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**Legislative Control over the Executive in Latin American
Presidential Systems**

Executive-Legislative Institutional Relationship during the Stabilization and
Structural Adjustment measures commonly known as “Washington Consensus”. The
cases of Privatizations in Argentina and Venezuela.

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0. Introduction

In Latin America many casual and academic observers have traditionally assumed that legislators and the whole legislative structure are functionally more a nuisance and a bureaucratic obstacle, than a real stage in legal production and the institutional control of powers. To many of these observers, Congress members recurrently give up their powers either due to a pragmatic perspective of power negotiation to obtain personal or group benefits, or due to the obvious impotence of a weakened institution, in comparison to an almighty presidential figure and cabinet.

That this perception became common to many of us may be because of the authoritarian tradition in the Latin American region, which has left the legacy of extraordinarily strong presidencies and presidential powers in the different constitutional texts. Kornberg/Musolf (1970), quote Packenham's study of Brazil, questioning whether the Assembly's function will ever be that of enacting legislation by itself; a very pessimistic conclusion, without even a word about the legislative daring to challenge the executive or to control it; so unequal were the forces at the time. Brazil's recent history before the 1970's allowed indeed no deeper analysis regarding institutional relations between the executive and the legislative.

A year later Agor (1971), presented a comparative study where only three states, Chile, Costa Rica and Uruguay, exercise "considerably more decision making influence in the total political system than the typical of most world legislatures" (p. XLI). Venezuela's Congress at the time, deserves the connotation of having a "minimal capacity" (p. XXVIII), however one that is "still capable of modifying, delaying and at times killing executive-branch legislation" (ibid.). Two subsequent studies by Blondel (1973) and Mezey (1979) endorse Agor's adjectives of "marginal" and "rubber stamps", also "minimal", when referring to Latin American legislatures, with the exception of the three formerly mentioned countries in the case of Blondel, and Costa Rica alone, in the case of Mezey. In between, there is also a Latin American research approach made in the University of Mexico by Lions (1974), where the conclusion regarding the possibility of an independent and comptroller institution in the figure of the legislative is appalling: "Despite all pressure means that Congress may have, the control over governmental acts cannot be more than a symbolic faculty" (p.90).

Some fifteen years later, amidst the debate whether parliamentarism or presidentialism would be the best political system for the region, O'Donnell (1993) introduced the idea of Latin American democracies as a species of its own among presidential democracies; in them, presidents did not consider the legislative as a cooperating power or even a controlling instance, but as a nuisance. Linz (1994) added that in a system like the presidential, where the "winner takes it all", legislatures had very little to say in real policy making and were but functional appendixes of the executive and the ruling party.

Contrary to these rather pessimistic views, Shugart/Carey (1992) and Carey (1994) present detailed studies outnumbering of the assemblies' resources and the constitutional and meta-constitutional power they may have access to.

Mainwaring/Shugart (1997) focus more on the legislative support presidents have and the reasons and consequences of this support but still consider the legislative a relevant variable of study. They even produced a conclusion that relates how this support can be important for better governance levels: “the number of parties present in the legislative affects the likelihood of at least a general compatibility between the assembly and the president. This situation can be difficult because the president has problems building reliable governing coalitions” (p.394). In other words, these authors accept the premise that for better governance indexes and indeed for any reform plan to be implemented there has to exist at least a minimal working support between the executive and the legislative. Otherwise the feared delay or killing of executive bill proposals can materialize in the Congress chambers and generate a run down in the effectiveness of the executive.

Based on the Laakso/Taagepera (1979) index for party fragmentation inside the chambers, Mainwaring/Shugart suggest there would be a direct relation between party atomization within the assembly, assembly support to the president, and governance. In the end, legislatures matter if only to a certain extent. Carey/Shugart (1998) edited a book where several authors show the different tools legislatures may employ to either veto presidential decisions or repeal single handed decrees. Morgenstern/Nacif (2002) work the topic further, introducing new terms into the discussion and granting a relevant role to the legislatures, particularly in times of reforms. For them “although Latin American legislatures are primarily reactive, that does not mean they are necessarily impotent or unimportant” (p.467). Policy production becomes, according to these authors’ conclusion, a game between veto players where the executive, being the mightiest figure, ought to be able to anticipate the desires of the assembly in order to make it a compliant collaborator.

- Problem and Theoretical Background on Reform Research

What explains the levels of legislative control over the executive? How did these levels and mechanisms of control operate in those privatizations done as part of the structural adjustment measures carried out during the 80’s and most of the 90’s in Latin America? How big was the congressional influence over the executive proposed bills to implement the reforms? Which variables elucidate the institutional relations between the executive and the legislative during reform years? If it is true that there is only partial influence and the executive always had resources at hand to secure success in the bill approvals, why did some cases go so notably wrong where others succeeded?

There is a notorious amount of literature dealing with structural adjustment reforms and why they happened in Latin America the way they did. Some observers objected, even before most countries embarked themselves in the straight jacket of reforms, that democracy and horizontal decision-making were (functionally) in opposition to the authority needed to impose deep structural reforms, a power more of a vertical nature. They meant that reforms would alter politics “as usual”, producing cost bearing sectors that would react adversely against them using whatever lobbying

capacity they found at hand. The legislative, in such a conflictive environment would become a buffer zone for all this debates. This institution (together with the political parties) would be the secure end to the civil society's resistance to any proposed economic reform.

In cases like Venezuela, where "politics as usual" meant a closed pact of several social and political actors, reforms in the economic structure meant a new mapping of the social relations of these forces with the patronizing state. Under this view, relating deep economic and structural reforms as conceptual opposites to democracy and majority acceptance, the main conclusion was that only dictatorships with clear vertical models of command, such as that of Pinochet in Chile, had the power to impose a number of complicated modifications in the economy and in the state structure (Foxley, 1983; Pion-Berlin, 1983). They would overcome dissidence by silencing and suppressing it. Legislatures were plural institutions where this plurality could operate against them: it could increase the viscosity and transform the assembly in a political nuisance for the executive.

Moreover: the fact that many governments in Latin America refused to apply strong adjustments after their debt crisis at the beginning of the 80's, seemed to diffusely support these observations of a needed verticality, if anything because some nations (Argentina, Peru and Brazil to a certain extent), decided to adopt "heterodox approaches" to what otherwise were repetitive orthodox monetary policy recommendations from the international financial institutions. Dahl (1998) spoke of "antagonistic symbiosis" to describe the relations between market economies and democracies in the third world, because they can both support and subvert each other. Any movement towards opening a state-led economy or headed for a market economy could weaken the political system by harming a number of created and time honored relationships of conveniences, most notably in those oil rentist countries such as Venezuela. But again, if democracies were to survive, they had to overcome their populist and state centered conception of development, so in a way, pro-market policies could help the democratic system grow.

The thesis considering a politically unaccountable force as the only one able to produce deep economic reforms and growth was not formulated to cover all authoritarian regimes: Argentina during the 70's also had a military government, and its members also tried to impose important liberal reforms through their association with wealthy sectors of the economy. Reality showed however, that political or rather authoritarian might was not enough. The military in Argentina were far from being the homogeneous ideological group they were in Chile, nor was the chain of command so vertical and monolithically controlled by one person. Objectives were not commonly planned by a plural Junta Militar, nor were they clear to all of them. In addition, the massive public policy management position occupation done by the military, made them create or re-activate alliances with the status quo and with union sectors that impeded a clear reform scenario. The military in Argentina had been in power for several years after the Second World War and had diverse political and ideological orientations regarding the state and the state reform.

Beyond the authoritarian/democratic discussion, we find ourselves at a basic conceptual crossroad to explain the necessary degree of governance required for reforms to be applied successfully: on one hand we may focus on the internal characteristics of the states, that is, their degree of technical competence and knowledge, their internal cohesion, presidential commitment, insulation from clientelistic or corporative pressures; and on the other, we focus on the characteristics of the relations between the state and the society, that is, how the state manages to establish smooth relations with those social groups over which it governs. The first choice relieves the debate of whether authoritarian or democratic regimes behave better with open market tendencies, because it centers more on the technocratic efficiency a determined government is capable of delivering in a certain period of time. The second option, on the contrary, takes directly the democratic side aiming to the heart of the democratic institutional inter-relation as a goal, and to the political parties as social interest brokers. Under this view, what matters is how the social tissue is interrelated with the political parties which will represent them in the assembly. This assembly and the map of interests there gathered, is the decisive element for an institutional resistance or approval of the executive reforms.

Understanding these premises, this study addresses a paradigmatic debate in contemporary political science: the discussion about the relative importance of institutional and structural constraints against the political agenda (even if it is an internationally agreed one as many adjustments were) and the choice or decision making possibilities plus the institutional channels to express these decisions. Clearly said, a pattern oriented to explain the probable success of reforming the state, by means of its institutional and social support and the institutional reactions and tools for that reaction presented by the legislative. Several views have tried to explain how this institutional interplay during the reforms happened and which the decisive trends for a final outcome were.

Purely economic arguments emphasize that severe economic problems resulting from external dependency and pressure from the international financial institutions, forced governments in the Latin American region to adopt orthodox, pre-made adjustment packages of which privatizations were a starting point (Stallings, 1992). Political institutionalists on the other hand, observe that the success or failure in enacting the reforms depended not so much on the depth of the reforms but on the institutional powers of the executives (presidents and cabinet members) to make the process go through (Haggard/Kaufman, 1995, Mainwaring/Shugart, 1997). Ideational perspectives argue that political and civil society groups had learned from the failures of the state-intervention in the economy (as it had existed in Latin America for decades) and decided to join orthodox liberal economy measures that would encourage private participation (Kahler, 1992). Rational choice theorists perceive that aside from institutional structure, politicians decided to apply drastic economic reforms to cut off with the sequence of failures “middle approaches” had left before. The idea was that radical adjustments applied in a short period of time, would have lesser political costs than a gradual approach, so in Latin America the political class

(after the heterodox failures of the 80's) decided for a direct application of an orthodox economic approach. Politicians could, under this view, obtain side benefits when applying reforms by using neo-liberal measures to weaken their adversaries and favor their support groups (Geddes, 1994; Przeworsky, 1991).

For the purpose of this study we have observed a mixed approach between a purely institutional perspective, and elements of rational choice in the actors implied. Undoubtedly so, the depth, speed and range of the reforms (and for our particular study, of privatizations), were influenced by the institutional actors, executive and legislative, and their ideological background. So how these were shaped and modeled and their level of mutual cooperation becomes germane to understand whatever result.

In the end however, it is the institutional design and the constitutional and legal provisions in each country that allow these actors a certain decisional and operative margin. In the case of Latin American presidentialist democracies, the historic tradition of the strong president together with a light parliamentary figure, developed throughout a continuous set of interactions and led to a great paradox: unequal powers cannot control each other despite being normatively conceived as mutual veto actors. The legislative, so asymmetrically equipped in the several constitutions of the region, could not perform its other main function aside from legislating, that is, the control of the executive power and its decisions. How then has congressional control over the executive policy proposals operated? How much control if any, has there been and through which tools has it materialized?

- The Argument

This research suggests that aside from a number of investigations done to explain the turbulent decades when structural adjustments took place, the role of the legislative (in passing or stopping many of these reforms) in the presidentialist democracies of Latin America has been enormously and continuously overlooked, because among other reasons, of its supposed weakness. This conclusion or rather, working premise, is not an isolated consideration since it has been a common perception from the days of Agor (1971), one of the first researchers to compare and determine how neglected Latin American legislative politics were. To the mentioned arguments based on economic-structural, political-institutional and rational choice premises, made to explain either the institutional outcome or the actors' behavior during the adjustments, the research made purely on legislative behavior adds little, but rather takes from them theoretically to explain some details otherwise disvalued.

This being said, a deliberate focus on the legislative powers in Latin America, brings out to light structural and functional constraints that do have a determinant and radical effect in the outcome of policy production. Despite being a seemingly historically and functionally weakened power in comparison to the executive it ought to observe and control, legislatures can apply a number of legal and extra legal resources to make their weight distinguishable in political negotiations. The perception Agor presented thirty years ago revealing that even weak legislatures could "delay and even kill" (1971, p. XXVIII) executive designed legislation, became

drastically important at the time of implementing economic adjustments during the 1990's for two main reasons: most of the adjustments implied a state design modification, which meant a *sine qua non* legislative involvement (especially when dealing with public property or public service provision); and second, many of these adjustment "solutions" had been internationally agreed with international financial institutions and were set with rigid time patterns. Any delay on the side of the legislative in the necessary bill approval, or any strong modification of the executive-sent projects, could have national and international economic consequences for the whole country and most visibly, for the government.

Another reason for the argument withheld in this thesis is the institutional relation study between legislative and executive as a determinant variable to overcome any economic crisis. Grave economic emergencies affect all social actors, though in an unequal way. Political parties and the political system are one of the buffer zones where the cost bearing groups are reflected and this has a clear mirror in the legislative politics pursued. Under the political-institutional scope both Geddes (1994) and Corrales (1998; 2001) have tried to explain legislative politics in times of crisis as the outcome of the relations between the president and the ruling party. This inference is also closely tied to the electoral system which draws the legislative map and consequently establishes the power sharing proportions. Political parties, most particularly those with a statist-populist background, tend to clash against reforms aiming towards a free market because they provoke internal divisions between those who favor the reforms as a historic opportunity and those who don't. These intra-party clashes see themselves later reflected in the congressional chambers where, if unattended, they may grow and determine an executive adverse outcome. This adverse outcome may materialize itself in the delay or killing of the necessary bill projects Agor (1971) comments, or in the increase of the viscosity mentioned by Blondel (1973). In one way or the other the parliament's cooperation and "running along with the executive" figure, becomes decisive for the planned reforms to go through the congressional chambers as they were originally designed.

- Why Privatization?

Privatization as a state-led policy is pertinent to explain the whole institutional interplay between executive and legislative in the presidential democracies of Latin America. It is the most legislative-related of all structural adjustment reforms since in all nations, it is constitutionally stated that the disposal of public property has to be supervised and deliberately authorized by Congress. At the same time, it was one of the main ingredients of the whole structural reform package implemented in Latin America during the 1980's and 1990's that openly reversed the surge of state ownership which occurred in the region after the Second World War. In the case of Venezuela, a real (though unnamed) privatization program began somewhat intermittently in the 1980's with the first mild forms of public property transference to private administration. It increased and reached its strongest peak between 1989 and 1991 when the government proposed it as a deliberate state policy.

Prior to that, and because of the strong influence of the state-led development model, privatization could only be addressed through euphemisms and not by its real name. In the case of Argentina, despite some initiatives pursued during the last military junta's government, and some attempts done during the Alfonsín administration, the real privatization program progressed through Ménem's first presidential period and extended to a certain part of his second. The Argentine case is bigger not only in comparison to Venezuela, but to almost all other privatization plans in the world. It became unique in its scope and length because it included all the previously state-owned basic enterprises, and in its speed, because the biggest bulk of it was done in the first four years of the Ménem administration.

The approval of any privatization initiative implies a deliberate involvement, so foreseen in the constitutions of the region, of parliament majorities plus willing executives. Privatization meant in short, a complete policy innovation that required a new legal and regulative corpus both in Argentina and Venezuela and a synchronization of the executive-legislative aims and purposes to produce it. The idea by itself represented a contradiction to the existing legal frame of a state based on a state-led development model for over 50 years, one with an unquestioned relation pattern with the so called decentralized administration, namely, the state owned enterprises; so the reform program, to be able to take off, had to be an institutionally common idea. The roots of the former inward development model had diverse depths in the constitutional and institutional design of the two countries, but in both cases it was mature and well implanted when Pérez and Ménem started to apply reforms; in Argentina throughout the decades after the war, and in Venezuela, most strongly after the 70's and Pérez's bizarre proposition of the *Gran Venezuela*.

By showing congressional intervention in the policy implementation, this research focuses on the means the parliament had to produce effective restraint over the executive initiatives, understanding privatization precisely as one of the policies where the inter-institutional interplay was most intense. The legislative control resources vary substantially from one case to another, and refer to the constitutional provisions given to the parliament in a region of presidential regimes where the institutional design between the executive and the legislative has clearly favored the former. However, by looking at a case by case scenario we observe, first, the institutional capacity of Congress to pursue a power balance with the executive using its attributions as veto actor and second, the diverse cooperation stages of a relation that is mutable and far from remaining stable and homogeneous. These two points lead us first to the controlling features of the legislative and the powers of the president plus the decisive orientation given by the ruling party in Congress, and second, to the important role played by the party system, which can either lighten the policy's legislative tour or deliberately hamper it. Seen this way, the aim of this research is not to explain the reasons of the failure or success for each privatization case in any of the countries but the institutional interplay between executive and legislative that produced a determinate result.

If we accept that the policy initiative was in the hands of an almighty executive, with enormous agenda setting powers over the legislative as well as an outstanding record of prepared bills, it is also true that congressional ratification (most specially in the case of privatizations) turned out to be an unavoidable step in the process of property change from public to private.

- Case Selection

The selection of Argentina and Venezuela as case studies for congressional control over the executive obeys a number of similarities and differences. Venezuela and Argentina both decided to start major stabilization and structural adjustments after 1989, with the newly elected presidents Pérez in Venezuela and Ménem in Argentina. These two candidates came from strong union-based, statist, populist political parties, *Acción Democrática* and *Partido Justicialista* respectively. These two parties had been the strongest advocates of the opposite development model, decades before, and had strong populist ties with the middle and lower income sectors of the society. The transition to an orthodox economic model meant a complete abandonment of the former state-centered development model and the following of several prescriptions made by the international financial organisms, frequently despised by the leadership of populist-statist parties.

The constitutional structure and legislative empowerment in both cases is different. The Argentine executive had always been extraordinarily powerful even for Latin American democracies, diagnosed as a potential hyper-presidentialist case (Nino, 1992). The Venezuelan government on the contrary, had been labeled together with Costa Rica as one of a congressionally controlled executive (Brewer-Carías, 1985). In both examples, congressional reactions had to be different provided this diverse initial pattern of institutional design; also because of the electoral system, which in Argentina gave political relevance to certain provinces.

In the economic arena, the similarities between the two countries increase. Despite some previous attempts that could be singled out, it is by the late 1980's when most state leaders in Latin America in general and in our case studies in particular begin to consider opening their economies to market forces. After the debt crisis at the beginning of that decade and some individual efforts done by several administrations, the orthodox monetary recipe proposed by the international financial institutions was gaining ground asserting that an opening of the economy through stabilization plans followed by state structural adjustment reforms would be the longest lasting solution to the regions' hyper-inflated, weak economies. Economic stabilization refers to those government implemented changes to produce a minimum balance in macroeconomic values such as inflation, exchange rates, balance of payment and fiscal deficits. Structural adjustments refer to longer lasting changes in the general institutional organization of the state providing chances for the private capital participation in the production of goods and services in the economy.

In both these countries, before the launching of reforms in 1989, privatization had only occurred marginally if at all. Both Congresses had never issued laws against

public property or any state owned enterprise and the ruling parties had been advocates of a strong state figure and intervention over the economy until then. Both countries took divergent paths towards the reforms: they succeeded to a certain point in Argentina, allowing for a constitutional reform and a presidential re-election, and failed soundly in Venezuela, producing a popular revolt in 1989 and two *coup d'état* attempts in 1992.

From a legislative point of view, Argentina's president could politically profit from the hyper-inflation crisis of 1989 and obtain two strong delegative laws from Congress to allow the executive an almost single-handed action regarding reforms. Congress regained its normal powers around 1991 and the institutional relations had to shape accordingly, when the president's wishes began to be tamed and adapted to a wider political reality based on institutional compromise and negotiations. After that, a more complicated scenario developed (especially after 1994) when Congress and the ruling party started focusing more on their priorities than on cooperating with the executive.

In Venezuela, reforms and the government's commitment to reform took most of the people by surprise. Pérez had won a second term based on his first term's reputation: the man of the *Gran Venezuela*, the macro state led plans and the big spending. However this time, Pérez proceeded like in the first administration only in being just as isolationist from the ruling party as he had been before. He surrounded himself with a number of expert technocrats who had no previous experience in politics, and started to rule at a very fast pace trying to implement as many of the internationally agreed reforms as possible. Two years later and despite relevant macroeconomic results, the ruling party managed to separate from the government, leaving it alone in Congress and with no political support before the public opinion. Collapse came a little after for the president and his administration and five years later to the party *Acción Democrática*.

From the two countries, Argentina bore a bigger experience dealing with diverse stabilization shocks and economic plans, particularly in the last decades. Every government that had shown any purpose of reform had had to negotiate and find a middle ground with the cost bearing groups of those reforms, while the general belief was that development should still be state led. This belief on a state centered growth development, subsisted in Argentina until the end of the 1980's for many Congressmen, throughout a series of stabilization measures that could never address the productive structure of the state but only apply certain shocks in the economy. In Venezuela, on the contrary, economic reforms had been almost unheard of for more than 20 years (from 1961-1983) so the 1989 reforms were perhaps the biggest turnaround in political economy and state design the country had experienced for more than a generation¹.

¹ There were also important differences in the socio-economic context previous to the reforms. Before 1989 Venezuela had a history of controlled prices that had led to an over value of the currency and to repressed inflation; in recent administrations there had been several goods shortages and black markets due to the exchange control with a clear privilege ladder. In Argentina, 1989 and the years before were

Methodologically, the two cases present a pattern of similar previous contexts with different outcomes. The two had decades of strong populist administrations with even similar time occurrences: the first peronist administration in the 40's and the *trienio* Adecuado in 1945 coincide. Both countries had authoritarian regimes during the 50's (Argentina relapsed more than once) and episodes of democratic high state investment in the 70's. In the two cases populism fed corporatism and this became an institutionalized condition visible in the structuring of interest groups, which meant the subsidization of pro-official associations and the official control of the internal governance rules of these associations (Malloy, 1977).

In Argentina, Peronists governments privileged peronist associations and there was a clear inherence in the peronist unions from the party. In fact, many peronist Congressmen, at the time of the radical reform proposal during Alfonsín, were sure they would not have the same problems trying to pass the same bill drafts through because the unions would remain loyal as part of an implicit corporative pact the peronist party had forged long ago with them. In Venezuela, when *Acción Democrática* returned to power in the 1960's it opted for a softer however direct form of corporatism framed under the institutional pact called *Punto Fijo*. Some groups would be directly subsidized (unions) and the state control over labor and labor leaders would increase (Kornblith/Levine, 1995; Karl, 1997).

- Research Design

This work is divided in five chapters preceded by an introduction and the conclusions of the investigation. Chapter one describes the institutional system in Latin America and a historical account of the parliamentarist and semi-presidentialist tendencies in an otherwise presidential region. The chapter portrays the different supports and critics to these institutional systems, their foreseen applicability in Latin America and a historical development of the ideas and institutions. Most important: the institutional design and interrelation between the executive and the legislative in each one of the models.

Chapter two relates to the specifics of the legislative amidst presidential systems, with its functional and structural prescriptions. The chapter also introduces historical and contemporary discussion concepts, from Madison's power balance theory to the contemporary consideration of Veto Player possibilities performed by each one of the actors. This is based not only on rational choice possibilities but on the constraints posed by their institutional, historical and functional limitations. It considers the presidential powers in the presidential systems of the Latin American region and the constitutional attributions of the Legislatures, in so far as being veto players within the institutional game. The chapter also explains the relation and debate between party and electoral system, and between government and ruling party.

Chapter three begins with a consideration over the production and formulation of the public policy process in Latin America, and the current debate over the

times of galloping inflation. The immediate tasks in both cases were reforms but with different aims: in Argentina, to stabilize the currency and the price levels; in Venezuela prices had to be liberalized.

institutional possibilities of accountability between the Legislative and the Executive. It is also a wide technical description of the legal control tools Latin American Congresses may have access to, taken from an average consideration of the constitutional texts in the region, and an account of the reactive scenarios the executive may dispose of to counteract congressional control. This chapter deals with decrees and laws as pro-active instruments and veto as reactive mechanisms Latin American executives regularly use.

Chapter four is a case study of the legislative control over the executive using the privatizations in Venezuela as example of institutional interplay, legal scenario and veto player capacity. Although most of these privatizations occurred between 1989 and 1993, a most active period, the transfer of public property or service provision to private administration had occurred before but without a proper law and legal name to the policy, also under different executive-legislative working patterns, and the ruling party elite (*cogollo*) exerting a tight command over presidential decisions. The wave of reforms of 1989-1991 shows the peak in privatization initiatives, taking the legislature almost by surprise; the policy was afterwards greatly reduced. The chapter shows the institutional relation between the executive and the legislative, and between the president and the ruling party. It measures how much the policy was affected by the cooperation/isolation level of the two bodies. At the end, the chapter has a detailed account of the veto actors in the privatization of the two biggest state owned companies privatized in Venezuela: the Telecommunications Company, CANTV, and the national airline, Viasa.

Chapter five is the case study of Argentina, a country that launched a massive privatization program in the same year as Venezuela with very different results in the end, mostly because of the legislative cooperation shown from the beginning. The chapter starts with the privatizations done without legislative, all accomplished during the military junta's government in the 1970's and beginning of the 1980's; the legislative frustrated privatization attempts put forward during the radical administration of Raul Alfonsín, and the wave of privatizations completed by Ménem after 1989. This last stage is subdivided in three phases, following the institutional relationship changes the executive and the legislative went through: a delegative, a cooperative and conflictive phase, each one explained with a related privatization discussion in Congress to depict the on-going situation. The chapter ends with a more detailed description of the privatization of two companies of the first stage, EnTel, the telephone company, and Aerolíneas Argentinas, the national airline.

- Basic Concepts

Democracy

It is one of the most widely defined concepts in political theory, if not the most. Several studies made on the transition from authoritarian rule to democracy (O'Donnell/Schmitter, 1986; Mainwaring, 1992; Sartori, 1994 and Przeworski, 1997) introduce a number of reforms of the idea particularly for the Latin American countries. For the purpose of our study we use the concept of democracy in an

institutional approach similar to Weyland's (2003) "a set of institutions that, in the context of guarantees for political freedom, permits the adult population to choose their decisions makers in competitive, honest, regularly scheduled elections and to advance their interests and ideas through peaceful individual or collective action" (p.12). Under this scope, democracy has been the political system in Argentina after 1983, with the first open elections after the authoritarian rule of the military junta, and in Venezuela since 1958. Because the research operates at an inter-institutional level, the idea of democratic consolidation is addressed only partially in both countries.

Market Reforms

This term, widely used in the Latin American region after the 1980's, had the common connotation of addressing a set of diverse measures aimed to reduce the degree of state intervention in the economy. Market Reforms have been differentiated into two phases: stabilization measures and structural adjustments in order to promote a viable market economy (Naím, 1993; Nelson, 1997). Weyland (2003) observes that the broad term market reform specifies only the direction of the change and not the end point, since a government that enacts market reforms does not necessarily intend to install a full scale market economy. In contrast to this, neo-liberal reforms would imply a set goal of creating a market economy. The setting up of market reforms does not *per se* imply a full swing towards a free market economy, but only the strengthening of more market features in the economy, whereas neo-liberalization reforms would mean a complete turn towards a leaner share for of the state and its institutions (Acuña/Smith, 1994; Weyland, 1996).

Structural Adjustments

They are commonly addressed as the second stage of the reforms, namely, those that occur to maintain the effect of the stabilization policies once these have been implemented. If stabilization measures are meant to correct macroeconomic disequilibria (inflation, fiscal deficits, imbalances in the external accounts), structural adjustment measures are deeper and seek to transform a country's developing model and relationship with the market. If stabilization measures can usually be executive designed and applied, structural adjustments normally require the participation (via authorization, approval, supervision, etc.) of the legislative. In general, structural adjustment measures are expected to have a long term impact. Naím (1995) has differentiated two main stages in the setting of structural adjustments: first, the dismantling of the nationalistic, state-interventionist inward oriented development model and in a second phase, the installment of the institutional framework necessary for a market economy.

Privatizations

Privatization has received several academic and functional definitions which range from trying to define the sale of public property to private investors as a single case, to the description of a wide state policy that aims at the operative reduction of the state and state functions, thus producing a slimmer conception of the administration and the administrative powers. For the purpose of our study and because we observe privatizations mainly from a legislative perspective, we will

consider privatizations as the legislation proposals received or produced by Congress to instrument the sale of public property. Because of constitutional dispositions, any sale or disposal of public property has to be authorized by the legislative, privatizations becomes the common ground where institutional interactions between executive and legislative can be observed.

Legislative

Although in most of the historical literature the definition for legislative is very similar (in so far as specifying the side of the administration in charge of legislation and executive control) our operative meaning works specifically with systems where there is an independently elected president, that is, presidential systems. For the purpose of the research, the legislative is also the ground where bill projects are discussed, eventually modified, and where a set of legal dispositions exist to modify these projects, by interpellating and questioning their authors. The legislative, being a power of its own and on a higher representation hierarchy than the executive, also has instruments to control the executive and stop or delay its legal initiatives. Bicameralism as such is addressed and contemplated, however it rarely becomes a variable in itself except for those cases of incomplete party dominance in the parliament, where the ruling party has either a working or an absolute majority in one chamber and not in the other.

Control

The notion of control implied in this research is close to the contemporary idea of accountability, as it is commonly used in public policy texts (Crisp, 1998). However, control is a wider notion. When related to the legislative, control over the executive can be done *ante facto*, as with the budget law that enables the assembly to modify the administration of the public income proposed by the government; *during facto*, with the interpellations, questioning and censure of the cabinet members; and *post facto*, with the legislative investigations and eventually, where it may be possible, the removal from post of a cabinet member. O'Donnell's idea of horizontal accountability (1998) is exposed as a theoretical background for the concept of legislative control, however the notion of control implies certain verticality in the institutional design and is theoretically opposite to that of horizontality.

1. Parliament and Executive in Latin America's Democracies.

A more serious subject of study for quite sometime now, the relation of legislatures with the executive power in the presidentialist democracies of Latin America is currently under strenuous revision (Llanos, 1998; Weldon, Mustapic, in Morgenstern/Nacif, 2002) due to its real significance and importance in democratic institutional arrangement and outcome and also because of its undeniable role in improving governance levels in the region. Verily, legislative research, both cross- and sub-national, has experienced a notorious resurgence in the last decade; particularly when empirical results (Mainwaring, 1997; Carey/Shugart 1992, 1998) have proved that the situation between presidents and their parliaments is clearly more complex than a delegative one-sided relation (Casar, 1999; Cox/Morgenstern 2001).

Studies like this one just some decades ago would have been dismissed and considered of little importance amongst the obvious role and power play of political actors and institutions. The research topic would have been no less than a pointless venture into the trivial (Close, 1995). Until very recently the so-called "obvious dominance" of the executive² (Lambert, 1963; Lions, 1974) continued almost unquestioned. It seemed as if most presidential democracies had strong proactive presidents with seemingly passive and simple assemblies, with very little exceptions in the region. However, on contemporary terms it is essential amidst the democratic flow, to observe the representative, control and confirmation factors implied in the parliamentary bodies of Latin America in order to better understand institutional role playing and political aftermath, variables with obvious governance repercussions for the region.

Observing previous researchers about our topic, Latin American Legislatures in general and their control capacity over the executive in particular, we find a pivotal study over their importance compiled some thirty years ago, 1971 that is, by Prof. Weston Agor³. There he empirically develops and edits the results of experience on nine countries, all of which relate to our concern except Mexico which was not included because, the author says, there was no worthy study, independent enough, on parliamentary behavior.

² "En su forma jurídica el régimen tipo presidencialista de América Latina casi no se ha alejado del modelo de la Constitución Estadounidense de 1787, pero en la práctica, las instituciones copiadas de las norteamericanas y aplicadas a sociedades muy diferentes de la de Estados Unidos, se han modificado profundamente. La forma perdura pero el espíritu es diferente: el régimen *presidencial* se ha convertido en régimen de *preponderancia presidencial*. (El Poder Legislativo en América Latina, Monique Lions, p.8, 1974)

³ There are other authors prior to Agor of relative importance, however his work one of the first to address the significance of parliaments in the Latin American region outside the pure developmental view as for example in Kornberg and Lloyd (eds) (1970) where we find Packenham; or pure structural positions as in Lambert (1969) or Huntington (1970). Another pioneer study worth quoting is "Government and Politics in Latin America" (David, 1958). Some papers published before the 70's and especially before the Chilean crisis in 1973, which brought the role of Latin American parliaments back into light are: Dix (1967); Scott (1958; also included in David, *ibid.*). Another, more general however substantial text, both quoted by Agor and myself is "Legislatures", Wheare (1963) where parliamentary functions are drawn: "In some countries they make or unmake governments. They debate issues of public concern and act as what J.S. Mill called a committee of grievances and a Congress of opinions" (p.12).

The main thesis of Agor's book, exposed right from the beginning of the preface, is the following: As far as Latin America is concerned, recent leading textbooks unanimously assert that in most nations of the region, the legislatures are rubber stamps institutions. They symbolize only a by-pass function, a bureaucratic stage, to make previously stated executive plans official. His results quite follow this notion although the precaution is made that some countries may have better parliamentary enforcement than others, either through legal prevision or political system.

Probably because they have been many a time overshadowed by strong presidential regimes and repressed (if not directly closed) by military governments in the region, Latin American legislatures have received little attention and been usually misunderstood in their importance and character for quite some time. The presidential preponderance in Latin America, quickly accepted as a fact, has been explained due to historical and cultural factors which regard the figure of the president as another metamorphosis of the XIX century *caudillo* (Ayala Corao, 1992). Jacques Lambert, who addressed the problem in 1963, explained the foundations of this prominence of the executive figure in four elements⁴:

- 1) The tendency to personalize power in the person of the President as a by product of political immaturity.
- 2) Institutional manipulation of Presidents through political (and electoral) factors and favors (as for corruption).
- 3) Need of adapting to the demands and contradictions of developing countries
- 4) The delegation (to the President) of powers and attributions not present in a pure presidential model such as the U.S.

To complement this polemical observations made by Lambert, some academic observers quickly assume, like in Agor's case, that legislators often give up their constitutional powers, abdicating them in favor of the executive either due to personal interest or party discipline⁵. On the negative side that Agor's conclusions portray, we can also compile Kornberg and Musolf (1970) quoting Packenham's study on Brazil and questioning (p.8) whether the parliament's function is or will ever be one of enacting legislation⁶. Most of those studies that denigrate parliamentary functions

⁴ The title of the book is already revealing "The transposition of the Presidential Regime of the United States: the case of Latin America" (translation by the author)

⁵ Agor accepts Packenham's belief that Latin American legislatures do not have decision making as one of their principal attributes (p. xxviii), but he exposes a scale based on the empirical results on the nine countries. Under this view, Chile, Costa Rica and Uruguay have parliaments that do exercise some decision making and influence their respective political system. Other countries (notably Guatemala) are mentioned as developing increasing empowerment for the legislatures; while the others have "minimal legislatures" speaking on power and influence capacity terms. Agor's view is complex and sometimes prone to contradict itself, as in the case of Venezuela where he comments that the legislature role is minimal but at the same time admits it is a Congress capable of disreputable modifications, delays and "at times, killing executive branch legislation" (p.xviii). These attributes, if existent, can in no way match the idea of a *minimal legislature* (the term was created by Michael Mezey in 1970), implying it had little or no instrumental institutional outcome.

⁶ Excerpts of this discussion are also mentioned by Morgenstern in his paper "Towards a Model for Latin American Legislatures", now chapter 1 for his book with Nacif (2002)

were conducted, as mentioned, under military regimes or viewed in general, when most of the countries in the region were governed by *de facto* administrations, being functional democracies a notable minority in the political map. Indeed, excepting Chile, Costa Rica and Uruguay, Blondel (1973) and Mezey⁷ (1979) endorse the adjectives of marginal and rubber stamps when not simply minimal (as mentioned by Agor), for Latin American legislatures respectively⁸. To this we can add, closer to our time, O'Donnell's (1993) criteria that Latin American democracies are a "new species", characterized by presidents who view legislatures as a nuisance, rather than a functioning part of liberal democracies.

This view is indirectly reinforced by Linz's (1994) statement about the winner-takes-all nature of presidential systems in Latin America, and by recent analysis on the excessive⁹ use of presidential decrees as a way to by-pass the delay that regular congressional functioning might mean. Most other academic investigations on legislative activities and congressional functioning have focused more on the purely legal aspect and constitutional/legal empowerment (Lions, 1974¹⁰; Brewer-Carías, 1980; de La Cueva 1982) existing between the two institutions, rather than on the politological analysis of interacting forces.

Twenty-five years after Agor's book¹¹, another seminal study on the matter made by Dave Close (1995) reverses that vacuum on the basis that if Latin American countries have massively concurred towards democracy, a liberal representative model of democracy that is, the parliament starts having a radical influence on almost every aspect of the political life. Close's argument recalls Walter Bagehot in his study (1867) on the English Political System and how institutions were either *dignified* or *efficient* parts of whole system. If we accept Agor's view that legislatures have been

⁷ This study by Mezey (1979) created a simple categorization on the bases of "democratic support" of the legislative institution and the legislature's "policy making power". The functionalist allotment proves to be a little restrained for the complexity of Legislative and Executive relations where other categories and considerations appear.

⁸ These countries had already been exempted from the whole Latin American legislative map. Agor's conclusion remained almost unquestioned for more than a decade during which military regimes enforced in many countries the idea of weak legislatures, if at all existent. These conclusions stated in brief are: 1) three Latin American legislatures –Chile Uruguay and Costa Rica- exercise considerably more decision making influence; and 2) the data presented questions the validity of the statement that legislatures are obstacles to political and economic development. This second finding, very much less quoted than the first, will be retaken 20 years later when addressing the relation between parliaments and structural adjustment measures.

⁹ One of the best sources to search the catalogue of decrees issued by Collor de Melo in Brazil, Menem in Argentina and Fujimori in Peru is "Executive Decree Authority" (Carey/Shugart 1998).

¹⁰ This study by Monique Lions published by the UNAM in Mexico, is clearly one of the first regional references; before that most studies had a foreign origin and many a time a foreign relation to the region referring to Latin America in term of analogous comparison or difference but not as a specific case. Lions is a clearly legally focused research however one that discusses constitutional and institutional developments of strong presidencies. "El régimen presidencial en América Latina no es un régimen de equilibrio de poderes pues la preponderancia presidencial le es inherente" (Lions, 1974, p. 12).

¹¹ There is an intermediate study in time, published in 1981 by Norman Orstein (Ed.) titled the "Role of The Legislatures in Western Democracies", from the American Enterprise Institute for Public Policy Research. Not being directly related to our topic it is mentioned because it encompasses part of the scope of research proposed. Most of the discussion focuses on the Congress as a political figure but many practical examples surround the role of the US Congress.

mostly decorative institutions amidst the movement of the presidential system, we could then say they were examples of the dignified part. Liberal democracies today on the opposite, because of the constant demands made on contemporary third world administrations, have to stand on the effective part of the scope, which is precisely what Close proposes.

It is now a consensus among several authors (Morgenstern, Nacif, ed. 2002; Mainwaring/Shugart, 1997; Carey/Shugart, 1998; Nohlen, 1998) that legislatures in different developing countries have had an important role, if not to say a decisive one in what Rush (1990) calls *pressure politics*. Parliaments in developing democracies have many determinant decisions over public policy and legislation. This idea of *pressure* can be expanded to the many consequences that can be observed under institutional power sharing and mutual veto exposure (Cox/Mc Cubbins 2001); when both constitutional, electoral and party system regulations allow legislative expression, and when legal initiatives taken by parliament promote legislation or severely modify any of the executive's legislative propositions.

A perception we ought to mention, which is very near Close's argument in 1995, had already been exposed, though from a slightly different angle, by Carey /Shugart (1992)¹². Among other conclusions these authors show institutional *trade offs* (implying the negotiations among several parties through the electoral system) singled out as necessary and convenient for democratic sustainability. These *trade offs* become more significant particularly when trying to maximize the advantages of both an accountable and electorally identifiable executive, as well as an assembly which is representative of the diversity of the society and polity. The authors expose as a majoritary conclusion that "having a separate executive and assembly requires careful attention to how the two powers overlap and check each other" (p.31), noting however, that institutional choices of presidentialism as possible variations as well as electoral system rules and time cycles employed for elections may compromise the advantages of the mutual accountability function.

Just more recently towards the end of the 90's and the beginning of the new century, studies have sprouted to explain legislative behavioral tendencies that otherwise would have remained unexplained. This is particularly true during reform times when parliaments had a very active role in many Latin American countries, a situation mostly visible after the mid 80's¹³. In fact, it is precisely after this decade when political scientists started discussing themes under the scope of "new institutionalism", drawing serious concern "sometimes more, sometimes less formal" from microeconomic understandings of rational behavior and individual responses to

¹² This study, though pioneer in many senses and written almost at the beginning of the so-called "Third Wave of Democratization" in Latin America, is strongly influenced by Lijphart's book "Democracies" (1984), where important conclusions on Parliaments, notably the practical consequences of Bicameralism are exposed.

¹³ One can quickly trace research efforts to work with results coming from Argentina with Ménem; Brazil under Collor and not least under Cardoso; Venezuela with Pérez and the convulsive period during the whole 90's decade; to understand how much more ink and stamina has been invested to legitimize a variable that would otherwise continue underrated.

incentive structures (March/Olsen 1984; Grofman 1987). This sub field of study, new institutionalism, placed political variables at the center of any discussion based on the fact that political structures ought to be judged under the rates of their political outcome (Shugart/Carey 1992). Considering both the consolidation of democracy and the governance debate, big discussion topics during the 90's, the understanding requires an active interaction of political institutions among which the executive and the legislature appear together involved in policy making (Hammond, 1996).

We state then that aside from the context of almost constant political instability for the region with a succession of democratic, semi-democratic and authoritarian regimes, congressional intervention should not be underestimated (Llanos, 2000). This, on the risk of confusing authentic hyper presidential realities (Nino, in Lijphart/Waisman 1996) with their functional opposite: presidential systems with a *limited scope* of centralism. These two terms center the debate on real parliamentary influence¹⁴ as their pivotal and functional difference (Casar, 1997; Mustapic, 2000) and the discussion of the existence of a system of checks and balances in Latin American regimes.

Empirical works have also been produced to support the thesis of the excessive (albeit deliberate) concentration of power in the president¹⁵, for example during the economic crisis in Argentina. They have shown how and through which means the executive used unilateral force to promote policy making and consolidate its power at the end of the 80's and the beginning of the 90's (Rubio/Goretti, 1998, in Carey/Shugart "Executive Decree Authority"). We now know this was so because the Argentine Congress consciously delegated its might as a response to the acute economic crisis and inflation. This was especially true in 1989-91, the first years of the newly elected Peronist Government of Carlos Ménem, when the two biggest parties, UCR and PJ, set a political agreement to allow the executive emergency measures to fight the economic crisis.

New inquiry also proves that though Latin American Legislatures tend to be reactive to the executive, that does not mean they are dysfunctional (Cox/Morgenstern, 2001); and the executives differ from the classical presidentialist model in the fact that it is one that can set the agenda for the legislative. Moreover, constitutional authorizations from the legislative and reactive control tools against executive initiatives exist in virtually all Latin American countries. When executive decisions have not been properly constrained, it could have been either because of voluntary parliament delegation (cases Mexico or Argentina); or because of a weak

¹⁴ The debate on whether Latin American Democracies have "hyperpresidentialist" systems or rather "limited centralism" ones due to the action of the legislative is today still active, with continuous interpretation of the institutional/empirical outcome. Recent studies such as Weldon, Mustapic, Nacif in Morgenstern/Nacif 2002; or those of Casar, 1999; Llanos 2001; Cox/Morgenstern 2001; tend to reinforce the interpretation of empirical data towards an underestimated move of the parliament and thus a limited centralism (as opposed to the vast possibilities of hyper presidentialist systems) for most of Latin America.

¹⁵ Rubio/Goretti (1996 in *Revista Desarrollo Economico*) showed how between 1989 and 1994 Ménem had signed 336 *Decretos de Necesidad y Urgencia*, a number clearly enormous if compared to the 35 that had been issued by all presidents between 1853 and 1989.

executive (Ames 2002 in Nacif/Morgenstern; Carey/Shugart, 1998; Llanos 1998) trying to certify itself without the negotiation of the parliament and by-passing control and legislative oversight through decrees or pork barreling. New research tries to show that decrees and unilateral moves from the executive, rather than being a sign of institutional strength, denote the isolation and weakness of the cabinet and the presidential figure (Margueritis, 1999; Llanos, 2000).

1. Presidentialism, Parliamentarism and Semi- Presidential Structures.

As Huntington (1991) pointed out, between 1974 and 1990 at least 30 countries made transitions to democracy, most of them coming from either authoritarian or totalitarian regimes. This progressive leap created a total of democracies that almost doubled the number of popularly elected regimes previously existent in the world. With this transformation the idea of Democracy as a Universal value became as thinkable and feasible (Sen, 1999) as it had never been before, at least on quantitative terms.

Never before had there been so many countries with constitutional governments in Latin America, elected in free competitive elections and under effective universal suffrage¹⁶ (Domínguez, 1998). Despite these news, many scholars remained pessimist or skeptical about the “experiment of Democracy” (Little, 1994) especially because of the outcome and capacity of the new regimes to satisfy numerous demands and co-exist with liberal market forms of the economy. In many countries it all happened almost at the same time, that is, the introduction of liberal market reforms and of democracy in a binomial form, as neither variable had ever before co-existed. Empirical research tended to show that presidential regimes in Latin America, or regimes based on imitations of the North American constitution of 1787, with independent executive and legislative election and a working separation of powers, had failed to be sustainable throughout history and that the flaws that had caused these failures were prone to repeat themselves in the near future (Linz/Valenzuela 1984).

In the first ten years of re-democratization most transition cases proved to have sustained institutional endurance, although in a number of them some old and familiar problems persisted so acute as to seriously challenge the polity’s claim to be a democracy (Burnell/Calvert, 1999). A mainstream of theoretical and empirical “consilodology” (Merkel, 1998) started to analyze the confirmation of the democratic institutional and cultural variable. Democracy as a concept became rather stretched (Collier/Levitsky, 1993; 1996) in an attempt to accommodate all the coming subtypes generated from the transition out of authoritarian regimes where democracy seemed to present peculiarities and qualifications.

¹⁶ Collier/Levitsky, (1996) show how the trend towards democratization in countries throughout the globe has challenged scholars to pursue two potentially contradictory goals. First, to develop a differentiated conceptualization of “democracy” that captures the diverse experiences of these countries’ transitions, and at the same time, extend the analysis to this range of cases without stretching and thus denaturalizing the concept of Democracy.

However true all these functional distinctions may be, structurally speaking two basic types of democracy, majoritarian and consensus, have extended roots in political science research. The terms¹⁷ appear itemized and explained in Lijphart's (1984; 1999) as well as in Dixon's¹⁸ (1968) work and reduce all empirical forms of democracy to a two-dimensional pattern on the basis of contrast between majoritarian or parliamentary and consensus or presidential government¹⁹. There is abundant literature on the definition of these abstractions, parliamentarism and presidentialism, as they were part of a heated debate during the end of the 80's and beginning of the 90's related to defining which would be the best or more convenient for the new born democracies of the developing world.

Regarding Semi-Presidential regimes, also contemplated as a possibility for Latin America (they were discussed as practical about a decade ago²⁰, especially because of the figure of a prime minister which some countries incorporated, Nogueira Alcala, 1986), our concept is based on Duverger's (1959) typologies. The main characteristics there specified state that the Chief of State be elected through universal, secret and direct elections, standing by a Prime Minister who would be elected by the parliament.

1.1 Parliamentarism. Concept and Historical Background.

In 1984 Arend Lijphart, based on the definition of Democracy given by Dahl²¹ (1971), typified elements that were characteristic to the Westminster model of

¹⁷ George Tsebelis (1995; 2000) went on the same structural track but with different terminology. His idea of veto players can be used to analyze all political systems regardless of their regime, be it presidential or parliamentary. The distinction is between "Institutional veto players", located in different institutions and "partisan veto players" as for the parties in a government coalition.

¹⁸ Dixon (1968) goes a little bit further than Lijphart assuming as characteristics of the consensus type of democracy the inclusion of federal states, separation of powers, bicameral structure in parliament (overall for the double scrutiny of all measures), executive veto power and other "arrangements and informal practices" p. 10-12. There is also root in Dahl's work (also quoted by Lijphart) particularly in the work of comparison between Madisonian and populist democracy (Dahl, 1956).

¹⁹ Lijphart (1999) is most appropriate on this point. He observes that two conclusions of his book stand out as most important. The first is that the enormous variety of formal and informal rules and institutions can be reduced to a clear two dimensional pattern on the basis of the contrasts between majoritarian and consensus government. The second important conclusion has to do with the performance of democratic governments: especially as far as the executive parties dimension is concerned, majoritarian democracies do not outperform the consensus democracies on macroeconomic management and the control of violence –in fact the consensus democracies have the slightly better record- but the consensus democracies do clearly outperform the majoritarian democracies with regard to the quality of democracy and democratic representation

²⁰ Several countries considered the adoption of a prime minister figure or cabinet chief either under a semi-presidentialist conception or as a pressure taker in the presidentialist model. Most studies were oriented to finding the possible consequences and suitability (Venezuela, Comision para la Reforma del Estado, COPRE, 1984-1988)

²¹ Dahl's definition will also prove very useful to us since it is a consensus of criteria on the modern democratic system explanation. In "Polyarchy: Participation and Opposition" (1971), he asserts that democracy can exist as such only when the following elements can be guaranteed: 1) Freedom to form and join Organizations; 2) Freedom of Expression; 3) The Right to Vote; 4) Eligibility for Public Office; 5) The Right of Political Leaders to compete for Support and Votes; 6) Alternative Sources of Information; Free and Fair Elections; 8) Institutions for making Government Policies depend on Votes and other expressions of preference (Quoted by Lijphart, 1984)

democracy as opposed to the consensus model of democracy. In his case-studies he focuses mostly on countries that have parliamentary systems vs. those that have presidential governments (good examples may be France's 5th Republic and the United States).

Lijphart's definition on Parliamentary Government is close to that of Leon Epstein (1968) which accepts that Parliament government or cabinet government can be concisely defined as the form of constitutional democracy in which executive authority emerges from and is responsible to, legislative authority. The definition outlines the fact that power is given to the executive by the parliament, an entity to which it is also responsible and accountable. Other definitions such as von Alemann (in Nohlen 1995), Carey and Shugart (1992), differ little from the basic assumption that it is the parliament that establishes the support and form of the executive power, enabling all forms of control over it and subjecting it to the laws and the legislative discussions that may be produced. The system also owes its name to the founding principle that the parliament is sovereign (Sartori, 1994), and that it does not structurally permit any separation of power between parliament and government but only legislative/executive power sharing²² (ibid.)

In 1959, Douglas Verney published his "Analysis of Political Systems" and established 11 points that define the composition of the parliamentary system. To him, Parliamentarism is the most widely adopted system of government, and it seems appropriate to refer to British parliamentary experience in particular because it is the British system which has provided an example for many countries (Verney, 1959). A most important detail out of Verney's conclusions is that in those countries where the parliamentary system has not been the result of a revolutionary change, it may have, as it did in England, undergone three major evolution steps or phases he classifies as:

- a) Government by a Monarch as responsible for the whole political system
- b) The appearance of an assembly of members who have challenged the hegemony of the King
- c) The assembly takes over the authority of the king for government, selecting among those of its own members and through democratic means those to be in charge of the executive power.

This idea exposed by Verney depicts the situation as lived in the U.K during the last centuries. Our concern however remains on the political research and thus his classification of the parliamentary regime. On the matter he states that

- 1) The Assembly becomes a Parliament.
- 2) The Executive is divided in two parts.
- 3) The Head of State appoints the Head of government.
- 4) The Head of the Government appoints the Ministry
- 5) The Ministry (or Government) is a collective body
- 6) Ministers are usually members of parliament

²² To illustrate the idea of power sharing, Sartori (1994) describes the head of the government as related to the members of his governments as: a) a first above unequal; b) a first among unequal; c) a first among equals

- 7) The Government is politically responsible to the Assembly
- 8) The Head of the Government may advise the Head of the State to dissolve parliament
- 9) Parliament as a whole is supreme over its constituent parts, Government and Assembly, neither of which can dominate the other
- 10) The Government as a whole is only indirectly responsible to the Electorate
- 11) Parliament is the Focus of the Power in the Political System.

For contemporary political theory, points 7, 10 and 11 shape the definitions which have evolved to date both under the revision of structural and functional²³ contemporary analysis (Lijphart, 1984, 1992; Linz 1984; Nohlen/Solari 1988). Indeed, in the parliamentary system and following point 7, the executive is an agent of the assembly rather than one of the voters. This idea that voters are indirectly referred to from the executive power is one of the most addressed differences with presidential systems, where there is both a set time limit for the executive and a direct influence from the electorate on the president chosen. On simple terms, in a parliamentary system the chief executive mostly known as prime minister, and his cabinet, are all responsible to the legislature because to exist they are dependent on the legislature's confidence. The importance of this confidence expresses itself unfavorably through a no-confidence vote that can do away with any cabinet members' executive life. The resulting subordination impels a deliberate attention for the assembly's political maneuvers and coalition building.

As far as elections and election periods are concerned, there are several forms and not all parliamentary systems respond on equal terms, but the common ground of being the assembly the institution that elects the prime minister and cabinet secretaries prevails. This deliberate dependence of the prime minister and the cabinet also influences decision making. As Lijphart puts it, parliamentary systems have collective or collegial executives, whereas presidential systems have one-person, non collegial executives (Lijphart, 1999). Following this idea and the comparative examples existing in countries with parliamentary systems, with relative operating differences, we can observe that in some cases the prime minister's position in the cabinet may vary from strong ascendance to almost equality with the other ministers. There is however, always a high degree of collegiality (Lijphart, *ibid*) in any decision making.

Sartori divides the current and historical forms of Parliamentarism into three major categories which are: English-type of premiership or cabinet system, in which the executive forcefully prevails over the parliament. The French (third and fourth republic) type of assembly of government that makes governing almost an impossibility; and a "middle of the way" formula of party controlled parliamentarism²⁴. Hence comes the idea that Parliamentarism, rather than a uniform

²³ Winfried Steffani (1983) resumes his functional position in a different criterion: the existence or not of constitutional empowerment to the parliament in order to be able to oust the executive.

²⁴ A complete historical explanation of the origins of this classification, taken to a more serious depth can be found in von Beyme (1999). In chapter III, "Die Parlamentarische Systeme in der Theorie der Politik", von Beyme separates the historical and institutional origin of the Parliamentarian system for France, with Constant and Chateaubriand. For England, with the model developed between the years of

name assigned to a political system in which the parliament stands as sovereign (Bogdanor, 1987), is more a term to define “a series of functional political outcomes” (Sartori, 1994, p.101). The notion that parliamentarism can be diverse²⁵ leads us then to understand that the existing variations may be the result of different patterns of legislative-executive relations, according to each country²⁶.

1.2 Parliamentarism: Ontological Problems and Critics

During the 80’s and 90’s when the superior qualities of either parliamentarism or presidentialism for the new democracies were strenuously discussed, the premises of the whole debate in favor of parliamentarism were the diverse weaknesses and imperfections detected among the several presidentialist regimes in third world countries. The shortcomings found in the presidentialist regimes in Latin America for example, made the whole democratic system prone to reverse to authoritarian rule or at any rate, did very little to enforce democratic functioning and real representation (Linz, Valenzuela, 1994). The debate elapsed²⁷ despite the radical points that critics have outlined in favor of parliamentary systems throughout time, and the recognition that there have been problems and theoretical dysfunctions.

“Parlamentkritik war mit ganz wenigen Ausnahmen immer auch Parlamentarismuskritik gewesen” (von Beyme, 1999, p.53); this shows how system opponents had been particularly active since the XIX century, when most political research had been oriented to depict the negative development of parliamentarism (cases of Holland, Belgium and Italy). Following Huntington’s demarcation of democratic waves for the XXth century, it would be in the democratic movement after the first world war when, after the exercise of electoral rights had covered most of the population, parliamentary systems stayed somehow closer to being democratic (von Beyme, *ibid.*).

On formal terms, government under parliamentary systems depends on the confidence or tolerance of the parliament to sustain the existence of the executive. There has to be congruence between the members of parliament and the cabinet as long as the latter is to remain in office, at least theoretically. In practice, the generic term “parliamentarism” implies several government types established on the criteria

1832 and 1867 by J.S. Mill and Walter Bagehot, and for Germany with the propositions made from Robert Mohl (1821) to Max Weber.

²⁵ After the lengthy debate on political systems that spanned during the 80’s and 90’s, Sartori’s position is that Parliamentarism is far from being a homogeneous or uniform system (p.101 and 102). “The fact is that parliamentarism does not denote a single entity”. This idea will be taken by Mainwaring/Shugart in a complex and polygonal study on Presidentialism in Latin America to denote also that Presidentialism and its continental consequences (in the case of Latin America), is far from being invariable. Rather it shows notorious changes depending on the menu of Constitutional Powers given to the president and the Party System in each country (Mainwaring/Shugart, 1997, p.13).

²⁶ This view of multiple empirical possibilities in parliamentarism as product of the relations between executive-legislative relations, leads the debate back to a point made by Nohlen (latest reprint, 2001) on Electoral Systems as the variable modifying a huge sector of the political spectrum.

²⁷ Some authors escape this scarcity, notably Sartori, Nohlen (1986, 1991, and 1998) and Lijphart (1984, 1999), who in several publications considered presidential and parliamentary system from a structural point of view and added a whole set of institutional considerations.

of power basis. Two classical forms are the French example (as in the III and IV republics) and the English cabinet or Westminster model (Löwenstein, 1959; Lijphart, 1984). Parliamentarism appears in two different forms according to whether the parliament has more political power than the cabinet or the cabinet can control the parliament. The prevailing of the assembly over the government is known as the French classical parliamentarist form. The superiority of the cabinet over the parliament is institutionalized in the cabinet government in Britain (Löwenstein, 1959). Detractors of this system focus more on the functioning than on the structure of the system.

1.2.1 Bicameral Structure

Functionally speaking, it can be argued that bicameral structures are a safety valve (Sartori, 1997) to prevent the concentration of power in the hands of a one chamber assembly²⁸. This follows the prevision of giving the upper house the character of a brake to the lower house²⁹ in parliamentary systems (Wheare, 1963), and the substantial admission that both houses have a share in decision making (Lijphart, 1984), despite possible structural weaknesses in the senate or upper house (English example).

Starting from the premise that there exist several bicameral arrangements we could argue that on pure power terms and functionally speaking, they can only either be equal or unequal (Lijphart, 1984, 1989, 1992; Tsebelis/Money, 1997; Sartori, 1997; Ornstein, 1981). On structural terms we would be considering cases of symmetrical force, for proportional strength between chambers, and asymmetrical, for unequal power distribution between them. Both cases lead us to a no-conflict scenario if the party composition or party majority is the same in both bodies; this could convey us to two houses that can be too similar and one be the echo of the other.

Disparate proportions in similarity and stark differentiation in party composition on the other hand, can certainly affect governability on the basis of party proportion, which may vary from one chamber to the other³⁰. Sartori (ibid.) argues that similarity in nature and composition are facilitating conditions to provoke consensus and agreement, however they are not a *sine qua non* condition that guarantees it to happen. In fact, Lijphart (1984) argues that bicameralism is rather incompatible with a strong parliamentarism as long as cabinets tend to be formed on the basis of narrow majorities in the first chamber. “If cabinets are grand coalitions

²⁸ “What is the use of the second chamber? Put in the most general terms, it seems to be that it provides for a second opinion. Countries however, vary in the idea to what extent should be the weight attached to that opinion” (Wheare, 1963, p. 209)

²⁹ This idea has several followers, notably Tsebelis/Money (1997). They argue that the second chamber always exercises an influence on the final outcome of the legislation, even beyond the fact of countries where that is obvious (Germany, Switzerland). The upper chamber or second chamber can also veto legislation in countries where it is rather weak, as in the English case.

³⁰ I recall here Giovanni Sartori’s words (1994): “Strong Bicameralism –two houses with equal power– assumes strong similarity, that is, in the final analysis, two Houses with the same congruent majority or at least, whose majorities are not incompatible and mutually hostile. And while similarity in nature and composition are both facilitating conditions of this outcome, they cannot make it certain”. (p.186-187)

they will have no problem, in fact, the obvious solution to the problem of two mutually hostile majorities in a strong bicameral legislature is to form an oversized coalition cabinet” (Lijphart, *ibid.* p. 104).

1.2.2 Party Discipline

It is debatable whether all parliamentary forms as those formerly described require an outstanding level of party discipline to secure governance. Although we could assume that a parliamentary system requires disciplined party voting, this discipline may have different origins that vary according to the party input and its history. Undisciplined parties however, can create functioning problems in presidential democracies but they can create even more frustrating problems in Parliamentary democracies (Sartori, 1994; Shugart/Mainwaring, 1997). Lack of party discipline was considered a structural inconvenience when analyzing Brazil’s possible institutional rearrangement from presidential to parliamentary regime through public referendum in 1993. “There is a danger that in countries with undisciplined parties, switching to parliamentary government could exacerbate rather than ameliorate problems of governability and instability³¹; unless party and electoral legislation were simultaneously changed to promote greater discipline, and unless political behavior quickly adapted to the new rules” (Shugart/Mainwaring, 1997, p.53)

The idea of a parliamentary system whose major strength rests on the confidence people and government have in the assembly, links very poorly to a scenario where members of parliament would act like “free agents”, foreign to predetermined party moves, strategies and discipline. Free to negotiate his or her vote, a member of parliament (even if he/she was member of the ruling coalition) could, because of the loose disciplinary structure, become an open adversary to the government. This position of antagonism between the executive and the ruling party in Congress has already been diagnosed in several presidential systems. Typical cases were those during the economic reform years when presidents in Venezuela and Argentina sought their parties to follow a thorough state reform. The rivalry meant a very difficult time for the president and the cabinet, but in a parliamentary system such an open degree of disagreement would have probably meant the anticipation of the whole electoral process or the dismissal of cabinet members.

1.2.3 Stability

Linz’s studies try to show that the most stable models among democracies in the whole world are parliamentary democracies (Godoy, 1990). To this seemingly obvious truth, it’s worth opposing Nohlen’s critic (1991) where the point is made that in this comparison there is a statistical relation that is being forced into two variables with no causal connection between them, namely, democracies and parliamentary

³¹ In these authors as well as Sartori, there is a clear answer to the propositions made by Lamournier in Brazil. Sartori develops his theory to show the constraints of an undisciplined party atmosphere as in Brazil, where several disorder conducts are commonly observed among party members. This lack of party cohesion and discipline present today could help picture the potential harms in a parliamentary system.

democracies. Indeed, pressing the idea of stability on current parliamentary systems may make us forget the fact that parliamentarism, as we today see and understand it, is an abstraction of many ideas and subsequent reforms of past regimes (von Beyme, 1999), and that parliamentarism, with some functional variations, was the regime that was fragile in the past in European countries (Nohlen *ibid.*).

Sartori (1994) also complains that stability is a variable not always related to efficiency or governability by itself (*ibid.* pp.112-113), as it is not the same to identify *stable government* with *stable democracy*³². Once again the statistical view is being forced on the facts to produce what otherwise would be an illogical induction. “Stable government may be a facilitating condition, but it is certainly not a sufficient condition for effective government. On the contrary, stability *per se* may be a misdirected concern and the notion of personnel stability (in government) an equally misdirected remedy” (*ibid.* p.114).

1.3 Parliamentarism in Latin America. Historical and Conceptual Background.

Latin American history shows several distensions from the presidentialist model instituted right after the independence in most of the countries due to the *sui generis* combination of the North American constitutional models with legislative patterns from Europe (Nohlen/Fernández, 1991). A strong parliamentary position aiming to limit the presidential preeminence, the parliamentary form we have conceptually described above can only be said to have existed in Chile until 1925 when the constitution reverted it to presidential democracy (Kantor, 1977). Aside from these empirical vestiges, other forms to precinct presidential tendencies and avoid a possible authoritarian turn out by excessive presidential power, had the pattern of strong legislative empowerment (as in Costa Rica or Venezuela) or Batlle’s³³ initiative of a plural executive tried in Uruguay³⁴.

Most of the investigative consideration in the 80’s and 90’s regarding the possibility of a new democratic system rather than the Presidentialism existing in the region until then, was basically due to certain factors and fears. Carpizo (1999) orders

³² “Which stability or whose stability? Stable democracy (i.e. regime stability) is one thing and stable government quite another thing. Yet we often allow the glitter of stable democracy to enshrine stable government. This is however an unjustified extrapolation. That democracy should not fall is obviously important. But why is it important that government should not fall? The answer is that stable government indicates effective government” (Sartori, 1994, p.113). Obviously Sartori misses the point here since the instability of governments in newly formed democracies is immediately associated with weakness and instability of the democratic system.

³³ Jose Batlle y Ordoñez (1911). He foresaw that the only solution for Uruguay’s extraordinary executive attributions was to limit them in favor of a polyarchical executive. As Batlle states, republics inherited from monarchies the idea of a one-person-executive. “It was necessary to compromise with kings to get them to abandon a good part of the government. Republics imitated constitutional monarchies, preserving the monarchs, whom they called president, substituting election for the obvious injustice of inheritance, and reducing more or less the term during which elected officials could exercise power”.

³⁴ Batlle y Ordoñez thought many of Uruguay’s political problems were rooted on excessive presidential attributions given by the constitution. At that time a Uruguayan president controlled both the legislature and the Supreme Court during his term in office, having also the prerogative to select a successor.

them as follows: a) power balance too “executive biased”; b) a weak, though constitutionally empowered, legislative; c) President with too many “extra-constitutional powers” and d) dysfunctional constitutional control mechanisms to limit presidential powers.

Chile

To many social scientists the parliamentary condition of government remains an unknown experience when studying Latin America, even if we take into account this so-called parliamentary 34 year period in Chilean history. In Chile the 1891-1925 period is called parliamentary though from this system it only had the parliament empowerment to censure ministers (and not the government chief, which is the crucial feature in a parliamentary system) (Nohlen, 1991). The political outcome of this period was a great instability in the government as well as strong oligarchic political tendencies. The constitution that re-established the presidential regime with important parliamentary control and supervision remained almost intact up to the military coup in 1973 (Ayala Corao, 1982).

Brazil

Brazil also has some historical background and experience with parliamentarism from the years of the limited constitutional monarchy the country had between 1824 and 1889. This monarchy included a certain type of parliamentary system. Under contemporary discussion terms it would perhaps be difficult to accept this example as a proper parliamentary assembly, since the emperor was still too powerful to let the assembly have a real controlling and institutional power balancing function. In 1889, the parliamentary system was dropped in favor of presidentialism after a revolution. In the end the two cases, Chile and Brazil, reverted to presidential regimes.

However, the existence of such vestiges of parliamentary government and the dissidence from presidential systems otherwise common in the region is what provoked the case of Brazil in 1961 (Lamournier, 1992). There and then, the elected president resigned, leaving the presidency to the vice-president who belonged to a party representing a minority of voters in Congress. Facing a constitutional crisis and under pressure, the legislature stripped the new president from its powers thus creating a parliamentary system. This initiative failed (Kantor, 1969) because though the powers of the executive rested on a cabinet responsible to the chamber of deputies, the president had the power to appoint the prime minister. Thus the president could, and did, appoint prime ministers who worked to weaken the parliament, weakening the whole parliamentary system as such.

Brazil proved the persistence of these pro-parliamentary government roots later in March 1988, when the Constitutional Congress defeated the Parliamentarist proposal by 344 to 212 votes leading to a national plebiscite on the issue in 1993. Despite all this institutional unrest, presidentialism remained³⁵.

³⁵ Two opposing however interesting positions in the case of Brazil as a feasible example of a potential ground for a parliamentarian system are: –against- Sartori (1994) and –in favor- Lamournier (1992). Lamournier’s arguments pointed that the institutional flexibility of parliamentary government avoids

If we accept the historical analysis that in Latin America the political system was created following the example of the North American revolution (the president and his separation from Congress as a “new entity” is a by product of the North American revolution, von Beyme, 1967; Fraenkel, 1981), we have to agree that the government frameworks that developed in Latin America later, were the outcome of a blend between new institutions and old colonial traditions. Also a model and not less important was the republican influence coming from the French Revolution, which introduced concepts of sovereignty and republican freedom. On this ground of influences, we observe that many Latin American constitutions avoid pure presidentialism and are closer to a “presidentialism with parliamentary control” (Brewer-Carias 1985), at least empirically. This conception, presidencies restricted by active parliamentary oversight and control³⁶, plus the historical developments in the XIXth and XXth century provide us with enough conditions to conceptualize and revise the influence of parliaments in Latin American presidential regimes; both through existing constitutional and political mechanisms as will be seen during the XXth Century.

2. Semipresidentialism. Concept and Function.

The idea of a semi-presidential or semi-parliamentarian³⁷ regime takes us back directly to the foundlings of the French Fifth Republic and the works of Maurice Duverger (1970, 1978, and 1980) as a primary source. Despite its popularity in political science, the term semi-presidentialism has journalistic origins³⁸.

There are also important historical groundings in the Bayeaux Manifesto given in 1946 by Charles de Gaulle, when he refers to the functions of the chief of state as an executive figure which should: “reconcile in the choice of men, the general interest with the direction given by the parliament; he must have the task of appointing the

the escalation of political crises into institutional crises that can lead to breakdown and the resurgence of authoritarian regimes. Sartori more skeptically disputes that Latin America does not have parliamentary fit parties (p.94), this alluding clearly to the discipline level required. To him the party development in Latin America goes no further than what may have been the same in Europe in the 1920's or 30's. As for Brazil and the 1993 referendum, with a group of parliamentary system partisans Sartori is clear: probably no country in the world currently is as anti-party, both in theory and practice, as Brazil. Politicians relate to their party as a rental. They frequently change party, vote against party line, refuse any kind of party discipline on the ground that their freedom of representing their constituency cannot be interfered with.

³⁶ This becomes true for most of the XXth century, though for the XIXth century presidentialism was stronger. Costa Rica becomes an interesting example among many of strong constitutionally stated presidential powers. As Fernández (in Nohlen/Fernández, 1991) observes, in Costa Rica the first constitutional attempts were a balancing pendulum between legislative and executive power.

³⁷ The works of Linz and Stepan and Suleiman provide examples of terminological criticism. Although these authors accept the term “semi-presidential”, they argue that it is synonymous with the term “semi-parliamentary” (Linz, 1994; Linz, 1997; Stepan/Suleiman, 1995). For these writers as well as for Carey/Shugart (1992) the term can be misleading since it can be substituted by another term with the same idea. Shugart and Carey openly criticize Duverger’s use of the concept and replace it with “Premier-Parliamentarism” (p.23).

³⁸ In a popular context the term “semi-presidential regime” was first used by the journalist and founder of Le Monde Newspaper, Hubert Beuve-Mery in 1959, though for political and scientific terminology we refer to the conceptualization later made by Duverger (1970 and 1980).

ministers, and first, of course, the premier, who will have to direct the policy and the work of the government”³⁹.

Duverger’s 1970 definition is that of a regime “characterized by the fact that the head of state is directly elected by universal suffrage and that he possesses certain powers which exceed those of a head of state in a normal parliamentary regime”. However and despite this identification, the government consists of a cabinet formed by a prime minister and ministers who can be dismissed by parliamentary vote (p.277). Admittedly so, constitutions that lay down semi-presidential governments are relatively homogeneous, but they show considerable difference in the amount of presidential powers that are granted (Elgie, 1999). These differences, with important consequences on the structural dynamics and polity design remain secondary to the physiognomy of the system (Duverger, 1980). The 1980 definition made by Duverger, which we follow for the purpose of our study states:

A political regime is considered semi-presidential if the constitution which established it combines three elements: 1) the president of the republic is elected by universal suffrage; 2) he possesses quite considerable powers; 3) he has opposite to him, however, a prime minister and ministers who maintain executive and governmental power and can stay in office only if the parliament does not show opposition to them (1980, p. 166). As empirical reinforcement Duverger adds six countries which should be classified as semi-presidential: Austria, Finland, France, Iceland, Ireland and the recently established Portuguese (1975-1982) regime. Additional literature with important reference to the topic exists in several of the works of Steffani (1995; 1997 p. 89-124) and Schultz (1999) explaining the features of semi-presidentialism as a mixed government form.

The first of the exposed criteria to define semi presidentialism is the popular election of the chief executive, who other than in the pure presidentialist form, must coexist with a premier, who would be the head of the government (not elected by the president). Also, following the second item numbered by Duverger, the president is granted some powers though it is not specified whether these would be particularly related to legislative matters, as we have already shown in the Latin American example. For scientific discussion Sartori (1994) provides five defining elements of the typology which Steffani (1995; 1997) observes as parliamentary systems with presidential domination (Parlamentarische System emit Präsidialdominanz). These elements are:

i) The head of the state (president) is elected by popular vote –either directly or indirectly- for a fixed term of office.

ii) The head of state shares the executive power with a prime minister, thus entering a dual authority structure whose three defining criteria are:

iii) The President is independent from parliament, but is not entitled to govern alone or directly and therefore his will must be conveyed and processed via his government.

³⁹ In Lijphart 1992, translated by Eva Tamm Lijphart.

iv) Conversely the prime minister and his cabinet are president-independent in that they are parliament-dependent: they are subject to either parliamentary confidence or no confidence (or both), and in either case need the support of a parliamentary majority.

v) The dual authority structure of semi-presidentialism allows for different balances and also for shifting prevalence of power within the executive, under the strict condition that the “autonomy potential” of each component unit of the executive does subsist.

This dual structure mentioned by Sartori is also a strong part of the criticisms made to the system notably by Merkel et al (1996)⁴⁰ and Linz⁴¹ (1994). On the contrary, Sartori (1994, p.135) recommends it as much better a system than “pure” presidentialism, since it can cope with split majorities in much better ways. It could also be a middle ground to a possible transition between presidential countries willing to make a leap to parliamentary systems. On strict comparative grounds, semi-presidential regimes share the same basic constitutional structure, and do not present strong variations regarding institutional design. They all have presidents who are elected through direct suffrage and they all have prime-ministers and cabinets who are responsible to the legislature. Some authors widen the concept to fit most possible realities: “a semi-presidential regime may be defined as the situation where a popularly elected fixed term president exists alongside a prime minister and cabinet who are responsible to parliament” (Elgie, 1999, p.13). This because under functional terms semi-presidential regimes can differ in several ways according to the power shift existing between executive and legislative. These variations respond to the specifics granted by the constitution and the consequences of the electoral and party system that determine the composition of the assembly.

Sartori (1994) also sketches the image of the presidential power delimitation (p.109-110) exercised by the cabinet and the cabinet chief, the prime minister, on the presidential figure. Due to electoral specifics they could belong to different political forces in which case they would have to cohabitate. He presents this counterbalance of forces between the president and the prime minister as a possible remedy against the so-called “Video-Politik” or the entrance of the charismatic or image-friendly candidate in the political arena possible in pure presidential systems.

Another theoretical observation made after O’Donnell’s “Delegative Democracy” in 1994, is that semi-presidentialism offers structural elements that can

⁴⁰ Rueb concretely says: “Semi-präsidentielle Regierungssysteme sind ebenfalls problematisch für die Konsolidierung der Demokratie. Sie haben alle wesentlichen Verfassungs- und Regierungsfunktionen verdoppelt: Sie haben eine bipolare Exekutive institutionalisiert, eine doppelte Legislative und eine doppelte Legitimität. Sie reproduzieren das für präsidentielle Systeme typische Problem der unterschiedlichen Legitimität des plebiszitären Präsidenten und der repräsentativen Versammlung innerhalb der janusköpfigen Executive selbst. Hinzu kommt eine Verdopplung der Wahlzyklen für die jeweilige Säule der bipolaren Executive. Sofern präsidentieller und parlamentarischer Wille asynchron verlaufen (Kohabitation), kann dies zu andauernden Konflikten innerhalb der bipolaren Executive führen” (p34).

⁴¹ “Basically, dual executive systems have a president who is elected by the people either directly or indirectly, rather than nominated by the parliament, and a prime minister who needs the confidence of the parliament (1994, p.48)

limit the over-powering of the executive figure. If we observe that in delegative democracies the president can be seen as “the embodiment of the nation and the main custodian and definer of its interests” (O’Donnell, 1994, p.60), we could then assume that there would be a feasible counter balance on the representation and sovereignty principle since a prime minister, elected by popular representatives as member of parliaments are, could alter the presidential missionary solitude towards decision making.

Table 1.1 *Semi presidential Systems*

Advantages	Disadvantages
<ul style="list-style-type: none"> It’s a possible intermediate way between Presidential and Parliamentary Democracy, keeping elements of both in case of a desired system transition. 	<ul style="list-style-type: none"> Constitution more complex also because of a bigger number of political actors (Linz, 1994:pp. 282/284) with more roles.
<ul style="list-style-type: none"> Limits of competence between President (popularly elected) and Prime Minister (elected from Parliament) giving the possibility of correction to political inexperience 	<ul style="list-style-type: none"> Risk of political competition between president and government chief (i.e.prime minister).
<ul style="list-style-type: none"> More flexibility of the system in risk of blockage as in presidential democracies⁴² 	<ul style="list-style-type: none"> Possible dysfunction of the “cohabitation” principle in case of parliamentary majority of the opposition (to the President).

2.1 Semi presidential Experiences in Latin America

There are two Latin American countries until 1995, Argentina and Peru, which because of the presence of a cabinet chief could be considered as potential semi presidential systems (Nolte/Krumwiede, 2000; De Riz/Sabsay in Nohlen 1998; Sabsay/Onaindia 1994). This is not a consensus however, since some voices disagree (Carey/Shugart 1992), commenting that presidential powers normally out perform and surpass any initiative to counter-balance the presidential figure from the parliament. Truly “pure” mixed models as in France, Portugal, Finland, stand aside from the idea performed in Argentina in the 1994 constitutional reform with the “Jefe de Ministros” (De Riz/Sabsay, 1998). The cabinet chief elected by the president is closer to an acclimatization of a presidential system to temporal or schematic adversities, and not least to use the vice president as a political escape-valve for pressure exerted on the presidential figure.

Argentina

The Argentine figure of the “Jefe de Ministros” (Argentine Constitution, 1994) has its origin in the idea of decentralizing and weakening the enormous constitutional and extra-constitutional presidential powers granted in that nation⁴³.

⁴² This point should be considered carefully because the French System, a paradigmatic example, does not simply act in a mixed way, but it strongly depends on parliament majority (from the president’s side) (see Nolte/Krumwiede, 2000:49)

⁴³ During his presidency, Ménem executed 308 national emergency decrees between 1989 and 1993 in comparison to only 10 by president Alfonsín in his period. To give a more historical proportion, De Riz/Sabsay point out that between 1953 and 1989 only 25 of this type of decrees had been used, though

The idea is not exactly new. In fact, the combination of the pure elements of presidential and/or parliamentary systems in different constitutional texts, and in this case, of semi-presidential systems, dates back to being a distinctive feature of many constitutional reforms in the XXth Century⁴⁴.

To support this point we can observe that even cases of strong presidentialism have deviated from being pure presidentialist examples: the Argentinean constitution has elements that somehow separate it from being purely presidentialist in favor of practices closer to parliamentarism. Whether these elements have been used or not in reality and whether variables such as party discipline have allowed the president a smoother ride in the executive-legislative relations stands in different correlation of arguments, and depends more on the political system and party system as independent variables.

The *Jefe de Gabinete de Ministros* or cabinet chief is responsible before the national Congress and he can be both interpellated and object of censure vote (arts. 100 and 101 of the 1994 draft). Nevertheless, it is almost exclusively a presidential power to remove him, since parliament has to produce a very difficult majority for such an event⁴⁵. The prime minister appears as cabinet chief in articles 99, 100 and 101, where his functions to name or dismiss cabinet members are specified, but his dependence on the presidential figure and will is absolute (Sabsay/Onaindia, 1992) being thus labeled as “coordination minister” (De Riz/Sabsay in Nohlen/Fernández 1998).

This idea of a prime minister as “filter” for the president has also repercussions in other Latin American cabinets where the figure of a minister to deal with parliamentary affairs was introduced. Particularly after the neo-liberal measures of the 80’s and 90’s, many presidents saw themselves between two scenarios:

it is understood that parliaments had less institutional force under authoritarian regimes. Aside from the huge amount of decrees issued by Ménem in a five year period critics observe (Ferreira/Goretti, 1994) that they did not all respond to national urgent matters, as for example decree 1653/93, delivered to secure the rights of some football games transmission.

⁴⁴ De Riz/Sabsay use, in convergence with Sartori (1994), the examples of France, Portugal, Finland, Uruguay, Peru and Austria. Nohlen (in Nohlen/De Riz, 1991) uses as historical examples of semi-presidentialism (or systems with mixed constitutional elements) the cases of the Weimar Republic and the second Spanish Republic. In the Spanish example, we see an exceptionally good illustration of mixed elements: the president or state chief could not be elected directly but through an electoral college (arts. 68 and 71); however he had the power of naming ministers and the whole cabinet under his criteria. Paradoxically though in this intertwining of constitutional might, “a minister could not remain in his cabinet office if the courts had withdrawn the confidence on him (art. 75). The president could dissolve the courts with ministerial approval (art.71) once every electoral period (it lasted six years; art. 81). Simultaneously, the courts could examine the motives, declare them insufficient and remove the president through vote, which was what happened in 1936” (Nohlen, *ibid.*, p.28).

⁴⁵ “En los sistemas parlamentarios, el planteamiento de la censura requiere de la voluntad de un pequeño número de legisladores, en tanto su efectivización resultará del voto de la mayoría de los miembros presentes en la votación. En el semipresidencialismo, los requisitos son mayores en la medida en que la presentación de la censura requiere de un número más elevado de legisladores que en el parlamentarismo” (De Riz/Sabsay in Nohlen/Fernández, 1998, p.226). Before this, the Council for Democratic Consolidation in Argentina had suggested that censure vote could be presented by one third of the deputy chamber members and ought to have an absolute majority from this chamber to be effective. This parliamentary censure could be, according to the CDC, effective on the prime minister as well as on any other executive cabinet member.

depending either on governing by decree, or on congressional speed and efficiency (Carey, 1998). This reality made them vulnerable and subject to executive-legislative relations and most of the time to executive-ruling party relations. Thus the consideration to create a cabinet post in charge of the relations with the legislative appeared in many countries. Venezuela had for a brief period a minister with such attributions though his power level was never considered to be above a regular cabinet member.

For these figures of prime ministers intertwined in Latin American presidentialism it is convenient to address Linz's critics before considering or even naming them semi-presidentialist tendencies. "We have to stress that a prime minister who heads a cabinet and directs an administration, is freely appointed and dismissed by the president, and does not need the confidence of the parliament, is not to be confused with the semi-presidential, semi parliamentary constitutional model. Creating such an office is only a form of delegating presidential powers, which might allow the president to avoid some criticism and to displace onto the prime minister. "In such a system, the president continues to be the only and ultimate decision maker and legitimator of decisions made by others"⁴⁶ (Linz, 1994, p.60).

A critical observation like this one, unmasking the so-called prime minister as a mere cabinet coordinator far from the "omni modal" power of the president had been envisaged by Bernales⁴⁷ (1979; also quoted by Roncagiolo in Nohlen/Fernández, 1991). The empirical accuracy of his comments is very close to Linz's, but referred to the Peruvian institutional case of double executive figures, president and cabinet chief, stated in the 1979 Peruvian constitution.

Peru

The Peruvian case, with a nominal difference for the *Jefe de Estado* and *Jefe de Gobierno* functions in the 1979 constitution, has remained at least for the prime minister in His first years of existence, mostly rhetorical (Nohlen, 1998). However there is a stronger idea of dependence on parliamentarian approval (Nolte/Krumwiede, 2000) which can lead to consider a certain degree of parliamentarization (Fernández Segado, 1994, p.42) in the presidential system as it was later on written down in the 1993 constitutional text⁴⁸.

⁴⁶ On empirical grounds, the functioning of these political figures show that 1) the *Jefe de Gabinete* or prime minister became a "mediator" (De Riz/Sabsay, *ibid.*) between the president Carlos Menem and the polarizing figure of his Finance Minister, Domingo Cavallo. And 2) he was also a link between parliament and cabinet, particularly after the 1995 elections.

⁴⁷ Bernales speaks as a Constitutional Lawyer and thus lacks perhaps the generalizing scope of Juan Linz, however his remarks were written 5 years before. "Tenemos un presidente de la república que es jefe de gobierno, sin que por sus actos responda ante el parlamento, que debe entonces ejercer el control a través de ministros quienes en muchos casos son simples ejecutores teniendo unas atribuciones reales que hacen que mas que como ministros, actúen como secretarios del presidente de la república. El presidente del consejo de Ministros no es jefe de gobierno, sino un coordinador del gabinete y es así como se concreta la posibilidad de un poder omnímodo del presidente, sin que el parlamento pueda ejercer atribuciones de balance y equilibrios" (Bernales, 1989: 153-154)

⁴⁸ Nolte/Krumwiede (2000) quote the result of a USAID poll research on the functioning of the Peruvian political system "The model working in Peru is the presidential model into which several elements from parliamentary system were adopted, such as the prime minister figure and the parliament dismissal power, that's why it has been called semi-presidential" (2000:16)

These provisions entail a constitutional tradition that goes back to the XIX century which somehow explains the empowerment of the parliament and the constitutional provisions to grant this empowerment (interpellations and legislative confidence vote for example) (Valega, 1994, pp.196-198; Fernández Segado, *ibid.*p.40). The 1993 constitution introduces several innovations for the Peruvian Political system though not so profound that it would cease to be a purely presidential system. The cabinet chief stands responsible both to the president who is allowed to unseat him (art.118), and to the parliament, to which he must present a ruling program in the next 30 days after his appointment. After this program presentation he must either come out with a legislative confidence vote or be dismissed with the whole ministerial cabinet (arts. 130 and 133). After two consecutive votes of no-confidence given by Congress to the cabinet chief, the president may be able to dissolve Congress and call elections. This provision exists except for his last year in office (art. 134).

In the cases of Argentina and Peru with the 1994 and 1993 constitutional texts respectively, there is no room for comparison with a truly semi-presidential system. In the two examples the case of parliament chief and/or cabinet chief (the name varies according to the country) lacks the empowerment to be a real government chief, and has no legal competence to act independently, as it would be for example against presidential initiatives (Schultz, 1999). In both cases again we face the definition on the empirical outcome given by Nohlen (1998) to the prime minister figure after the exposure of the constitutional requisites:

- 1) Als Koordinator und Verbindungsglied zum Parlament zu wirken
- 2) Den Präsidenten in Verwaltungsangelegenheiten zu entlasten
- 3) Die Kabinettsitzungen und die Arbeit der Ministerien zu koordinieren
- 4) Als "Puffer" für den Präsidenten in der Tagespolitik zu wirken

3. Presidentialism. Characteristics. Historical Backgrounds.

The partition of the executive from the legislative power as an operating entity and an independent electoral choice has several historical backgrounds most of which relate us to the separation of the United States from England both as a territory and a governing province.

On purely theoretical and conceptual grounds the separation of powers had already been foreseen by Montesquieu in his classic treaty "The Spirit of the Laws" (1748) where separation of functions is drawn as an example towards certain efficiency. Following a line that can be traced back to Locke (Verney, 1959) on the provision of division of powers, we see that this separation image is something also commonly found in the political literature of the XIX century⁴⁹. The Lockean suggestion was that the conflicts on governing between the king and the legislature should better be resolved by separating the executive, then in the hands of the king, from the two houses of legislature. As far back as Locke's own time we find the

⁴⁹ In Nohlen (1970) aside from an incumbent inquiry on Spanish Parliamentarism, there is also extensive bibliography. To illustrate our point on how customary the idea of power separation was becoming see p. 168 and 191.

perception that the executive had better be run by one agent since its actions require faster and more immediate decisions than those of parliament in which both proposal and common voting take place. Curiously enough, Locke makes the prevision that when executive and legislative are separated, anyone holding the executive post but being also part of the legislative (Book II, chpt. XIII) may be called the *supreme* for being related to the parliament, which is at ends the only supreme power. The execution of the laws under this view is only a temporal delegation.

Montesquieu in 1748 foresees an executive power that could supervise the legislature to avoid it from becoming despotic, based on the fact that it can pass the laws it may consider and thus favor itself (part II, bk. 11 chpt. 6, also quoted by Lijphart 1989). However, this is not reversible because the legislative should not have the right to check the executive power. Montesquieu leaves a small crevice for legislative control, he does grant the fact that the assembly may concern itself on lawmaking and on how the laws, once sanctioned, are executed. This will be retaken later as theoretical background for the checks and balance idea of powers and the control equilibrium between them.

Kant had already called *republican* that form of government where the principle of separation of powers operated actively, even if the holder was a monarch (Bobbio, 1989, p.105). In this way the term “republic” earned a new meaning: it no longer meant a state or even government by assembly contrasted to government by one individual. Instead it was a form of government possessing an internal structure and specific functions compatible even with the existence of a monarch.

As direct background for the presidential form and idea somehow similar to our present belief, we must look back to the first constitutional conventions in the United States of America and some of the Federalist Papers where both Madison and Hamilton’s considerations (Federalist Papers 47,48,51 and 70) are discussed. They set us on the track of a regime that may have been consciously engineered (Shugart/Carey 1992) towards the deliberate separation of the assembly and the executive in two independent bodies. In fact, this consideration of the North American constitution as an engineered product (Sartori, 1968) is not at all new (see Grofman, 1989).

Actually in the first drafts of this constitution, two ideas of the time had been rejected through discussion: a) the selection of the executive by the assembly (as in England in the Westminster model) and b) the possibility of instituting a monarchical power. Both were considered as links to the defects of the British governmental forms and thus separated from what should be a new form of government. Electoral colleges then, became expressions of popular preferences creating the form of two independent but correlated agents of the electorate. The discussion in the Federalist (Paper num. 51) argued that each department was to be constituted in such a way and manner that the members of each body had very little to do with the election of the members of the others.

One hundred years later, Walter Bagehot in his celebrated essay “The English Constitution”, published in 1867, referred to presidentialism, as developed in the

United States (by then a regime that struggled to survive in other regions, notably Latin America), naming it “the great competitor” to parliamentarism. He also mentioned something that critics of presidentialism retook over a hundred years later when addressing their comments to the Latin American region. That is, that presidentialism had no elastic structural and political element since everything was specified, rigid and dated. These problems will later be addressed as institutional immobilism⁵⁰ (O’Donnell, Linz, 1994). Bagehot also refers to other contemporary well known problems such as fixed time limits and the dual legitimacy that arises between parliament and executive due to their origin from popular direct elections.

3.1 Presidential Government: Contemporary System definitions

One of the first definitions of presidentialism based on regular observation and investigation in the field of political science is that of Verney (1959); and also that of Löwenstein (1949). Verney, as in the case of Parliamentarism, presents elements based on the description of contrasting regimes from those of the classic models. At first the debate about presidentialism may have been more oriented to enumerate the surveyed attributes found on the system itself, as following the historical method; but later on it has also focused on the operational features and institutional consequences. This empirical approach observes accounted results produced by the system and whether it is viable to handle presidential political conflict outside the U.S (Löwenstein, *ibid.*).

Verney compares mostly the UK and US governments from where he deduces 11 characteristics⁵¹ as opposed to the parliamentary system which because of overlapping criteria for some elements we have resumed in six⁵². To these Thibaut

⁵⁰ Bagehot (1867) approaches the problem in a very direct way: the independence of the legislative and the executive powers is the specific quality of the presidential government just as their fusion and combination is the precise principle of cabinet government. If the persons who have to do the work are not the same as those who make the laws, there will be a controversy between the two sets of persons (Chp 1). The executive is crippled by not getting the laws it needs, and the legislature is spoiled by having to act without responsibility. The executive becomes unfit for its name since it cannot execute what it decides on; the legislature is demoralized by liberty, by taking decisions of which others (and not itself) will suffer the effects.

⁵¹ The original proposition for presidentialism made by Verney (1959) is the following: 1) The Assembly remains an Assembly only; 2) The Executive is not divided but is a President elected by the people for a definite term at the time of assembly elections; 3) The Head of the Government is the Head of the State; 4)The Presidents appoints Heads of Departments who are his subordinates; 5) The President is Sole Executive; 6) Members of the Assembly are not eligible for Office in the Administration and Vice versa; 7) The Executive is responsible to the Constitution; 8)The President cannot dissolve or coerce the Assembly; 9) The Assembly is ultimately Supreme over the other branches of Government and there is no fusion of the Executive and Legislative branches as in a parliament; 10) The Executive is directly responsible to the electorate; 11) There is no focus of power in the political system

⁵² Verney, following what we could call a historic-empirical approach, based his views on the compared characteristics of the US and UK political system. From those details exposed he produced six features with about the same attributes: 1) the head of the state is the head of the government; 2) president appoints the cabinet; 3) legislative and executive staff are distinct; 4) executive is not dependent on confidence from the assembly; 5) president cannot dissolve the assembly; assembly is the supreme branch of the government.

(1996) adds the considerations of Ernst Fraenkel⁵³ (1957) pointing out the incompatibility between government position and state as well as the impossibility of the government to dissolve parliament. These two he submitted as irreconcilable differences between parliamentary and presidential systems.

Fraenkel also emphasized the immobility of the government as a cause of a particularly loose relation between presidents and ruling party; this relation extended also among parliament members, whom, as he observed, lacked a strong party discipline. Löwenstein later adds a typology based on empirical studies in Latin America, aiming to the power relation between Executive-Legislative and also among cabinet members⁵⁴. Rather than creating a typology itself, Löwenstein describes the power relation and outcome of the presidential system in the Latin American region, where Hybrid Presidentialism (a strong president but also a constitutionally empowered legislative) would outline Madison's power balance idea through mutual check's theory.

Klaus von Beyme⁵⁵ (1967) names the identity of the government and state chief in one person as the most relevant characteristic from presidential systems, plus the inability of both the legislative and the executive to remove one another (parliament to executive) or dissolve the assembly (executive to legislative). The lack of legislative power of the executive may be compensated by the right to veto parliament law initiatives. "Der Präsident, der die Funktionen des Regierungschefs und des Staatsoberhauptes in sich vereinigt, darf auf keinen Fall dem Parlament angehören" (p.67).

Based on this historico-empirical concepts and proposals we can conclude, according also to further literature (Linz 1989, 1994; Lijphart, 1984, 1992; Diamond/Linz/Lipset (Ed.) 1988; Nohlen/Fernández1991; Nohlen/Lamourner 1993), regarding some of the important points and characteristics that could round a sufficient definition of presidentialism for our study purpose. Therefore a regime is presidentialist when we find

- a) popular and independent election of the president
- b) the terms of both the legislative and the executive are fixed in time
- c) Executive members and legislative members do not depend on one another's trust or confidence vote to rule
- d) The president works alone in the selection of the executive cabinet

⁵³ Fraenkel's work, included in Ders. /Bracher, Karl D. (Hrsg): "Staat und Politik", is mostly concerned with parliamentary government forms. The essay titled "Parlamentarisches Regierungssystem", uses the presidential differences to position his ideas on the parliamentary system.

⁵⁴ Löwenstein's argument for the region is that there are three variant forms of presidentialism. *Pure Presidentialism*, when the president has all powers for himself and the cabinet acts as mere auxiliary. *Soft Presidentialism* ("Presidencialismo Atenuado" –Ortiz Mercado 1996), when power is a collective product of president and ministers, the latter well organized and empowered as cabinet. *Hybrid Presidentialism*, when the system pursues the limitation of presidential powers and influence through power-balance elements such as parliamentary intervention.

⁵⁵ Von Beyme addresses the problem in a more direct way in his work when mentions, Das präsidentielle Regierungssystem der Vereinigten Staaten ist der Lehre der Herrschaftformen; he does not number characteristics only to differentiate the systems but deepens on empirical study of the presidential form itself.

- e) The president may have some constitutionally legal authority in law making or law supervision

Sartori (1997) offers a leaner definition that remains with points a), c), d) and takes b), related to time lapse as precondition for all the others to exist⁵⁶.

Some authors disagree with one or another point from those exposed and some of the items are only valid in the Latin American regimes where presidents are granted special legislative forms either through partial/total vetoes, and/or delegative emergency laws. Lijphart (1989; 1992) refers to presidential typology as a one-person executive. Indeed, theory most of the times proves a little static to comprise all the possibilities that have developed from the presidentialist model as understood in the prototype form of the United States. The projections of the idea in other regions have been rich in diversity.

In fact, another important exception that ought to be made on our designed typology is that the related independence of both government branches, the situation remains doubtful particularly when the parliament has been granted strong control power to supervise the executive. Thus either confidence or censure votes from the parliament do matter in many presidential regimes since they may lead to the removal of a cabinet member without any possible intervention of the president. Also yearly legislative fiscal approval and its continuous oversight, a highly complicated theme in presidentialist Latin American regimes, has been a set back for thorough presidential power.

Another functional approach comes from Shugart/Haggard (in Haggard/McCubbins, 2001) where the true nature and differentiation of regime types can be defined along four dimensions. These are:

- Cabinet accountable to the president or to the parliament
- President popularly elected or “is considered primarily ceremonial”
- Terms of office are fixed or controlled
- Executive power does or does not have a veto power.

In a “pure” Parliamentary system, cabinets are accountable to the assembly majority, the assembly can be dissolved before the completion of a full term and only the lower house (in the Westminsterian model) has veto power. “If there is a president he or she enjoys only ceremonial powers” (Shugart/Haggard, *ibid.*, pp. 67). As a contrast to this, in a “pure” presidential system cabinets are accountable to and usually selected by a popularly elected president who sits for a fixed term. While the president cannot dissolve the legislature, he is almost always granted veto powers (Carey/Shugart, 1998) either total or partial.

Hyperpresidentialism

A persuasive inclination in the balance of power towards the presidency can be termed strong presidentialism or hyperpresidentialism in the political research

⁵⁶ Sartori literally says: “a political system is presidential, if the head of the state, president: I) results from popular election; ii) during his or her pre-established tenure cannot be discharged by a parliamentary vote and iii) heads or otherwise directs the government that he or she appoints. When these conditions are jointly met, then we doubtlessly have a pure presidential system, or so says my definition” (p. 84; 1997).

literature⁵⁷. This concept is based both on the amount of extraordinary constitutional powers and the use of those granted to the president (see Jones, Archer/Shugart and conclusion in Mainwaring/Shugart, 1997; Mustapic 2002, Casar 2002) as well as the net constitutional powers enhanced to the president by three political preconditions. These are: a) unified government; b) party discipline and c) recognition of the president as party leader (Weldon 1997; 2002)⁵⁸.

In countries where the president is given strong legislative room for maneuver, hyperpresidentialism can present itself as an operational tool to avoid system gridlock⁵⁹ in parliamentary-executive relations. Presidential success, under this view would be measured by estimating the approval rates of presidential bill initiatives on roll-call votes (Ames, 1998). Immobilism, or institutional movement collapse between parliament and executive, need not happen as a consequence of the independent election of the two branches when the president can count with a certain party majority and support in Congress. Risks do accentuate when there is loose party discipline, that endangers the executive's assistance by the ruling party or ruling coalition in the parliament, or when the president may have little possibilities of disciplining legislators.

Concrete examples of hyperpresidentialism can be found in Argentina (Nino, 1992), where the "*decretos de necesidad y urgencia*"⁶⁰ have been a strong means of overcoming parliamentary hostility or at least political difference. Also in Mexico, where after the *maximato* period (see Nacif/Morgenstern 2002) the president obtained the simultaneous recognition of his figure as party and executive leader thus having access to extraordinary political weight. Carpizo (1978; 1999) notes that hyperpresidentialism had already been defined as a concept by Löwenstein (1949) under "neo-presidentialism" (in the case of Mexico) to betoken the existence of an

⁵⁷ Carlos Nino, one of the authors of important research on Hyperpresidentialism in Argentina, bases his normative idea of democracy on Dworkin (1986). "Democracy" is but a social practice and as such it is confirmed by a series of regular behaviors and attitudes which give rise to institutions oriented to a certain value or goal. This idea of institutions as embodiments of a collective continuous demeanor (together with the traditional variable of *caudillismo* and strong presidents) may carry in itself the deliberately unbalance of the republican institutional triangle of forces. This unbalance is what could give ground and existence to hyper presidentialist regimes and simultaneously delegative legislatures.

⁵⁸ Weldon (1997; 2002) insists that all the three factors of meta-constitutional presidentialism are necessary conditions without which we would observe a depreciation of the mighty figure of the president, at least in the Mexican case where decrees and veto powers have not been so abundantly used as in, for example, Argentina. "Without these variables, the president would still maintain his considerable constitutional powers, but he would have to share power with the other branches of government".

⁵⁹ Gridlock or immobilism is one of the system critics that J. Linz (1994; 1999) repeatedly has made to presidential systems. Against it there is some relevant literature that deals with the problem and its specifics. See Morgenstern/Domingo (1997).

⁶⁰ The 1994 Constitution in Argentina allows the president to dictate decrees for reasons of "urgency and necessity" in all areas except those regulating penal, tax, electoral matters or the political party system. These decrees must be signed also by the appropriate minister and the chief of the cabinet. The 1853 Constitution left a clear vacuum on the subject leaving as recognized exceptional measures the state of national emergency and federal intervention designed to the main threat (Mustapic, 2002) visible in those days: resistance by provincial powers or authorities. This oblivion also left non-contemplated topics in the constitution to the discretion of the president which tacitly added more power to the executive institution.

executive power which concentrates special executive and legislative attributions on the presidential figure with a consequent subordination of the legislative assembly to the executive. “The difference between this extreme and deviated form of presidentialism from the already known authoritarian systems in Latin America is the existence of special constitutional procedures”⁶¹.

3.2 Historical and Contemporary Critics to Presidential Regimes.

Attacks on the presidentialist system based on both structural and functional system analysis, became more acute after the third wave of democratization (Huntington, 1991). Then the defects and run down elements of the system were outlined, as well as the weaknesses and reversions it had suffered to authoritarian regimes in the past. Most of the reproach towards presidentialism was based on the *efficient* (as Bagehot, 1867) viewpoint, and the system’s real capacity to deliver measured in democratic participation and governability means (Inkeles, 1991)⁶².

This perspective to measure the system and produce an evaluation from the comparative results of some of its variables, had important precedent in the works of Lerner (1958), Lipset (1959), Coleman (1960), Cutright (1963), Banks and Textor (1963) as an example of those who provided comparative indicators of democracy. As democracies collapsed and authoritarian regimes rose, the 1970’s saw a decline in social science interest in measuring democracy. We find important work still done during this period (Banks 1971; Dahl 1971; Gastil 1978) but the volume of works declined⁶³. Despite this temporary setback, the tendency to measure the performance of institutions on their political outcome became a continuous tendency of later years.

Research and critics appeared abruptly with the redemocratization of Argentina, Brazil, Chile and the Philippines. In fact, a few of these critics took sometimes rather extreme positions such as Linz and Stepan (1986), Linz (1987) and Di Palma (1990). These authors indicated that democratization, referring to the new democracies in Latin America, was (or better should be) a matter of political crafting, or institutional engineering⁶⁴, leaving aside any possible historical legacy in the

⁶¹ Löwenstein, Karl. “La Presidencia fuera de Estados Unidos”, Boletín del Instituto de Derecho Comparado de México, México año II, num. 5, 1949, p. 55. Also quoted by Carpizo in “El Presidencialismo Mexicano” (1978) and “México: Sistema Presidencial o Parlamentario” (1999).

⁶² In the late 50’s and 60’s when several nations became independent from colonial former powers a large group of them began with relatively democratic political systems (Bollen, K. in Inkeles, A., 1991). Along with this went the first major efforts at developing cross-national measures of political democracy.

⁶³ There is an interesting summary on the research evolution of political structures made by Nohlen (1991): “Desde los años sesenta se tomaron en cuenta factores adicionales, como los fenómenos políticos pre-institucionales y las relaciones económicas y sociales, lo que derivó en sostener la existencia de una compleja relación entre diferentes variables y la necesidad de estudios históricos contingentes para determinar la orientación y el grado de relación causal entre ellas”. (p.15)

⁶⁴ Di Palma makes no middle ground here and states that by political crafting he means 1) the quality of the finished product (the particular democratic rules and institutions that are chosen among the many available); 2) the mode of decision making leading to the selection of rules and institutions; 3) the type of craftsmen involved (alliances and coalitions forged in the “transition” and 4) the timing imposed on the various tasks and stages of the transition.

region in favor of deliberate crafting and planning of democracy and democratic institutions. The motto point for all this development towards planned constitutional engineering was that at any rate parliamentary democracy had proved to be more *stable* than presidential models, an empirical truth based on statistics and case comparison⁶⁵ present in different countries outside the United States. Then, both *stability* of the system (the same variable as in Plato's "Republic" and "the Laws" *Politeia and Nomoi*), plus a classic utilitarian⁶⁶ version in terms of a regime incapable of satisfying the biggest number of people, became the pivots for critical study. The same countries where democratic models existed under a presidential system had fallen to authoritarian regimes in the recent past.

The opposite view, the historic-empirical approach⁶⁷, stated on flexibility and consideration of the singular sociopolitical variables of each region rather than collecting isolated historical facts, which is probably a closer advance to the history, tradition and institutional stands of the Latin American region. It was there where the debate had been most centered, producing even a census between the two tendencies for Brazil in 1993.

In general terms, critics⁶⁸ of presidentialism concentrate on: a) Temporal rigidity; b) majoritarian tendencies; c) dual democratic legitimacies, (Linz 1989; Mainwaring, 1989; Stepan/Skach⁶⁹ in Linz/Valenzuela, 1994). There is also the imitating factor⁷⁰ (see Linz 1989, p.5), making the presidential democracies, as derived from the U.S model, more similar to one another. Since most of our work will be dealing with outcomes of the relation between executives and parliaments in

⁶⁵ one of the common case studies taken as stand point for both pro- and against parliamentarism in the Latin American region was exposed by Valenzuela (1978; 1994) who supposed that Chile's democracy would have been able to survive had this country been ruled by a parliamentary system. For a defense of the presidential system (see Nohlen, 1998, p. 19)

⁶⁶ The whole perception of Democracy as a system that ought to deliver services and "satisfy" the biggest possible number of people springs out of the bases of liberal democracy which in turn comes from the Utilitarian conception of government (see both J.S. Mill's Autobiography and his text on Utilitarianism). This concept has older root in Aristotle's Politics, where the conception remains basically the same: the possibility of accounting for the development of government activity on the bases of being able to "promote good to the most of the people".

⁶⁷ For a more detailed exposure, see Nohlen/Fernández 1991, 1998; Nohlen 1992; Nohlen/Solari 1988.

⁶⁸ Mainwaring (1989, 1992) has a good synthesis of arguments pro and against presidentialism as well as Nohlen/Fernández 1991.

⁶⁹ "Why is it logical and predictable that military coups are much more likely in pure presidential constitutional frameworks than in pure parliamentary ones? Because parliamentary democracies have two decision rules that help resolve crises of the government before they become crisis of the regime. First, a government cannot be formed unless it has acquired a supported majority in the legislature; second, a government who is perceived to have lost the confidence of the legislature can be voted out of office by the simple political vote of no confidence. Presidentialism on the contrary systematically contributes to impasses and democratic breakdown" (p129-130)

⁷⁰ Linz (1984) observes that most presidential democracies are probably more similar to each other than the larger number of parliamentary democracies are alike, partly because all presidential models were inspired by the US model and partly because the societies with such systems (with the exception of the United States) have some common characteristics. In parliamentary systems the only democratically legitimated institution is the parliament and the government deriving its authority from the confidence of the parliament, either from the parliamentary majorities or parliamentary tolerance of minority governments, and only for the time the legislature is willing to support it between elections and, exceptionally, as long as the parliament is not able to produce an alternative government.

Latin America, under the presidential system that is, these spotted weaknesses and their theorist-empirical counterparts will be more accurately discussed later on.

3.2.1 Temporal Rigidity

A set time of government for both the executive and the legislative is a common characteristic to all presidential systems. Though in some models the idea of the impeachment by Congress to oust the president may be contemplated, presidents cannot be removed from office due to political reasons by the legislative as it may happen in the parliamentary systems.

Two theoretical consequences can be observed, and both lead to differences between executive and legislative. If the president is elected for a fixed period, this time cannot be shortened in case of unpopular regimes, or prolonged in case of successful ones (Linz, 1989). Then there is the parliamentary limitation by temporal rigidity since legislative powers are also elected for fixed periods of time, during which they have to work with the executive. The executive is also unable to dissolve the parliament or call for elections (as it may in the parliamentary systems), creating a forced atmosphere which in the end depends and is solely ruled by party proportions in the legislative product of the electoral system.

3.2.2 Majoritarianism

Frequently quoted under Linz's "Winner takes all" perspective is the critique that centers on the possibility of a minority being certified as winner by an atomized electorate, usually occurring in a scenario of high political abstention. If the presidential election is a multicandidate affair, total vote deviation may be 60% or higher. Even in a closed two candidate race the deviation is seldom lower than 40% (Lijphart, 1989; Lijphart/Rogowski 1991) which results from the fact that a government may represent only a minority of voters. This is clearly affected by the zero-sum game (Przeworski, 1990), where the winner takes the whole of the representation, naming his own cabinet and not having to take the loser group into account. The defeated candidate may later on have no political status at all despite whatever vote proportion he managed to obtain, even if his percentage was as high as to take him to a second round in the ballots.

At the same time, not only is the balance of voter preferences distorted in the person of the president but the composition of the cabinet will reinforce it rather than mitigate it. Unlike parliamentarism, which may encourage compromise among parties to construct executive coalitions, presidentialism stiffens the presidential figure and helps create political individualism within the executive. Some precautions to this may be the hampering of executive freedom by constitutional provisions on parliament empowering.

Another point in the rule of hyperpresidentialism in Latin America is that most cabinet members are likely to be members of the president's own party and very seldom (almost never) opposition members (Morgenstern, 2002). Whenever the president has taken opposition party members into the cabinet or has delegated

executive positions, it has usually been for pre-planned and specific presidential intentions, as in the case when Ménem included liberals from the UCeDe in the cabinet privatization plans in 1990-1991.

Another consequence with implications for the party system is the fact that the winner-takes-all concept makes presidential competition the fiercest episode in the democratic game. The winners have no reason to try to cooperate with the losers. This may derive into total disregard for minorities through tokenism or descriptive representation (Lijphart/Rogowski, 1991) and presidential elections become an “all-or-nothing scenario” for the political organizations.

3.2.3 Dual Democratic Legitimacy

Dual Legitimacy is a theoretical though also empirical source of criticism for presidentialist systems based on the consideration that if the executive and the legislative power are independently elected there is open competition for democratic legitimacy, since sovereign power has been delegated to both⁷¹. A common observation mixed with the variable of temporal rigidity is that presidentialism demands a compromise incentive (Mainwaring, 1989) from democratic institutions. We observe that presidents in multiparty systems, who do not have a clear majority support in the parliament, have little incentive to uphold enduring coalitions if these are formed. Parliamentary majority may function to ensure a certain legislation to pass by, but having parliament majority or not does not affect the survival of the executive in general (Kaminsky, 1989; Mainwaring, 1992; Shugart/Carey 1992). Because of this ontological disposition in Presidentialism, conflict remains latent⁷², as well as the potential deliberate obstruction of the system⁷³ from either one of the institutional actors.

This dual legitimacy had already been foreseen by Montesquieu who thought it a less dangerous consequence, perhaps because his balance of power was already inclined towards an executive that could inspect parliamentary deliberations. Under his consideration this could not occur the other way round; he also underestimated a total institutional collapse scenario because institutions “will be forced to move in

⁷¹ Dual Democratic Legitimacy is, in fact, the first of Linz’s (1994) critics (p.6 of “Presidential or Parliamentary Democracy, Does it make a Difference?” included in “The Failure of Presidential Democracies”, Vol. 1)

⁷² Juan Linz’s observation sees no middle grounds to this perhaps irresolvable point in democratic theory: “The most striking fact is that in presidential systems, the legislators, particularly when they represent well organized, disciplined parties that constitute real ideological and political choices for the voters, also enjoy democratic legitimacy, and it is possible that the majority of such a legislature might represent a different political choice from that of the voters supporting a president. Under such circumstances, who, on the basis of democratic principles, is better legitimated to speak in the name of the people: the president, or the congressional majority that opposes his policies? Since both derive their power from the vote of the people in a free competition among well defined alternatives, a conflict is always latent and sometimes likely to erupt dramatically; there is no democratic principle to resolve it, and the mechanisms that might exist in the constitution are generally complex, highly technical, legalistic, and therefore, of doubtful democratic legitimacy for the electorate. It is, therefore, no accident that in some of those situations the military intervene as *poder moderador*. (Linz, 1994, p.7)

⁷³ Lijphart sees it as the inevitable result of the co-existence of two independent organs that the presidential government creates and that may be in disagreement.

concert” (Chpt. 2. in Lijphart, 1992). Bagehot (1867) holds that their mutual independence provokes, in the middle and long term, a continuous antagonism that in the end weakens both actors.

The immobilism⁷⁴ as a point and consequence of the conflict between dual legitimated powers has been a convergence for many scientists who debate the concentration/dispersion structure and function of presidential democracy. Huntington (1968) admitted that some power concentration on the side of the executive might be necessary and a requirement to function, in contrast to what may happen in the US. Richard Rose (1983) contends that presidentialism has very seldom fostered effective policy implementation, in part because power balance, when deliberately sought, has led to institutional immobilism⁷⁵.

To the debate, Mainwaring (1989) adds that the combination of presidentialism and a fractionalized multiparty system seems especially inimical to stable democracy, with the notable exception of Chile who had a multi-party presidential democracy that endured for more than twenty five years. To some scholars, many executive and parliamentary relations appear to be a mutual blocking co-existence to several degrees rather than a checks and balances system on functional terms. This potentiality to foster institutional conflict ingrained in the presidentialist architectural design (Nohlen/Fernández, 1991) complicates the legislative outcome and at the same time weakens the parliament as institution and structure.

A consequence to presidential critic based on the idea of dual legitimacy is the consideration that presidential policy production is *confrontational* where parliamentary is *consociational* (Lijphart, 1990). “The presidentialist system is an enemy of consensus and compromises; that makes parliamentary systems superior in times of crises” (Nohlen/Fernández 1991, p.23). Indeed, the consociational functioning elements of parliamentary democracy as outlined here, may be a recent discovery and transformation of the so called pure parliamentary regimes in some European countries. The Westminster model on the contrary, based on adversary criteria, from cabinet government, majority and power rotation (*mayoría y alternancia*), with a strong influence on European parliamentary forms for many years⁷⁶ (Nohlen, 1991) has also presented important confrontational scenarios.

⁷⁴ This idea with very little changes is present throughout the whole literature of critics to the presidential systems (Stepan/Skach in Linz 1994; Valenzuela 1978, 1989, 1994). Counter critics also allude the term as one of the points that can be inherent to a certain flawed type of the presidentialist form (Sartori, 1994)

⁷⁵ The balance of legitimately elected powers which collide and immobilize one another, has been a recurring problem in several Latin American democracies (Coppedge, 1988) even in countries that have fared better economically and politically than others.

⁷⁶ Nohlen writes a defense (or perhaps a counter attack?) of presidential regimes in Latin American where he dissects J. Linz’s proposal both on theoretical and empirical grounds, reducing it almost to absurdity. Over this consensual point against the confrontational input as diagnosed in presidentialism he weakens his point a little adding “Soluciones de compromiso pueden no producir efecto alguno o tener consecuencias negativas. En tiempos de ajustes o reajustes (del Estado, de la Economía, de la Sociedad) es difícil sostener la prioridad de estructuras decisionales que no pueden forzar a nadie a soportar la carga de esta política. Paradójicamente, la incapacidad de tomar decisiones a este respecto

3.2.4 Delegative Democracy

One last critic that ought to be considered against presidentialism on pure structural grounds is the collateral empirical damage existent in many a presidential system, and reported by O'Donnell (1991; 1994) as "delegative democracy", a conceptual opposite to "representative democracy". Theoretically speaking, O'Donnell⁷⁷ derives his idea from a Hobbesian interpretation of the power delegation or authority delegation people make on the first magistrate or president (p.67, 1994). This "new species" of democratic breed, presenting a sovereignty deviation from democratic institutions towards the presidential figure, may appear as an intermediate stage in the normal consolidation and institutional process of democracy.

On normal terms, in a healthy representative democracy the mass of the democratic weight lies on the different institutional guarantees of citizen representation (Hammond, 1996). In the case of a delegative democracy, this representation turns to emerge polarized towards the figure of the executive. Important common characteristics of this delegative democracy include a) Presidents who present themselves as being above parties; 2) institutions such as parliament and judiciary viewed as a nuisance or unnecessary delay; 3) preeminence of the executive power both on the presidential or cabinet figure; 4) the President is institutionally and deliberately isolated. O'Donnell's conceptual critic rests on the premises that because they are personally and directly elected, presidents may feel they are somehow entitled to a personal mandate, thus marginalizing other representative institutions.

Functionally speaking, this may be a deepening view of Linz's argument of the "winner takes all", referring to the preeminence of the winner of the executive office over other collective interest institutions, which may in the end result overrun. The operative difference is that although the winner does take all in this model of delegative democracy, the result would be more a consequence of voluntary delegation of powers. The causes for this to happen can be several, either political exclusion of opposition actors in Congress (thus granting the executive a blank check to proceed as it will) or collective political indifference, or even a state of emergency that produces a coalition around the idea of delegation of powers. As O'Donnell himself describes it: "Delegative democracies rest on the premise that whoever wins election to the presidency is thereby entitled to govern as he or she sees fit, constrained only by hard facts of existing power relations and by a constitutionally limited term of office. The president is taken as the embodiment of the nation and the main custodian and definer of its interests" (1994, p.60.)

Delegative democracies as we will see later, portray a whole set of institutional misconceptions among which the parliament is greatly affected. As O'Donnell acknowledges, democratic institutions are political institutions and their

puede conducir a situaciones que reclaman la mano fuerte, mayor autoritarismo y soluciones dictatoriales". Overly admitted, the contraposition or confrontational factor is an institutional characteristic and probably a weakness in the presidential system.

⁷⁷ This idea of delegative democracy was first exposed and can be found in two sources: paper Number 172 from the Kellogg Research Institute and Journal of Democracy Vol. 5, No.1, January 1994.

degree of accountability provides also an effect on their outcome⁷⁸. He later described a deficiency in the power balance and in the accountability initiative between political institutions as “Horizontal Accountability⁷⁹”. This would be the desirable presence of state agencies that are legally enabled and empowered, and factually willing and able to take actions that span from routine oversight to minimal sanctions or impeachment in relation to actions or omissions by other agents or agencies of the state that may be qualified as unlawful (O’Donnell, 1999, p.38).

4. Presidentialism in Latin America. Historic and Theoretical dimensions

Although Presidentialism is often treated as a homogeneous regime type, several authors, notably Nohlen⁸⁰ (1996) and Mainwaring/Shugart (1997), have proved that variables like constitutional stated authority, the party system and electoral system can promote different levels of stability and governability in democracies. The conjugation of variables in each case produces such an assorted outcome that the concept itself has to be stretched to cover different realities. Even when discussing the same regime in one country, time becomes an important variable to an extent that it may modify the interaction of all other political variables considered (Nohlen, *ibid.*)

Presidentialism expanded from the United States and had a main influence in the whole Latin American Hemisphere since the XIX Century, as well as in the successive independence efforts of many countries. Several decades after the passing of the first North American Constitution⁸¹, Simon Bolivar addressed the newly invested *Congreso de Angostura* (1819) in Venezuela, recommending presidential powers as stated in the U.S.⁸² document and praxis, though he did not sufficiently

⁷⁸ O’Donnell’s by argument is that when there is strong horizontal accountability between democratic institutions, these are at the same time more autonomous and perhaps slower in operating, however less prone to errors than in vertical structures. The lack of consensus may have a say in the output both on speed and quality (see 1994, p.62)

⁷⁹ An interesting answer to O’Donnell’s assertion is provided by Shugart/Moreno/Crisp (2000) where the concept of Horizontal Accountability is described as an Oxymoron. Since “horizontal” means equal or at the same level, while accountability implies some form of hierarchy that permits the assignment of responsibility and the possibilities of rewards or punishment. On power delegation terms the national Congress would most likely be the most proportionally empowered institution by the society and to it is the executive accountable rather than the opposite. However the president is also legitimized by his independent and popular election.

⁸⁰ In a Conference in 1996 titled “La Trilogía: Sistema de Gobierno, Sistema Electoral y Sistema de Partidos” Nohlen stated that “En el ámbito del Presidencialismo hay tantas variantes como casos; en forma tipológica pueden distinguirse por lo menos cinco: el presidencialismo autoritario, el reforzado, el puro, el atenuado y el parlamentarizado” (Nohlen, 1996, p.6)

⁸¹ The first written constitutions in the US (Pennsylvania, Maryland and Virginia) were enacted by 1776. The Philadelphia Convention established several principles, including a frame of government. In 1789, the Bill of Rights was proposed by the first Congress and these were included in the federal constitution of the United States under the name of the ten amendments in 1791.

⁸² *El Discurso de Angostura*, delivered by Bolivar at the inauguration of the second national Congress in 1819, states that “although the powers of the president of the United States are limited by numerous restrictions, he alone exercises all the governmental functions which the constitution has delegated to him; thus there is no doubt but that his administration must be more uniform, constant, and more truly his own ...” also “give Venezuela such an executive power in the person of a president chosen by the people or their representatives, and you will have taken a great step towards national happiness”.

stress the difference between parliamentary and presidential systems. At any rate, presidential forms of democracy later expanded to the other Bolivarian republics which in turn took very close followings to the presidentialist U.S constitution. This is also *logical* (Kantor, 1977) since the leaders involved in the settings of the new governments “had lived in Europe or in the United States”. Kantor’s historical thesis starts from noting that by the time of colonial independence there was no group formally prepared to form government or “governmental machinery”. To this situation then, victorious *caudillos* turned to follow the other political system that had been victorious against Europe, namely, the U.S presidential model with autonomous power division. This abrupt change and the immediate cessation of all colonial institution in favor of a new republican model intertwining elements from France and the United States, created a transition period which took time to assimilate since military independence purveyed the countries with an autonomy few were prepared to have⁸³.

Historically speaking then, Latin America is the region of presidentialism amidst democratic systems (Nolte/Krumwiede, 2000) showing a map with two most important constraints to address the question: 1) Presidential Democracies have existed mostly in Latin America; 2) Parliamentary Democracies exist mostly in Europe or in former British Colonies.

Nohlen/Fernández (1991) present Latin America’s presidentialism as one of its kind, (“*sui generis*”...p.37) resultant or by product of three political components mixed among others which are: 1) the Power Separation Doctrine versus a Centered Monarchical Tradition; 2) Constitutionalism vs. Authoritarianism; 3) People’s Sovereignty vs. Oligarchic Government.

1) *Power Separation Vs Monarchical (centralist) Tradition*. Historical points to support this first pronouncement observe that the independence movements in the region were positively well-versed with most of the relevant enlightenment literature (Rousseau, Condorcet, and Montesquieu) which helped to mix power separation doctrines, people’s sovereignty and a certain centralist heritage from the monarchies in Europe. Examining the institutional character of the presidency in the first years of the new republics both as a ruling institution and its effects, we find the power type to which the president has access closer to a borbonic type than to a British, north American or from the French encyclopedists. The presidential figure mostly incarnated by a “*caudillo*” had the limit of being a military with an intellectual (usually European) background. The introduction of liberal doctrines near the second half of the XIX century ensured reforms on the political party structure (thus the possibility of certain power rotation) as well as a slow but progressive separation of powers (a major definition of functions) (Bulmer-Thomas, 1994).

⁸³ “To put it in another way: the independence destroyed the only symbol of legitimacy the people knew, the crown, and substituted it for a constitutional system no one really understood. The new presidents and members of the legislatures did not have the faintest idea how to manipulate the complicated system of checks and balances, separation of powers, federalism (where it was adopted) or other ideas contained in the U.S. Constitution created in Philadelphia” (Kantor, 1977, p.22 in Thomas di Bacco)

2) *Constitutionalism vs. Authoritarianism.* Structurally, it is discussed whether Congresses or assemblies preceded the presidential presence in many Latin American nations. In any form, the constitutional arrangements taken both from the French republican initiative and the North American revolution, founded the institutional order of the new republics in a constitutional document. This constitution was relatively present in political life and authoritarianism did not appear to be an anti-constitutional phenomenon but para-constitutional form⁸⁴ as if in some way authoritarian rule was a by product to guarantee constitutional reinforcement (Nohlen/Fernández *ibid.*). To this analysis, the presence of the authoritarian figure and its own functional contradiction with the republican constitutionalism was conceivable in times of disorder when only *caudillos* or *hombres fuertes* could assure civil order, a premise which ought to be held over everything else. Another consequence of this constant struggle between constitutionalism and authoritarianism is the extraordinary length of Latin American constitutions (Lloyd Meham in Snow, 1967) born out of a natural mistrust towards the authoritarian tendencies of different governments; hence the elaborate provisions to prevent the abuse of power.

3) *Popular Sovereignty vs. Oligarchic rule.* Another profound contradiction in the first years of the independent republics was the duality between the theoretical conception of popular sovereignty vs. the oligarchic tendencies in some countries and their executives. However the ideological concept of citizen representation in the parliaments was not on behalf of them but on behalf of the “nation”, an abstract supra concept that ranked higher than any of the people. Presidentialism in Latin America contributed to make the principles of national sovereignty part of regular rhetorical speech rather than an incumbent reality.

Under a theoretical approach towards the Latin American presidential systems, these however derive their essence from both the normative and empirical outcome of the model. Though some XIX century divergences can be found through historical analysis as presented by Nohlen/Fernández, the empirical output of the system leads to the belief that the North American model is still present at least in a general structural manner. In terms of longevity during our period of study, 1985-1995, Costa Rica had remained as the oldest democracy (1949) together with Venezuela (1958). Argentina re-established the democratic system in the 1980's. Mexico, until the first presidential rotation after 70 years in 2000, was commonly politely skipped considered by many experts as a democratic façade.

To the conceptual elements provided above, socio-economic and cultural elements pervade the simple systematic analysis of the democratic forms of the region. The continuation of acute, pervasive, and blatant inequalities –sharpened by the severe economic crisis and monumental foreign debt inherited from preceding authoritarian regimes (cases like Argentina) maybe one of the outcomes of the

⁸⁴ Waldman (1983) in his “Essays on Politics and Society in Latin America” diagnoses “to the democratic and rule of law ideals, according to which institutions should guarantee uniform political flow, there existed the belief and perception that only some people could warrant social stability” (p.19)

socially restricted and/or shaky democratic regimes that already exist, and will exist in the near future in Latin American (O'Donnell, 1986).

Recent studies about Latin American (Molina, 2001) have openly shown how democracy is measured by its output in economic terms in the region and how governments, presidents most particularly, suffer the rundown effects of economic stagnation both personally (for those countries where re-election is possible) and for their party in subsequent party suffrages for parliament posts. Incapacity to deliver in terms of economic improvement shows an acceleration of the political image-decline both for the president and his party/ies of support. Legislative majorities suffer then a periodic re-accommodation and re-negotiation even before election time when surveys begin to permeate several social sectors and parliament members and indicate changes in the political composition of the legislative in the near future (Molina, *ibid.*)

4.1. Latin American Presidentialism. Contemporary Concept and Function.

Functionally speaking, Mainwaring's (1989) differentiation for Latin American Presidentialism is pertinent in contrast to the historical outlook. Under his view, the sharpest distinction to define the limits of authoritarian regimes abundant in the region, and strong presidential regimes, lies in the presidential figure (and its powers); many of the former maintained only a democratic façade⁸⁵. This is a real working difference in contrast to that between US presidentialism and Latin American Presidentialism⁸⁶.

Mainwaring also picks up the glove on Agor's conclusion when he regrets the exclusion of Chile, Costa Rica and Uruguay. Agor (1971) observed that most studies generalized the region as one of weak Congresses and dominating presidencies. "This observation is not meant to suggest that presidentialism in Chile, Costa Rica, and Uruguay was the same as in the United States but rather to argue that the more meaningful difference (authoritarian Vs. Democratic context) may have been misperceived as a result of attempts to write about Latin American as a whole" (Mainwaring, 1990, p.30).

⁸⁵ "Quiérase o no, hablar de autoritarismos abre la posibilidad de hablar de semidemocracias o de regímenes de transición que, vistos en retrospectiva, son el equivalente de la mayoría de los regímenes autocráticos institucionalizados que llenan la historia política de América Latina. El Autoritarismo Institucional ha pasado a ser un exponente más de la cultura política de la región: el liderazgo fuerte personalista y ejecutivo, el *caudillo* o la norma bonapartista no sólo se permite sino que se espera". (Wiarda, 1985 en Nohlen/Fernández 1991)

⁸⁶ Mainwaring (1989, 1997) stresses the institutional variable of democracy. "For analysts of Presidentialism, it would be more revealing to compare Chile, Costa Rica and Uruguay with the United States, rather than comparing them with the Latin American Countries under authoritarian rule, or even with the new democracies whose procedures were not yet *institutionalized*".

Table 1.2 *Presidential Elections in Latin America*

Pais	Duration Mandate	Reelection Possible	Election Direct/Indirect	Majority required	Posterior Electoral Rounds
Argentina (1853)**	6 years	No. Only after 6 years	Indirect. Electoral Council.	Absolute Majority	Congress chooses between the two most voted candidates
Costa Rica (1949)	4 years	No.	Direct	Majority of Votes that exceeds the 40% of all valid votes	2 nd round between rolls (nóminas) with most votes.
Mexico (1917)	6 years	No	Direct.		
Venezuela (1985)	5 years	No. Only after a period of 5 years	Direct	Relative Majority	

*Source: Nohlen/Fernandez, (1991) Mid-90's.

Another observation directly akin to Latin American presidentialism is that for different reasons and due to the conjunction of different working variables, they might not be as strong and almighty as they appear⁸⁷ (Sartori, 1994; Mainwaring 1990; Shugart Carey, 1992). Though some authors like Shugart/Carey conceptualize presidential power in Latin America as one that grants legal powers to the presidential figure, reality is that at least for most of the XXth Century, and in periods when a democratic system was underway, parliaments had a lot of exercise room for their initiatives.

Another problem to establish a stable Latin American presidential contemporary concept, in defiance of its systematic variations all over the region, is worked by Suárez (1982). The presidential electoral process, being one separated from the parliament (with all its known variations) is almost always won by majority either absolute or relative. This facilitates the entrance of political outsiders, ergo, people with very little political experience, in the political arena⁸⁸. In fact the idea of being politically independent and most likely without either cabinet or parliamentary experience can bestow political attraction to the aspirants which can show themselves as positively foreign to the political system. The data presented by Suárez and Molina

⁸⁷ Some relative exceptions: Chile's 1989 Constitution which empowers the president to dissolve the Chamber of Deputies (art.32); also Sartori considers Uruguay's case as one that has dabbled with quasi-presidentialism in its history though its current regime should be conceptualized as a presidential one, despite the fact that the legislature is empowered to censure cabinet members and that the president is empowered to dissolve the legislature.

⁸⁸ This interesting though not completely stressed variable is mentioned by specialists in Populism and neo-populism, as prominent cases in presidential systems, notably in Latin America and Asia (J. Estrada in Philippines being an outstanding case). "After the 40's, a number of Latin American leaders began to advocate free elections and widening the franchise of a classic populist appeal" (Conniff Ed., 1999, p.11). It can be discussed that since in direct election of the president it's basically his mediatic charisma that counts, the populist mode, with its gravitation and initiative around the leader, has many chances of expanding.

(1982 and 2001, respectively) positively support this proposition as one of the feature damages of presidentialism may cause in the region.

Though Molina concentrates more on the electoral consequences of the whole event, the swinging pendulum of disenchantment with democracy and democratic institutions (as reported by the *Latinobarometro*) leaves room for outsiders of the political arena to capitalize on. In addition, Suárez shows that aggregate data on heads of state and governments between 1940-76 from presidential regimes proved less experience on average for presidents than their respective prime ministers in parliamentary systems (see also Shugart/Carey, 1992 and Carey, 1994)⁸⁹. Many of these heads of state went directly to the highest position in public policy having little or no intermediate experience in politics. The delicate conclusion is that “politically uneducated leaders” may find it harder to start negotiating relations with the parliament once elected. The legislative on the other hand, will more likely remain closely related to party interest and discipline, than dependent on the executive electoral outcome. The charismatic leader that has climbed the electoral ladder through direct voting preference may find it hard to adjust to an operative reality of institutional power balancing, particularly if it is adverse to him in Congress. In the case of a newcomer in politics this possibility increases since the candidate may either not have obtained a clear majority in any of the chambers, or have a ruling party that does not want to cooperate with him.

Another peculiarity in the Latin American region is the fact that democratic consolidation may or may not have an incidence result on institution strengthening; this is not *a sine qua non* clause (O’Donnell, 1994). O’Donnell observes that populist or “delegative” drawbacks in the democratic development are likely to happen independently of how stable the system may be and they could continue to appear in the near future if the institutional output on economic and political terms was not satisfying.

In conclusion, the intermediate dominance status of executive-legislative relations in Latin America can also be taken into account as a factor stretching between pure parliamentarism and pure presidentialism. In the United States, the president cannot appoint a sitting member of Congress to his cabinet because the constitution expressly forbids (Article I, section 6) simultaneous occupation of the presidential cabinet and the legislative office. This prevents cabinet members not from attending congressional hearings, but from participating in the debates or voting in any of the proposed bills.

In some Latin American countries this simultaneity of office has occurred with deliberate constitutional allowance, e.g. in the Peruvian Constitution of 1933) or in cases like Brazil, where the *suplente* or legislative substitute system existed, with singular powers. An elected member of Congress can yield his seat temporarily to his *suplente*, or replacement, but then reassume the seat later (if dismissed from cabinet,

⁸⁹ In Latin America, practical examples became notorious as the traditional political parties began to lose their grip and connection with civil societies. Most notable examples are the Peruvian elections between Vargas Llosa and Fujimori in the 90’s.

for example). This created a politically awkward situation in Brazil, where ministers would occasionally resign their cabinet positions just before an important vote in the assembly and resume their ministerial posts again afterwards (Shugart/Carey 1992).

Another element in the operationalization of the presidential concept in Latin America is the setting of parliamentary agenda through law project introduction. In the U.S., taken as a pure presidential role model, the president does not have the right to directly introduce legislation. Even the budget draft must be introduced by a member of Congress. In contrast, most Latin American chief executives have the power to introduce legislation directly, and some -Brazil, Chile, Colombia prior to the 1991 constitution and Uruguay- (see Nacif/Morgenstern 2002) have exclusive powers of introduction in some specific areas. Moreover, the U.S president cannot determine the Congress' agenda in any direct way, nor can he accelerate bills on ordinary congressional calendars. In sharp contrast to this, Brazilian, Colombian and Peruvian presidents for example, can send urgent bills to Congress that take priority over other legislative matters. In Chile (Siavelis in Nacif/Morgenstern, *ibid.*), Ecuador, Paraguay and Uruguay, presidential powers on legislative agenda setting are such that the president's bill proposal automatically becomes law if Congress does not formally reject it within a specific period of time. This forces Congress to either call for extraordinary meetings (if not in sessions), or to rearrange the daily agenda of discussions in order to consider the new project. All these points on parliamentary ground leave Latin American Presidents' powers closer to those exercised by prime ministers in parliamentary systems⁹⁰.

Table 1.3

<i>Latin American Presidentialism</i>	<i>U.S. Presidential Model</i>
<ul style="list-style-type: none"> • Cabinet Members can eventually sit in Parliament and sometimes vote for Laws; occasionally they are selected to solidify Assembly support. 	<ul style="list-style-type: none"> • Ministers cannot be Congressmen or participate in congressional debates. Members of Congress are also not appointed to build support.
<ul style="list-style-type: none"> • The whole executive (President and Cabinet), but most specifically the President, can exercise important influence in determining the Legislature's agenda giving priority or urgency to certain drafts. 	<ul style="list-style-type: none"> • The President does not have the right to determine directly the measures that Congress will consider, or accelerate bills on congressional agendas. He is not allowed to introduce any law project directly to Congress.
<ul style="list-style-type: none"> • Prone to Vertical Accountability 	<ul style="list-style-type: none"> • Horizontal Accountability
<ul style="list-style-type: none"> • The integration of the executive and legislative members of parties is often greater in Latin America 	<ul style="list-style-type: none"> • Members of the executive remain distant from Congressmen and do not cross agendas deliberately on party issues.

⁹⁰ We can accept that the separation of powers is stronger and more clearly limited in the U.S. Although there the president can also veto legislation, he is not capable of pushing any legislation through in the internal procedures of Congress. A contrast to this is the structural capacity of Latin American presidents to reach inside the assembly, appointing its members to the cabinet, introduce and propose legislation and accelerate their consideration. A curious point made by Siavelis, Mustapic and Nacif (all in Morgenstern 2002), is that when a president has good prospects of legislative support, cabinets are constructed to maintain this support. "In those cases, initiative powers and urgency provisions are used in concert with coalition partners, and the president relates to the Congress more like a prime minister relates to a parliament" (p.669).

4.2 Empirical and Normative Factors in Latin American Presidential Democracies

In a review of the works of Robert Dahl (1950; 1953; 1956; 1961; 1963; 1971; 1985; 1986; 1989; 1998) and a comparison of field works like Mainwaring (1997) Shugart/Carey (1992) and Latinobarometro, we can deduct several considerations about the applicability of the classical normative democratic presidentialist model into the regional perception and the empirical results of Latin American presidential democracies. The term “democracy” and also “presidential democracy” suggest immediately a series of guidelines without which we would not be talking about democracy, or in this case, about presidential democracy in the Latin American region. In the case of presidential democracy as independent variable, the unification of the normative concept and the empirical outcome finds place in the concept of democracy itself, despite functionalist critics such as Duncan/Lukes⁹¹ (1963) who rule Dahl’s emphasis on citizen involvement as excessive, particularly when reality shows that democracies regularly work with very low participation indexes.

As for presidential democracy, two defining characteristics stand normatively as premises: a) that the chief executive or president is popularly elected and b) that the working office terms for both parliament and executive may be defined and limited. These attributes contrast openly to those of parliamentary systems as studied in the literature since Bagehot, namely that a) the chief executive or prime minister is not popularly elected but instead is chosen by parliament and that b) the terms of office are not limited or fixed *a priori*, since the survival of the whole executive government depends on the confidence (expressed by vote) of the parliament.

Regarding Latin American democracies, the main normative factors come from the constitutional attributions presidents have on legislation, out of which the capacity to propose laws (and thus to affect congressional agenda), plus the reactive power of veto (either partial or total⁹²) stand out as remarkable in comparison to the congressional invulnerability of the classical model in the US. We could say the US model has a better legislative isolation from presidential drive.

Following the patterns exposed by Dahl/Lindblom (1953) and Maiz (2001) on presidential empirical outcomes and relating them to the Latin American model, we trace back elements of difficulty to instrument accountability on the presidential figure and to guaranteeing equality of participation among the growing number of interest groups in the society (Dahl/Lindblom, 1953:303-306). Moreover, Dahl draws some bitter conclusions from the contrast of the pure normative theory of democracy with empirical reality. This gap has been projected to other presidential democracies as part of the internal defects the presidential system may be prone to. This constraint

⁹¹ For Duncan/Lukes as well as Lane Daves (1964), the idea exposed by Dahl in 1956 and 1961 (Who Governs?), assuming that normative democratic values needed an adequate empirical orientation theory was viewed as a degradation of the normative exposure of the democratic principles. However, Dahl assumed in his “Polyarchy” a resumption of the necessary link between principles and practice in democracy.

⁹² Ayala Corao (1992) establishes several points: 1) Initiative to propose laws to parliament; 2) Decree facilities; 3) Constitutional extraordinary powers; 4) Veto powers (either total or partial).

from theory to practice outlines many of the deficiencies found in Latin American democracies. Most of these deficiencies, due to a lack of thorough institutional improvement, have become chronic ailments for public administration. Social equality is one of such major difficulties as we see in Dahl's words: "the economic system in the United States and the structure and functioning of politics, hinder efforts to diminish social, economic and political inequality" (Dahl, 1987: 13).

In the concept of Polyarchy, published in 1971 but already sketched by 1953, we find that the grounding of this term is itself an adaptation of the democratic normative demand, made on the empirical reality produced by different presidentialist countries. "The characteristics found by Dahl⁹³ to show us what poliarquies are, represent *practical* approximations to a democratic ideal and historical purposes taken to magnitude level of states" (Maiz, 2001:45). This theoretic ideal suffers the rigors of adapting to a multiple sided reality when becoming a working model.

In Latin America, where the presidential model with power separation was taken as role model (Nohlen/Fernández1991; Alcántara, 2001), other variables entered into the game to further distort the original presidential scheme, such as *caudillismo*, multi-parties systems with congressional representation and a whole set of differences among institutional mechanisms of accountability. Nevertheless, there still are fixed normative elements in the democratic models of the region, such as the survival/independence of legislative and executive powers, and their being separate from each other's individual will⁹⁴.

One last systematic empirical difference from a classical approximation of a presidential democracy is the deliberate empowerment of parliaments to act with diverse degrees of influence on the executive (parliamentary control). This can be seen as a potential mixture of parliamentary or semi-presidential elements within the presidential model. Congressional control with specifically designed constitutional tools can seriously limit presidential authority, and it structurally relates more to the parliamentary regimes, where a strong legislative can, based on its own considerations, change one or more cabinet members, than to a pure presidential form of government.

4.3 Critics and Support to Latin American Presidentialism.

That presidentialism in Latin America has significant variations from whatever specific normative role model we may choose, is a theoretical conclusion with several empirical examples in daily reality (Mainwaring/Shugart, 1997). This observation has also consequences on the criticism towards presidentialism in the

⁹³ In "Politics, Economics and Welfare" (1953), Dahl refers to poliarquies as the systems which may have: 1) Right to vote; 2) Equality in value for votes; 3) Subordination to collectively elected authorities; 4) possibility of governmental alternation; 5) Plurality on information sources; 6) Several politics and policy options.

⁹⁴ Mainwaring/Shugart point out here that regarding the norm among Latin American presidential democracies that no president has the authority to dissolve Congress when he wishes, Peru has had the constitutional prevision in the drafts of 1933, 1979 and 1993 to allow the president such a procedure if exposed to repeated censures from the parliament (1997:17).

Latin American area. Up to this point, most of the criticism against presidentialism was on systemic terms, general observations directed to all presidential democracies. Some authors, notably Valenzuela, Linz, and O'Donnell addressed the functional problems of the largest presidential region of the world, as Latin America is considered. To the proposed political reforms of the 80's and 90's, when several nations, Argentina, Brazil, Uruguay and Chile (also Peru and Ecuador) toyed with the idea of changing the political system from a presidential towards a parliamentary one, the consensus against this decision came from the common acceptance that Latin America had had very little parliamentary experience and that parties were probably not disciplined enough to start such a risky enterprise. Strong critics against presidentialism came also from the comparative quantitative analysis which led to conclusions such as Lijphart's (1994) that presidentialism is inferior to parliamentarism, regardless of whether the president is strong or weak. In the first instance, the system will tend to be too majoritarian; in the second case, majoritarianism is not replaced by consensus but by conflict, frustration and stalemate.

This reproach is common to the numerical conclusion of Linz also in 1994 who speaks of accumulated evidence of the past in presidential systems, particularly in Asia and Latin America, and the success of contemporary parliamentary systems in Western Europe. This accumulated evidence denotes mostly the stability⁹⁵ of the parliamentary system (Sartori, 1994) as fundamental variable and the fallacy, already demonstrated, that two such examples could be compared on the basis of their figures' resemblance, skipping cultural and historical variables so deeply intertwined in the political system.

Also working on quantitative grounds, Stepan/Skach (1994) set a whole corpus of evidence aimed at proving the superior record of parliamentary systems in different democracies around the world. They note that among 43 consolidated democracies in the world between 1979 and 1989, 34 were parliamentary systems, 2 semi presidential and 5 presidential. The conclusion here is that parliamentary systems probably had "a better ability" to sustain democracy. The argument of a "better ability" presupposes that given the same variables a parliamentary system would not break down, as in the case of Valenzuela (1994), who claims presidentialism was a detrimental factor in Pinochet's authoritarian regime rise, and in Chile's falling into a dictatorship regime.

4.4 Defenses of Latin American Presidentialism

⁹⁵ Stability has recurrently been a variable to discuss and compare not only presidentialism and parliamentarism, but also democracy as a system itself. In his "Open Society" first volume, Popper exposes the inconsistency of such a characteristic when solely used to consider the benefits of a political system. One of the repetitive arguments used against Latin American presidentialism by its critics is that, among the long term "stable" democracies, few were presidential. Also that because of the gridlock and functional incapacity to quickly solve conflicts, presidentialism led to "returns" or drawbacks to the authoritarian tendency the region has been historically prone to.

There is an argument that presidentialism has developed its own constraints to avoid collapse (Ayala Corao, 1992). According to this tendency of thought, to all the criticisms previously exposed: fixed terms leading to rigidity as opposed to the confidence and dissolution forms in parliamentary systems; the immobilism due to the dual legitimacy of the power branches, and the “winner takes it all logic”; structural and functional counter symptoms can be found inside the system to avoid destruction.

For example: just as presidentialism makes it structurally difficult to remove presidents from office during their ruling period, it also secures the forms to guarantee that presidential power will not perpetuate itself for more than the established time⁹⁶. Thus many Latin American constitutions foresee a necessary limitation to the presidential period and possible reelection. To the second argument against presidentialism, institutional gridlock or immobilism between the legislative and the executive, power and conflict rather than consensus as alternative (Lijphart, 1994), the orientation has been towards special legislative powers for the president that can help in the veto playing game between the two actors. Several scientists (see Maurich, 2001) see decrees and their use as a tactics used by the executive to rule amidst a complex cohabitation with the rest of the political actors. This is also complemented by other serious studies (Blondel, 1973; Mezey, 1979; Cox/Mc Cubbins, 2001) that show how parliaments in Latin American have routed their actions towards being reactive to executive legal proposal, limiting their scope to either local affairs or pork barreling while leaving proactivity in legal affairs to the president and cabinet.

This diagnose does not mean that legislatures may be dysfunctional. On the contrary, it is the practical recognition of their limitations to a normally more prepared and resourceful executive power. Also, there is the comprehension that power abdication or delegation, only present under certain political circumstances, exists in direct proportion to the weakness of the executive and its lack of partisan power and popular support.⁹⁷ Delegation, vetoes and decrees are symptomatic to show that the waves of power can be determined, as for the case when the executive slowly loses its conciliatory powers and must retort by using its constitutional attributions of power against parliamentary opposition.

The third criticism of this group is the winner-takes-all effect diagnosed by Linz (1994). A positive outcome of this situation may apply to the Latin American region in so far as it is something inimical to democratic stability. The winner-takes-all in Latin American presidentialist systems excludes secondary actors in the political

⁹⁶ Linz (1994) argues convincingly on this point that if the case were of a good president “the fear of discontinuity and distrust of a potential successor encourage a sense of urgency that might lead to ill designed policies”. This somewhat speculative reality leaves us with the fact that a limited term for the executive does constrain both good or bad regimes.

⁹⁷ As Llanos (1998) explains and we will show later, the institutional resources of the presidency are not always invariable and permanent. Rather than that, they stand as the outcome of constant and current negotiations between the parliament, the party system and the executive. In the approval of privatization laws and the whole set of state reform policies displayed, in the case of Argentina for example, there are evolution stages in the executive-legislative relation that denote institutional exchange to either enhance or constrain the powers of the president. By showing that congressional intervention should not be underestimated, several authors conclude that many a time Latin America has shown clear symptoms of legislative-controlled presidencies (Brewer-Carias, 1985).

map, a phenomenon frequently viewed in the conformation of executive teams where all prerogatives go in favor of the winning group in the elections. The fact that direct suffrage and thus direct sovereign transaction from the people may empower a president to the point of making him feel it unnecessary to pursue coalitions or give certain concessions to the opposition, is also a fact worsened by rigid governing terms existent in presidentialism and the need to pass a number of policies through different power sharing institutions. There is also the risk that the president may observe himself as allowed to pursue his own idea of policies without having to consult second opinions since he himself is attributed to choose the whole executive and other institutional actors. “Winners and losers are sharply defined for the entire period of the presidential mandate. The losers must wait between 4 or 5 years without access to the executive or patronage” (Linz, *ibid.*)⁹⁸

Another rather negative empirical consequence of this winner-takes-all phenomenon is the psychological factor derived from a false sense of popular sovereignty (Carey/Shugart, 1992) or popular mandate (Blondel/Suárez, 1981; Suárez, 1982). This applies strongly to those cases either where a president has been elected with a plurality of votes or where the winning difference has been so small and scarce that it proves a starkly divided electorate.

To this phenomenon we may add the lack of immunity presidentialism may present against newcomers or politically foreign actors. There is indeed a double argument here: on one side it may appear acceptable that the political establishment perpetuates itself allowing a limited number of beginners, so to speak. On the other, if high margins of political and economic corruption are considered as run down elements of the overall democratic system’s image, the system may appear weak to avoid periodic renewals independently of whether these changes were sought after or not. This abrupt arrival of new political actors (actors who arrived mainly by being popular or media friendly) is not exclusive only of presidential systems but sadly most common in them. It can also happen in parliamentary systems, as Mainwaring points out, with the sudden emergence of Silvio Berlusconi’s Forza Italia in 1994. Berlusconi’s almost inexistent political past shows that parliamentary systems are not totally invulnerable to outsiders.

⁹⁸ Shugart/Carey (1992) provides us with a descriptive view here: “Evidently, the winner takes the entire executive, and depending on the timing of congressional elections, can expect to take more than its share of Congress as well. We do not universally condemn the pull of presidentialism on assembly elections. In countries with multiple, factional and personalized parties the impetus to coalesce for presidential competition may counteract the tendency towards fragmentation” (p.32).

Table 1.4

Latin American Presidential Powers	Institutional Controls in Latin American Presidentialism
Capacity to Legislate and set the legislative Agenda	Fixed and Limited duration of the mandate period
Exclusive Initiative to introduce Budget Law	Control over immediate reelection ⁹⁹
Decrees and Veto Powers (total or partial)	Constitutional Accusation due to infringement of the law ¹⁰⁰
<i>Leyes Habilitantes o de Emergencia</i>	Parliamentary Control forms ¹⁰¹ (Interpellation, censure or approval vote, etc)

Source: Ayala Corao (1992)

Regarding the sustainability of democracy and focusing on the economic output of popularly elected governments, Przeworski (1995) and Limongi (Prezeworski/Limongi, 1997) have argued that low and medium income democracies are more vulnerable to breakdown if their economies perform poorly. This may occur regardless of the type of democratic system, only considering the capacity to deliver on socio/economic terms. Democratic breakdowns in Latin America in the 60's were sometimes attributed to economic problems rather than pure political differences (Mainwaring, 1999).

According to the IADB 2000 report, poor economic performance can affect an elected government's capacity to survive for several reasons. Since low economic growth can erode legitimacy in popularly elected governments, it becomes twice as hazardous a variable particularly when combined with strong indexes of administrative corruption, something apart from the fact of considering whether we are dealing with a parliamentary or presidential system.

Two other substantial critics have been provided by O'Donnell in 1994 and 1998, delegative democracy and horizontal accountability respectively. Though both criticisms entail a whole conception and observance of the presidentialist democracy as a structure *per se*, they clearly come out as diagnose based on the empirical reference of Latin America. From the comparative research data shown in the 1994 article¹⁰², out of 7 countries named as new democracies and clearly in the process of institution building towards democratic consolidation, 5 are Latin American countries. The definite pattern towards the Latin American delegative democracy type observed by O'Donnell is that in the third democratic wave of Latin America, many of the countries that returned to democracy were already in the middle of a great socio-economic crisis. Notably, there is the allusion to the parliamentary control existent in

⁹⁹ Several reforms in some Constitutional texts have lately altered this principle, notably Argentina 1994 and Venezuela, 1999.

¹⁰⁰ Ayala Corao argues that the presidential system strengthens the principle of the president being responsible civil and judicially, however irresponsible or to some extent unaccountable politically. This explains why he cannot be dismissed under this accusation solely. In Latin America the president responds following the constitution and the laws; cases of constitutional accusation exist only in Argentina, Colombia, Chile, Ecuador, Guatemala, Peru and Uruguay.

¹⁰¹ These of course vary from country to country but in general terms validate, at least theoretically, the principle of check and balances set for separate powers.

¹⁰² Guillermo O'Donnell, "Delegative Democracy", Vol.5, Num. 1, January 1994.

some countries, one that has been deliberately given up in some places at a higher degree than in others. “The difference is that Uruguay is a case of re-democratization where Congress went to work effectively as soon as democracy was restored” (O’Donnell, 1994, p.64). In other countries, some because of a weak institutional tradition, and some because of the need for speedy measures the effectiveness of Congress was not as notorious. The strong inheritance of an authoritarian presidency-oriented past is mentioned as probable cause¹⁰³ to explain the idea of an executive viewed as national rescuer or prominent figure.

The second concept, horizontal accountability, is applied only sometimes as an incisive censure to presidentialism in Latin America. It is easy to observe that the whole idea frontally collides with a politically polarized power system, one without adequate power balances. However, horizontal accountability is not a specific criticism to presidentialism from the standing point of a parliamentary system as most other arguments have been. As a study variable and the product of sheer comparison, it springs from a theoretical conception of power sharing¹⁰⁴ and the so-called checks and balances conjecture innate to the original idea of power separation¹⁰⁵.

One of the major criticisms that can be made to presidential democracies in Latin America is that their institutional development may either be too weak or intentionally hindered by a polarized power designed to favor the executive. If, as in the case of delegative democracy diagnosis, the abdication of social powers from other political institutions is too inclined, there is an anatomic impossibility to perform power checking and balance. Horizontal accountability is a reproach to the tendency already observed in Latin American presidential system to concentrate too much on the presidential figure leaving all other political players in the shadow as reactive elements. However, in both cases the role of the party system and the relations between president and ruling party can be fundamental to enhance governability and to limit these negative system deviations.

¹⁰³ O’Donnell literally says that in the cases of delegative democracies of Argentina, Brazil and Peru there is no need to detail the depth of the crisis that these countries inherited from their respective authoritarian regimes. Such crises generate a strong sense of urgency and provide fertile terrain for unleashing the delegative propensities that may be present in a given country.

¹⁰⁴ The concept proposed by O’Donnell (1998) states that the existence of state agencies that are legally enabled and empowered, and factually willing and able, to take actions that span from routine overseeing to criminal sanctions or impeachment in relation to actions or omissions by other agents or agencies of the state that may, presumably, be qualified as unlawful.

¹⁰⁵ As much as the whole idea of delegative democracy sprang out of an interpretation of Hobbes’ idea of power delegation, the whole notion of horizontal accountability has roots in the works of Madison in the Federalist Papers; notably his theory of ambition as a coercive and limiting force. “Ambition must be made to counteract ambition. The interest of man must be connected with the constitutional rights of the place. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed and in the next place, oblige it to control itself”. (Num.50and 51)

II. Parliaments in Presidential Democracy. Concept and Classification.

Taking an institutional perspective towards the study of parliaments means recognizing that formalized structures and rules cast a delimited context within which political actors make decisions that are socially effective (Crisp, 2000). By classifying parliaments as “Institutions”, we imply them to be formal structures that have a range of political options from where to choose, and codified rules of behavior. These rules can be instrumental, particularly in the case of Latin America, for the consolidation of democracy.

Institutions are often defined quite broadly, as the humanly constructed rules of the political game (North, 1990), or as the rules, norms, expectations, and traditions that limit the free play of individual will and calculation (March and Olsen, 1984). They can also be defined as the functional structures that constitute the process of policy making and the codified rules that are adopted to govern organized groups’ behavior (Crisp, 2000). Relating to our institutional study of the legislative power, a deeper observation would involve, in the case of formal governmental rules, the study of electoral ballot structure, the timing of elections, seat allocation formulas, provisions for censuring cabinet ministers, veto powers, presidential decree authority and legislative initiative.

A representative body in the institutional corpus of contemporary democracies, parliaments may be considered a product of their local political and social environment, portraying within their structure, the complexities of the society they belong to (Mezey, 1979). After the negative impression several political scientists developed from the passivity of third world Latin American assemblies/legislatures, the debate has evolved more towards what type of institutional attitude and environment legislatures provoke, and whether any power delegation occurs only by executive usurpation, or by real voluntary proposition or delegation of the assembly (Reich, 2002). Supporting this first premise of presidential or executive primacy, we observe that though at first glance wide ranging presidential decree and veto authority (or other executive legislative powers) might suggest the executive branch domination of legislatures, these decree powers and other legal attributions of the president can also be the product of a rational delegation of authority by legislators, obeying a context of different reasons (Carey/Shugart, 1998; Llanos, 1998; Cox/Morgenstern, 2001; Nacif/Morgenstern, 2002).

In Latin America the case is that many casual as well as disciplined observers assume that legislators often give up their constitutional powers abdicating in favor of the executive due to several motivations¹⁰⁶. Deviated or extreme sprouts of these various power-delegation perceptions take numerous routes, such as the questioning of the “real importance of legislatures” made by O’Donnell (1993), as well as the

¹⁰⁶ In the case of Mexico, Casar (1997, 2002) Nacif, (2002) have outlined how in the case of the PRI and due to the nature of the party system (based mostly on un-competitiveness) legislators have abdicated their responsibilities, which are clearly stated in the constitutional text. This delegation of power present in other nations too, can be the result of *economic emergency*, as in Argentina (Llanos, 1998); *political agreement* (Mustapic, 2002) or other elements fostering the legislative capacity of the president and the executive’s partisan powers (Carey/Shugart, 1992; Mainwaring/Shugart, 1997)

depiction of Latin American Democracies as “new Species” because of their behavior. Under this view, we classify the diminishing role and little institutional oxygen that survives for legislatures within Linz’s perception of the “winner takes all” nature of presidential systems.

Performing a historical observation of the executive-legislative relation phenomena, several studies stand out from which, on comparative terms, Blondel (1973) and Mezey (1979) develop a particular institutional terminology to attempt to classify legislatures according to their empirical outcome. Although the variables considered to explain legislative behavior vary, the studies are mainly centered on evaluating policy making capacity and the margin of social support they have as institutions. Mezey, in fact, conceptualizes legislatures as “an elected body of people that acts collegially and has at least formal, however not exclusive, power to enact laws binding on all members of a specific geopolitical entity” (p.6, 1979). His study starts from the point that the policy-making strength of a given legislature determines its institutional characteristics and role play predominance; this develops together with the positive image and support the legislature may have as an institution rooted in the society.

Previous to his attempt, and after what he named the “long eclipse”¹⁰⁷ in comparative parliamentary studies, Blondel (1973) also developed a four point scale¹⁰⁸. The gradation made by Blondel assesses the strength of the legislature compared to that of the executive on the basis of whether or not the right of censure stays in the hands of the legislative, and whether or not the executive has the right to dissolve the legislature. Blondel’s classification remains distant from an exclusive focus study on presidential systems particularly on the idea of executive domination. Due to arrangement premises, the closure or dismissal of the parliament, as existent in some parliamentary systems, is structurally unlikely to happen in presidentialism.

¹⁰⁷ Blondel’s introduction begins: “Because legislatures had been ignored for so long, much is still unknown about the activities and effect of representative assemblies. For most of the new countries, data are hard to find and patchy in the extreme; even for older countries studies of outcomes of legislatures, of their influence in both important and routine matters, of the attitudes and desires of their members, are merely beginning to emerge” (pp.xi)

¹⁰⁸ Blondel’s (1973) classification based on the amount and meaning of parliamentary activity is the following:

- a) Nascent or Inchoate Legislatures: those whose ostensible activities are very small and almost non-existent and whose effectiveness and influence remain largely at the level of detailed matters and to the level of intermediate questions. Example: the Soviet Union immediately after Stalin.
- b) Truncated Legislatures: that where a number of bills and occasionally general policies are discussed. And that means “discussed” with reasonable effectiveness though they do not appear to be concerned with the most important aspects of the life of the country. The level of activity and influence of these legislatures is greater than the first group. Example: African countries, possibly more in French speaking countries than in Commonwealth polities and Singapore.
- c) Inhibited Legislatures: those that discuss all matters of government and are involved in general questions as well as in intermediate matters. However they are not really equipped to influence the executive to any considerable extent on broader questions. Examples: Latin American Legislatures such as Uruguay and Venezuela, some Commonwealth countries like India.
- d) European Legislatures, those of the Older Commonwealth and that of the United States. They can be said to channel demands and discuss problems effectively as well as having various means of intervention in order to veto some of the suggestions of the executive. They can initiate new ideas.

Blondel's classification mixes parliamentary and presidential systems to the extreme that in one of the categories, the fourth, he groups the United States' Congress together with the Parliaments of Western Europe, despite their normative and operative attributions being so distinct. The associative reason for this arrangement is only that they are both qualified to veto some Executive proposals and initiate law projects by themselves.

His approach remains short from most of the presidential singularities other comparative researchers have found in Latin America. Aside from the nominal classification, his study would today have only historical value except for a concept he introduced in 1969 and reiterated in 1973: Viscosity (p.126); that is: the degree to which legislatures may be free or compliant with the executive or from the executive's command¹⁰⁹. "Where the legislature is very compliant, bills do not merely pass but they pass very easily and the time spent, or the number of speakers, is small. As the legislative becomes freer, the time spent increases and amendments are discussed and indeed passed (Blondel, 1969; also quoted by Mezey 1979, p.24). The degree of institutional viscosity in the parliament is often directly proportional to legislative initiative, process and speed. The suggestion Blondel makes prevails: the ideal situation would be a middle point of not so compliant, not so resistant legislatures.

Two years later, Weinbaum (1975) remarks that symptoms of a legislature's decisional role, are the capacity to initiate legislation, to modify, delay or defeat executive proposed bills, to influence administration through parliamentary questioning, to interpellate executive members, to conduce parliamentary investigation, and the capacity to alter departmental budgets, authorizations and personnel, what really counts¹¹⁰. These are new variables for the better scrutiny of legislative institutional empowerment.

For all these authors, legislatures present themselves as functionally able if they are capable of placing constraints to the executive power in a presidential regime and if they are powerful enough to become veto actors in a game of negotiations and concessions. Room in the reviewed literature is also left to discuss the amount of agenda parliaments were able to set by themselves, but the classification has usually aimed at the pro-active and reactive compounds in legislative behavior. Little attention has been given to the partisan powers of the president, the party and electoral system as potential ingredients in the parliamentary map.

As an addendum to previous studies and the discussion operating almost until the end of the 70's, Mezey (1979) includes "support" as a research variable to singularize legislative activity, and in this case, its social roots. The term rescues the

¹⁰⁹ A more contemporary definition of Viscosity comes from Manzetti/Morgenstern (2000). They define it as "the speed to which presidential proposed bills get through parliament" (p.9)

¹¹⁰ This appreciation made by Weinbaum is remarkably correct on normative and empirical terms, and also on the focus of the legal tools that parliament may dispose of to denote its strength. This depiction of mechanisms is later taken by several authors, notably Avellaneda (1999) who evidences the legal significance of both legal (as enabling) and political (as empowerment) interpellations, legislative questioning, censure and other operative forms of control and authorizations.

collective perception about the validity of institutions: “by support, I mean a set of attitudes that look to the legislature as valued and popular political institution” (1979, pp.27).

The point of singularizing support as a variable is also time oriented. Since it can be given or taken away it is an element which may be of temporary value and significance. “Policy making power indicates us where a legislature is presently located relative to other policy making institutions in a political system, but it offers no guidance to where the legislature may be four or five years later” (Mezey, *ibid.*, pp.27). There is strong endorsement from several researchers on institutional development to this time oriented conception. Since politics and political institutions can be seen as aggregating sustenance into collective action (by shaping procedures of bargaining, negotiation, coalition forming and exchange with the civil society) they all depend on collective involvement, a factor that can be particularly time sensitive (March/Olsen, 1996).

The conclusion is that Mezey/Blondel/Weinbaum ground the debate on two very important fields: first that the legislative power ought to be studied, through a certain range of its specific activities with the potential to coerce pure presidential power (even though they might be mostly a reactive corpus to executive initiative as the examples given in L.A.). Second, the display and amount of possible social support; one that may have already existed, or be temporarily granted around the institutional corpus of the legislative.

Out of the combination of these two variables and their interplay with several degrees of institutional strength for legislatures, Mezey produces 5 types out of which the Minimal Legislatures, mostly assigned to totalitarian regime legislatures, has been separated from the current classification

Table 2.1 *Mezey’s Typology of Legislatures*

Policy-Making Power	Less Supported Legislatures	More Supported Legislatures
Strong	<i>Vulnerable</i> (Uruguay, Chile)	<i>Active</i> Legislatures (USA, Costa Rica)
Modest	<i>Marginal</i> Legislatures (Peru, Brazil, Argentina, Guatemala)	<i>Reactive</i> Legislatures (Mexico)
Little or none		<i>Minimal</i> Legislatures (former Communist Regimes)

Except for Costa Rica, which stays together with the United States in the *Active* legislature, most of the rest of the legislative bodies in Latin America are *Marginal*, *Vulnerable* or *Reactive* Legislatures. The performance of the Active Legislature (strong policy making powers and strong support) is one of involvement at all stages of law making. Vulnerable Legislatures are among those that have had scarce social support despite their constitutional empowerment to act¹¹¹. In Reactive

¹¹¹ “The difference between the active and the vulnerable legislature stems from the fact that the expectations of executive centered elites concerning the legislature are incongruent with the specifications of the policy making model. That these legislatures have an uncertain life expectancy is

Legislatures, only parliamentary regimes are considered, whereas the term Marginal Legislatures¹¹² is characterized by the lack of congruence between the behavior of the legislators and the expectations of both mass publics and executive centered elites¹¹³. Minimal legislatures stand mostly for totalitarian regimes.

To this classification, Shugart/Carey (1992) and Mainwaring/Shugart (1997) add three variables to define the power balance between legislatures and executive in presidential systems. They are a) legislative powers of the executive; b) executive powers of the legislature and c) partisan powers of the executive. This classification leaves little room for discussion towards a normative proposal for an assembly type. It rather focuses all attention on the empirical results produced by the country-studies done until then. The normative discussion operates only on the constitutional design each country may offer.

Results considered until then led to believe that there existed a correlation between the two oldest democracies of the Latin American region (“the most democratic”, Shugart/Carey, 1992, p.277) and the fact that they were also the systems where presidential powers were most constrained in regard to their capacity to legislate. Verily so, Costa Rica and Venezuela’s Constitutions, issued in 1949 and 1961¹¹⁴ respectively, are the documents that empower legislative assemblies more thoroughly in comparison to all others. To justify this assumption, Shugart and Carey explain that Chile (before the Coup) exemplifies exactly the opposite case, namely, “that the decline and fall of the Chilean democracy followed the concentration of legislative and particularly fiscal powers in the presidency. This is far from being a coincidence” (ibid. p277).

A most important contribution to the problem of legislatures’ definition in presidential regimes comes from Cox/Morgenstern (2001) who set a three subtype form currently applied to the Latin American institutional discussion. Democratic assemblies can insert themselves into the policy making process in one or more of three basic categories:

attested to by the fate of the Congresses of Philippines, Chile, Uruguay, The French Fourth Republic and the Weimar Republic. Their inability to deal successfully with political demands is indicated by their lack of mass support and by the fact that when these institutions have been abolished by executive elites, no mass mourning or resistance has marked their passing”.(Mezey, 1979, p.279)

¹¹² Taylor-Robinson/Díaz, (1999) complain about the unfairness of this classification: “most Latin American Congresses have fallen into the marginal category of legislatures, with modest policy-making power and little support from political elites. Although marginal legislatures are not the primary engines of policy making they remain a critical actor” (pp.595)

¹¹³ Executive elites view this type of legislature as an inconvenience whose only possible redeeming value might be to act as legitimators of their power. However the legislature’s own lack of support, combined with the magnitude of the tasks involved in legitimizing an often unpopular regime (that in all likelihood is beset by disintegrative pressures) means that the legislative fails to perform even these system-maintenance activities. Given these “failures” there is no reason for the executive-centered elites to support the legislature. Thus coups or other extra constitutional actions directed against marginal legislatures are quite common, and these institutions disappear and reappear and disappear once again on a more or less regular basis.

¹¹⁴ Because of the time limits of this study we consider only those constitutional documents existent between 1985-1995. Venezuela changed its constitution starting in 1999 and even changed its own republican name to “Bolivarian”.

- a) Originative, by “making and breaking executives”, meaning that they also share most of the responsibility and decision making power.
- b) Proactive, by initiating and passing their own legislative proposals
- c) Reactive, those who limit themselves to amending and/or vetoing executive proposals

Table 2.2 *Types of Assemblies (Cox/Morgenstern, 2001)*

	Proactive	Reactive
Originative		West European Parliaments and most Parliamentary systems
Proactive		U.S. Congress as pure presidential model.
Reactive		Latin American Countries (unable to limit the executive or to pass their own legislation)

European Parliaments are for Cox/Morgenstern the best examples of Originative/Reactive assemblies due to their capacity to modify and eventually remove the executive power, as well as their option to act on its demand. On presidentialist terms, the classical model, the U.S. and its Congress portray the mixture of being both Proactive/Reactive. Latin American Legislatures typically cannot remove presidents they dislike, and lack the resources to fashion their own legislative proposals. Thus, they are neither Originative nor Proactive but merely Reactive (Cox/Morgenstern, 2001).

As in the case of Blondel (1973) and Mezey (1979), the variable to explain legislative control and participation is its policy making record, which says very little about other functions the assembly may provide. Also, the deliberate constitutional empowerment of the executive on legislative matters, such as the budget introduction, can help explain very much of this reactive capacity. The behavior study of Congresses solely based on their policy output or policymaking power, plus the existence of social or political support, leaves little room for a deeper discussion of the appearance and evolution of so-called third wave legislatures.

1. Legislatures in Presidential Democracies in Latin America

The comparison between parliamentary and presidential system has been the main focus of studies of government performance and regime stability in Latin America in the last decade. These studies stressed the problems and perils of the presidential system, which supposedly derive from its constitutional design. The outlined handicaps may hamper the convenient development of an enduring democratic system (Linz, 1984). Since the origin and survival of each branch of government is independent from the others, presidential systems have lacked institutional mechanisms to induce cooperation between the executive and legislative. That source of conflict is clearly institutional due to the predisposition for mutual obstruction through veto exercise in policy design if interest or purposes (or even work methodology) on public policy are deviant. Specific electoral and party design

by way of legislation would be necessary to rectify this institutional flaw in order to create structural ways to avoid the possibility of power blockade (Sartori, 1994).

Shugart/Carey (1992) shifted the focus of study based on the comparison between presidential and parliamentary systems, by emphasizing the differences among already existent presidential systems. They suggested that the main distinction between any systems comes either out of the characteristics of the legislative power, of the executive, and/or from executive party support in the legislature¹¹⁵. The meta-assumption here is that strong presidents have the means to impose their will over Congress while weak ones have little other options but to negotiate and accept legislative decisions. The idea of a deadlock as an institutional flaw reappears also under this consideration, particularly when presidential systems have a president with strong constitutionally established legislative powers and must face legislatures where he or she lacks partisan support. Even so, say the authors, both institutions, executive and parliament, have organic devices to avoid such a stalemate condition.

In 1997, Mainwaring/Shugart compiled a book on the effects of the conjugation of these two variables, presidential constitutional powers and party support. The central research point is the ability or possibility of each president (or executive) to shape legislation despite possible congressional hostility. A lateral observation is that structural adjustment measures, product of negotiations with the International Monetary Fund and the World Bank, had recently taken place. Hence, all the selected countries had lately required parliament recognition for adjustment measures implementation. This involved negotiations, support, and most of the times (as in the privatization's case) deliberate legislative approval.

Mainwaring/Shugart concluded that two factors are crucial in determining partisan support for the executive (as decisive factors to avoid or suppress gridlock): the level of party fragmentation existing in the party system and party discipline¹¹⁶. The ideas exposed pretend to demonstrate that the more fragmented the party system is, the less likely it is that the president's party will control a majority of seats in the legislature. Party discipline, the second variable, determines the cost of governing for an executive. When very low, it may force the executive to have to turn to pork barreling or seek a negotiating exposition of options for party leaders and legislative members. If parties are not disciplined, presidents may count on their nominal support

¹¹⁵ Casar (1999) when analyzing the relations between the Mexican executive and legislative, draws a compound of three variables based on Carey/Shugart (1992) and Shugart/Mainwaring (1997) which are: a) the legislative powers of the executive; b) executive powers of the legislative and c) partisan powers of the executive.

¹¹⁶ For obvious reasons attached to these two variables, Brazil was under heavy study (see Mainwaring, 1999; Ames, 1998; Cheibub-Figueroa/Limongi, 2000) since it is one of the cases that shared a most fragmented party system and one of the weakest bonds of party discipline among party legislators. Party members more often than rarely changed parties according to the electoral offer. However, Mainwaring and Sartori's choice of the Brazilian case study is strongly contradicted by Cheibub-Limongi (2000) both on the multiparty thesis from Mainwaring and the lack of party discipline argued by Sartori (1994). Field work from Cheibub/Limongi apparently shows that the executive does rule strongly over the parties but mainly through patronage, and eventual pork to the party leaders who have control over disciplined legislative fractions.

but alas, not the power to translate or materialize this support into votes for their purported policies.

There is another classification created particularly to suit the Latin American cases made by Taylor-Robinson/Díaz (1999). After a detailed analysis of the Honduran Congress, these authors conclude that the formerly used classification proposed by Mezey stands inadequate. Under Mezey's assortment, most Latin American legislatures remain under marginal or vulnerable categories due to their poor performance in policy making. Also the minimal, marginal and vulnerable types, assume the continued and potential occurrence of a democratic breakdown (Taylor-Robinson/Díaz, p.614, *ibid.*).

Thus the typology needed to be evaluated under the current context of third wave democracies. The new sorts proposed are

1) Active Legislature (as exemplified by the U.S. Congress). Here, the variable to consider is the set of independent means through which each Congressman can win elections. This frees deputies "from strong demands of loyalty to either executive or their party", and thus affords them the possibility to pursue their own (or their constituents') preferences; even when these preferences stay in conflict with the president's agenda¹¹⁷.

2) Secondary Policy Making Legislature. In this type of legislature, the deputies' incentive to act independently is constrained by their means of getting elected and re-elected. Any legislative political career requires the support and backing of party leaders rather than the public, making legislators or parliament members dependent on the amity of those leaders¹¹⁸.

3) The third category is Mezey's Reactive Legislatures, exemplified by the British parliament in which the Prime Minister's party has a clear majority. In this type of legislature, party control over who receives nominations for important electoral positions on the party list, or who gets the chance to run in "secure" districts, allows the party to have the loyalty of the deputies.

From the Cox/Morgenstern (2001) classification made sometime after, Latin American legislatures stand out as pure reactive types, however not minimal or dysfunctional. The meaning of reactive here is applied to presidential models in which the legislature's action is rather a consequence or condition of presidential or cabinet initiative. Empirical results (Mustapic, 2002; Ferreira-Rubio/Goretti, 1998; Jones 1997) show also that this reactive role¹¹⁹ leaves legislatures an open space to adopt a

¹¹⁷ Curiously enough these authors warn (p. 615) that the Brazilian legislature would fall into this category basing their assumption on its electoral institution and the incentives for independence they find it provides. Ames (1995) has shown that both the open-list electoral system and the existence of weak party ties give Brazilian deputies a strong incentive to attend constituent's interests rather than follow executive ideas. Reality shows nonetheless, that this independence has taken the form of rampant pork barrel work, rather than national level policy from the executive.

¹¹⁸ Taylor-Robinson/Díaz do not mention the fact that when presidents control party leaders or when they themselves have strong partisan powers, the mentioned parliamentary reelection (or other developments into further political responsibilities) can come in the form of patronage from the executive directly. (See Weldon, 1997)

¹¹⁹ Most Latin American Congresses have traditionally fallen into the category of legislatures with modest policy-making power and little support from political elites. Despite the formal separation of

certain policy bargaining mode with the executive. A less optimistic perception is that the ordinary policymaking process in Latin America is a distinctive form of bilateral veto game¹²⁰ (Cox/Morgenstern, 2001), which in many ways exhibits features that are intermediate between the classical role models of presidentialism and parliamentarism. This duality of qualities is partially what most authors have perceived as “Latin American Presidentialism” (from the diagnosis of Latin American Presidentialism as hyperpresidentialism by Nino, 1989, to the “Legislative Controlled Executive” of Brewer-Carías, 1985, in some Latin American Nations). In all these cases, the whole political circumstance is based only on these two actors, executive-legislative or better said, party representation and support in the legislative and ruling party presence in the cabinet, leaving very little space for other institutional interplay such as, for example, an independent judiciary.

If legislative and executive powers are structurally engaged in a strong bilateral veto game (Tsebelis, 1995; Cox, 2001), then their connection can be expressed under the spectrum of possibilities of dual veto players. Using the classification made by Mainwaring (1997) and Cox/Morgenstern (2001), made on substantial empirical evidence¹²¹, the operative sequence in a reactive assembly may be as follows. “The president proposes one or more policies; the legislature either accepts, amends or rejects some of his proposals; the president can either bargain, take unilateral action or seek to undermine the assembly’s ability to veto proposals” (Cox/Morgenstern, p.173). The bargaining process implies either concessions in proposed policies, or the gaining of favor from parliament majority or simple vote buying through pork barreling or patronage. The unilateral action alludes to the uses of presidential constitutional attributions (decrees, special delegative laws, veto).

The Cox/Morgenstern classification divides in four the subsequent types of legislatures according to their reactive capacity, interests and the role as dual veto players. The type of legislature present in any institutional design is what will shape the executive-legislative relation. Therefore it stands *a priori* as a decisive element. Parliaments can either be

- a) Recalcitrant,
- b) Workable,
- c) Parochial-venal
- d) Subservient (2001, pp.173).

powers that existed in previous waves of democracy in the region, legislatures were typically rubber stamps of presidential policy or at best, junior partners in the policy making process (see also Morris, 1984, p. 65; Pierson/Gil, 1957, p.261; Wesson, 1982; Wiarda/Kline, 1990, p.p. 86-87). This idea of the legislative as rubber stamp, or executive dominated policy making for many developing countries is also the argument behind Shugart/Carey’s use of the more neutral term *assembly* (see p. 3)

¹²⁰ This idea of bilateral veto game meaning the interaction as active veto players between the legislative and the executive, leaves out other institutions which also have relevant veto player weight (though not as marked) as these two. Namely we can point out the church and the media, reiteratively excluded from this category. Originally, the Haggard/McCubbins (2001) point of view and classification is a development of what George Tsebelis (1995/2000) had already exposed.

¹²¹ These studies comprise what previously has been strong quantitative research, made among others, by Ferreira-Rubio (1998); Casar, (1997); de la Garza, (1972). They all point out the immense majority of bills proposed by the executive in comparison to those promoted by parliament.

Recalcitrant majorities (very low number of parliament members supporting the president) will reject or strongly amend essentially all proposals the president may offer. Subservient majorities on the other side of the spectrum (high percentages of members of parliament in support of the president) will accept most policies and amend them the least. Aside from these two extreme possibilities, presidents may face two basic types of legislatures: one that demands a seat at the policy table (workable); and another that is willing to concede policy issues in exchange for access to pork or other resources (subservient). Since the two extreme types in the classification are conformed by either electoral force or coalition pro/against the president¹²², reference is made to the other two, operative and parochial-venal as usual working models.

This leaves the executive with the operative dilemma of working with a mostly favorable majority in parliament or a majority (either from its own party or by-product of coalition with other party representation) sensitive to prizing, willing to concede policy issues if either pork or party demands are met.

Table 2.3 *Presidential/Assembly Model*
Assembly Strategies

Presidential Strategies	Reject	Bargain	Demand Payments	Acquiesce
Undertake Unilateral Actions	Imperial President. Recalcitrant Assembly			
Bargain		Coalitional President. Workable Assembly.		
Pay Off			Nationally-Oriented President. Venal or Parochial Assembly	
Dictate				Dominant President. Subservient Assembly

Source: Cox/Morgenstern (2002)

The conclusion reached by a recent study (Morgenstern Nacif, 2002), is that however presented, Latin American executive-legislative relations typically take the form of a constitutionally distinctive bilateral veto game. In this game, the president tends to move first, proposing most of the important legislation, but well aware of when and under which circumstances the assembly would react. The Morgenstern/Nacif conclusion is based on the premise that presidents know how to anticipate a potential adverse legislative, which despite being labeled as reactive is not impotent or unimportant and can overturn or modify relevant policy decisions.

¹²² These two possibilities exemplified by Collor de Melo's government (with a minimal congressional voice) and Salinas de Gortari (one party rule) serve purposely to show how much in proportion to presidential parliamentary powers is the frequency of unilateral decision from the executive.

1.1 The central Oscillation

One of the pivotal arguments in our thesis is that Presidents exert important influence on the legislative both through their special powers, as acquired via the constitution, and their share of partisan powers. The central oscillation (Cox/Morgenstern, 2001, p.174) in Latin American Politics is the president's changing use of his constitutional and other special powers in response to possible changes in assembly support, or the decision to work together with his party. Latin American executives typically have greater powers of unilateral action. These are wider than either U.S. Presidents' or European Prime Ministers', but they occupy an intermediate position in any classification to what regards executive penetration of the legislative process within the assembly (Cox/Morgenstern, *ibid.*). What is a notable variance on this point is not that there is a tendency to use constitutional asserted powers but the amplitude of the oscillation, namely the discretion and persistence to which they are used, despite in many cases having no ample ruling party support in the assembly.

The amplitude of this oscillation¹²³ is then the grade to which executive behavior remains between the range of "imperial power" and a "coalitional presidency"¹²⁴. This range is based on the fact that in Latin America most presidents have greater powers of action to modify or significantly alter the internal legislative process of the assembly, and the decision to use them or not remains a political or personal one. Aside of Mexico during the PRI years, the oscillation of power spectrum is observed between the tendency of the president to govern alone (Ferrerira-Rubio/Goretti, 1998), either by delegation or unilateral initiative, or to submit to diverse forms of coalition or cohabitation with his and/or other parties. These coalitions with the ruling party or a group of political forces, have distinctive actions (e.g. Costa Rica, Venezuela, see Schultz, 1999) such as the initiative of including relevant party members in his cabinet.

The model exposed by Nacif/Morgenstern (2002), based on the conception of possible power shifts by the executive, implies the transformation of the executive-legislative relation according to four possibilities:

- a) Changing in the use of unilateral powers
- b) Changing in the use of integrative powers
- c) Evidence that the use of powers varies according to assembly support
- d) A Typology of Presidents and Assemblies

¹²³ "Three key elements jointly produce greater amplitude of oscillation in the modality of presidential action in Latin America. The amplitude of oscillation is certainly greater in L.A. if one includes cross national variation, ranging from the dominant presidencies of Mexico, to the coalitional presidencies of Uruguay and Chile, to the imperial presidencies of Argentina, Brazil and Peru. The amplitude of oscillation is also larger within many of these systems. Thus for example, Allende pushed further in the imperial direction than did Nixon or Reagan, while Alwyn and Frei have pushed further in the coalitional direction than did Wilson" (Cox./Morgenstern 2001, pp.179)

¹²⁴ These categories correspond to Nacif/Morgenstern based also on the work of Amorin-Neto and Ferreira-Rubio/Goretti (1998). They derive their adjective imperial from the unilateral form of presidential governments observed when the executive relied mostly on unilateral (proactive or reactive) initiatives.

a) Under the concept of central oscillation, the idea of *unilateral powers* as exposed by Nacif/Morgenstern is close to the pro-active concept divulged by Carey/Shugart (1992). It refers to those legislative powers of the executive to change or introduce policy¹²⁵, which can be used without the concurrence of the legislature. For a better understanding of the variation in the use of constitutional powers by the president, it is necessary to consider the level of assembly support he endures specially the conditions of his relation with his own party.

When a president faces a hostile majority in the assembly he will have diminished chances of implementing his policy goals via statute (except cases of pact or coalition as in Ménem's first months when Congress agreed to delegate on behalf of the strong economic crisis, see Mustapic, 1998; Llanos 1998). On the opposite side of the spectrum (as in the case of Mexico during the one party regime of the PRI) when presidents enjoy massive assembly support due to either party discipline or pork barreling, the separation of powers has been overridden (Ames, in Nacif/Morgenstern, 2002) by the president's political strength (partisan powers). Moreover, this assembly support is further accentuated if the president is able to control candidate selections and/or elections to the assembly, distribution of pork to members of the assembly, and (case of Mexico, exposed by Weldon, 1997) the post assembly career prospects of sitting legislators.

b) The change in the use of integrative powers is the agenda initiative authority the executive has in most Latin American democracies. In this region (as already explained in chapter I) constitutions allow most presidents to set the policy agenda either by sending special/exclusive proposals to be considered by Congress or by prioritizing some bills over the regular internal procedures of Congress. The idea of integration powers means a stark convergence of interest and purpose between both, executive and legislative. Be it through constitutionally ascribed powers or by presidential power control over the legislative, the result is the integration of purpose between the two institutions. This has been fostered by figures like the *suplente* (substitute Congressman) in Latin American parliaments, which is an empowered persona to substitute a legislative member while on leave because, for example, of executive duties.

Previous studies show how institutional power separation in the United States is much stronger than in Latin America (Mainwaring, 1997). Notably among the strongest impossibilities from the U.S. presidential system stand that presidents cannot appoint cabinet members from members of parliament; nor do they have the

¹²⁵ "This point can be illustrated by considering Collor, Ménem, Frei and Salinas. Collor, politically the weakest, ended up pushing the limits of the constitutional powers of the Brazilian presidency. Ménem, had the putative support of the largest party, but having reversed field on several key issues, could not rely on consistent support. He too ended up pushing the limits of his constitutionally defined powers, seeking only enough support in the assembly to prevent the override of his decrees. Frei, with a workable majority in Chile's lower house and a large majority in the upper house, avoided controversial use of his substantial unilateral powers. Finally, Salinas, presiding over the last years of a one-party regime, could get whatever statutes he wanted –as soon as the ducks were lined up within the PRI- and so, did not need decrees, vetoes, or other unilateral tools used by presidents in more competitive systems" (Nacif/Morgenstern 2002, pp.661-662)

right to introduce any legislation in Congress or somehow alter the congressional priority or agenda. As opposite to this, Latin American presidents are not only encouraged to present legislation, but some areas remain of their exclusive power¹²⁶ (budget initiatives for example). Also, Brazilian, Colombian, and Peruvian presidents can send urgent bills or express bills that take precedence over ordinary projects while in Chile, Ecuador, Paraguay and Uruguay, the president's bill automatically becomes law unless rejected within a specific time period.

A relevant observation here is that integrative powers as exposed by Nacif/Morgenstern operate in inverse proportion as unilateral powers do. That is, just as much as empirical results may have proved that presidents rely on unilateral use of constitutional powers when they lack substantial assembly support, integrative powers are used more when the president is politically stronger, and less when he is weaker in the legislative.

c) This point, evidence of power use according to Assembly support, is mostly reinforced by Amorin-Neto's (1998) conclusions on the evidence found in a study of 75 cabinets by 57 Latin American presidents from 10 countries over the period 1946-95. Here the data seems to show a correlation between the level of cohabitation between president and assembly, and the number of party members included in the executive cabinet (normally a pure presidential choice). On the contrary, presidents who knew in advance their lack of support and the need to rest on unilateral coercion and initiative, surrounded themselves by technocrats and politically independent members¹²⁷ (Collor's case is paradigmatic as well as Ménem's second term). This understanding reveals the need to create patronage when the possibility of support through party or coalition members exists, and the work "*de espaldas al congreso*" (turning their back on Congress) when the prognosis is that almost all moves will face eventual legislative viscosity.

d) Cox/Morgenstern's (2001) classification of President and Assemblies, later used in Nacif/Morgenstern (2002), starts from the empirical fact that a president's level of support in the assembly will have a large impact on his policy making strategy. The question is whether to seek a cooperative and statutory implementation of goals, by governing with the assembly, or a non-statutory implementation (by being either unilateral or dominant). The cross chance of possibilities here shows that presidents can be dominant or important according to their constitutional provisions,

¹²⁶ "While there are important exceptions, Latin American Presidents have generally taken much more advantage of their delegated, constitutional, and para-constitutional powers than have U.S. presidents. There are certainly cases of unilateralism in the U.S. but in comparison presidents in Latin America make regular policy decisions almost unilaterally. Presidents in Bolivia, Brazil, Chile, Ecuador, Paraguay, Peru, Uruguay and Venezuela have tremendous advantages in structuring the national budget, as the legislatures there are restricted from making significant changes" (Baldez/Carey, 1999).

¹²⁷ The executive could opt to seek bargaining alternatives with the legislative. This bargaining is measured by the number of concessions in proposed policies made by the executive to gain legislative conformity. Or by the tendency to buy votes either through pork barreling or patronage.

and coalitional or nationally oriented. All types according to and in response to the assembly's nature, and the organization of the legislative¹²⁸.

Under this consideration and keeping assembly support always as the independent variable, legislative types should develop according to their bargaining possibilities based on the following sequence of moves:

- a) President/Cabinet proposes one or more policies (bills)
- b) Legislature either accepts, amends or rejects the president/cabinet's proposal
- c) If the legislature amends or rejects the proposals, the president can either negotiate, take unilateral action, or seek to undermine the assembly's ability to veto proposals (Cox/Morgenstern, 2001, pp.448-449)

1.2 Blondel's Paradox

Many studies based both on constitutional analysis (Casar, 1997; Mustapic, 2000; De Riz/Smulovitz, 1992) and empirical results (Carey, 1998) agree on the point that Latin American presidential democracies tend to show a marked predilection for presidential powers. In democratic regimes, legislative structures have at least two important roles (Llanos, 1998). They supervise and control the implementation of politics by the government and participate in the elaboration of norms and regulation. Under this brief definition we understand that the law making process, normally defined in Latin America by a proactive executive and a reactive legislative (Cox/Morgenstern, 2001), is also an encounter point for both institutions, a point where in the case of different existing purposes each separate corpus would have to set to negotiate.

In presidential regimes, policy making is characterized by being the product of a separation of powers¹²⁹ and many a time, by a separation of purpose –different parts of the government motivated to seek different goals. This separation of purpose arises when separate elections result in different partisan groups controlling the two (executive-legislative) branches, a phenomenon researchers refer to as “divided government”. Difference of purpose may also exist because presidents are elected by a national constituency, whereas parliaments and legislators usually stem from a smaller ballot (Shugart/Haggard in Haggard/McCubbins, 2001).

The direct consequence of this separation of purpose is a conflict that may place the whole of the legislative powers on one side, and those of the executive on the other, the latter aiming to get its initiatives through a series of parliamentary

¹²⁸ The theoretical model of Carl Friederich tries to explain anticipated reactions in policy making. According to it, if X's actions will be subject to review by Y, having this actor the capacity to reward or punish the proposal, X will most likely take this into account and accommodate to Y's desires (Friederich, 1963)

¹²⁹ In general terms, a separation of powers can be thought of as the extent to which different components of government have the ability to exert their influence through the exercise of a veto in the process of formation of Public Policy (Cox/McCubbins, 2001). A separation of powers is one of the defining peculiarities of presidential systems, but as Tsebelis (1995) points out, a functional separation of purpose can also be found in parliamentary systems, as well as in the form of bicameral congressional structures and in federal structures or party systems that generate coalition government (see Tsebelis/Money, 1997).

reactive tools. From the presidential side the main variety of proactive/reactive powers include decree, veto, and agenda setting powers; all of them legislative faculties that empower the president against a more or less dominant, though mainly reactive, legislative. Presidential legislative powers are particularly significant in crucial instances when presidential and legislative interests diverge openly, and sometimes when legal speed is required. However it is not a *sine qua non* clause that a divided government forcefully has to lead to gridlock, indecisiveness or slow motion in policy approval.

Recent studies¹³⁰ have set themselves to prove that public policy promoted from the executive has to be the result of legislative support, public approval and communicative approach (Ferraro, 2002; Shugart/Haggard, 2001). Empirical works have also been produced in support of the thesis of concentration of power, notably the Argentinean case, where parliament delegated power mainly through two legal instruments, the emergency act and the state reform act (Ferreira Rubio/Goretti in Carey/Shugart, 1998). In any case, policy would be the outcome of the working power and probably purpose separation.

Despite these elements, the whole interplay of powers between the pressure politics parliament may exert either through modification, delay, or stopping legal initiative from the executive, remains a complex subject of study where reactivity, on the parliamentary side, is far from meaning institutional absence.

Beyond constitutional empowerment given both to the parliament and the executive, limitations of the influence of legislatures depend on how a variety of constraints operate. In the case of presidential legislative power, we showed some of the external restrictions that can operate on parliaments. Executives will not be able to restrain the powers of the legislature unless they have enough authority to impose curbs on legislators and on the nation as a whole. The essence of their strong legislative powers is probably a prevision against their own weakness. Hence a paradox already viewed in 1973 by Blondel: “those executive institutions which most need to limit the powers of the legislatures through constitutional means because they are the weakest, are in fact precisely the executives which cannot do so because they lack the authority to impose the constitutional curbs. Conversely, those executives which have a very strong authority over the nation and the legislature can afford to give the legislature constitutional powers, since these will most unlikely be used in practice” (Blondel, 1973, p.45).

This paradox explains in part research findings such as those of Casar, (1998; 2002); Mustapic (2002) and Jones (1997; 2002). Here the comparison between presidents who use their proactive legislative powers (mostly decree powers) and others having them but not using them, revealed the weakness of one and not the

¹³⁰ Thanks to the continuity of the democratic rule in many Latin American nations, the strength and policy making capacities of the Executive have begun to be tested empirically (see Mustapic, *Oficialistas y Diputados, relaciones ejecutivo-legislativo en Argentina*, Desarrollo Económico, vol, 39, No 156, 2000).

other¹³¹. The case of Argentina (Llanos, 1998) proves that after a period of concerted delegation of power from the legislative to the executive, decrees appear only when the partisan powers (with members of his own party) of the president weakened to the point of making his power presence in Congress fragile. “The presence of the decrees in the third stage of privatization, when most institutional balance had been reached, was a proof of the executive’s certainty on the policy failing to go through parliamentary control and observation. Thus we referred to the decree as an indicator more of the weakness than of the strength of presidential leadership and mostly, of the progressive erosion of this leadership in relation to his own party members” (Llanos, 2000, p.36).

In counterpart to this, conclusive studies (Casar, 1998; Weldon, 1997) show that the Mexican case is one of very little use of presidential legislative powers in front of an already submissive legislative. In this case, the partisan powers (before the 1997 reforms and the subsequent weakening of the PRI) of the president and his whole control of the assembly (either through pork barreling or simple party control) were so relevant that the constitutionally existent attributions of the legislative to curb executive initiatives existed only on paper.

Evidence that Latin American Presidents vary their strategy to present policies in Congress in response to their prospects of support in the assembly and the institutional powers they can access to, is also exemplified by Amorin-Neto’s study¹³². Presidents who have decided to implement their policy goals via statute will lay groundwork by appointing party leaders in their cabinet, who can help solidify assembly support. In contrast, those who seek to rule by decree can form their ministerial cabinets with technocrats¹³³. Amorin-Neto explains that the percentage of partisan members in a president’s cabinet increases in direct proportion to the percentage of seats of the ruling party in the assembly. In other words, presidents with

¹³¹ Morgenstern/Nacif (2002, p.661) explain quite frankly in their conclusion: “the main point to make about presidential use of unilateral powers is this: when the president is politically weaker, he typically resorts more frequently to his unilateral powers. In contrast, when he is politically stronger, he resorts to these powers less often”:

¹³² Octavio Amorin-Neto “Of Presidents, Parties and Ministers: Cabinet formation and Legislative Decision Making under Separation of Powers” (Ph.D. Dissertation, University of California, San Diego, 1988)

¹³³ The example provided by Collor de Melo (1990-92) is clarifying. When he took office in March 1990, his party, the PRN, commanded only 5.1% of the seats (Amorin-Neto, 2002). His legislative situation was quite difficult in terms of party support and was also complicated by the perception that he was too far right oriented in the political spectrum to make coalitions with other forces. Had he wanted to form a stable legislative majority, he would have had to make an enormous number of concessions to the large parties, so he made his policy clear from the beginning. He decided to face hyper-inflation crisis by means of decree (art. 62 of the Brazilian Constitution calls them provisional measures). Indeed Collor appointed a cabinet of “cronies and technocrats” as Amorin-Neto says and signed 36 presidential decrees in 15 days and a total of 163 during 1990. In contrast to that Casar’s conclusions for the Mexican case show how, during the PRI’s hegemony and because of strict intertwining between the executive and the party leadership (plus a strong party discipline in the legislative), almost no extraordinary solutions were ever necessary. In fact, previous studies (De la Garza, 1972) as well as more contemporary ones (Weldon 1997) on bill approvals show that although the executive did not remain as the exclusive bill initiator, the rate of approval for his projects was close to 100%.

a better political base in the assembly and with poorer institutional powers to pursue a unilateral strategy are more likely to seek to govern with, rather than without, the assembly (Cox/Morgenstern, 2001).

2. Main Functions of the Legislature in Latin America

From their most antique roots, Parliaments had first a law making and then a representative nature to which later a financial one was added (Berlin-Valenzuela 1993). These functions¹³⁴ widened as parliaments and parliamentary chambers attempted to reduce monarchic power and fiscal and legislative responsibilities gained importance. To some researchers¹³⁵ the long history of parliaments helps to explain the conflicting expectations we may have towards an institution labeled as steadily losing political importance (Bryce, 1970). The functional approach to the institutional presence of legislatures denies the sole role of a law maker, since legislatures could be considered adaptable institutions that could fulfill a variety of functions in a political system (Wheare, 1963; Kornberg, 1970; Loewenberg, 1971). In fact, many of these authors catalogued legislatures as agents of political recruitment, collective information and education, instrument of national integration “and in general, Legislatures could have the effect of mobilizing public support for a regime and thereby of legitimizing the whole political system¹³⁶” (Mezey, 1979, pp.4-5). To complicate this, the proliferation of nation states in the 20th Century has also brought the proliferation of parliaments (Loewenberg, 1971) and of parliament types. “With the advent of democracy and the declining legitimacy of the monarchy two functions of the parliament acquired a new importance: the selection of cabinet members and the legitimation of policy” (ibid. p. 14)

Mezey also mentions some of the common legislative activities, which form his notion of a legislature¹³⁷. He divides them into three broad categories: policy-making activities, representational and system-maintenance activities. Interestingly enough, in the policy-making activities he outlines that though many legislatures play

¹³⁴ There is a whole support of the legislative function in the studies of Mainwaring/Shugart, 1997; Thibaut, 1996; von Mettenheim, 1997; Schultz, 1999.

¹³⁵ A pessimistic view of an independent future for the parliaments is presented by Bryce (in Loewenberg, 1970) who, in a title resembling O. Spengler’s “Decline of the West”, titles his essay “The Decline of Legislatures”. His, as many other gloomy considerations on parliamentary capacity, are perhaps tainted by a comparison between the parliaments of the XIX and XXth century. The academic study of legislatures has long been influenced by parallels with the XVIII and XIX century where the basic variable considered is the legislature as the central law making and policy making institution. Recent investigation show that neither of these assumptions is tenable on the grounds of a parliamentary or a presidential system, (Loewenberg, 1959). If legislative behavior is evaluated in terms of policy making only, performance naturally falls short of expectations. Furthermore, the standards of the demand input model are equally unrealistic (Wahlke, quoted in Loewenberg, 1971).

¹³⁶ One could observe that strong political parties also recruit political elite, represent citizens, educate and inform the public, mobilize regime support and somehow serve the function of promoting national integration. The same functionalist view remains handicapped when we observe that Political Parties need natural opponents since they do not represent the whole social political spectrum but need, in order to conform a party system, at least the presence of one and its opposite.

¹³⁷ “I think of a Legislature as a predominantly elected body of people that acts collegially and that has at least the formal but not necessarily the exclusive power to enact laws binding on all members of a specific geopolitical entity” (1979:p. 6)

no role in initiating policies, and their approval of policies initiated by others is foreordained, they still perform some type of deliberative function on the matter. Oversight or parliamentary control over the executive is also a policy making activity (Kornberg, 1970; Agor, 1971; Pakenham, 1970) since the “watch and control of the Government is the proper office of the representative assemblies” (Agor, 1971, pp.8-9). As a support to this, it is empirically observable that both parliamentary and presidential governments give constitutional ground for the legislative to conduct policy investigations, and produce either censure or endorsement to the executive.

The representational activities referred to by previous authors as public interest articulation (Agor, 1971; Blondel, 1973) show the social map gathered on the assembly and the fact that legislators normally act as intermediate forces between the government (the executive) and the people. System maintenance activities are those legislative activities that contribute towards the stability and the survival of the political system (Mezey, 1979), activities which may add to the support contribution from the public to the system¹³⁸.

According to Martin Needler (1995), the major functions of all legislative bodies are the following:

- 1) Its primary purpose is to pass laws. The legislature serves to ratify and legitimate legislative drafts prepared elsewhere: by the party leadership, by the president and his or her staff, by a cabinet department and sometimes by an interest group. Normally, in Latin American presidential systems the president can be expected to have a majority in Congress and if so, it is his legislation that is passed.
- 2) The legislature serves to legitimize not only individual laws but also the political system as a whole. The Congress is elected by popular vote and thus exemplifies the democratic character of the political system¹³⁹.
- 3) The legislature monitors the executive branch, in the sense of interpellating cabinet ministers and conducting investigations
- 4) Educating the Public through the broadcasting of debates and discussions.

Based on the structural differences from the legislative powers in the contemporary notion of the state, Gentile (1997) derives two main types which correspond to a series of structurally different functions, namely, the English parliament and the North American Congress. He dissociates the terms Parliament

¹³⁸ The role of the Legislature in the recruitment and socialization of political elites has direct implications for another “system-maintenance” activity of Legislatures: conflict management and conflict resolution. The need for this function rests on the assumption that conflict is systemically unavoidable and to some extent desirable in democracy since it portrays a range of diverse interests. Therefore, an institutional setting is required within which conflicts can be adjusted in a way as to permit the system to meet its responsibilities with minimum responsibility and maximum collective endorsement. (Stauffer, 1970; Mezey, 1979).

¹³⁹ Molina (1998, 2000) substantiates this relation convincingly. He is in favor of the representation functions of the political map in the Venezuelan Congress, prior to becoming a unicameral Assembly and before the electoral modifications of 1999. See also “Electoral Laws and the Survival of Presidential Democracies” (Jones, 1995) chpts. III and V.

and Congress¹⁴⁰ as referring to different subjects. The term parliament, for those political assemblies modeled after the Westminster example; and Congress, for presidential regimes with clear cut three power division. He assigns the parliament with the following functions: Constituent, Legislative, Control, Approval of International Treaties or governmental Acts, intervention in the assignment or removal of civil servants, scene for opposition politics, public opinion's resonance box, representative and participatory, intermediary, hall of debates, educational, ethical, etc. Some of these concepts may overlap each other as in the case of intermediary and representative, resonance box and participatory, etc. For the Congress he observes that legislatures have the following functions in contemporary debate: representative, deliberative, financial, legislative, and control¹⁴¹ (also in Berlin-Valenzuela, *op. cit.*).

2.1 Representative function

The representative function of Congress is born out of the modern form of contemporary democracy. Both in parliamentary and presidential systems, it is the formation of the decisive popular will into a college through general elections and based on the majority principle (Kelsen, *op. cit.* in Gentile, 1997). This fact is also stated as a principle in all democratic constitutions in the Latin American region (Argentina, Art. 1 and 44; Costa Rica, Arts. 9, 104-105; Ecuador, Art. 1, and 126; Mexico, Art. 40; Venezuela, Art. 138, etc). It indicates the voluntary delegation of the popular sovereignty on an institution through an electoral process¹⁴². The representative function¹⁴³ in presidential regimes is also divided between the presidential figure and the legislative, which due to its number of participants and regionalization of ballots is taken to be more direct.

Exceptional circumstances develop regarding interest representation on parliamentary research when we consider parliamentary structure and the party system as variables. This can be observed when party interests appear against constituency interests. The accountability of Legislative members, born structurally

¹⁴⁰ In "Presidents and Assemblies" (1992) Carey/Shugart do exactly the same reasoning, arriving by consensus to the term assembly; a rather more neutral term than the connotation in meaning from the words Parliament and Congress.

¹⁴¹ Some researchers (Camposeco, 1984; de la Cueva, 1982; de Carreras/Valles 1977) assign the parliament investigative, jurisdictional and communicative attributes. For the purpose of our study and because some of these assignments are debatable, we remain with the more classical criteria exposed by Berlin Valenzuela (1993) and a whole set of empiricists in Parliamentary Law focusing on the basic 5 functions exposed above.

¹⁴² Most of the documents resemble the same principle: the legislative power of the nation is exerted by a parliament, normally elected in representation of so and so. Exceptionally though, some constitutions like Panama, Art. 141, N. 5, furthers electoral details of representation "Every electoral circuit will have a maximum of forty thousand inhabitants..." Where as others, Nicaragua, Art. 132, clearly state the representative function by means of voluntary delegation "The legislative power is exerted by the Assembly by delegation and mandate of the people..."

¹⁴³ In almost all theories born together with the formation of the great territorial states (in Europe) from Maquiavelli to Bodin, Hobbes to Hegel, including the whole spectrum of German theories on public law (Jellinek to Kelsen and even Weber), the fundamental characteristic of the state is the power to rule. The defense of the sovereignty of the parliament in the doctrine of representative democracy has always sustained the political representation as opposed to interest representation (Bobbio, 1996)

out of their representative function stays in question¹⁴⁴: whether it should obey institutional interests, political interests (as set by the parties), or the will (and benefit) of their represented constituencies. Studies like those of Carey (1994) and Nohlen (2001) show that time limits and re-election possibilities as well as the electoral system, have determinant influence on deciding this controversy about parliamentary accountability. Politicians tend to think more about their survival and future political career, a fact that influences their final accountability relation.

Bicameralism also is determinant in modifying representation, since the upper chamber normally differentiates from the lower, aside from the specific duties and functional outcome, in the way it is elected, with a standard number per province in contrast to the proportional representation that characterizes the deputies' chamber¹⁴⁵.

2.2 Deliberative Function

Theoretically exposed in one of Burke's 1774 speeches to parliament¹⁴⁶, the capacity to deliberate in parliament unveils the braiding of expertise with collective representation (Laundy, 1989). In general terms, it is the practical condition through which Congress can see over and decide, both on its internal affairs and on those matters on which it is constitutionally attributed to supervise the executive. The deliberative function is fulfilled by numerous commissions that integrate both chambers in Congress as well as by the general chamber meetings (Avellaneda, 1999). The deliberative function is also the result of information gathering on specific topics. These can be legislative matters or technical subjects, with the support of contracted advisors.

Aside from the constitutional provisions for congressional deliberation¹⁴⁷, there are also specific legal instruments that empower legislative designed commissions to deliberate (Paoli, 2000). In several Latin American countries (Mexico's *Ley Orgánica del Congreso General de los Estados Unidos Mexicanos*, LOCGEUM, could be a good example) constitutional attributions are specified and widened through either *reglamentos* or organic laws. These laws expand, classify and limit the range of congressional decision and deliberating powers.

¹⁴⁴ Tocqueville had already warned the deputy chamber in France about this: "I dare ask if in the last 5, 10 or 15 years the number of those who vote guided by personal interest has not increased just as much as the proportion of the decrease of those who vote on the basis of a global political opinion" (Tocqueville, Political Scripts, 1969)

¹⁴⁵ To this, Gentile (1997) adds, "because the representation of those in the debate (and with decision making responsibilities) was done following the United States example adopted later on by Latin American Constitutions, the lower chamber represents the people with a number that is proportional to the number of inhabitants. The Senate represents the provinces or states of the Federation, with an equal number of legislature members for each state" (p.48).

¹⁴⁶ "Parliament is not a Congress of ambassadors that defend different and maybe hostile interests, interests that each one of them ought to sustain as agent or lawyer against other agents or lawyers. It is a deliberant assembly of a nation with one interest: that of totality". Burke (1984), "Textos Políticos", pp. 312-313, Fondo de Cultura Económica, México.

¹⁴⁷ Since the first appearance of parliaments in the XIII Century, the notions of control and deliberation were embedded as part of the intention of limiting royal power. J.S. Mill in his famous "Considerations on Representative Government" already spoke of Parliament as having the instances to be the Nation's committee of grievances and its Congress of Opinions (Mill, reprinted 1998)

Congress may exert this deliberative function directly or through special technical commissions, and their reports (as in Venezuela's joint commission for the reform of the state, Copre, 1984) can be implemented or delayed by parliament. In most cases, the deliberative factor, measured only by its output in chamber votes, relates directly to the bicameralism situation of most Congresses in Latin America since it is there where aside from the intra-chamber debate a specific difference of deliberation can be seen¹⁴⁸. However, though Bicameralism could become a decisive variable, the cases of Argentina and Venezuela, with both congressional chambers having disciplined legislative factions, made the confrontation between chambers a rather small issue because of the majoritary presence of the presidential party.

In fact in Venezuela, data collected until 1993 (Crisp, 1998) shows that there has been only one time when the party that had most seats in the chamber of deputies did not reach the most seats in the Senate. This party dominance clearly limited any difference in deliberation. Back to the Argentinean example, aside from the fact that Alfonsín's last years and both Ménem's periods were periodically tainted with congressional conflict, the *Partido Justicialista*, PJ, managed also to have majority in both chambers¹⁴⁹ (Ferreira-Rubio/Goretti, 1998) throughout the whole interval, so that deliberation was part of internal party politics. Argentinean Parties, having also a high degree of congressional discipline, made roll call almost a nominal routine, just as in the Venezuelan case, since it could be foreseen that the tendency to win was that favored by party leaders.

2.3 Financial

While taxing and spending are probably the most important financial activities of governments (Samuels, 2000), the biggest financial responsibility granted to Latin American parliaments (with few operative variations in the different constitutions) is the control and revision of public spending through the national budget. The same importance ranks for the acquisition or issue of national or international debt (Argentina, art. 75; Mexico, Art. 73, Venezuela, Art. 139 and 231). However this is not the limit for financial attributions of Congress. The catalog of functions is broader, comprising fiscal policy, sales of national goods and possessions¹⁵⁰ and the

¹⁴⁸ The role of Bicameralism as an example of the deliberative capacity in parliament is also related to the decentralization variable (Ornstein, 1995).

¹⁴⁹ The only exception here are those months when Ménem took power before time after the May elections. Congress remained unchanged in its internal proportions until December.

¹⁵⁰ The fact that sovereignty exists by representation in parliament and that the nation's goods can not be sold without its consent and approval is what makes Privatization, from all the Washington Consensus (Williamson, 1988) measures the most related to being a legislative program. The massive privatization programs implemented in several countries, notably so in Argentina, demanded from parliament an almost 180 degrees turn from what had been the import substitution model. Many a time (Mustapic, 2002) the privatization program dissented from the existing legal norms created to protect the previous Statist development ideal. Most state entities had been created by law or presidential decree and required the enactment of special legislation in order to be sold. Thus we say privatization was a legislative program where initiative lay in hands of the Executive, but congressional ratification turned out to be unavoidable as a step to legalize property change (Llanos, 2002).

control over international treaties whereby financial elements can be implied (Fernández-Maldonado, 1990).

There is a parallel observation relating party system and legislative financial responsibility on the grounds of possible institutional patronage, since legislators have control over financial resources which can be used to exert influence on party lines (Packenham, 1970). Another point is that through the legislatures' work, parties can oversee the execution of the Budget and verify that their preferred outcomes are not being undermined.

Most of the existing work on budgeting in Latin America adopts the ranking used in Shugart/Carey (1992) to grade presidential might on the matter from 0 to 4 (Sanguinetti/Tommasi, 1997; Fukusaku/Hausmann, 1998; Baldez/Carey, 1999)¹⁵¹. In the Latin American countries it is normally the president who proposes the budget law and remains the financial agenda setter¹⁵². Legislatures have two basic ways of amending the president's proposal: in terms of the amount budgeted and in terms of the distribution of spending within the budget¹⁵³.

2.4 Legislative

According to the theory of power separation, Congress is assigned with two central tasks: law enactment and control of the executive (Paoli, 2000; Berlin-Valenzuela, 1993). Normatively speaking, this constitution of the legislative activities obeys the delegation of authority made by the people: it ought to legislate by itself and deliberate on all coming bill projects.

Packenham¹⁵⁴ (1970) observes also a legitimation factor amidst the legislative action and/or any empowerment done by Congress, which he subdivides into three

¹⁵¹ Samuels (2000) adopts a wider view, separating five variables that in his opinion ought to determine executive-legislative balance in terms of budgetary authority:

- whether the president or the legislature is designated *de jure* budget proposer
- the degree to which the president and or the legislature can amend the budget proposal
- the revisionary outcome
- the president's veto power
- The president and/or the Legislature's ability to modify the budget during the fiscal year

¹⁵² Although Baldez/Carey (1999) assert that the presidents of Ecuador, Venezuela, Argentina, Costa Rica, Bolivia and Brazil do not have exclusive "gate keeping" authority to propose the budget, the constitutional texts of those countries seem to state otherwise. For Ecuador see Art. 171; for Venezuela, Art. 228; for Argentina, Art. 100; for Costa Rica, Art. 140 and 177-78; for Bolivia, Art. 96; for Brazil, Art. 165. (Latin American Constitutions in the Georgetown Political Database of the Americas).

¹⁵³ On average, Legislatures are not allowed to increase the amount of the executive proposed budget but they can cut it, or redistribute some of its priorities. There are however some possibilities according to the legislative power (Samuels, 2000):

- The Legislature cannot increase spending of the deficit, but can decrease spending or raise revenue
- The Legislature requires presidential approval before final passage to increase spending
- The Legislature cannot increase the deficit but can increase spending if it increases fiscal revenue
- The Legislature can increase or decrease spending or revenue without restriction.

¹⁵⁴ Packenham's view is mostly concerned with the Brazilian Parliament in the convulsive decades before 1970. In fact, his study was published when the legislative had been suspended in that country. The relation between the legislative function of Congress and the legitimation of the regime as a whole derives from the stoppage of the parliamentary meetings and thus of its regular law making discussions. "In December 1968, the Brazilian government failed to gain legislative support for a measure to suspend the immunity of two critical legislators. It then suspended congressional sessions

subgroups: legitimation as a latent function, legitimation as a manifest function and the “safety valve” or tension release function of the process. However, he questions whether legislatures in new nations will facilitate economic or political development and whether their principal function is, or will be, that of enacting legislation¹⁵⁵ (Kornberg/Musolf, 1970).

Constitutional design can modify these foreseen limitations, as done in the Argentinean constitution of 1853. This document took the U.S. Constitution as a model and it specified a formal division of powers. “In fact many provisions were taken almost verbatim from the U.S. Constitution” (Mazetti/Morgenstern, 2000, p. 22). The reasoning according to Mazetti/Morgenstern is that the Argentine constitutional engineers feared a break-down of the country with a divided government and specially designed a strong presidency. Due to that it is a structurally divided constitution but functionally an executive dominated system¹⁵⁶. In such a scenario the legislative function is severed. The enormous amount of authority bestowed upon presidential hands was also increased by the fact that when Congress was not in session the president could rule through decrees (during the legislative recess period)¹⁵⁷.

Therefore, although a normative function of the divided government principle in many Latin American constitutions is that the legislative should legislate; this principle saw diverse functional translations according to the formation of the parliament; via electoral laws and the local party system.

The 1994 Argentine Constitution tries to empower the legislative while accepting new ways of social participation. It accepts the approbation of legal projects considered through voting and referenda aside from those of pure legislative approval. However these bill projects can be delegated to the internal commissions for the “particularities” (Art. 79) they may present.

2.5 Control

On normative grounds the function of control developed by the legislative connotes “fiscalization, inspection and revision made by the parliament on behalf of

indefinitely and entered into a period of harsh authoritarian rule in which all pretense of democracy was abandoned. The indefinite suspension of Congress was one of the series of actions for which the regime paid dearly in the coin of legitimacy” (p.529)

¹⁵⁵ The parliament as legislator and the relation between capitalist development and democracy has been severely questioned for decades (Lindblom, 1977, 1982; Katznelson/Kesselman, 1987). Congresses with a strong legislative capacity have been considered a democratic burden more than a necessary counterbalance since they can stop or neutralize market reforms.

¹⁵⁶ These authors as well as Shamway (1991); Nino (1992) believe that many of the executive dominant features from the Argentinean 1853 Constitution were borrowed from the Chilean Constitution. For example, the presidential term was fixed at six years without immediate re-election, cabinet ministers did not have to be approved by the senate, and the executive had the prerogative to declare state of siege when Congress was on recess.

¹⁵⁷ In addition to the strong presidentialism created by the constitution, the electoral system prevented the legislators from developing the necessary independence to be able to check the executive. After securing a secret ballot from the beginning of the century (Saenz-Pena Law, 1912), Argentina remained with closed lists for legislative positions, something that increased the dependence of legislators on party leaders.

the accountability of the executive, and as part and parcel of the disposition granted to it by the law” (Berlin-Valenzuela, 1999; pp.139). In most of the Latin American cases it is a function normatively stated in the constitutional texts (Uruguay, Art. 118, 119, 147; Venezuela, Art. 159, 160¹⁵⁸, 161) as an oversight duty¹⁵⁹.

The way these two last functions mentioned, legislative and control have been performed, has varied. The variation responds more or less in proportion to the type of assembly, to the party system with which their internal politics intertwined, and to the intra-parliamentary politics which affect legislative behavior (see Cox, 2000).

Functionally speaking, legislative oversight of the executive is a function of all parliaments, regardless of the system of government (Laundy, 1989). The effectiveness of this control depends on the extent of parliament’s power in relation to the executive. Although in presidential systems both institutions are independent from one another in terms of survivability, mechanisms of legislative oversight and accountability exist to restrain the executive’s initiatives.

While historically most Latin American Legislatures were overpowered by the executive and by military governments during the 1980’s and 90’s, recently they have taken a much more active role in policy and oversight. As a result three Latin American presidents were removed by their legislatures on charges of alleged corruption and mental insanity¹⁶⁰. Even in countries with abnormally dominant presidents such as Argentina, Brazil or Mexico, legislatures confronted the executive and won important concessions.

The control techniques are diverse though they normally encompass reports from the cabinet, interpellations, censure votes and eventually cabinet or ministers’ removal. Cases of strong presidential power with limited constitutional congressional oversight such as Argentina have improved in later reforms (Dromi, 1997). The original 1853 text had little regulations on the possibilities of legislative control over the executive. The 1994 reform changes the panorama a little when it rules the obligation of the cabinet chief (normally the vice-president) to “attend congressional appointments and participate in the debate” (Art., 100) and sets the duty of sending to Congress “law projects considered in the cabinet and that of the national budget”. Also indirect control attributions in Art. 75, num 5 and 8, where it is the specific authority of the legislative to “dispose of the use and sale of any national property”. This derives from a similar empowerment in the 1860 constitution (Art. 67, 4) and will prove to have determinant consequences on control over privatization

¹⁵⁸ The 1961 Constitutional Text is one where the control disposition of the legislative over the a) executive and b) the whole of the Public Administration system, is most clear. Literally the legislative bodies or its commissions can proceed with all the investigations they deem as necessary. All civil servants must, if required, appear before this investigative commission and provide them with all information and documents substantive to their investigative duty.

¹⁵⁹ Latin American Presidents operate with general impunity, and this is seldom obstructed by the constitutional stipulations of legislative procedures to control them. If Legislatures there are not supine, it is clear that they fail to curtail such excesses (Manzetti/Morgenstern, 2000)

¹⁶⁰ Collor de Melo, Brazil; and Carlos Andrés Pérez, Venezuela; for corruption charges and Abdala Bucaram, Ecuador, for mental insanity.

dispositions. The oversight of the national budget, though not its specific amendment, is also contemplated in both texts.

The Venezuelan 1961 text allows more constitutional provisions for congressional oversight on the executive than the Argentine example. In Art. 126 the Venezuelan constitution states that “without congressional approval no contract of national interest could be celebrated”. This has particular emphasis on oil wells or potential mining territory. For something of such pertinence both chambers ought to produce a deliberate consent. Art. 128 also empowers the legislative to oversee any international agreement done by the executive to the extreme of being the last voice in declaring it null or valid.

3. Constitutional Attributions of the Legislative Power

Constitutions in Latin America establish a number of specific attributions in order to counterbalance the might presidential figures traditionally have had¹⁶¹. These normative prescriptions stated in each constitution have seen a notable evolution throughout the XXth century, and grown almost in direct proportion to the widening of the democratic regimes in the region in the last decades. Because of the grounding of liberal democracies with separated and independent (at least theoretically) branches of power, most constitutional texts include the figure of the parliament as co-administrator in public policies. Part of the institutional interplay designed in different countries contains at least one of the following characteristics. Most commonly, parliaments are empowered to:

- Revise and approve any contract to sell national property or industry
- Revise and approve international treaties either of diplomatic or economic nature
- Authorize and control the nomination for the Supreme Court
- Authorize Presidential travels abroad
- Revise and approve the budget law introduced by cabinet members.
- Censure vote and eventual removal of cabinet members with two thirds majority in lower chamber (found in Venezuela, art. 153 and Costa Rica, art. 121, num. 24)
- Authorize the President to legislate through delegate authority¹⁶²
- Designate the permanent legislative commission during the vacation period of the parliament.

There are noteworthy differences in the two countries object of our study, Argentina and Venezuela, markedly on the might and possibilities of the each one of

¹⁶¹ See “Los Sistemas Constitucionales Iberoamericanos” García Belaunde, Fernández Segado, Hernández Valle, Editores, 1992.

¹⁶² The 1853 Constitution in Argentina in its Art. 29 establishes: “El Congreso no puede conceder al ejecutivo Nacional, ni las legislaturas provinciales a los gobernadores de provincia, facultades extraordinarias, ni la suma del poder público, ni otorgarles sumisiones y supremacías por las que la vida, el honor o las fortunas de los Argentinos queden a merced de gobiernos o persona alguna. Actos de esta naturaleza llevan consigo una nulidad insanable, y sujetarán a los que los formulen, consientan o firmen, a la responsabilidad y pena de los infames traidores a la patria”.

their congressional institutions. The fact, for example, that the Argentine executive has a strong veto power over any legislative initiative, while in Venezuela there is only a suspensive voice granted to the president, exerts an enormous difference not only on the congressional oversight function but on its possible consequences. As will be further discussed, the executive in Argentina can deliberately modify or reject a legal project it esteems as inconvenient, all this under the constitutional empowerment done after the 1994 constitutional reform. Ménem, using this partial veto went as far as approving only those parts he considered suitable for his policies from whole bill texts sent by Congress. In Venezuela during the 1961 constitution's rule, the president was more at the mercy of the parliament if we consider the veto variable alone. He could only send back a project for further discussion which, if later approved by two thirds of the present quorum, he was forced to send to print within 10 days. Only if the voting went by simple majority could he send it back for reconsideration. At any instance was he allowed to modify or significantly alter the project once it had been discussed and approved by the two chambers.

The Argentine Constitutional Text of 1853-60, valid until the recent reform in 1994, established the following attributions to the Legislative¹⁶³:

- 1) Legislates over customs and creates import taxes
- 2) Creates and imposes all taxes in the nation
- 3) It can borrow money on the nation's credit
- 4) It creates the disposition to sell national property
- 5) Establishes and rules a National Bank in the Capital and in the provinces with the faculty to print money
- 6) Arranges the payments of internal and external debt obligations
- 7) Fixes the yearly budget plan. Approves or rejects the investment account.
- 8) Fixes all possible subsidies to provinces when their local budget is not enough to cover expenses
- 9) Rules over all navigation channels
- 10) Creates money and its value as well as the equivalence with all foreign currencies. Also determines a uniform metric system for the whole nation.
- 11) Dictates all civil, criminal, mining, work and social security codes.
- 12) Regulates all commerce with foreign nations
- 13) Regulates over the postal service
- 14) Arranges all limits within the nation's territory. Creates new territories and provinces if necessary
- 15) Provides security arrangement in the border and peaceful agreements with the aboriginal people
- 16) Provides what is conducive to the development of the country and well being of the provinces.

¹⁶³ This is a free translation made by the author which tries not to limit the essence of each point. It does however reduce the amount of text used in the constitution. An original Spanish version can be found at www.georgetown.de/pdba/Constitutions/Argentina.

- 17) Establishes those tribunals inferior in rank to the supreme justice. Decrees all honors and amnesties.
- 18) Accepts or not the renouncement of the president or vice president. Calls for elections and rectify its procedures
- 19) Approves or rejects commercial agreements established with other nations
- 20) Admits other religious groups aside from those already existent
- 21) Authorizes the executive to declare war or negotiate peace
- 22) Establishes all ruling for dams
- 23) Establishes the amount of military force in the country
- 24) Establishes the arming of the militias and provide them with all necessary things.
- 25) Allows the presence of foreign troops in the country and the moving out of the national army
- 26) Decrees the state of siege in the nation
- 27) Legislates over the whole national territory
- 28) Creates all laws necessary to establish the powers herein described and all other content in this constitution

The 1994 text changes little of these provisions in its Art. 75, namely, that Congress should:

23) Legislate and promote positive actions towards the equality of access to the rights of the constitution.

Most interestingly though, some of the arguments towards the constitutional reform of 1994 given by Ménem/Dromi (later published as a book in 1997) for the legislative crisis in Argentina were, a) the transference of the legislative function to other institutions and b) the normative hyperinflation, characterized by its “fragmentation, incoherence and disorganization which in the end becomes an obstacle for the legislative function itself” (pp.240-241). Despite these two arguments, which both theoretically lead to a widening of the parliamentary scope of attributions, the 1994 constitution broadens the executive power reach. It leaves the legislative with very little practical tools to counterbalance, for example, the constitutional provisions made to empower the president with the Necessity and Urgency Decrees¹⁶⁴. These NUD, combined with the partial veto, give the president a massive constitutional power while they also promote the partial sanctioning of laws (Gelli, 1995). This partial sanctioning of already congressionally discussed and approved bills makes all subsequent investigation much more difficult, and complicates the possible allegations to determine responsibilities. Other critics (Sandler, in Bidart-

¹⁶⁴ To the surprise of the reader considering Ménem’s behavior during his presidential period, Ménem/Dromi (1997) indicate nine points through which the parliament could expand its control faculties. Both authors say the classical function of the parliament is the control activity of the government’s acts, that is, of the public administration and of the executive. Among the mechanisms to expand the congressional labor from what was contemplated in the 1853 constitution, the proposal mentions several modern mechanisms but the constitutional text later passed incorporated only one or two, regarding the presence of a national comptroller and the formalization of internal control procedures such as interpellations, written reports given to parliament from executive members, etc.

Campo/Sandler, 1995) of the congressional tasks as established by the 1994 constitution demonstrate that several points of the quoted Art. 75 are almost unaffordable considering Argentina's institutional history (p. 32).

In Venezuela, the 1961 constitution prescribes important tools for the congressional activity of executive control. These have not always been properly or effectively used since the country inaugurated democracy together with an elite pact which intentionally excluded several sectors of the nation from political action and oil rents (Karl, 1997). This constitution divides congressional attributions according to the chambers though it is stated as a premise that it is solely a congressional matter "to legislate on all matters of national competence and over the functioning of the different branches of the public administration" (Art. 139).

- The Senate according to Art. 150 has the following attributions:

- 1) Initiates all discussions regarding law projects about international treaties or agreements
- 2) Authorizes the National Executive to sell or negotiate public goods following the dispositions of the law
- 3) Authorizes civil servants to accept honors, rewards or recognitions from foreign countries
- 4) Authorizes the moving out of national troops or the reception of foreign troops in the country
- 5) Authorizes the promotion of military officers to the highest positions
- 6) Authorizes the president to leave national territory
- 7) Authorizes the assignment of the national comptroller and those of the permanent diplomatic missions
- 8) Authorizes, with vote of a simple majority of its members, the impeachment and political trial of the president. For this to happen the Supreme Court must declare there are enough causes to initiate such a trial.
- 9) Grants the honor of being buried in the *Panteon Nacional* to those Venezuelans who accumulated sufficient merits during their lifetime

- The Deputy Chamber has the following ascriptions:

- 1) Initiates the budget discussion and the debate on any other legal project concerning the national tax regime
- 2) Gives censure vote to cabinet members. The censure motion can only be discussed two days after it has been presented in the chamber. A vote number equaling simple majority of the chamber members is a censure vote, a qualified majority of two thirds causes the removal of the minister.

3.1 Autonomy of the Legislative Power

The very existence of Parliament as an institution of Government and its conception as an independent actor and veto player from the executive is particularly remarkable in any country. This is especially true for those recent democracies in which it lacks functional organic roots and is frequently the product of foreign imposition, colonial rule or institutional copy and imitation (Loewenberg, 1971).

When we analyze the executive-legislative relations in the Latin American Presidential systems, we can observe that they are the product of complex mutual interactions where theoretical conception towards equilibrium competes with a cultural and historical heritage of authoritarian regimes and strong and unaccountable presidents (Jacktisch, 1995). One of the facts that enhance the multiple institutional contacts is the system of parties of which one or more (in coalition) may exercise power and presence in both establishments. In Latin America, the president acts as a co-legislator with the parliament and is someone who can deliberately intervene in the parliamentary agenda in several ways¹⁶⁵: directly as a law proponent, by altering the legislative agenda calling for extraordinary or special sessions, or indirectly, through his appointed cabinet members who can also send urgent bills for immediate consideration.

Because of the strong power concentration surrounding the presidential figure, constitutional counter balance in Latin America promotes both the inner control among executive members¹⁶⁶ and the external control exerted by the parliament. However, parliaments remain autonomous assemblies regulated either by their own rules or directly by the constitution. The first element of this autonomy and legitimacy in Latin American legislatures, is that they are elected independently¹⁶⁷ from the president and that their legislative period cannot be modified by the executive. Additionally most parliaments in the region are constitutionally empowered to

- Create their own rules and sanctions (Venezuela, art. 158; Argentina, art.67.)
- Agree on its own expenses and budget
- Name its own Police services
- Conform investigative commissions

There are also specific considerations in all constitutional texts so that no member of government (cabinet member) can at the same time be a member of parliament. Soft exceptions to the rule are the situations in which the law admits that a MP could be named cabinet member, temporarily resign while his substitute takes his place and come back to his seat when he is dismissed from cabinet¹⁶⁸ or the fact that cabinet members may be allowed in congressional discussions without being able to cast a vote for legislation. Another significant symptom of their autonomy and to a

¹⁶⁵ We refer to attributions such as exclusive presidential initiative on certain laws, appointment to extraordinary legislative sessions, the possibility to speed up certain legal projects, veto, *leyes habilitantes* and decree possibilities. Several studies determine this, notably so Shugart/Carey, 1992.

¹⁶⁶ There is a strong structural contradiction here because although the president has the faculty to select, name and remove his own cabinet, several constitutional texts demand the signature and approval of either some ministers or eventually the whole of the cabinet (Kornblith, 1995). This could be taken as an internal form of control, assuming that when a minister does not agree with a decision he may express his disagreement or ultimately, quit his post.

¹⁶⁷ This is certainly an arguable point since as Carey (1994) has shown, simultaneity or time distance between presidential and legislative elections can have a marked effect on electoral results. Nevertheless, that is a quantitative statement far from the legal fact that by being popularly elected parliament members receive their delegated sovereignty.

¹⁶⁸ One of the empirical outcomes that move Mainwaring (1998) to consider Brazilian parties as undisciplined was also the fact that cabinet members who had been MPs could quit their position, vote in parliament and resume their executive posts and activities afterwards.

certain degree of their special status is that they cannot be put on trial until the legislative assembly itself deprives them of congressional immunity.

3.2 Parliaments and Democratic Consolidation in Latin America

In the whole process of transition from authoritarian regimes to democracies in the Latin American region, parliaments have developed further roles of assurance of the institutional role of democracy (Nolte/Krumwiede, 2000). In fact, from the primary definition of democracy as Polyarchie (Dahl, 1953 and 1971) democracy is viewed as a system open to public contestation and the right to participate, whereby the principle of power legitimation comes from the free expression of popular rule through its elected representatives (Merkel/Croissant, 2000). Purposely also, we subscribe the definition of Plattner/Diamond (1997) that democratic consolidation is fostered by a number of institutional, policy and behavioral changes. Many of these institutional policy and behavioral changes improve governance by strengthening the state's capacity on the terms of a liberal democracy: liberalizing and rationalizing economic structures; securing social and political order while maintaining and respecting basic liberties; improving accountability and the rule of law and controlling corruption.

Democratic consolidation can also be achieved by the improvement of the representative functions in the legislative. Democratic governance can be better attained if the system fosters political parties and their connections to social groups so they can exist in parliament. Thus institutionalization of interests is likely to reduce the tendency towards party fragmentation in the party system¹⁶⁹ and enhance public accountability of legislatures and local governments¹⁷⁰. Ulrike Liebert (1995) lays down also three main characteristics of parliaments in the young democracies in southern Europe which we may incorporate to our discussion over Latin American presidential systems and the role of the legislative. She observes: a) the integration of the political and social forces of a country –those of the ancient regime as well as the newly emerging ones, and in particular, the (potential or actual) anti-system opposition; b) the stabilization of peaceful conflict regulation among the main political actors as a condition for decision making capacity and governability of the new regime; c) the building of support among mass public.

The presence of a plural parliament in the presidential democracies of Latin America seems to be a tangible guarantee to secure the legitimate nature of the government. Nolte/Krumwiede (1997/2000) outline three specific congressional characteristics that act as consolidating factors in any a democracy. They are

1. Limits and control over the power of the Executive
2. Co-government
3. Representation

¹⁶⁹ Following the thesis exposed by Mainwaring/Shugart 1997 that party fragmentation is inversely proportional to good governance levels in Latin America.

¹⁷⁰ Underlying all these advice, based on the assumption that democracy can always be improved despite the fact of being new or old, or of being in a transitive stage, is the idea of an intimate connection between the deepening of democracy and its consolidation.

1) These authors see the degree of democratic consolidation in Latin America related to how the legislative uses its political ability to confine presidential power. The veto game between the two institutions is the most visible difference compared to any authoritarian past and the perception of an almighty executive and a powerless legislative. Indeed, if Latin America's political history is viewed as a constant cycle of dictators and authoritarian regimes temporarily interrupted by short-lived democratic administrations that were closer to a façade than to real democracy, the idea of a parliament as representative of popular might and counter balance to a powerful presidential figure is a radical institutional change. The structure of power in the transition from authoritarian to democratic regimes suffers an ontological sequential change from vertical or hierarchical to pluralistic and horizontal¹⁷¹ (Croissant/Thiery, 2001).

The region includes a number of countries that have been democratic most of the time (Costa Rica, Uruguay, Chile, Colombia, Venezuela) as well as others characterized by instability and frequent shifts between democracy and authoritarianism (Argentina, Brazil, Peru, Ecuador). In Central America, apart from the mentioned example of Costa Rica, as well as in Paraguay, Bolivia, Haiti and the Dominican Republic, "military or paternalistic dictatorships predominated until almost the end of the XXth Century" (Diamond/Plattner, 1997). The region could be said to be of a fragile democracy prone to drawbacks by military officers or ambitious *caudillos*.

Under these circumstances of authoritarian and potential façade democracies, a certain political culture has developed as a product of this heritage, where the very basic notion of power balance and horizontal control is almost exotic not to say totally foreign. The fact that many studies over legislatures started just as Close's (1995), declaring parliamentary analysis in Latin America a pointless venture into the trivial, grounds precisely on the perception of parliaments as "acclamation organs" of the group or person in power. It is the same idea of Parliaments as rubber stamps we see in older studies (Agor, 1971; Blondel 1973).

2) In Presidential regimes, policy making is characterized by the separation of powers. The idea of co-government for parliaments in presidential regimes relates to the capacity and exercise of the veto powers, and proactive behavior tendencies the legislative may have as an institution (Needler, 1995¹⁷²). On ideal terms, it envisages the possibility of a purpose difference margin between the executive and the legislative wide enough to promote institutional control and power balance. Also a "difference of purpose" gap, close enough to avoid institutional gridlock.

¹⁷¹ On the consolidation and differential factors between totalitarian, authoritarian and democratic regimes, Croissant/Thiery follow the idea already exposed by Merkel (1999) on the criteria to establish a liberal and a defective or illiberal Democracy most common in developing countries.

¹⁷² Obviously the primary function of the parliament is to pass laws. This is not to say that the legislature itself writes the laws. "Typically, the legislature serves rather to ratify and legitimate legislative drafts prepared elsewhere –by party leadership, by the President or his staff, by a cabinet department or sometimes by an interest group" (Needler, 1995, p.154).

On the fact of democratic consolidation, critics of presidentialism, drawing on a comparison with parliamentary systems, have argued that extreme difference of purpose between parliamentary and presidential institutions in presidential regimes produces a number of generic problems two of which are very important. First, whenever a separately elected president possesses veto or other constitutional law making authority, there is the risk of indecisiveness. Second, that in order to overcome the blockage imposed by parliament or party forces, presidents may (as they have) turn to decrees, or in the case of congresses, they might use legal recourse to jump over the presidential stance.

2) Representation: the representative variable has a particular relation to the structure of the parliament as institution, whether uni or bicameral, also connected to the electoral system (Manin/Przeworski/Stokes¹⁷³, 1999). Defining representation as acting in the interest of the represented is the minimal core conception on which other specific theories converge. However, the issue is far more complicated as we see from historical discussions in Burke (1774) and Kelsen (1929), where the demarcation between what the delegate thinks is correct and what the represented want him to do is rather diffuse. Obviously the claim connecting democracy and representation is that under democracy, governments are representative because they are elected, that is, if elections are freely contested. A proportional degree of representation assumes the existence of a real social map in the assembly thus promoting better governance levels and facilitating democratic consolidation (Molina, 1998).

Another factor related to the deepening and consolidation of the democratic regime, federalism, can also increase the separation of purpose among legislative and executive actors insofar that it creates national and sub-national arenas in which politicians may develop policies and pursue political careers in different levels of government (Shugart/Haggard, 2001). This is prone to cause political collision of interests if the deputies, or lower chamber, create an imbalance based on the electoral proportion they resemble (the lower chamber is usually elected according to the size of each constituency and the population of the every state). The senate or second chamber could balance that, because of the equal representation it has for the various states. "Most federal systems, as well as few non federal ones, have a powerful upper house that provides an equal number of seats for each sub-national unit regardless of population" (Shugart/Haggard, *ibid.*, pp.90). However, it is part of the consequential critics against presidential systems that the more veto actors implied, the more of a chance for an institutional breakdown there might be.

¹⁷³ These authors lay down four generic reasons why governments and parliaments may represent the interest of the people: 1) only those people who are public spirited offer themselves for public service, and they remain uncorrupted by power while in office. 2) While individuals who offer themselves for public service differ in their interests, motivations and competence, citizens use their vote effectively to select those candidates whose interests are identical to those of the voters or those who are and remain devoted to public service while holding office. 3) While anyone who holds office may want to pursue some interests or values different from and costly to people, citizens use their vote efficiently to threaten those who would stray from the path of virtue with being thrown out of office. 4) Separate powers of government check and balance each other in such a way that, together, they end up acting in people's best interest.

4. Divided Government

The nominal factor of having the legislative and executive structures separated with their own institutional structure and survival terms, creates basically two distinct dynamics in the executive-legislative relation¹⁷⁴. The first would be when the president's party or presidential supporting coalition has an acting and voting majority in the legislature. This type of situation surely makes oversight more difficult, since for various reasons it would be unlikely that the legislative majority opposed their partisan leaders¹⁷⁵. The second type of situation, the president with a minority in terms of assembly support, would have the already mentioned risks of a potential structural blockade or at least a strong amount of parliamentary viscosity (Blondel, 1973). This second scenario would theoretically also have the benefit of a more independent control over the executive (Manzetti/Morgenstern, 2000).

Perhaps the earliest modern approach to the existence of divided government is that of Madison in the *Federalist Papers* (nr.57), who foresaw the need of competing branches of government to prevent the corruption of power. Thus each house had to be elected from different constituencies, at different times and the executive ought to be relatively uninvolved in legislative election.

The first scholars in the XXth century to write on the subject of divided government and its functional consequences had a strong party-government orientation based on the United States' classical presidential democratic model. Most of these writers (Wilson, 1908; Bryce, 1921) focused on a retrospective look at the ending of the XIXth century where divided government was associated with the possibility of "institutional gridlock and disorganization" (Jones, 1995). A later generation of scholars (Lasky, 1940; Raney, 1954) focused more on the consequences of divided government in those cases where presidents did not enjoy congressional majority to rule. "While divided government was not a commonplace in the United States during the first half of the XXth century, in twenty-six years of the forty four after 1950 the president has lacked a majority in one or both of the congressional chambers. This upsurge in divided government has resulted in a second genre of investigation focused on its causes and consequences" (Jones, *ibid.* p.19).

Regarding Latin America, other scholars have observed the institutional arrangements of divided government in the region and how feasible a real balanced

¹⁷⁴ The ideas we expressed in Chp. I about the different forms of power distribution have a long history. The concept of a divided government first expressed by Montesquieu in modern times, had already by then a background in several other political thinkers, and it had strong critics from the beginning. Relatively close to the considerations made by several writers in Linz/Valenzuela (1994) and other resilient critics of parliamentarism, we could recall Mirabeau's words "The brave champions of the three powers should be able to explain to all of us what they understand by this grand phrase and how, for example, they think they will make it possible to have a legislative power with no participation in the executive power and an executive with no participation in the legislative" (Constituent Assembly 18/06/1789, quoted by Martin in: Ramírez, Ed. 1978, p.71). This problem remains a very attractive puzzle for political scientists and institutional engineers up to date.

¹⁷⁵ Difficult situations can appear when the president has little command over party elites, as in Pérez II (1989-1993) in Venezuela, when his party members took distance from the growing unpopularity of the neoliberal package he implemented.

structure has been. Most of these scholars presented comparative studies on the various democracies of the region (Linz, 1984; Mainwaring, 1990, 1997; Sabsay, 1991; Shugart/Carey, 1992). Many of them argue that the divided government types of Latin America are product of the system's electoral rules which shape both the institutional arrangement in the legislature and the party system.

These authors focused mainly on the consequences of the divided government display and its inefficiency, a topic that had previous literature and analysis in the United States; they also focused on the potential breakdown of democracy and, after the third wave, on the roads for its consolidation.

The separation of powers present in almost all constitutional texts allows the parliament to have a certain control function of this institutional division. Because of that, in the Bolivian Constitution (articles 55, 70), "the chambers are allowed to ask cabinet ministers for either written or verbal reports, inspection or fiscalization of their duties and propose investigations on all matter of national interest". Also in Paraguay, (articles 192, 195), "Chambers of Congress are allowed to ask other government institutions, autonomous entities, and civil servants, detailed reports on matters of public interest...". In Peru, (articles 96-98) "Congress can start investigations on any matter of public interest..."; similar provisions exist in Uruguay, (articles 147-148) and Venezuela, (articles 159-161): "all civil servants and those working in autonomous institutions are compelled to appear in parliament when required and provide deputies and senators with the documents they may need"¹⁷⁶.

Assumptions against divided government and its rationale are known since the writings of Wilson (1908) on the US system, and the fears of institutional gridlock between independently elected bodies with the ingrained capacity to control each other. This level of potential conflict between legislative and executive branches can also have economic consequences such as increased government spending and budget deficits (Cox/McCubbins, 1991). Other authors such as Fiorina (1992) and Davidson (1991) stand as those pointing that policymaking and governance have not suffered from divided government since this institutional design does not undermine legislative productivity.

In Latin America after the 1980's and the massive re-democratization of the region, studies such as those of Lijphart (1990), Linz, (1994), Valenzuela (1990) have outlined the possibilities of gridlock immanent in the presidential system. This influenced later studies to focus on the consequences of presidents having poor congressional support or having to deal with a multiparty environment in Congress¹⁷⁷.

¹⁷⁶ The most detailed exposure so far made on parliamentary forms of control exposed in a Constitution is the Venezuelan 1999 constitution where article 222 announces: "La Asamblea Nacional podrá ejercer su función de control mediante los siguientes mecanismos: las interpelaciones, las investigaciones, las preguntas, las autorizaciones y las aprobaciones parlamentarias previstas en esta Constitución y en la ley y mediante cualquier otro mecanismo que establezcan las leyes y su reglamento. En ejercicio del control parlamentario, podrán declarar la responsabilidad política de los funcionarios o funcionarias públicas y solicitar al poder ciudadano que intente las acciones a que haya lugar para hacer efectiva tal responsabilidad".

¹⁷⁷ Many of the conclusive studies of the 90's cite insufficient president legislative-support as a serious contradicting factor to the lack of good governance levels in several Latin American nations. Panizza

The reasons for these conclusions are that in a democracy it is more difficult for a president in a multiparty congressional environment to gain majority or near majority. Thus the government would most probably have to seek coalitions, in order to avoid the congressional viscosity levels for policy approvals. This fact, the need of legislative support by the president, seen during the 90's, makes any restructuring proposal highly unlikely to succeed unless the executive had the necessary partisan support.

As Mainwaring (1993), puts it: "congressional support is indispensable for enacting laws, and it is difficult to govern effectively without passing laws. Contrary to common belief, presidents are often weaker executives than prime ministers, not so much because they have limited prerogatives but because of the potential of legislative/executive gridlock. Under democratic governments, a system of check and balances must operate but can paralyze executive power when the president lacks support in Congress". (p.215).

4.1 State indecisiveness and irresolution

One of the major theoretical problems of power separation is the observation that the bigger the number of veto players in a process is, the greater the possibilities of irresolution or indecisiveness. Following Tsebelis (1995), we define a veto actor as a person, political party (or faction of political party) that exercises a veto (total or partial) on whatever relevant issue, by itself, based on the institutional or legal empowerment he/she/it has received to be able to do so. This veto logic applied to the political game takes us back to one of the perils of presidentialism denounced by Linz (1994) and discussed previously. Indeed, several branches of comparative political research argue that dividing or separating power, creating various veto actors within the structure of the state, can lead to lower governance levels, indecisiveness, or a zero point gridlock.

If the trade-off between indecisiveness and irresolution on the means of public policy depends on the effective number of veto players there are, the next step would be to classify and determine the number and intervention scope of those veto players and their interrelation both on legal-constitutional and on empirical grounds (in party system deployment). The most common divisions of power¹⁷⁸ or sovereignty on pure theoretical grounds are:

(1993) suggests, for example, that a possible solution to this disarray is the consistent provision of a legislative majority for the president. Sabsay (1991) traces all these deficiencies in legislative support for the president to failures and inadequacies of the electoral laws. One important explanation comes in 1997 with Mainwaring/Shugart (eds.) considering the multiparty presence in Congress as a complicating factor for democratic governance.

¹⁷⁸ As pure veto players Cox/Mc Cubbins (2001) introduce this categorization but also mention the Judiciary, with important playing room, and also the military, which could, in certain situation of democratic fragility, play an approval or disapproval vote. To them the military constitutes an important veto gate in many countries, often defining the boundaries of acceptable policy change. Truly enough, the military is also given in many nations a constitutional role to protect the country against special situations or *estados de excepción*, during which the constitution itself may be out of political action. The Judiciary may constitute another veto gate in the governmental process, if it is both independent and bestowed with the power to judge the constitutionality of proposed or enacted

- a) Presidentialism: separating the executive power from the legislative.
- b) Bicameralism: creating more than one house in the legislature which in turn allows interplay between the actors and their vetoing potential.
- c) Federalism: the separation of governmental spheres by creating a national and sub national (or regional) governments.

All of these divisions of power imply the creation of different veto players at different political levels. In presidential regimes, policy making is the outcome of a power separation which in most cases is the product of the actors' diversity of purpose. There is separation of powers because of the independent authority of the executive and legislative branches, and separation of purpose when separate elections result in different partisan groups controlling the two branches, or when the ruling party having parliament majority opposes the policy proposals of its own executive leaders. Thus the perils of presidentialism as outlined by several critics (Lamournier, 1989; Lijphart, 1984; Linz, 1984; Valenzuela, 1993) are commonly based on three structural flaws: Temporal rigidity, Majoritarianism (fixed time length for both executive and legislative; "winner takes all" theory) and dual democratic legitimacy. They all are by products of the separation of powers.

Focusing on the veto capacity of the actors, this last quality, the dual legitimacy both institutions have, is the most serious problem in presidential democratic governance (Jones, 1995). To break the gridlock possibility among two equally powerful actors, the tendency in many constitutional texts and electoral systems is to favor the presence of an important number of presidential party seats in Congress. This could be done directly through an electoral law or indirectly by controlling the timing of such elections (Jones, *ibid.*).

The number of chambers in a constitutional system may also affect the likelihood of a president's legislative majority and the subsequent legislative irresolution factor. Conversely, it is more difficult to win a majority in two chambers than in one, particularly when the allotment, term length and electoral formula differ significantly in the two chambers. Most South American nations have a two chamber Congress except for Ecuador¹⁷⁹.

One of the decisive elements that has helped avoid institutional gridlock in many Latin American countries is precisely that the presidential party has almost always obtained a relevant majority in both chambers. The problem of a potential gridlock is transferred to another sphere, namely, the intra-party politics or the partisan powers of the presidential figure. The extent to which the presence of a second legislative chamber helps make this achievement (of an overall absolute legislative majority or near majority) depends on the a) electoral laws of the system;

legislation. Two social actors left aside, perhaps due to their more abstract nature, are the church and the media, both of which rank amongst the most trusted collective actors in Latin American nations.

¹⁷⁹ In the case of Ecuador, it was the Constitution of 1978 that abolished the Senate. The reader must always bear in mind that we are speaking about the period between 1985 and 1995. Venezuela also changed from a bi-cameral structure to a one chamber assembly in the Constitution of 1999. The bicameral configuration of assemblies is also popular among the Argentine provinces with 8 out of 23 having bi-cameral legislatures.

b) electoral formula used to select the executive; c) the timing of the executive and senate elections (as well as time lengths) and d) the formula used to allocate senate seats (Jones, 1995).

Another important point regarding the number of veto players and the overall relation between legislative and executive power is party fragmentation. The political consequences of the number of political parties in a party system have been subject of considerable debate precisely assuming whether they can be a burden to or rather a consequence of multi interest representation. From the first studies (Mayer, 1980; or Taylor/Herman, 1971) there seems to be substantial evidence on behalf of stability for systems with low levels of multipartism, which tends to follow the obvious assumption of “the fewer actors, the easier the agreement”. This variable has also been coupled with better accountability by Powell (1982). The aim would be to signify that accountability is greater and easier in a two-party system, regardless of whether it is presidential or parliamentary government, than in a multi-fractional one.

In presidential systems, high levels of multipartism may reduce the size of the president’s legislative contingent and increase the likelihood that the president will lack a majority or a near majority. Where the president lacks legislative support effective governance will be more difficult. He might be forced either to assume constitutional ways to overlap Congress or turn to patronage and negotiation with coalition party leaders. Mainwaring/Shugart (1997) consider that one of the most important questions in executive-legislative relations in presidential systems is the relative size of the presidential party (pp.396-397). Their outspoken judgment is that significant party fragmentation becomes a problem for presidential systems since they impede a possible majority for the president. He would in turn have to rely on coalition. The problem is that coalitions in presidential systems seem structurally weaker (see Mainwaring, 1993; or again, Lijphart, 1994) for two reasons¹⁸⁰:

1) Governing coalitions in presidential systems vary significantly from electoral coalitions. The latter are made basically to ensure significant electoral results. The executive power is not always formed through post election agreements among parties and is not proportionally divided in parties that at least theoretically could be co-responsible for governing (even though members of several parties can participate as cabinet members) as in parliamentary system coalitions. There is also the fact that a candidate may be supported while in campaign but not so closely followed in parliamentary assistance if he turns to unpopular policies (as in Venezuela during Pérez’s second mandate 1988-93), because coalition members do not feel part of the government, especially in times of reform (Corrales, 2001).

¹⁸⁰ One of Mainwaring’s basic theses on the fact is that party coalitions in parliamentary systems generally take place after elections and they are “binding” during the administration period; opposite to those coalitions in presidential systems which are made before and are not always binding past Election Day. This is a rather questionable argument with examples that occurred later in the 90’s, namely the second government by R. Caldera (1994-1998) where coalition was a definitive factor both in the parliament and in cabinet forming.

Another point on the matter is a coincident reflection on party discipline¹⁸¹. There is little guarantee that unless strong and cohesive party discipline exists, members will follow coalition decisions made by party leadership. Indeed, weaker discipline reinforces the instability of congressional support for government policy. Mainwaring/Shugart seem to sustain here the thesis that parliamentary governments tend to have more disciplined party factions since “In most parliamentary systems, individual legislators tend to support the government unless their party decides to drop out of the governmental alliance” (ibid. p.15).

In conclusion, the point remains to be proved that party fragmentation creates real governance problems as far as state irresolution and policy decision, implementation and speed are concerned. It stands out that party coalition, a probable consequence of a highly fragmented party model, is different (probably more complicated and fragile) in presidential systems than in parliamentary ones. It also increases the number of potential veto players in the legislative arena. However, whether fragmentation can be directly related to governance indexes or legislative support remains doubtful. Molina (2000) argues for example, that the Venezuelan legislative, which changed abruptly from a two major party system to a multi-party force in parliament after the 1993 elections, became a better form of social map including all civil society tendencies and their representation.

Obviously, it is not only the number of parties and the share of seats of the president’s party that matters. The ideological proximity or policy orientation of parties also affects the relations between legislative and executive. But the possibility of working together is tougher the bigger the number of parties to form alliance with in Congress.

Table 2.4 *Legislative Multipartism in Latin America*¹⁸²

“Effective number of Parties” in the Lower/Single House of the National Legislature

	1.99-2.50	2.51-3.00	3.01-3.50	3.51-4.00	4.01-4.50	4.51-5.00	5.01-
Electoral Systems	Chile * Colombia Costa Rica Paraguay	Uruguay Peru Argentina	Venezuela	Guatemala Bolivia			Ecuador Chile Brazil*

*After the re-democratization in 1989 (period of study until 1995)

Political divisions of purpose stem from the inherent diversity of opinion within a nation’s society and from the incentives that the electoral system presents to combine those interests into the existent political organizations in a particular force map. Some electoral systems encourage the formation of a few hierarchical parties

¹⁸¹ Party discipline is outlined as a definite factor for presidential strength in the legislative.

¹⁸² This is Laakso/Taagepera’s 1979 index. Legislative Multipartism is commonly calculated utilizing a measure based on the percentage of legislative seats won by the various parties in the lower chamber (or single when one chamber assembly) elections. Values for multipartism have a continual distribution with a mean of 3.434 and a standard deviation of 1.618. Values for this dependent variable range from a low of 1.992 (case of Chile 1989-1999) which corresponds to a little less than two effective parties, to a high of 7.464 (which is the value for Brazil 1989-1994) and corresponds to seven effective parties.

while others facilitate either a large number of parties or the existence of atomized ones (Nohlen, 2000).

When a polity combines institutional veto stages with diverse political agents, the result is a form of multilateral veto game, most dreaded in strong presidential systems since it is likely to produce eventual institutional gridlock. In such games the most feared result is indecisiveness, when the various groups cancel each other and cannot agree on any action. Another possibility outside the normal consensus is unilateral action of one or more of the players¹⁸³.

This has been the outcome of several situations of potential gridlock in Latin American cases where presidents, already too weak to reach the feasibility of an institutional agreement with the legislative, decide either to suppress their contradicting faction by force (as in Fujimori's parliament elimination, 1991), or to use constitutional means (such as decrees, or special laws) to coerce the results they desire (as in Ménem's *Decretos de Necesidad y Urgencia*).

4.2 Separation of Power and Purpose between Veto Players. Concept and Operation

The balance of power between branches of government and their role in the policy making process is central to the nature and quality of the democracy. Therefore Latin American democracies are often quoted for having extended and somewhat weakly checked executive powers. Where presidential power is too strong, representation and accountability via checks and balances may decline. Representation declines first of all, because the most, if not all elected officials, are made relatively tangential to political outcomes. Campaigns for Congress may be conducted, policy stances may be defined and voters may express their preference; but if the president is excessively powerful by constitutional attributions, this process does not lead to real representation (Crisp, 1998; 2000).

The accountability that results from checks and balances across political branches in a presidential system can be severely eroded where presidents are too powerful, either through constitutional disposition or because of partisan control of the legislative. The legislature (and also the judiciary) is supposed to limit or define presidential prerogatives, but where the institutional balance is either structurally or functionally biased, presidents can be delegated ruling authority until the end of their constitutional term (O'Donnell, 1994).

The relative power of the executive and the legislature are a function of the constitutional grant of powers given to each actor and the partisan control of the government branches. Constitutionally allocated powers include, for the parliament, the vote necessary to override a presidential veto, legislative initiative, legislative control mechanisms (interpellation, censure, etc), and veto or influence over the yearly budget law project. For the president it is the decree power, the ability to

¹⁸³ Balkanization is the political term for such extreme unilateralism. It denotes the situation when the various veto groups give up on arriving to a mutually or collectively acceptable policy and attempt to take unilateral action.

influence/modify the legislative agenda, exclusivity on certain legal domains to introduce projects and also the budget making process. The partisan control of the government branches, which in presidential systems means the partisan control either through coalition, patronage or directly pork barreling, includes four basic possibilities (Crisp, 2000): the president's party has a majority, the president's party has a plurality, an opposition party has a plurality or an opposition party has a majority.

In presidential regimes, the flow of policy making is normatively adhered to the idea of power separation, out of which veto playing among actors sets the bases for the whole idea of checks and balances. In general terms, a separation of powers can be thought of as the extent to which different components of government have the ability to exert influence through the exercise of a veto on the formation of public policy. This defining feature of the presidential system and its consequent veto game between equally ranking institutional actors, can also be found in parliamentary systems (see Tsebelis, 1995; or Tsebelis/Money 1997) in the form of bicameral structures or federal structures. All these branches of power can exert validating vetoes to one another.

The fact that a political structure is ramified and divided does not *per se* mean that there ought to be a differentiation of purpose among the actors (Shugart/Haggard, 2001). Separation of powers, for the scope of our research, refers to the independent authority of the executive and legislative branches. Separation of interest or purpose can exist with or without power separation. The institutional reference arises, due to nominal and essential factors, so to speak, of the presidential regime: first, the fact that presidents and parliaments are elected separately; and second, that neither branch can act directly on the other to remove it or to shorten its political period¹⁸⁴. The executive and the legislative remain separate both in their origin and their survival (Carpizo, 1980). We can draw several conclusions out of this.

The first of the features indicated and thoroughly accepted as characteristic of the presidential regime (Shugart/Carey, 1992; Mainwaring/Shugart, 1997; Nohlen/Fernández, 1998), is that legislatures and presidents are the product of independent electoral processes that could or not take place on the same day¹⁸⁵; this evidence exposing that presidential systems are prone to separation of purposes between institutions of power. Separation of purpose may arise when separate elections result in different partisan groups controlling the two branches, executive and legislative. Separation of purpose here may also appear if the president does not anchor a strong leadership within his own party which may decide to oppose him in

¹⁸⁴ The fact that presidents can be impeached and removed from office cannot be taken as due to political reasons. These impeachments are legally grounded on constitutional disobedience or unlawful acts from the presidential side. As a functional mechanism, impeachment requires of extraordinary majorities (most commonly two thirds of each chamber) plus, in many countries the consent of judicial bodies.

¹⁸⁵ This is a most important variable we will expand later as it has important effects on the havoc or success of the party. In presidential systems, the *efecto portaaviones* can be seen when an extremely charismatic leader pulls favorable parliamentary vote for his party, particularly when presidential and legislative elections take place on the same date.

parliament (as in Venezuela's Pérez II government 1989-1993), or also because of the difference of interests between the local (or sub-national) constituencies that may elect legislature members in comparison with the national opinion that elects the president. Therefore the perception that presidents often tend to be more preoccupied with national concerns, whereas legislators tend to focus more on local issues (Siavelis, 2002).

The second normative fact of presidential regimes, the independent holding of the two power branches, executive and legislative means there ought to be a constant pursuit of compromise to avoid institutional gridlock. "If parties are highly fragmented and poorly disciplined, or if the president's party is a minority in a multivariuous and polarized legislature, separation of purpose increases and in turn, the potential for deadlock, instability and balkanization also increases" (Shugart/Haggard, *ibid.* p.65)

Table 2.5 *Institutional Rule and Policy Authority**

Institution	Structural Separation of Powers	Political Separation of Purpose	Possible Consequences
National Executive	Presidentialism Parliamentarism	Divided Government	<ul style="list-style-type: none"> • Institutional warfare (e.g. over the branches to control expenditures) • Unilateralism (i.e., the prosecution of separate policies by different branches) • Gridlock (e.g. inability to pass budgets or executive exclusive initiative projects on time) • Budget Deficits (e.g. those in the U.S during the 80's) • Pork
National Legislature	Bicameralism Unicameralism	Divided Partisan or Factional control of the Houses	<ul style="list-style-type: none"> • Gridlock (when the two houses cannot agree) • Budget Deficit • Pork
Legal Relations between National and Sub national Governments	Federal State Unitary State	Distinct Regional Preferences	Politicians tend to focus on local constituencies creating distributive and often Pork Barrel Policies.

*From Cox/Mc Cubbins in Haggard/Mc Cubbins (2001) p. 34

4.3 Legislative Powers of Presidents

The sources of legislative presidential power are basically the constitutional provisions that empower the presidential or cabinet figures, and the eventual power delegation made by the legislative either due to an agreement or to the partisan powers of the president (Shugart/Carey, 1992). As noted in chapter I, one of the

defining characteristics of Latin American presidentialism is the determinate presence of legislative powers given to the president and/or executive through which they can either legislate or significantly alter the congressional Agenda. Shugart/Carey (1992) envisage a sequence of sets, the first of which entails legislative powers constitutionally granted to the president: total veto, partial veto, presidential authority to legislate by decree, the exclusive right to initiate legislative proposals, budgetary initiative, and powers to call for referenda. Latin American Presidents also have the authority either to set the parliamentary agenda by demanding special attention on some matters, or the power to call for extraordinary assembly meetings to deliberate on a required topic. Other aspects of presidential power that can affect legislation (though occurring apart from the legislative domain) are cabinet formation and cabinet dismissal. Shugart/Haggard (2001) divide presidential legislative powers into those being reactive (veto in its various forms) and proactive, those that imply extraordinary law making power known as decree powers or *Leyes Habilitantes*.

It is much more complicated to determine the institutional interplay and adequate balance between executive and legislative in presidential systems than in parliamentary ones. That is because in the latter, a parliamentary executive holds only those legislative powers that have been delegated to it by the general assembly. A presidential executive usually has its own ingrained legislative powers in addition to those that could be delegated by the assembly. As we have seen, all Latin American presidents have constitutionally established legislative powers. However, they do present a wide variation in terms of how much power each executive may hold. Because of extreme cases of legislative empowerment for the president provided in the constitution, and/or by the existence of a lenient legislative, studies made on several countries have argued that Congresses are either rubber stamps or institutions with regularly usurped powers by the executive (Levine, 1973; Kelley, 1977; Suárez, 1982).

Table 2.6 *Mainwaring/Shugart (1997) Summary of Presidential Powers in Presidential Constitutions in Latin America*

President's Constitutional Legislative Authority	Configuration of Powers	Examples
Potentially Dominant	Decree, Strong Veto, Exclusive Introduction Decree, strong Veto	Chile 1980-89 Colombia 1968-91 Argentina Ecuador
Proactive	Decree, weak Veto, Exclusive introduction Decree, weak Veto	Brazil 1988 Colombia 1991 Peru 1993 Peru 1979
Reactive	Strong Veto Exclusive Introduction Strong Veto	Brazil 1946 Chile pre 1973 Uruguay Bolivia Dominican Republic El Salvador Panama

Potentially Marginal	No Veto	Costa Rica Honduras Mexico Nicaragua Paraguay Venezuela
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The operative range of this institutional interplay tends to vary. There are pure delegation cases (the Mexican PRI case before 1997; Casar, 1999) where, though Congress was empowered by the Constitution¹⁸⁶ to an average number of attributions, these were put off on behalf of the dominance of the party and the partisan powers of the presidential figure.

The other side of the spectrum is illustrated by cases like the 1853 Argentine Constitution, which also reveals the tendency to favor the executive by leaving important gaps, or silences in the legislative work (Bidart-Campos, 1992). The *Decretos de Necesidad y Urgencia*, commonly used by President Ménem in both of his periods 1989-94 and 1994-1999, are the previewed normative response (Manzetti/Morgenstern, 2000) of the constitution to create a strong executive that could completely substitute a five month a year working parliament when this was not in session¹⁸⁷. An executive so strong he could deliberately intervene, in his own right, any of the federal states of the republic.

Table 2.7 *Index of Presidential Powers over Legislation*¹⁸⁸

Package Veto	
0	No Veto or Override by Majority
1	No Veto on spending, but Veto with extraordinary majority override on other bills
2	Veto with extraordinary majority override on all bills
Item Veto (with promulgation of vetoed items permitted)	
0	No Item Veto
1	Item Veto on some Bills (usually spending), extraordinary majority override
2	Item Veto on all Bills, extraordinary majority override

¹⁸⁶ Casar (2002) adds on: "In spite of its constitutional powers the Congress in post revolutionary Mexico appears as a weak and subordinated institution. Weakness and subordination are patent where congressional action is expected. Congress in Mexico has made a poor role in lawmaking. It is not only that Congressmen are seldom initiators of law proposals but also that they do not play the role of stopping or substantially amending those bills sent by the executive" (P.5.)

¹⁸⁷ This is strongly arguable. Other authors like Lutz (1994) observe that the Argentine Constitution was not created in a presidentialist process so judicial reinterpretation was the way to adapt the constitution to reality. The 1853 constitution made no provision for decree laws but president Ménem succeeded in packing the Supreme Court with compliant judges through his party's control over the legislature, which confirms justices and sets the size of the court (Jones 1997 in Mainwaring/Shugart, 1997). The 1994 constitution does codify the decree powers and leaves the president with strong veto powers.

¹⁸⁸ This graphic belongs to Shugart/Haggard in Haggard/ Mc Cubbins 2001. According to the classification system, Argentina is one of the two strongest scoring presidencies though this may be arguable. The Russian President has the ability to issue decrees on almost any policy area, however the President in Argentina may have more power to ultimately influence policy outcome (Shugart/Carey, 1998). Several other Latin American systems with a reputation for having hyper presidential or strong presidencies vest practically no constitutional powers in the president (e.g. the Mexican case already studied by Casar, 2002).

- Decree (new legislation)
- 0 No provision
- 1 Provided
- Exclusive Authority to introduce bills in specified policy areas
- 0 No Provision, or applies only to budget bills with no major restrictions on amendment
- 1 Provided also in non-budgetary bills, but no major restrictions on amendment
- 2 Provided, major restrictions on amendment (such as inability to increase spending)

	Index Value	Country	Package Veto	Item Veto	Decree	Exclusive Introduction
High Powers	6	Argentina	2	2	2	0
	5	Russia	2	0	2	1
	4	Chile	2	0	0	2
		Colombia	0	0	2	2
		Peru	0	0	2	2
	3	Brazil	0	0	2	1
		Ecuador	1	0	2	0
	2	Bolivia	2	0	0	0
		Uruguay	0	0	0	2
Low Powers	1	Costa Rica	1	0	0	0
		Mexico	1	0	0	0
	0	Venezuela	0	0	0	0

Interestingly enough, most Latin American constitutional texts have the figure of the *Comisión Permanente*, permanent commission, one that would maintain the congressional authority and party representation proportion while the legislative was in recess. This figure did not exist in the 1853 Argentine text (later printed in 1859¹⁸⁹) which left enormous discretionary powers for the president to legislate. The executive will prevailed all the time, considering that the Assembly worked only for 5 months a year (Art. 55). The Permanent Commission appears in Argentina in the 1994 reform (Art. 99) as Permanent Bicameral Commission and Congress has extended session of up to 8 months, but the president retains the exclusivity to introduce decree-laws (constitutionally formalized after 1994) to be considered by parliament.

Another indirect faculty related to the legislative powers and prerogatives of the executive, present in many constitutional texts, is that cabinet members can attend parliamentary sessions and take part in their debates to defend or attack positions. Despite this they are not allowed to vote (Argentina, Art. 100; Venezuela, Art. 170 and 245¹⁹⁰) but it is conceived that they can explain and reinforce parliamentary opinion towards them.

¹⁸⁹ Argentine Constitution in the Political Database of the Americas. “Sancionada por el Congreso General Constituyente el 1 de Mayo de 1853, reformada por la Convención Nacional *Ad hoc* el 25 de Setiembre de 1860 y con las reformas de las convenciones de 1866, 1898 y 1956”.

¹⁹⁰ Art. 170 corresponds to the 1961 Constitutional Text commonly used in our dissertation. However it is interesting to see that this dispensation was also granted in the 1999, so-called, “Bolivarian” Constitution.

Table 2.8 *Legislative Powers of Popularly Elected Presidents*

Package Veto/Override		Partial Veto Override	
4	Veto with no Override	4	No Override
3	Veto with Override requiring majority greater than 2/3 quorum	3	Override by extraordinary majority
2	Veto with Override requiring 2/3	2	Override by absolute majority of whole membership
1	Veto with Override requiring absolute majority of assembly or extraordinary majority less than 2/3	1	Override by simple majority of quorum
0	No Veto; or Veto requires simple majority override	0	No partial Veto
Decree		Exclusive Introduction of Legislation	
4	Reserved Powers, no rescission	4	No amendment by the Assembly
2	President has temporary decree authority with few restrictions	2	Restricted Amendment by the Assembly
1	Authority to enact decrees limited	1	Unrestricted Amendment by the Assembly
0	No Decree powers or only as delegated by the Assembly	0	No exclusive powers
Budgetary Powers		Proposal of Referenda	
4	President prepares Budget; no amendments permitted	4	Unrestricted
3	Assembly may reduce but not increase amount of Budgetary items	2	Restricted
2	President sets upper limit on total spending within which Assembly can amend	0	No Presidential authority to propose Referenda
1	Assembly may increase expenditures only if it designates new revenues		
0	Unrestricted authority of Assembly to prepare or amend Budget.		

Source: Shugart/Carey, 1992

In Argentina, the sum of presidential powers is considered high since the executive is able to use decree force, partial veto, and to alter the legislative agenda either by its prerogatives in some exclusive project introduction or by determining the priorities in discussion. Venezuela holds similar though softened advantages for the president since the constitutional text of 1961 allowed special legislation from the president only on economic matters and he had no veto but a suspensive vote¹⁹¹ that sent the bill project back to the legislature for reconsideration.

¹⁹¹ The more difficult it is for legislators to build and maintain coalitions capable of passing legislation, the more attractive the alternative of providing the executive with decree authority will be (either through deliberate delegated authority or constitutional empowerment). Carey/Shugart (1998) identify four factors that may expand the possibilities of presidents as legislators: a) Party discipline meaning how far can party leaders compel their legislative factions to vote as blocs; b) The number of Legislative Chambers: the higher the number of majority votes required (pp.16-17), the more cumbersome the process; c) Lack of Policy Expertise: this is also a common reason to avoid parliaments. Regarding this variable Crisp (2000) explains that in the Venezuelan parliament, the low level of professionalization and minimum staff was partially a reason for its low productivity; deputies and senators have to expand their legislative and investigative work which severely curtails their production and the quality of their production. This logic could suggest the delegation of procedural authority (decree or agenda powers) to executives, especially if the costs of gathering information

4.4 Meta-Constitutional Powers of Latin American Presidents

The possibility of the president either to name or dismiss his cabinet can be located among those non-legislative, pure presidential attributions. The freedom of the president to interact with his own cabinet can be hampered if there are, for example, clear constitutional provisions that may grant the assembly the capacity of either censoring or giving no-confidence votes to the ministers or the whole cabinet itself¹⁹². The oversight function of the parliament can have practical results that often lead (if parliament is so empowered) to the removal of an unwanted minister, an event that can significantly modify the whole planning of the cabinet.

This exclusive possibility over cabinet selection and construction depends on presidential choices which can be filtered by parliament to some degree (Shugart/Carey 1992). Cabinet formation also represents an excellent opportunity for the president to negotiate legislative support with strong party leaders, extending his power range from constitutionally average to those we mention as meta-constitutional powers. They are a consequence of the constitutionally acquired functions but, by adding legislative cooperation, they develop more as a product of the political culture of each society and its party system.

about outcomes are lower for the executive than for the legislative; d) Time Constraints: Legislative procedures are frequently slow, whereas the need for policies might be pressing, as in the case of Ménem's election after Alfonsín in 1989. The fact that Congress would take too much time for a decision of overcoming inflation was one of the basic reasons for allowing the president to legislate by decree.

¹⁹² Several authors (Shugart/Carey, 1992; Close, 1995) have tried to link the variables of strong congressional empowerment with longer democratic life in Latin America. Indeed, the coincidence that outside the United States (which has a very strong Congress) it is Venezuela and Costa Rica who have in some institutional sense the weakest executive versus a legally tooled parliament, could be seen as a more than incidental issue. In the 1949 constitution of Costa Rica, the president was specifically assigned only four independent functions: appointment and removal of his ministers; service as Commander in chief of the *Guardia Civil*; representation of the nation in official ceremonies and presentation of a state of the union address before Congress (K. Mikeski, in Di Bacco, 1977).

Table 2.9 *Non-Legislative Powers of the President*

Cabinet Formation		Cabinet Dismissal	
4	President names cabinet without need for confirmation or investiture	4	President dismisses cabinet ministers at will.
3	President names cabinet ministers subject to confirmation or investiture by the Assembly	2	Restricted powers of dismissal
1	President names premier, subject to investiture, who then names other ministers	1	President may dismiss only upon acceptance by Assembly of alternative minister or cabinet
0	President cannot name ministers except upon recommendation of the Assembly	0	Cabinet may be removed and censored by the assembly
Censure		Dissolution of Assembly	
4	Assembly may not censure and remove cabinet or ministers	4	Unrestricted
3	Assembly may censure but Presidents may respond by dissolving Assembly	3	Restricted by frequency or point between terms
1	Constructive vote of no confidence (assembly majority must present alternative cabinet)	2	Requires new Presidential Election
0	Unrestricted Censure	1	Restricted: only as response to censures
		0	No Provision

Source: Shugart/Carey, 1992

Some Latin American constitutions stipulate certain policy areas in which no bill can be considered by the assembly unless it is initiated by the president. This is also referred to as gate keeping (Shugart/Haggard, 2001). It regularly extends to military policy, creation of new bureaucratic agencies, laws on taxation and credit policies, aside from the annual budget law. Similarly to the veto, the gate-keeping power is considered as “reactive” because by not initiating a bill the president can alter the Congress’ agenda¹⁹³.

In strong cases of presidentialism where parliaments tend to be more passive than expected, though constitutionally enabled to act otherwise, we may anticipate the presence of meta-constitutional powers of the executive used on the members of parliament or on parliament as a whole institution¹⁹⁴ (Weldon, 1997). This presidential influence over the ruling party through partisan powers (Shugart/Carey, 1992; Mainwaring/Shugart, 1997) bestows presidents with radical influence over parliamentary fractions. Weldon groups three sources¹⁹⁵ as vital for the presence of meta-constitutional powers:

¹⁹³ Shugart/Haggard (2001) sustain that the president’s ability to set the parliamentary agenda or to constrain it is made even stronger where there are restrictions on legislative amendments (p.77)

¹⁹⁴ For example the constitution grants the Mexican chamber of Deputies near extraordinary powers over the budget. It has exclusive rights to approve the budget submitted by the executive, and it may amend it. Moreover, according to the prevailing views of constitutional scholars, the president does not have the power to veto the budget (the chamber of deputies actually has extensive powers to review all expenditures, Mendoza 1996). The outcome of the budget game in Mexico does not reflect this institutional bias towards Congress. Between 1928 and 1997, the chamber of deputies always approved the budget sent by the president, usually without amendments; and it never made any amendments that could have been unacceptable to the Finance Ministry (Weldon, 2002).

¹⁹⁵ Weldon talks specifically about the Mexican case. His classification could, under our view, also be projected onto other cases of Latin American Presidentialism.

- Unified Government
- Party Discipline
- Recognition of the President as Party Leader

This is a projection of the three element connected relation between the president, the party and Congress. The idea of a unified government is the functional opposition to the structural idea of a divided government, eliminating the institutional possibility of Congress as an active veto player against executive initiatives. This effect of unity usually provided by the ruling party when it has congressional majority, seems to be potentiated when legislative elections coincide with presidential elections. That may guarantee a pulling effect from charismatic candidates as in Argentina or Venezuela (Nohlen, 2001).

The second condition, Party Discipline, is the guarantee that Legislative members will act in accord to prearranged party lines¹⁹⁶. It is an element consistently found in several countries, Argentina (Jones 1999), Venezuela, (Corrales, 1998) and Mexico (Weldon, 1997), though Mainwaring/Shugart suggest parties need not be specially disciplined in presidential systems. The idea of grouping it as a source of meta-constitutional power for the executive is that with a disciplined party the president does not have to negotiate a coalition for every legislative proposal or calculate deliberate pork barreling for every move.

The last element, the recognition of the President as a party leader, is more complicated and difficult to find in other countries with a more operative and evolved concept of democracy than the Mexican example. However, the position of mutual interdependence between executive and parliament makes patronage possible, especially for those in power towards their supporters in the party. Legal dispositions like Art. 141¹⁹⁷ in the Venezuelan Constitution favor this possibility. Just like in the Brazilian case (see Ames in Morgenstern/Nacif, 2002), members of either chamber are entitled to be chosen for ministerial or foreign service positions and then return to their legislative posts. Such freedom enables the president to distribute positions among party leaders.

Another example of presidential meta-constitutional powers affecting Congress is the procedure that presidents can use their decree authority to create “high profile commissions¹⁹⁸”. This initiative can bring executive branch authorities together with either “experts” or representatives of interest groups, to study issues of presidential choice. At a further stage of policy formation, similar commissions are

¹⁹⁶ “When we talk about party discipline, we have in mind a simple phenomenon: legislators of the same party voting together almost all the time. Even in undisciplined parties, legislators of the same party usually vote together but this is because many legislative matters are relatively consensual across and within party lines” (Mainwaring/Shugart, 1997,p. 418)

¹⁹⁷ The Article literally says: “Senators and Deputies can accept ministerial positions, or of Secretary of the Presidency, Governor, Chief of a Diplomatic mission or President of an Autonomous Institution without losing the investiture. To work in the cabinet, they must however separate from their representative position to which they can return once they have ceased to work in their other functions. The acceptance of several popularly elected posts, in case the laws allow it, does not entitle to the simultaneous exercise of them”. (Venezuelan Constitution, 1961, Database of the Americas)

¹⁹⁸ This is specifically registered as one of the cases where the president can issue special decree laws in Venezuela, by creating public institutions or state owned enterprises.

often assigned to write legal drafts that the president can submit to Congress for adoption. Congress receives an already prepared draft having only reactive power over it, or proactive (but limited) if we consider its capacity to reform the bills.

Because of this tendency to leave the creation of legal drafts in the hands of executive created expert commissions, in many countries the lobby of interest groups addresses the executive directly. “Rather than approaching deputies and senators, lobbyists have greater incentives to approach the executive since the president has the ability to act on this lobby and after consultation with interest groups, by proposing legislation or issuing decrees” (Crisp, 2000, pp.71-72).

4.4.1 Dissolution of the Assembly

Though theoretically absurd within the principle of separation of powers in presidential systems, assembly dissolution has been and remains an option in some Latin American constitutional texts. Considering that it has been a structural feature of parliamentary systems, where the executive power is formed by members of parliament, in presidential systems the fact of giving the executive the faculty of dissolving an independent body such as the parliament polarizes the whole institutional arrangement.

The provisions currently exist in the Chilean case, and also in the Uruguayan and Peruvian constitution where dissolution of parliament can be invoked only after Congress has censured a minister (or the entire cabinet) repeatedly, which could be attributed to political and not “national” reasons¹⁹⁹. Some researchers (Esteva-Gallicchio, 1992) consider this potential to destitute parliament members to be an extreme measure to avoid institutional deadlock due to political antagonism, though he asserts Uruguay has never used this possibility as stated in the Constitution²⁰⁰.

The 1979 Peruvian Constitution has also the possibility of assembly dismissal in response to censure of the cabinet. Art. 221 of the 1979 Constitution states that cabinet ministers are individually responsible for their own doings and those

¹⁹⁹ This possibility of the executive to dissolve the parliament was incorporated from the Uruguayan model, Art. 148, in the Venezuelan 1999 Constitution, Art. 248, which accepts the possibility of assembly dismissal by the president if the Vice-President is censured more than three times during a government period. Literally “La aprobación de una moción de censura al Vice Presidente Ejecutivo o Vice Presidenta Ejecutiva, por una votación de las tres quintas partes de la Asamblea Nacional implica su remoción” and later on, “La remoción del Vice presidente Ejecutivo en tres oportunidades dentro de un mismo periodo constitucional, como consecuencia de la aprobación de mociones de censura faculta al presidente de la republica para disolver la Asamblea Nacional. El decreto de disolución conlleva la convocatoria de elecciones para una nueva legislatura dentro de los sesenta días siguientes a su disolución”.

²⁰⁰ “Las relaciones entre los poderes Ejecutivo y Legislativo, según la sección VIII de la Constitución, son del subtipo parlamentario racionalizado. Los Ministros son designados por el presidente de la republica entre individuos que por contar con apoyo aseguren su permanencia en el cargo. La Asamblea General, previa moción aprobada en cualquiera de las cámaras por mayoría simple, es competente para declarar censura a los actos de administración, o de gobierno de un Ministro (individual), de más de un Ministro (plural) o de la mayoría del Consejo de Ministros (colectiva). El Presidente de la republica esta facultado para observar el voto de censura. Si la Asamblea general lo mantuviere el presidente puede por decisión mantener al/los ministros censurados, disolver las cámaras y convocar nuevas elecciones” (Esteva-Gallicchio, in Belaunde/Fernández/Hernández, 1992, pp.754-755).

presidential decisions they may endorse. To that end the constitution (arts. 224-225) establishes the need of regular presentation of reports to both Congress chambers so they can expose and debate the government program and the political and legislative measures required (García-Belaunde, 1992). There is also the prospect of interpellation since it is obligatory for any public servant to present himself before Congress if demanded to do so, and the censure vote²⁰¹ to assign a political responsibility, in which case the censored minister or ministers must resign.

The power to investigate, give censure or confidence votes are exclusive to the deputy chamber. “As a consequence of these rights of parliaments, through Article 227 the president is allowed to dissolve the deputy chamber if they have either censored or denied confidence votes to three consecutive cabinets. The dissolution decree must explain the motives and causes for such a decision plus the call for new elections in 30 days (García Belaunde, 1992). Aside from the *Fujimorazo*, the authoritarian dissolution of Parliament made by President Fujimori in 1992, under very different circumstances, we know of no instance in which such a dissolution (as constitutionally conceived) has been invoked in Peru, or even of the case of three no-confidence votes. Under these theoretical conditions, it seems that dissolution will remain the recourse of an embattled and highly confrontational President. Probably not much of a threat to any Congress (Shugart/Carey, 1992).

The Chilean Constitution of 1980 and the revision of 1989, are both characterized by following a tradition of very strong executives (Mainwaring/Shugart, 1997) though the presidencies of Alwyn and Frei could be taken as moderate in the use of their enormous presidential prerogatives arsenal (Siavelis, 2002). However, the constitutional provision exists, against the principle of power independence and division, that the president may be allowed to dissolve the chamber of deputies.

In the cases of Uruguay and Peru, conditions must be created for assembly dissolution the situation must be put forward from both sides so it will probably be avoided from both sides. The Chilean case, aside from giving the strongest legislative powers (partial veto and legislative exclusivity) to the executive, plus the possibility to declare law projects as urgent, entitles it to dissolve the chamber of deputies. “Once in a term, and not in the last year of the term; but there are no other conditions stipulated (Art.32, sec. 5)” (Shugart/Carey, 1992). In terms of absolute balance of powers between the branches of government in post authoritarian Chile, the president is the most important legislative actor and the most important legislator (Siavelis, 2002). Despite this huge potential to coerce parliament, the provision has not yet been used, probably due to the fact that there has been incentive to negotiate and that the

²⁰¹ The 1979 Peruvian text has “Voto de Censura y Voto de falta de Confianza”: el voto de censura se produce cuando la cámara decide hacer efectiva una responsabilidad política; el Ministro o Consejo de Ministros censurados deben dimitir. En cuanto al voto de falta de confianza, solo se produce por iniciativa ministerial y esto sucede cuando una iniciativa ministerial es presentada como cuestión de confianza; si la cámara la desaprueba, el Ministro debe dimitir. En ambos casos el Presidente de la República está obligado a aceptar la dimisión” (García Belaunde, in García/Fernández/Hernández, 1992, pp.714-715)

senate, where opposition has had simple majority has decided not to play an obstructive role.

Assembly dissolution is an extreme example of presidential powers but contrary to the spirit of most constitutional texts which do not conceive it, not even as a means of avoiding institutional gridlock. In the cases of Argentina and Venezuela this option is deleted, although analysis grants that from these two countries Argentina can be considered a case of hyper-presidentialism (Nino, 1992) due to the ample legislative powers of the executive.

4.5 Who Sets the Agenda?

The relative power of the executive and the legislative is almost completely the product of mixing two important institutional factors: the constitutional grant of powers given to each institution and the partisan control of the branches. Constitutional powers to support legislative powers of the executive involve decree powers, exclusive legislative initiative, veto –partial or total- and legislative veto override. The partisan control of the branches deals with whether the ruling party has a majority, a plurality or a minority in its level of support in parliament and how much support it grants to the executive.

In Venezuela, Congress has the power to legislate in areas of national concern and “over the functioning of the distinct branches of national power” (Art. 139). It is granted the power necessary to make it a key institutional player in public policy making. Ordinary sessions run from March to July and September to November. This schedule can be altered by an absolute majority vote of the chambers in joint session (Art. 155); the call for extraordinary sessions by initiative of the legislative is contemplated. Congress is enabled to question ministers (Art. 199) and revise their yearly account of expenditures out of which investigations can be (and have been) initiated. The Senate has the exclusive power to initiate discussions of treaties, to use national troops for overseas missions and it is expressly required to authorize the sale of state owned property.

Despite the means of deliberate constitutional empowerment, in the Venezuelan case the executive has consistently dominated legislative initiative. This is an interesting fact considering presidential formal constitutional powers are comparatively few. His powers are far from the extremes in other countries; however they enable him to name cabinet ministers without congressional approval (Art. 190) and until the year 1989 when some amendments were made, the president could name all state governors by the same article. In the area of legislation the president and his ministers have the right to propose legislation (Art. 165); and ministers have the right to address Congress at any time and participate in the parliamentary discussion of legislation (Arts. 170 and 199).

The proactive power of the president in Venezuela is mild in comparison to countries like Argentina or Chile where the constitutions grant stronger and more discretionary powers to the executive figure. A strong difference also can be observed between the so called reactive powers of the executive (Shugart/Carey, 1992). The

veto is a radical empowerment present (and used) in the Argentine Constitutions while in the Venezuelan case it is only a suspense veto²⁰² over legislation.

Table 2.10 *Initiation of Legislation by Branch*
All Laws *Ordinary Laws*²⁰³

	Executive initiated	Legislative Initiated	Total	Executive Initiated	Legislative Initiated	Total
Betancourt (AD) 1959-64	76 84%	14 16%	90	13 54%	11 46%	24
Leoni (AD) 1964-69	115 86%	19 14%	134	22 55%	18 45%	40
Caldera I (Copei) 1969-74	108 81%	25 19%	134	21 49%	22 51%	43
Pérez I (AD) 1974-79	124 89%	15 11%	139	33 79%	9 21%	42
Herrera (Copei) 1979-1984	143 89%	17 11%	160	25 76%	8 24%	33
Lusinchi (AD) 1984-89	160 90%	20 10%	180	33 77%	10 23%	43
Pérez II (AD) 1989- 1994*	122 75%	41 25%	163	15 33%	30 67%	45
Caldera II (Conv.- MAS) 1994-95	59 80%	15 20%	74	12 52%	11 48%	23
Total	907 84%	166 16%	1073	174 59%	119 41%	293

- Pérez was removed from office due to administrative fund deviation in the final year of his term which was then completed first by Octavio Lepage, the legislative president, and the by Ramon Velázquez, chosen in Congress to finish the period until the call to election.
- Source: Servicio Autónomo de Información Legislativa SAIL/ Crisp, 2000.

Some researchers deny all possibilities to Congress regarding the initiation of public policies. It is certainly not up to Congress to initiate government policies; that is the president's job. This is such an undisputed topic that the Argentine 1994 constitutional reform did not even consider the possibility of introducing mechanisms

²⁰² Venezuelan presidents have no exclusive right to introduce legislation outside the yearly budget law proposal, so they cannot prevent the legislature from considering particular issues by refusing to pass a related bill. Regarding the veto, if a joint session of Congress overrides the president's initial return for reconsideration with more than two thirds majority, the president must execute the law within five days. If they override his first "veto" with less than a two thirds majority, the president has the right to return it once more. But the second suspense veto can be overridden with a simple majority (Art. 173)

²⁰³ "Ordinary Laws are the Bills that constitute the new or original legislative output of Congress" (Crisp, 2000. pp.52-53)

that could give priority to the legislative initiatives of the executive or limit the time devoted to them as in Chile and Brazil (Mustapic, 2002). However and despite the fact that Congress seldom initiates government policy, its participation in the legislative production both as promoter and as reviser in Argentina is relatively high²⁰⁴.

In Venezuela the most common laws, those concerning public credit, are entirely designed and proposed by the executive. In the initiation of ordinary and organic laws the balance is not so strong but it still favors the executive branch. Hypothesis regarding presidential support in parliament as decisive for favoring more legislative initiatives are not consistent with real data. For example research shows that AD, when having total domination of both chambers, was very low in legislative production, similarly so when it had a plurality (during Herrera's govt. 1978-1983). Curiously enough, it was extraordinarily creative during Pérez II (1989-1993) with almost twice as many ordinary laws initiated as the executive²⁰⁵.

In the Argentine case the executive is also a great promoter. However, legislative production becomes more consistent with time as the data show.

Table 2.11 *Bills passed by initiative and presidential period (Argentina)*

Initiative	1983-1989	1989-1995
Executive	338 (52.4%)	386 (46%)
Congress	307 (47.6%)	449 (54%)
Total	645 (100%)	835 (100%)

Source: Mustapic, 2002

This table however, does not show modifications to executive bill initiatives done in Congress although that is also relevant information. For example, out of 190 bills submitted by the executive during Alfonsín's period, 125 (65%) were modified in Congress; during Ménem's administration this proportion fell²⁰⁶ (in direct proportion to increasing ruling party support) to 50%, having modified 87 out of 165 bills presented by the executive (Mustapic, 2002).

²⁰⁴ Yearly law making averages speak for themselves on what regards overall legislative production. In a period comprised between 1959 and 1995 the Venezuelan Congress has passed 1073 laws which leaves some 29 per year. "In comparison, the Brazilian Senate passes over 800 laws per year, the Argentine Chamber of deputies over 300 and the Colombian Congress over 70". (Coppedge, 1994, pp. 69-70)

²⁰⁵ This data is consistent with our thesis that during Pérez II, AD, the ruling party, separated itself from the ideas of the executive drastically changing the terms of what had been until then regular ruling party relations with the executive. This non-cooperation from the legislative went as far as enacting legislation it considered necessary, independently of what a priority there was in the executive's policy agenda.

²⁰⁶ The idea of modifications made by the legislature as well as the percentages of initiatives between the two powers reminds us of what Blondel (1973) mentions, namely, that between the congressional power of initiative and the preventive power with which Congress dissuades the government from proposing certain policies, there is the role of legislatures as reactions to executive proposed bills. This reactive role (which is at the same time active since it prepares for new initiatives) has a permanent range from total acceptance and compliance with the initiatives to complete rejection, facing afterwards (as in the case of Argentina) the possibility of a veto from the president.

According to Molinelli et al (1999) in Argentina presidents have been strong legislative agenda setters, usually pursuing their own policy project. After the return to democracy in 1983, the sanction of bills produced by executive initiative has oscillated between 36% (1990) and 61% (1994) with a total average of 47% for the whole period 1983-1997. We may also observe that congressional initiative has fluctuated between 38.5% and 64% with a total average of 53% in 1983-1997²⁰⁷. The viscosity (Blondel, 1973) index, meaning the degree of resistance found by executive initiatives on legislation is high in Argentina for the 1983-1997 period, reaching an average of 40%. This is not a constant figure and the data variations per year observed in Molinelli are consistent with the phase studies in congressional-executive relation during the Méнем years presented by Llanos (2002).

The legislative viscosity index in Argentina grew parallel to congressional self-confidence after the emergency years of 1989-1991. The president-ruling party relation variations studied by Corrales (2001) show how Méнем scored a success by making the PJ (a traditionally labor oriented and statist party) endorse the reforms he promoted and defend them in Congress at least until 1995. Murillo (2001) also quotes the incidence of congressional reaction to the executive and how much the fact that the PJ supported (or to a certain point endorsed) the whole reform transformation, guaranteed, if not total cooperation, at least a convenient operative silence from many of the main labor unions. This silence, also had an impact on congressional attitude (Murillo, *ibid*).

5. Party System and Electoral System in the Venezuelan and Argentine Congress during the 1990's

- Electoral System Argentina

Argentina is a Federal Republic consisting of 23 provinces and a semiautonomous *Capital Federal*. In 1990 *Tierra del Fuego* was admitted as a province by government proposal, which raised the number of provinces to twenty-four. The country has a bicameral structure in parliament. The Chamber of Deputies has 257 members who are elected from multimember districts (the twenty-three Provinces and the *Capital Federal*) for four year terms. Prior to 1991, there were 254 Deputies, considering that *Tierra de Fuego* added 3 to the total. In 1983, all deputies were elected on a established date. Deputies in Argentina for this period (1983-1989) were elected from closed party lists using the D'Hondt coefficient for proportional representation. In the event that a deputy resigned he ought to be replaced by the next

²⁰⁷ Molinelli et al (1999) also present the difference regarding those projects considered as “most important” laws or “less important”. That triggers a considerable difference of interests between the executive and the legislative. “As it could have been expected and in all countries occurs, in those laws considered of maximum importance the executive participation abruptly increases: from 1983-1997 the minimum figure is 44% (1996) to a maximum of 87.5% (1987). The difference in numbers between presidents on this regard is 72% for Alfonsín and 60.4% for Méнем” (p.99). Exactly the opposite happens with those laws of minor importance or of only local impact: every year congressional responsibility increases in presenting and approving them.

person in the party lists who had not occupied a political post²⁰⁸. According to constitutional dispositions, one half of the chamber (one time 127, the other 130) is renewed every two years, with every district renewing half of its legislators or the nearest number possible. The Constituents of 1853, by establishing 4 years for the deputies as power period, distance themselves from the Philadelphia Constitution which elected representatives for two years, having a complete renewal of the chamber at the end of this time (Gentile, 1997). The four year period however was already laid down in the Argentine constitutions of 1819 and 1826²⁰⁹.

The 24 provinces then receive a number of deputies in proportion to their respective population with the following restrictions:

- a) no district should receive fewer than five deputies
- b) no district should receive fewer deputies than it possessed during the 1973-76 democratic period²¹⁰

Argentina has an extensive territory in the Buenos Aires province, which itself includes the Capital Federal and accounts for 38, 7% of the national population. Despite these figures and because no district should receive fewer than 5 representatives, this province holds only 27,2% of the chamber seats. This misrepresentation translates also to the second and third most populated areas of the country. Córdoba and Santa Fé are moderately underrepresented having an 8,5% and 8,6% of the total population each and 7% and 7, 4% of the seats in the deputy chamber respectively.

The Senate is composed of 72 members with every province and the Capital Federal having 3 senators, according to the Art. 54 of the Constitution, with a current term of six years. Prior to the 1994 constitutional reform, all of the country's 22 provinces and its *Capital Federal* were represented by two senators²¹¹. These were elected indirectly for nine-year terms by the provincial legislatures²¹² using the

²⁰⁸ Intramandate turnover is relatively common in Argentina. Between 1985 and 1997 there was an average of 13% of the legislators being replaced by alternates every two legislative year period (Molinelli, Palanza, Sin, 1999)

²⁰⁹ For the 1819 Constitution Art. IV: "Los Diputados durarán en su representación cuatro años, pero se renovarán por mitad al fin de cada bienio. El reemplazo de estos se hará por los que, con la anticipación conveniente, elijan los pueblos, a quienes correspondan".

For the 1826 Constitution: "Los Diputados durarán en su representación por cuatro años, pero la sala se renovará por mitad cada bienio.

²¹⁰ Jones (1995) notes that these provisions conduce to a notable unbalance in representation. Almost uninhabited areas like provinces Catamarca, La Pampa, La Rioja, San Luis, Santa Cruz and Tierra del Fuego are highly overrepresented according to the relation between their percentage and the total population and legislative seats. These 6 provinces contain 3,9% of the Population but 11,7% of the Deputy Chamber and 25% of the Senate (Gibson/Calvo/Faletti, 1999). If the 257 seats allocation obeyed only to number of inhabitants per province, and each province received only one representative as a minimum, then Buenos Aires would have 99 deputies instead of 70 as it currently possesses (Jones, *ibid.*).

²¹¹ Because of the abrupt changes both in the number of senators per province and the duration of the terms, a transitory disposition was granted to those senators lasting until 1995. "En ocasión de renovarse dos tercios del Senado en 1995, por finalización de todos los mandatos de todos los senadores elegidos en 1986, será designado además un tercer senador por cada distrito por cada legislatura".

²¹² Every Argentine province has its own constitution with a directly elected governor and legislature. Provincial governments are very important political entities, controlling large budgets and exercising

plurality formula, except in the *Capital Federal* where they were selected via an electoral college²¹³. They could also be re-elected indefinitely but the chamber ought to be renewed by one third every three years²¹⁴. Two other points are pertinent as new elements in the 1994 constitution: In Argentina, one-half of the legislature is replaced in December of every odd year²¹⁵ that is 1989-91, 1991-93, 1993-95 and 1995-97 for the purpose of this research. Also no regional legislature can have its three senators belonging to the same political party.

Table 2.12 *Population and Representation in the Argentine Congress 1983-1995*

Province	Population (1991 Census)	Number of Deputies	Population per Chamber Deputies	Number of Senators*	Population per senator
Buenos Aires	12.538.007	70	179.114	2	6.269.004
Capital Federal	2.960.976	25	118.439	2	1.480.488
Catamarca	264.940	5	52.988	2	132.470
Córdoba	2.764.176	18	153.565	2	1.382.088
Corrientes	780.778	7	111.540	2	390.389
Chaco	799.302	7	14.186	2	399.651
Chubut	356.445	5	71.289	2	178.223
Entre Ríos	1.021.042	9	113.449	2	510.521
Formosa	363.035	5	72.607	2	181.518
Jujuy	513.213	6	85.536	2	256.607
La Pampa	260.041	5	52.008	2	130.021
La Rioja	220.910	5	44.182	2	110.455
Mendoza	1.400.142	10	140.014	2	700.071
Misiones	787.514	7	112.502	2	393.757
Neuquén	385.606	5	77.121	2	192.803
Río Negro	506.314	5	101.263	2	253.157
Salta	863.688	7	123.384	2	431.844
San Juan	526.263	6	87.711	2	263.132
San Luis	286.379	5	57.276	2	143.190
Santa Cruz	159.726	5	31.945	2	79.863
Santa Fé	2.782.809	19	146.464	2	1.391.405
Santiago del Estero	670.388	7	95.770	2	335.194
Tucumán	1.142.321	9	126.925	2	571.161
Tierra del Fuego	69.450	5	13.890	2	34.725

influence over many areas of public policy such as education, health and public safety. “Furthermore the principal focus of partisan competition in Argentina is at the provincial level. Making a strong base in the provinces is vital for the electoral success at the national level” (Jones, 1995, p.149)

²¹³ The 1854 constitution had the provision in the Art. 46, that the two senators from each district ought to be elected by the provincial legislatures with simple plurality. Ménem/Dromi (1994) justify senators’ best election as indirect, a system that was reconfigured in the 1994 constitution.

²¹⁴ Art. 48 literally says: “Los Senadores duran 9 años en el ejercicio de su mandato, y son reelegibles indefinidamente; pero el Senado se renovara por terceras partes cada tres años, decidiéndose por la suerte, luego que todos se reúnan, quienes deban salir en el primero y segundo trienio”.

²¹⁵ Art. 56 refers to this and literally says: “Los Senadores duran seis años en el ejercicio de su mandato y son reelegibles indefinidamente, pero el Senado se renovará a razón de una tercera parte de los distritos electorales cada dos años”.

*Since Dec. 1995, every province has 3 Senators.

- Venezuelan Legislative Electoral System

The Venezuelan legislative has two chambers and its members stay five years as representatives, a period just as long as the president's. They can however, be reelected indefinitely and the election process has usually been exactly (outside a difference in the 1998 election²¹⁶) the same day as the executive's.

Before the 1999 constitution which did away with the second chamber, the Senate was formed by two members representing each state plus two from the federal district (the capital); they were elected through proportional representation in closed and blocked lists in bi-nominal circuits (Molina, 2000). Deputies were elected according to the proportional representation. This was done by dividing the number of deputies between the number of the population. After 1993, deputies are elected by a system of proportional representation inspired in the German system (Nohlen, 1994) that combines proportional selection between closed and blocked lists for about half of the posts and the election by relative majority in uni-nominal circumscriptions for the rest of the posts (Molina, *ibid*).

The country had 20 states plus two national territories and a federal district. Venezuela until 1993 used a presidential electoral system with relative majority and simultaneous parliamentary elections. This type of electoral system, where the presidential election receives most of the electorate's attention is normally favorable to the concentration of votes around the candidates with main options and the organizations backing them (Molina, 2000). It tends to promote a low number of "effective parties" (Laakso/Taagepera, 1979) which gives the president either a very solid parliamentary force or a small block to negotiate with. In Venezuela the combination of majority presidential elections and the legislative appointment helped consolidate the presence of two strong parties amidst an almost insignificant periphery of small parties. After 1993, bi-partism went into crisis and degenerated in a multi-partism presence which became notorious in the legislative map²¹⁷.

²¹⁶ In 1998, the legislative elections were held on Nov. 8th together with the governors and state legislative assemblies' elections. The elections on December 6th would have been massive since they compiled president, national legislative, regional legislative and municipal. They were divided as follows: the municipal were done later, in 1999; the regional and national legislative on Nov. 8th and the presidential on Dec. 6th. It has been argued that the reasons for such grouping, aside from the operative side that may exist, has also political motives. The traditional parties, AD and Copei, once hegemony in the Venezuelan party system and then still important legislative majorities, had no presidential candidate to match the incoming presidential candidate from the MVR, but they did have a number of regional candidates with clear options in their regions. They pacted to make early regional elections in order to avoid the *portaaviones* effect (coat-tail effect) according to which the presidential vote tends to pull all other vote intentions.

²¹⁷ "The effective number of parties in the 1988 elections was 3.4 for the legislative and 2.3 for the presidential. In 1993 the indexes varied indicating the transition from a mild bi-partism structure to a limited unstable multipartism with 5.6 (for deputies) and 5.2 (presidential election). This tendency continued to grow in 1998 with 7.6 (deputies) and 3.8 (presidential)" (Molina, 2000, p.5). Most interesting to see here is that while the legislative vote keeps fractioning, the presidential is rather more predisposed to concentrate among few candidates with real option. This would indicate that the relative majority system continues to create a propensity to polarization between, in this case, the two candidates with more option. Crisp (2000) also notes that "with the exception of a brief downturn in

Until 1993, both chambers of Congress were elected by the same ballot since there were only two cards for each party: the big one representing the presidential candidate and the small, the legislative list. Parties were responsible for preparing these closed lists and voters were only allowed to choose between parties. As we said the number of deputies was chosen by proportional representation “but given the district magnitude and the D’Hondt formula for representation, any tendency to promote multipartism is overridden” (Crisp, 1997, p.169). Each state and federal territory elects two senators. The party that receives the biggest regional voting, gets at least one chair. If the amount of votes is double or more than that of its nearest competitor, it receives both seats, otherwise this place goes to the second most voted party in the state²¹⁸.

Parties prepared the closed lists of legislative candidates prior to the election. The slates were closed and blocked meaning that voters could not alter the order in which candidates appeared, nor could they add new candidates to the ticket. In 1993, a system “resembling the German model of compensatory member elections was adopted for the deputy chamber” (Crisp, 2000). So the voting for the deputy chamber functions as follows: one half of the deputies (with their substitutes) are elected through the traditional method of closed lists-proportional representation by state. The other half comes from first-past the vote or plurality elections in single member districts. In this way, only one side of the former problem was overcome: a party’s percentage of seats was still determined by the number of closed lists votes for the party. The only change the single votes system brought about a clearer determination of the names of those being sent to the chamber, a procedure that was previously exclusive to party elites.

Table 2.13 *Venezuela: Electoral Results for the Executive and Legislative Branches**

President	Votes for Presidential Candidate	for Seats in Chamber Deputies	the Seats in of Senate	the Partisan Control of Branches
Betancourt (AD) 1959-1964	AD 49% URD 31% Copei 15%	AD 55% URD 26% Copei 14%	AD 63% URD 22% Copei 12%	President Party has majority
Leoni (AD) 1964-1969	AD 33% Copei 20% URD 18% IPFN 16%	AD 37% Copei 21% URD 16% IPFN 12%	AD 47% Copei 17% URD 15% IPFN 11%	President Party has a Plurality

1978 the number of parties nominating both presidential and legislative candidates increased steadily over time, and more parties nominated legislators rather than presidential candidates” (p.43).

²¹⁸ “The D’Hondt system discourages both significant fragmentations, given that there are two seats per district (senators), and single dominance, since capturing a total dominance is more difficult than achieving a plurality in two distinct races. There is however an additional provision that does promote minor parties. If a party receives 2,38% of the national total vote it is given one of the additional seats in Senate which means that the size of the senate may vary from election to election” (Crisp, *ibid.*, p. 169). This is substantiated in art. 16 of the national electoral law (*Ley Orgánica del Sufragio*) which states that to name additional senators the total number of votes obtained must be divided by the national electoral coefficient. If the difference is 2 or more than 2, two posts can be created; if the difference is 1 then only one post can be created.

Caldera (Copei) 1969-1974	Copei 29%	AD 31%	AD 37%	Opposition Plurality	Party	has
	AD 27%	Copei 28%	Copei 31%			
	MEP 17%	MEP 12%	MEP 10%			
	URD 12%	CCN 10%	CCN 8 %			
Pérez I (AD) 1974-1979	CCN n.a.	URD 8%	URD 6%	President Majority	Party	has
	AD 49%	AD 51%	AD 60%			
	Copei 35%	Copei 32%	Copei 28%			
Herrera (Copei) 1979-1984	Copei 45%	AD 44%	AD 48%	Opposition Plurality	Party	has
	AD 43%	Copei 42%	Copei 48%			
Lusinchi (AD) 1984-1989	AD 55%	AD 56%	AD 64%	President Majority	Party	has
	Copei 33%	Copei 30%	Copei 32%			
Pérez II (AD) 1988-1993	AD 53%	AD 48%	AD 48%	President Plurality	Party	has
	Copei 40%	Copei 33%	Copei 43%			
Caldera II (Conv/MAS) 1994-1999	AD 23%	AD 27%	AD 32%	Opposition Plurality	Party	has
	COPEI 22%	COPEI 26%	COPEI 28%			
	Causa R 22%	Causa R 20%	Convergencia			
	Convergencia 17%	Convergencia 13%	20%			
	MAS 11%	MAS 11%	Causa R 18% MAS 2%			

* Source: Rey, 1994. Crisp, 2000.

Data shows that there are three periods in the Venezuelan legislative (also noted in Crisp, 2000) which can be considered of growing fragmentation, until 1973. After that a strong two party dominance appears until 1993, and subsequently another period of fragmentation. The presidential elections face different relations between candidates with real winning options. This may be because electoral laws surrounding the executive promote a two party system, while the proportional system used for the legislature promotes a multiparty system. This structural contradiction and its pull effect if we consider that elections (executive and legislative) are carried out on the same day, may help explain the tendency to fragmentation of the last years in the Venezuelan Congress.

- Argentine Party System

After a very convulsive series of military rules in the last two decades before the 80's, Argentina arrived to the third democratic wave with two prominent political Parties, the *Partido Peronista (Partido Justicialista, PJ)* and the *Partido Radical (Union Cívica Republicana, UCR)*, controlling most of the popular preference. The first president after 7 years of military rule, Raul Alfonsín, belonged to the UCR. He was then succeeded by peronist Carlos Ménem in 1989 after early elections due to the economic emergency the country was undergoing.

The Argentine Party System could be characterized as a two-party dominant structure during Alfonsín and Ménem's first presidential period. This feature ensured that during most of his period, the president had either enough support from his party or enough negotiable support with the opposition (Jones, 1997). Argentine parties also

had a strong level of party discipline²¹⁹, as has been demonstrated by studying roll call votes (Jones, 1997; 2002). In the chamber of deputies²²⁰ the UCR's presence has ranged from 51, 2% (highest point) during the years of 1985-87, and 26,5% the lowest point. Contrary to that, peronist representation in the legislative has remained more constant with ranges between 51,2% at the highest point (between 1995-97) to a low of 38,9% between 1999-2001. The weakest point for the UCR during its strongest years (1983-1987) was the Senate where they didn't manage to obtain an absolute majority.

Table 2.14 *Deputies and their Party elected in 1983²²¹. Seats to be occupied: 254*

Political Party	Deputies	Percentage
Unión Cívica Radical Justicialista	128	47,97
Intransigente	112	38,47
Móv. Popular Neuquino	003	2,78
Unión Centro Democrat.	002	
Bloquista	002	
Liberal	002	
Demócrata Cristiano	001	0,94
Autonomista	001	
Movimiento Federalista Pampeano	001	
Movimiento Popular Jujeno	001	
TOTAL DEPUTIES	254	100

Table 2.15 *Deputies and their Party elected in 1985. Seats to be occupied: 127*

Political Party	Deputies	Percentage
Unión Cívica Radical	63	43,20
Frente Justicialista de Liberación	21	16,38
Justicialista	15	7,83
Frente Renovador	11	10,11

²¹⁹ This is particularly true in the deputy chamber. The high level of discipline, according to Jones (2002) stems primarily from a combination of the institutional rules governing elections and intra-legislative organization in Argentina. "These rules combined with a majority of legislators possessing progressive ambition, helps in part to explain the rarity of legislators voting against their party's position on the chamber floor" (p.184).

²²⁰ For the purpose of our study we focus most on parties such as the UCR and PJ which have had a significant role in the policy implementation from the parliament, most particularly over decisions regarding structural adjustments and privatizations. However, between 1989 and 2001, several provincial parties held seats in the chamber of deputies, such as *Acción Chaqueña*, *Partido Autonomista*, *Partido Liberal* and *Partido Nuevo*, both from Corrientes; *Movimiento Popular Jujeno*; *Partido Demócrata de Mendoza*; *Movimiento Popular Neuquino*; *Partido Popular Rionegrino*; *Partido renovador de Salta*; *Cruzada Renovadora*, *Desarrollo y Justicia*, *Partido Bloquista de San Juan*; *Partido Demócrata Progresista de Santa Fé*; *Fuerza Republicana de Tucumán* and *Movimiento Popular Fueguino*. Some of these parties, namely the *Partido Autonomista*, PA, the *Partido Demócrata Progresista de Santa Fe*, PDP, and the *Fuerza Republicana de Tucumán* (FR) held the status of national parties for sometime during the 90's. Their electoral support was mostly provincial. It is also important, surveying the first years of the Ménem administration, to outline the role played by the *Unión del Centro Democrático* (UCeDe), a center-right party that generally supported Ménem's neoliberal measures in the deputy chamber.

²²¹ There are several sources for these results. I have used the information provided by De Riz/Smulovitz (1990)

Intransigente	05	6,07
UCR-Mov. Popular Catamarqueño	02	0,38
Alianza de Centro	02	2,88
Demócrata Progresista	01	1,24
Frente Justicialista de Chubut	01	0,28
Movimiento Popular Jujeno	01	
Demócrata	01	
Renovador Salteño	01	4,59
Autonomista	01	
Movimiento Popular Neuquino	01	
Liberal	01	
TOTAL DEPUTIES	127	100

Table 2.16 *Deputies and their Party elected in 1987. Seats to be occupied:*
127

Political Party	Deputies	Percentage
Justicialista*	61	41,46
Unión Cívica Radical*	52	37,24
Unión de Centro Democrático*	05	5,80
Alianza Unidad Socialista	01	1,52
Demócrata Progresista	01	1,37
Autonomista	01	
Liberal	01	
Movimiento Popular Neuquino	01	
Provincial Rionegrino	01	
Renovador Salteño	01	
Bloquista	01	
Defensa Provincial		
Bandera Blanca	01	
TOTAL DEPUTIES	127	100

*With alliances in some districts

Table 2.17 *Deputies and their Party elected in 1989. Seats to be occupied:*
127

Political Party	Deputies	Percentage
Frente Justicialista de Unidad Popular		
Unión Cívica Radical	67	44,68
Alianza de Centro	41	28,92
Confederación Federalista	09	9,54
Independiente		
Alianza Izquierda Unida	03	3,76
Blanco de los Jubilados	01	3,48
Otros*	01	1,81
	05	3,96
TOTAL DEPUTIES	127	100

*District Parties

Some authors (Jones, 1997; Mainwaring/Shugart, 1997) conclude that the combination of the electoral college method of presidential election, a mixed executive-legislative timing cycle, senators elected by “plurality rule” by the provincial legislatures²²², and deputies elected from districts with a relatively low effective magnitude have contributed to the maintenance of a two party dominant

²²² Some Governors are also elected by the plurality formula.

system in Argentina between 1983-1995. The two party dominant system has been decisive for providing important legislative support to the president²²³. For Alfonsín and Ménem during their executive rule the legislature had at least a chamber in which their party held an absolute majority of seats during their government²²⁴. In the case of the *Union Cívica Radical* and Alfonsín, this plurality was an absolute majority in the deputy chamber during 1983-87. Ménem, who held an almost absolute majority (especially in the second half of his first period), had several problems within his own party and coalition support²²⁵. This became obvious through the reaction of party members who, particularly at the beginning, responded adversely to the stabilization and adjustment plans.

This was not specially a sensitive issue in the beginning, due to the strong empowerment of the executive through the laws 23,696 and 23,697 to enact urgent economic measures, but it made a difference later on when Congress started recovering its negotiating capacity (phases 2 and 3 from Llanos, 2002). When Ménem had difficulties with the deputy chamber because of this regained capacity of the legislative, he looked more continuously for the support of the UceDe (Union del Centro Democrático) or other centre right minority parties which favoured neo-liberal measures favourable to compensate the vote difference. This tendency to parliament disloyalty also fostered the issuing of decrees from the executive once it could not patronize a whole coalition.

²²³ It may be argued that the party system in Argentina is in decline as the fracture of party alternance is observed by the consecutive ruling of Ménem. However, the conditions numbered by Sartori illustrate the situation in Argentina for the 90's. "The lenient conditions that function according to the rules of two partism are: a) two parties are in a position to compete for the absolute majority of the seats; b) one of the two parties actually succeeds in winning a sufficient parliamentary majority; c) This party is willing to govern alone and d) alternation for the rotation in power remains a credible expectation". (p.188)

²²⁴ It must be said that in 1989, due to the anticipation of the electoral process for the presidency, Ménem and the *Partido Justicialista* lacked this mentioned plurality in the chambers. This was softened first by the deliberate cooperation (Llanos, 2002; Murillo, 2001) of the UCR to help in order to bring down the economic crisis that was affecting the nation.

²²⁵ The coalition problem was originated by the resistance of several deputies from districts where they had been elected as member of the PJ in alliance with other parties. The alliance was created with parties that reacted disapprovingly to the Washington Consensus (*Partido Demócrata Cristiano*, *Partido Intransigente*) and these Congressmen were not reliable votes for the executive (Corrales, 2002).

Table 2.18 *Percentage of the Seats in the deputy Chamber per Party 1983**

Political Party	1983-85	1985-87	1987-89	1989-91	1991-93	1993-95	1995-97
Partido Justicialista	43,7	40,6	42,9	50,0	50,2	50,2	52,1
Unión Cívica Radical	50,8	51,2	46,1	37,0	33,1	32,7	26,9
UceDe	0,8	1,2	2,8	4,7	4,3	2,0	1,6
Center-right	3,2	4,3	5,9	7,1	9,3	9,3	8,2
Provincial Parties							
Center-left Provincial Parties	1,6	2,8	2,4	1,2	2,0	3,1	9,7
MODIN					1,2	2,7	1,6
Total	100 (254 seats)	100 (254 seats)	100 (254 seats)	100 (254 seats)	100 (257 seats)	100 (257 seats)	100 (257 seats)
PJ and UCR	94,5	91,7	89,0	87,0	83,3	82,9	79,0
Largest Third Party	PI	PI	UCeDe	UCeDe	UCeDe	MODIN	FREPASO

Source: Jones, 1997

Table 2.19 *Percentage of Seats held per Party in the Senate (1983-1998)*

Political party	1983-86	1986-89	1989-92*	1992-95	1995-98
Partido Justicialista	45,6	45,6	54,4/54,2		
Unión Cívica Radical	39,1	39,1	30,4/29,2		
Center-right Provincial Parties	15,2	15,2	15,2/16,7		
Center-left Provincial Parties					
Total	100 46 seats	100 46 seats	100 46/48 seats	100 48 seats	100 72 seats
Largest Third Party	4,4 parties)	(3 4,4 parties)	(3 4,4/4,2 parties)	(3 4,2 parties)	(2 2,8 parties)

Source: Jones, 1997

*The fact that this period has two numbers is because Tierra del Fuego acquired state status in 1990 when it received 2 senators which created a small but different power balance in the chamber

- Venezuelan Party System

After its return to democratic rule in 1959, Venezuela has had three most distinguishable periods in its political party system configuration. It could be called a multi-party system until 1973, from then on there was a two party system hegemony with several satellite organizations, then again it became a multi party system after the 1993 elections. Some authors differ in using 1993 as temporary landmark and prefer 1989, when direct elections of governors and mayors were finally introduced (Kornblith, 1990).

The multiparty system after the 1993 elections marked a notorious decline of the party system. This has been due to several factors, namely, 1) traditional parties had lost representation capacity and were penetrated by interest groups 2) the electoral system and 3) the extreme rigidity and non negotiable discipline of members of Congress (Crisp, 1997). Because the party system was institutionalized in democracy through a pact of political and civil forces, it has been called a “conciliatory elite pact”²²⁶ (Rey²²⁷, 1980; Penfold, 2000). This notion roots from the understanding that

²²⁶ Three most important features assigned to the pact-based democracy that established a two party system for 20 years are: a) The use of non-majority decision rules and the inclusion only of those political actors that would accept this arrangement, gaining in turn political and economic advantages. Karl (1997) explains this in terms of access to the oil rent sources administrated by the state. The *Punto*

with oil rent as the basic income of the Venezuelan state, and the oil company as a national enterprise (before 1976, the oil company was not a state owned enterprise properly speaking, but certainly under government restrictions since all concessions had to have executive and legislative overview) the signatory members of the pact of Punto Fijo would be able to use fiscal resources single-handedly and as an instrument to punish or reward excluded actors. The result is a by-force consolidated system of exclusionary nature (though views on this harsh exposition may vary). Kornblith/Levine (1995) consider that political parties and the party system have contributed mightily to the creation and survival of democracy in Venezuela. Coppedge (1994) describes the prejudices of the partyarchy system (*partidocracia*), and the way vertical decision making has eroded the popular bases of AD. He also mentions Venezuela's unique advantages as uncommon leadership, unusually strong political parties and extraordinary oil wealth. Most of these views were anchored in the need of a strong party system to sustain democracy and, as Sartori (1976) puts it, in the idea of a two party system as the best of all scenarios.

Crisp (1997) sustains that the force of the Venezuelan party system came as a result of the penetration (via control of the income from oil resources) of other sectors, namely the unions and the private sector²²⁸. This patronage done by the parties, based on their exclusive access to oil rents slowly degenerated when reinforcement of decentralization and reforms in the electoral system appeared. This seems consistent with Mainwaring/Shugart's ideas (1997) if we observe that the more the multiparty system increased the more unstable the whole system became.

<u>Venezuelan Elections</u>	<u>Number of "Effective" Political Parties</u> <i>Laakso/Taagepera (1979) Index</i>
1973	2,7
1978	2,5
1983	2,4
1988	2,4

Fijo Pact excluded what afterwards became marginal actors, from the subsidies of oil rents. These oil revenues became fabulous after the beginning of the 1970's and helped consolidate the structure of both AD and Copei as unique power possibilities, giving the illusion of a stable two party system for over twenty years; b) the inner idea that conflicts could be solved (in the last instance) with rewards from the oil rent distribution (Penfold, 2000) and most important c) the deliberate exclusion of actors signed as non convenient for the political system leaving them to starve outside the oil rent administrated by the government in turn.

²²⁷ Rey (1991) also remarks that the Venezuelan party system has a particular attribute that does not fit in the classical typologies (Duverger, 1959, Sartori, 1996) usually based on either the Weberian view that parties were groups purely organized to seek power, or the Marxist approach that they were groups designed to follow a strict ideological agenda; or even as a mixed position between these two tendencies. The point that Rey makes and that we assume as valid is that in Latin America, in many a case, parties were founded to guarantee the presence and existence of democratic rule. Traditional classifications come mostly from countries where long standing regimes make democratic stability a non-issue, whereas in Venezuela the need to protect the system has been, particularly in the 60's and 70's, part and parcel of the political behavior.

²²⁸ Karl (1997) is far more incisive since she also names the universities, think-tanks and many enterprise groups as dependants of the oil rent distribution.

1993	5,2
1998	7,4

Today legislative multipartism is calculated using the measure based on the percentage of legislative seats won by the various parties in the lower house²²⁹ (deputies) through the Laakso/Taagepera index for the “Effective number of Parties” in a party system (see Laakso/Taagepera, 1979, pp. 3-27). Jones (1995) considers that because an increase in the level of multipartism is inversely proportional to the size of the executive’s contingent in Congress, the ideal combination for presidential systems in Latin America is to have proportional representation²³⁰.

From these figures we see that Venezuela went from an almost strict two-party system with *Acción Democrática*, AD, and Copei, between the years 1974-1988, to a highly fragmented system. This made notorious differences in the parliament where coalitions became broader but also more fragile and unstable²³¹. The electoral reform of 1989 and its practical effects on decentralization imposed new challenges for the traditionally dominant parties. It directly implied a number of multiple, competitive scenarios against local parties (for Governor and Mayor Elections) that were strong in some regions. Another complication was the possibility (and thus the mention to the electoral reform) of re-election for both mayors and provincial governors.

The new decentralization parameters introduced abrupt variations in the electoral scenario. Before them there was little, if at all, electoral competition, speaking on provincial structural terms. The idea that the winner takes it all (Linz, 1984) could nowhere be more true than in Venezuela before 1989, since the party that managed to get enough votes to sit in the presidency, was allowed to craft the entire executive configuration as a nationwide basis for the next period. Regional Governors were named from the presidential palace (Miraflores), and these posts were almost always given as rewards to regional party leaders, thus reinforcing bonds (and patronization) with the party (see Coppedge, 1994; Crisp, 1997; Karl, 1997; Crisp, 2000). Re-election, until then a forbidden mechanism both regional and nationwide,

²²⁹ In general terms it is assumed that most of the lower chambers (*Cámara de Diputados*) are usually the product of a proportional representation in contrast to the senate which aside from being a second chamber also acts as a federal counter-weight having the same number of delegates per province/state.

²³⁰ The electoral formula employed to allocate legislative seats has been linked to the number of parties in the assembly. The plurality formula tends to result in a two party composition while majority runoff and proportional representation formulas are considered to lead to multiple legislative parties (Nohlen, 1994). Two points are important here: first, that between plurality and Proportional Representation (PR) system, there is a large difference regarding their impact on the level of multipartism (Lijphart, 1990). The plurality formula is thought to produce a two party system (assuming the use of single member districts) whereas the PR favors a diverse multiparty system (Duverger, 1986)

²³¹ The adjective fragile here is based on the structural prejudices given by Mainwaring/Shugart 1997. The fact that a system may vary from a closed two party to a multiparty system is not *per se* a dangerous condition. In fact, some analysts like Molina (1998; 2000) have more than often stressed how the electoral system in Venezuela (proportional representation for deputies) tried to cope with the variances and new electoral preferences shown by the people. The argument of a multi-party administration becomes thorny when, as in Venezuela, it is combined with a presidential system. That may increase the executive’s difficulties to find legislative cooperation in the worst scenario; in the best, it may make it extremely complicated to promote negotiations since the amount of pork and benefits given to grant coalition would have to increase for every step.

became an issue at least for meso and micro administrations (governors and mayors). It certainly complicated the clientelistic map of the traditional parties even within themselves, since new variables appeared: the civil society rapport would start to make a difference in candidate selection and approval, and small parties, with locally known candidates, could start to challenge the macro-party institutions²³².

In any case and as the Laakso/Taagepera index of parties shows, by 1989 Venezuela had started to gain momentum in the creation of a multiparty system. In spite of that, Pérez still had a parliament with favorable majority for the ruling party, *Acción Democrática*, during his second government. Privatization control moves and all other reactions occurred mainly in the first years of 1990, when AD was still a controlling party in the Legislative, though in a milder form as during the Lusinchi years where the party had an absolute majority in both legislative chambers. The biggest structural changes in parliament occurred after 1993 (see chapter V).

5.1 Legislative Multipartism and Bi-Partism in Congress

The political consequences of the number of political parties in a party system (or for our purposes, in the legislative) have extensive background in the works of Mayer (1980) and Powell (1982) who argue on the accountability and stability advantages of two-party systems. Later Haggard/Kaufman (1994) and Geddes (1994) reach similar conclusions, contending that high levels of multipartism have negative consequences for the construction of consensus regarding economic policies, and that a two-party scenario would help the advancing of the reforms. This two last works are probably the most representative of those studying the confluence of the variables structural reforms (1980's and 1990's) and party system. Before and after these studies, Lijphart (1994, 1984) had first contradicted the conclusions reached by Mayer, observing that cabinet stability was not a clear indicator of regime stability²³³, and that these two variables could be interrelated or not. The point is that their possible interrelation did not explain, or was a sufficient cause to deduce, that the occurrence of one could lead us to infer the appearance of the other.

The basic assumption to fear a high degree of congressional multi-partism or an opposing party in a two-party system is the structural fear of gridlock and with it,

²³² The simple fact of establishing independent local elections at municipal and state level, created a massive demand of flexibility from the parties and havoc in many of them. These structures with very defined hierarchies (the sadly famous *cogollos*) proved too rigid to be able to cope with elections at a national, regional and municipal level. It meant the development of functional delegation from institutions that until then ruled everything with their closed lists and decisions from above. Electoral tactics ceased to be a matter of every five years to become a daily problem with 22 states and more than 300 municipal instances to control. This situation of regional powers in emergence is especially true in the case of the originally Bolívar-state based *Causa R* (see López-Maya, 1993). *Causa R* was a party that gained configuration through its acceptance and alliance with the strong steel unions in Bolívar state. It was then able to defeat the former biggest party, AD, and win the governor elections with their candidate, Andrés Velázquez.

²³³ "Lijphart has also detected what he considers to be an over-weighted focus by bi-partite party proponents on multi-party systems which failed (French Fourth Republic, Weimar Republic, etc) and the lack of consideration of the successful multi-party systems (Netherlands and Sweden)". Jones (1975, p.75)

the impossibility of the executive to put its policy reforms through. Another explicit variable implied as a potential cause for institutional gridlock, is the level of party discipline: if a president encounters a situation of divided government wherein a party or stable coalition opposed to the president holds a majority of seats in both houses of Congress, strong party discipline makes it complicated for the president to produce deals cutting across party lines. If the line of the leading party in Congress is to maintain an obstructive position towards the executive, it is most likely that its Congressmen will go along party lines. Moreover in Venezuela, if the party leadership (the *cogollo*) is against the president, something that was blatant during Pérez II, they make it difficult for the president to count on congressional support even if the party had chamber majority²³⁴.

The two party system in Venezuela, while it lasted, was more the product of a forced pact of elites than a natural transfer of social reality. When it faded, it became patent that high levels of multipartism could reduce the size of the president's legislative contingent and thus increase the likelihood that the president would not have a decisive majority or near-majority in the legislature. From this we may conclude that where the president lacks a strong or at least considerable amount of legislative support, effective governance will be more difficult and the possibilities for coalition may have to lie on pure agreements and negotiations.

5.2 Institutional Determinants of Party Discipline

Until now we have accepted party discipline as part of the meta constitutional powers Latin American presidents may have, considering that the party's congressional power delegation will favor the president in bloc. It can also act otherwise and foster gridlock if congressional majority is against executive policies or if the ruling party is hostile to its own president. In this last case, discipline is most likely to work alongside party leaders isolating the president.

Regarding the institutional variables that affect the solidity of party discipline, Cox/Mc Cubbins (1993) and Figueredo/Limongi (1995), state that congressional rules affect party discipline and its consolidation. This is later asserted by Jones (1997; 2002) and Molinelli (1991) on the basis of several studies on Argentina's parliament. Party Discipline is most important if congressional commissions control a substantial amount of resources, or power over resources.

In Venezuela, the congressional control over the executive has several mechanisms and commissions, such as the finance commission which, while integrated by a pool of parties, can be controlled by opposition parties (as in the Caldera II administration) when the president has a weak party presence in Congress.

²³⁴ This phenomenal split is Corrales (2002) ground thesis to explain the failure of the neo-liberal reforms in Venezuela as opposed to the Argentine case. Though issued in the same year, both from newly elected governments, Ménem was able to cut through party resistance (after having a purely delegative phase) and gain party support, whereas Pérez II could not convince party leaders of the need and effectiveness of the measures and thus gained a new enemy in parliament. Because AD party discipline was traditional tight, the president could almost always count on a vote against his cabinet policies if the party directive had already labeled them as inconvenient.

In this case, voting is likely to follow strict party adherence and discipline. This commission is in charge of approving the extraordinary credits the executive may be forced to ask outside the budget program when calculated resources prove to be short. Therefore for every extraordinary move the president must consider whether there are both the need and the political resources to satisfy such a credit which will probably be denied otherwise.

Other institutional sources of party discipline in Latin America stem from the relationship between the party leaders and the political career of the legislators. This is valid both at provincial level and at national level. It is frequently the case that parties control the access of many candidates to the ballot and the order in which they will be placed. In many cases and until very recently, in Argentina and Venezuela legislative candidates were voted on closed lists proposed by party directives. Mainwaring/Shugart (1997) list three key elements of the electoral laws that influence the level of party discipline in a country: 1) pooling of votes among a party's candidates; 2) control over who runs on the party label; 3) Control over the order in which members are elected from the party list.

If party leaders control candidate selection, deviation from the party policy lines is certainly going to be punished with support withdrawal in next elections²³⁵. Thus politicians hoping for a long career in Congress will also tend to be more compliant with party directives. If party leaders also control the order in which their members are elected, they selectively operate on reward or punishment by ranking politicians up or down in their lists or placing them in constituencies where they are most likely/least likely to be elected. In all, it is a strong differential element from the U.S. democracy where party leaders do not control who runs for legislative posts.

Mustapic (2000) argues that party discipline in Argentina is not the automatic result of pure institutional variables such as the degree of party control over nominations. Nominations in Argentina, she maintains, are not monopolized by central party committees so party cooperation must be produced through the share of incentives on the side of the executive.

²³⁵ The obvious contradiction to this is the presence of bans on immediate congressional reelection as in Costa Rica or Mexico.

Table 2.21 *Electoral and Party Laws in Latin America. Provisions for party control in the candidate selection process*

Provisions for Control Over Candidates	Closed List	Mixed: closed list/ single member district	Closed List with Primary	Factional list	Open List	Open List with "birthright candidate"	List	Personal List (effective single non-transferable vote)
Control candidate selection?	Yes	Yes	No	Yes	Yes	No		No
Control order of election?	Yes	Yes	Yes	No	No	No		No
Pool votes among party's candidates or lists with districts?	Yes	Yes	Yes	Yes	Yes	Yes		No
Examples in L.A.	Argentina Bolivia (to 1993) Ecuador Paraguay Venezuela (to 1993)	Bolivia (1997) Mexico Venezuela (1993)	Costa Rica	Uruguay	Chile, Peru	Brazil		Colombia

Source: Mainwaring/Shugart, 1997.

The institutional control exerted by party directives over candidates makes it more important for politicians to promote themselves inside the party than in their constituencies since these would in the end probably have no voice in their survival. As Karl (1997) accurately points, this type of party discipline was a fate mark of the Venezuelan pacted democracy: big political parties distributed the oil wealth and controlled the state, allowing little institutionalized opinion aside from their own. In sum, Venezuelan democratic institutions were built to channel participation only by certain parties and groups and those actors were not interested in relinquishing the benefits that they received from a large, interventionist state who was also and at the same time, the owner of the most important wealth in terms of GDP (Crisp, 2000). This was the exclusionary outcome of a pact between forces which enabled no other incursion in politics or policies but those necessary for big parties to survive when the system was showing gradual crisis and decay symptoms²³⁶. The closed list and proportional representation electoral system combined, meant that voters could only choose between two preordained options, A or B, and not individuals or members of their local community. The result of this structural role in terms of contemporary democracy was that legislative members were accountable to their party leaders more

²³⁶ After the devaluation crisis in 1983, the idea came up that some reforms ought to be implemented. Therefore the presidential resolution to create the commission for the state's reform (Copre), which was promptly shelved and very little heard.

than they were to their districts/states or constituencies. Party discipline was a natural feedback in retribution to the granted legislative post²³⁷ and a guarantee to a longer legislative career.

5.3 The Party Powers of the President and their effect in the Legislative

We have already shown party discipline as one of the meta-constitutional powers presidents possess to guarantee better results in the executive-legislative relations and in the output of their own pursued policies. In her work, Mustapic (2002) presents two conclusions that represent a new image of the relation between the president and the legislative and the consequences of his or her policy selection on the ruling party. According to Mustapic's study, the evidence is not consistent with the image of a legislator whose behavior is subordinated by party discipline to presidential initiatives because when the president unilaterally decides to use his strong institutional powers he will most likely face challenges in Congress or reforms to his bill proposals. This becomes more visible during Ménem's second period where the president could not easily control his faction in parliament (Llanos, 2002), but also that the opposition did not manage to present a united front against unilateral decisions.

The case of Argentina where the president has enormous legislative powers does not imply they can be used only at will. "One of the reasons Ménem was able to use his Necessity and Urgency Decrees (NUD), powers so frequently was that the opposition did not have a majority control of either house in Congress. If they had had the power to veto initiatives in either house, as had the PJ in the Senate during Alfonsín's government, Ménem's use of this tool would surely have been much more moderate" (Mustapic, 2002, p.45). Because of certain differences within the ruling party, objections and a more severe form of control started to occur after 1995.

Structurally seen we could acknowledge that with a low parliamentary support, Ménem would have generated great hostility within the chambers by trying to impose his will, which would have affected the regular support he needed for other routine bills. In Venezuela, without deliberate congressional support it is even more unthinkable that a president can produce unilateral legislation. Rather he has to subdue to party pressure or to coalition demands as it was the case with Caldera I (1969-73) and Caldera II (1994-1998).

Colonization of the party hierarchy (Palermo/Novaro, 1996; Acuña, 1994) is another initiative the president can seek when he has the constitutional empowerment to negotiate and pork barrel party members in Congress. Before the electoral reform of 1988 in Venezuela, presidents could choose all governors and local authorities nationwide, a decision that normally favored ruling party leaders from each region being likewise selected for each post. In Argentina, it is also frequently argued that

²³⁷ This may be also one of the fundamental reasons why legislative production has been so low in Venezuela throughout its democratic life. Because legislators did not take a personal approach to policy stand nor did they propose legislations to benefit their constituencies, Congress as a whole never developed an internal structure and institutional trust as problem solver or trouble shooter.

Méнем's success in obtaining party support was his colonization of the party chain of command, something he did by imposing his own executive work from the beginning and the executive economic views as a must for certain public posts²³⁸.

The constitutional design in Venezuela after the 1988 electoral reform and the already existent structural inhibition of presidential re-election after a pre-determined five year period, created the impression to some researchers (Coppedge, 1994) that presidents gradually lost authority over party actors. This is contravened by the fact that two presidents have been re-elected since the return to democracy in 1959, thus remaining important figures in their party²³⁹. Also, the fact that Venezuela has an oil rent model of economy has made the president a pivotal individual in the distribution of resources and party patronage when in office. Part of this analysis developed by Karl (1997) shows that in Venezuela, the design of patronage networks could clearly be observed in the drastic increase of current expenditures against capital expenditures. "Much of this increase is attributable to expenditures for personnel: the time-honored means of sustaining clientelist loyalties" (ibid. p.104). Thus the institutionalization of privileges (at the top of which stayed a strong presidential figure) produced a mixture between the idea of the government and the state. "In Venezuela these clientelistic rules first established and then reproduced the entitlements of parties, organized labor, and the capitalist class, entrenching these interests in a new status quo" (Karl, ibid. pp.104-105).

This concentration on the patronage possibilities by the executive is not unique. Cheibub-Figueroa/Limongi (2000) observe that the image of a fragile and weak executive blackmailed by opportunist legislators (i.e. also party leaders) who obtain new appointments and positions for each vote is rather inconsistent. The executive, with the resources it controls, is in a more advantageous position. Most cabinets are formed by formal agreements between party leaders and the president "who then become the main brokers in the bargaining between the president and the legislators" (ibid. p.165).

In the case of Argentina and following the latest studies on executive-legislative behavior (Llanos, 2002; Corrales, 2001; Mustapic, 2002) we observe that legislative support has to be won more by direct negotiation and involvement than due to (as was the case in Mexico pre-1997) pure presidential party power. In Argentina during and right after the marked delegative phase between 1989 and 1991, the ruling party played an important role by participating in the passage of all important

²³⁸ The State Reform Law introduced the figure of the *Interventores* in 1989, which were executive named public officers to decide on the restructuring or privatization of the State Owned Companies (SOEs); these people were accountable only to the executive, weakening the possible control Congress (also the ruling party) could have over privatization. Being a member of the ruling party was not a condition to be *interventor*, and the party stayed far from the decisional instances of the executive in this and other regards.

²³⁹ This happened with Caldera, although he left Copei to found another party that would back him for the 1993 elections. He was a funding member of the Copei party and his powers within the organization were so strong that they had given him several presidential chances, both before and after his first presidential period. Pérez remained a polarizing figure after his first administration but faded after his removal and resignation in 1993.

privatization laws. Corrales (ibid.) observes that more than settling for his extraordinary powers or his position in the party, Ménem's first attitude was one of trying to involve his own party in the application of the reforms²⁴⁰.

It should also be taken into account, when analyzing presidential powers within his own party that in Argentina, contrary to the case of Venezuela, all major political parties are structured as decentralized organizations (Mustapic, ibid.). The party leader is backed by a coalition of regional leaders who then and in turn regulate the power balance in the organization. This decentralized party structure, together with elements of institutional decentralization present in the Argentine government such as operative federalism, prevent any automatic acceptance of the party's directive or in any terms, of presidential decisions²⁴¹.

5.4 Executive Ruling-Party Relations. Observations during the 1990's in Argentina and Venezuela

The arrangement of president and ruling party relations has varied considerably throughout Latin American history during the XXth century. The political spectrum is as wide as to show legislatures being appendixes to *caudillos* as diagnosed by several political scientists (Casar, 1997), on one side and representing a varied social map in reflection to the pulse of the civil society on the other (Molina, 1999). Because our case studies are focused at the end of the 1980's and beginning of the 1990's (the toughest structural adjustment period and privatization years for both countries studied) it is there that we start our analysis of the interaction between the two institutions, executive and legislative, acknowledging though that the present situation is indebted with the recent past as much as with several actors' decisions (Karl, 1997).

In 1989, the newly elected administrations of Carlos Andrés Pérez, and Carlos Saul Ménem in Venezuela and Argentina introduced similar market reform programs, later known by Williamson's name as the Washington Consensus²⁴², despite sharing a

²⁴⁰ Data comprised by Molinelli/Sen/Palanza shows that the PJ maintained a highly pragmatic view of itself and the cooperation it lent the executive. It agreed to be seen as part of the political success the government obtained when abating inflation but at the same time started asking for a bigger role in legislation drafting. "It should be stressed that although approving all the executive bills in this period (1991-1994), the legislative took its time to make all kinds of possible reforms to them" (Llanos, 2000, p. 85).

²⁴¹ Mustapic widens her perception on the matter (that legislators work on a decentralized party basis) on the following terms: "First of all, few legislators are re-elected, the reelection rate for lower house members oscillates between 15-29% and thus legislators should be relatively unconcerned with the president's ability to thwart their electoral goals. Second, the frequent internal party realignment, especially around electoral periods, implies that legislator's political careers are not particularly tied to any political leader. Third, regional concerns sometimes clash with national policy, and thus legislators must weigh presidential loyalty versus regional influence when voting. Fourth, when presidents for whatever reason deviate from the main course of their policies, they at least face vocal opposition by party loyalists. Thus, ideological divides are a final reason why we should expect legislators to oppose a president's policy initiatives". (Mustapic, 2002, pp. 28-29).

²⁴² Williamson (1992) has later disagreed with the tendency to group all the multilateral economic plans under his term but despite that, the idea of a "Consensus" from the Washington offices of the International Monetary Fund and the World Bank (also the Inter American Development Bank) has

dissimilar recent democratic history. Both presidents came from strong and dominant²⁴³, statist-populist²⁴⁴, labor linked²⁴⁵ political parties, namely, the *Partido Justicialista* in Argentina and *Acción Democrática* in Venezuela. The different political outcome of these two administrations in times of economic reform provides us with several variables to explain the success or defeat of the executive's initiatives²⁴⁶ in Congress. Considering the majority both presidents had in the chambers through their parties, the relations between the executive power and the ruling party were determinant for the outcome of the reforms. Soon after the beginning of the economic transformation implied in the consensus, Venezuela fell into a strong political crisis while Argentina could speed up most of the programs and even write a new constitution to allow the president another presidential period. Privatization, one of the economic package's central points as part of the structural reform was especially quick and effective in Argentina (Acuña, 1994; Navarro, 1994) while in Venezuela it had to face strong opposition, delay and in the end, very little effectiveness despite a promising start²⁴⁷.

One of the most eloquent explanations to this divergent outcome is that although not a common feature in the Latin American democracies, ruling parties can turn against their own administration. This can happen either due to reasons of political survival or incomprehension of the reforms (as might have been the case in Venezuela) and the need for immediate state reform. The requirement of a close cooperation between the ruling party and the executive in reform times, could lead us

gained wide acceptance and even critics refer to it as a whole (see Naím, 2000, "Washington Consensus or Washington Confusion", *Foreign Policy*)

²⁴³ We follow here Sartori's (1976) conceptualization that a dominant party is one that generally outdistances all others. This may be less visible in Argentina due to the numerous military regimes in the last decades, however, the peronist party has been a definitive force in Argentina. *Acción Democrática*, at the time, had been elected for a second consecutive period, something without precedents in Venezuelan contemporary political history.

²⁴⁴ As several authors demonstrate (notably Corrales, 1998; 2002) both the *Partido Justicialista* and *Acción Democrática* had been parties that favoured a state centred development policy. The adjective populist becomes for several authors a *sine qua non* ingredient in the beginning of many big Latin American political parties where the appeal towards emotions rather than reason was the motto. (see Boeckh, 1999)

²⁴⁵ Przeworski defines a "labour linked" party as one that has strong association with labour unions and thus a strong power to summon or assemble votes among the working force, which by the way, are a symptomatic form of social discipline among the civil society. In fact Przeworski (1991) defines them as those having "the power to discipline the behaviour of their constituents" (pp.181-182)

²⁴⁶ Numerous scholars (Acuña, 1994; O'Donnell, 1992.; Nino, 1996) relate Argentina's reform and more effective outcomes with the unusual concentration of power the executive has (Hyper-presidentialism, Delegative Democracy). It is inaccurate to exclude Pérez since he too had a lot of extensive powers, especially in the beginning of his period. One of the possible clues to solving this difference is the relation of the president with his own party which in both cases played a very defining role in parliament augmenting or diminishing the level of legislative viscosity (Blondel, 1973). "A closer look at both countries reveals that political styles were more nuanced in both countries, or at least equally mixed: sometimes the Executives negotiated some policies with some groups, other times they imposed policies. Sometimes consultation worked, sometimes it did not" (Corrales, 2001, pp.27).

²⁴⁷ Although mentioning a good start for the privatization may sound paradoxical when studying the Venezuelan case, it was indeed so. The privatization of the telephone services, CANTV, for example, was shown as one that could happen devoid of union complaints and conflict (FIV, 1992; see also Murillo, 2002).

to the understanding and importance of “economic governance”²⁴⁸. This concept has been mentioned before by researchers (Migdal, 1994; Evans, 1995) who also stressed the need for a strong party system to support it.

Many of these authors suggest that the possibility of an effective state-society connection may lie in the accurate representation by well organized and disciplined parties. Nevertheless, Evans makes it clear that the term “strong party” can be discordant since it is linked in colloquial speech with clientelism and the capture of the state. However, he uses it recurrently and arrives at the same conclusion as Kohli/Shue (1994), recognizing that without strong parties (meaning by the term those that can create and sustain projects that can bring together state and society interests) governance level will certainly weaken.

Two other authors that during the structural adjustment decade published important works on the role and influence of the political parties in the width and depth of economic reforms were Haggard/Kaufman (1995) and Geddes (1994). In both works again the conclusion points to the interaction between the party in office and the opposition. Haggard/Kaufman, much in tune with what later on will be the conclusions of Mainwaring/Shugart (1997) argue that when reformers confront a polarized or very fragmented party system, the prospects for effective policy implementation decline. Geddes argues that if there is a possible coalition and sharing of losses between the opposition and the ruling party, reforms are more likely to occur.

In any case, the endorsement of the ruling party is crucial (especially in the congressional arena) if the executive has to propose and embark into a whole reform package against the traditions in development and wealth production of a society. Parties can be very important and active veto actors in the sanctioning of laws and in the reform process in general. Market reforms imposed (and do impose) significant socio-political costs and risks on ruling parties. Even more if the party in turn is of a statist²⁴⁹ nature. This may breed a political crisis within the party itself, generating

²⁴⁸ If we accept, as most political scientist do, that political parties are essential or even an indispensable pillar of democratic governance (Lipset, 2000) we must prolong this logic to understanding that parties are also essential in providing economic governance, most particularly in developing countries. As Corrales (2001) puts it: “Insofar as parties matter, many scientists would tell you it has to do with their programmatic orientation. Yet parties matter more than that. In fact their programmatic orientation in many ways may be secondary. Parties matter for economic governance for the political grounding they provide. Parties bring to the state the capacity to shield it from interest group pressures while simultaneously linking it to the civil society. Parties thus help the state to solve the problem of stateness” (p.12).

²⁴⁹ Corrales (2002) determines elements that may widen this crisis, meaning the colliding points between a statist political party and the possibility of accepting free market or neo-liberal measures. Features such as: 1) Market correctors: State-populist parties consider themselves to be able to correct market failures. They mistrust the capacity of the market to correct social or economic needs. 2) Brokers. Often statist parties serve as brokers in the distribution of rents among corporatists groups, specializing in assigning rents and screening rent demanders. These brokerage functions make parties averse to market reforms since they fear that reforms will diminish the rents that they broker and weaken the groups that use their services. 3) Custodianship. State-populist parties often consider themselves founders and thus custodians of the political institutions of the nation, many of them the institutions that economic reforms request to change.

also tensions with the executive²⁵⁰. Any slowing of the fluency in the ruling party-executive relation, swells the viscosity index in parliament to pass reform measures and thus hampers the velocity and intensity of the transformation. On the other hand, executive ruling party cooperation if existent, solves two very important problems almost complementary, faced by any reform proposal, namely,

- A functional executive-ruling party coalition can deactivate “societal resistance”. This is based on the premise of parties having a real connection (ground connection) with civil society.

- They can help the reform maker to build credibility on the programs. This can be true in two ways since for any market reform to triumph the economic actors (both on a national and international scope) must be convinced that the state is thoroughly involved in carrying out the reforms. On political grounds it promotes cooperation even from opposition forces (Corrales, 2001).

In Argentina, previous to the Ménem reform initiative²⁵¹, any government that had shown some serious intention or commitment towards economic reform (recent examples may be the Peronist Government in 1975 with Isabel Perón; the Military Junta 1978-81 and the Alfonsín Government in 1985) had incited the rage of potential cost bearing groups and most of the parties. The Ménem administration was no exception to this but it emerged with better results due to the consensus gained through the emergency in which Ménem came to power and the alliance between the executive and the ruling party²⁵². In Venezuela the relations between the executive and the ruling-party began with stress and by 1991-1992, they had almost completely collapsed, leaving the government with a coalition of enemies to the reforms which included the ruling party itself as main actor. This provided enormous distrust to all skeptics and potentiated social and political unrest that Congress reflected and which remained for the immediate years.

²⁵⁰ Despite admitting this tension and the statist nature of the ruling parties in Argentina and Venezuela (Mexico, Paraguay and Ecuador also serve to illustrate this point) there can also be some points of conflict and points of compatibility (Corrales, 2001) between the reformist executive and the reacting (pro-statist) legislative. In the points of conflict we could say that ruling parties may be repelled by reforms due to many reasons, such as the proposed spending cutbacks as well as sharing the blame for unpopular measures in the society, with mediate or immediate electoral results (Molina, 2001). Among the common grounds with an executive proposing reforms, Corrales (ibid.) identifies several coincidences between “populism” and “neoliberalism” since both ideologies provide a) utopian views of the future, b) they both identify clear enemies (privileged economic groups) and c) they seek to mobilize actors that were hurt by the pre-existing model of the economy. Implementing necessary reforms may offer these traditional parties the opportunity to repeat their role as foundational parties, or those who bring modernity to the nation.

²⁵¹ Argentina had notorious experience in the field of launching diverse economic reforms both in democratic and authoritarian regimes in comparison with Venezuela, more isolated from economic turmoil due to the oil rents. The administrations of Perón (1951-55), Juan Carlos Onganía (1966-70), Isabel Peron (1974-76), Jorge Videla (1976-81) and Alfonsín (1983-89) had all unleashed stabilization plans due to diverse economic and political problems.

²⁵² “By siding with the Executive, the peronist (ruling) party shielded the state from the sabotaging effects of these activated cost-bearing groups. Unable to count on the statist-populist party and thus to defeat the executive in its initiatives, most of these groups had no option but to abdicate. They reconsidered their resistance and gradually adopted a more cooperative stand”.(Corrales, 2001, p.32-33)

Table 2.22 *Hypotheses about the Causal Effect of Executive-Ruling Party relations*²⁵³

Executive Ruling Party Relations	Impact on Reform Sustainability
Disharmonious (Argentina Venezuela 1989-1991)	<p><u>Mixed Sustainability:</u></p> <ul style="list-style-type: none"> • The ruling party begins to behave like an opposition party, thereby increasing the transaction costs of the reforms. • Eroding cooperation on the part of the Congress and the Cabinet. • “Corruption” of the Reform Program: emergence of measures to rescue the reforms and win allies, which compromises the reform process
Hostile (Venezuela 1991-1993)	<p><u>Low Sustainability:</u></p> <ul style="list-style-type: none"> • Information gap and credibility gap between institutions expand • Black hole in the political system: <ul style="list-style-type: none"> -Mistrusting sectors ends their cooperation with the State -Cost bearing sectors find allies for their plight to challenge the State -Anti-establishment sectors find that the time is right to take center stage • Introduction of technicians in the cabinet more than party members
Harmonious ²⁵⁴ (Argentina 1991-1997)	<p><u>High Sustainability:</u></p> <ul style="list-style-type: none"> • Reforms advance (together with economic growth and sustainability) • Boost in credibility • Ruling Party delegitimizes or ignores societal claims and ceases to be available as a political ally of anti-reform interest groups.

In times of reform, executives face three basic options (Haggard/Kaufman, 1995; Corrales, 1998, 2001) which comprise a negotiating posture (with potential pork barreling), an imposing posture (relying on the possibility of decrees as Ménem after 1995, see Llanos, 2000) or a passive consenting nature towards the legislative as a whole. In this last case, an executive consenting nature means accepting the ruling parties’ interests and decisions. Most Latin American executives have responded to initial dislocation in executive-ruling party relations by circumventing the ruling

²⁵³ As in Corrales, 2001, p. 34-35.

²⁵⁴ This appreciation (harmonious relations between the executive and the legislative during the years 1991-97) can only be accepted on very macro terms and even so, it is hard to swallow. Other studies, notably Llanos, (2002) and Murillo (2001) portray a very different reality that claims to detect phases amidst this “harmony”. In fact, Llanos determines that although there was a complete harmony in the beginning (due to the strong delegation given to Ménem after the Alfonsín government) Congress went from a delegative phase, to a cooperative and later a conflictive phase after 1995; there Congress not only kept its reactive powers (Morgenstern/Nacif, 2002) but it started exerting prevention powers over the executive.

party, or by attempting to negotiate some policy autonomy in return for some political concession to the party, or by acceding to the party's desire to interrupt the reform plan. These positions are commonly known as

- Party-neglecting policy
- Party-accommodating policy
- Party-yielding policy.

From the clear party-neglecting scenario in Venezuela after 1989, we can observe that bitter relations between the ruling party and the executive critically erode the credibility of the executive. A continuous party neglecting attitude also undermines the possibility of "societal cooperation" with any plan of reforms. In the case of Venezuela and Pérez we observe that by 1989 *Acción Democrática*, (AD) had governed Venezuela throughout most of its democratic history. It was a party used to distributing and enjoying state subsidies and prerogatives. As Corrales puts it: "From 1983 to 1989, AD enjoyed a power feast: it solidly controlled the executive, the two houses of Congress and every echelon of bureaucracy. President Lusinchi appointed all the provincial secretaries of AD as governors of their respective provinces..." (Corrales 2001, p.138).

After such a power controlling environment, the contrast produced by the new AD government was hard to accept for party leaders. In 1989 Pérez ignored the *comisión de enlace* (link commission), an agency created by the party to soften the government transition and executive-legislative differences; he also named many technocrats as ministers, leaving out prominent figures of the party who were used to having a political toll over the cabinet and cabinet decisions. It was also the same year, 1989, when for the first time in Venezuelan democratic history the party had to fight for each regional and local post in open elections with other political forces.

In the case of Argentina it is argued that from the beginning, Ménem's attitude was to circumvent parliament deliberately with hundreds of decrees. Less attention is paid to the fact that before 1994, the legislative rarely complained about this presidential attitude and that the laws which gave way to the strongest points of adjustment (the State Reform and Economic Reform Law) were approved by the parliament²⁵⁵. The legislative in Argentina maintained certain control features especially after the emergency period was over in 1991. Thus as part of executive-ruling party agreements ministers and reforms would have to go more often to parliament to explain their policies; legislators would be allowed to introduce modifications in the executive proposed bills and even halt progress on labor market

²⁵⁵ It is interesting to see though that the State Reform Law provided that privatization policy would mainly be implemented by means of decrees rather than regular laws. In this case, Ekmedjian (1990) states that articles 2 and 3 of the law (Nr. 23.696) delegated to the executive the power to intervene in state companies. Art. 3 and 4 granted the "interventores" and respective ministers the power to disregard a wide range of legal dispositions concerning the internal organization of those entities. Article 6 also allowed the executive to modify the legal framework of those companies. In the case of the Economic Emergency Law (Nr. 23.697), the strongest delegation made by the legislative is in Art. 24 and 25 which empowered the executive to make certain changes in the national budget.

reforms²⁵⁶. Nevertheless, the executive reserved for itself the right to veto totally or partially any project of law. After 1991, Ménem looked for a more cooperative relation with his own party and hence with the legislative as a whole.

Once the emergency phase (which guaranteed the forced delegative compliance of the parliament) was over, the parliament quickly tried to recover its powers and influence on all those decisions that during the economic emergency period had been presidential prerogatives. The delegation stage of both emergency laws was over and in the case of privatizations there was a sensible slow down since the executive could not make any more massive sales as before. Now it had to confront parliamentary observations for almost every deal²⁵⁷. Ménem's attitude post 1991 and at least until 1994-1995, can thus be qualified as tendencies towards Party Accommodation rather than party neglecting. He agreed with the PJ not to touch labor market reforms and social welfare reforms, both areas that had been traditionally linked to the party's concerns, but he got the party to accompany him in almost all of the other reforms.

5.5 The State without Party and The Party without State²⁵⁸.

That the beginning of the economic reforms of the 80's and 90's was introduced by statist, labor oriented parties, created an expectation of potential friction between the executive and the legislative and within the ruling party itself. The PJ and AD were both traditional labor-oriented parties with strong roots in past state-centered development ideas. The introduction of economic reforms to these ideas could be considered as treason to the party's distributive ideals, especially so in Venezuela where AD had been in power most of the democratic time until then. Reforms came precisely from the same parties that had expanded state investment public expansion during all of their past administrations. These parties, PJ and AD, were now viewed as co-responsible for all economic changes (liberalization and orthodox monetary policy reforms) starting to happen in 1989²⁵⁹.

Market reform introduction forced traditional labor oriented and populist parties like the PJ and AD to go against many of their long-established distributional principles in the economy, and fed their enemies with arguments from the enormous contradiction the launch of market oriented measures by these parties implied. A consequence seen in Venezuela after 1991, the ruling Party leaving the state alone and withdrawing important support in parliament voting for structural adjustment

²⁵⁶ This flexibility and reliance on the legislative, which could alter a legal proposition made by the executive finds two interesting explanations: first, that most of the delegation phase happened in a harmony environment from both the *Partido Justicialista* and the UCR; and secondly, that the empowerment given to the president and cabinet figures had been so strong that even if there were disagreements the president could simply delete the inopportune legislative observation on a law project and publish the rest.

²⁵⁷ Llanos (2000) also acknowledges that a clear symptom for the evolution in the executive-legislative relation was the presence of *Marcos Regulatorios* in the case of some privatizations during this period.

²⁵⁸ I took this idea from Corrales 2001. It is his title for chapter 12.

²⁵⁹ There is also a conflictive situation starting from the time Pérez was chosen candidate instead of the party man (and President Lusinchi's favourite) Octavio Lepage.

measures, made reform implementation twice as hard. The executive on the other hand, tended to isolate itself more and more with the aid of non-party technocrats²⁶⁰. This forwarded more signs of separation between institutional powers to both opposition and moderate party leaders doubting whether to defend the government. To all eyes the state was being guided without a ruling party.

According to Corrales (1998) the state-without-party condition, a situation that was potentially possible both in Argentina and Venezuela during the implementation of the reforms, happened only in Venezuela because of a deliberate and calculated party rebellion²⁶¹ against governmental procedures. The executive in Argentina avoided this by elements of force such as decrees, but also by incorporating the Peronist party as co-author of the reforms. With the executive scoring notorious success in the first three years of government when the inflation spiral was tamed, the party could benefit (and thus better its results in subsequent elections) from the public opinion's support of the reforms.

In the circumstance of a serious disturbance between legislative and executive branches within the ruling party, it is most likely that the dissident sector will maintain recalcitrant positions to try to obstruct the acting of the president in Congress. The case can be even more complicated if aside from a non-cooperation scenario between executive and legislative we have a multiparty Congress instead of a two-party dominated one. Following the conclusions exposed by Mainwaring/Shugart 1997 that a multiparty system creates more difficult conditions for coalition or for significant majorities in the legislative, we could argue that an atomized and hesitant ruling party will turn Congress into a serious impediment to reform²⁶².

²⁶⁰ Executive-ruling party relations had a decisive impact in the accomplishment of the executive's policies (in our case the privatization amidst the list of structural adjustment reforms). In Venezuela, although AD leaders controlled some posts these were not as many during Pérez II as they had been during Lusinchi when the CEN (Executive National Center) of AD practically monitored every executive decision and members of the directive of the party were also in charge of important cabinet posts. In 1991, the state apparatus was internally divided as follows: Pro-reform forces controlled Cordiplan (planning Ministry), FIV (investment fund), OCePre (Central Budgeting Office), Ministries of Education, Agriculture, Development, PDVSA (State Oil Company) and the Ministry of Communication. Reform hesitant forces (also relatively party linked) controlled the Central Bank, Ministry of Mines and the CVG (Guayana Corporation, steel and aluminum). The Ministry of Finance was particularly divided in 1991, with a pro reform vice-minister and a reform hesitant Minister.

²⁶¹ Corrales says that the state-without-party condition emerges when either of the following two situations is present. One is a rebellion from within a ruling party that has been historically strong, as happened in Venezuela during Pérez II. The second occurs when the executive wins office by means of a loose, *ad hoc* coalition of minor political forces and movements, or a last minute fabrication of a ruling party. The first case depicts a situation like Pérez II while the second most clearly depicts a condition closer to what Caldera II had to face during his presidential period 1994-1998.

²⁶² As shown by several scientists (Lijphart, 1994; Molina, 1998, 2000) in presidential governments there is a close interrelation between the electoral systems used to choose both executive and legislative and the results to be expected. One of the normative groundings in presidential systems is the deliberate avoidance of institutional gridlock between the two powers. Shugart/Carey (1992) and Mainwaring/Shugart (1997) consider that the president needs a workable majority or coalition possibilities in Congress if he is to sail with relative peace throughout his period. System analysis shows that relative majority for presidential elections (Duverger, 1957) plus a simultaneous presidential-legislative election tend to favor the former. Presidential elections tend to pull the vote and thicken the options of the most favored candidates.

Differences between the executive and the ruling party may also have consequences in cabinet composition, since many posts in statist parties had usually been given as a reassurance to high ranking party members. This can become worse if aside from institutional isolation, the ruling party turns to deliberate disobedience and contradiction with the executive. Sabotage in the legislature becomes a real possibility in the plans of the ruling party. On the other hand, the very few cabinet members that could exist sent by the party (and first and foremost party loyal), may and behave and purposely act as obstacles to the reform program²⁶³.

In the presence of structural reforms²⁶⁴ as is the case of this study, being privatization one of the most legislative influenced measures since it involves the sale of public property, the connection with the ruling party is a decisive influence in the achievement of most proposed policies. In Argentina, the introduction of the program had a very different outcome although having reforms undergo similar resistance in the beginning. congressional participation and support varied through the years, considering that the first period of the Peronist administration was characterized by a profound imbalance created by the critical economic situation. This forced the two most significant parties to unite against the rampant economic emergency after Alfonsín's efforts had proved fruitless with several stabilization plans²⁶⁵. This first stage was marked by the economic emergency and the automatic renewal of legal instruments through which the legislative had empowered the president to act swiftly aside from congressional encumbrance. By the time both laws 23.696 and 23.697 had ceased to exist, Ménem incorporated the PJ leadership closer into his plans rather than provoking a conflict scenario. This brought congressional factions from the ruling party into the planning and design of the reforms²⁶⁶.

²⁶³ "AD began to behave like an opposition party of sorts. The less hostile Adecos considered Pérez to be politically inept and brainwashed by modern social scientists who knew nothing about the realities of the Venezuelan People. They saw Pérez as insensitive to the social costs of reforms and, worse yet, as insensitive to the electoral objectives of the party". (Corrales, 2001, p.147) The tension between the government and the orthodox sectors of the party showed no decline as time went on. AD's secretary general Humberto Celli warned the government the party would scrutinize to the millimeter the whole privatization process, and it did. The privatization commission in the chamber of Deputies was in charge of Matos Azócar, Lusinchi's ex-planning minister. This commission made more delays than the unions in, for example, the privatization of the national telephone company CANTV (see Frances, et al; Murillo, 2001).

²⁶⁴ Huntington (1968) argued that carrying out reforms is harder than carrying out a "revolution" because the former faces a more complex and wider type of opposition. In the revolutionary environment, everything becomes polarized thus promoting a one-front united group, the reformer has to fight a double battle front, first, with those he naturally opposes and second, against those that consider he hasn't done enough or that things ought to have been done differently (conservatives and revolutionaries). Any reform starts a double critique: either it goes too far, or it does not go far enough.

²⁶⁵ Alfonsín's government had also failed to achieve the *Plan Austral's* goals of promoting privatization due to the shortage of political (he never had an absolute majority in the senate) and institutional resources; this as well as a presidential leadership most of the people identified with the reconstruction and consolidation of democracy and not with economic reforms. All this acted against a successful outcome of the economy (Llanos, 2002).

²⁶⁶ By the time Ménem incorporated Cafiero and other PJ directives, receiving in return a decisive party cooperation for the implementation of the reforms, he was aware that after a strong delegative phase during 1989-1991, Congress was starting to flex muscles and discover its powers of reactions (Llanos, 2002) to either approve, modify, delay or reject executive projects. Debates in Congress during this time show a marked contrast with the former period. Two indicators serve to prove this change in

6. Types of Laws in Congress.

One of the principal functions of the legislative is to legislate, that is, to create new laws, codes and instruments of public and private regulation. Legislation runs parallel to the political and administrative control functions the legislative may exert over the executive power. The laws sanctioned by the legislative can be the by product of a whole co-relation of powers with the executive which in sum produces the legal text. While the general picture is that presidents control the legislative agenda and production, this view may be one-sided since the final outcome of a regular bill has had at least four separate chamber discussions and a voting process in Argentina as well as in Venezuela.

In Venezuela, the legislation types are mainly divided in ordinary laws, organic laws, laws concerning public credit and laws approving different executive actions. Public credit laws, mostly those concerning special credits to widen the yearly budget proposal, constituted 62% of the total legislative production between 1959 and 1995. All these bills were proposed and written by the executive (Crisp, 2000). Public credit laws include the budget itself and cover all manners of revenue and spending, such as the authorization to borrow money, to issue bonds (*bonos del tesoro*), tax law and tax law reforms; also laws approving prior executive action usually related to foreign accords. “They are the single most frequent form of congressional activity” (Crisp, *ibid.* p.74). Similarly to public credit legislation they also have their origin in the executive cabinet. Organic laws are written texts that comprise all former legislation until that moment and have been sanctioned through regular channels with two congressional discussions in each chamber and presidential approval. They have priority over all other legal contents on the matter.

In Argentina, although the constitutions have usually termed as laws any text approved by both chambers in Congress passed to regulate public life, there are notorious divisions between their intent and their object, as well as in their initiators. Several authors (Gentile, 1997; Ménem/Dromi, 1994) observe some subdivisions including constitutional laws, general laws, special laws, federal laws, laws approved by referendum and others²⁶⁷. These so-called constitutional laws are “those that regulate new institutions which require the grounding of new warranties”

Congress’ attitude: the first is the legislators’ involvement in the writing of bills, which shows that although eventually approving all the executive proposals, the congressional majority took its time to make all kinds of amendments. The second concerns the executive’s constant displays of leadership efforts to pressure or to persuade reluctant legislators, which also means that the executive could not limit itself to only submitting the bills, but rather had to follow their path in Congress in order to secure a successful result” (Llanos, 2002, Chp. 6). This certain weakness, which would later on lead to unilateral decrees when Congress was less cooperative, evidences the proportional relation between one-sided measures and relative impotence and isolation from the executive.

²⁶⁷ Gentile (1997) observes a number of laws that have discussible differentiations. He mentions, however, the *Leyes de Necesidad y Urgencia* (a product of the presidential decrees with the same name); *Leyes Omnibus* (laws including several legal topics in one “package”); Delegated Laws; *Leyes en Blanco* (Blank Laws, that is, those for which there is no complete prevision and they must be “finished” or facilitated through executive decrees –p. 150) and secret laws, those which are discussed without the total awareness of the public opinion.

(Ménem/Dromi, 1994, p. 278). A good example is the law to create or reform the system of social security. Federal laws may be issued to have nationwide validity and hinder regional legislation on the matter (Art. 31 and 116 of the 1994 Constitution). The laws coming from popular consult are a structural innovation compared to the others. Art. 40 of the Constitution allows the deputy chamber to promote a public referendum for a bill project. Whatever the out-coming decision, it may not be object of a veto. Thus its sanctioning can be considered as automatic.

III. Parliamentary Control

1. Public Policy Process in Latin America.

The process that any intention of law, any bill, has to follow to become a fully sanctioned legal text has several similarities in both Argentina and Venezuela (and other Latin American countries) according to each country's constitutional provisions. As it is stated in the diverse constitutions, the bill initiative can be originated either in the executive or in the legislative; sometimes also as a popular project presented by a previously established number of people²⁶⁸. The introduction of a bill project by the executive is part and parcel of the president or the cabinet members' rights. Cabinet members can also take part in the discussion of the idea but have no permission to vote. A congressional initiative can be introduced by any member of Congress regardless of the chamber, though discussions of the idea will usually begin in the Deputy Chamber.

In the cases of Argentina or Venezuela for a law to be enacted a bill (or given the case, a draft statute) it must be laid out, discussed and voted before the two houses of Congress. The scrutiny process normally involves a detailed inspection in the commission *ad hoc* to the matter, after which it should go to the floor of the Deputy Chamber for further discussions. In Venezuela, it is constitutionally designed in the 1961 text that the proposal be discussed at least two times on different days and agreed upon by a simple majority of members (except for extraordinary resolutions, when a qualified majority may be required). The proposal undergoes the same procedure afterwards in the Senate. If the project is to go through for executive revision, both chambers must have agreed on the same text that will be sent. Once remitted to the executive (still referring to the Venezuelan example) it is considered that the cabinet has a fixed number of days to pronounce its opinion (normally 10 working days). No deliberate opinion on the matter means positive juridical silence and the law becomes active.

As mentioned, when the bill has been written, it starts the process of legislative inquiry by at least two readings in each house. Before and during this process the bill remains under revision, article by article, by the specialized committee in charge. In Argentina, if a period of two years goes by without the law receiving any approval, it expires. The 1994 Argentine constitution (Art. 79) allowed a subsequent reduction of the number of necessary readings for a bill from four (two per chamber) to three if the second chamber had no objections to the draft presented.

There are normally seven stages of legislative development (Morineau, 2001):

- 1) Initiative
- 2) Report
- 3) Discussion
- 4) Sanction
- 5) Publication
- 6) Date of Start

²⁶⁸ This characteristic, already present in the Argentine constitution was later incorporated in Venezuela in the 1999 text.

The Initiative is the first phase of the whole legislative process and consists of the presentation of the project of law or decree. At this stage there is no structural discrimination between one or the other, but the elementary requisite that the project must come from a constitutionally or otherwise legally empowered source. In the case of Argentina and Venezuela, the 1994 and 1961 constitutions respectively, grant this law initiative possibility to either chambers of Congress or to the executive, be it from the president itself or the members of the cabinet. In Argentina, (1994, Art. 39) citizens are also empowered to present projects in the Deputy Chamber and Congress is obliged to answer to their proposal in the following 12 months. In Venezuela the same disposition existed, but only when and if the document had at least 20.000 signatures and personal identification numbers (ID) with it.

The Report step is accessible after a designated commission has reviewed the proposal and has presented a written description about it. On regular terms, the president of the commission is responsible for those documents studied, although the whole commission signs the observations. In Latin America, commissions can be allowed to modify original projects that come either from congressional initiatives or from a technical delegation of the executive. One important exception to this is the budget law which undergoes special treatments²⁶⁹. Outside of this particular exception, reports normally contain an exposition of motives to pass or reject the law and also a proposal in case changes are considered necessary. It ought to be signed by a majority of the members of the commission to be valid. In Argentina (1994, Art. 79) once a chamber has given a general consent for the study of a project, it delegates the approval of the particulars of the project to a specialized commission of which it will receive a report afterwards.

The Discussion stage takes place once the report from the study commission has presented the chamber with the details of the new project. It comprises a period between the presentation of the commission's verdict and the floor voting of the entire chamber. In Venezuela, Congress has to grant every reviewed legal project at least two discussions per chamber and each one of them on different days²⁷⁰.

Floor voting in each chamber and the sanctioning of the project both follow the procedures and internal regulations that each house of Congress has. Parliaments are empowered by constitutional prevision to regulate themselves. The last two steps, publication and date of start, suppose that there are no executive objections to the draft since in Venezuela, this can lead to delay of the approval of the law, and in Argentina, it can lead to the total suspension of the project (total veto), or the approval of some of its parts only (partial veto). These two veto possibilities remain presidential prerogatives in that country.

²⁶⁹ Budget as a topic will be detailed later on. Because it can be one of the tangential points of Congress exerting control over the executive, it will be classified as a control mechanism after 3.4 in this work

²⁷⁰ There are a number of legal intricacies in some congressional law codes. On average, discussion on new law projects contain: a) first reading of the commission's report; b) second reading. *Moción de Orden and Moción de Suspensiva* (Morineau, 2001) if the project requires a specific explanation or its discussion ought to be suspended for the time being, respectively.

Another important classification for bill development stages is proposed by Gentile (1997), in expansion of what is already stated in Art. 77 of the Argentine Constitution. Under his view, projects are “any proposition presented and registered in parliament” (Art. 125 Deputy Chamber ruling, and 133 from the Senate, Argentina). Thus the procedure follows these steps:

- Projects (Types and Authors²⁷¹)
- Presentation and Discussion
- Approval (or denial)
- Revision (in the Chambers)
- Observation and Veto
- Publication and Beginnings

In Argentina, the general rule is that no chamber is specifically designed to present or receive legal projects. This is also valid for the executive and cabinet members (all are empowered), though it is generally accepted that due to technical facilities it is the Finance Minister who coordinates the budget plan presentation through the president. Gentile (ibid.) and Bidart Campos (1995) suggest fiscal (tax) laws ought to begin in the Deputy Chamber, whereas those dealing more directly with federal consequences should be left to the Senate. The theoretical considerations have little influence over political reality. Ménem, during his first presidential period, introduced all his legal drafts and bill proposals through the Senate, a chamber where the ruling party had a comfortable majority.

Regarding Art. 39 of the Constitution in Argentina (1994), citizens also have the right to present projects to the Assembly, and should obtain “express treatment” from both chambers. This constitutional article and prescription is ruled by a specific law (num. 24.747), which details in its own Art. 4 that the initiative leading to a popular presentation of a legal project will have as many signatures as 1,5% of the latest census used to elect the members of the Deputy Chamber and must represent at least 6 electoral districts. Art. 6 of the same text observes that the paper containing the signatures plus a brief presentation of the project will be revised by the *Defensor del Pueblo* in a term no longer than 10 days. The electoral council will verify the origin and validity of the collected signatures in a period no longer than 20 days and then it can be handed to the Deputy Chamber representatives.

Venezuela (1961)

1. Law projects can be presented in any chamber except those where it is otherwise explained.
2. Initiative of the law corresponds to:
 - a) The congressional delegate commission or any of the permanent commissions of the chambers.
 - b) The national executive power

²⁷¹ Gentile’s observation regarding authors is that the executive is empowered to send projects to Congress, previously signed by the cabinet chief as stated in Art. 100 of the Constitution. The executive is granted no special introductory powers though it is understood the yearly budget project comes also in this way. “But it does not mean that Senators and Deputies cannot present proposals since it is nowhere stated the exclusivity of the executive” (pp157-158).

- c) Senators or Deputies (at least three)
 - d) Supreme Court
 - e) Electors: 20.000 signatures
3. Project receives two discussions on different days in each chamber.
 4. Once approved in the Deputies' Chamber it will pass to the Senate. Projects approved by Deputies can be approved by the Senate in only one discussion if the vote in favor is equivalent to two thirds of the total.
 5. President receives the bill project and has up to ten days either to publish it or to return it to Congress for further considerations. Because he has no veto power, it takes only a simple majority from congressional chambers to approve the law without the president's consent.
 6. Law is published.

Argentina (1994)

1. Law projects can begin in any of the congressional Chambers, either by congressional members or by members of the executive power.
 2. Chambers may delegate the study of the project to specialized commissions (Art. 79)
 3. Once approved in one chamber it goes for further discussion to the next. If approved by both it is then sent to the executive
 4. If the executive does not return the project in ten days, the project is taken as approved and must be published. Because the Argentine constitution empowers the president with a veto he is allowed to publish either the whole text received or those parts he agrees with (Art. 80 *partes con autonomía normativa*)
2. Parliamentary Control as part of the Rule of Law. Checks and Balances Theory. The Ambition factor.

One of the distinguishing features of the presidential constitutions is the separation of powers of government into three branches where each branch separately exercises the powers of government (Huntington, 1968). Because both the parliament and the executive are independently elected, each one claims to have its *own* legitimacy (Carey/Shugart, 1992).

Despite the dual legitimacy factor, and regarding legislation (theoretically and functionally seen), in Latin America it is the president or the cabinet (through any of the cabinet members) who regularly act as the law presenters. The legislative has an important amount of presented drafts too, particularly in Argentina. But as Molinelli et al (1999) confirm, most of the nationwide referent projects come from the executive, whereas either regional or less important matters are proposed by the legislative. To a certain extent in Argentina this may have a slight correspondence with the fact that it has a federal government where certain legislators could act to reinforce their constituency's electoral base by promoting regional legislation. But even if legislatures are not strong law initiators, they still have the institutional control option for their own projects as well as those presented by the executive.

According to Huntington (*ibid.*), government as a system of checks and balances evolved during the fourteenth through sixteenth century in Europe (it evolved first in England). The Monarch was the representative of all people and the members of the first British parliaments represented purely and mostly either local or corporate interests, many a time those of barons and feudal lords (*ibid.* Chpt. 2). The fact is that this parliamentary assessment and presence could have political or economic motivations, such as those mentioned by Edward I in 1295, namely to collect taxes and financial assistance (Solozábal, 1986). Hobbes' formulation of the idea of representation gives us a step forward from the feudal past towards the modern state. He denies the presence of individual subjects as such but states there are masses, which grant their representation to the sovereign through a covenant.

What remains clear from these proposals is that medieval parliaments were little more than consulting organs, thought to assist and cooperate with the monarch rather than to control him (Abellan, 1991). As Sartori (1976) states, medieval representation was not associated with government, but the parliament was a channel that somehow *mediated* between the sovereign and the subordinates. That is an open contradiction with modern parliaments, be it the English or the post-French revolution model since they both are examples of institutions independent from any monarchic or other executive power. They do not receive an imperative mandate but a purely representational one to which they respond with legislation and control (Kelsen, 1974).

In the case of the British Parliament, the "Agreement of the People" (1653), ordained that the representatives had the trust of the people. A truer confirmation of this is Edmund Burke's "Speech to the Electors of Bristol" (1744), where he proposed that the representative acted with freedom for the benefit of the nation.

This division of power present in England in the XVI Century later evolved into a stronger empowerment for the parliament as a representative body and was in some way translated into the colonies in America, a system of divided authority that the "founding fathers" of the 1776 American constitution embroidered in their text, but with variations on the central idea of power. Following the British theory they had learnt, the Federalist writers, Madison, Jay and Hamilton, did not emphasize so much on the moral qualities and standards of the representatives. However they concentrated on a better design of the electoral system: periodical elections, size of the communities, number of representatives, and so on. The point was to guarantee that the people's interests would not be betrayed by the parliament itself, as organ of the representation (Abellan, 1991).

The checks and balances in the U.S. presidential constitution denote the fear of concentration of power in either the presidential figure or the democratically elected legislature, since they both shared democratic legitimacy and thus the pure power delegation (Mueller, 1996). Part of the idea in *The Federalist Papers* (number 48 and 51 for example) is that the weak be protected from the strong, as a core idea. Considering that human interests are of a varied nature, and that ambition is an innate

human quality, responsibilities ought to be shared to prevent power from clotting somewhere in the social tissue²⁷².

Madison considered ambition a motor that ought to be counteracted by itself in institutional design; thus a “sheer” separation of public powers was needed in order to prevent the coagulation of power. But separation itself was not enough. These powers ought to be able to check each other; in other words, the public power branches should have jurisdiction over the decision that each one independently took and the capacity to exchange their views, as well as the jurisdictional empowerment to veto certain decisions. These “auxiliary precautions” as Madison puts them, are the “control” and “guarantee of control” (an *a priori* perception that separates control from accountability) that these powers would wield by checking each other’s decisions, having been constitutionally empowered to do so. Structurally seen, we could argue that rather than a *separation* of power the idea behind it may be of constitutionally *balanced* powers²⁷³.

On purely legislative terms, the idea of ambition keeps its validity as a behavior fuel, and it can be measured as the desire to widen the political career of a certain actor, whether of a static or dynamic nature (Morgenstern/Nacif, 2002). For these authors, the ambition factor, protracted only to the inter-institutional sphere of Congress, is directly linked to the intentions of the members of parliament and their future career directions. Since not all legislators seek (or are able to) reelection, we assume that not all of them are driven by the same motivation. Some look for reelection in order to build national political careers, while others seem to use the legislature as a stepping stone for either regional or national political posts. In all cases, ambition as variable can usually explain the behavior of the candidates and their accountability institutional relations, whether to the party, as in many centralized structures where the political parties control the survival factor of their political careers; or directed towards their constituencies, which could by vote agreement guarantee their continuation in office.

2.1 Vertical and Horizontal Accountability

One of the most important roles of Congress aside from creating legislation is its institutional counter-weight function to the executive and comptroller role (Figueredo, 2000). In a system of checks and balances, that does not only

²⁷² As Madison puts it in the Federalist papers num. 48: “It is agreed on all sides that the power properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. It is equally evident that neither of them ought to possess directly or indirectly, an overruling influence over the others in the administration of their respective powers. It will not be denied that power is of an encroaching nature and that it ought to be effectually retrained from passing the limits assigned to it”. (p.251)

²⁷³ O’Donnell (1999) expresses a rather pessimistic though probably realistic view of this institutional architecture as applied in Latin America. As the History of Latin America illustrates, however much enshrined in constitutions, these additional controls may be no more than parchment barriers if courts, and eventually other institutions or political forces, cannot or would not uphold these rights. History and comparative politics teach us that, even with the barriers that liberalism has erected in the modern times, there are no ultimate guarantees against the abuse of power, although some countries have been more prone to this risk than others.

automatically imply that Congress has to have the capacity to oversee executive actions and proposals in the implementation of policy decisions, but that it is itself a main actor in the process of policy making either by stopping policy, by reforming it, or by introducing ideas of its own. Assuming that, as O'Donnell argued (1999), Latin American Presidents in office have operated with "general impunity", meaning by this their little regard to the constitutional stipulations of legislative procedures, we could presume that vertical accountability means that power is exerted from above, and the rendering of accounts obeys a power relation, something closer to authoritarian forms than to the rule of law²⁷⁴.

In less radical terms, vertical accountability is the control function exerted from structures higher than, on institutional terms, our own. In political representation that would mean the number of empowered people which is bigger in the legislature than in the executive. Contrary to this definition, O'Donnell's explanation (1999) claims "horizontal accountability" is the existence of state agencies that are legally enabled and empowered (and factually willing and able) to take actions that span from routine overseeing to criminal sanctions or impeachment in relation to actions or omissions by other agents or agencies of the state that may be qualified as unlawful. From this definition we observe that the horizontal accountability concept is anchored in the division of powers and jurisdiction, to create a democratic framework of mutual observance between institutions. The Madisonian idea as inspiration is perhaps not very far from this horizontal accountability concept O'Donnell presents, but his exposure may be operatively deficient as we will see.

Some authors (Crisp/Moreno/Shugart, 2000) see a functional contradiction in the horizontal perception of accountability because the core problem of any accountability relation is that it has to be exerted vertically and not horizontally, if the possibility of sanctions is implied. "Horizontal implies equal or at least at the same level while accountability implies some form of hierarchy that permits the assignment of responsibility and the meting out of rewards and/or punishment" (Shugart/Moreno/Crisp²⁷⁵, *ibid.* P. 1). This view denotes that agents cannot hold other agents accountable, only their principals can; and that horizontal exchange (as in the federalist terms) will occur only where the vertical connections between the electorate and its elected agents, encourage those elected officials to act against individual ambitions.

²⁷⁴ In a later diagnosis, "Polyarchies and the Un-rule of Law", O'Donnell (1998) recreates more of the symptoms that deviate from a systemic horizontal accountability, namely, a) flaws in the existing law; b) application of the law; c) relation of the bureaucracies with ordinary citizens; d) access to the judiciary and to a fair process; e) sheer lawlessness.

²⁷⁵ It may be convenient to differentiate the need and nature of the institutional control from that of accountability as the latter is of a more abstract nature while the idea of control (also more alike to a preventive strategy) is a concrete and operative term. Thus, the idea that accountability implies certain verticality in the relations cannot be applied to control if we consider that in the Federalist, the concept to explain power division is "exchange" and not accountability. New institutionalism (March/Olsen, 1984; Grofman, 1989; Moe, 1990; Thelen, 1992) observes that accountability relations always take place when there is a structural relation within the context of principal-agent relationships. To this we add that the theory explains that relations of delegation run in one direction, from principal to agent, while relations of accountability run in the opposite, from agent to principal.

Adding to this and outlining purely institutional design elements, wherever presidents are barred from immediate reelection, the “accountability” relation between legislative and executive is severely weakened. Reelection would be a tangible mechanism to rate presidential approval because accountability of presidential figures is most effective when the president is subject to “personal accountability” as an incumbent running for reelection (Shugart/Carey, 1992). To this possibility, Molina (2000) answers that though it is true that the presidential figure is unaccountable to a certain point (when reelection is not contemplated), the party, viewed as a fundamental channel of presidential recruitment, becomes itself the object of the accountability reaction because most closed lists systems accentuate the attention and pressure on the party rather than on independent candidates. Parties in Latin America with no presidential reelection clause end up paying the bill of being unpopular or having failed to stand up to what were probably messianic promises.

In parliamentary systems (see chp. I), the fact that the life of the executive is affixed to the legislative consideration in most of the cases, creates a vector or single chain of vertical power delegation. The executive in this case enjoys no constitutional independence from the legislature and no direct connection to the electorate other than the public opinion feedback to its policies. Accountability is done by the legislative since the executive is but an operative agent. The executive is a pure agent of the legislative, headed by a prime Minister and other Ministers selected to reflect the partisan composition of the parliamentary majority, and they are all accountable in the simplest way: they can be subject to dismissal at any time by a coalition forming a vote of no-confidence²⁷⁶.

On the contrary, presidential systems have institutional independence regarding survival. The president has been popularly elected as have members of Congress, and that creates a conflict of double legitimacy between both institutions that causes the term “exchange” to be more appropriate than “accountability”, unless proper dispositions exist in the constitution to place congressional oversight and control above presidential decisions. To this conceptual difference between exchange and control, the idea that both interact with each other as veto players is probably closer to their role in presidential systems, where a zero sum of the game would be the emergence of an institutional gridlock (Haggard/Kaufman, 2001).

2.2 Accountability and Representation

The madisonian principles of constitutional design, we could argue, are normatively present where presidentialism rests on horizontal exchange (checks and balances), between agents with different vertical accountability ties to the citizenry. In other words, the sovereignty is transferred to them in certain degrees to which they must later on respond. Legislators in presidential systems are at least in theory,

²⁷⁶ As we observe later in this chapter, some presidential systems have taken control mechanisms from the parliamentary regimes and applied them somewhat successfully. In Venezuela, Ministers can be object to a censure vote with a simple majority in the chambers and they can also be ousted if the voting total joins 2/3 of the members present. This mechanism has been used before to oust unpopular Ministers (see case Walter, 1995).

vertically accountable to their constituencies (i.e. the citizens) and it is the electoral system that designs the nature of this hierarchy. As Sartori (1976) views it functionally, legislators are representatives of the people in two ways, that is, a) they exert representation as to represent (relating something to something else) and b) the exercise representation as responsibility, meaning a linking bond created through the electoral process.

The problem is, as Morgenstern/Nacif et al (2002) have reported, that some presidential systems in Latin America lack, for their legislators, a balance between collective accountability to parties and individual accountability to constituents or regions. This is a basic disruption of the problem of representation. If legislators are uninterested in national policy because of excessive regional focus, or they are unaccountable to voters due to strong party discipline, they (in both cases) tend to have little or no interest in exercising constant political control over the executive unless the executive decisions contradict party or regional interests.

The accountability of the legislative organ is closely linked to the electoral system, because the public realizes that its capacity to change parliaments is exercised almost exclusively during the voting process; it is in the parliament where the mapping of societal/regional/state interests functionally occurs. We observe then, that the electorate is “superior” to the legislator in the hierarchy of democratic power transfer and can thus hold him accountable by not renewing his mandate in the next period. This is so at least on theoretical grounds. In reality, the link between this notion and reality is by all means the electoral system. If the electoral system remains, as in Venezuela before 1989, with closed lists elaborated by the little *cogollos* (party elite directive groups) of each party, the direct accountability process is marred from being effective on the relation between constituencies and the members of parliament. On nominal lists for example, this representation and a later accountable review possibility, can be done more accurately away from purely party design.

Another point relating accountability and representation is the fact that the legislative as institution, has a bigger percentage of accuracy for the public opinion’s political representation. This has made some Latin American constitutions empower it explicitly, thinking of a comptroller function for Congress over a traditionally strong executive (Andueza, 1975). If this institutional reinforcement is complemented by an electoral system that grants the citizenry an adequate map of its own tendencies, the accountability process, or better said, the “exchange process” between legislative and executive on control terms becomes more effective.

3. Parliamentary Control Functions

From the origins of presidential democracy in modern times, we observe that the mistrust of power (something of an “encroaching nature”, as Madison puts it) has been one of the constants in any institutional engineering design. Thus the concept of control as a pre-emptive measure stands on the norm that dividing the powers and, as far as possible, seeking a balance between the institutions of the regime, will result in a working institutional equilibrium.

The control function deepens the horizontal accountability of the system as part and parcel of the institutional power balance and one of the main functions of Congress (Manzetti, 2000). The concept of control separates from the idea of accountability on its functional as well as nominal procedures. While all accountability is a form of control not all control is accountability. The idea of accountability implies a certain verticality that goes in a different direction from the madisonian exchange between institutions (see Shugart/Crisp/Moreno, 2000). Accountability is the posterior inspection and measure of results, whereas control has a pre, during and post phase over the whole of the institutional procedure. Also, controls are of a dynamic nature in so far as institutional interplay is concerned, since they cover the whole institutional role play between actors from beginning to end.

In the idea of the contemporary State, “congressional control” is a function but also a power intrinsic to the configuration of the state itself (Vanossi, 1978; in Ramírez ed.). The powers resulting from the intertwining connections in the government process have several phases, of which control and accountability consequences are the last ones (Duverger, 1980)²⁷⁷. Moreover, in the control processes as we have explained, the “accountability phase” put in general terms, is but one of the whole horizontal checks or interchanges that occur between government institutions, i.e. the legislative and the executive.

A clear form of contemporary control far beyond the pure accountability procedure is expressed by the budget practice in both Venezuela and Argentina. The presentation and discussion of the legal project produces a constant feedback for both powers (legislative and executive), as different policy areas are discussed and the whole idea of development for the nation is suggested through the priorities reinforced in the document. Most of the legislative procedures, (interpellations and censure votes) are utter accountability procedures in which the parliament can (as in the Venezuelan case) oust the Minister in charge of a certain plan which Congress considers ineffectively managed. However, during the budget discussion it is the executive that proposes while the legislative controls the assignments, not authorizing them if considered inappropriate. The cabinet will be later held accountable for the administering of the budget, but until it is sanctioned as law, Congress exerts its preemptive power in the form of distributive control.

For any control procedure to be effective, several normative pre-arrangements ought to exist namely, a) the independence of the comptroller from the controlled entity; b) a clear definition of the range and coverage of what is to be controlled and c) the right to inform and make all results public (Ramírez, 1994). The first point is self-explaining since control and concentration are self excluding concepts when

²⁷⁷ According to Duverger (1980) the governmental process entails the following stages: 1) Assessment (or consulting period); 2) Decision (policy determination); 3) Execution (Policy execution); 4) Control and 5) Consequences (as those resulting from the accountability process derived from control. Control implies the function of rendering accountability but as explained during the chapter, it is a more wholesome idea contemplating the madisonian principles of institutional exchanges throughout the entire policy selection and execution process. Thus the Duverger and Ramírez (Op. cit) definition falls short of the preemptive features implied in modern focus of control within institutional design.

dealing with power. In contemporary politics it also involves the presence of more than one party so that there is the guarantee of at least a minimal structural opposition and the means to express it. The second point observes the need of a clear determination of the field to be controlled; while the third becomes a topic of contemporary democracy, that is, the right to be informed of those decisions and policy determinations resolved or rejected in Congress. In other words, peoples' right to be informed and receive value estimation and expert judgment of what happens in the legislative.

In conclusion, one of the main functions Congress can exert to effectively balance power between a traditionally weak assembly and a strong executive is an efficient control role, in order to restrain one sided excesses or deviations from the already stated development plans. It can also provide a working support for the president (through a harmonization of the president and the ruling party in policy proposal) which could avoid the possibility of an institutional stalemate, and help the cabinet introduce reforms²⁷⁸ when necessary.

3.1 Limitations of the Executive Powers

One of the basic consequences of legislative control over the executive is the limitation of any decision power in policy selection and execution. On a purely theoretical ground, there are several constitutional and institutional empowerments given to the legislature for this process to occur, since it is but a consequence of the divided government design, common to all Latin American Countries. On more practical terms nonetheless, the diverse relation possibilities of the executive and legislative are also greatly influenced by the interacting options between the president and the ruling party, and to a minor extent by the dominant parties between them in the legislative arena (Shugart/Carey, 1998; Mustapic, 2000).

The relations between the president and the ruling party can be harmonious or recalcitrant, hostile or tolerant, and that helps define the dynamic of affairs between the executive and the legislative in general. The setting of these relations is also a by product of the electoral system since in Latin American presidentialist democracies the ruling party is likely to have an important share of the vote in the chamber floor. But that is only one of the possibilities. The president also can have an opposing majority in Parliament, either in one or in both chambers, as Caldera II in Venezuela (1994-1998). That does not automatically mean the legislative will act against the executive policies but only that the president will have to seek for coalition forces within the assembly.

In such circumstances and despite the limitations implied by the lack of a sound congressional majority the president can negotiate legislative accords with the party chiefs if party discipline standards are very high, or directly with the legislators. Not in all terms will the economic governance of the government directly depend on

²⁷⁸ As Nolte/Krumwiede (2000) write, in previous democratic periods in Latin America there were "Façade Democracies" as the authors name them, where most of the power was concentrated in the hands of the president, certifying the cliché that presidents had all the power while legislatures none.

or be secured by the output of his parliamentary support, even if he has the institutional capacity to by-pass Congress²⁷⁹. The principle of having a ruling party majority can operate inversely also: Pérez managed to have a favorable majority of the ruling party in Congress but the party directives did not go with him all the term and halfway through turned to favor opposition, which made everything twice as thorny for the executive. Likewise, Alfonsín had a ruling party majority in the deputy chamber but this advantage did not work for his privatization initiatives because the party was not convinced of the needs of privatizing. That the Peronists had a stronghold in the Senate became a minor problem in comparison to an intra-party discrepancy within the files of the radical party for the President.

When congressional decision stays to act against the executive ruling there are very few resources the latter can do to prevent Congress from stopping his policies. Even in cases of strong presidential constitutional empowerment like in Argentina, Congress has a set of options to increase internal viscosity to the point of either stopping the bill project, or taking the executive to a negotiation stand. Confrontations between the executive and the legislative in this sense are also time sensitive: in the so-called “honeymoon period”, when a president has just taken office, his public acceptance and popularity may be so high that Congress would rather seek negotiation and agreement better than open confrontation. As presidential popularity wanes, Congress can stiffen its position and force the president and the cabinet to reconsider any measure on their behalf. This occurred in both our case studies: in Argentina, it was only after Ménem’s re-election and when several of the economic problems reappeared, that Congress (and the ruling party) started to take a more active instance. The Argentine Congress remained passive or almost passive to presidential initiatives and legal extra limitations for an unusually long period of time, from 1989 to 1994. In Venezuela, Pérez was elected with very high popular hopes for his second period that his party in Congress remained cautious on how to react. Once the presidential intentions became clear to follow a state reform path and the corruption scandals involving the ruling party (from the previous period) started to rise, opposition within the ruling party became harsher, reaching a peak by 1992, three years after the president had been elected, that is, a little bit beyond half of the presidential time period.

3.2 Cooperation with the government.

In terms of democratic consolidation it is very important that parliaments show at least certain degree of cooperation with the government (Nolte/Krumwiede, 2000). Following our exposition that parliaments ought to control presidential initiatives using their constitutional and institutional tools, they should also support

²⁷⁹ Several studies (Llanos, 2000; Murillo, 2001; Mustapic, 2002) argue that in Argentina (an example of strong presidential decree empowerment, particularly after 1994) Ménem relied on decrees mostly when his Congressional image and authority was run down. It is true that presidents, as Ménem in this case, can wield to their unilateral powers and issue decrees to pass their idea of policies, what is not true is that they would rather always do so, since the Congressional approval and support is important and many times makes a radical difference in convincing the public opinion.

them to the extent of making policies possible. As Needler (1995) points out, the legislature is a fundamental stage that serves to ratify and legitimate legislative drafts prepared anywhere, be it the president and his staff, a cabinet department or an interest group. Thus more than a rubber stamp, there are certain strengthening factors the legislature can provide to a bill draft once an effective Congress has overviewed presidential policy initiatives.

Particularly during reform²⁸⁰ times, the parliament accentuates the possibility of acceptance of any reform by enhancing credibility over the proposals (Corrales, 2001). This is predominantly true for the behavior of the presidential faction or ruling party group in Congress since one of the main consequences of an improved executive-legislative relation is the increase in congressional sanctioning of reform policies. This support works towards the closure of the credibility gap in public opinion, posed by the new variances in policies. There are empirical effects of this joint work between legislative and executive in times of reform such as the country premium risk indicator, a factor with clear consequences on the loan possibilities and foreign investment for each country. By cooperating with the government, Congress may widen its credibility (on reform application for example) and success in policy production.

We could also assume with Corrales (2002) and Geddes (1994) that in a period of reform introduction the deliberate cooperation between executive and legislative boosts reliability in favor of the government and any new measures²⁸¹. Whether this may be obtained through ingrained ruling party support (Ménem after 1991) or by coalition with the major opposition forces (also in Argentina 1989 when all political forces agreed to cooperate to abate inflation), legislation in favor of reforms finds a clear way.

The negative side of cooperation would be a case of extreme cooperation. Seen under the light of historical analysis, it means that the legislative, either due to extreme party discipline or to institutional submission, becomes the feared rubber stamp, skipped through party conventions and patronizing or through unilateral

²⁸⁰ This study concerns itself most with the reactions of Argentina's and Venezuela's Congresses to privatization. Although privatization is one of the reforms, "Reforms" in general should be understood as a number of policies implemented during a period that comprehended two important stages: economic stabilization, meaning government implemented measures to restore some balance in macroeconomic variables, such as inflation, exchange rates, balance of payments and fiscal deficits. Structural adjustments or the second phase of the Washington Consensus puts forward more elaborated government implemented changes in the way of organizing the internal economy. Most measures dealt with a reprogramming of the figure of the State making more room for private initiative and investment in the production, industrialization or exchange of goods and services. Thus the adjustment reforms work towards trade opening, privatizations, tax reforms, deregulation, decentralization and export promotion. (see Williamson 1990, 1994; Bates/Krueger, 1993; Haggard/Kaufman 1992, 1995; and Przeworski 1991)

²⁸¹ Corrales (ibid.) is more extreme in his perception: "The key to reform sustainability, and hence to economic governance, is the nature of the relation between the Executive and the ruling Party. If the President manages to get the ruling party to cooperate with the reform process, the State's capacity to govern will increase. The executive is more likely to carry out reforms, and more important, survive the frictions in state-society relations that these reforms engender. If however, the relationship is non-cooperative, the whole reform process will be imperiled". (p.13, 2000)

executive decrees. As Lamournier (1994) puts it “the fact that presidents in Latin America usually carry hopes of almost messianic proportions should not be viewed as a curiosity of the region but rather as a structural phenomenon of the presidentialist regime in general” (1994: pp.184-185). To carry out these messianic tasks, the president may seek special congressional delegation of powers to legislate in order to accelerate policy production. A submissive parliament can agree to this as a consequence of a) strong party discipline and b) the president as a party leader figure. Extreme cooperation with this ideological background would curtail the oversight function of the legislative and any structural possibility of accountability or institutional exchange.

4. Parliamentary Controls in the Presidential Systems of Latin America

If we accept the premise that aside from legislation, *control* is the other most important function of the legislative (Gentile 1997; Serna de la Garza 1996), we may agree it is a common normative function of all Congresses or assemblies in the presidential democracies in Latin America. Control as balance of powers and part of the madisonian checks and balance idea, is not an exclusive duty of the parliament since it is also executed by the judicial power, the *Contralor* (Comptroller), the Public Defender, etc. However, a most certain way through which the parliament intervenes in the public policy cycle is by exerting its veto power over executive initiatives or by forcing its own motivations through legal resources, treating the executive power as foreign and equal.

In constitutional terms, Congress is the most significant representation of the people in presidential systems (Tovar Tamayo, 1983). The defense of the interest and aspirations of people can be exerted through several functions: legislating, control of the executive and accountability. Relations of control are present in both presidential and parliamentary regimes and qualify the parliament to have deliberate instruments to intervene in the executive’s action. The controller in this case acts by way of voting, interpellations, questioning, investigation committees, etc, plus financial controls and controls over all international affairs. “In conclusion: a) any parliament is a natural comptroller of the executive action, aside from its natural function of legislating; b) To this task there are different mechanisms which may vary from country to country; c) The censor demands the responsibility of the administrator and d) Both censor and Administrator are limited in regard to efficiency and protection standards of state and common interests” (Tovar Tamayo, *ibid.*, pp.83-84).

Although controls over the executive can be an essential feature of the legislative in parliamentary as well as in presidential systems, structural differences among them persist (Linz, 1984). A radical difference between parliamentary and presidential systems is that in the latter censure votes do not mean automatic removals from office. In presidential regimes the executive does not need the reliance of the legislative since they are both independently elected. However, parliamentary control will have a direct influence on the political cooperation of the chambers (Morgenstern/Nacif, 2002; Jones, 1995). As Mainwaring/Shugart (1997) have shown,

if the president has a notable majority of his party in Congress, he may have it easier to pass his policies through parliamentary approval and will rather pursue that than start issuing decrees. Of course this is not always so, since interest and party discipline are dynamic concepts which may need constant presidential observation and rapport²⁸².

Parliamentary control in a Latin American presidential system is then an activity through which parliament can examine governmental acting and the administration of public policies (Avellaneda, 1999). This should be understood together with the normative idea of making adequate policies following constitutional principles, and the political and social criteria of opportunity²⁸³. There is also the conception that parliamentary control can be of a double nature, namely of a political and of a purely administrative one (Andueza, 1975). The idea is that political control is a subjective attitude or a “value judgment” made by either one of the chambers or by both of them over the executive’s actions. Political control can have diverse consequences, to the extreme point of a ministerial removal. “This type of control happens always after the administrative act” (ibid. p.66). Financial control on the other hand, has more to do with the technical assessment Congress produces over, for example, the yearly executive budget, where approval obliges the participation of both chambers. Normally, observations here are of purely financial nature and do not comprehend a position of confidence, or no confidence against a cabinet member.

We can foresee some consequences of the control function, both for the executive and the legislative:

-Legislatures may impose sanctions, for example (Costa Rica, Venezuela) the implementation of a censure vote against a particular cabinet member. This is in itself a reminiscence of parliamentary empowerment of the legislative. In fact most countries that do have the censure motion, have no further step implied aside from Venezuela and Costa Rica. In Venezuela the Deputy Chamber can do away (and has done, see Minister Carlos Walter case, Crisp, 2000) with a presidential designated cabinet member if the majority vote presents a correlation of at least two thirds of the chamber members.

-The legislative can take measures to hinder or directly stop a series of executive steps that depend directly on congressional authorization. Here we refer to Blondel’s viscosity index, explained in chapter II. As a result, the empowerment of Congress is almost inversely proportional to the legislative force the executive members are allowed. In cases of very strong presidentialism as Argentina (see Shugart/Carey’s classification, 1992; also in Nolte/Krumwiede 2000) where presidents combine three

²⁸² See the cases of parliamentary pork barreling reported by Ames (2002), or the progressive transformation of the Congress during the Ménem years in Argentina from a full cooperative stance to an almost confrontational one (Llanos, 2000).

²⁸³ The idea of a criterion of opportunity though apparently simple, entails a complex notion of the exercise of power. Theoretically at least, it implies that Congress, through its majority should endorse or negate what it may consider as viable, given a certain economic, social and political moment (Montero-Gibert/Garcia Morillo, 1984). The criterion of opportunity can also transform itself into the criterion of opportunism, as disciplined legislative majorities become insensible to social demands and attend only to the *cogollos* (party nucleus) appeals (Coppedge, 1994).

powerful elements, namely, decree powers, veto (partial and total) and conditions for agenda setting, the Congress is almost reduced to a follower condition²⁸⁴. This is no wonder when we see that one of the criteria present before and during the Argentine constitutional reform of 1994 was that “historical factors” determined the prevalence of the executive²⁸⁵. However this consideration, the fact of having to govern with an unfavorable legislature shortens the policy approval chances since almost all economic reform actions require congressional revision, cooperation, approval or authorization.

-The legislative can see over the public responsibility of public officials, most especially cabinet members. In almost all Latin American Constitutions the prevision stays to empower the legislative to initiate investigations, to state questions or require detailed information from any civil servant; it is also constitutionally stated that he/she will have to respond²⁸⁶.

In countries with parliamentary regimes parliamentary control is explicitly stated in the constitutional texts with all its possible variances. In countries with presidential regimes it can be so or else, it can be an implied deduction of the articles, or a norm further explained in a specific law; it can also be detailed in the legislature’s internal codes. An example for this is the Spanish constitution of 1978, which establishes that the general courts exert the legislative power of the state by approving its budget law, controlling governmental action and all other competence attributed by the constitution²⁸⁷. In the case of Argentina, legislative control is not so clearly stated in the 1853 constitution, nonetheless it is assumed as a concept derived from the functions assigned to Congress (Hidalgo, 1997). Article 75, regarding congressional attributions, does not mention control over the executive as a fact but it does refer to approvals, authorizations, declarations and delegations. Ménem/Dromi’s (1997) proposal of the recuperation of the control function by the Argentine Congress observes a more normative structure, incorporated later in the 1994 approved text.

- 1) Creation of specialized controlling agents such as the national comptroller
- 2) Permanent parliamentary and extra parliamentary auditing
- 3) Control of the Laws

²⁸⁴ “An observable fact is the progressive weakening of our control system. This is motivated for various reasons. These reasons have diverse specific weight as we will see. The first of these reasons perhaps more apparent than real is the accentuation of the executive power leadership, which as we have said, is identified with the government” (Ménem/Dromi, 1996, p.5) Obviously the 1994 reform did little to change such conditions when we see that for these authors the Argentine executive polarization (the highest in the Shugart/Carey ranking) is only apparent.

²⁸⁵ “The republican system adopted by the national constitution imposes the functional division of powers as a necessary balance to avoid the overrun of one power by another. The formula it responds to is power contains power. However, the historical and political development of the state in general, the complexity of economic, social and institutional matters, have conducted to the prevalence of the executive” (Ménem/Dromi, 1996, p.83)

²⁸⁶ In Argentina in 1992, Congress approved a project to force cabinet members to present written reports when asked for under law 24.157. Unfortunately the president exercised his veto over it.

²⁸⁷ Art. 66, apartado 2: “Las cortes generales ejercen la potestad legislativa del estado, aprueban sus presupuestos, controlan la acción del gobierno y tienen las demás competencias que les atribuye la constitución”

- 4) Public audiences with citizens or civil society to discuss matters of communal interest
- 5) Specialized investigative commissions
- 6) Reports, interpellations and assistance of the cabinet members to parliament when required
- 7) Political trial
- 8) Participation in the naming and election of the Supreme Court Magistrates according to constitutional prescription²⁸⁸

In Colombia, another presidential example, the constitution empowers Congress to the “making of the laws and to exert political control over the government and the administration²⁸⁹”. Most interesting, the Colombian constitution aside from being presidential observes parliamentary control as structural requirement and produces technical elements to conduce it. In Venezuela, the 1961 constitution states (Art. 139) that the control of the public administration is part and parcel of the congressional functions. To this end the constitution also names a number of legal tools, particularly authorizations, censure capacities, treaty approvals, and the faculty of removing cabinet members when there is enough quorum in a censure vote.

4.1 Functional Mechanisms of Parliamentary Control in Venezuela and Argentina

The function of control can thus be either specifically stated or implied in the regulations decreed by the constitution. To this normative conception the functional connection is produced by a series of prerogatives parliament members may have access to. Most commonly mentioned are: the budget law, parliamentary authorizations and approvals, parliamentary questioning, parliamentary interpellations, parliamentary investigations, censure motions, removal of cabinet members and presidential impeachment.

The budget law approval is one of the most effective ways for parliament to exercise a potential veto power on executive policies and decisions. By discussing and approving the yearly budget law, parliament can perform a control even in advance, knowing the executive plans as policies for the forthcoming year and the amount of money destined to each of them. Congress in Latin American countries, most particularly after the third wave or re-democratization of the 90’s, can usually modify the executive presented project by reducing or increasing priorities and thus altering the government plans to a certain extent, limited by the constitution. Some general observations can be made on the constitutional texts of Latin America:

²⁸⁸ Ménem/Dromi (1996) also obscurely equate the function of representation with the function of control when they say “The control function is a requisite of the democratic state and the rule of law. The essential finality of the public control is to be able to create political and administrative responsibility. The function of control from the parliament ought to be recovered because it expresses representation. *Representation is control*. To recover the representation we must recover the control. The control of the provinces over the central government, of the people over the government”. (p.246)

²⁸⁹ Art. 114 of the 1991 text: “Corresponde al Congreso de la República reformar la Constitución, hacer las leyes y ejercer el control político sobre el Gobierno y la Administración”.

- a) In most of the cases there is a very short period of time to discuss and examine the budget proposal (except Venezuela)
- b) Some countries have created specific dispositions to limit the altering power that parliament can exercise on spending and incomes over the general draft. In the particular case of Venezuela for example, the chambers are allowed to remodel the budget priorities but they cannot exceed the amount of money estimated as income for the next year (Art. 288).

A regular complaint referred to the need of Congress modernization in the region, is the legislative access to technical assistantship which could facilitate more accurate legislation on specific subjects. One of the admitted reasons for congressional delegation in Latin America is that some of the assemblies' revision requires technical expertise and assistance which not all parliaments in the region have (Carey/Shugart, 1998). The budget revision is a clear example of this problem where many discussions can be necessary and the effectiveness of control is directly proportional to the expertise level of the commissions and chambers.

Congressional authorizations are the ways through which Congress empowers the executive to an action that requires legislative oversight as stated in the constitution (Andueza, 1975). The principle of sovereignty is translated from the parliamentary representation to the articulation of the executive which is endorsed with the approval. In Latin American Constitutions authorizations deal mostly with management of public property, or certain specifics of foreign policy including international treaties and presidential journeys. In Argentina and Venezuela they are clearly related to the selling of state property, situation that became crucially important during the structural adjustment reforms of the 80's and 90's (Washington Consensus, Williamson, 1989). In Venezuela, the constitution establishes legislative authorization for all additional credits to the budget law; all operations concerning public credit and the selling of any state property. In Argentina, the act of war can only be authorized by Congress (Art. 75:25); also all presidential journeys (Art.75:28); the privatization is precisely dependent on legislative authorization (Llanos, 1998), which makes it a complete congressional issue. The control and the oversight faculty in such a case are observed on the legislative report-analysis, since for this authorization the legislative must know details of the proposed privatization.

Parliamentary questions are one of the most common ways in which legislatures obtain information regarding any public policy implemented by cabinet members. They are widely used and conceived in many constitutions; in Argentina (1994) several articles contain the topic, for example Art. 71. This is not to be confused with the fact that in Argentina (and in Venezuela also) Ministers can be present in congressional discussions with equal rights to parliament members but the endowment to cast a vote on legislation (Art. 203). Aside from this optional presence in Congress, civil servants must always attend congressional appointments when

required; but they may remain silent on those matters which involve national security²⁹⁰ (Avellaneda, 1998).

Interpellations are a step forward in the questioning procedure. They consist of petitions made by the whole chamber (usually the Deputy Chamber) to a Minister or Public Servant so that he/she explains the purpose of determined policies taken by his or her office. Normally Interpellations produce debates on the application and convenience of the exposed policy which may lead to voting (roll call) on the support/censure of the chamber. Some constitutions, for example the Spanish (Art. 111) and the Venezuelan, present the interpellation as a constitutional control mechanism.

Based on the competence to ask questions and to interpellate public servants, Congress can also initiate investigations embedded in the collection of facts and interrogations. Most of the investigations may lead to and contemplate the possibility of a sanction. In Venezuela, Art. 160 empowers the legislative chambers or its commissions to conduct investigations, and the internal code of the Deputy Chamber rules over permanent investigative commissions²⁹¹. The counterpart to this congressional right is what Carpizo (1978) calls the "Political Privilege" of the president who has the right to avoid personal investigations that could force him to reveal facts that could compromise the security of the state. The final stage of all investigations is the presentation of a report to be discussed by the congressional chambers and a vote, to institute political or judicial sanctions.

Censure Motion or censure votes are commonly the result of a whole prior procedure. They can be seen as reminiscences of the parliamentary system, where the parliament can censure the government and force it to renounce. In presidential systems, the legislature's right to censure executive members holds the power of a strong warning with possible dismissal consequences. The following conditions ought to be met for its implementation:

- 1) In general terms a censure motion must be proposed by a determined number of parliament members, typically in the Deputy Chamber.
- 2) There is usually a period of time between the presentation of the censure and its discussion
- 3) The motion must be approved by a determinate number of votes to be valid, and it must be representative of the parliament's criteria.

²⁹⁰ This is a very sensitive point since many topics can be argued, particularly at a ministerial level, to be of national security. Avellaneda does not deepen the point, leaving an interpretative space for the law.

²⁹¹ Academic literature on the matter is particularly abundant for the case of the U.S. The first investigation ordered by the North American Congress occurred in 1792, to find facts about a lost expedition; but it was not until 1881 when the Supreme Court presented the problem of parliamentary investigations (Pritchett, 1965). "From this situation (the Killbourn case), three limitations on congressional investigations ought to be derived. 1) The power to investigate is limited to the principle of power separation. 2) The investigation must be based on topics and matter where Congress has competence to legislate and 3) the decision to investigate must be born out of the need to dictate norms on the matter (ibid. pp. 256-257).

In parliamentary systems, the censure motion implies the immediate dismissal of the government, thus the conception that this can be a semi parliamentary measure since it is a qualified mechanism to impute cabinet members with political responsibility (Shugart/Carey, 1992). In presidential systems, Argentina and Venezuela being good examples, the government is not politically responsible before the Legislative. Therefore the censure vote is rather not directed to the executive in general but to a specific Minister, due to a policy proposal or policy implementation of his or her responsibility. In some countries in Latin America (i.e. Colombia, constitution of 1991, for example) the approval of such a motion by the legislative involves the automatic removal from office. In Argentina, the 1994 text applies a stronger measure than the 1853 constitution. Art. 101 qualifies any of the chambers to decide on the censure vote of a cabinet member with a simple majority vote; though to remove the Minister it takes the simple majority of both chambers is necessary. In Venezuela, the Deputy Chamber can also present a censure motion to a cabinet Minister but that does not foreordain the immediate dismissal, unless the censure is approved by two thirds of the parliament members. So far this has occurred only once (case of Minister Carlos Walter, 1996). Other than that, the censure remains as a strong congressional warning to the executive.

In the particular case of congressional controls and functional mechanisms, Gentile (1997) points out some other figures not mentioned in the context of this study but operative in Argentina after the 1994 reform, namely,

Presence of the National President: the president must appear in Congress once a year before both chambers to inform about the nation's progress. This is a constitutional principle from the 1853 constitution that has been maintained. Many other countries' constitutions establish it for the opening session of the legislature's working period.

Presence of the Cabinet Chief: In Argentina one of the figures that officially appears as an intermediate stage between the legislative and the executive (see Bidart Campos/Sandler, 1995) is the cabinet chief. According to Art. 101 of the constitution, he must attend congressional sessions at least once a month, alternatively in each one of the chambers²⁹². He can be interpellated and object to a censure motion with the majority vote of any of the chambers and removed, with the vote of a simple majority of both chambers combined.

Presence of the Cabinet Ministers: Art. 71 of the 1994 text enables Congress to call on any Minister to produce the necessary explanations of any point in policy

²⁹² This is indeed a strong control feature if we consider what the Senate's legal code (*Reglamento del Senado*) establishes: "When according to what is disposed in Art. 101 of the Constitution, the cabinet chief must attend congressional sessions, proceedings should be the following:

- a) The cabinet chief must present a written appointment of his coming with a detailed description of the topics of his presentation not less than 7 days in advance.
- b) Political blocks present in the chamber will send the cabinet chief no later than 5 days in advance the reports and specifications they might need for the session and he must be able to produce a report if deemed necessary.
- c) The cabinet chief can come accompanied by those Ministers or cabinet members he considers necessary.

proposal or implementation. Also Art. 104 details the *Memoria y Cuenta*, which is the yearly report all Ministers present before the chambers in Congress²⁹³. The Argentine constitution of 1994 represents a strong advance in congressional oversight in comparison to the previous text, with the addition of Arts. 71, 101 and 104.

Another relevant classification on the topic of congressional controls over the executive belongs to Tovar Tamayo (1983) on basically two major points and several subdivisions:

- Chamber controls over the President: the Venezuelan constitution gives no direct presidential impeachment initiative to Congress. To judge the President or to be able to legally oust him from office the Supreme Court must demand permission from the Senate to start trial. Aside from this possibility based on legal infringement rather than political criticism, there are no particular censure votes against the presidential figure. The only other direct contact left between the two powers, executive and legislative, is the annual presidential message before the two chambers and the critics it may arise.
- Parliamentary Control over the Ministers: aside from any administrative, judicial or civil responsibility the parliament wields three major forms of control:
 - 1) Ministers can be interpellated by each one of the Chambers
 - 2) Ministers must deliver a yearly report to the chambers on their work and the expenses they may have run into.
 - 3) The censure vote (reserved to the Deputy Chamber). In Venezuela this may imply the removal of the Minister.

Financial control in the chambers is done *a priori* by Congress through the approval of the yearly budget law. *A posteriori*, it is put forth by the chambers through the investigation commissions.

4.2 Legislative Investigations

There is a conditional factor to Legislative Investigations: as much as the interpellation and questions, they also belong to the informative corpus Congress has access to, but in this case it is a collective tool rather than an individual one (Santaolalla, 1982)²⁹⁴. On conceptual terms we could contend that it is one of the universal mechanisms through which Congress can hold the executive accountable or, in any case, make it subject of judicial and legal responsibility. It is one of the normative tools to empower parliamentary control since investigations are the primer step towards a parliamentary dismissal or an impeachment procedure.

²⁹³ The *Memoria y Cuenta* from cabinet members is a common procedure in other countries too but mostly as a report between cabinet members. Normally they produce such reports to explain to the president how far they have gone in the implementation of determined policies (La Roche, 1971). In those cases, these reports stay optionally at congressional request. Gentile admits that in Argentina, where aside from purely executive control measures they have to be taken to Congress, the constitutional prescription remains void since the procedure is not fulfilled.

²⁹⁴ Based on his analysis of parliamentary systems, Santaolalla determines 4 types of investigations: Personal, Jurisdictional, Control and Legislative (pp154-155).

The congressional investigative attributions are normally stated in almost all constitutional texts, allowing thereafter the possibility for a political trial or impeachment as result of the investigations. Where it is not stated as a constitutional clause, it may be included as a rule in the Senate or Deputy Chamber law. In those constitutions where this authorization is not explicitly conceived –as in the north American constitution- it can be understood as part and parcel of the congressional functions of legislating and controlling the executive power²⁹⁵ (Andueza, 1983). Congressional investigations ought not to be confused with either reports or questioning that parliament members may regularly require from public servants. The congressional investigation is normatively a procedure to fathom the intrinsic details of a matter concerning legislation (Andueza, *ibid.* p. 44) either because Congress looks forward to reforming an existent law, or because it wants to control a procedure.

Another theoretical approach to the reason of investigating is based on the constitutional dogma that in liberal democracies, it is the Parliament that represents the people in the most immediate way (Tovar Tamayo, 1983). The relation of control between legislative and executive, independently of whether it be a parliamentary or presidential democracy, is a consequence of the normative statement for legislating and controlling as primary functions of the legislative.

The Congress' investigative attributions in Venezuela are stated in Art. 160²⁹⁶ of the constitution (common disposition for both chambers): “The legislative bodies or its commissions can proceed with the investigations they may consider necessary according to the rule. All servants of the public administration are under obligation to be present when demanded and to provide chambers or their commissions with the documents and information they may require”.

In Argentina, the provision to regulate congressional investigations does not reach a constitutional rank as such, but they are stated as part of the internal Deputy Chamber ruling (*Reglamento de la Cámara de Diputados*) Art. 90²⁹⁷ which states that “It is competence of the Political Judgment Commission, to investigate and determine the causes and responsibilities attempted against public servants, undergoing political trial according to the constitution, and to follow the complaints and denounces presented before the Deputy Chamber ..(...)”

4.2.1 Constitutional Background of Legislative Investigations

²⁹⁵ Andueza supports his thesis on the French author Esmerin (1921) and his *Elements of Constitutional Law* who affirms: “The right to parliamentary investigations derives from the principles that the chambers have to legislate spontaneously, and control the acting of the executive and cabinet Ministers” (p.1043)

²⁹⁶ Art. 160: “Los cuerpos legislativos o sus comisiones podrán realizar las investigaciones que juzguen convenientes, en conformidad con el reglamento. Todos los funcionarios de la administración pública y de los institutos autónomos están obligados, bajo sanciones que establezcan las leyes, a comparecer ante ellos y suministrarles las informaciones y documentos que requieran para el cumplimiento de sus funciones”.

²⁹⁷ Art. 90: “Compete a la comisión de Juicio Político, investigar y dictaminar en las causas de responsabilidad que se intenten contra los funcionarios públicos sometidos a juicio político por la constitución y en las quejas o denuncias que contra ellos se presenten en la Cámara. Esta comisión reglamentará el procedimiento a seguir en las causas sometidas a su dictamen”.

In the Venezuelan case, legislative investigations do not appear before the 1945 constitutional draft, being this text (Art. 79²⁹⁸) the first to authorize the chambers to name investigative commissions; and obliging all national, executive, and judicial authorities to provide them with information and documents they may require. The 1947 text keeps the disposition on general terms. The constitution of 1953 provokes a change in the short lived tradition, determining the Senate as the body in charge of naming the investigate commissions. All these constitutions establish the investigative conditions as normative clauses without details on the boundaries that ought to be considered in the investigations. Finally, the 1961 document established two articles (Art. 160 and 161) itemizing the depths and extents of the congressional investigation.

In the case of Argentina, the presidential prerogatives have been strong for a long time according to the constitutional texts. The 1853 constitution in its Art. 45 sets the prevision that the Deputy Chamber can initiate accusations against the president, vice-president or any cabinet member and this investigation (not mentioned as such) has to be approved by two thirds of the members and sent to the Senate. In the 1994 document, Art. 53 affirms (and this remains almost textually untouched from the previous text), that only the Deputy Chamber can accuse, before the Senate, the president, vice president and cabinet ministers. The cause would be considered valid with the vote of at least two thirds of the chamber members. Investigative remarks and attributions of the Deputy Chamber are normatively reinforced in Arts. 7 and 90²⁹⁹ of its own ruling (*Reglamento de la Cámara de Diputados*). The impeachment or Political Trial commission (*Comisión de Juicio Político*), is the only one to have its own internal rules, known as *Reglamento de Procedimiento Interno*, last reformed in 1992.

From these premises we observe that in Argentina any investigation would have to be initiated in the Deputy Chamber with an outstanding voting majority to be able to start. Two thirds of the chamber vote considering the backgrounds of highly disciplined congressional factions in Argentina (see Jones, 1997; Mustapic, 2002;), plus the recent party map in Congress where no winning president has had less than 30% of the vote (see Ferreira Rubio/Goretti, 1998; Llanos 1998) makes it highly improbable that an investigation against the executive would take place. The Senate can be said to have a more deliberative position than the Deputy Chamber. Art. 99³⁰⁰

²⁹⁸ Almost all article quotations come from Allan Brewer-Carias (1985) “Constituciones de Venezuela”.

²⁹⁹ Reglamento de la Cámara de Diputados (Argentina): Art. 7: “La comisión de peticiones, poderes y reglamento estudiará y dictaminará sobre las impugnaciones producidas. Esta comisión dictaminará el procedimiento de juzgamiento que garantizará el derecho de defensa del titular del diploma impugnado. La comisión podrá dictar medidas para mejor proveer e incluso ejercer las atribuciones correspondientes a las comisiones investigadoras de la cámara”. Art. 90. “Compete a la comisión de Juicio Político, investigar y dictaminar en las causas de responsabilidad que se intenten contra los funcionarios públicos sometidos a juicio político por la constitución y en las quejas o denuncias que contra ellos se presenten en las cámaras”.

³⁰⁰ Reglamento del Senado, Art. 99: “Corresponde a la comisión de Juicio Político dictaminar en todo lo relativo a reformas de leyes de procedimiento interno de esta comisión; en las causas de

of the Senate's internal ruling defines it like this: "any reform on the procedures of a political trial corresponds to the Senate ..." However, the article does not mention any active Senate practice regarding investigation. On general terms, the executive seems well isolated from any investigative initiative from any of the chambers, taking into account the roll call necessary to initiate investigations.

4.2.2 Limits of congressional Investigations

One of the constitutional previsions present in both Argentina and Venezuela's constitutions is that if required, all public servants have the duty to present testimony in any of the congressional chambers. "The active and legitimate authority to survey is part of the rights senators and deputies have access to; other legislative members not included in the specific investigative commissions have the right to be present but not to vote" (Andueza 1980; Tovar-Tamayo, 1983). Some subjects can be discussed in Congress while others may not, thus the criteria of the investigative commission to determine what can be publicly discussed. Andueza (1980; 1983) is of the opinion that Congress has limits to where federal or municipal policies begin since they would be out of competence. This may be theoretically correct since structurally seen in a federal republic, local assemblies have the right (also constitutional) to their own procedures. In political reality we observe that although the 1961 constitution in Venezuela opened as a federal one, the application of this premise was delayed until 1988 when the first electoral reforms changed the disposition that it was the president who named the state's governors and other regional authorities.

According to the internal rules of the Deputy Chamber in Venezuela, permanent commissions in Congress have among their charges to investigate (Art. 139 and 140) while in the Senate all commissions have "investigate and research functions" (Art. 129). In Argentina it is normatively stated in Arts. 7 and 90 of the deputies' ruling code that there ought to be a permanent investigative control commission. Some legal limits common to both systems regarding investigations are the following:

One of the first and foremost normative limitations to constitutional investigations is that they cannot surpass other constitutional and legal warranties. Thus public servants called for investigation have the right to remain silent or not to give in documents compromising their "honor, reputation, or private life" (Art. 59 Constitution –Venezuela). Also, public servants have the right to remain silent or not to give in documents that would prove themselves guilty. There is a confidential or secrecy clause that limits legislative investigations on the basis of national security: some facts ought to remain secluded from public opinion due to their content³⁰¹.

responsabilidad que se intenten contra los funcionarios públicos y magistrados judiciales sometidos a juicio político y en las quejas que contra ellos se presenten en las cámaras(...)"

³⁰¹ This is an extremely polemic point since the fact that economic or social issues cannot be publicly ventilated can be taken as reminiscences of authoritarian regimes. The idea that the state, and most specifically, the government, can have secrets for security reasons is grounded by Tulio Chiossone in "El Delito de Revelación de Secretos" inside the *Doctrina general de la Procuraduría de la República* (1971), Caracas, 1972.

Andueza (ibid.) considers that four sectors of the public administration are prone to special secrets: foreign policy, military strategies, police investigations and economic information.

4.2.3 Consequences of Legislative Investigations.

The fact that we speak of political responsibility nowadays is, according to Löwenstein (1983), an invention of modern constitutionalism. It occurs when a person holding office must present accounts to someone else (other official or institution) holding another office on the fulfillment of his own mission (ibid. pp. 34-35). The most common consequences of legislative investigations are political sanctions and censure votes. This can produce strong effects in the cabinet selected by the president since Congress can not only block future policy initiatives but also (in some cases) remove cabinet members. In fact it is a *sine qua non* condition that political trials should start as and be grounded on parliamentary investigations to substantiate the cause. Thereafter follows a jurisdictional transition when the case is transferred to a court.

On Nov. 5, 1989, the Venezuelan Senate determined the political responsibility of former president Jaime Lusinchi (votes 26 against 22) on corruption charges which lead to a judicial investigation and widening of the cause. The report presented by the special commission designated by the Senate declared him politically responsible with co-relative imputations to other cabinet members such as Manuel Azpurua, Hector Hurtado and Eglee Iturbe (all former finance Ministers). This report was sent to the general attorney to initiate civil or penal actions against these public servants.

Argentina has also had investigative commissions and the internal ruling of the Deputy Chamber has clear dispositions on the matter (Art. 7 and 90). The commission designated to investigate and follow up privatization procedures has been particularly important. However, the low esteem for legislative institutions is usually the product of investigations that have led to find out personal responsibilities but produce no punitive consequences for them. The fall of the political image many Latin American countries experienced during the 90's, is precisely the lack of effective accountability and potential results for corruption charges (*El Nacional*, 25/04/93).

4.3 Interpellation to Cabinet Members.

An interpellation obliges cabinet members to appear before Congress and explain either the policies they are implementing, or those they are planning to implement. The procedure itself can lead to a floor debate if the political forces supporting the Minister are representative. Interpellations can also be part of a specific investigation, or a deliberate form of control over budget expenditures or

particular ministerial policies. In Venezuela, Art. 199³⁰² of the constitution establishes the interpellation as an instrument of control assigned to the legislative.

The constitutional regulation states that the Minister has the right to speak before the whole assembly of the chamber or a specific commission which needs of his explanation. This disposition has three sides, first the right of the Ministers to speak before the chamber (or commission) calling him; second, the duty to report and answer if appointed; and third the obligation under the law to attend. Interpellations can be part of a congressional investigation or not. They are not tied to a specific routine and are the product of a commission's voting.

In Argentina, interpellation is a prerogative of the chambers to ask any cabinet member, also the cabinet chief himself, to attend a specific session and explain or present the report required (Gentile, 1997). In fact, Art. 204 of the Deputies ruling code states that "any deputy can propose the presence of one or two members of the cabinet to widen the explanation Congress has right to, according to Art. 71 of the Constitution". Art. 205 and 206 refer to the presentation of reports and speaking order during the procedure. The Senate regulations are also particularly specific (*Título XIX*) on the speaking order and the duration of any explanation. Despite this, interpellations in Argentina have been substituted by ministerial questioning in Congress and more than often by written reports which are somewhat more impersonal. Most literally "the whole legal ritual of the interpellation has lost continuity in the last decades and has been functionally substituted by the visit of one or more Ministers or secretaries of state, to either a specific commission or the chamber hall" (Gentile, *ibid.* p.193).

4.3.1 Constitutional Backgrounds to Interpellations.

In Venezuela, the first act of speaking order with "obligation to report" from Ministers to parliament members dates back to 1819, where the petition included both oral and written reports if deemed necessary. The constitution of 1821 deletes the presentation of such reports leaving the obligation to inform parliament (Art. 139). In 1830, for the first time, the Ministers' action is divided between the annual presentation of accounts and their explanatory visits to the chambers. In this sense, Art. 137 (1830) states that all cabinet members should report to each chamber at the beginning of the sessions; they should also present any other report, oral or written, reserving what "may not be convenient to publish". We have to distinguish between the feature of the *Cuenta Anual* each Minister may present, and the interpellation itself as control measure. Better said, the presentation of the yearly *cuenta* is not an interpellation but an account of ministerial proceedings during the past 12 month whereas the interpellation has a deliberate object and policy to follow and explain.

The 1857 Constitution also asserts the possibility that cabinet members concur to Congress either when the executive so decides, or when an agreement with

³⁰² Art. 199: "Los Ministros tienen derecho de palabra en las Cámaras y en sus Comisiones y están obligados a concurrir a ellas cuando sean llamados a informar o contestar las interpelaciones que les hagan".

Congress members is reached. Ministers will not, however, have voting capacity on any resolution derived from their presentations (Art. 70: 1857). From this it is understood that Ministers and cabinet members must attend congressional sessions and remain obliged to do so if appointed by Congress. The 1864 Constitution determines that Ministers should present oral or written reports demanded by Congress, excluding only classified information concerning foreign affairs and war strategies (Art. 79). In this constitution it is implemented for the first time that Cabinet Members have the constitutional right to speak either before a determinate commission or before the assembly (Art. 80: 1864). All other constitutional texts remain with very similar provisions (see Brewer-Carias, 1985). Cabinet members can attend congressional sessions but without the possibility to vote and they are obliged to attend and produce both oral and written reports if demanded so. The 1925 constitution deleted the formula of the written reports leaving interpellations as pure oral information.

The figure of Interpellation as it is conceived in the Venezuelan Constitution today appeared in the 1947 text for the first time³⁰³. There, Art.161 num. 7 empowers Congress to interpellate Ministers on their procedures so that they produce satisfactory and sufficient explanations to their actions. Art. 209 regulates the speaking order during the procedure and the obligation to attend this appointment if established. As expected from an authoritarian regime, the constitution of 1953 removed the figure of interpellation leaving (as in the 1925 text) only the report facilities (Art. 80).

Argentina has no constitutional provision for the ministerial Interpellations, neither in the 1853 constitution nor in the 1994 text. This being said, Art. 63 (1853) observes that Ministers have to attend appointments made by the legislative and provide assembly members with any information or explanation they consider necessary. This disposition is textually preserved as Art. 71 of the 1994 Constitution.

4.4 Legislative Questioning (Interrogations) to Cabinet Members.

Legislative questioning is different from interpellations in so far as not being methodologically so exhaustive (Andueza, 1980). Almost all Latin American constitutions conceive the possibility of parliament members demanding the presence of cabinet Ministers or other high public officials to question them on certain matters. The legislative questioning can also have printed form³⁰⁴ through written reports and it belongs to the regular procedures of both the Venezuelan and Argentine Congresses.

Legislative questioning ought not to be confused with the presence of the Ministers (as in the Argentine 1994 Constitution, Art. 104) to display a yearly plan or report. They are either part of congressional investigations or comply with rendering

³⁰³ As a historical background of the procedure, it is in 1947 when the law substantiates the procedure although the whole conception of ministerial information to parliament existed as constitutional provision since 1819 (Avellaneda, 1998).

³⁰⁴ In the Senate (Venezuela), questions can be asked either orally or written and so can the answers be presented according to Art. 181 and 182 of the Senate internal rules.

information around something. In the Deputy Chamber in Venezuela, all questions must be of “public interest” according to Art. 195 of the house rules. Questioning sessions usually take place before a designated commission, only very seldom before the whole assembly. In Argentina, Congress has the constitutional attribution to call on any public servant (Art. 71: 1994); the same constitutional rank for the disposition exists in Venezuela (Art. 160: 1961).

Despite the common legal dispositions with other Latin American countries, in Argentina, particularly after the delegative stage (during the so called cooperative phase of Congress, Llanos, 2002), communications between legislative and executive did increase, but more through written reports than active cabinet presence. These reports were constantly demanded by parliament and presented by the executive. This increase in the presence of the executive members in Congress is viewed as a strategy to win cooperation and support from his own party and from those sympathetic to the proposed reforms (Corrales, 1998). In the case of Ménem it later weakened, once relations became colder, to the extent that the legislative sanctioned a law (Ley 24.157) imposing time periods after which the executive (i.e. cabinet members) was forced to answer a legislative petition. The executive quickly vetoed this initiative but its appearance was already a symptom of the growing abyss between the two institutions. Many times also the written report petition did not disagree with the fact of having a congressional questioning session later and for this, the report deepened comprehension of the executive’s policy intentions.

4.5 Legislative Authorization

The notion of the legislative authorization is also part of the congressional delegation of powers though in a more limited scope (Santaolalla, 1982). It implies the transmission of sovereignty from the representational form in Congress to an initiative presented by the executive, evaluated as necessary by the legislative. As means of control it implies the previous knowledge of the executive actions by the legislative in order to authorize or validate the action (Hidalgo, 1997). Although a milder form of delegation they ought not to be confused with the delegative laws and special forms that Congress can use to empower the executive to legislate. The authorization can be done by Congress or by the permanent legislative commission³⁰⁵, both have the same power. According to the 1961 constitution in Venezuela, authorizations can be classified on the matters they cover, namely,

- Authorizations on Political affairs
- Authorizations on Military affairs
- Authorizations on Financial affairs
- Authorizations on Legislative Affairs
- Authorizations on Administrative affairs

³⁰⁵ The permanent legislative commission is the part of Congress that remains at work in time of congressional recess. In Venezuela it is formed by the President of each chamber and 21 Congress members (Art. 178: 1994) who can be elected in proportion to the conforming forces of the whole assembly.

The fact that authorizations may be detailed and differentiated is mostly a constitutional provision reflected in several legal texts. In Venezuela, a Congress with further instrumental forms of executive control in the constitution, legislative authorizations on political affairs are

a) The Senate authorizations to public servants to accept honors, rewards or even positions offered by foreign countries.

b) The Senate authorization for the president to travel outside the national territory.

c) The Senate authorization, by simple majority vote, given to a Supreme Court petition to impeach the president and set him to trial.

d) The authorization given by both chambers in joint session (it can also be authorized by the permanent commission) that the president lifts a previously declared state of emergency (a,b,c all numerals of Art. 153; d, Art. 243).

Authorizations over Military Affairs comprehend a) the Senatorial authorization to the executive, so that members of the Venezuelan army can be sent abroad or international troops can be allowed in the national territory and b) the senatorial authorization to military promotions to the highest ranks (Art. 150). The procedure in this last item was through a list the executive received from the armed forces which was then sent for congressional analysis and approval.

Authorizations on Financial Affairs include two specific cases particularly sensitive to our dissertation. First, the congressional approval to executives' decrees regarding public credit, on those expenses either not contemplated in the budget law or those whose amount may have been insufficient. This authorization has some special premises, namely, that the national treasure supports the executive initiative with enough currency and that it be approved in joint sessions of the chambers (Art. 227: 1961). A second financial authorization field is the endorsement to conduct public credit operations, (Art. 231).

The authorizations on Legislative Affairs are Venezuela's gate to presidential decrees in the economy. Theoretically, authorizations on legislative affairs are included in Art. 190, which empowers the executive to decree extraordinary measures in economic or financial proceedings "when so demanded by public interest and the president had been previously authorized to it by special law"³⁰⁶. Practically they are a way for Congress to delegate both its oversight and legislative responsibility on economic matters (Crisp, 2000).

Authorizations on Administrative Affairs affect directly any possible privatization initiative, since they constitute the Senatorial consent to the executive

³⁰⁶ As Crisp (2000) points out, this is a totally discretionary door to presidential legislative powers since most presidents in Venezuela have declared economic emergency to be able to bypass congressional overview on the matter. "The president has numerous forms of decree authority. He can issue non-substantive decrees in the process of executing a law, he can obtain wider decree authority in states of emergency (there has been only one limited state of emergency in the whole democratic era), he can issue decrees when constitutional rights have been restricted or suspended (the right to economic liberty has been restricted or suspended for virtually the entire democratic era) and he can be delegated legislative decree authority by Congress" (Crisp, 2000, pp 70-71).

proposal of selling national property or public enterprises. This is also in the prerogatives of the Senate as chamber (Art. 150). Secondly, it is due to congressional authorization that all diplomatic representatives are elected. Thirdly, there is the authorization to the president so he can decree new oil concessions. These are all administrative affairs.

In Argentina, the amount of authorizations Congress is entitled to is smaller than in Venezuela. The 1994 constitution did little to increase the congressional oversight through this instrument, which is a form of knowledge “a priori” of the cause. The authorization provides Congress with a more balanced perception than the scrutiny through interpellation or questioning, or even the result of investigations of what already has occurred. This is so, because to substantiate the cause, the executive must present a number of existent or potential reasons sufficient to grant him the authorization it requires. By granting the authorization, Congress endorses it, and obtains a certain co-authorship over the procedure.

The 1994 Argentine constitution concedes Congress military attributions specifically those where it must authorize the executive power to declare war or peace; to allow the introduction of international troops in the country or the sending of the national army abroad. Politically, it also qualifies Congress to revise the purpose of presidential trips and thus grant or deny the authorization for the president to go overseas (all provisions in Art. 75 and Art. 99). International treaties (Art. 75) must also be supervised and approved by Congress. So without a specific or detailed form (Gentile, 1997) the constitution establishes that Congress should authorize the executive to

- Declare war or peace (Military)
- Allow international troops on Argentine soil or Argentine troops to leave the country (Military)
- Authorize presidential visits to other countries
- Approve presidential selection of potential Supreme Court members with 2/3 of the vote.

4.5.1 Authorization on Political Affairs

After having subdivided the political authorizations from Congress in the Venezuelan case into four sub-types, we now detail more of their constitutional origins. The first form of control, that no public worker should accept rewards, positions or honors from foreign countries, is as old as the 1830 constitution. Already then the text declared this authorization a faculty of Congress, stated in Art. 214 (Brewer-Carias, 1985). This point changed in the 1893 text, giving only the Senate this faculty, and has remained so until the 1961 document. The term “Authorizations” as such first appeared in the 1947 constitution.

The legislative authorization over the presidential leave of the national territory is another strong empowerment given to Congress also present in other constitution of the region. The 1961 text rules that the president may not leave the country unless previously authorized by the Senate or else, by the permanent

commission. This norm has existed in the past in other constitutions though it is the 1961 text which empowers the Senate to grant or deny the authorization (Art. 150). Before that, the 1947 text had envisaged that there should be a joint meeting of both chambers to give the permission and know about the reasons for the trip³⁰⁷. One of the famous decisions denying the possibility to travel abroad was the case of Pérez during his second presidential period. He had been invited to the II Iberoamerican Presidential Meeting in Spain in 1992 and thus sent the petition to the Senate who in turn sent it to the foreign policy commission. The roll call vote afterwards produced an almost unanimous decision that the president should not leave the country due to the then fragile political situation.

Another important authorization granted to the Senate and directed to the Supreme Court, is the possibility to impeach the president and send him to trial. Under the 1961 constitution, the procedure exists that the Supreme Court, having found enough evidence against the president, must ask the Senate to provide authorization (voted by simple majority) to follow trial (Art. 150). Though legally a strong measure, this can be seen as a drawback to what Venezuela had in the past with constitutions such as the 1819 document granting the Senate the complete power of a Justice Court to impeach the president. After 1821 and in almost all constitutions during the XIXth Century, it was the Deputy Chamber that was in charge of initiating accusations against the President. The Senate's role then was more that of a hearing court in charge of judging and sentencing those civil servants accused by the lower chamber (Avellaneda, 1998). This principle stayed almost intact in the 1830 and 1891 texts where the lower chamber was in charge of formalizing the accusations and forming the cause, whereas the upper chamber had to substantiate and solve those trials against public servants initiated by the Deputy Chamber. According to the 1961 Constitution, the concept of the political legislative authorization to the Supreme Court is embedded in a faculty given to the Senate to authorize the impeachment or *sometimiento a juicio* of the President. Prior to this maneuver the Supreme Court had to have had an investigation and accusation on the presidential figure, substantial enough to prove his potential culpability.

The Case of President Pérez in Venezuela (1993) was resolved according to the procedure stated in the Art. 150 of the 1961 Constitution. Once the Supreme Court found enough evidence to start trial based on misuse of public funds charges, the general attorney asked Congress to consider giving the authorization to proceed trial. The authorization was granted³⁰⁸ by a majority of votes where several members of Pérez's own party voted against him.

³⁰⁷ Avellaneda (1998) suggests there are two important reasons for the Senate's empowerment, namely, that the president's initiatives have to be made public and so the reasons for the journey he would have to undertake, and second, to prevent the president from escaping his responsibilities by leaving the country (p. 93).

³⁰⁸ Aside from any academic analytic approach, a good way to follow the whole Pérez case is in *El Nacional* (May 20th-July 10th, 1993). Senator Felipe Montilla (Copei) presented an agreement with the following point to abridge the whole legislative debate (also published in *El Nacional* 22/05/93):

- 1) Authorize the impeachment of Carlos A. Pérez, President of the Republic
- 2) Notify the President of the present decision and issue

4.5.1.1 Authorization to declare the cessation of the Emergency State. Suspension and/or Restrictions of the Constitutional Warranties.

Decree authority in Venezuela has been done usually by declaring a state of emergency due to several reasons. This allows the president to legislate on several matters and this legislation retains a legal character for as long as the warranties remain suspended. For example, excluding the right to economic liberty, constitutional guarantees were suspended by Pérez in his second mandate (1989³⁰⁹) when he withheld numerous individual rights and the political right to protest publicly. After the military coup attempt in February 1992, Pérez suspended the same rights as in 1989 plus the right to strike³¹⁰. This happened on two occasions, following the two coup attempts in February and November of that year. During his second term as president, Caldera also suspended constitutional guarantees due to the economic-financial emergency³¹¹, allowing arrests without a warrant (Art. 60:1), stopping the inviolability of the home (Art. 62) and free transit (Art. 64). He also suspended the economic rights to property (Art. 99 and 101) and the right to economic liberty³¹².

Aside from the rights to suspend several guarantees or liberties, the 1961 constitution dedicates a whole chapter to the Emergency States (Art. 240-244). The president is empowered to suspend one or more constitutional rights due to internal or external commotion affecting the nation. In Venezuela this consideration, the rule by exclusive decree in times of emergency, appears sanctioned in several constitutional texts³¹³. A significant political turn made by the 1961 constitution is that it contemplates that the suspension of guarantees (or thus constitutional rights) should be taken by the executive as a whole, meaning the inclusion of the ministerial cabinet.

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- 3) Notify the Supreme Court of the decision with its particular legal consequences
 - 4) According to ordinal 8 in Article 150 of the constitution, the president is thus suspended from power and its attributions. We invite the Deputy Chamber for the take of oath of Octavio Lepage, current president of Congress
 - 5) In a later act, the legislative chambers in joint session will determine the person, according to constitutional prescriptions, who should take charge of the presidential duties before new elections are called.

³⁰⁹ Decree num. 49, *Gaceta Oficial* number 34.168, February 28.

³¹⁰ The right to strike is considered in Art. 92 of the 1961 constitution. The suspension of rights in 1992 happened through decree 2.086 (*Gaceta Oficial Extraordinaria* 4.380, Feb. 4, 1992) and they were re-established in April with another decree, 2.183 (*Gaceta Oficial* 39.941, April 9th, 1992). The whole procedure was repeated months later when a second coup attempt appeared, decree 2.668 (Nov. 27 *Gaceta Oficial* 35.101).

³¹¹ Decree 241 (*Gaceta Oficial* 35.490, June 27 1994)

³¹² The right to economic liberty (Art. 96 of the constitution) was suspended by Decree num. 51 (*Gaceta Oficial* 35.410, Feb. 28, 1994) almost 15 days after taking office. Less than a month later, this was ratified along with several other suspensions (see also B. Crisp, 2000)

³¹³ From the 1819 constitution on, the president is allowed to take extraordinary measures when and if the security of the state is involved. This appears in very similar terms in the 1821 constitution (Art. 128) and the constitutions of 1830 and 1857 (Arts. 118 and 54 respectively). Most of the extraordinary powers were oriented to the case of an external war event, in order to grant the president enough and quick powers to be able to organize the state to react (Constitution 1864, Art. 72). It is important to consider, in a brief constitutional review, that almost all texts in Venezuela from 1821 to 1901 required a specific participation of the legislative when those extraordinary powers had to materialize into extraordinary measures (Avellaneda, 98; Brewer-Carias 1985). From 1904 up to 1961 congressional overview or participation is eliminated from the extraordinary power use in states of emergency.

The reinstatement of the constitutional warranties has to be supervised by the cabinet also, and have the authorization of both chambers in joint session (or otherwise of the delegate commission).

During the turmoil caused by the guerrillas in the 60's, the then President Rómulo Betancourt suspended the right to free transit in the national territory, the freedom of expression, the assembly freedom and the freedom to protest by decree number 455 (*Gaceta Oficial* Num. 26.464, 24/01/1961). This decree was in turn substituted by decree 674 (*Gaceta* 26.747, 08/01/1962) and both were stalled by Congress following Article 243 of the Constitution. Restrictions however, were left on economic freedom since the congressional agreement still found elements that disturbed economic circumstances.

4.5.2 Authorizations on Military Matters

Both countries studied here empower their legislatures to take active supervision on the management of the national armed forces. In Argentina, the capacity to declare war or negotiate peace has to be approved and known by Congress (Art. 75:25) as well as the allowance of international troops or national troops on international mission. These elements are also present in the 1853 and the 1994 constitutions.

In Venezuela, the sending of military missions abroad³¹⁴, has to have the explicit approval of the Senate (Art. 150:4). All constitutional texts starting from 1947, also empowered Congress to approve military promotions to the position of General (Art. 79). The procedure is applied to executive approved lists sent for congressional consult.

4.5.3 Authorizations on Financial Matters

One of the most common congressional authorizations on financial matters is that of additional credits to the national yearly budget. In both countries, congressional oversight on financial matters is almost a XXth century feature. In Argentina it is well stated that the legislature cannot increase expenditures without approving the necessary financing. Also, that the executive may authorize expenditures not provided for in the budget for emergencies or "immediate relief efforts in the event of floods, epidemics and other cases of force, but it must keep Congress informed" (Petrei, 1998, pp.222-223).

In Venezuela, the constitution of 1961 demands the authorization by joint chamber sessions if the president wants to ask for extraordinary credits. Actually, the idea of this authorization procedure is that the legislative be able to control and overview any alteration of the yearly budget plan. "Congress, by giving these authorizations, must be completely aware of how much spending money it can grant from the national treasury" (Avellaneda, 1999, p.118).

³¹⁴ Pérez sent some military force to Costa Rica in 1978; also in 1989 to Central America as part of an international United Nations peace force.

4.5.4 Authorizations on Legislative Matters

One of the common features that have led some Latin American Democracies to be dubbed as “delegative democracies”, is the capacity of their presidents to bypass congressional oversight either by constitutional force or by deliberate legislative empowering. Decrees done by constitutional empowerment or by legislative authorization, would be the most “sweeping” form of imposing a unilateral will over the rest of the institutions, since “whoever wins the elections to the presidency is thereby entitled to govern as he or she sees fit, constrained only by the hard facts of existing power relations and by a constitutionally limited term of office” (O’Donnell, 1994). Most modern Latin American constitutions establish potential delegation of power by Congress to the president, with several conditions or limitations both on the time and the object or cause (García Pelayo, 1975). The idea of these structural limitations is perhaps not to surrender the legislative contingency belonging to the parliament completely, but rather to produce a method that “may preserve the *auctoritas* of the parliament, meaning that it is this institution that authorizes, and at the same time observes the legislative *potestas* of the executive, which either ratifies or rectifies its use” (Garcia Pelayo, *ibid.* pp. 895-896). The constitutional anchoring of this principle is varied according to the delegative degree allowed in the several constitutional texts in Latin America. In fact, presidentialism is measured by the amount of special powers (added to their own current institutional provisions) that presidents may receive³¹⁵. Regarding Venezuela and Argentina, the delegative faculties given to the presidency are stated in their constitutions with several operational differences and supervision degrees from Congress.

In Venezuela, Ordinal 8 from the Art 190 of the 1961 Constitutional text entitles the President to dictate, together with the ministerial cabinet, extraordinary measures in economic or financial matters when required³¹⁶. The delegation (if we could call it like this³¹⁷) presupposes internal economic difficulties which could be addressed by the executive either through cabinet expertise or by speeding up the legislation process, having in every case a reduced number of veto actors than in the regular executive-legislative procedure. Outside those decrees sanctioned on the base of suspended economic warranties, the laws of delegation or special authorizations to legislate are called *leyes habilitantes*³¹⁸. Any decree that the executive produces

³¹⁵ Mainwaring/Shugart, (1987) provide us with a scale where several considerations on constitutional provisions, party powers and congressional delegation are intertwined.

³¹⁶ Andueza (1975) thinks that if congressional authorizations (mostly on economic decisions) started after the Second World War it is due to the fact that the president needed speed in resolutions where time was determinant. This could be held as true if we observe that earlier than the 1945 constitution all economic extraordinary decisions (1939 onwards to follow the war example) were taken through restrictions of the economic guarantees.

³¹⁷ There could be ground for a conceptual debate. It is stated in the constitution that the president can legislate under special circumstances and these have to be determined or ratified by Congress. Although the device exists to speed economic and financial legislation without regular congressional steps, it has some previous stages where there is still space for maneuver.

³¹⁸ A wider exposition of the topic, with a strong legal rather than political orientation, is found in Brewer Carías (1980) “*La Evolución del Régimen Legal de la Economía desde 1939-1979*”. Also Fernández, G. (1992)

within their scope has equal legal rank as any of the other regular laws sanctioned through ordinary legislative procedures. The constitution says little on the general conditions the country has to face in order to press Congress to produce a *Ley Habilitante*, however almost all presidents in Venezuela have been granted these powers to legislate (Crisp, 2000; Fernández, 1992). The first *Ley Habilitante* to enable a set of decrees was produced in 1961 under President Rómulo Betancourt. It was the first time the constitutional Art. 190:8 had been used³¹⁹ (*Gaceta Oficial* 26.590 in June 29 1961). Pérez in his first government (1974-1978) was also granted special powers through a congressional *Ley Habilitante*. This is less surprising if we consider that AD, his party, had majority in both congressional chambers, unlike Caldera (1969-73) who had to govern with a working minority in Congress. Pérez received special legislative powers³²⁰ thought “to grant the president extraordinary powers that enable him to legislate in economic and financial matters” on May 31st 1974 (*Gaceta Oficial* 30.412). Next was President Jaime Lusinchi (1984-88), also from AD, who with a strong presence of the ruling party in both chambers received a *Ley Habilitante*³²¹ on June 22nd, 1984 (*Gaceta Oficial* 33.005). Caldera in his second term obtained the law two times (each one with a duration of one year) in 1994-95 with the banking crisis (*Gaceta Oficial* 35.442, April 18th, 1994) and in 1998 (*Gaceta Oficial* 36.531, September 3rd, 1998).

There are two important exemptions to the regular form of the *Leyes Habilitantes* issued by the Venezuelan Congress. As exposed, these laws enable the executive to produce decrees that rank as laws by the nation, however, they are not the only way to issue decrees in Venezuela. Two very important cases diverge from the normative constitutional prevision of Art. 190:8, the decrees dictated under suspension of constitutional guarantees and those dictated for the creation of public services. These cases exemplify Pérez’s second period, where several constitutional guarantees were suspended in various times. It permitted the possibility of decrees without the limits of a *Ley Habilitante* and not only in the economic and financial areas though these were the most common. The 1961 Venezuelan constitution admits the possibility of guarantee suspensions in cases of emergency or “exceptional circumstances” through a decision of the president and the ministerial cabinet. The prevision states that for the time being “all liberties and rights thereby suspended cannot be exerted in a normal way and must thus be regulated by executive prevision”

³¹⁹ Justification for this measure was the crisis then faced by the Government, so the law granted the executive a year to solve difficulties with public expenses. It also allowed the President to extend all national collective contracts within the public administration for one more year and either freeze or reduce civil servants’ incomes.

³²⁰ Interestingly enough the causes to justify this delegation were not the economic crisis elements as faced in 1961 but the unexpected amount of wealth received due to the 1973-74 oil crisis. “From reading the introductory exposition it becomes almost obvious that the executive needed to take urgent measures to adapt Venezuela to a strong modernization of its economy” (Fernández, 1992, p. 90).

³²¹ The argument to issue the delegative law mentions the then strong economic crisis started by the *Viernes Negro* (Black Friday) which meant the initial break down of the oil rent based state. The argument and motif of the law stated that “the situation the Venezuelan Economy is going through needs the effective and punctual action of the State, to correct the multiple distortions that have made the country poorer and which hinder the path to a sound economic development”.

(Brewer-Carias³²², 1989, pp, 54). The constitutional provision to this suspension does not denaturalize congressional or other institutional functions, and it is the Congress in joint session that is entitled to end, when so determined, the guarantee suspension. The second type of decrees issued without *Ley Habilitante* (or a deliberate act of delegation by Congress) are those contemplated in Art. 190:11³²³ where in times of congressional recess and due to the creation or elimination of public services the executive may inform the permanent delegate congressional commission of the decrees it may issue in this regard. This is also the same principle for the creation of state owned enterprises.

Another interesting detail is that after the suspension of Pérez in 1993 and during the Velázquez term (June-Dec. 1993), the *Ley Habilitante* that allowed presidential initiatives mentioned them as Decree Laws, a term which had not been used before in Venezuela. This was afterwards taken into account when first in 1994 and in 1998 two *Leyes Habilitantes* were issued for Caldera.

4.5.4.1 Parliamentary Control over Legislative Authorizations

Following the pattern of power division, most constitutional texts in Latin America foresee the possibility of expedite legislation in times of economic or financial crisis when the executive may not be able to follow the regular though probably time consuming process of legislation.

In Argentina, according to Ferreira Rubio/Goretti (1998), the President could issue three types of decrees before the 1994 constitutional reform, namely:

- Rule-making Decrees in the course of implementing legislation
- Autonomous Decrees based on constitutionally endowed presidential powers
- Legislative Decrees based on authority delegated by Congress

The 1853 text also granted the President emergency powers in case of state of siege (*estado de sitio*), it being declared either by the president himself or by Congress when internal or external unrest put in danger the constitution or any constitutional powers. The situation at the time when Ménem took power was rather complicated and he appealed to the enormous economic stress the country was under to justify the amount of economic measures that had to be taken. Thus, congressional supervision of these measures and of its own delegation had several stages, depending both on the economic recovery of the nation and the political, economic and adjustment plan followed. The two most important laws, 23.696 and 23.697 (Administrative Emergency and Economic Emergency respectively) at the beginning of the Ménem period, are both product of conscious legislative delegation where both the *Partido Justicialista* (Ménem's own Party), and the *Unión Cívica Radical*, UCR (the main opposition party), complied to empower the president.

³²² Brewer Carías has referred to this topic before but he details the consequences of guarantee suspension in "Consideraciones sobre la Suspensión o Restricción de las Garantías Constitucionales", *Revista de Derecho Público Num. 37*.

³²³ Art. 190 Ord. 11: "Decretar en caso de Urgencia comprobada, durante el receso del Congreso, la creación y dotación de nuevos servicios públicos, o la modificación o suspensión de los existentes, previa autorización de la comisión delegada".

The Economic Emergency and Administrative Emergency laws are good examples of the institutional architecture as delegative laws. They allowed very little congressional supervision and the use of emergency regulatory powers in order to overcome the present situation of collective risk caused by the serious economic and social circumstances the nation was undergoing. The controls running parallel to this delegation that Congress devised were designed to limit time settings and topics of legislation. In the case of the Administrative Emergency Act, the ground law to promote massive privatizations, the executive received an empowerment for one year and the chance to extend it for a year more (Ferreira-Rubio/Goretti, *ibid.*). The cases of the Necessity and Urgency Decrees, NUDs, are another variant which do not imply delegation or authorization from Congress but rather a one-sided initiative taken by the president or the cabinet.

In Venezuela, although the *Ley Habilitante* empowers the president to take extraordinary economic and financial measures (after 1994, some are named *decretos leyes* -decree laws), the process of delegation also intends a certain grade of control and oversight in the normative proceedings. The constitution of 1961 does not establish any subsequent control measure over the decree laws themselves but the process of granting the legal delegation does. We already mentioned the possibilities of time and topic constraints. Past examples provide us with further restrictions that Congress used and could have used if it intended so. According to the 1984 text of the law given to Lusinchi (1984-1988), Congress stated that the executive ought to inform about its decisions and proceedings every six months. “The president must inform Congress, through its finance commission, about the measures taken in accordance with the law and the results of its application” (Art.4).

During the very turbulent times of President Velázquez (1993); the text of the *Ley Habilitante* he received asserted that the national executive must render “special and detailed account to Congress” within ten days of any decision approved in a cabinet meeting on the application of any extraordinary disposition. It also established that the president himself had to submit a detailed description of his acts and decisions during the habilitation (Art. 4 and 5). In 1994, after winning the election with a divided Congress and only a working minority in both chambers, Caldera received a *Ley Habilitante* very much on the same terms as Velázquez, that is, one that would force the executive to put forward details of any decision taken during the lapse of this law. It is interesting to see that this extraordinary precautions may have been due to, first, the president’s small working power in Congress (both Velázquez and Caldera) and the recent experience of the neo-liberal adjustments taken by Pérez against his own party in Congress (Corrales, 2001). Congress feared that an empowered and uncontrolled executive would retake measures to liberalize the economy, something most members of the legislative fiercely opposed during Pérez II.

4.5.5 Authorizations on Administrative Affairs

One of the most important congressional attributions is the empowerment to decide whether a property, be it of public or private domain, should be sold or otherwise commercialized for the benefit of public interest. From the point of view of sovereignty theory, the legislative is the qualitative representation of society on the best quantitative terms (Díaz,1998). In consequence, it is the entity which can grant the executive the authorization to act, though it must also present sufficient specifications.

In the first Venezuelan constitutions, the power to regulate all proceedings regarding the sale or confiscation of property is a purely congressional attribution. The constitution of 1821 states that Congress can determine what may be convenient for the administration and preservation of public goods. This disposition repeats itself in the 1830 and 1858 texts with an almost identical spirit. Between 1864, right after the federal war, and 1936, the disposition is absent from the legislation; but the 1936 text does include the faculty that both congressional chambers may act as co-legislators to authorize the executive to dispose of public goods. This remains almost intact until the 1961 constitution, which again grants the Senate this possibility and introduces several possible exceptions³²⁴. One of the important exceptions is the privatization of public goods. As will be detailed later, privatization began without specific legal ground in Venezuela, based only on the dispositions of former laws that authorized the executive to sell public property under certain specific conditions. However, the sale of state owned enterprises was a delicate matter and the word “privatization” was thoroughly avoided in all legal texts (though not in political campaigns) until 1989. The privatization law was later introduced (1992) by the executive to avoid what could be excessive congressional intromission if the operation remained unregulated or in an operational limbo³²⁵ as it had been until then (Villalba, interview, 2002).

Aside from this administrative authorizations, mostly related to public goods and real estate, Congress in Venezuela has a word in the naming of the national comptroller and the chiefs of all diplomatic missions³²⁶. According to the 1961 Constitution, it is the President who presents Congress with the possible candidate’s names for each country where diplomatic missions are held and who asks for the authorization of the Senate or the delegate commission. The executive must also obtain authorization to create, modify or eliminate public services; aside from those

³²⁴ There are several exceptions to the authorizations Congress may give. Avellaneda (1998) points out the following: a) *Ley Organica de Hacienda Pública*, several prescriptions regarding land near populated areas; b) *Ley de Reforma Agraria*. Goods under this law need no special authorization from Congress; c) *Ley de Privatización*, which regulates the political process of privatization of public goods, does not need special (item for item) authorization of the Senate.

³²⁵ The law of privatization jumps the item for item approval of the Senate, but maintains several mechanisms of supervision through the finance commission. The law entailed that each privatization policy, elaborated by the *Fondo de Inversiones de Venezuela* (Venezuelan Investment Fund) and approved by the President in a cabinet meeting, should be notified to Congress in the next 15 days after its sanction, specifying the goods and services the executive was intending to privatize.

³²⁶ We use the term diplomatic mission chiefs and not “ambassadors”, following the Vienna Convention.

goods and benefits the state may produce as enterprise owner³²⁷, any transaction that involves public property stays under congressional supervision. Another of the administrative authorizations that Congress must grant the executive to promote any possible development in the area, are the authorizations regarding mineral (oil) deposits. The constitution of 1961 establishes that no new concession for oil development or exploitation can be given³²⁸ unless it counts with the explicit approval of the chambers in session, previously informed by the executive of the concessions planned.

Concerning oil there is a specific organic law that reserves the state all activities regarding oil exploration, exploitation and commercialization³²⁹. One of the first authorizations in this area happened when in 1992 the Venezuelan oil industry subscribed to *convenios de asociación* (associative agreements) with a Japanese and a North American company. This was also the case in 1994, when the executive presented the guidelines of a large-scale project for the oil exploration of new areas for congressional consideration and authorization. The bicameral commission went on to produce a report where it determined the public convenience of the associative agreements, which later enabled the possibility of joint ventures in the oil industry.

In Argentina, due to the economic emergency after the Alfonsín Government, Ménem was granted special powers from Congress in what has been called the “delegative phase” of the Ménem period. The legislative approved two very important instruments to authorize the executive action, the State Reform Law and the Economic Emergency Law. The former was primarily concerned with privatization while the latter was aimed at the cleansing of the financial sector involving severe cuts on expenditures and subsidies. Both laws provided the executive a series of dispositions guaranteeing the means to rapidly implement measures without major institutional interference. In the delegation process, the legislative authorized the executive with Act 26.697 (*Ley de Emergencia Económica*) to alter the destination of public funds (Art. 28), to set fuel prices (Arts. 30 and 31), and to regulate the functioning of the capital market (Art. 41). With the State Reform Law, a series of dispositions (Arts. 3, 4, 15, 18) empowered the executive to administrate and intervene state companies potentially subject to privatization.

4.6 Parliamentary Approvals.

³²⁷ The following of this idea would take us too far from the planned objectives; however it is important to see Brewer-Carias (1981) on the notion of public service together with the understanding that the state in most Latin American societies is also an enterprise owner and not always a public good administrator.

³²⁸ Being petroleum a time-related topic (a circumstance of the last years), there is meagre mention (if any) in the constitutional texts before 1914 where for the first time the congressional chambers appear as co-legislators. This is confirmed by the 1922 constitution which sanctions the state as the only owner of any mineral reservoir and the 1961 text which introduces the mechanism of congressional authorization for any further development in the area.

³²⁹ The law of nationalization of the oil industry in 1975 left a margin for manoeuvre regarding the possible need of international cooperation through its Art. 5, which allowed the possibility of joint ventures to exploit or produce oil in areas where the state finds it either unproductive or too expensive.

The normative differentiation in most Latin American constitutions between authorization and approval regarding congressional matters is that the authorization is previous to the act itself and the approval occurs posterior to it (Avellaneda, 1999; Bidart-Campos, 1997; Gentile 1997). In juridical consequences it is implied that the congressional approval is a standing pre-requisite for an executive decision to juridical and/or legal effects. In most constitutions in the region, the legislative has a follow up supervision control on international treaties or agreements and all contracts signed by the executive that are of national interest.

In the Argentine constitutions (1853, 1994) the figure of the approval is sometimes mixed with the authorization and they are sometimes presented as “agreements” (Gentile, 1997). In most cases, the approval or agreement to an executive proposal has to do with the supreme court magistrates selection (Art. 94), where candidates are evaluated and their options considered together by executive and legislative; and some members of the foreign service which have to be accepted by substantial majority of the Congressmen (Art. 99:7). The highest military ranks are also awarded with congressional approval from a list presented by the executive (Art. 99:13).

The fact that in Argentina Congress can exercise a veto and thus match the presidential force to some extent, makes this non-approval chance a real obstacle to which we may also add the viscosity level of the chambers. If the chambers do not operate on behalf of an executive initiative, they can (and do) obstacle the realization of the legal process and impede it. This deliberate slowing or even stopping of bills can be due to several causes (disagreement, lack of party discipline, political distance with the executive, etc.) but has the practical effect that Congress does not approve what is being presented.

In Venezuela almost all the formerly mentioned categories are also equivalent. International treaties and agreements must be approved and sanctioned through a special law to be valid (Art. 128). Diplomatic and military missions also require a parliamentary approval though the military list sometimes goes first to Congress and then to the executive making it a process of authorization rather than of approval. Most important is a concept introduced in the constitutional text of 1864, designing “contracts of national interest” for the first time (Brewer-Carias, 1985). This idea has been present since then in almost all constitutional texts and they are almost always related with congressional supervision of the treaties under discussion. The 1961 constitution, Art. 126, observes that no national treaty or contract involving goods and/or interests of the nation can be celebrated without congressional approval, except those necessary for the normal functioning of the public administration. Other concepts are added but remain related to the idea, such as contracts of “national interest” and of “public interest” (Avellaneda, 1999). The point is that these national interest contracts usually involve decisions on state property, and as a result all privatizations of national industry, total or in parts, (i.e. selling or negotiating of public property) had to be approved by parliamentary majority to be valid. The

participation of Congress on this topic is purely under a controller role since it has to oversee the procedure and consider the need and purpose of the sales.

In both countries, the whole budget process has an approval part on the side of Congress. Once it has been discussed in the chambers according to the internal rules of each part, the result is the possibility of endorsement or refusal of those accounts and plans presented by the executive³³⁰.

4.7 Memory and Account from Cabinet members

Another functional mechanism of legislative control over the executive is the mandatory constitutional presentation of cabinet members before parliament once a year, in order to acquaint parliament with their activities during the past year and the reasons supporting them. This presence, called *Memoria y Cuenta de los Ministros*, ought to be differentiated from regular parliamentary questioning and discussions, normally related to a specific point. The *Memoria y Cuenta* is rather a more detailed description of the whole number of ministerial initiatives and can lead to a confidence vote or to the imposing of sanctions.

In Argentina, Art. 104 (1994) mentions that “once Congress has started its sessions, cabinet Ministers should present a detailed report on the state of the nation, and of their department’s duties”³³¹. Gentile (1997) complains on personal grounds that this initiative is not regularly observed. “The *Memoria y Cuenta*, though stated in the constitution, does not become real in practice. When I was a deputy, I presented projects to try to make it effective without major success” (ibid. p. 190). Indeed as the number of written reports increased particularly after 1991, the ministerial report done at the beginning of the congressional sessions has not been mentioned by statistical studies such as Molineli/Palanza/Sin (1999).

In Venezuela, the constitution makes no specific prevision on the quality of these *Memorias*. They have institutionalized themselves and are always presented in printed version. Congressional ruling stipulates the conditions on the form these reports have to be handed in with. They allow posterior control and overview in advance, according to those activities each cabinet member presents and the related plans for the immediate future.

4.8 Annual Presidential Message to Congress.

³³⁰ In Venezuela this approval has a particular reference in the second amendment of the 1961 constitution which disposes that during the first year of the constitutional period the executive must present Congress its global program, detailing the general lines to guide the economic and social development of the nation, which must be approved. Politically, part of what was afterwards an enormous political divide and shock came after Pérez II presented the “Great Turnaround” (*El Gran Viraje*) to Congress, outlining his policies for the next period. Before this *paquete*, which was an effort to liberalize the economy, Pérez had presented himself as the usual populist he had been (Corrales, 2001).

³³¹ Art. 104 (1994): “Luego que el congreso abra sus sesiones, deberán los ministros del despacho presentarle una memoria detallada del estado de la nación en lo relativo a los negocios de sus respectivos departamentos”.

Aside from the initial executive message done in the first months of the year we mentioned, where in some cases the president must present an exposé of his plans for the development of the nation, most Latin American constitutions (certainly both the Venezuelan and Argentine) have the provision for a yearly “state of the nation” presidential speech before both chambers in Congress. This message frequently coincides with the beginning of the legislative year.

According to Art. 99: 8 in Argentina the president must report to Congress “on the state of the nation, on promised reforms and to hear the recommendations he deems necessary” (Gentile, 1997, p.187). There is however a subsequent figure to this provision contemplated in the 1994 constitution, which observes that the Cabinet Chief (Art. 101) should attend Congress at least once a month, alternatively in each one of the chambers³³², to report on the decisions taken by the government. Politically this has been seen as a step forward in the formalization and regulation of legislative-executive relations since it allows the former a closer and more detailed view of what is happening or going to happen in the different branches of the executive administration. Another theory relevant to our study is offered by Corrales (2001, pp.176-178), observing that this new approach made by Ménem’s administration was a deliberate scheme to incorporate the *Partido Justicialista* into the government in order to reduce legislative viscosity and accelerate and improve the approval rate of policy proposals³³³. Indeed this new involvement of Congress in presidential policy proposals created a reinforced institutional relation through which the benefit for the executive was undeniable; it broke the gap of misinformation some congressional leaders had denounced before. This rule of legislative engagement was specially applied to privatizations since almost all privatization projects between 1991 and 1995 went to Congress (Llanos, 1998). “In return to this involvement, Congress approved almost every privatization bill, albeit with some modifications” (Corrales, *ibid.* p.177).

In a presidential model that took much of its architecture from the classical North American form, the message to address the state of the union was transferred as the annual message of the president, to be delivered to Congress in Venezuela. This is

³³² The rule code of the Senate is more specific on the presence of the cabinet chief. It says in Art. 214: “When it has been agreed that the cabinet chief should attend congressional invitations, the following proceedings must be observed: a) he must agree with the plenary on the day and hour of his presence; b) legislative blocks must present 5 days before any petition of detailed report or inform considered necessary; c) the cabinet chief can come in company of the Ministers he considers necessary”. The Deputy Chamber rule code also states similar regulation being more specific on the exposition time he (cabinet chief) may have to address chambers or commissions (Art. 199-201)

³³³ In a very interesting proposal Corrales (*ibid.*) mentions that increasing the executive presence in the legislative either through personal visits or through the petition of *informes* (reports) that increased notoriously after 1991 was part of Ménem’s strategy of renegotiating the rules of engagement with Congress, something that could give him the policy boost he needed now that the open delegative phase of Congress (1989-1991) had passed. The terms of the approach with the legislative were the following:

- Ministers and reforms would go to Congress more frequently
- Legislators would be allowed to introduce modifications to the proposed bills and even halt progress on labour market reforms; but
- The executive was reserved the right to veto all or parts of congressional output.

present in all constitutions from 1811, 1819 and 1821. After 1922, the constitution demanded the president deliver a clear and synthetic message including the plans and administrative and political acts he proposed. For the constitution of 1961, the disposition remains that the message ought to be delivered during the first 10 days of the beginning of congressional sessions, and that it should be delivered before the two chambers.

4.9 National Budget Procedures

On normative terms there are two ways through which the legislature can amend the president/cabinet's budget proposal: altering the general amount proposed and/or, in terms of the distribution and priorities, the expense allocations set by the executive (Samuels, 2000). On regular terms, most constitutions allow executive presentation and legislative revision³³⁴, while this revision does not mean a possible swelling of the proposed money amount, unless Congress itself can determine the source where this additional funds are to be found (as in the 1853 Argentine Constitution). There are several possibilities in this veto game between the powers to avoid potential gridlock from both sides: if the legislature amends and later approves a budget, the president may accept or react to this. As part of the reactions he can either veto the proposal (in those countries where total or partial veto is allowed) he can impose new funds via decree, or he can submit extraordinary credits which will also be analyzed and granted through congressional supervision.

In Venezuela, fiscal and monetary policies are coordinated by the Ministry of Finance and the Central Bank, with the participation of Cordiplan (Planning Ministry). In 1992, a new law was approved that grants autonomy to the central Bank and limits its participation in the financing of government operations. The Bank's president is appointed by the executive with at least two thirds of the Senate's approval and he/she remains autonomous. The Central Budget Office (Ocepre), a branch of the Finance Ministry, is the coordinator of the budget process which implies the collaboration of all other mentioned executive actors. Its director is also appointed by the president with the consent of the Minister of Finance, who will be the cabinet member to present the budgets to the Deputy Chamber. The timetable allows the legislature several months to debate the budget: at the end of June, the executive must submit the budget bill to Congress, which must have approved it before December of the same year. Congress may alter budget items but cannot authorize expenditures that would exceed the total of what has been given as the estimated amount of revenues. In cases where it is probable that revenues could be insufficient, the

³³⁴ *Ceteris Paribus*, these variables ought to determine executive-legislative balance in terms of budgetary authority:

1. whether the president or the legislature is designated *de jure* proposer
2. the degree to which the president and/or the legislature can amend the budget proposal
3. the reversionary outcome
4. the president's veto powers
5. The president and/or the legislature's ability to modify the budget during the fiscal year. (Samuels, 2000)

president of the Minister council may order some adjustments in the budget credits. This is also true in a reverse case: a Minister must present (given the case) a justified request to reduce a budget appropriation already approved by congressional finance committees.

Once in Congress, the budget bill follows a regular course of discussions as all other laws. It enters the Deputy Chamber where it is sent to the Finance Committee and its subcommittees. Control is present in so far as congressional representatives can call any of the Ocepre, Finance Ministry or Central Bank technicians to explain or expand the idea of the project. From there it goes to the Senate where, if rejected, joint meetings with the deputies are held. If Congress does not approve the budget proposal, or does not approve it on time for the next fiscal year, the executive must place a re-launched budget (normally the current year's budget) into force. This has happened many times and examples abound such as in 1983, 1996 and 1999³³⁵ (Petrei, 1998). This re-launched project possibility is based on the previous budget with adjustments introduced: the law gives the executive enough flexibility since it allows it to include extraordinary credit petitions, necessary to ensure the continuity and efficiency of government operations.

In 1997, two offices were created for the coordination of macroeconomic policies: one of them under congressional attention and the other within the scope of the Ministry of Finance³³⁶. The Macroeconomic Analysis Unit (*Unidad de Análisis Macroeconómico*) was created to analyze the consistency of proposed policies and their macroeconomic effect; it tried to monitor and evaluate public sector fiscal management and to “understand the potential fiscal impact of those laws debated in Congress” (Petrei, *ibid.* pp. 324-325).

In Argentina, the budget situation after the re-democratization was rather different because of the complex economic conditions and the staggering inflation that made it almost impossible for any government to elaborate yearly plans. The lack of a firm institutional framework and the inflation had profoundly deteriorated the budget process. Existing economic data systems did not generate reliable and timely information (Petrei, *ibid.*). Reforms applied in the first months of Ménem's presidential period tried to promote a modernization of the public administration and to open the economy. Several steps contributed to this goal: in 1991 Congress adopted an executive proposed law (Convertibility Law or *Ley de Convertibilidad*) establishing a fixed exchange rate backed with central bank reserves (the so called

³³⁵ The government of Chavez-Frías found it hard to reconcile political changes with economic expectations and thus, amidst many institutional changes, Congress became a one chamber assembly that had little time to survey the executive's demands.

³³⁶ These two offices were created with support from the Inter American Development Bank (see Hausmann/Stein 1996 “Searching for the Right Budgetary Institutions for a Volatile Region”). The *Unidad de Análisis Macroeconómico* placed in Congress was established to overcome the possible knowledge handicap in some economic matters, the unit in the Finance Ministry aimed mostly at a monitoring system for macroeconomic policies. Ideally speaking (as Petrei mentioned in an article in 1996), the establishment of such offices attempts to create a strong institutional capacity for macroeconomic analysis in government, to give Congress the technical resources to analyze and monitor budget borrowing operations and to promote laws to modernize financial administration.

Caja de Conversion). After these provisions, and because no money could be printed without having its backup in gold reserves, the budget process is governed by the regular constitutional provisions and specifics detailed in the Law on Financial Administration and Public Sector Control Systems issued in 1993 (Num. 24. 156), and the Regulatory Budget Act (Num. 11.672).

The 1994 constitutional reform introduced several changes in the legislative control of the budget, and the steps it should go through. It created the figure of the Cabinet Chief (*Jefe del Gabinete*) as the person in charge of preparing the budget project to be introduced in Congress. Moreover, the new constitution stipulates that the executive branch must submit an annual budget of revenues and expenditures through this chief of cabinet once it is approved in the ministerial council³³⁷. In 1996, Congress approved the *Ley de Reforma del Sector Público* (Law on Public Sector Reform, num. 24.629) with provisions that affect budget and budget proposal. It stipulates that future budget laws should contain an addendum classifying expenditures geographically, and that the executive shall forward a report to the legislature on the most important points contained in the following year's budget act before June 30 of each year. To strengthen legislative controls more, this law provides that the executive will submit a quarterly report on budget execution to Congress³³⁸.

Before March 31st of each fiscal year, the executive must produce a consolidated public sector budget which includes a summary of the budget for the national government, basic figures from state owned enterprises' budgets, aggregate revenues and expenditures, the financing requirements of the main investment projects, and the relation of all these figures to the rest of the economy (Rodríguez, 1997). The budget bill must be sent to Congress by September 15th, where it undergoes the debates of both chambers as is the procedure for regular legislation. If it is not approved by the beginning of the following fiscal year (either because the government did not manage to send the bill on time, or because there was no agreement in Congress) the previous year's budget law remains valid. The legislature cannot increase expenditures without simultaneously approving the necessary financing for them. There is the possibility of the executive authorizing extraordinary expenditures not provided for in the budget (for relief of natural disasters for example) but it must keep Congress informed of these initiatives and they could be vetoed. By approving the yearly budget and according to laws 24.629 and 25.156, Congress approves deficit ceilings and new debt limits. In general terms, academic opinion agrees (Petrei, 1996, 1998; Llanos 1998; Makron, 1993; Rodríguez, 1997) that the role of Congress in budget discussion and its level of inherence and decision

³³⁷ The office of the cabinet chief is also responsible for tasks related to public administration, general revenues collection and budget execution; it must also report to Congress annually, along with the other related Ministers, on the work performed by the government (Art 100, 6-12).

³³⁸ This comes as no surprise and in full coincidence with what Llanos calls the conflictive phase (post 1995) of the Executive-Legislative relations during the Ménem government. During this stage, Congress not only kept the reaction powers it had had, but it increased its active powers by delaying almost all privatization projects and forcing more controls on the executive from which, after a strong delegative period at the beginning of the 90's, it wanted to be independent.

making have been growing in comparison with previous stages of executive dominance. The regular procedure can be deliberately altered by Congress to speed up reforms (as it was the case with the Economic Reform Law), empowering the executive to dispose of certain budget assignments and detour money transfers, only informing the assembly and not having to withstand the possibility of an opposite opinion or a veto.

4.9.1 Constitutional Base and Historical Evolution of the Budget Law³³⁹

- *Evolution of Budget and Control Institutions in Argentina*

- 1767 A court of accounts is created under the viceroyalty of the River Plate, largely to control the use of revenues from taxes and import duties.
- 1822 In the province of Buenos Aires the Budget prepared by the executive is submitted to the legislature for approval.
- 1826 The 1826 Constitution establishes the authority of the executive branch to prepare the national budget, requiring the approval of Congress.
- 1853 The constitution allocates the power to levy taxes between the Federal and Provincial Governments; it also establishes that Congress must set the expenditures, budget and approve the investment account.
- 1859 The regulations on treasury payments are sanctioned by Law num. 217.
- 1870 The Accounting Act (num. 428) is issued; it remains in force for more than 70 years, regulating the control systems and the submission of the annual budget.
- 1898 The budget process is regulated, especially in relation to how government institutions can enter into obligations and sign contracts.
- 1947 The Law 12.961 is adopted, establishing the rules for submitting the budget and the fiscal year regime and incorporating the principles of unity and universality of the budget.
- 1956 The requirement to separate current from capital expenditures and an incumbent approach with regard to expenditures are adopted. The court of Accounts is created as an external control organ, to exercise preventive control and to carry out the account reviews and accountability proceedings (Juicios de Cuentas y Juicios de Responsabilidad)
- 1963 The National Budget office is created, and the functional classification of expenditures is incorporated, specifying program objectives
- 1989 Ménem's first presidential period. Stabilization plan and structural adjustment measures to re-arrange public spending are taken.
- 1991 The Convertibility Act is adopted providing a fixed exchange rate and automatic support of the monetary base by central bank reserves (*Caja de Conversion*). A cost containment policy is also adopted.
- 1993 The law on Financial Administration (Num. 24.156) enters into force thoroughly reorganizing the administration of public finances. The national office of public debt is created. The internal control functions are transferred to the General Comptroller's office. The office of the Auditor-General is

³³⁹ Source IADB, 1998.

- created to exercise external control as an auxiliary organ to the national legislature; it replaces the court of accounts with expanded functions.
- 1994 A constitutional amendment creates the figure of the Chief of Cabinet (*Jefe de Gabinete*) or coordinating Minister, gives constitutional standing to the office of Auditor General and expands the powers of Congress in its control task. A government plan is prepared describing the main policy lines and presenting an investment plan to Congress. Law 24.354 is passed, creating the public investment system, the under secretariat for public investment and the national bureau for investment and project finance.
- *Evolution of Budget and Control Institutions in Venezuela*³⁴⁰
- 1776 The Intendancy of the Royal Army and Treasury of Venezuela is created. Its functions include promoting economic activity and providing fiscal control.
- 1811 The Constitution of 1811 guarantees the right of all inhabitants to be informed about the use of public revenues and to participate in fixing tax rates and contributions.
- 1819 The new Constitution requires the executive branch to render an account to parliament of the use of all public funds obtained through the levying of special contributions.
- 1821 The General Accounting Office of the Treasury is created within the framework of the Congress of Gran Colombia. Among other functions the office assumes those of the official auditing office.
- 1830 The Budget function begins to comply effectively with the constitution of 1830, which requires Parliament approval for the entire budget process.
- 1873 The Public Finance Code is approved as a legal instrument than incorporates all laws related to the management of public finances
- 1918 The new Basic Law of the Public Finances stipulates that the General Accounting Office would exercise its functions of control and examination of public accounts under the executive branch.
- 1938 A new Basic Law stipulates that the office of the General Comptroller of the Republic would be an autonomous agency responsible for exercising external control over public accounts.
- 1947 The Office of the General Comptroller is incorporated into the Constitution.
- 1948 The General Directorate of the Budget is created with divisions of budgetary planning, implementation, public credit and publications.
- 1958 The Central Office of Coordination and Planning (Cordiplan) is created as an advisory agency for the President and the Council of Ministers.
- 1971 The Budget begins to be presented by Programs (*Cuarto Plan de la Nación, Quinto Plan*, etc)
- 1976 The Basic budgetary law scheme is promulgated, establishing the requirement to formulate the budget by program, setting program targets and defining government activities.

³⁴⁰ Source IADB 1998.

- 1978 The Central Office of the Budget, Ocepre, is created. This office has played a fundamental role in consolidating the budget process along modern lines. Its' most important achievements include consolidating public sector accounts and creating a monitoring and evaluation system for the budget reporting.
- 1992 A new law regulating the Central Bank's functioning is approved. It grants the Central Bank a greater operating autonomy and limits the possibilities for granting direct financing to the government.
- 1995 A reform project is taken to strengthen the government's financial administration. A new basic law for the office of the General Comptroller is approved to separate internal from external control in budget creation.
- 1997 A system of control is organized, creating the superintendence of internal control and public accounting and the macroeconomic assessment unit for Congress

4.9.2 Parliamentary Control over the Budget Procedure

The Constitution of 1961 distributes responsibilities related to the budget matter in Venezuela accordingly: "The National Executive will hand over to Congress, in the opportunity signaled by the organic law, the Project of Budget Law. Chambers will then be allowed to relocate budget initiatives but they are not permitted to authorize expenses that exceed the income amounts in that project" (Art. 228). The structural fact is set: The executive power presents a budget proposal which is later analyzed and eventually corrected or approved by Congress without altering the incoming amounts originally provided.

Historically, this normative condition has been present almost since the first constitutions. The 1821 text contemplated provisions that stated it should be Congress that would set the amount of expenses for the executive (Art., 55); even back then, the President would open the annual congressional sessions presenting a balance of the budget he used indicating "the reforms or improvements that could be done in each case" (Art. 129, 1821 Constitution). All other following constitutions until 1858 (Brewer-Carias, 1985) establish the separate powers of the legislative and executive regarding the budget, that is, the legislative rules on public spending and controls all investment of income, while the executive presents the projects and explains how/when expenses have occurred. Constitutional texts from 1864 (the ending year of the Federal War) until 1893 show that the legislative was enabled to formulate the annual expenditures of public offices, which after 1893 (and most clearly in the 1901 constitution) becomes a yearly obligation. That is, to "discuss and sanction the plan of public expenses which under no circumstances must be delayed from year to year" (Art. 54, 1901).

It is in the 1925 text (Brewer-Carias, *ibid.*) where the competences of both executive and legislative are better separated and expressed. The constitution establishes the division between the preparation of the law project and the formal discussion and sanction of it as law. The constitution of 1947 enhances new powers to the Legislative: (1) Congress can produce modifications on the law project presented

by the executive and (2) the permanent congressional Commission can participate in the design of the Budget project. This Constitution was created under very particular political conditions. The recent Coup of 1945 had removed the government to place a civil-military group which then called for democratic elections. The elected Parliament was granted strong powers to legislate as part of the new democratic spirit. For example, Art. 208 (1947) lays down that the Finance Minister must present (in the first 5 days after the beginning of Assembly meetings) “correctly and individually explained”, each and every one of the major items exposed in the budget. This document had to have been prepared in collaboration with other cabinet Ministers and the permanent commission of Congress. Chambers were free to modify the presented project while increases in the expenses foreseen by the executive were not allowed, unless both chambers could produce a vote of two thirds of its members to authorize the enlargement. Aside from this presentation made by the central executive, all federal executive authorities had to expose their investment plan through the finance Minister.

From the analysis of this constitutional provision it can be deduced that the legislative had strong controlling powers over the executive’s initiatives. These were even bigger than those in the 1961 constitution as Avellaneda (1998) mentions: (1) the legislative participated actively in the making of the budget law through the members of its permanent commission, being also able to obtain more information and an accurate revision and approval of the project. (2) Chambers were allowed to modify the project as it seemed best to them, needing a two third floor vote to increase the expenditure provisions. The Constitution of 1947 does not mention whether Congress was unable to authorize expenditures that exceeded the total income planned by the budget law.

The Constitution of 1953 and 1961 represent a certain drawback regarding congressional empowerment over the budget³⁴¹. The 1953 text limited former congressional inherence to participate in the project making and to alter its content. Actually, it narrowly allowed the chambers to approve the budget of income and expenses presented by the national executive. This rubber stamp reduction of the congressional role was to be performed “every July first, even if then it had not yet been sanctioned” (Art. 81). The 1961 constitution brought back a lot of the former congressional empowerment conditions but did not go as far as the 1947 constitution. Congress was indeed allowed to modify some specifics but could not alter the total amount of expenses.

In spite of these advances to empower Congress on the study of the project presented by the executive, in Venezuela there is no control over the procedure itself once the law has been discussed and approved; thus it can be said there is little if any congressional participation over budget decisions once they are on course. What could happen is that controls appear *a posteriori*, once the resources have been used and the

³⁴¹ The 1953 Constitution was made under the authoritarian regime of Pérez Jiménez, while the 1961 was the consolidation of a coalitional pact named *Pacto de Punto Fijo* where all political forces except the communist party participated.

president or some cabinet member is called for questioning or for interpellation. The only other possibility of congressional control is when the executive needs extraordinary financial resources and must present Congress its substantiation for an extraordinary financial assignment. These petitions can be denied or passed according either to the grounding of the need and/or the ruling party's representation in both chambers.

In Argentina the constitution of 1853 was rather vague compared to the 1994 text regarding congressional control over the budget since it conferred presidential powers "to collect taxes and invest them" (Art.86), this article also says the president "participates in the making of the laws and sanctions them". In 1994, the text is more specific on budget matters and Art. 100 clearly mentions the executive must "send to Congress all legal projects and that of the national budget after a collective agreement in the cabinet". Despite these provisions and although the National Budget Office was created in 1963, a long period of political instability occurred "characterized by a high concentration of power on individuals and a succession of financial crisis and high and variable inflation, including hyperinflation" (Petrei, 1998, p.215). During most of the 70's and part of the 80's the budget institutions deteriorated continuously as did all other effective institutional interplay to warrant power balance. Budgets approved in the beginning of the year would undergo many non consulted changes during their implementation³⁴². There is a clear tendency with these variables to form a financially dangerous vicious circle: the lack of stable framework made it difficult to formulate a budget and at the same time, the absence of a budget impeded macroeconomic management and improvement too much to create a stable institutional framework.

In 1991, Congress adopted a new law (*Ley de Convertibilidad*) establishing a fixed exchange rate backing the monetary base, while in 1993 a law on financial administration was sanctioned (Act. 24.156), aimed at the efficient and effective use of revenues and at the facilitation of the attainment of economic equilibrium. After these two laws the functional procedure remained that the budget bill must be sent to Congress by September 15 to be debated, if it is not approved by the beginning of the following fiscal year (either because the executive did not manage to send a bill or because chambers in Congress arrived at no conclusive agreement) the budget of the former year is valid (same condition as in Venezuela). Constitutional provisions that the legislature cannot increase expenditures without approving the necessary financing at the same time remained unchanged, also the constitutional provision for extraordinary financial credits in events such as natural disasters. However, Congress must be closely informed about the expenses. Also according to Art. 75 of the 1994

³⁴² Petrei (ibid.) adds: "At times budgets were not even approved at the beginning of the fiscal year but in mid term or sometimes when the year was already over. For several years there was a strong confusion between the budget and actual execution, so much so, that expenditures were considered a sort of draft against an open ended spending authorization. This occurred both when there was a legislature and when there was none." (P. 215) It was in 1991 that the Argentinean executive managed to submit the budget within the legally expected time frame, something which had not happened since 1953.

Constitution³⁴³ it is the assembly that determines the financing of the resources and its limits.

It is almost a common agreement that the Argentine Congress has gained presence in the control function both on constitutional terms and on real political play (Llanos, 2002; Corrales, 2001). Despite that, the budget process is one of the aspects that still wait for better empowerment. The fact that it is an instrument with political, legal and planning aspects, specially the power to admit or refuse the passing of the bill with the pertinent observations to amend it, gives Congress influence to act as a veto player (Ménem/Dromi, 1995).

However, once the budget has been approved by the two chambers, Congress has little overview power but, again, it can use controls *a posteriori* to make the executive accountable. For years the budget execution control was assigned to the National Accounting Office, anchored in a legislation of 1870, and the executive had the exclusive power to remove its directors. This left the system with almost no external control of the budgetary execution until 1993, when all these control functions were allotted under the general comptroller's office.

5. Other Institutions to Constrain Executive Power.

In most of the Latin American constitutions there are other forms to coerce governments without the direct intervention of the parliament. This is coherent with the premise that other institutional empowerment happened out of the fear for loss of institutional balance and additional institutions to control the executive were born out of this worry.

Some presidentialist institutional designers were afraid of giving the legislative excessive supremacy (as in the U.S.), but it was easy too see that everywhere the real threat consisted in power encroachments by the executive. This conclusion led, with many variations across countries, to the creation of a series of public institutions (general accounting offices, ombudsmen, general attorneys, special prosecutors, and others) that are supposed to complement (and reinforce) the older - now perceived as insufficient- institutions of balance accountability. Some authors, notably Mueller (1996), include bi-cameralism as a form of constraint and increase of control not only by constitutional appointment of the chamber powers, but because of the increase in political weight there is when Congress has two chambers rather than one in a presidential system. The constraint factor is also viewed on behalf of the veto capacity other actors or institutions may have, to limit the proposal or actions of the government.

Table 3.1 Elements Constraining Governmental Power

- Referendum (for Constitutional Decisions)
(For Parliamentary Decisions)
- Bicameralism

³⁴³ Art. 75:8. "Fijar anualmente conforme a las pautas establecidas en el inciso 2 de este artículo, el presupuesto general de gastos y cálculo de recursos de la administración nacional, en base al programa general de gobierno y al plan de inversiones públicas y aprobar o desechar la cuenta de inversión".

- Federalism³⁴⁴
- Rights
 - Human Rights
 - Constitutional Rights
- Civil Society and NGOs
- Market
 - Public Property Rights
 - Private Property Rights
 - Economic Rights³⁴⁵
- Contracts
 - Anti-Trust Regulations
 - Tariffs and Quotas
- Access to information
 - Free Press
- Procedural Constraints
 - Holding public hearings so all points of view are aired
 - Conducting Independent Cost-Benefit Studies

Some of the institutions are present in all constitutional texts, some are not. One of the most interesting and perhaps itself a remembrance of direct democracy is the Referendum³⁴⁶. We distinguish four forms in common use, namely,

a) The constitutionally mandated referendum: when the constitution requires that certain issues (Constitutional amendments; earlier elections) voted upon by the legislative, be approved by the citizens in a popular referendum before they can take effect.

b) The government-initiated Referendum: the constitution may allow the government (in the form of either the legislative body or the chief executive) to place certain issues before the electorate to be decided directly through a popular consult.

c) The citizen-initiated Veto. The Constitution may allow an action taken by the legislature to be submitted to the citizens, upon the petition of a required number of citizens (normally through a signed and certified document). Any action taken by the legislature should be overturned, if it fails to receive enough votes in a referendum.

³⁴⁴ Federalism as a category is not used by Mueller (1996), however it is mentioned by Cox/Morgenstern (2001) as a one of the effective veto actors in governing. Indeed, the power of the executive in a presidential system can be notably diminished and perhaps controlled to a certain point by the regional, also publicly elected and legitimate governments. To accentuate this, some Latin American constitutions have a determined weight placed on regional assemblies (e.g., Argentina 1994 constitution; Venezuela, 1961 text with the reforms made in 1983) which enables these to influence or curtail centralized decisions.

³⁴⁵ Most constitutional texts in Latin America have a number of constitutional rights embedded in their Articles. A constitutionally protected premise as Liberty requires not only freedom to act but also the capacity to do so. That one is free to purchase food and medical protection to sustain life is of little consequence if one lacks the economic capacity to act. Most constitutions speak of the right to labor, and to receive some assistance from the state if ill or unemployed. In Switzerland, old age pensions are part of the constitution. In the U.S., both social security and unemployment insurance have, though arguably, quasi-constitutional status. In Latin America, economic rights still work on their real development. The Venezuelan Constitution (1961) has a whole chapter dedicated to them (Chapter V Economic Rights, Arts. 95-109). The Argentine texts from 1860 and 1994 are less specific though the contract does provide a set of rights (Art.14 and 14 b in the 1994 Const.)

³⁴⁶ We accept here Mueller's (1996) own classification on four types of referenda though it is convenient to point out that the topic itself, as others alluded here, escape the scope of this study and deserve a critical study. For a deepening in Referendums and Referenda (term discussion included) see Butler/Ranney, (1978); Zimmerman (1986), Zisk (1987) and Cronin (1989).

d) The Citizen initiative: the constitution may allow an action to be placed before the citizenry in a referendum should a required minimum number of citizens make this petition. If the initiative is triumphant in the popular consult, it ought to have the same stature as a decision taken by the legislature.

Other classifications made in Latin America (Gentile, 1997; Zarini, 1992) and defining referendum as “procedure through which the electoral authority takes a public pronouncement on a decision of normative character” include:

Constitutional, legislative, administrative, jurisdictional or municipal: the name depends of the character of the norm that is being discussed.

General or partial: it refers to the range capacity of the referendum, which is whether the consult will verse over general terms or over specific questioning³⁴⁷.

Obligatory, facultative or optional: the criteria here, is the voter and his participation. It will be mandatory only when the law states it so, facultative when it runs under the consideration of the electoral body, and optional, when it is up to the criteria of the citizen to participate or not.

Ante Legem or Post Legem: the focal point is whether the consult takes place before a legal project is approved by the legislative or after it has become a law.

In the case of Argentina, the 1994 constitutional reform has incorporated the popular consult in chapter II, titled “New Rights and Warranties”. Art. 40³⁴⁸ establishes that Congress, through an initiative of the Deputy Chamber, can submit any law project to popular consult (referendum). The positive vote on the matter will automatically give it a law rank and it ought to be immediately published as such. The president is also allowed to call on popular consult, though votes in this type of call are not mandatory. However, the end of Art. 39 and Art. 40 itself, rule that Congress has the power to preclude some topics from popular consult. Art. 39 establishes that “the following projects will not be object of popular consult: constitutional reform, international treaties, tax organization, budget law and justice dispositions”. This is one of the most serious objections to the use of referenda as a public way of decision making since the general public may be too uninformed on specific subjects. Anyway, it is up to the legislative to give the last word whether a subject ought to become a topic of consult or not. Regarding the number of people in Argentina that make a referendum call valid, this is declared a matter of the electoral body (Gentile,1997). During Alfonsín’s government, a presidential decree (num. 2272/84) carried out a non-relating optional popular consult on the border problem

³⁴⁷ This is a seriously debatable point since the idea of a popular consult, aside from the fact that it can be mandatory or not, always refers to a most general opinion stated in the form of a Yes/No question.

³⁴⁸ In the chapter of New Rights and Warranties, Art. 40, states: “El Congreso a iniciativa de la Cámara de Diputados, podrá someter a consulta popular un proyecto de ley. La ley de convocatoria no podrá ser vetada. El voto afirmativo por el pueblo de la Nación lo convertirá en Ley y su promulgación será automática.

El Congreso o el Presidente de la Nación, dentro de sus respectivas competencias, podrán convocar a consulta popular no vinculante. En este caso el voto no será obligatorio.

El Congreso, con el voto de la mayoría absoluta de la totalidad de los miembros de cada cámara, reglamentará las materias, procedimientos y oportunidad de la consulta popular”.

with Chile and the Beagle channel. Following the constitutional text, the vote was optional and without previewed sanctions for those not interested in voting.

In the Venezuelan 1961 Constitution, Art. 246³⁴⁹ contemplates the possibility of Constitutional Reform when a congressional initiative is submitted to popular consult. People ought to pronounce themselves in favor of or against the reform. This procedure was followed for the 1999 reform, after the electoral results had openly favored the presidential candidate with a strong congressional majority.

Structurally speaking, a negative consequence of referenda can be the following: if the government, a political party, or an interest group can, by petition, bring a constitutional amendment to a public vote, the possibility exists that the basic rights and democratic institutions may become vulnerable to short-lived alterations in public opinion and/or shifting majority coalitions or interest groups. On the other hand, when very large majorities or a strong number of hurdles are normatively required to pass any constitutional change, the ideas and values of a generation (regarding individual rights issues and a whole set of moral arrangements) may be imposed on future generations via fixed constitutional dispositions.

In sum, mandatory referenda on constitutional amendments can improve the democratic process by involving citizens in the modification or reformation process, thereby reinforcing their commitment to the constitutional contract. Citizen-initiated referenda can function as a check on the government (Mueller, 1996), whereas government initiated referenda serve to a less clear purpose and have been used by authoritarian regimes and by party leaders to achieve their objectives rather than those of the people.

Another institution set to constrain executive power though not always entitled to supervise it, is the whole nature of the constitutional rights designed for the individual (Dworkin, 1977). Although no society has the same embodiment of institutions to protect and define a common set of individual rights, the frame of rights does depend on the constitutional engineering process³⁵⁰. The diagram of the rule of

³⁴⁹ Art. 246: “Esta Constitución también podrá ser objeto de reforma general en conformidad con el siguiente procedimiento:

- 1) La iniciativa deberá partir de una tercera parte de los miembros del Congreso, o de la mayoría absoluta de las asambleas legislativas en acuerdos tomados en no menos de dos discusiones por la mayoría absoluta de los miembros de cada asamblea.
- 2) La iniciativa se dirigirá a la presidencia del Congreso, la cual convocará a las cámaras a una sesión conjunta con tres días de anticipación por lo menos, para que se pronuncie sobre la procedencia de aquella. La iniciativa será admitida por el voto de las dos terceras partes de los presentes.
- 3) Admitida la iniciativa, el proyecto respectivo se comenzará a discutir en la cámara señalada por el congreso, y se tramitará según el procedimiento establecido en esta constitución para la formación de las leyes.
- 4) El proyecto aprobado se someterá a referéndum en la oportunidad que fijen las cámaras en sesión conjunta, para que el pueblo se pronuncie a favor o en contra de la reforma. El escrutinio se llevará a conocimiento de las cámaras en sesión conjunta, las cuales declararán sancionada la constitución si fuere aprobada por la mayoría de los sufragantes de toda la república”.

³⁵⁰ Constitutions are socio-political contracts defining the rules under which the polity operates, and the rights and obligations of its citizens. These constitutional contracts arise to reduce the uncertainty over how individuals and the state should behave in the future. “In absence of decision making costs, citizens would never define constitutional rights. All collective decisions could be made without costs and instantaneously using the unanimity rule. The veto each individual possesses under the unanimity

Law (Díaz, 1998; first ed. 1961) comprises the respect of the law as an expression of the common will, the division of powers, and the set of fundamental rights and judicial warranties the individual is entitled to. There seems to be a small paradox if we observe that one of the functional pre-conditions of the democratic state is the protection of an array of individual rights, however that goal may impede by itself the role of governing. Constitutional rights for the individual encompass the widest range of empowerment definition society has access to (including property rights, all kinds of private contracts and regulations of the economy), and they become a clear border for the power of the government.

Civil society and non governmental movements have had a slow evolution in Latin America, but their development has lately been accelerated due to functional loop holes left by the traditional political parties (Castro-Leiva/Pagden, 2001). Most Latin American societies, mixed between a tradition of strong republicanism and a combustion of desired liberal states with welfare provisions, have reacted, particularly after the 80's and 90's, with a more organized response at grass root level. Civil society in those Latin American nations where it has gained some momentum, represents a non official initiative to offer solutions to problems local and national governments have either not focused or not been able to solve. Their empowerment is mostly constitutional since the freedom of association is part of the natural warranties all democratic constitutional texts grant.

6. Consequences of parliamentary Control in Latin America.

The notion of control as we have shown it implies not only its accountable nature but also the idea of pre-emptive procedure through which the failures or inconveniences in public policies (proposed by the executive) can be curtailed in advance by the legislative. This can be done as a counter policy proposal, by veto, by modification of the legal plan projected, by approving only some of its parts, etc. As much as it is true that the executive in countries like Argentina after the 1994 constitutional reform, has a partial veto empowerment, (the power to approve extracts from a legal proposal sent by Congress) the legislative has always had this entitlement. Whatever law project is introduced by the executive in Congress will be dealt with and voted two times in each chamber, revised article for article. Thus the legislative has the possibility to singularly alter (and significantly modify) any executive initiative. It can even create a counter legal tool to it in order to make the executive bill short lived or dysfunctional. Both examples have been seen in Argentina where Congress (especially after 1991) performed a growingly active role approving (but greatly modifying the terms of) all the privatization contracts the executive demanded³⁵¹.

rule would be the only protection of rights that he would ever need. Rights, like the institution of government itself, emerge as a way of reducing the transaction and decision making costs of collective decisions" (Mueller, 1996, pp. 220-221).

³⁵¹ Some authors (Murillo, 2001; Margueritis, 1999) observe this as an attempt of the *Partido Justicialista* to near itself to the base and maintain its support. It probably did not want to look too neoliberal as a party that after all, had been statist in nature and origin. Most of the reforms included in

The consequences of legislative control can be legal sanctions as by products of the investigations or interpellation. Political trial, (a possible impeachment in the case of the president) can lead to further judicial trials for other responsibilities³⁵². Another set of consequences is that controls, or better said, the increase of legislative viscosity by strong control or growth of potential disagreements between the institutions, can trigger the use of legislative powers each Latin American president is entitled to.

The controlling role and the procedures it involves have a notable effect on the political image of the actors particularly in times of reform. Avellaneda (1998) concludes that Congress can influence various policies, programs and/or projects from the executive, modifying them and molding them, directly through discussion and approvals (inclusion) within the budget law, or conditioning its approval to a reform done by the executive itself. In this sense, the legislative can recommend the executive to take its observations into account to approve international treaties, contracts of national interest or the configurations of the whole economic and social development plan of the nation.

6.1 Political Image and Credibility of Political Institutions.

A direct consequence of the controls Parliament can exert over any executive policy administration is the variation in the perception of the political image of the actors, something severely deteriorated during the reform period of the 80's and 90's. This can function in two ways: by continuous support between the two powers, executive and legislative, any executive decision is better assimilated and the government credibility is boosted (Corrales, 1998); on the other hand, if legislative controls are continuously applied, people may perceive that institutionally seen, Congressmen are "doing their job".

For the first case, legislative overview in times of reform has the two possible options of Congress in favor of and Congress against reforms, having the latter the possibility of institutional gridlock. However, because of the preemptive character of many of the control measures or their "by-process" form, controls could be exerted so that the legislative can go together with, or clearly express, its opinion about the reform clauses or measures. The alliance of the president with his party in Congress, if he has an absolute or working majority, has the simultaneous effect of reinforcing the collective disposition towards reform and the state clearly seems more united to the public opinion³⁵³.

the parliament were guided to benefit the unions with share packages thought for the workers in each privatization.

³⁵² After the 80 and 90's when a new vision of the role of the state had been proclaimed, several important legal causes have found way and are common to almost all the Latin American Region: a) *Malversación*; b) *Enriquecimiento Ilícito*; c) *Gastos que excedan las previsiones presupuestarias*; d) *apropiación ilegal de bienes públicos*; e) *tráfico de influencias*, among others (Avellaneda, 1999)

³⁵³ One common indicator of the rising credibility both inside and outside any country is the "country risk premium" or "country risk factor", namely, the difference between the international and the national cost of money. Most Latin American governments are regularly in the drama of having problems to raise money from foreign creditors. Bonds are normally sold at interest rates far above

For the second case, the perception that the political institutions are working, it can be taken also like a signal for economic health of the whole system. This was not perceived so during the adjustment periods in Latin America in which, according to *Latinobarometro*, the integrity of both reformist governments and institutions in general was put into distrust affecting the whole political environment. Another fact is that an abrupt loss of popularity brings up the question of legitimacy, a problem that has affected the region as a whole (Canache, 1997).

6.2 Censure Vote and Removal.

One of the direct consequences of legislative control is the possibility to initiate a political trial involving the president or any of the cabinet members (Bidart Campos, 1990; Molinelli, 1999). Strictly speaking, it is one of the accountability controls the legislative has over the executive, already included in several constitutional texts in Latin America. In Argentina it has been applicable to Ministers, vice-president and president alike since the 1860 constitutional text. "The spirit of these trials was not only to remove a civil servant from office, but also to pursue his/her total inhibition from any public position" (Molinelli/Sen/Palanza, 1999, p.111). In Venezuela, the declaration of political responsibility by parliament normally is the product of an inconformity between the legislative and the executive institutions (Brewer-Carias, 1982). The faculty that the legislative can dismiss cabinet members due to political disagreements and not penal responsibilities, is also a reminiscence of the parliamentary system where the whole cabinet can be removed by censure votes. The case of Venezuela, a country with strong legislative constitutional empowerments in the 1961 constitution, the censure vote can be transformed into a dismissal, by a simple majority and a qualified majority vote of two thirds of the Congress members respectively.

In both countries the procedure to censure cabinet members is similar in the sense that it starts in the Deputy Chamber. After voting it is sent to the Senate to deliberate on the ultimate decision. In both countries it is the upper chamber that has the final word to authorize legal measures or not. In Argentina, no Minister has been subject to such measures between 1983-1999. In Venezuela, legislative chambers have declared political responsibilities of two presidents (on one of them two times). In the first two times, Pérez I and Lusinchi, the commission did not deliver further results because of party discipline which automatically inhibited any independent

those of the international markets, in direct proportion to the degree of credibility institutions may inspire. Although this is not an exact rule, normally countries on the way to economic reforms that imply (among others) the reduction of the fiscal deficit, observe a reduction in the international risk level proportional to the rise in the amount of their credibility factor. Thus, the higher the difference of what a government has to pay to attract lenders the higher (and more costly) the credibility problem. Argentina, after the difficult period of 1989-1991 saw a strong reduction in international market interest rates from 21% (1990) to 3,6 (1993). (Corrales, 2001). Of course there are international standards to the reduction of interest for national bonds other than the credibility factor. The normative criteria to access to international money on convenient terms for any government must follow the subsequent pattern: a) the economy must be small by world standards; b) fiscal policy and monetary policy must be conservative; c) the Central Bank must be independent; d) the economy must be liberalized; e) labor market flexibility must be high (Corden, 2000).

initiative of any party member. In both cases AD had absolute majority in both chambers and could easily override any motion against its own president. The situation was much more different in the case of Pérez' second government, when his party still had important sectors of parliament but most of his party members deserted him as he began with the reform plans agreed with the IMF and the World Bank.

During Pérez's first government, the Sierra Nevada case³⁵⁴ provoked a congressional consideration for a political trial on the president, the Minister of Industry (Luis Alvarez) and other public servants. This congressional deliberation occurred after AD had lost its tight grip on both chambers, and only had a working majority in Congress with the other major political party, Copei, producing a certain balance in the legislative. The pact mentality of all Congressmen triumphed in the end considering that the determination of guilt on one political figure could start a witch hunt harmful to all of them. As a Congressman author of one of the saving votes that prevented Pérez from going to prison in his first government put it: "through the declaration of political responsibility on the Sierra Nevada Case, we make a value judgment over his whole presidential activity" (José V. Rangel, *gaceta de debates del Congreso*, 17/04/1980).

A similar case happened with Jaime Lusinchi where AD once more had a tight rule over the congressional chambers. A commission proposed by the Senate in 1990 (after the Lusinchi period) found him responsible of several administrative mistakes in the exchange control disaster known as the Recadi case, together with finance Ministers Hector Hurtado, Manuel Azpurua and Eglee Iturbe³⁵⁵. In both cases the accountability process done by the legislative was *a posteriori* and with no significant consequences.

6.2.1 Removal of Cabinet Members.

A notorious form of control exerted by the parliament in some presidential systems is the possibility to remove cabinet members, i.e. Ministers designed by the president. This element, not always included in all constitutional texts, is a reminiscence of parliamentary systems that becomes an almost theoretical opposite to the idea of congressional delegation on the executive (Planchart, 1985). The empowerment of the parliament to interfere with the executive cabinet programming is also a particular characteristic of Latin American presidentialism, probably closer to

³⁵⁴ Sierra Nevada was a ship that became itself a symbol of unnecessary spending by a seemingly immature and corrupt government. Its name became a symbol of the huge corruption of an era where petro dollars created the illusion of progress at the cost of enormous international credit and debt. The same can be said about the *Régimen de Cambio Diferencial*, Recadi, a currency exchange control institution that achieved records of corruption for selected cheap dollar assignments during the Adeco government of Jaime Lusinchi (1984-1988).

³⁵⁵ The internal differences between the party factions of Pérez and the Lusinchistas were no secret. Pérez, to become a candidate for the second time, had to beat Octavio Lepage, the president's favorite candidate. Some AD members considered later the corruption investigations done during Pérez's second administration as a revenge on Lusinchi and his sympathizers. The ex-president after being declared guilty by the court, had to leave to Costa Rica on exile together with his private secretary.

Madison's original idea of checks and balances but also ideologically distant from the concept of public power independence and separation.

Presidentialism, far from being a homogenous idea or system, presents significant variations in some countries (Mainwaring/Shugart, 1997). The nature of the party system and the number and discipline of the parties involved affects the compatibility level of the president and the assembly. The executive-legislative connection or understanding many times depends only on the amount of presidential support in the assembly, either from his own party or from a supporting coalition, and the electoral system that will determine how this majority, or even disciplined minority, will behave. Electoral systems favoring party lists will certainly give more hand to the possibility of having the party and the party leaders as controllers of the selection process. Most surely, the control of the pecking order in the lists will favor those parliament candidates who are likely to maintain a stronger discipline level in the assembly favoring the party's goals. In the Venezuelan case, every time the president's party had an absolute majority in congressional seats, Congress delegated decree authority in economic and financial matters for at least one year.

If the president confronts a highly fragmented parliamentary map, he is more likely to have to rely on coalitions which will demand either patronage or pork barreling from him (Morgenstern/Nacif, 2002). When party fragmentation is less pronounced, the need for inter-party coalition diminishes and, even when his own party does not have an absolute majority in parliament it will surely control a strong portion of the seats in the assembly. This is particularly significant considering that constitutional texts require a simple majority to apply a censure vote to a cabinet member but normally demands a minimum of two thirds of the chamber vote to remove him. Therefore removal may require the cooperation of the ruling party and of the major opposition forces.

Because in Argentina there have been no political procedures against cabinet members, the statistics in Venezuela are comparatively more impressive. Censure votes have occurred several times whereas ministerial dismissal only once. Almost in every case these censure votes have been tied to party discipline, either because the ruling party has overridden an attack against one of the cabinet members, or because, as opposition party (the party with a big portion of the seats), the party members center their attention on one or more of the cabinet members. Having the power vote, the censure procedure is carried with total uniformity through roll call votes. In Venezuela, party discipline was so tightly sealed that it made roll call votes only an empirical projection of what the party directives (*cogollo*) had previously decided.

Votes of Censure on Venezuelan Presidents and Cabinet Members

Date of Decision	Minister Under Scrutiny	Administration in Power	Partisan Control of Congress	Result of the Move to Censure
President's Party Controlled fewer than 34% of the Seats in the Chamber of Deputies				
17/05/72	Public Works Curiel Rodriguez	Caldera COPEI	Opposition Plurality	Approved by less than 2/3

28/03/95	Agriculture and Livestock Añez Fonseca	Caldera/MAS/Converg.	Opposition Plurality	Withdrawn because Minister left post
23/05/95	Development Corrales	Caldera/MAS/Converg.	Opposition Plurality	Defeated
19/10/95	Health and Social Assistance Walter	Caldera/MAS/Converg.	Opposition Plurality	Approved by more than 2/3. Minister was removed.
27/03/96	Finance Matos Azócar	Caldera/MAS/Converg.	Opposition Plurality	Defeated
President's Party controlled between 34% and 49% of the seats in the Chamber of Deputies				
28/05/81	Education Fernández Heres	Herrera Campins COPEI	Opposition Plurality	Approved by less than 2/3
27/10/81	Education Fernández Heres	Herrera Campins COPEI	Opposition Plurality	Approved by less than 2/3
04/05/83	Energy and Mines Calderon Berti	Herrera Campins COPEI	Opposition Plurality	Approved by less than 2/3
04/05/83	Development Porrás Omana	Herrera Campins COPEI	Opposition Plurality	Approved by less than 2/3
04/05/83	Agriculture and Livestock Villegas	Herrera Campins COPEI	Opposition Plurality	Approved by less than 2/3
04/05/83	Cordiplan Izaguirre	Herrera Campins COPEI	Opposition Plurality	Approved by less than 2/3
04/05/83	Venezuelan Investment Fund Luis Soriano	Herrera Campins COPEI	Opposition Plurality	Approved by less than 2/3
27/03/92	Agriculture and Livestock Coles	Perez II AD	Presidential Plurality	Approved by less than 2/3 thirds
27/03/92	Finance Pocaterra	Perez II AD	Presidential Plurality	Defeated
27/03/92	Cordiplan Rodríguez	PerezII AD	Presidential Plurality	Defeated
President's Party controlled at least 50% of the seats in the Chamber of Deputies				
02/06/76	Finance Hurtado	Perez I AD	Presidential Majority	Defeated
02/06/76	Development Casal	Perez I AD	Presidential Majority	Defeated
02/06/76	Agriculture	Perez I	Presidential	Defeated

	Contreras	AD	Majority	
02/06/76	Cordiplan G. Rodriguez	Perez I AD	Presidential Majority	Defeated
02/06/76	Basic Industries Lauría	Perez I AD	Presidential Majority	Defeated
02/09/86	Secretary of the Presidency Lauria	Lusinchi AD	Presidential Majority	Defeated
02/09/86	Finance Azpurua Arreaza	Lusinchi AD	Presidential Majority	Defeated
05/04/88	Justice Manzo Gonzalez	Lusinchi AD	Presidential Majority	Withdrawn because minister left post

Source: Crisp, 2000

6.2.2 The Impeachment of the President.

The impeachment or political trial of the presidential figure derives from two practical conditions present in contemporary Latin American democracies, namely, the run down process of the presidential image and the fixed term of the executive (Serrafero, 1995). The fact of a fixed term avoids what otherwise would be a dissolution of the parliament and a call to new elections as it would occur in the parliamentary systems (Carey, 1994). The conflict of a politically deteriorated image has particular incidence in the Latin American democracies after the 90's, especially after the structural adjustment measures in the so called "lost decade"³⁵⁶. The fact that almost the whole region saw an increase in poverty levels simultaneously with a wave of new democratic regimes, made the variable comparison quite inevitable, and forced the consideration of whether democracy was delivering enough.

Recent history has provided us with some empirical presidential impeachment cases like Fernando Collor in Brazil 1992, and the suspension and further dismissal of President Carlos Andres Pérez in Venezuela 1993. Another important historical case quoted by some authors (i.e. see Serrafero, 1995) were the several attempts made by the parliament in Argentina to remove Maria Martínez de Perón from power in 1976; their success, it is argued, could have averted the subsequent military coup. This last case was neither a proper impeachment nor a power suspension; however the legislative attempts amidst strong constitutional empowerment of the executive and,

³⁵⁶ Particularly after the 80's and 90's, presidentialist regimes in Latin America have faced numerous political crisis originated by several causes, one of them the mismanagement left by former authoritarian regimes. In many cases democracy has been asked to deliver results soon, especially in socio-economic terms, and numerous countries have not managed to uphold internationally expected standards. Governments and cabinet members have been the visible faces for the disappointed people. If any government has lost the minimum legitimacy and has not been able to ensure some stability in the regime, political impeachment (namely, *juicio político*) is the last resource in presidential regimes to oust the president and provoke a change through pacific though traumatic means (Serrafero, 1991; 1995).

at the same time, the institutional weakness of Congress, could be considered as a background to what happened later.

In all government systems, parliament performs two main functions aside from other attributes: legislate on those matters related to its competence, and control the governmental activity (Avellaneda, 1985). Hamilton³⁵⁷ (in the *Federalist*) had already argued in favor of a political trial almost solely designed by the legislative with a deliberate exclusion of the judicial power: the lower chamber would act as an accusative organ and the higher as a juridical. This proposal had taken certain background from the discussions of Lord Blackstone and Edmund Burke. The former maintained that impeachment was an instrument to sanction the trespassing of clearly defined laws, whereas the latter pondered that impeachment should also include authority and confidence abuse by civil servants, most particularly those in the executive (Kessler, 1982³⁵⁸).

In the presidential system archetype, the United States, impeachment as such has been close to reality notably in the cases of Andrew Johnson and more recently William Clinton³⁵⁹. In the case of Johnson during the XIX Century, the Senate was one vote short of the quorum needed to certify the political causes accused on the president. So impeachment as such has never happened, though constitutional provisions exist in accordance to the idea of the check a balances theory as proposed by Madison. Impeachment would be the ultimate resource of parliament to illegitimate the performance of the executive based on its malfunction.

In Latin America, however, the possibility of political trial can be considered related to the constitutional prevision against authoritarian tendencies from the executive, since it empowers the legislative to proceed against the president or other members of the cabinet. This “constitutional prevision” not always present in all constitutional texts, provides the number of tasks and duties president and cabinet members are allowed to perform; in turn, this list is also a limiting enumeration. All other activities which are not approved by the parliament run the risk of becoming reasons for political accusation. In the classical doctrine of power separation, and remaining on pure theoretical grounds, legislative activity is associated with normative activity, and executive with an administrative function (Suárez, 1994). The performance of the latter becomes an object of judgment for the former on the common normative ground laid down in the constitution. It is empirically more difficult to make power division and separation of activities coincide³⁶⁰ as pure abstractions separated from one another do not exist in reality but institutional powers are closely intertwined in government and policy production. Each one of the powers

³⁵⁷ See Hamilton, Madison and Jay in *The Federalist Papers*, num. LXV and LXVI

³⁵⁸ Frank Kessler (1982), “The Dilemmas of Presidential Leadership: Of Caretakers and Kings”.

³⁵⁹ The case of Richard Nixon and the situation of impeachment is frequently confused. For a clarifying discussion on the topic see Patrick Mc. Geever “Guilty Yes; Impeachment No. Some Empirical Findings” and Gerald Finch “Impeachment and Dynamics of Public Opinion: A Comment of Guilty Yes, Impeachment No”, both in *Political Science Quarterly*, Vol. 89, num. 2, 1974.

³⁶⁰ This is textually envisioned in Art. 118 from the 1961 Venezuelan Constitution: “Every one of the Public Power branches has its own functions, but the organs thus related to its exercise will collaborate with one another towards the ideals of the State”.

has its own set of functions plus also those appointed by the constitutional text and the political need³⁶¹.

Although the so called *Juicio Politico* (political trial) has almost the same name in all countries in the region its device, planning and operative output is very different from country to country. In some, it is the chambers of Congress that accuse and judge the cabinet member who, if found guilty, could be sent directly to justice for further trial. In other cases, Congress or one of the chambers authorizes the investigation which can be performed either by internal commissions or by external members belonging to the judiciary.

In the case of Argentina, art. 45 of the 1853-60³⁶² constitution states, in relation to the lower chamber (deputies): "It is only the members of this chamber who are allowed to accuse before the Senate, the president, vice-president, Ministers, members of the Supreme Court and/or smaller tribunals, in the responsibility clauses attempted against them, due to mismanagement or crime committed while in office. The cause will be declared existent once the chamber has been informed and considers it real by a minimum of two thirds of the vote"³⁶³. Art. 51 elaborates on the procedure a little further: "It is the Senate that must judge under public trial those civil servants accused by the Deputy Chamber, being all its members under oath for this operation. If the trial is against the Nation's President, the Senate will be headed by the chief magistrate of the Supreme Court. No one will be declared guilty unless there is a majority of two thirds of the vote in the chamber". Most interestingly, in the Argentine case the next article, Art. 52, conveys that all this process is to certify the removal of the person accused from Congress; he/she can then be considered liable of penalty in normal judicial courts.

In the Venezuelan case, control exercised by the parliament can have several consequences. Congress can observe the civil, criminal and administrative responsibility and thus, directs its accusations and proofs to the Attorney General who will conduct the indictment; Congress can also declare the responsibility of the

³⁶¹ This consideration of other functions plus those constitutionally assigned can be exemplified by the emergency powers to which presidents arrive by congressional delegation and which provide them with a whole set of additional functions and powers.

³⁶² The Constitution in Argentina was reformed in 1994. The articles that now regulate this situation are number 53, 59 and 60. Very little operative change has occurred, if any, other than a numerical variation.

³⁶³ Art. 45: "Solo élla (cámara de diputados) ejerce el derecho de acusar ante el senado al presidente, vicepresidente, sus ministros y a los miembros de la corte suprema y demás tribunales inferiores de la nación en las causas de responsabilidad que se intenten contra ellos, por mal desempeño o por delito en el ejercicio de sus funciones; o por crímenes comunes, después de haber conocido de ellos y haber declarado con lugar la formación de causa por mayoría de dos terceras partes de sus miembros presentes".

Art. 51 "Al Senado corresponde juzgar en juicio público a los acusados por la Cámara de diputados, debiendo sus miembros prestar juramento para este acto. Cuando el acusado sea el presidente de la Nación, el Senado será presidido por el presidente de la Corte Suprema. Ninguno será declarado culpable sino a mayoría de dos tercios de la votación de los miembros presentes.

Art. 52: "Su fallo no tendrá mas efecto que destituir al acusado, y aun declararle incapaz de ocupar ningún empleo de honor, de confianza o a sueldo en la Nación. Pero la parte condenada quedará, no obstante, sujeta a acusación, juicio y castigo conforme a las leyes ante los tribunales ordinarios".
Constitución de la Nación Argentina 1860, Base de Datos de las Américas.

president or any member of the cabinet. The 1961 Venezuelan Constitution states in its Art. 150, Num. 8 that it is an attribution of the Senate to authorize by majority vote of its members, the trial of the President only when the Supreme Court has declared the motion justified. Once the trial is authorized the president is no longer allowed to remain in office and his duties and responsibilities are suspended³⁶⁴. In a comparative perspective, it is a particular feature of the 1961 text to expand and empower the competence of the Senate enhancing it with the capacity to authorize the executive on foreign relation treaties and travels of the president; also with the faculty of starting or not (with a simple majority vote) the trial on the presidential figure (Planchart, 1985). The Constitution of 1961 kept the principle of power separation, but following a tendency previously initiated by the 1947 text. It recalled that each one of the power branches should have its own attributions but they will all collaborate towards the purpose of the state.

A functional analysis of the structural proposal of both constitutional texts shows that the Argentine initiative would be always harder to comply with, considering that the Deputy Chamber is elected in accordance to proportional representation of the provinces and that the president is unlikely to have a parliamentary minority smaller than one third. Serraferrero (1995) calls this a political trial, and bases himself on the fact that it is Congress alone which determines whether there are (or not) causes to follow an accusation. In the case of Venezuela, it is the Senate (elected with an equal proportion of seats nationwide) and with a vote of simple majority who can definitely alter the situation. This occurs only if and when another branch of the public powers, the Supreme Court, has already found judicial reasons to indict the president.

6.3 Presidential Legislative Powers. Functional and Constitutional Concept

As previously defined and in accordance with other studies³⁶⁵, in presidential regimes policy making is characterized by a separation of power and, sometimes (since it is not a *sine qua non* condition), by a separation of purpose among the institutional powers. This division of approach or intention to policy orientation is normally caused by the multipurpose idea of collective representation embedded in the Parliament as an institution (Aja Espil, 1987). The fact that in presidential systems both the president and the legislature are elected independently from one another plus the fact, contrary to parliamentary systems, that none of them can shorten the legal power term of the other creates the notion that they are independent bodies with very different institutional conceptions (Carey, 1994).

³⁶⁴ Art. 150, num. 8, “Son Atribuciones del Senado: Autorizar por el voto de la mayoría de sus miembros, el enjuiciamiento del Presidente de la República, previa declaratoria de la Corte Suprema de Justicia de que hay mérito para ello. Autorizado el enjuiciamiento, el Presidente de la República quedará suspendido en el ejercicio de sus funciones”. Constitución de la República de Venezuela, 1961, Base de Datos de las Américas.

³⁶⁵ Shugart/Carey, 1992; Lijphart, 1992; Jones, 1995; Mainwaring/Shugart, 1997; Shugart/Haggard, 2001; Morgenstern/Nacif, 2002

The separation of purpose between the legislative and the executive institutions we refer to is also conformed and encouraged by the electoral system of the parliament, which clearly shapes the proportion of the seats³⁶⁶ and sets a power correlation. It is also influenced by the party system which helps to draw the parliamentary map with its party share. These elements combined can produce a parliament where the ruling party has a numerous or modest (working) majority; or where the presidential political tendency is the outnumbered part. Thus a functional aspect of the notion of divided government³⁶⁷, and the resulting governance level is severely damaged when the legislative and the executive do not find a common ground of support to each other. Divided government and independent institutional powers imply that none of the institutional branches can replace the other, but also carries an obvious compromise and individual commitment not to provoke the institutional gridlock that a total confrontation of powers may guide to.

Several theories separate here to define what can provoke an institutional gridlock in presidential systems and how it may be avoided³⁶⁸. A most common consensus is that the more fragmented the party system in Congress is, the more unlikely the president will have a sound majority to govern³⁶⁹. The tentative conclusion is that the legislative will remain foreign and distant to the executive's initiatives or, in the best case scenario, probably indifferent or waiting for pork to

³⁶⁶ We have already discussed this topic extensively. However, authors who dedicate exclusive attention to the relation between Parliament, electoral system and political outcome are Molina (1996; 1998) and Jones (1995) among many others.

³⁶⁷ In relation to the concept of divided government there are several approaches. The most negative is the Gridlock potential associated with it and thus an inherent constant in presidential system (see J. Linz/Valenzuela, 1994 for example) and the conception that the party system contributes to such division (Mainwaring/Shugart). Another interesting approach already outlined in our study is Shugart/Haggard (2001), observing that separation of purpose may also occur because presidents are elected by national constituencies whereas legislators commonly by local ones. So the president may tend to be more preoccupied with national concerns while legislators engage themselves more with local issues. This observation however revealing, tends to dismiss the reality of many Latin American electoral systems, particularly in the period of our study and prior to some electoral reforms occurred in the 90's where party leaders chose Congress members from their own party in closed lists. People then had very little access to their representatives and many a time legislators from one state had very little to do with it in reality. They only conformed the block of power their party had in the legislative.

³⁶⁸ If we accept that institutional gridlock occurs only when there is division of purpose between the executive and the legislative, and that there are the institutional mechanisms to make it happen (veto or override for example), we can also arrive to Shugart/Haggard's conclusions. To these authors the institutional combination most conducive to unity of purpose, are: concurrent presidential and legislative elections, a party centered electoral formula (cases of Venezuela and Argentina), a unicameral Congress elected congruently with the president's constituency and full renewal of legislative seats at each election. This institutional combination is more likely to generate presidential biased majorities than all other possible combinations (see Shugart, 1995). Even when there is no presidential majority in Congress this formula increases the possibility of relating issues that determinate the presidential election with the legislative campaign. As for the combination most likely to produce a wide span of separation of purpose the elements would be: non concurrent legislative elections, a candidate centered electoral formula, a federalist upper house (Senate) and staggered legislative elections (Shugart/Haggard, 2001, p.94)

³⁶⁹ One of the most important questions in executive-legislative relations in presidential systems is the relative size of the president's party. Some analysts say that presidentialism is frequently prone to minority government situations in which the president's party lacks a majority of seats in Congress. If the president's party holds a distinct minority –say one third of the seats- presidents may have a difficult time piecing up legislative coalitions. (Mainwaring/Shugart, 1997).

cooperate. It is almost a standard thesis until recent studies to say that in presidential multiparty systems, executives tend to be controlled by single parties and individuals with a weak or non-existent connection to the legislative (Jones, 1995; Linz, 1994; Mainwaring, 1994). The ruling party is one of many, without specific weight in the legislative chambers. On this ground, it has become a commonplace to argue that executive display of unilateral legislative power is evidence that the president is acting over a probably ineffectual legislature (Shugart/Carey, 1998).

On the other hand, studies on the dimensions of presidential power tend to demonstrate that in Latin America, regimes with great presidential influence over the legislative (or strong legislative powers themselves) can be problematic, just the same as those in which the executive authority over the cabinet is shared between Congress and executive (Shugart/Carey, 1992). Probably the huge background of authoritarian regimes in the region fostered constitutional development towards the contemporary legislative powers of the president.

Following the classification made in chapter I alluding to presidential regimes, we can point out that the institutional separation between the legislative and the executive can be measured by four elements, namely,

- Cabinet Accountability. In many Latin American constitutions (i.e. Costa Rica, Venezuela, and Argentina after 1994) it is stated that the Cabinet Members or Cabinet Chief ought to render yearly reports of their work to Congress in order to be approved or censored. Congress is usually empowered to apply censure votes and possible removals of cabinet members selected by the president.
- Election of the President. Not only the independence in the election of both parliament and executive members (and the fact that both are directly elected) but also the timing sequence of these elections is important to grant the president a possible majority in parliament which is a governance cleavage for stability.
- Veto Gates. Aside from the bicameralism, which in itself raises another veto possibility, the assembly and its voting majority is the most significant veto gate in itself.
- Party Discipline. Closely related to the former item, Party discipline can guarantee the cohesion necessary for roll call voting

Presidential legislative powers may be particularly significant in those acute instances when presidential and legislative interests diverge. The overall institutional strength of the president, defined as his ability to establish and conduct a policy agenda, varies with the existent legislative support he may have, with the public approval ratings and with his ability to communicate effectively (Shugart/Haggard, 2001). Constitutional attributions of power do not preclude extra-constitutional elements such as the party system and party discipline level which though not normatively stated have a deep influence in the general outcome and performance of the legislative.

Among those constitutionally envisaged powers for the executive institution Argentina and Venezuela possess the following:

- Argentina (1853 Constitutional Text³⁷⁰ Mainwaring/Shugart classification)
Executive Election: by majority of the Electoral College. Each Province and the Capital should send the double number of deputies and senators they have in Congress (Art. 81). The President and Vice-President are chosen through separate ballots. Failing a majority, Congress elects both offices in joint sessions from between the two top candidates present in the first round (Art. 83).

³⁷⁰ In the Constitutional Text of 1853 (1860) the Attributions or Powers of the Executive in Art. 86 are the following:

- 1) Es el jefe Supremo de la Nación y tiene a su cargo la administración general del país.
- 2) Expide las instrucciones y reglamentos que sean necesarios para la ejecución de las leyes de la Nación, cuidando de no alterar su espíritu con excepciones reglamentarias.
- 3) Es el jefe inmediato y local de la Capital de la Nación
- 4) **Participa en la formación de las Leyes con arreglo a la Constitución**, las sanciona y promulga.
- 5) **Nombra los magistrados de la Corte Suprema y los demás tribunales federales inferiores de acuerdo con el Senado.**
- 6) Puede indultar y conmutar penas por delitos sujetos a la jurisdicción federal, previo informe del tribunal correspondiente, excepto en los casos de acusación por la cámara de Diputados.
- 7) Concede Jubilaciones, Retiros, licencias y goce de montepíos conforme a las leyes de la Nación.
- 8) **Ejerce los derechos del patronato nacional en la presentación de obispos para las iglesias catedrales a propuesta en terna con el Senado.**
- 9) Concede el pase o retiene los decretos de los concilios, las bulas, breves y rescriptos del sumo pontífice de Roma con acuerdo de la Suprema Corte: requiriéndose una ley cuando contienen disposiciones generales y permanentes.
- 10) **Nombra y remueve a los magistrados plenipotenciarios y encargados de negocios, con acuerdo del Senado;** y por si solo nombra y remueve los ministros del despacho, los oficiales de sus secretarías, los agentes consulares y demás empleados de la administración cuyo nombramiento no esta reglado de otra manera por esta constitución.
- 11) **Hace anualmente la apertura de las sesiones del Congreso reunidas al efecto ambas cámaras en la sala del Senado, dando cuenta en esta ocasión al Congreso del estado de la Nación, de las reformas prometidas por la Constitución y recomendando a consideración las medidas que juzgue necesarias y convenientes.**
- 12) **Prorroga las sesiones ordinarias del Congreso o lo convoca a sesiones extraordinarias cuando un grave interés de orden o de progreso lo requiera.**
- 13) Hace recaudar las rentas de la Nación y Decreta su inversión con arreglo a la ley o presupuestos de gastos nacionales
- 14) Concluye y firma tratados de paz, de comercio, de navegación, de alianza, de límites y de neutralidad, concordatos y otras negociaciones requeridas para el mantenimiento de buenas relaciones con potencias extranjeras, recibe sus ministros y admite sus cónsules.
- 15) Es Comandante en jefe de todas las fuerzas de Mar y Tierra de la Nación.
- 16) **Provee los empleos militares de la nación: con acuerdo del Senado, en la concesión de empleo o grados de oficiales superiores del ejército y armada; y por si solo en el campo de batalla.**
- 17) Dispone de las fuerzas militares, marítimas y terrestres y corre con su organización y distribución según las necesidades de la Nación
- 18) **Declara la Guerra y concede patentes de Corso y cartas de represalia con autorización y aprobación del Congreso**
- 19) **Declara en estado de sitio uno o varios puntos de la Nación, en caso de ataque exterior y por un termino limitado con acuerdo del Senado. En caso de conmoción interior solo tiene esta facultad cuando el Congreso esta de receso, porque es atribución que corresponde a este cuerpo. El Presidente la ejerce con limitaciones prescritas en el artículo 23.**
- 20) Puede pedir a todos los jefes de todos lo ramos de la Administración, y por su conducto, a los demás empleados, los informes que sean convenientes y ellos están obligados a darlos.
- 21) **No puede ausentarse del territorio de la Capital sino con permiso del Congreso. En caso de receso de este solo podrá hacerlo con licencia por graves objetos de servicio público.**
- 22) **El Presidente tendrá la facultad para llevar las vacantes de empleo que requieran el acuerdo del Senado, y que ocurran durante su receso, por medio de nombramientos en comisión que expiraran al fin de la próxima legislatura.**

Presidential Term: 6 years for President and Vice-President with no immediate re-election (Art. 77)

Assembly Terms: Chamber of Deputies, 4 years with half of the representatives renewed every 2 years (Art. 42). Senate 9 years with one third being renewed every three years.

Election timing: Mixed

Veto Override: by two thirds of the vote in each chamber. (Art 72)

Executive Introduction of Legislation by Executive: No provision

Decree Legislation: no provision³⁷¹

Referendum/Popular Initiative: None

Cabinet Appointments: President does all the cabinet appointments without restrictions (Art. 86)

Dismissal of Ministers by Assembly Vote: No Provision

Impeachment of the President: of both Ministers or the president, by two thirds of the vote in both chambers³⁷² (Arts. 45 and 51).

Emergency Powers: Due to foreign invasion or state of siege declared with consent of the Senate. Internal disturbance only if Congress is not in session

- Argentina (1994 Constitutional Text³⁷³)

³⁷¹ An interesting feature of the 1860 text is the apparent vacuum left on this matter. We could however, see that the constitution allowed Congress to work only five months a year (Art. 55), then allowing the executive to act without further supervision. During the Ménem period of 1989-1993, despite a favorable possibility in Congress, decrees had the possibility of being issued under the justification of congressional recess; despite that he used the economic emergency and crisis of 1989 as a better maneuver. He sent two most important bills that provided for an emergency plan of government and these were the base for most of forthcoming decrees. "At the same time that these laws declaring a state of emergency were enacted, the number of NUDs (Necessity and Urgency Decrees) issued unilaterally by the president, exercising congressional law making authority, greatly increased" (Ferreira Rubio/Goretti, 1998). The formal reason for this development was that the executive considered the Congress and the congressional review of each law too slow for the existent degree of emergency.

³⁷² But only the chamber of Deputies can initiate the accusation process.

³⁷³ In the Constitution of 1994 in Argentina the attributions of the Executive powers are laid down in Art 99.

- 1) Es el Jefe Supremo de la Nación, Jefe del Gobierno y responsable político de la administración general del país.
- 2) Expide las instrucciones y reglamentos que sean necesarios para la ejecución de las leyes de la Nación cuidando de no alterar su espíritu con excepciones reglamentarias.
- 3) **Participa en la formación de las leyes con arreglo a la Constitución, las promulga y hace publicar. El poder ejecutivo no podrá en ningún caso bajo pena de nulidad absoluta en insanable emitir disposiciones de carácter legislativo. Solamente cuando circunstancias excepcionales hicieran imposible seguir los tramites ordinarios previstos por esta constitución para la sanción de las leyes, y no se trate de normas que regulen materia penal, tributaria, electoral o del régimen de los partidos políticos, podrá dictar decretos por razones de necesidad y urgencia, los que serán decididos en acuerdo general de ministros que deberán refrendarlos, conjuntamente con el jefe del gabinete de ministros. El jefe de gabinete personalmente y dentro de los diez días siguientes someterá la medida a consideración de la comisión bicameral permanente, cuya composición deberá respetar la proporción de las representaciones políticas de cada cámara. Esta comisión elevará a su despacho en un plazo de diez días al plenario de cada cámara para su expreso tratamiento, el que de inmediato consideraran las cámaras. Una ley especial sancionada con la mayoría absoluta de la totalidad de los miembros de cada cámara regulará el trámite y los alcances de la intervención del Congreso.**

Executive Election: the president and the vice president are chosen on the same ticket by a two round system, requiring 45% of the votes or else a 40% with a margin of at least 10% to declare a first round victory (Arts. 94-98)

Presidential Terms: four years for president and vice president with one immediate reelection possible. Further than that, the candidate must wait one period in between to be chosen once more (Art. 90).

Assembly Terms: Deputies: 4 years with half of the chamber renewed every two years by lottery (Art. 50). Senate: 6 years with one third of the chamber renewed every 2 years (Art. 56).

Election Timing: Mixed

Veto Override: Two thirds of the vote in each chamber (Art. 83). The President has both total and partial veto (Art. 80), plus partial promulgation if the

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- 4) **Nombra los magistrados de la Corte Suprema con acuerdo del Senado por dos tercios de sus miembros presentes en sesión pública convocada al efecto**
 - 5) Puede indultar o conmutar las penas por delitos sujetos a la jurisdicción federal previo informe del tribunal correspondiente, excepto en los casos de acusación por la cámara de diputados.
 - 6) Concede jubilaciones, retiros, licencias y pensiones conforme a las leyes de la nación
 - 7) **Nombra y remueve a los embajadores, ministros plenipotenciarios y encargados de negocios con acuerdo del Senado;** por si solo nombra y remueve al jefe del gabinete de ministros y a los demás ministros del despacho, los oficiales de secretaria, los consulares y los empleados cuyo nombramiento no esta reglado de otra forma por esta constitución.
 - 8) **Hace anualmente la apertura de las sesiones del Congreso, reunidas al efecto ambas cámaras, dando cuenta en esta ocasión del estado de la nación, de las reformas prometidas por la constitución, y recomendando a su consideración las medidas que juzgue necesarias y convenientes.**
 - 9) **Prorroga las sesiones ordinarias del Congreso o lo convoca a sesiones extraordinarias cuando un grave interés de orden público lo requiere.**
 - 10) Supervisa el ejercicio de la facultad del jefe del gabinete de ministros respecto a la recaudación de las rentas de la nación y de su inversión con arreglo a la ley o presupuesto de gastos nacionales.
 - 11) Concluye firmas y tratados concordatos y otras negociaciones requeridas para el mantenimiento de buenas relaciones con las organizaciones internacionales y naciones extranjeras, recibe a sus ministros y admite a sus cónsules.
 - 12) Es comandante en jefe de todas las fuerzas armadas de la Nación.
 - 13) **Provee los empleos militares de la Nación. Con acuerdo del Senado en la concesión de los grados superiores de las Fuerzas Armadas, y por si solo en el campo de batalla.**
 - 14) Dispone de las Fuerzas Armadas y corre con su organización y distribución según las necesidades de la nación.
 - 15) **Declara la guerra y ordena represalias con autorización y aprobación del Congreso**
 - 16) **Declara en estado de sitio uno o varios puntos de la Nación en caso de ataque exterior y por un tiempo limitado con acuerdo del Senado. En caso de conmoción interior solo tiene esta facultad cuando el Congreso esta en receso, porque es atribución que corresponde a este cuerpo. El Presidente la ejerce con las limitaciones previstas en el Artículo 23.**
 - 17) Puede pedir jefe del gabinete de ministros y a los jefes de todos lo ramos y departamentos de la administración, y por su conducto a los demás empleados, los informes que crea convenientes, y ellos están obligados a darlos.
 - 18) **Puede ausentarse del territorio de la Nación con permiso del Congreso. En el receso de este solo podrá hacerlo sin licencia por razones justificadas de servicio público.**
 - 19) **Puede llenar las vacantes de los empleos que requieran el acuerdo del Senado y que ocurran durante su receso por medio de nombramientos en comisión que expiraran al fin de la próxima legislatura.**
 - 20) **Decreta la intervención federal a una provincia o a la ciudad de Buenos Aires en caso de receso del congreso y debe convocarlo simultáneamente para su tratamiento.**

approval of parts of the bill “does not alter the spirit or the unity of the bill as passed by Congress” (ibid.).

Executive Introduction of Legislation by Executive: no provision

Decree Legislation: with the exception of the rules regulating penal, tax or electoral matters (also those related to the political party system) the president may dictate decrees for reasons of need and urgency (*Decretos de Necesidad y Urgencia*). These must be countersigned by the appropriate Minister and the cabinet chief, namely, the vice-president. Within 10 days the measure must be submitted to Congress for discussion.

Referendum/Popular Initiative: at the motivation of the chamber of deputies, Congress may submit a bill to popular consultation. Although the initiative to such a procedure may come from either the president or the Congress’ president, it will be the parliament itself that sets the topic, regulations and timing for such a procedure. The law regarding this initiative can not be vetoed by any of the institutional powers (Art. 40).

Ministerial Appointments: The president alone appoints and removes the chief of the cabinet Ministers and all other Ministers (Art. 99).

Dismissal of Ministers by Assembly: The chief of the Cabinet of Ministers has to attend Congress appointments once a month and can be interpellated and subject to censure. He may be removed by absolute majority in each chamber (Art. 101).

Dissolution of Parliament by President: No Provision

Impeachment: of the President, the chief of cabinet and Ministers, by two thirds of the vote in both chambers. As in the former constitutional text of 1853, it is only the chamber of deputies that can start accusations (Arts. 53 and 59)

Emergency Powers: foreign invasion, state of siege declared with consent of the Senate. Internal disturbance also allows special powers but only if Congress is in recess (Art. 99).

- Venezuela (1961 Constitutional Text³⁷⁴).

³⁷⁴ In the 1961 Venezuelan Constitutional Text, the president has the following attributions and duties:

- 1) Hacer cumplir la constitución y las leyes.
- 2) Nombrar y remover a los ministros.
- 3) Ejercer, en su carácter de jefe de las fuerzas armadas nacionales, la suprema autoridad jerárquica de ellas.
- 4) Fijar el contingente de las Fuerzas Armadas Nacionales.
- 5) Dirigir las relaciones exteriores de la República y celebrar o ratificar los tratados o convenios o acuerdos internacionales.
- 6) Decretar el estado de emergencia y decretar la restricción o suspensión de garantías en los casos previstos en esta constitución.
- 7) Adoptar las medidas necesarias para la defensa de la República, la integridad del territorio y su soberanía en caso de emergencia nacional.
- 8) Dictar medidas extraordinarias en materia económica o financiera cuando así lo requiera el interés público y haya sido autorizado para ello por ley especial.
- 9) Convocar al congreso a sesiones extraordinarias.
- 10) Reglamentar total o parcialmente las leyes, sin alterar su espíritu, propósito y razón.
- 11) Decretar en caso de urgencia comprobada, durante el receso del Congreso, la creación y dotación de servicios públicos, o la modificación o supresión de los existentes previa autorización de la comisión delegada del congreso.
- 12) Administrar la hacienda pública nacional.

Executive election: Direct election and results by simple majority with only one round (Art. 183).

Presidential Term: 5 years. Presidents who have held office for more than half a constitutional term cannot be reelected before 10 years have passed since they last held office (Art. 185). If the presidency is vacated (due to death or impeachment), Congress in joint sessions elects a replacement to serve as president for the remainder of the term. During this time it is the president of Congress who holds office.

Assembly terms: 5 years for elected deputies and senators. Ex-presidents become senators for life, except while serving any subsequent term as president (Art.148).

Election Timing between Congress and Executive: Concurrent

Veto Override: The president may return a bill to Congress within 10 days including the proposed changes. Override requires two thirds vote by Congress in joint session. However a simple majority returns the bill to the president, who may return it again within 5 days; this time the legislative requires only a simple majority to promulgate the law as it is (Art. 173)

Exclusive Introduction of Legislation by Executive: no provision

Decree Legislation: Congress may delegate the president authority to issue decree laws on appropriations, revenues, the creation or abolition of public services and monetary policy; also to maintain public order (Art. 190).

Referendum/Popular initiative: No provision.

Ministerial Appointments: The president appoints cabinet members, also from his party co-members in parliament, without restrictions (Art. 190).

Dismissal of Ministers by the Assembly: Ministers and cabinet members obtain censure vote with a simple majority in parliament. The censure vote becomes a dismissal if approved by a two thirds majority in the chamber of deputies (Art. 153)

Dissolution of the Assembly by the President: No provision

Impeachment: The president can be impeached by a majority vote in the Senate ruling that he should be subject to trial. This is only possible when the Supreme Court has previously declared such an accusation as justified (Art. 150).

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- 13) Negociar los empréstitos nacionales.
 - 14) Decretar créditos adicionales al presupuesto previa autorización de las cámaras en sesión conjunta o en su defecto, de la comisión delegada.
 - 15) Celebrar los contratos de interés nacional permitidos por esta constitución y las leyes.
 - 16) Nombrar, previa autorización del Senado o de la Comisión Delegada del Congreso, el procurador general de la República y los jefes de las misiones diplomáticas permanentes.
 - 17) Nombrar y remover los gobernadores del distrito federal y de los territorios federales.
 - 18) Nombrar y remover, de conformidad con la ley a los funcionarios y empleados nacionales cuya designación no esté atribuida a ninguna otra autoridad.
 - 19) Reunir en convención a todos o algunos de los gobernadores de las entidades federales para la mejor coordinación de planes y labores de la administración pública.
 - 20) Dirigir al congreso bien personalmente o a traves de uno de los ministros mensajes especiales.
 - 21) Conceder indultos.
 - 22) Los demás deberes y derechos que señalan esta constitución y las leyes.

Emergency Powers³⁷⁵: the President may declare a state of emergency, which must be submitted to cabinet and Congress within ten days. To end a state of emergency, the constitution requires the action of both the executive and a majority of each house of the legislature. This state of emergency implies the suspension of constitutional guarantees but not the power of decrees (Art. 240-244).

Emergency powers did not affect public property and that became evident at the time when privatization was needed. Due to successive legislation on the matter (1982 and 1987, see chapter IV) the state was empowered to sell those public enterprises and service providers it considered unproductive or bankrupt. These rights of the president had a very tight congressional supervision under the 1961 Constitution on the following matters:

Presidents can celebrate any contract without congressional oversight except those accorded for the normal functioning of public administration. He is not allowed in any manner to dispose of oil concessions unless he obtains the approval from both chambers purposely instructed on the circumstances of the change (Art. 126). He cannot therefore, sell national property unless specifically empowered and Congress having approved his plans for that.

6.4. Level and Exercise of Presidential Reactions to Parliamentary Control. Classification.

There is a wide range of constitutional authority that executives may have to produce legislation. We have so far regarded them as the legislative powers of the presidency. These presidential legislative powers (see also Chapter II) have been divided into *proactive* and *reactive* powers (Shugart/Carey 1998; Morgenstern/Cox 2001). The distinction is based on the relationship between executive authority and reversionary outcome³⁷⁶: “Reactive powers” would be considered conservative

³⁷⁵ As Crazut (1994) correctly observes, there is a very interesting relation between the economic warranties contained in the Constitutional text and the State as intruder in the national economy. One of the most effective ways to perform this was through the declaration, via decree, of national emergency. The suspension of economic warranties has a notorious background in the pre-World War II era when in 1939 General López Contreras, then president, decreed their postponement on September 9th. The cause explained for such a suspension was to prevent further problems with the population. A national commission of import control was created (also by decree in 1940) in order to prevent speculation. General Medina ratified this suspension creating the national *Junta Reguladora de Precios* in May 1942, which deepened the official intervention in the economic activity. The coup of 1945 and the modernist perception that economic activity could be promoted through state intervention is present in the 1945 constitution and to a lesser grade in those of 1947, 1953 and 1961. The idea of economic emergency was first introduced in the 1947 text where the president can be empowered to carry out extraordinary functions “destined to protect the economic and financial life of the nation when the circumstances so demand it. That is the spirit the 1961 Constitution picks up (García Bolívar/Gallardo Pérez, 1997) in its Art. 241, which has been used by different presidents to issue decrees with legal force.

³⁷⁶ “The reversionary outcome –frequently the status quo- is the state of the world that obtains if the executive does not exercise authority. Reactive powers are those by which the executive can maintain policy at the reversionary outcome even in the face of legislative preferences for a different outcome – in the case, for example, in which the executive blocks an attempt by the legislative majority to authorize a new class of welfare entitlements or to cut funding from a previously authorized level of appropriations” (Shugart/Carey, 1998, p.5).

because they allow the executive to prevent changes promoted by the legislative that would otherwise occur. “Proactive powers” in turn, are the powers which enable the executive to produce changes in the outcome of the legislature, changes that the legislature itself would have probably not initiated³⁷⁷ by endogenous initiative. The most common proactive type of legislative powers granted to the president are the decree powers, under several regulations according to each country, and the legislative agenda setting powers. This last consideration, agenda setting, can exist either by absolute monopoly or partial empowerment of the executive to introduce new law projects, usually the budget (Casar, 1997), or also by the prerogative the president may have to impose a particular discussion of a law project in parliament and/or call for extraordinary sessions.

Proactive powers involve the executive initiative over a topic, but granted in isolation (without reactive possibilities) they leave the president (or cabinet member) vulnerable to assembly counteraction. These powers are visibly increased if the executive is also granted a faculty of veto in the same policy areas, and Congress has difficult conditions (a two third majority in both chambers for example) to produce a presidential veto override. This particular combination increases geometrically the presidential powers that, as in the Argentine case, can allow the executive to impose its will either by the issuing of decrees, or by vetoing any change the legislative would make on executive initiatives. Most particularly the partial veto, if granted to the president, (as used by Ménem before and after the 1994 constitutional reform) makes him almost unassailable since the executive would delete inconvenient measures included in the bill and publish the rest.

In terms of powers to appoint cabinet staff the constitution of Venezuela states that the president has the right to name cabinet Ministers without congressional approval. Until 1989, he also had the right to name provincial governors. The executive branch also had some powers into the legislative area since Ministers and the president could propose legislation, had the right to address Congress at any time and participate (without vote) in any discussion of legislation. All this had a particular effect in the assembly. The President also has numerous forms of decree authority. He can issue “non-substantive” decrees in the process of executing a law, he can obtain wider decree authorities in states of emergency, he can issue decrees when constitutional rights have been limited or suspended and he can be delegated legislative decree authority by Congress (Crisp, 2000). The case of Venezuela is also interesting to depict weaker reactive powers assigned to the executive. Venezuelan presidents under the 1961 Constitution had no exclusive right to introduce legislation, so they could not prevent the legislature from considering particular issues while refusing to pass a specific bill. In addition to this functional weakness, presidents only

³⁷⁷ It is convenient to reconsider that the authorization to use proactive powers such as those special powers given by parliament may not always be a simple case of delegative democracy or institutional delegation, but a deliberate empowerment of the executive to solve a national contingency (Mustapic, 2002; Llanos, 1998).

had suspense veto over legislation, which means the power only to delay a project sometime for further congressional overview.

In Argentina, out of the three elements that Shugart/Mainwaring identify as significant for the president's ability to influence legislation, namely, a) veto power; b) exclusive introduction of legislation other than the budget and c) decree authority, presidents had constitutional access to the first two in the 1853 constitution and to all of them in the new text of 1994. The political variable makes them commonly accessible if another meta constitutional variable exists, namely, the support and discipline of the ruling party faction in Congress (Jones, 2002). This last issue can be part and parcel of the presidential reactions to parliamentary control, particularly when we consider that the presidential position may have strong influence over the party politics and over the congressional faction³⁷⁸ (Coppedge, 1994; Corrales, 1998).

6.4.1 Pro-Active Presidential Powers: Decrees and By-Pass of Parliamentary Instances

The decrees we focus on here are those that have force of law (sometimes even superseding an existing law) but they were sanctioned without the prior consent or perhaps even knowledge of the Assembly. Few constitutional texts allow presidents to promulgate by decree any new legislation without first asking for authority from parliament to do so; this petition of approval is an act that compromises the legislative through its authorization or delegation. In fact only Argentina, Brazil and Colombia in the Latin American Region, grant presidents the power to issue legislative decrees that take effect immediately and do not require prior authorization (Shugart/Haggard, 2001). Presidents may, and surely have, enacted laws by decree thus distorting and dominating the legislative planned agenda. Decrees become more than agenda-setting items for the legislature because of their immediate legal force.

In some countries, notably Brazil, decrees are only temporary unless converted into regular legislation by parliament; but during that interval (or even if they are renewed) presidential preference prevails³⁷⁹.

Some provisions regarding Decrees (Shugart/Carey 1998)

- Argentina (1994 Constitution)

CDA (Constitutional Decree Authority)

Art. 99.3³⁸⁰: The executive shall never issue law making decisions. These kinds of measures will be considered null and void.

³⁷⁸ Explaining the Argentine party discipline Jones tries to make us understand how closed the model can be and how discipline is but a conditioned response to heavy party punishment. "A deputy who consistently votes against his/her party will eventually be expelled. Knowing this, most deputies who are continually at odds with their party will defect (jump before they are pushed). And legislators who either defect/are expelled find themselves afterwards in the wilderness with moribund political careers, since in addition to overcoming the electoral obstacle, these politicians also have to find a party's approval" (Jones in Morgenstern/Nacif, 2002, p.177).

³⁷⁹ Even when a majority can rescind a decree, and most assemblies possess such authority, presidents can use decree power strategically. Consequently, when emitting a decree, a president cannot be confident that it will survive in Congress since decree power alone does not let the president dominate the legislative process. Decrees do allow presidents to initiate policy change and obtain legislative outcomes that Congress on its own may not have passed (Carey/Shugart, 1998; Shugart, 1998)

Only when exceptional circumstances make it impossible to follow the ordinary law making process established by this Constitution, the executive can issue Necessity and Urgency Decrees (NUD), insofar as they do not regulate penal, fiscal, electoral or political party matters. NUDs must be decided by the assembled cabinet and must be countersigned by the cabinet chief and the other Ministers.

Within ten days, the cabinet chief will personally submit the NUD to a permanent bicameral committee which should be composed proportionally according to the political representation of the Deputies house and the Senate. The committee will send its opinion to the floor within ten days. Deputies and Senate must immediately consider the opinion. A special act, passed by the positive vote of the majority of the members of the Deputies and the Senate, will determine the proceedings and effects of the Congress intervention on this matter.

Delegated Decree Authority (DDA)

Art. 76³⁸¹: Legislative delegation to the executive is forbidden except in the case of matters of administration and public emergency, with a limited time period for its effectiveness and within the standards for the delegation of authority established by Congress.

The expiration of the time period mentioned above will not cause the revision of the legal relations born under the rules issued as a consequence of the legislative delegation

- Venezuela 1961 constitution. (Shugart/Carey 1998)

³⁸⁰ This point included as numeral 3 in the article 99 (number of attributions of the executive power) has no background in the constitutional text of 1853. Carlos Méнем, then president, theoretically explains his position in Méнем/Dromi (1997): “the new legal order had to be imposed out of practical reason and not pure reason. This state of law should become the judicial tool in the national transformation. Time was pressing to start the construction of a new country, thus the first step was the sanction of the law number 23.696 of the state reform and restructuring of public enterprises” (pp.95-96). The numeral itself reads as follows: “El Presidente de la Nación participa de la formación de las Leyes con arreglo a la constitución, las promulga y las hace publicar. El poder ejecutivo no podrá en ningún caso bajo pena de nulidad absoluta e insanable, emitir disposiciones de carácter legislativo. Solamente cuando circunstancias excepcionales hicieran imposible seguir los trámites ordinarios previstos por esta Constitución para la sanción de las leyes y no se trate de leyes que regulen materia penal, tributaria, electoral o el régimen de los partidos políticos, podrá dictar decretos por razones de Necesidad y Urgencia, los que serán decididos en acuerdo general de ministros que deberán refrendarlos, conjuntamente con el jefe del gabinete de ministros. El jefe de gabinete de ministros personalmente y dentro de los diez días siguiente someterá la medida a la consideración de la comisión bicameral permanente cuya composición deberá respetar la proporción de las representaciones políticas de cada cámara. Esta comisión elevará su despacho en un plazo de diez días al plenario de cada cámara para su expreso tratamiento, el que de inmediato consideraran las cámaras. Una ley especial sancionada con la mayoría absoluta de los miembros de cada cámara regulará el trámite y los alcances de la intervención del Congreso”.

³⁸¹ This article closes the fourth chapter of the Constitution, dedicated to the attributions of Congress. It has a background in the Art. 30 of the 1853 text where special delegations of power are forbidden. The 1994 text is written as follows: Art. 76: “Se prohíbe la delegación legislativa en el poder ejecutivo salvo en materias determinadas de administración o de emergencia pública, con plazo fijado para su ejercicio y dentro de las bases de la delegación que el congreso establezca. La caducidad resultante del transcurso del plazo previsto en el párrafo anterior no importará revisión de las relaciones jurídicas nacidas al amparo de las normas citadas en consecuencia de la delegación legislativa”.

Rule Making Authority

Art. 190. Num10³⁸²: “The president is allowed to regulate the laws totally or partially, without altering their spirit, purpose and logic”.

Delegated Decree Authority (DDA)

Art. 190³⁸³: The faculties and obligations of the President of the Republic are

8) To decree extraordinary measures on issues related to economic or finance when required by public interest and having been authorized to take action by special law.

11) To decree, in cases of urgency, and during congressional recess, the creation and endowment of new public services, or the modification of existing services as authorized by the permanent commission of Congress.

Emergency Authority:

Art. 190³⁸⁴: 6) to declare a state of emergency and decree the restriction or suspension of constitutional guarantees.

Art. 240³⁸⁵: The president of the Republic shall be able to declare a state of emergency in case of internal or external conflict, or when there exist reasons to believe one or the other will occur.

Art. 241³⁸⁶: In case of emergency, of disturbance that could upset the peace of the Republic or of grave circumstances that affect social and economic life, the President of the Republic shall be able to restrict or suspend constitutional guarantees, or some of them, with the exception of those established in Art. 58 and in sections 3 and 7 of Art. 60

The decree shall specify the reasons on which it is based, the guarantees that are restricted or suspended, and whether it applies to all or part of the national territory.

The restriction or suspension of guarantees does not interrupt the functioning nor affect the prerogatives of the other organs of the national power.

Art. 244³⁸⁷: if there exist any reasons to fear imminent disturbance of public order, which does not justify the restriction or suspension of constitutional guarantees,

³⁸² Son atribuciones y deberes del Presidente de la República

10) reglamentar total o parcialmente las leyes, sin alterar su espíritu, propósito y razón.

³⁸³ 8) Decretar medidas extraordinarias en materia económica o financiera cuando así lo requiera el interés público y haya sido autorizado para ello por ley especial.

11) decretar en caso de urgencia comprobada, durante el receso del Congreso, la creación y dotación de nuevos servicios públicos, o la modificación o supresión de los existentes previa autorización de la comisión delegada.

³⁸⁴ 6) “Declarar el estado de Emergencia y decretar la restricción o suspensión de las garantías en los casos previstos en esta Constitución”.

³⁸⁵ Art. 240: El Presidente de la República podrá decidir el estado de emergencia en caso de conflicto interior o exterior, o cuando existan fundados motivos para que uno u otro ocurran.

³⁸⁶ Art. 241: “En caso de emergencia, de conmoción que pueda perturbar la paz de la República, o de graves circunstancias que afecten la vida económica o social de la República podrá (el presidente) restringir o suspender las garantías constitucionales, o algunas de ellas, con excepción de las consagradas en el artículo 58 y en los ordinales 3 y 7 del artículo 60. La restricción o suspensión de las garantías no interrumpe el funcionamiento ni afecta las prerogativas de los órganos del poder nacional”.

³⁸⁷ Art. 244: “Si existieran fundados indicios para temer inminentes trastornos del orden público, que no justifiquen la restricción o suspensión de las garantías constitucionales, el Presidente de la

the President of the Republic in Council of Ministers, shall be able to adopt the necessary measures to avoid that such disturbances occur.

These measures are limited to the detention or confinement of relevant individuals, and must be submitted to the consideration of Congress or its permanent commission within ten days after their adoption. If these measures are declared unjustified, they shall cease immediately; otherwise, they are maintained up to a maximum of 90 days. The law shall regulate the exercise of this authority.

6.4.1.1 Constitutional Decree Authority. *Decretos de Necesidad y Urgencia*.

One of the distinguishing elements that make Latin America's Executive-Legislative relations a distinctive bilateral veto game, in which the president normally moves first, is the strong constitutional empowerment of the executive figure³⁸⁸. In addition to a classical reactive power like the veto, present also in the United States model of Presidentialism, presidents in Latin America can also wield to proactive or unilateral powers³⁸⁹ (Shugart/Carey, 1998). They can have constitutional rule making and/or interpretative authority which is also at some point a creative power. Constitutions entitle them to single handedly appoint cabinet member, judges, and other high public officials, though this initiatives might sometimes be supervised by parliament.

Constitutional decree powers should not be confused with powers that are normally granted to presidents in case of national state of emergency (due to calamity or tragedy), since this type of special powers normally require Congress approval (they are a delegated form in themselves) and last only a set period of time. They are usually limited also to the precise actions against the cause that provoked them. Thus on pure normative terms we usually speak of decrees with legislative habilitation (*decretos-leyes con habilitación legislativa*) and decrees without legislative habilitation. In the Argentine case, the situation before the 1994 constitution allowed the president to dictate norms which became laws as if they had been passed by Congress. According to the norm, the president could dictate three types of decrees

República en consejo de ministros, podrá adoptar las medidas indispensables para evitar que tales hechos se produzcan. Estas medidas se limitarán a la detención o confinamiento de los indiciados, y deberán ser sometidas a la consideración del Congreso o de la comisión delegada dentro de los diez días siguientes a su adopción. Si estas las declarasen no justificadas, cesarán de inmediato; en caso contrario, se las podrá mantener hasta por un límite no mayor de 90 días. La ley reglamentará el ejercicio de esta facultad”.

³⁸⁸ We are careful not to subscribe to terms such as “Hyperpresidentialism” (Nino, 1992) based on the constitutional empowerment since, as Mustapic (2002) has shown, the use and abuse of presidential constitutional powers could be a sign of institutional weakness rather than of strength. Although it could be reasoned that it is part of a strong presidential system, we prefer no conceptualization based on constitutional architecture alone.

³⁸⁹ These two authors consider as Para-Constitutional Initiative those decrees that represent pure presidential initiative but are not clearly constitutionally delineated. They judge executive decrees whose constitutionality is disputed by legislatures or courts on procedural, but not substantive grounds to be “Para constitutional” or outside the constitutional reach. Such are for example the initiatives made by Boris Yeltsin and Fujimori (those backed by tanks), but also many of President Ménem’s decrees of urgent necessity. Brazilian president Collor reissuing decrees that had previously been rejected by Congress, and Venezuelan President Caldera’s reiteration in 1994 of a decree suspending civil and property rights in spite of congressional action to re-establish those rights.

(Ferreira Rubio-Goretti, 1994) “executionary” (the ruling of a law already passed by Congress), “autonomous” (the executive regulates constitutionally assigned matters), and “delegated” (it regulates subjects which would normally correspond to Congress).

About the reasons for the constitutional grounding of decree powers Shugart/Carey (1998) and Crisp, (1998), hypothesize that in cases where the executive (or those who expect to hold executive office) have influence over constitutional design, the likelihood of constitutional decree authority is bigger. It may have been the case in Argentina particularly when we read the dispositions already planned in Ménem/Dromi (1994; 1995; 1997) and suggested as positive constitutional modifications. In a presidential system however, it may be more difficult to see what represents a power delegation and what really is an executive initiative circumventing the assembly. If the ruling party supports the president or he has a strong command over legislators, it is hard to clearly define when the assembly abdicates its own authority or if it is a case of a one-sided executive project. Another probable cause for decrees is the enormous recess time of the chambers established in the 1853 constitution (they had a working timetable of 5 months/year). This proves inconsistent as a demonstrative reason if we observe that 38% of the decrees between 1989-93 were made in sessions and the other 62 in times of extraordinary meetings, in both cases the Congress was in full session.

One of the most commonly quoted handicaps of the presidential system in Argentina is that it empowers the presidential figure excessively. Ménem’s political success was attributed to the fact he could bypass the legislative institution through his own decrees. According to Argentine law until the constitutional reform of 1994, the president could issue three types of decrees

- Rule-making decrees in the course of implementing legislation
- Autonomous decrees based on constitutionally endowed presidential powers
- Legislative decrees based on authority delegated by Congress³⁹⁰.

Emergency and Necessity decrees do not appear under this classification. In the 1853 constitution (and this is ratified by the 1994 text) the executive is never allowed to legislate on penal, electoral, tax or party legal regulations. Thus the legal anchoring of the NUDs was the economic and financial emergency that created “exceptional circumstances that made unworkable the ordinary procedures of the constitution” (Art. 99:3).

The first two types correspond to rule making or pro-active powers of the executive; the latter to the form of delegated decree authority³⁹¹. So neither the constitution of 1853 nor any specific law granted the president the authority to issue

³⁹⁰ Ferreira Rubio/Gorreti (1998) follow the common nomenclature for this as *decretos delegados*.

³⁹¹ It is convenient to point out that the 1853 text also conceived granting the president with extraordinary emergency powers in case of state of siege (*estado de sitio*). This condition was to be declared either by Congress or the president himself, when interior unrest or external attacks put in danger either the effectiveness of the Constitution or the power of the constitutional authorities (Ferreira-Rubio/Goretti 1998). In these cases, civil liberties were to be restricted and some constitutional warranties withheld but the president was not allowed to make laws.

necessity and urgency decrees. In this respect NUD were temporary exceptions to the principle of separation of powers³⁹², since until 1994 these decrees were part of what Shugart/Carey called the Para-constitutional initiatives. “Their constitutional status, though having been used before, came after the constitutional reform” (Ferreira Rubio/Goretti, 1998, pp34-35); the norm came after the practice. Indeed, before the 1994 constitution the only certified situation for an independent executive initiative of this type was during Congress recess which was rather prolonged, since the legislative was scheduled to work only 5 months a year.

Other researchers, notably Bidart-Campos (1988), think constitutional decree authority and decrees in general are in some ways related to an emergency situation or *estado de excepción*. From this perspective we could assume that an emergency situation could provide room for emergency legislation given the case. Thus to be valid, emergency decrees (argumentation before the 1994 constitution) had to “represent an immediate presidential response dictated under totally exceptional circumstances and under the pressure of necessity which could not wait for the regular legislative procedure³⁹³” (Ferreira Rubio/Goretti, 1994, p.14).

Venezuela does have *decretos de necesidad y urgencia* under the same coding as Argentina. However, institutionally seen, the president has access to two independent figures according to the 1961 constitutional text: decrees dictated under constitutional guarantee suspension and decrees dictated in the creation of new public services. In the first case, the president, in a completely exceptional situation (cessation of constitutional guarantees) dictates the norms that the legislative would in a normal state of affairs³⁹⁴ (Brewer-Carias, 1992). The second type of decrees which undergo no legislative supervision are those to regulate new public services and are only related to these extraordinary cases.

6.4.1.2 Delegated Decree Authority. *Leyes Habilitantes*

Many presidential decrees are issued under powers that are explicitly delegated by legislatures. This is a relevant point when discussing the pertinence of presidential power and some of the forms that delegative democracy can take. If presidents issue legislative decrees under authority granted to them by Congress (sometimes with restrictions on the range of acceptable policy choices and with some reporting requirements before Congress) the issue can be far more complicated than simple presidential agenda or policy preference³⁹⁵. Rather than create legislation by

³⁹² The position held by Ferreira Rubio/Goretti 1998, and to some extent by Weldon 1997, is that the *decretazo* has been characterized by the intensive use of NUDs as a policy making device. In this way the executive presents legislative facts already accomplished, eluding the principle of checks and balances and thus, replacing the rule of law with the presidential interest.

³⁹³ Before the *Decretos de Necesidad y Urgencia* were admitted on a national level, they already existed in the constitutions of several provinces (Salta –Art. 142; Rio Negro –Art. 181) to allow governors more speed in the imminence of public calamity or catastrophe.

³⁹⁴ The fundamental condition of the constitutional warranty suspension in Venezuela is the possibility of the executive to regulate the use of the law, assuming that these competences normally belong to the parliament.

³⁹⁵ An interesting fact is that in Argentina in 1989, the recently elected President Menem obtained authority from the outgoing Congress to issue new laws in policy areas. They were defined into two

themselves, which may allow the executive to make decisions on the ways of implementation, assemblies sometimes prefer to forward legislation writing authority, giving the executive the authorization to make new laws. The limits of this attribution are regularly constitutionally stated, and restricted to some areas (in Venezuela the constitution had deliberate provisions to empower the executive on economic and financial decisions), but can also be granted without limiting the policy areas in which the executive may bring changes about. The most common form of executive habilitation to make laws is the case of a delegation (either due to political or technical reasons) where the assembly approves a delegated decree authority (*Ley Habilitante*) in specific policy areas and for limited time periods. Policy area and time are the most common constraints placed in any power delegation.

It may seem contradictory that assemblies delegate their institutional power to the executive when we understand they are precisely an important veto gate in policy making and policy negotiating. Shugart/Carey (1998) suggest two general factors that determine the attractiveness of the decree for the assembly. First, the severity of bargaining problems faced by legislators when making policy; second, the extent of agency loss which results from endowing the executive with decree authority (p.16)³⁹⁶.

Bargaining problems (problems legislators have in order to build and maintain coalitions) grow in direct proportion to the level of party atomization existing in the congressional chambers. A ruling party with a working majority (or if the president's party has a minority in representation) would consider attractive the possibility of having the executive legislate by congressional delegation or simple unilateral constitutional means, to avoid negotiation and confrontation with the other political blocks. Structurally viewed, the bargaining problem within the parliament relates to the internal veto capacity of the different actors implied. To this internal possibility of legislative actors canceling each other's initiatives, there are four influencing factors:

- Party Discipline. The control that party leaders exercise over individual candidates' access to a position in the legislative ballot. This is most frequent in those countries where the electoral system accepts closed lists directly from the Partyarchy (Coppedge, 1994). Under a more general scope and related to the capacity of bargaining, party discipline refers more to the capacity of the party leaders to control all legislators' vote, even if individual legislators would have reasons or preferences to vote against their party's choice on specific issues. The

major groups *Ley de Reforma del Estado* (Reform of the State) and *Ley de Emergencia Financiera* (Economic Emergency). Ménem profited from the existing consensus among parliament member to fight a double digit inflation and constant devaluation of the currency (Ferreira Rubio/Goretti 1994). Decree laws issued under this given authority included privatization of a number of state-owned enterprises (SOEs). Because of the widespread use of the emergency decrees by Carlos Ménem and to a lesser extent by his predecessor Raul Alfonsín, Argentine democracy has been labeled as mostly delegative (O'Donnell, 1994), to depict a situation where the president rules by decree with little regard to any formal congressional or judicial overview.

³⁹⁶ "When we claim, as we shall, that assemblies will not prefer to give decree authorities to executives who hold legislative vetoes, a natural response would be to point out that if assemblies control constitutional design, they could just as well deny executives a veto as well as deny them decree authority, or even deny them both." (Shugart/Carey 1998, p. p16-17)

more locally rooted a legislative candidate is, and the more his constituency becomes the “raison d’ être” of his office, the more likely this phenomenon of potential disobedience is to happen.

- Number of Legislative Chambers. If standard legislation procedure requires majority votes in more than one chamber of the legislature, the procedure becomes more complicated particularly when bargaining to obtain a majority vote. Once again, the idea of a complicated legislative process suggests either a compromised majority or a minority for the presidential party. These reasons can, not only provoke open delegation from the assembly but can also force the president either to threaten with decrees or to use them³⁹⁷.
- Lack of Policy Expertise. One of the reasons that parliaments may delegate their authority to the executive is the scarcity of resources and the little professional level they may have to produce legislation (Close, 1995; Mainwaring/Shugart, 1997). The logic within is that gathering information and producing technical reports is easier for better equipped executives than for legislatives. In Krehiel’s model (1992) for example, information shortages are a motivation to delegate agenda power to legislative committees, which specialize in several areas. The same idea could apply to originate a delegation if we accept that the executive in many Latin American Countries disposes of better technical assessment and overall a better budget than Congress.
- Time Constraints. Time is also a factor that might drive the legislative towards a conscious delegation, understanding that decrees may run much faster than ordinary legislation procedures. This was one of the reasons alleged by the executive in Argentina to encourage Congress to pass the state reform and economic reform laws of 1989. The legislative was conscious that privatization, for example, required precise and quick decision, something unnatural to the legislative procedures and regular speed. The economic crisis of the country, so outlined by the executive in a special address to Congress, demanded extraordinary actions, albeit tacitly understood these special powers would be only for a previously accorded working period of time.

Remaining with the Argentine case before the constitutional change of 1994, the situation regarding legislative power delegation was rather complicated. If we understand delegation as a form to empower the executive to create material legal contexts with the power of formal laws (Quiroga-Lavie, 1993), it becomes obvious that the 1853 constitution expressly prohibited congressional delegation in Art. 29³⁹⁸.

³⁹⁷ The relation between bicameralism and speed has been a common point for many proposed state reforms (see Crisp, 1998; 2000; Ayala Corao, 1992). The fact that each chamber may act as a veto gate to the other and that each one could have a different party composition and majority, becomes a practical threat for a gridlock with the executive. The threat to deliberately “by-pass” Congress has been recurrently used; and presidents have recurrently asked for congressional special powers to expedite difficult situations (Ménem in 1989; Caldera 1994-95)

³⁹⁸ Art. 29: “El Congreso no puede conceder al Ejecutivo Nacional, ni las Legislaturas provinciales a los gobernadores de provincia, facultades extraordinarias, ni la suma del poder público, ni otorgarles sumisiones o supremacías por las que la vida, el honor o la fortuna de los argentinos queden a merced de gobiernos o persona alguna.”

However this situation was becoming common due to several of the reasons pointed out above. After the 1994 reform, Art. 76 changes the constitutional conception from the former complete negation of delegation to a selective one³⁹⁹. Some authors coincide (see Llanos 2002; Nacif, 2002; Haggard/Kaufman 1992) that this measure was a consequence of the structural adjustment reforms which, after the implementation stabilization plans in many countries of the hemisphere, demanded articulate communication between executive ideas and congressional law approvals. In Argentina, the change from a “no” position in the constitution regarding delegation left parliament with little options to empower the executive. Art. 99 (1994) contemplates that the permanent bi-cameral commission is also allowed to delegate through a law that can administer how far Congress is settled to intervene. In the Argentine case of congressional delegation, three functional observations can be made on the procedure:

There cannot be legislative delegation on penal, tax, electoral or political parties matters, following the provisions of Articles 76 and 99 (num.3). These belong to the unconditional constitutional competence of legislative control over the public power (Gentile, 1997, pp.168).

Congress must fix a set time for Executive dispositions under empowerment conditions. The delegation to legislate is done directly on the person and figure of the president of the republic, and not on the Ministers, members of cabinet or any other state institution. Nor can the president alternatively delegate this power to an institution or a person. The delegative act must be precise and explain the contents and limits of the norms the president is about to consider. The Carrio Project⁴⁰⁰ (see Gentile pp.168-169) for regulations of parliamentary procedures, states in Art. 6 that it is Congress that at all times regulates the degree and form of the delegation and not the executive.

In 1989, the Argentine executive sent two bills to Congress that the government believed necessary to overcome the political and economical emergency after the government of Alfonsín. In August and September in a sort of global coalition due to the crisis, Congress passed the Administrative Emergency Act (23.696) and the Economic Emergency Act (23.697). The Administrative Emergency Act declared a national emergency regarding public services managed by the state as well as fulfillment and execution of public contracts and agreements. The declared emergency would be valid for a year and the executive would be able to extend this period for one additional year⁴⁰¹. The Economic Emergency Act (law 23.697) allowed

³⁹⁹ Art. 76: “Se prohíbe la delegación legislativa en el poder ejecutivo, salvo en materias determinadas de la administración o de emergencia pública, con plazo fijado para su ejercicio y dentro de las bases de la delegación que el congreso establezca”.

⁴⁰⁰ Here Gentile (1997) in his work on parliamentary law quotes the project presented by deputy Maria Elisa Carrio (*Tramite Parlamentario*, Num. 15 presented March 21, 1996) which is where most of the regulations made on congressional delegation have been specified.

⁴⁰¹ The main topics of this act were (Ferreira Rubio/Goretti, 1994;1998):

- Intervention in public agencies and public corporations
- Change in the legal structure of public corporations
- Rules and proceedings for the privatization of public corporations

the use of emergency regulatory power in order to overcome the present situation of collective risk caused by serious economic and social circumstances of the nation. The regulatory power of this congressional delegation was to rule and limit civil rights as previously stated⁴⁰².

Most important in these cases of congressional delegations is that time limits have to be set clearly, as well as the policy areas to be affected. In the case of the Administrative Emergency act the term was one year with the executive receiving the grant to extend it for one more. The Economic Emergency Act applied other criteria, establishing different terms for each rule. Thus while public subsidies and benefits were suspended for 180 days, the tax benefits coming from the industry promotion were suspended for a period up to six months. When these periods expired, the executive turned to a NUD to extend the period for a year more; but even before that, both legal tools were on the understanding of a much needed institutional speed to promote the reforms, so they encouraged the use of decrees by the executive (Ekmedjian, 1990).

Congress delegated on the executive enormous faculties to regulate several aspects of public policy through these two legal instruments. The Administrative Emergency Act empowered the executive to exempt privatized corporations from taxes, also the power to authorize reductions and term extensions for the collection of debts by privatized corporations. It gave the executive the power to revoke laws hampering privatization. In fact, this administrative act or *Ley de Reforma del Estado*, can be considered the main column of Ménem's privatization scheme from the very beginning when he proposed the normative rules that would guide privatization (Llanos, 98).

Aside from establishing rules for future privatizations, the law to reform the state started the whole privatization idea by itself; it contained in Art. 9, those public

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- The “participative property program”, which involved rules for special share holding by employees of public corporations that were privatized.
 - Executive powers and rights regarding privatization, such as the power to establish tax exemptions for privatized corporations, the power to determine that the state would take upon itself the debts of those corporations while privatizing only the assets, and the power to repeal those laws that created monopolistic privileges that hindered privatization.
 - Rules for public emergency agreements and contracts
 - Rules for the annulment or re-negotiation of public contracts
 - A two year suspension of enforcement of court judgments against the state
 - Labor emergency plan

⁴⁰² The economic emergency act dealt with the following policies (Ferreira Rubio/Goretti *ibid.*):

- Suspension of the public subsidies and benefits
- Suspension of industrial incentives through tax exemptions
- Suspension of incentive programs for mining activities
- Modification of the rules for foreign investment
- The use of credit bills to pay drawbacks
- Tax on fuel
- Gas and oil royalties
- Compensation for public debts
- Reform of stock market rules
- Labor dismissal and compensation policies for the public sector
- Sale of unnecessary public real estate

companies potentially subject to privatization such as airlines, telecommunications, railways, etc (Ekmedjian, 1990). The magnitude of the delegation becomes visible when structural analysis shows that Congress could merely follow some privatizations through a bi-cameral commission created ad-hoc but otherwise had very little to say on the matter⁴⁰³.

In Venezuela, the 1961 constitution empowers the decree legislation on financial and economic emergency. The fact that many presidents have maintained a decreed economic emergency is because it is purely a political judgment when to declare economic emergency. The constitution also mentions little on the legislative delegation on economic and financial matters but it does not impede simultaneous congressional and executive legislations on the matter (Fernández, 1992).

6.4.2 Reactive Powers: Presidential Veto. Political Use and Legal Basis

We call the veto a *reactive* power according to the literature (Shugart/Carey, 1998; Morgenstern/Cox, 2001, Haggard/McCubbins 2001) because it is the most frequent presidential reaction to a legislative proposal. Theoretically it can be considered the primary check of the president on congressional power, but the veto varies in its nature and scope in the different constitutional texts. Highly constrained, the veto can allow the president no more than an opportunity to express disapproval with a law project (as in Venezuela's 1961 Constitution), but it can also endow the president with effective power to designate the specifics he wishes from among a large legislative package in the case of an extended form, or partial veto.

The veto can also be a potential tool for institutional gridlock since it takes presidentialism to the essential dilemma of dual legitimacy between Congress and Executive. Both Executive and Parliament can veto each other in several ways, or at least slow down and severely interrupt the political moves of one another. In the presidential form of the veto, the idea would be to grant the president the possibility of revision and modification of the proposed text without affecting the origin and survival of the two institutional branches.

In both Argentina and Venezuela, the period of consideration for any law project presented, discussed and approved by the chambers is ten days after which, any bill not returned to parliament will be considered endorsed by the president and cabinet. One very important stage in Argentina is the revision chamber (Gentile 1997) which can also modify the legal project before it reaches the executive and also in the case it has been returned for new analysis in Congress (Art. 81:1994). The President in Argentina has access to both types of veto though the partial one, i.e. publication of only some selected parts of the original bill proposal, which has given place to further discussions whether the constitutional principle of not altering the spirit of the law is being guarded.

⁴⁰³ Most interestingly, Llanos (1998) divides the congressional attitudes into three phases that occur between the executive and the parliament. The delegative phase, with the laws of Administrative Act and Economic Emergency; the cooperative phase, once the economic emergency was through and Congress started regaining some of its previous strength; and a third and conflictive phase, where the privatization process was sensibly delayed and diminished.

According to Molinelli/Sen/Palanza, (1999), presidential vetoes and parliamentary insistence on bill approval, are the clearest sign of institutional tension between executive and legislative. The main difference in the Argentinean case and its difference with almost any other presidential system in the region is the presence of partial veto which allows the approval and sanction by the executive of only “part” of the law. Since 1983, the number of vetoes in Argentina has increased; predominantly during the governments of Ménem who vetoed 39 laws of “major importance” (Molinelli et al., *ibid.*) with a radical incidence of partial vetoes since they are “less costly because laws do not have to be completely vetoed and redone” (*ibid.* p.103).

The situation with the 1961 constitutional text in Venezuela is very different. The president can only return projects for congressional consideration and this only for a few days after which he has no power to stop the same project once approved by a simple majority of the chambers. This leaves him in a rather defenseless condition as we have seen, particularly when his majority on the chamber floor is compromised.

6.4.2.1 Total Veto

In all presidential systems, the president is required to take action on legislation passed by Congress: either to promulgate it or veto it, within a limited time period. This period can also be shortened if the matter is deemed urgent by Congress.

In Argentina, Art. 80 (1994) of the constitution clears the difference between total and partial veto. In this case it implies the return of the law project to the congressional chambers.

6.4.2.2 Partial Veto or Item Veto

The partial veto allows the president to target specific elements of a legislation proposal he has received, leave them aside, and promulgate the rest. It allows the president to pull legislation apart, to craft possibilities which are more unison with the cabinet’s or president’s ideas. With the possibility of a partial Veto, Congress cannot present large legislative packages to the president because it runs the risk of becoming vulnerable to negotiation of all its parts.

6.4.2.3 Veto Override

Veto Override would be the most direct reaction the president faces once he has exercised a total veto. The potential for an override normally lies on the electoral factor that is required. In most countries it is two thirds of the assembly vote, with which the law, already vetoed by the president, is promulgated by Parliament. In Venezuela, the president may veto a bill; immediate override of his decision needs a two thirds majority in both chambers. A simple majority makes the project go back to the presidential desk for a new revision. The president may then veto the bill once more, but the second time, Congress can promulgate it and thus override the presidential veto with a simple majority vote (Art. 173).

This back and forth institutional possibility, more than a revision plan can be considered a public opinion call (Kernell, 1986); so either the president or the cabinet members can express their concerns on the new project, gain public support and exert pressure on parliament members. Legislative override of executive decisions runs the risk of being too closely related to party discipline. It can become a challenge for the presidential fraction, unless it counts on a considerable number of Congressmen⁴⁰⁴.

⁴⁰⁴ In Colombia before 1991, override of a veto on appropriations legislation required two third majorities, whereas override for all other legislation required only an absolute majority (Art. 88). Although the Colombian budget process was complicated by other institutional arrangements besides the veto, this arrangement strengthens the president's hand in budget matters related to non-fiscal issues. In Paraguay, the constitution requires a two thirds majority for override of a package veto, but only a simple majority to override a partial veto (Art. 158,159). In Ecuador, a partial veto can be overridden by two thirds majority, whereas Congress by itself cannot override a package veto but it can submit the topic to a referendum (Art. 69,70). Bolivia's Constitution requires a two third majority in a joint session of Congress for override (Art.77)

IV. Congressional Control and Privatization in Venezuela.

Most of the books concerning privatization in Venezuela (Naím, 1993; Torres, 1995, 2000) will lead the reader to a starting date: the year of 1989. There and then the opening remarks of the elected President Carlos A. Pérez were that the government would embark itself in a series of reforms that would lead to a complete “new notion of the state⁴⁰⁵”. Despite the assurance of that moment as the very first to relate executive and legislative with privatizations when Washington Consensus structural reforms were thought would be successful, we begin our study based on previous information⁴⁰⁶. Detailed research showed here recounts parliamentary acquaintance and cooperation/delay/dismissal of executive sent bill projects regarding state reform in general, and privatization in particular, at least two governmental periods earlier. In other words, congressional control on the sale of public property had been effective since the beginning of the 1980’s.

Several facts indicate that privatization was not a new notion to the Venezuelan government in 1989, as it was nothing new to Congress. The legislative had confronted the reality of inoperative and bankrupt public enterprises almost simultaneously with the beginning of the debt crisis in 1983 and had seen executive considerations to transfer some of them to the private sector. Moreover, this same legislative power that later took more than three years to study a privatization project written by the executive (handed in 1990), had already passed a specific law to dispose of public goods in the most convenient manner. This law was approved by the ruling party, *Acción Democrática*, which enjoyed a power feast between 1983 and 1988 (Coppedge, 1994). AD then (1986) had an absolute majority in both chambers of Congress, all governors and mayors nationwide; a time when the cooperation between party directives and executive officials was perhaps the closest in recent Venezuelan democratic history.

congressional control reveals during the 1980’s and the 1990’s to be more associated with party discipline and teamwork with the executive from the side of the ruling party, than an individual institutional initiative from Congress, following constitutional prescriptions. During the 80’s and the beginning of the 90’s, when AD had either an absolute or a working majority in the legislative, congressional control became a punishing tool for a president who either willingly or not, disobeyed party lines or distanced too much (as was the case with Pérez) from the party’s directives. In those cases Congress could make use of a set of political resources to put enormous political pressure on the executive.

Even a party with a working majority as was the case of AD during the Pérez II years (1989-1993), the ruling party proved capable of exerting deliberate and constant strain to stop, modify or at least, considerably delay any bill project. The

⁴⁰⁵ See *El Gran Viraje (1990): Lineamientos Generales del VIII Plan de la Nación*, Oficina Central de Coordinación y Planificación.

⁴⁰⁶ The years previous to those of the well documented stage after 1989, are based on texts from several authors and firms, namely, the *Centro Latinoamericano de Administración para el Desarrollo*, CLAD (various years), *Instituto de Estudios de Administración* IESA Papers, several legal texts, interviews and official reports.

difference in party behaviour between the administrations Lusinchi and Pérez, is a relevant variable to show how much the legislative situation and cooperation variable can differ, despite the fact that in both cases we are dealing with privatizations and their relative congressional authorization, necessary for the sale and/or disposal of public property.

1 Privatization in Venezuela before 1989.

During a period of almost 15 years (1980-1995), privatization varied in its social meaning from being a selected instrumental policy estimated as necessary by both presidential candidates in the 1983 elections (the two main contenders, Caldera and Lusinchi, from COPEI and AD respectively, had conceived ideas of restructuring the economy after the 1983 devaluation), to slowing down and almost disappearing from the scene as an anti nationalist policy after 1997 (Torres, 2000). Despite thorough inconveniences, most due to the stringent existing legal frame, the executive in this period did not stop selling enterprises (or trying to sell them); meanwhile Congress passed a number of 4 general organic laws⁴⁰⁷, it also granted a delegative law (*Ley Habilitante*) which produced a strong number of presidential decrees the legislative could have objected, had it wanted to. In conclusion, everything done was aimed to empower the executive for the disposal of unproductive public property. There was, however, no deliberate executive policy on the subject with a proper name, until the great turnaround (*Gran Viraje*), which then produced, under executive initiative, the law of privatization in 1992. Before that, all sales of public property were done without proper legal structure thus hindering if not the speed, surely the accountability and transparency of the whole procedure.

In fact, right at the beginning of the 80's, several political leaders in Venezuela had been thinking about the role of its public sector, and some of them after 1978 reached the conclusion that the public sector should be cut down in terms of economic activity⁴⁰⁸ (Kelly, 1987). At the time several privatizations did occur, but were mainly the transactions of already bankrupt initiatives or sound corruption scandals; observed in isolation they do not automatically mean that there was a serious restructuring of the state going on, or that it somehow planned to withdraw its participation in the national economy. Privatizations happened as sales of unproductive enterprises or as policies of investment promotion for proposed mixed capital enterprises (Villalba,

⁴⁰⁷ The main documents to regulate the privatization process (only known by this name after the law of 1991) are, aside from the constitution, the following:

- *Ley de enajenación de bienes del Sector Público no afectos a las Industrias básicas (1987)*
- *Ley de Salvaguarda del Patrimonio Público (1982)*
- *Ley de Licitaciones*
- *El Gran Viraje: VIII Plan de la Nación (1989)*
- *Ley del Fondo de Inversiones (1991)*
- *Ley de Privatización (1992)*

⁴⁰⁸ Despite judgments such as this, the Venezuelan development and conception of development was very state-led still, and moreover, oil-rent based. For others (Karl, 1997), the life and times of the Lusinchi and Herrera Administration were times of partial reforms, half measures, and perpetual debt negotiations where corruption and the rent seeking behaviour, on the part of those who seemed to understand that "the dance of the millions" was coming to an end was their habitual approach (p.163).

1984). At the same time, initiatives related to other state-owned enterprises (SOEs), were announced in electoral campaigns as promises but moved exactly in the opposite direction, that is, candidates proposed to expand several SOE's outlay and market domain. The state was still observed as the classical development promoter.

In 1993, Gerver Torres, then recently dismissed director of the *Fondo de Inversiones de Venezuela*, FIV, the entity in charge of coordinating a massive privatization plan for the executive, wrote extensively (Torres, 1994) on the need of selling already bankrupt public enterprises. However, his work did not look back or take into account what had happened in the 80's before his effort in the Great Turnaround. The problem of privatization was more complicated than the obvious procedure of selling bankrupt enterprises. The extensive role of the state in Venezuela had led public investment to almost all areas, from mining and oil exploitation to hotels, tourist industries, horse racing, etc; all with a complicated legal structure which in a way sealed them from any possible scrutiny and control. Torres admitted having combated a deeply rooted, and for many, economically rentable fallacy: that privatizations were the government's way to favor a small group of investors⁴⁰⁹, rather than being beneficial for the whole country. This negative association with privatizations was a later consequence of political strategies developed against Pérez II (1989-1993) and his stabilization and structural adjustments plans, particularly by his own party members in Congress. *Acción Democrática*, AD, had been very close to the Lusinchi administration (1984-1988), which was being judged for massive corruption scandals on exchange controls. Several party members escaped justice running away on self imposed exiles, including the former president himself (Lusinchi) who fled to Costa Rica with his personal secretary. So aside from being divided between those people supporting the current administration (Pérez II) and those supporting the former (Lusinchi), many party members felt themselves at odds by having to endorse "neo-liberal" free market measures.

1.1 The Roots of Conflict: *La Gran Venezuela*.

The Venezuelan democracy from the 60's to the 90's was structurally based on two documents that served as foundational agreements: the 1961 constitution and the *Pacto de Punto Fijo*. After the overthrow of the last authoritarian regime in 1958 and a swift transition to democracy, this regime was institutionalized by a constitution that in spite of the self given name "federal", architectonically guaranteed strong centralist

⁴⁰⁹ Regarding public services, for example, Torres denotes a paradox rooted in the collective belief that public means "belonging to all" (in rights but not in duties), and that for the poor these services had been "cruelly" privatized since long without legal protections. "I was interpellated many times in Congress amidst a strong anti-privatization climate. There paradoxes were disconcerting. It was argued—in the name of the people—the inconveniency of privatizing the public water service of Caracas because of the supposedly resultant increase in water bills. However, it so happens that the poor in Caracas, those living in the *cerros* (small mountains around Caracas), do not receive any water from the public water service but have to pay for trucks to deliver it at prices that not even the most inefficient private company would charge. For the poorest of our society water service has been *privatized* for years, not to say always. But that has been a *perverse* privatization. It is the one that happens when privatization is not a State planned policy. That is the mayor paradox: statist leave to market forces what ought to be central piece of state policy" (Torres, 1994, pp. 15-16).

and presidential powers; simultaneously the *Punto Fijo* Pact guaranteed that only a few social actors would regulate the participation or exclusion of all groups in society. Oil rents underlay this system of competing interests making them, in general terms, a subsidized clientele of the whole petroleum revenues (Karl, 1997).

The basic common consensus of all political forces (and a good part of the private sector) was of the idea that there ought to be an interventionist state and oil led development⁴¹⁰, thus the state would be the “engine” of the economy, basing its model on the allocation of subsidies and benefits to all political and social groups inside the pact (Naím, 1993). This approach had important roots in the worldwide discussion of the role of the state issued after the Second World War and sponsored by such international organisms as ECLAC⁴¹¹. This commission envisioned the necessary industrialization of the developing countries as its founder, Raúl Prebisch, expressed it in 1947. Afterwards, the Latin American structuralist school described “dependence” of the poor or underdeveloped countries from the developed ones, in terms of center-periphery and north south relations which again, had to be overcome by state-led development and planning (see Falleto/Cardoso, 1971). During the 60’s and part of the 70’s, dependence advocates proposed the thesis of “internal development” as a process through which the third world countries should arrive, somewhat in the long run, to a desired condition of import substitution and industrial self sufficiency, favouring nationally made products (Sunkel, 1991). For the ECLAC at the time any development program implied *per se* a great importance of the role of the state, which was entitled to and should plan all strategies to transform old/outdated existing internal production structures (Ocampo, 2001; Prebisch, 1959)

The situation in Venezuela as shown in chapter III, illustrates the first structural approach to democracy in the XXth Century made by the 1947 constitution, a document that promoted a turn to a more flexible conception of the state, something the 1953 text (under an authoritarian regime) quickly averted. The democratic constitution of 1961 reaffirmed the ideas of state intervention and strong presidentialism⁴¹² (Brewer-Carías, 1985; Karl, 1997) by giving the executive control over the nation’s defence, the possibility to issue extraordinary decrees (overrunning Congress to a certain extent) on monetary and tax policy by declaring the state of emergency, authority to name all governors in all states, all cabinet members and all directive officials of state enterprises.

⁴¹⁰ There is a widely praised and criticized sentence from Uslar Pietri (1943) *Sembrar el petróleo* (sow the oil) which somehow depicts this idea that development should be oil-led through state guidance and intervention with resource based industrialization and the fostering of import substitution in the private sector.

⁴¹¹ The Economic Commission for Latin America and the Caribbean, ECLAC, was founded by resolution 106 of the council on economic and social affairs of the United Nations in 1948.

⁴¹² Karl (1997) includes a very interesting observation on this turning of the 1961 constitution towards more conservative models than those of the 1947 text: “Believing that only the state could distribute the fruits of the nation’s patrimony and that democratic forces needed a mediator who could rise above the partisan conflicts that had destroyed the trienio (1945-48), the 1961 constitution validated the tradition of highly centralized power and made the president the supreme political arbiter” (p.105)

Regarding Congress and its real checks and balance possibility, although this institution was constitutionally empowered to a variety of actions and control tools (among which there was the fact of overriding the presidential veto with a simple working majority) it has been an institution with few financial or human resources at its disposal⁴¹³. The Venezuelan Congress has not been completely able to modify or, in many a case, even understand the laws originated in the cabinet by the technicians working in the ministries. A direct consequence to this lack of expertise and a subsequent product of the strong party discipline promoted by the pacted democracy and the partyarchy environment of the whole political game, is that congressional production has been outstandingly low even in comparison with other Latin American presidential legislatures⁴¹⁴ (Crisp, 2000). Because of the electoral system and executive/legislative election taking place on the same day with closed lists, the winning presidential candidate was likely to pull the members of his own party into Congress. The ruling party when being a majority in Congress, exerted closed lines of obedience (under the euphemism of party discipline) to the directives of the CEN (Executive Party Central), from which the whole political life of the legislative members depended. Were this party discipline principle not in force for some individual or group, the CEN would immediately expel the rebel, the heterodox assemblage or promote, as it did in the past, a party division. Thus executive ruling by *Leyes Habilitantes* which enabled decrees in economic and financial matters was common, especially when the ruling party had an absolute majority and legislative initiative was kept to a minimum; this minimum being closely supervised and concerted with cabinet members by the party central⁴¹⁵.

That is exactly the case with *Acción Democrática* after 1974. The other important Party, COPEI, never reached an absolute majority in both chambers as AD did on two occasions. When in opposition and having a working majority to override the executive initiatives and block them in Congress, AD always had the means to prevent a strong legislative production. Additionally, the executive could also constrain congressional supervision in, for example, the case of the yearly budget. One of the important constraints the executive had over the legislative in the 1961 constitution was the possibility to assign resources to state enterprises (*empresas públicas*) or *institutos autónomos* that were not subject to congressional oversight in the same way as regular public administration or cabinet expenditures were.

Another fact in detriment of the congressional development and the legal production directly related to the presidential model in Venezuela, derives from the victory of Pérez in 1973: the fourth democratic president in a row, elected with the

⁴¹³ To counteract such well known deficiencies, common ailments to all parliaments in the region, the IADB started an economic assessment office in 1997, which has been in charge of giving advice to the commissions in both chambers, and to the National Assembly established by the 1999 Constitution.

⁴¹⁴ Figures given by Crisp show that even cases like Argentina had a higher average in legal production than Venezuela, a case that was only comparable to the Cuban People's Assembly.

⁴¹⁵ For a more detailed description of the intricacies of AD as ruling party during Pérez I or Lusinchi's presidential period (where it had absolute congressional majority) see Coppedge (1994) Chpt III and IV.

biggest legislative majority any candidate before him had ever had. This reduced precedents of potential interaction between the legislative and the executive when all governments before, disposing only of working majorities, had to resolve to compromise with other legislative factions and negotiate a common government plan. In 1973, the party directives and party members were forced to believe that their strong quotas in the legislative, never before so high in both chambers, were the product of Pérez and his popularity to whom they ought to remain in alliance.

Aside from the structural restrictions of the legislative against a centralist executive with nearly all power command over the oil revenues, the fact that before Pérez presidents had to negotiate coalitions in Congress had led to some checks and a more active participation of the legislature (Kelley, 1977; Karl, 1997). But with the margin that AD obtained in 1973 (51% in the Deputies' chamber and 60% in the Senate) almost all possible political limitations to restrain the presidential office were removed, considering in addition to these legislative quotas the strong degree of party discipline diagnosed⁴¹⁶ (Carey, 1994; Coppedge, 1994). This is also observed by Crisp: "aside from the incredible financial resources Pérez had access to, his activism was aided by his party's control over the legislature" (2000, p.32). The elections of 1973 also marked the initiation of a period of a two-party domination period between AD and COPEI, parties which at the time and combined, had more than 80% of the total amount of electoral votes.

The structural institutional model found in Venezuela at the beginning of the 70's and what was to be the foundation for the forthcoming *Gran Venezuela*, was then the result of party arrangement sequences and the economic and financial outcomes of the oil boom after the Yom-Kippur war and the 1973 concomitant oil crisis. To a closed pact that had established its regime consolidation on a combination of statecraft (through the 1961 constitution) and the oil rent dollars, the oil-price boom aggravated the oil-renting mentality and the severe dependence on state intervention for both the public and private sector's economy. In Venezuela, oil prices almost quadrupled between 1973-74, and between 1972-75 oil prices went from 2.10 to 10.90 dollars, which is more than five times the currency price used for budget calculations. The fiscal income per barrel of exported oil rose from \$1.65 to \$9.68 which meant a revenue increase of more than 500% for the state.

Table 4.1 *Fiscal revenues of Venezuelan Governments 1961-1978 (Millions of Bolívares)*

Government	Total Income	Average Year
Rómulo Betancourt (1959-1963)	16,285	3,257
Raúl Leoni (1964-1968)	25,573	5,114
Rafael Caldera	36,952	7,390

⁴¹⁶ The fact that AD won so many seats and that the president could name governors and regional authorities made him also a strong man within the party, rivalling with the traditional founder figure and former president Rómulo Betancourt.

(1969-1973)		
Carlos A. Pérez (1974-1978)	148,640	29,728

Sources: Banco Central de Venezuela/Karl, 1997.

As we observe from the preceding table, the state's total income was, in Pérez's time, bigger than the sum of all previous amounts together. As much as he did later during his second administration, Pérez concentrated most of his activity on the economic and financial aspects of the country, mainly through presidential decrees. He was given a *Ley Habilitante* by Congress in 1974, scarcely two months after being in power, because the oil boom had expanded the fiscal resources so abruptly that it echoed instantly in the dimensions of the economy and the boundaries of the public sector.

Pérez started his administration using his extraordinary powers to by pass Congress⁴¹⁷ and moved at what he thought was the necessary institutional speed to promote the desired state-led development. This deliberate and pursued isolation of the presidency to make quick un-consulted decisions, created two future political dilemmas which from then on hampered Pérez's relations with his own party and the opposition, a conflict that usually echoed in the legislative arena.

First, it must be seen that Pérez obtained the *Ley Habilitante* to issue all decrees only after AD used its majority to sweep away opposition (composed mostly by the other big party, COPEI) which saw in the crisis no special reasons to empower the president. AD had a majority in both chambers and many deputies felt they owed their seat in Congress to Pérez's victory and popularity. Until then also, party discipline remained at very high stakes and parliamentary role votes were but a formality to expose already accorded decisions made at the executive committee of the party. Pérez, once having won the legislative vote and the *Ley Habilitante*, started issuing the decrees and made no consultancy to the party's committee; nor did he make any efforts to include any member of the opposition, something that until then, both due to the party composition of Congress and the closed nature of the *Punto Fijo* Pact, had usually occurred. Former governments, perhaps attending their coalitional needs (before 1973 there was no clear two-party system and none had an absolute majority) in the legislative had been more party inclusive and opposition inclusive; if not in action at least in form. Pérez, adducing necessary decision speed, did away with all that.

Second, by excluding his party from decisions within the cabinet and directly by-passing Congress Pérez created a background of considering congressional

⁴¹⁷ Statistically seen, the record made by Pérez is sadly impressive on institutional grounds, or as an example of pure delegative democracy which probably no one in the region can surpass. Not more than a month and a half after becoming president he started the discussion in Congress to obtain, just as president Betancourt did in the 60's (but under different circumstances) a *Ley Habilitante* to rule the country through presidential decree. Due to the unexpected oil rent income surplus, he asked Congress for authority to implement a package of important measures, such as a reform of the income-tax system, a re-organization of the public enterprises and financial institutions, and a whole new labour policy. In less than a year he issued 830 decrees and created fifty one commissions (Fernández, 1974).

oversight as “slow and unnecessary” if changes were to be made in depth and speed; unilateral decision was preferred to be able to produce quick and tangible results⁴¹⁸. This idea, together with negative variables that attempted against legislative efficiency such as party discipline, and the existing electoral system favouring centralized decisions of the party committees, made no institutional benefit to improve the possibility of a real power balance between executive and legislative. From his very beginnings as a statesman, Pérez undermined the support his party could have given him, something that proved to be politically fatal 20 years later.

With all this unprecedented amount of income and almost personal powers to rule, Pérez started in full swing to implement an ambitious plan of public investments in structure and in “strategic sectors” for the country’s economy, such as iron, aluminium and electricity production (Rodríguez-Mendoza, 1988). Public investment grew at a rate of 22, 2% in the 1974-78 period, and the idea of a state-led industrialization moved private investment to a certain extent since this sector grew 10.5% a year in average. The total amount of debt for the whole period was of around \$10 billion, \$6.6 billion for the public sector and \$ 3.4 billion for the private. At the same time the public sector increased its external actives (*activos externos*) in about \$ 9.4 billions represented in \$ 4.8 billion as international reserves in the central bank and some \$ 4.6 billion of reserves in *Petróleos de Venezuela* and other public actives.

Table 4.2 *Public Investment Vs Private Investment between 1965-1976 in millions of Dollars*

Year	Public Industrial Investment	Private Industrial Investment	Total Industrial Investment	Public Investment as % of all Investment
1965	48.99	243.82	292.81	17
1966	47.19	240.67	287.86	16
1967	71.01	219.55	290.56	24
1968	104.49	313.26	417.75	25
1969	282.92	278.20	561.12	50
1970	133.93	287.42	421.35	32
1971	248.76	337.75	586.51	42
1972	530.11	355.73	885.84	60
1973	417.30	387.87	805.17	52
1974	358.43	351.01	709.44	51
1975	512.13	359.33	871.46	59
1976	906.07	438.42	1344.50	65

Source: *Comision de Estudio y Reforma Fiscal* (1987) and Crisp (2000)

Regarding external circumstances acting on the economy, during Caldera’s first administration the oil barrel had risen from around two dollars in price, to almost

⁴¹⁸ The debate whether market development and democracy are opposite in nature has been a long one (Lindblom, 1977, 1982). In this case, although the president’s intention is to promote the state’s inderence in many matters, the variable remains the same: whether democratic processes and institutions should be respected even if the slow institutional operation, in terms of economic decisions, delays necessary actions.

\$14. More than half of these revenues went to the government, creating a strong surplus in the budget⁴¹⁹. This is exactly the money Pérez later wanted to invest in a massive industrialization campaign and an import substitution model. Government revenues from petroleum also supported economic development in the private sector by helping to keep tax rates in the non-petroleum sectors of the economy quite low. The subsidy policy of the economy seeking to promote its growth was made directly through public and private investment. The state itself invested in public enterprises that provided employment and produced goods for the domestic market, especially inputs for other industrial activities. The government also invested directly in a wide array of businesses in which private capitalists retained majority ownership, so this, plus a soft tax policy, made the private sector's life easy while letting it remain underdeveloped in real competitive terms.

As Baptista/Mommer (1989) explain, the dependence on oil revenues and the supported economic development from the government began creating an overvalued currency which made imports cheap but strangulated national non-oil production initiative, as say, agricultural goods. Thus the economy made it easy to import all kinds of finished goods but almost impossible to be able to produce and compete at international market prices with all other non-oil products. However, there was a certain cycle in the situation: the state pursued development through heavy industrial investment creating jobs, goods and services. This in turn helped the private sector which benefited, first from some of the products of the public industries at subsidized prices; second, of the mixed capital industries it sustained with the government; and third, from the consumption of the private industry's finished products by the state at abnormally high prices. As Baptista (1980) shows, the overvalued currency made internal prices on goods so high they could not have survived under open market rules. Thus the private sector could seize much of the amount of petroleum income that was amassed in the state by selling import-protected, overvalued products in the country. "The economic mechanisms of the Venezuelan society assure that public spending, financed by petroleum revenues, in the end are converted into benefits for the capitalist sector" (Baptista, *ibid.* p. 456, also quoted in Crisp, 2000).

The surplus in the budget during Pérez's first years, plus the government's idea of a needed massive industrialization to substitute imports, helps to explain the enormous increase in state expenditures. This occurred mainly through the creation or expansion of public companies, something that Pérez would continue and muscularly enlarge during his government through the guidelines stated in the 5th National

⁴¹⁹ Caldera's first administration was the last before the two-party system gained strong consolidation in Venezuela. Thus he faced strong congressional opposition made by a plural opposition of which none had definitive majority. His cabinet had to represent the various forces around him, namely, members of his party, COPEI, plus independents and business men. After a confrontational period with the legislative, Caldera decided to ally with AD to create a united front in Congress. This pact was manifest when after the university riots at the beginning of the 70's, several opposition parties wanted to censure the Minister of education. The decision was prevented by *the aplanadora* (bulldozer machine) of the two parties in Congress 120 votes to 52 (Crisp, 2000).

Plan⁴²⁰. His idea to transform Venezuela into a developed nation followed many of the principles of import substitution, stressing an acceleration of the economy: “state planners were frequently told to think big” (Karl, 1997, p.125). So, large capital intensive projects focused on the growth of public companies were favoured over other ideas. Sadly, this was done at the cost of forgetting social expenses, to the point that public investment in education, housing and other social expenditures had a share of 19.9% of the GDP in the Fifth Nation Plan, when they had already reached a 35.4% in the Fourth⁴²¹.

The conception of the *Gran Venezuela* had two basic elements: the struggle against poverty by expanding the demand through a combination of price controls, income increases, employment creation and social services diversifying the country’s export structure while deepening import substitution; and the inner idea that oil industry as well as other strong mining products had to be nationalized⁴²² (Karl, *ibid.*). The idea that oil nationalization was immanent in all of Pérez’s plans is shared by Crisp (2000) because government spending was central to economic development, and the revenues in Venezuela during the XXth century had historically come from the taxes on multinational oil companies. After the industry was nationalized (01/01/1976), they stemmed directly from the profits of *Petróleos de Venezuela*, the state-owned petroleum company.

The operative elements of the *Gran Venezuela* concept and the whole import substitution strategy implied the following conditions as premises in order to strengthen both public and private sector:

- a) protection from foreign competitors⁴²³
- b) price supports and subsidies
- c) investment incentives

The market isolation that implied having official protection from outside competitors was based on the understanding that if industries were to develop, they had to have a growing phase, so to speak, where they would reach a balance between

⁴²⁰ “National Plans” were the development proposals each government presented before Congress to show the guidelines it would follow during the next 5 years. In Pérez’s case, his 5th Plan and the 8th Plan (also known as the Great Turnaround) are paradigms of, first, the idea of planning the economy to a certain extent and second, of orthodox and free market ideas.

⁴²¹ Figures can be deceiving here. Although the percentage is smaller in the 5th plan, it has to be considered that the total number was really bigger than a higher percentage in the 4th plan, mainly due to the increase in oil revenues. However, the amount does reveal the intentions of the government and its own idea of progress.

⁴²² Karl remembers one of the great fears at the time, which was that oil production would soon (20 years maximum it was said) come to an end and that Venezuela, of all OPEC countries would be the first to face a “day of reckoning”, not having any more light crude to sell. Verily explorations had almost ceased since the beginning of Democracy in 1958 and hopes that the heavy crude in the Orinoco could be productive were rather meagre since technology (to do that) was expensive. This idea of not having any more oil even jumped to the TV screen when RCTV, one of the main TV channels, made soap operas facing that fact. The idea was also politically used to make the public conscious that money from the oil boom had to be used massively and quickly in order to bring the country to a gigantic industrialization and import substitution paradigms.

⁴²³ Coronil (2001) gives a detailed description of the dead born industry of auto parts in Venezuela and how the situation reached the point when cars in Venezuela had a price more than double of what could be found overseas.

technology-price and production after a certain time. This was a cornerstone conception of the whole import substitution strategy used in several Latin American countries. Price supports and price controls were also part of the idea of a subsidized economy and a system that would keep a number of basic products (gasoline among them), at an easy and affordable range for the consumer. These products were part of what has since then been known in Venezuela as the “basic basket” (*cesta básica*), a selection of goods which contained the so-called *productos de primera necesidad* (first necessity products), growing the people accustomed to a dependence on a reality based on the oil income.

Regarding investment incentives, statistics show that the state not only invested directly in its enterprises but also encouraged mixed ventures with private capital. Because of the systemic structure of the pacted democracy, many politicians held important lobby positions in the party or even in the cabinet⁴²⁴. Institutions like the National Coffee Fund, Cocoa Fund and others were instituted to lobby and obtain preferential rate interest loans. For those purposes there were also institutions like the *Fondo de Crédito Agrícola, Instituto de Crédito Agrícola y Pecuario, the Banco de Desarrollo Agropecuario* (Bandagro)⁴²⁵ and others⁴²⁶. Aside from these “promotion policies” there were also deliberate policies of tax forgiveness and pardon of already contracted debt.

Because of the state intervention in the economy and the connections existent between large industrial and agricultural groups and the government, the already symptomatic overinvestment registered in the 60’s worsened with the oil booms of the 70’s (Baptista/Mommer, 1989). Public funds, meaning either direct public investment or subsidies to private and public companies, made up around a 50% of the whole industrial investment at the end of the 60’s and by mid 70’s they had reached a scandalous 90%, which reduced real private commercial or industrial autonomy to a minimum.

1.2 Stealth Privatizations: The Philanthropic Ogre⁴²⁷

⁴²⁴ Coronil (2001) mentions several of these cases, for example the case of Carmelo Lauría and the Machado Zuloaga family, owners of the steel company Sivensa.

⁴²⁵ Crisp (2002) observes that despite this intense subsidy policy, the whole mechanism was defective and produced poor results. Although participation by owners and organized labour in executive-branch decision making helped deliver more than \$ 712 millions in interest subsidies to the agricultural sector for 10 consecutive years, the agricultural contribution to the GDP declined from what was already a scanty 7.1% in 1970 to 5, 75% in 1980.

⁴²⁶ The list is longer and changes according to the creativity of the government in turn. There were also the Foreign Commerce Institute, Export Finance Fund, Industrial Credit Fund; almost all used as subvention establishments. The Venezuelan Investment Fund, FIV, created by decree in the 70’s as part of the plan to avoid the inflationary impact on the economy all the unexpected oil revenues could have. On accountable terms it was a dead end street of confidentiality since its director reported directly to the president with no other oversight. Later, it worked as the entity in charge of the planned privatization during the 90’s.

⁴²⁷ This title is the combination of two famous sentences. First, “stealth privatizations” found in a paper by Kelly (1987), widely quoted and cited in this work since it is one of the first references to the topic of privatization before the launching of the programs after 1989, with Pérez’s second regime. The “Philanthropic Ogre” is a term used by Octavio Paz (1978) in an article published in the Mexican magazine *Vuelta* where he developed his thesis of the state as an ogre, whose tentacles were

Ever since the government of Herrera (1979-83) there had been proposals that started to consider administrative reforms for those non productive public enterprises created after the *Gran Venezuela* of Pérez I (1974-1978)⁴²⁸. Many of these massive investment initiatives quickly started to produce losses and deteriorate. One of Herrera's operative weaknesses in attempting any kind of serious reform, was that he had only a working majority in Congress (AD controlled 44%), which disabled any possibility of serious structural change. Adding worse damage to that, AD was traditionally a party that controlled a major stake in the biggest unions and it openly used that power to attack Herrera's administration. As Davis/Coleman show, CTV led strikes against Herrera's government reached an incredible number of 200 in a year, dropping to 39 in the first year of Lusinchi's administration. The situation thus was conceivably different on behalf of any possible reform, with the abrasive majority Lusinchi (1984-1988) and AD obtained in Congress and with the Union's support after the sound political and economic failure attributed to Herrera's government.

But even during Herrera's administration and due to the debt crisis at the beginning of the 80's, the whole model of public state enterprises and state promoted development was starting to be questioned (CLAD, sep. 91). It was Herrera's government that devalued the currency for the first time in more than 20 years, and though oil prices had a substantial hike during the Iran-Iraq war, the amount of expenses combined with the loss of international credit due to the cessation of payments was such, that it promoted a strong capital flight while interests were kept under inflation value.

At this point of the Venezuelan history the state was the main promoter of a subsidized economy based on massive oil rents which stopped being sufficient for the enormous and continuous state expansion. The state operated mines, energy factories, oil gas, petrochemicals, bauxite, iron, alumina, steel, it owned banks, ships and a naval transport industry, air transport, construction, education, health care and public sanitation. "It provides newsprint, owns the communication system's wavelength, leases frequencies to radio and TV stations, oversees the telephone and generates

everywhere, asphyxiating private and public life. Philanthropic because to a certain extent, the ideology implied in the term is that the state was necessary and in the end, "for the common good". As Paz himself states: "Modern state is a machine, but a machine that reproduces itself non-stop. In western countries, far from being the political dimension of the capitalist system, a superstructure, is the model of economic organizations" (p.149).

⁴²⁸ Some people (see CLAD documents sep. 1991) consider the Commission for Public Administration (*Comisión de Administración Pública*) created during the first government of Caldera (1969-1973) a probable pioneer of the structural reforms in public administration. This is only relatively true since the commission went only as far as diagnosing the need to proceed to restructure public administration at all levels and in all sectors, creating autonomous institutes and state enterprises, in order to "bring them subject to the demands of the whole social and economic planning" (Molinos/Hernández/Capdevielle/Falcón, 1987). Some results from this commission were the legal projects for two organic laws for public administration. It was Pérez I (1973-1978) who created a legislative Commission for the Integral Reform of Public Administration, whose main task was to study the reform of the public administration. This commission sanctioned the Organic Law for Central Public Administration. Most important, it classified the decentralized state companies in Service companies, free or subsidized service enterprises and institutes for social action (*empresas de producción y servicios, empresas de servicios gratuitos o subsidios e institutos de acción social*) (Molinos et al, 1987).

transmits and distributes electricity, gas and water” (Guerón, p. 1; in Tulchin/Bland, 1993).

The state was everywhere in the production process, and nothing was foreign to its presence and control. What it did not own or control directly, it regulated by law in every phase of the private activity: it granted licenses, fixed prices, regulated minimum salaries, set the cost of money by controlling interest rates and exchange value. “It finances, guarantees, and authorizes subsidies, protects the market by tariff or import restrictions, sets consumer prices, decides tax rates, allows exemptions, collects obligations and condones debt” (Guerón, *ibid.*p. 2). Aside from many of the regulative policies common to other presidential democracies, what the Venezuelan system had increased in the first 20 years was a democratic consolidation based on the deepening of the oil-rentist model, and a huge number of public enterprises which created the image of regime stability, though at a colossal cost. Many of these public companies had acquired enormous and unaccounted amounts of international debt in the name of the nation, since many of them had the autonomy to borrow money abroad without specific controls and oversights from the central government (Tulchin, 1993).

When Mexico declared its default in 1982, a series of debt crisis followed in many Latin American regions. That was the “wake up call to reality” or the end of many peculiar ways in the Latin American economies (Boeckh, 1999). The impact of the debt crisis reached Venezuela in 1983 when the country had to devalue its currency, anchored at 4,3 Bolívares per Dollar for almost a whole generation. In the elections that year, both candidates⁴²⁹ addressed the situation of public enterprises as a main financial problem for the state, with potential but rather not radical or traumatic solutions. If privatization meant the transfer of ownership and control of an enterprise or activity from the public sector to the private sector, then ownership can be dissociated from the activities or services offered (Slavich, 1987). But despite many state-owned enterprises clotted free market processes, the idea of transferring even executive management to private control, led politicians to think that privatization

⁴²⁹ Clear references to the unproductive situation of the public enterprises was made both in “*Un Pacto para la Democracia Social*” (A pact for Social Democracy) by Jaime Lusinchi (1983), and “*El Programa de Caldera*” (Caldera’s program, 1983). Both candidates however were particularly careful in their expressions regarding privatization. The term “basic industry” was coined to signify those state-owned industries involving processing of raw materials or the provision of universal services. Any industry considered non basic thus superfluous for the economic life of the state could be considered subject to privatization. Caldera said the following: “In those state owed enterprises considered as basic industries due to their size or strategic nature, there will be efforts to specify their objectives, improve their structure, professionalize their management and assure control systems and supervision. As for Public Services, policy will be based on three criteria: decentralization, privatization and mobilizing the population to participate in the functioning of these services”. Lusinchi in his plan for a social pact, was rather less specific on addressing privatization as such. However, the separation between basic and non basic state enterprises remained, as well as the suggestion of some privatization forms and a reduction of the size of the state: “Putting the state-owned enterprises in order is a difficult task, of immense proportions. In each and every one it will be necessary to introduce reforms and in some cases merge, eliminate or transfer them. The autonomous institutes will be reduced to the minimum and will be limited to those functions that cannot be carried out in the central government or by the state companies. And as for the state-owned enterprises, those that are strategic or that operate in basic industries and services will remain under state control”.

was also a tendency associated to liberalization of the markets. Something that was already by then, and became later even more so, a recurrent socio-political taboo.

Due to the former well rooted thought, that the state should be the conductor of the whole economic development and movement, many policy makers in Venezuela were more than often concerned with the idea that the liquidation or sale of a state-owned enterprise, might leave the market to a small number of market suppliers, with clear unfavourable effects on the national efficiency and wealth distribution. The state guaranteed a benefit distribution it was supposed, the private sector could not. However, mounting pressure on the yearly budget plans and irreconcilable figures to maintain all the decentralized administration, forced administrations to start thinking otherwise. During the 1983-1987 period, privatization (still a policy without a name) in Venezuela had three main procedural alternatives (Kelly, 1987):

- a) Divestiture of equity or assets⁴³⁰
- b) Contracting Out⁴³¹
- c) Privatization by Stealth

Of these three possibilities the first two had dissuasive factors implied, which inhibited the government either actively or passively to implement them. In the case of divestiture of equities or assets, a “selective policy of equity sales” could not have been part of any of the statist policies both AD and COPEI had followed in the 70’s and 80’s. In the political jargon of the time, any idea of selection among the private sector would have been outlined as a deliberate preference and a likely symptom of corruption. In many developing countries with small local markets, it is common that an industry sector be dominated by a few enterprises with the state-owned enterprise having the leading role in price setting and market division (Kelly, *ibid*). Such was the case in Venezuela in the beginning of the 80’s with cement, air travel, steel production, electricity and shipping among other products. Thus it would have been unlikely that the state would have yielded this position to a private group with the public’s acceptance and the political parties’ endorsement.

For contracting out, or the possibility that private management could be called to administer state-owned property that was producing losses, the positive side was precisely that it had a down play on the anti privatization social and political stigma⁴³². “Contracting out had been used in Venezuela in areas such as hotel

⁴³⁰ In Venezuela, the country and its policy makers had not changed their view of the state as investment and growth promoter very much, despite the harsh reality and budget deficits of the 80’s. A selective policy of equity sales to a single buyer (as was the case of the United Kingdom) would have hardly promoted any democratization of the ownership, and it may have rather obeyed to the need or desire to bring in an important client or supplier.

⁴³¹ Contracting out (granting of operating concessions) was frequently considered as a privatization option for countries in Latin America. In such cases the state may retain the ownership of capital assets while contracting a private sector operator company to provide the management. In Venezuela, due to constitutional and legal restrictions this was almost impossible and legislators commonly thought that no areas within the government’s competence should be turned over to the private sector without “strings” namely, the dependence on official concessions or licensing.

⁴³² Regarding the political stigma of privatization and the widespread fear it produced, Torres (1994) tried (albeit hopelessly) to illustrate that these fears were but fallacies manipulated by power and

operation and parking services for many years, and was often suggested as an alternative to public management of government owned assets” (Kelly, p. 6). It was commonly allowed on the basis of technology transfer in the petrochemical industry where it was accepted that the private sector could make a difference both in management and in technology updating, without major costs.

As seen, although privatization had a negative image from the beginning since it was against the common belief of state-led development, the topic of public assets’ transference was openly debated and to some extent, already slowly happening in some areas (“private” hotel management as example). The nature of AD and COPEI, as statist dominant political parties, impeded a thorough possibility of reform because the whole constitutional structure and the understanding of development in such a rent seeking political society (private sector also implied) avoided the possibility of any deep reform proposal, let alone of any reform sustainability. Privatization of state-owned enterprises required such a common party consensus to become operative (Figueras, 1995). State-owned enterprises, SOEs, were often subject of public debate since they tended to operate in almost monopolistic industries that provided essential inputs for many other industries. However, during Herrera’s government no measures to curtail SOE growth were provided or taken. Under Lusinchi, their unrestrained expansion was maintained and paid with the nation’s international reserves rather than trying to pursue any reform. AD would not allow such proposals, less so when general elections were nearing in 1989. These variables (and short-term thinking) plus a miscalculated amount of payments for debt services, led to the 1989 crisis.

Because of the ideological pre-condition of the state as enterprise promoter and owner, privatization in those areas where financial hardship was more acute and which were not in the spotlight of public attention (i.e. not part of the Basic Industries, namely, aluminium, oil, steel, electricity) started occurring almost by spontaneous generation. It developed as a process that occurred, or better said, started occurring without official words, somehow to help evade the dishonour of accepting the failure that the state did not or could not be an effective manager in so many areas. Privatization was then a process not politically unknown to both public and private sector, and not yet so socially demonized as it would be later on.

“Stealth privatizations” we define as those less noticeable institutional moves and decisions, in or through which the state changed its way of initiating new projects in the country, either by letting the private sector invest in areas where formerly the state had had a monopoly (or total investment priority), or by letting private investment (via technology or management capacity provision, for example) come

political sectors that would be favoured by the remaining of “politics as usual”. He numbered six great social fears regarding privatization:

1. unemployment rise
2. monopolization of the economy
3. Price stampede
4. corruption boost
5. foreign invasion of the economy
6. weakening of the state

into some sensitive areas (i.e. petrochemical products). Nevertheless, the word privatization as such was never mentioned⁴³³. Some sectors of the economy reflected the course of action better than others: investment in the tourist sector and in hotels became almost totally a private initiative after the 80's, and only private banks were created during that decade. As mentioned, this occurred more by a policy of *laissez-faire* than due to a deliberate official policy. In Venezuela, as in many countries, there was strong public discussion regarding the desired nature of the economy, and the amount of free market growth that should be allowed, particularly after the slowing process at the end of the 70's (Przeworski, 1991). Despite any discussion on possible economic freedom the structural command of the 1961 constitution was austere: it provided for many individual guarantees, economic and social, but it also allowed the president to suspend them and gave him the right to rule by decree in those areas. Afterwards, the habit remained that some constitutional guarantees were restored but not the economic guarantees which since then almost every government has deliberately suspended in order to intervene in the economy (Brewer-Carías, 1989; Crisp, 2000). With this normative environment, any possibility of free market had to be engineered from above, that is, from either one of the two dominant parties. This was unlikely to happen because the crisis was not yet so severe and because electoral costs of any structural reform would have probably been too high.

For legal and practical conditions the decentralized administration in Venezuela is composed by two types of entities: the Autonomous Institutes and the Public Enterprises (SOE). Both this types of public units have legal personality and their own source of income aside from the *Fisco Nacional*.

- 1) Autonomous Institutes are entities that must be created through a law decreed by Congress or through a norm of equivalent rank (also presidential decrees) and they relate to the centralized administration through a legal figure called "adscription" which determines the ministry that ought to exert control over the institute⁴³⁴ (CLAD, 91)
- 2) Public Enterprises or State Enterprises are entities or anonymous societies (*sociedades anónimas*) created under the norms of the Commerce Code. The coordination and control of Public Enterprises are exercised by the entity (either ministry or autonomous institute) that has the whole or at least 51% of the company's shares.

Statistics show that during the 70's, there were no privatizations in Venezuela and that, on the contrary, state-owned enterprises widened their command with systematic growth (Bigler, 1981). Coherent with this premise, the contribution of the

⁴³³ Particularly after sound cases of corruption during Pérez and Herrera, the idea that something public would be sold had connotations of favouring certain groups at the expenses of the whole society. Thus privatization was almost an anathema for Venezuelan politics and almost all possible synonyms were used to express the need of the state to get rid of bankrupt enterprises or of bad investment initiatives it did not know how to manage.

⁴³⁴ This adscription could be done through sectorial criteria or it could be a transferred function of the President.

non-financial state-owned enterprises to the gross domestic product continued to expand towards the 80's.

Table 4.3 *Non-financial state-owned enterprise share in Venezuela's Gross Domestic Product 1974-1985*

Year	% of Total GDP	% of non oil GDP
1974	3.9	7.5
1980	5.3	7.4
1982	4.3	5.6
1984	7.0	9.5
1985	7.2	9.3

Source: Central Bank Venezuela/Kelly, 1987.

Kelly (1987) mentions three factors to explain the increase in the share of the state-owned companies particularly in the period 1982-1985 which comprises a slowdown in the economy and a strong recession in all markets. These reasons were the decline in oil market in this period (which in a mono-productive economy makes the GDP automatically shrink), the decline of participation of the private sector as a result of the recession and the rise of the state-owned enterprise export earnings after the devaluation.

The fact that the government started a preferential control over the exchange rate (*Régimen de Cambio Diferencial, RECADI*) notably affected the production of the private sector and private sector debt, which became directly dependant on official benevolence and consideration. SOEs continued receiving enormous amounts of money despite their proved being unproductive also because they involved many of the strong unions where AD had its roots and basic support, and because the state had become the main employer in the last 10 years after the *Gran Venezuela*. External borrowing, which originated in the 70's primarily to finance the large scale industrial projects of the Fifth National Plan, quickly became an ingrained mechanism in which both the executive and legislative participated jointly to cope with and delay fiscal crisis without having to face the facts in the short run. Shortly after the 1973-74 boom and as early as 1977, when current-account deficits appeared (never again to disappear in contemporary Venezuelan economy), foreign debt quickly surpassed the amount prescribed and accepted by Congress around 7.5 billions. In Herrera's administration, the figure rose from something more than 8 billions to 23 billions in 1983, and by 1986 under Lusinchi it was around 33 billions; so by the end of 1988, Venezuela was forced to destine around 40% of its income to pay debt service.

1.2.1 Privatizations under Luis Herrera's (1979-1983) government

By the time Herrera came to power in 1979, the perception that something had gone wrong with the *Gran Venezuela* and the state-owned enterprises as investment policy was spread among politicians (Acuna/Gamarra, 1994). The oil boom had stimulated domestic demand for goods and services, but the government was, at the same time, unable to satisfy that demand: telephones were insufficient and worked

poorly, garbage collecting services was inefficient most particularly in the big cities, and many basic products from the Venezuelan industries were expensive when compared to international prices.

Figures adding the amount of subsidies the public industries needed showed a huge debt was growing both at home and abroad. In 1978, this debt was near 20% of the GNP products and it seemed that oil prices could not sustain such a spending rate.

Several characteristics of the Herrera government deepened the structural problems the oil rent mentality the society and most politicians already had on economic terms, the same that had been worsened with the oil booms (1973-74 and 1979-1980). The following list presents some symptomatic indications (Nissen/Welsch, 1992):

- The internal saving rate of the private and non-oil public sector dropped sharply in real terms between 1979-1982
- After a period of over investment, the private sector started to flee capital
- Private companies and public entities (not the oil sector) borrowed from state-owned financial institutions to finance investment or current expenditures. This complicated the process of debt accounting since many of these debts were contracted without congressional or even executive knowledge.
- The financial sector as well as other public entities borrowed abroad feeding the exchange market with huge amounts of dollars and allowing the private sector to re-export this capital. The result was a public foreign debt of U.S. \$ 30 billions.

During the second oil boom, product of the Iran-Iraq war (1979-1981), the increasing dollar earnings in the economy allowed the public budget to gain a temporary balance but the overvalued price of the currency (inflation was rated at 22% a year in 1980) with low interest rates (8%), promoted an explosive mix that could not last long. When the oil prices weakened in 1982-83, the balance on the current account went into big deficits. Aside from the fact that most of the debt had been contracted under short term conditions (10.8 billion dollars were to be due in 1983, plus some middle and long term obligations of around 2.2 billion dollars). The sum surpassed by far the paying possibilities of the Venezuelan reserves and thus Venezuela had to stop payments for 90 days in order to renegotiate the debt that was contracted and that would be due within a short term⁴³⁵. According to World Bank reports Venezuela's debt started a dramatic increase in its share of the GNP from being 17% in 1978 to a staggering 50.5% in 1986. After several renegotiations with the banks owning the debt, the percentage decreased to around 40% in 1988.

⁴³⁵ "The figures of the floating debt are the dramatic testimony to mismanagement, corruption and administrative chaos. Without auditing or controls this form of borrowing spiralled wildly. In 1977-78 for example, total government spending rose nearly 50% immediately prior to elections, and this increase was financed through floating debt" (Karl, 1997 p.173). Most of this total debt was not reflected in budgetary statistics and once it was totally counted it imported almost twice as much as what Congress had authorized.

The only privatizations “of any note” in Caracas at this time were the garbage disposal service and the agricultural marketing board⁴³⁶. Both responded to corruption charges on the public enterprises providing these services (Kelly, 1987), so the legislative did not react to them. Particularly because of the opinion matrix developed during Herrera’s government that faulty and corrupt management in SOEs had been the legacy of the former administration, which to a certain extent was true. But as can be seen, the idea of lending or selling to private sector managers what had become inoperative in the public sector, was a possibility politicians were preparing to tolerate, based on the example produced by the solution to the garbage disposal in Caracas.

Other information sources (CLAD, 1991), report that under Herrera some other restructuring efforts (involving sales or not) were the liquidation of the *Corporación Venezolana de Mercadeo Agrícola* (Corpomercadeo) in 1982; the transformation of the Petrochemical sector of the Venezuelan Petrochemical Industry (Pequiven) 1981; the restructuring of the steel plant *Siderúrgica del Orinoco*, Sidor (1980-81); the garbage collection service, which was “transferred” to some private companies and the restructuring of the national airline Viasa⁴³⁷. Not in every case can we speak of sales or even assets’ transference, but the restructuring procedure meant that some steps were taken, although many a time only to increase the amount of state intervention.

1.2.2 Privatizations under Jaime Lusinchi (1984-1988)

Very much like other presidents in Latin America at the time (Alfonsín, in Argentina; De la Madrid, in Mexico) but due to somewhat different circumstances, Lusinchi inherited an economy in disaster⁴³⁸. This crisis was mainly related to the coming of date of a lot of foreign debt contracted in short term conditions, without supervision or control, by many of the public enterprises which could by-pass legislative and even executive oversight thanks to their normative and legal structure.

Venezuela’s experience with import-substituting industrialization strategies was in many ways similar to that of other developing countries. It created an industrial and service base in a country that previously had none; but the condition of “unreality” coming from the oil renting model (worsened by two consecutive oil booms), created fertile soil for economic distortions. Oil wealth and a deformed fiscal

⁴³⁶ Curiously enough, although Herrera’s slogan once he became president was that he planned to restructure and reorganize public enterprises since he had inherited a “mortgaged country”; he not only did not do that, but during his administration the foreign debt of the public sector as a whole more than doubled. Around 75% of this debt had been acquired through the enormous disorder of the public enterprises and their independence to contract borrowing plans.

⁴³⁷ All this appears in the *Proceso de Reestructuración de las Empresas Públicas en Venezuela*, made by the *Centro de Información y Análisis de Información del CLAD*, 1997.

⁴³⁸ Herrera’s government tried to cut public spending and to some extent it did. However, many entities of the decentralized administration (public enterprises) took advantage of the *Ley de Crédito Público*, which allowed them to contract short term credits without Congress or even cabinet approval. These loans were used for current spending as well as for long term financing. By the end of 1982 the foreign debt of the state enterprises and other entities of the decentralized administration made up to 70% of the nation’s total foreign debt, which then totalled around \$ 28 Billion (Nielsen/Welsch; Kelly, 1985).

policy which made oil rent better than any tax policy, allowed economically dubious decisions to appear viable, and generally served to mask the negative consequences public policies were having⁴³⁹. Industrial policy became an excuse to transfer public resources to politically chosen and privately owned “priority sectors” which based their major strategy on courting the state to obtain the paramount benefits (Naím, 1993, 1995). “Jockeying for the largest possible quota of foreign currency at the lowest officially available exchange rate became the single most important objective for the Venezuelan private sector in the 80’s” (Naím, 1993, p.45).

Each year from 1978 to 1985, according to all indicators from the Central Bank and the World Bank reports (Annual Reports 1979-1986), the country’s economy shrank. Reality started to become visible in Venezuela when the GDP declined consistently while the population rate grew constantly, to the point that in 1985 the real GDP was 25% smaller than it was seven years before, and the income per capita that year (1985), during Lusinchi’s administration, was almost 15% lower than it had been before Pérez’s government in 1973. However, the fact that Lusinchi was elected with strong AD union support and had named one of the important Adeco personalities in the union world, Manuel Peñalver, as AD secretary general and later as interior Minister, guaranteed that the AD-controlled *Confederación de Trabajadores de Venezuela*, CTV, would exert its disciplined militancy in favor of the government⁴⁴⁰ (Ellner, 1993; Murillo, 2001). So, in contrast to the record setting number of labour strikes during Herrera’s government, the CTV did not organize (or even threaten to) any general strike against Lusinchi despite steadily growing inflation, the failure of his proclaimed social pact, and the number of promises and stealth privatizations that were occurring in diverse sectors, most obviously in the food and distribution chain of agriculture products.

Lusinchi’s administration shows certain coherence with Corrales’ (2001) observation that any reform plan ought to be taken with the support of the ruling party in order to obtain a stronger amount of social support, or at least certain social validity. Despite a number of new reforms done over the economy, the party support guaranteed social stability. The Lusinchi administration continued the policies of multiple exchange rates and price controls it had received, and managed to stabilize the economy to a certain extent by 1985, based mostly on the dollar price of the oil income. “By the end of that year the government switched from restriction to demand-

⁴³⁹ In this regard, Naím (1993) adds that due to the deliberate ignorance provided by the continuous oil rent income, policymaking remained simple, primitive and extremely slow in adapting to changes occurring either in the country or abroad. “Exchange rates, interest rates, fiscal policy, monetary policy, trade and industrial policies were rigid, not well coordinated, if at all; imbalances and distortions of many kinds were continuously accumulating without the public, politicians, or even most local economists doing much about it” (p.43).

⁴⁴⁰ Crisp (1997, 2000) had also observed this when he argued that because of the influence of party interests on labour groups, every time AD managed to control the executive (most of the times also one or both chambers of the legislative) and the CTV, labourers were less able to structure their demands or put them through, since union leaders are more reactive to party discipline; when the government was from COPEI (notably in the case of Herrera) labour unrest and conflict became a common destabilizing political tool since most of the unions, particularly during the 70’s and 80’s were controlled by AD (McCoy/Smith, 1995).

stimulated expansion but falling oil prices in 1986 contributed to exacerbate the economic imbalances, so the growth period from 1986 to 1988 had to be paid for with increasing inflation and decreasing monetary reserves⁴⁴¹ (Nielsen/Welsch, 1992, p.33).

After two years in government, Lusinchi devalued the currency and tried to implement a stabilization program agreed with the International Monetary Fund, based on fiscal austerity and exchange and price controls. However, the fiscal deficit kept growing since nothing was done regarding SOEs and this, plus an inadequate policy towards state-led enterprises, stalled the state's ability to deliver basic services and pay for always growing amounts of subsidies. Despite growing social/political and economic tension, the control and discipline of the CTV directives plus that of the legislative was tantamount to a social endorsement of the administration's decisions⁴⁴².

One of the indicators that started to accumulate in Venezuela since the beginning of the 80's, regardless of any official efforts to mask it or restrain it, has been poverty. Its growth showed the duality of a state that was massively investing in bankrupt enterprises while people did not receive adequate public attention⁴⁴³. After 1981, the number of people living below the poverty line started to increase steadily throughout the decade. By 1989, the former 32% living under the poverty line at the beginning of the decade (poverty on absolute terms) had increased to 53% (Boeckh 1995; 1997). The problem was worsened by the enormous spending of the state and the cost of the whole public administration. Most of this investment went completely at loss in public enterprises that were openly bankrupt and whose economic survival, aside from nationalistic rhetoric, was only possible at extraordinary high costs and continuous subsidies. Statist labour parties like AD saw the problem almost as insoluble because on one side, most of the *industrias básicas* were clearly not productive but had important union enclaves where the party had political command; it was also publicly acknowledged that any privatization policy would increase poverty and unemployment, both variables already soaring in the economy. On the

⁴⁴¹ According to Central Bank's reports, the level of international reserves had shrunk to less than 1 billion dollars by 1989.

⁴⁴² This did not happen freely: the relation of AD with the unions and most important, with the unions' directives had always been a patronizing one. At the beginning of his administration Lusinchi issued a decree ruling employers to increase their workforce by 10%; quickly afterwards he established transport subsidies for workers plus some other program for the poor. He ordered radical increases in the minimum wage and held CTV directives as his advisors. Thus the extraordinary "diplomatic" answer given in 1984 by the then CTV president, Juan J. Delpino: "first we will discuss things with the government and with Fedecámaras in the tripartite commission without resorting to coercive measures like strikes and public demonstrations; because the situation of the country requires equilibrium among its principal forces and the CTV wants to become an example of equilibrium" (El Nacional, 16/10/85 cited by Coppedge, 1994, pp.88-89)

⁴⁴³ The whole political cycle was at loss and the private sector was denaturalized and also completely rent seeking in behaviour. The private business made use of all kinds of manipulation to receive the so called "preferential dollars" while at the same time the working class suffered high unemployment rates. The politically intended correlation between the offer of the government to grant preferential rates for the private foreign debt and the requirement that the private sector should increase employment by at least 10% was not met by the private sector, on the contrary: unemployment almost doubled between 1982 and 1985 (Nissen/Welsch, 1992).

other side, restructuring the SOEs was probably the only way out of the public policy conundrum, growing since Pérez's first administration, but restructuring or privatization were both expensive options for a government that had to set its priorities month to month.

Regarding privatization or at least, the idea of restructuring the state in relation with its own enterprise investments, the promotion message of both candidates during the 1983 electoral campaign had included the notion of *empresas básicas* as those the state would keep at all costs due to their strategic value. By opposite logic, *empresas no básicas* would be those that could be subject to sale or other financial solutions, meaning that they would not remain under state control. Lusinchi since then, put an accent on what he referred to as the "economic cooperation system", part of his campaign proposals. An idea based on producers' cooperatives and the possibility that state assets could be sold to them and not directly to private investors.

Among other social actors favouring privatization were *Fedecámaras*, the private sectors organized chamber, and the *Grupo Roraima*⁴⁴⁴, an alliance of private sector representatives. These two actors preferred and clearly suggested a necessary turn in the public industrial policy in favor of privatization of unproductive assets. On practical terms and as part of a deliberate idea of selling unproductive enterprises or restructuring their management possibilities, the government began to prepare ground for privatization in some areas and in others, it initiated policies that would imply important changes in the relation with the state as donor or unique economic supporter. "In particular many new investments were being programmed as joint ventures with private sector participation, or as activities open to private investors" (Kelly 1987, p. 23).

Table 4.4. *Government Policy in Venezuela Affecting State-owned Enterprise Activity, by Company 1982-1987*

Company (Sector)	Sales of SOEs	Policy carried Out
Mining		
Bauxiven (bauxite)	0.0%	New Investment Undertaken by Public Sector to participate in Production of transport equipment
Carbones del Zulia (coal)	0.0%	Government Policy of Including Policy Partners in Project with 52% announced
Ensal (salt)	0.3%	New Investment undertaken by Public Sector
Ferrominera (iron ore)	2.1%	New Investments Undertaken by Public Sector; sale of briquette processing plant announced in 1987

⁴⁴⁴ In Venezuela, the experience of investing in massive government projects has had mixed results. Investing in state-owned enterprises to generate exports is not necessarily a bad principle, but it tends to be deficient because it has to overcome structural difficulties like:

1. avoiding the intrinsic tendency of state-owned enterprises to be inefficient and oversized
2. facing the realities of international markets
3. weakening other sectors with greater competitive advantages for exporting

Grupo Roraima (1983): *Plan de Acción: Proposición al País* (Translated by Kelly, 1987)

Fosfatosuroeste (phosphates)	0.1%	Private partners invited to participate in formerly 100% government owned company
Minerven (gold)	0.2%	Private Partners Included in a New Project for larger-scale mining operations
Venorca (gold)	0.0%	No change
Manufacturing		
Alcasa (aluminium)	4.0%	New Investments undertaken by public sector; joint ventures agreed to for downstream production in Venezuela and abroad; plan to sell minority shares in the local stock market announced in 1987.
Cavim (arms and explosives)	0.3%	New Investments undertaken by the Public Sector
Cenazucar (sugar mills)	2.2%	Plan to sell sugar mills to private sector announced
CVG-Pulpa Orinoco	0.0%	Private Interest to Invest in major pulp and paper plant; similar joint ventures planned for other investment in wood processing
Dianca (shipbuilding and repair)	0.2%	No change
Interalumina (alumina)	4.1%	New Investments undertaken by public sector
Nitroven (fertilizers)	1.5%	New Investments undertaken by public sector
Pequiven (petrochemicals)	3.0%	New Investment undertaken in joint ventures private partners
Sidor (steel)	16.8%	New Investments undertaken by public sector; Sidor initiated some downstream joint ventures with the private sector
Venalum (aluminium)	8.4%	New Investments undertaken by public sector; plan to sell minority shares in local stock market announced in 1987
Electricity		
Cadafe	9.6%	New Investments undertaken by public sector
Edelca	2.1%	New Investments undertaken by public sector
Enelven	1.6%	No change
Enelbar	0.6%	No change
Water		
Inos	2.4%	No change
Commerce: Restaurants and Hotels		
Corpomercadeo (agricultural marketing)	0.0%	Liquidated in 1984
Almi (military stocks)	0.6%	No change
Corpoturismo (tourism)	0.0%	Plan to sell hotels to private sectors announced
Foncafe (coffee marketing)	2.8%	No change
Foncacao (cocoa marketing)	0.6%	No change

Fondefru (fruit marketing)	0.0%	No change
Transportation Storage and Communications		
Adagro (silos)	0.3%	Sales of Silos to local farmers undertaken (16 sales completed)
CANTV (telephones)	12.1%	New Investments undertaken by public sector
CAVN (shipping)	4.7%	New Investments undertaken by public sector
IAAIM (Caracas airport administration)	0.3%	Authority of IAAIM expanded to other airports
Ferrocarril (railroad development)	0.0%	Policy not clear
INC (canals)	1.2%	No change
INP (ports)	12.7%	Discussions of contracting out administrative functions to private sector began
Ipostel (mail)	0.4%	No change in Ipostel; greater tolerance for private couriers allowed.
Aeropostal (airline)	1.2%	No change
Cametro (underground)	0.5%	New Investments undertaken by public sector
Viasa (airline)	5.1%	Domestic and state-owned carriers permitted to open international routes competing with Viasa
Other Services		
INH (horses betting)	4.3%	No change
IMAU (Garbage Collection)	0.7%	Most services in Caracas contracted out to four competing companies in 1982
Real Estate and Housing		
Centro Simon Bolivar (urban development)	0.4%	No change
INAVI (low cost housing)	0.9%	No change

Source: *Banco Central de Venezuela: Anuario de Cuentas Nacionales* and Kelly (1987)

In spite of the results shown above, where most of the investment is shown as being undertaken by the public sector and despite certain discouraging consequences, the Lusinchi administration started to make ground for the possibility of either joint ventures, contracting out or complete sales to the private sectors in areas where it had been recognized (at executive levels) that no gains would or could be obtained. In particular many new investments were being programmed as joint ventures with private sector participation or, in the case of production based on state-owned enterprises inputs, as activities open to private investors⁴⁴⁵.

One case considered as a model during this period (Kelly⁴⁴⁶, *ibid.*), and leading to the privatization road was the transfer of foreign shares in the milk

⁴⁴⁵ See the examples in phosphates, Minerven, Cenazucar and INP.

⁴⁴⁶ Kelly's conclusions in this study were rather ambivalent. On one side she diagnosed the set of ailments surrounding privatization and on the other she favoured joint ventures more than the possibility of a complete transfer of assets to the private sector: "The Venezuelan case does not support the theory that public enterprise activities will diminish in the foreseeable future. At the same time, the case is consistent with the idea that market forces will increase with the pace of development in

processor Indulac, to local producers. The government sold a stake while it kept a controlling (though not a majority) share in the formerly state-owned milk processing company, and was careful to avoid public charges that it was favouring economic concentration or a specific group of investors. To a certain extent, this progressive privatization system and method (though more developed for the case) was later used in the selling of the national telephone company, CANTV, when the government moved in two phases: selling first an important portion but remaining with a considerable number of the shares (49%) until a second privatization round was called, where it sold the rest.

1.2.2.1 Congressional Control over Privatizations during Lusinchi's Administration

Lusinchi asked for, and like Pérez before him was also granted, a *Ley Habilitante* in order to deal with the economic crisis of 1984 via decrees. The strong AD representation in both chambers of Congress was willing to delegate an extensive list of items, most of them focused on government spending, raising fiscal revenue and refinancing public debt. What makes this delegation a most important chapter, is that Congress was aware of what had happened when Pérez I received an open empowerment to legislate on economic matters, so this time, legal restraints imposed on the delegation were more precise. Almost all percentages up to which public salaries could be reduced as part of the austerity program were assigned by Congress and some other taxes (alcohol) and tariffs were also accorded in the *habilitante* law. Lusinchi was however given a “greater scope” in areas of power or delegation to organize the public sector; in pursuit of administrative efficiency the law conveyed him the right to dissolve public enterprises, and he did⁴⁴⁷. This *Ley Habilitante* required the president to present through an assigned Minister, a regular report of his activities to Congress. So both in the regular reunions with AD's executive committee, CEN, and through this weekly informative meetings provided by a cabinet member, the president (and the whole executive) was kept under tight supervision of AD's interests.

Lusinchi issued 71 decrees; more than half of them (36) were released to sell government bonds to refinance the public debt, or for issuing vouchers to compensate public employees (Crisp, 2000); both things had previously been sustained as conditions for Congress to grant the executive a *Ley Habilitante*. Comparisons between the power delegations made to Pérez (1974) and Lusinchi (1984), throw important light on the restrictions and their results imposed by Congress on the delegative text. These two presidents enjoyed absolute majority in both congressional

general. By restructuring state-owned enterprises, giving them less protection, encouraging them to compete in international markets, inviting private investors to collaborate in government projects, the state can increase the influence of the market without giving up its direct role in key economic sectors. This is not to say that state-owned enterprises become indistinguishable from private enterprises but that they should become less like the state-owned enterprises so often found in less developed countries in the past” (p.59).

⁴⁴⁷ “Only in one important area, agriculture-food processing storage and distribution, did the central government complete an important privatization plan, and this was simply a continuation of that announced by the former government” (Kelly, 1987, p.22)

chambers, however the extent and conditions of the power delegation they received varied widely because AD, the ruling party in Lusinchi's Congress, wanted to be more co-participative of the government's decisions and extend its brokerage and lobby functions (Coppedge, 1994). The opposition was also more aware due to the last somehow traumatic experience with Pérez, and though not able to exert strong legislative pressure, it did stress on the public opinion the fact that presidents were prone to abuse while using these open delegative laws.

In general terms the fact that most of AD's power was built on a strong congressional majority, and having learnt from the exclusion they were subject to during Pérez's first period, the CEN kept a very close oversight on the executive policy production and limited authorizations on its decisions. Lusinchi also granted several party members important ministries and governorships. The first symptoms of the *cogollo* (most powerful inner elite of the party) way of doing policy stem from this period (Coppedge, 1994). No policy would be launched without first being approved by the Executive Committee of AD, and once it was agreed on this stage, congressional sanction was a matter of formality and time (Coppedge, *ibid.*).

Table 4.5 *Consensus among AD on Orthodox Economic Policies during Lusinchi's Government*

Which of these measures do you approve and disapprove?		Congress	Labour	CEN ⁴⁴⁸ AD
a) Currency devaluation of 1983	Approve	59%	57%	87%
	Disapprove	37	39	13
	It depends	4	4	0
	Total	100%	100%	100%
b) New or higher taxes on consumption, alcohol and tobacco	Approve	89%	74%	78%
	Disapprove	6	22	17
	It depends	6	4	4
	Total	100%	100%	100%
c) An income tax increase	Approve	46%	39%	43%
	Disapprove	28	22	39
	It depends	26	39	17
	Total	100%	100%	100%
d) The sale of certain public enterprises	Approve	89%	78%	87%
	Disapprove	9	13	9
	It depends	2	9	4
	Total	100%	100%	100%
e) Administrative stimulation of Exports	Approve	91%	96%	100%
	Disapprove	6	4	0
	It depends	2	0	0
	Total	100%	100%	100%

Source Coppedge, 1994

As we observe in the table, the executive committee of AD, a major actor in any congressional decision (or perhaps the only one), was not opposed to the idea of

⁴⁴⁸ CEN stands for "Comité Ejecutivo Nacional", which is the directive of the political party, in this case, *Acción Democrática*, AD.

restructuring most of the publicly owned enterprises. In the text of the *Ley Habilitante* given to Lusinchi at the beginning of his period, the idea was implied that the government had to deal with some public investments which had ended up as political and corruption scandals (i.e. *Corporación Venezolana de Fomento*; the *Instituto Municipal de Aseo Urbano*, municipal waste disposal, IMAU). Point (d) shows that the sale of certain public enterprises was deemed necessary, with the classification made between the already explained difference of basic and non basic industries. Most legislative members of the AD faction understood that selling inoperative SOEs could be a way to earn an extra income for the government, bringing the budget to an ideal manageable deficit, and to gain more accountability on the executive spending since most of these SOEs were independent of scrutiny, attached only to particular Ministers and subject to their supervision.

Table 4.6 *Important Privatizations and Divestitures in Venezuela (1982-1987)*

Enterprise	Action Taken	Date Initial Decision
Agricultural Marketing, Processing and Storage		
Corpomercadeo (marketing Board)	Liquidated; functions passed to private sector	1984
Adagro (Silos)	Privatized; silos sold progressively to local farmers.	1984
Indulac (Milk Processing)	Majority of Government shares sold to producer interests although the government retained a high level of control	1984
Transportation		
Instituto Municipal de Transporte Colectivo (Caracas' Bus Service)	Liquidated; functions passed to private bus companies in Caracas. The state-owned subway company C.A. Metro began to offer some new routes linked to the subway lines.	1984
Ministry of Transportation provided this service directly	Law passed to permit concessions to construct and operate long haul highways.	1983
City Services		
Caracas Cementery	Plan to grant to private bidder announced by City Council	1987
IMAU-Caracas, IMAU Maracaibo and later other cities (waste removal)	Concession granted to private sector	1982
Mining		
Fosforita del Táchira (phosphates)	Policy announced to open capital to private investors, preferably from the state of Táchira	1986-87
Conglomerate Holding Company and its Affiliates		
Corporación Venezolana de Fomento (conglomerate with approximately seventy subsidiaries)	Liquidation initiated; some affiliated companies transferred to related ministries; most smaller affiliates put up for sale (such as hotels, cement companies, and sugar mills)	1984
Hotels (ten hotels owned by the Hotel Holding Company)	Policy of sale to private sector announced; process of assessment	1987

Corpoturismo; various owned by the Corporación Venezolana de Fomento)	initiated to establish fair prices	
Sugar Mills (11 companies)	Plan to sell mills, with preference to local sugar producers announced	1984
Minas de carbón de Lobatera	52% participation sold to the private sector	1984
Cement companies (3 companies)	Plan to sell companies to the private sector announced	1984
Textile companies (five companies)	Plan to sell companies to the private sector announced	1984

Source: Kelly (1987) based on press releases and newspaper reports

Coherent with Kelly's (1987) report that privatizations only occurred in the commercialization of food (aside from the IMAU and CVF scandals) is the fact that many executive officials were wary of the *Ley de Salvaguarda del Patrimonio Público* (1982), which made them potential subjects to corruption charges, by any movement or decision made on public property by state officials. At the same time, most of the state investment areas had suffered important variations between 1982 and 1987, so not all privatization plans were met, partly because dealing with state property was risky and politically suicidal⁴⁴⁹. Stealth privatizations, on the contrary, occurred spontaneously since the state did not show a deliberate policy in some areas, but started an obvious investment retreat in many areas where it had formerly been either a monopoly investor or a strong competitor. This retreat was taken as an "opportunity signal" for the private sector to advance. Congress, despite of not being disparate with the idea of privatization at this stage, did nothing to ease the process. The awe caused by the *Ley de Salvaguarda* held up the possibility of improving the nation's fiscal deficit problem via SOE sales. Congress did not decide against it, or even in favor of any other move and the whole weight of the *Ley de Salvaguarda* was left impending on any sale possibility despite the amount of losses a SOE could have.

A different signal came later with the *Ley de Enajenación del Patrimonio Público* which was issued in 1987, when Lusinchi's administration had entered a rather passive stage (Crisp, 1998). This was the first clear indication of new policy possibilities that could be completely initiated by the executive and more adequately comprehended by the legislative. This law of disposal empowered the executive (already in deep economic troubles due to very high external debt interest payments) to decide almost unilaterally on the need to sell any SOE (outside the *Industrias Básicas*) and the way to do it (see point 2.2). Despite this advance, the government still continued to act as a major industrial investor and tended to maintain its overall share of the economic activity. But even this attitude was gradually reduced: there was no area of the state-owned enterprises in which the government held a monopoly (aside from oil, gas, salt, and iron-ore industries, the so-called basic group); the

⁴⁴⁹ Some SOEs deteriorated quicker than others, and in some fields (like telecommunications) the technology leap with digital advances made state companies lag behind and widen their actualization and modernization gap with first world counterparts.

private sector's share in the economy was growing. It was participating in government promoted projects such as the petrochemical industry or competing directly with it, as in the airlines sector.

At the time, the mechanics of a possible privatization process (price, capital market) were also new to Venezuela. Setting an acceptable price to both parties was difficult because if the government official produced a very low price that could be seen by the opposition as a political giveaway of public property⁴⁵⁰, additional to that, the fact that the capital markets were to that date still underdeveloped both structurally and functionally, hampered a convenient democratization of the capital by placing industries to public offer through share sales.

2. Normative Frame and congressional Control over Privatization until 1989

According to Art 139 of the 1961 constitution, it is the National Congress that exerts or should exert oversight and control over the national administration. Art. 230 extends this faculty to those autonomous institutes and public corporations where the state may have interests⁴⁵¹. Aside from the *post facto* possibilities of control which could lead to congressional investigations and formal legal accusations, or during *facto*, such as interpellations and questioning procedures to cabinet members, Congress could anticipate and to a certain extent intervene in many executive manoeuvres through the crafting of the budget law. According to the Budget Law⁴⁵² (1990) all branches of the public administration were contemplated except public enterprises (Art. 12) which reported directly to the executive through their ministry of adscription (*tutela ministerial*).

After the corruption scandals subsequent to Pérez's first administration, the idea of the public administration being looted by executive members grew, which led to the legislative engineering of the *Ley de Salvaguarda del Patrimonio Público*. This law was designed to save and protect public goods from temporary administrators. It also became a serious impediment to state reform, since it imposed strong penalties on anyone accused of mismanaging public property. At the time of making a price value for any SOE subject to sale, the operation could easily be bumped in legislative instances, arguing that public property was being underrated or under priced.

In 1986, considering "the accumulation of unnecessary goods in several branches of the public administration that would overload their effective capacity, plus the existence of some other goods that could be cleared out due to their obsolescence and

⁴⁵⁰ Fear of the *Ley de Salvaguarda* is mentioned as a burden to more sales of public property during Lusinchi's administration. In 1983 the sale of six hotels was criticized as a giveaway to political favourites and was cancelled by Congress.

⁴⁵¹ **Art. 139:** "Corresponde al Congreso legislar sobre las materias de la competencia nacional y sobre el funcionamiento de las distintas ramas del poder nacional. Es privilegio del Congreso decretar amnistías, lo que hará por ley especial. El congreso ejerce también el control de la administración pública nacional en los términos establecidos por esta constitución". **Art. 230:** "Solo por ley, y en conformidad con la ley orgánica respectiva, podrán crearse institutos autónomos. Los institutos autónomos, así como los intereses del estado en corporaciones o entidades de cualquier naturaleza, estarán sujetos al control del congreso en la forma en que la ley establece".

⁴⁵² *Ley orgánica de Régimen presupuestario (LORP) Gaceta Oficial* Num. Extraordinario 4.239, 20 Diciembre de 1990

deterioration, and observing that until now they could not be object of sale for the lacking of an effective legal frame⁴⁵³...” the government introduced the project for the *Ley que Regula la Enajenación de Bienes del Sector Público no Afectos a las Industrias Básicas* (Law to Regulate the Selling of Public Goods not related to Basic Industries). This legal initiative was a certain palliative to the *Ley de Salvaguarda*, granting the executive some power to execute privatizations of non basic industries and the sale of unnecessary goods. It was introduced by the finance Minister in August, and printed as organic law in the *Gaceta Oficial* four months later, in January 1987.

One of the biggest handicaps of congressional supervision over SOEs was the “ministerial tutelage”: the adscription and report level every public entity had with a certain ministry. This could be direct, if the president of a SOE reported directly to a cabinet member, or indirect, if he had to report to an intermediary authority before the ministerial command⁴⁵⁴. Due to the presence of enormous state holdings with an important number of subsidiaries, control was even difficult for the cabinet members over their enterprises, particularly over those that had indirect ministerial adscription.

2.1 *Ley de Salvaguarda del Patrimonio Público*⁴⁵⁵ (1982)

The *Ley de Salvaguarda* (law of safeguarding public patrimony) was issued at the end of the Herrera period and meant a social reaction against what was perceived as “massive corruption” and institutional isolation of the executive during the administration of Pérez I. As part of a short lived anti-corruption wave, Pérez himself was short of being impeached; he was saved by a small number of votes that impeded his trial for corruption. Afterwards, his government was always viewed as morally loose⁴⁵⁶.

Thus the *Ley de Salvaguarda*'s main objective was to “prevent, prosecute and punish the illegal enrichment of civil servants by, or through the (commerce of) public goods” (Art. 1). The law defined as “civil servants” or “public servants”, anyone dealing with public goods, either by office or by free service, full time or part time, in the public administration or anyone belonging to the autonomous institutes. This macro scope placed on the actors subject to the law, was complemented by designing as “public good” anything belonging to the republic, states or municipalities,

⁴⁵³ This is a literal extract of the *Exposición de Motivos* (Motive exposure) to issue the Law of Public Sector Sales in 1987. It was introduced by the executive and sent by the then Finance Minister Manuel Azpurua to the president of Congress, Reinaldo Leandro Mora. *Diario de Debates del Congreso 18 de Agosto de 1986*.

⁴⁵⁴ See *Reglamento de Adscripción de Institutos Autónomos y Coordinación de Fundaciones* (*Gaceta Oficial, extraordinario 22/03/1977*) and Decree 2116, 12/04/1977 (published in the *Gaceta Oficial 29/04/1977*).

⁴⁵⁵ *Gaceta Oficial* Num. 3.077 de fecha 23 Diciembre de 1982.

⁴⁵⁶ Aside from the groundings on reality this accusation may have, it is also true that by ignoring his party during his period, Pérez did himself no favor when it came to seeking legislative support. This stood as a consequence of the *Ley Habilitante* when he openly by-passed Congress not even consulting his own faction on the decisions taken. At the same time, COPEI, the main party in opposition, felt itself left aside for the first time since the return to democracy and after what had been a period of consultation or coalition between all major parties.

autonomous institutes and/or “all those societies where the republic has a participation equal or bigger than 50% of the social capital” (Art. 4).

According to the law, all public servants had to render a sworn declaration of their goods and possessions⁴⁵⁷ before taking office, and submit it to the office of the general comptroller who would, in a given case, initiate any investigation. This law conceived civil penalties and strong legal penalties to any public servant (Arts. 32-41) who:

- By action or inaction goes against a previous legal disposition
- Abusing on his condition, causes damage to public patrimony
- Takes public funds as personal capital to open bank accounts under his or someone else’s name.

The most important burden for any privatization initiative or even that of possible restructuring of the public enterprise universe in Venezuela, came from title VI “attempts against the public good”, all of which items carry not only a fine but have jail penalties implied. A specific normative prevision against privatization is article 71:3 which establishes: “punishment with a prison term from 3 to 10 years for the public servant or any person having obtained economic advantage as a consequence of false declarations regarding the construction of buildings, installations or any other works contracted by public entities...” and also 71:6, for presenting “untrue accounting balances”.

The first step in the attempt to sell any public enterprise had to start from the fact that it had to be publicly and officially recognized as unproductive. This became functionally more difficult during Herrera’s administration since he did not have a complete majority in Congress. So once this classification step was reached in cabinet, it was easy for the opposition to block any sale in a later step, arguing that whatever the price offered, it was too low for the real value of the asset. The *Ley de Salvaguarda* made everything riskier since the under-pricing of public property could bring difficult legal consequences for the cabinet member in charge if the sale.

Objectively seen, the procedure of price setting implicit in a privatization, attends to a number of elements that obey simple market rules, among them, that the price has to be competitive and in balance with the risks to be taken and securities offered. But under the circumstances working then in Venezuela, fear of establishing a specific price and being later accused of giving public patrimony away (under the law of safeguarding public patrimony) was not completely unreasonable. Even if the price were set by an independent consulting firm, the mere selection of one firm and not the other could be subject to legal discussion and, in any case, to a lot of paperwork and time loss. Many public servants considered themselves threatened by the law and did not push any sale too far because of it (Kelly, 1987; Coppedge, 1994).

2.2 *Ley de Enajenación de Bienes Públicos*⁴⁵⁸ (1987) (Public Goods Disposal law)

⁴⁵⁷ Art. 7 made the following exceptions: teachers and professors, soldiers not having an administrative function, members of academia, legislative commissions and consultant bodies.

⁴⁵⁸ *Gaceta Oficial* Num. 3.951 de fecha 7 de Enero de 1987.

Introduced by the Finance Minister Manuel Azpurua in a letter to Congress on August 18, 1986, this law reveals the need and concern of the executive to obtain more of a free hand in the possibility of selling “obsolete and unneeded goods”, which because of the existing law (most particularly the *Ley de Salvaguarda*) the government had not had the chance of disposing of. More than that, the law tries to adapt the state to its new financial and economic reality and the enormous fiscal burden of the debt accumulated during the Lusinchi years. This law was passed unusually quickly, with all four congressional discussions taking place between August and December 1986.

The law authorizes a five member commission freely named by the president to sell off just about anything outside the basic industries, at a price determined by a variety of methods including that of “present value of future cash flows”. The law also favoured producer groups and labour unions as buyers, something that had been a core proposal made by Lusinchi during his campaign days, later implemented as a pre-condition by Congress in the privatization law sanctioned in 1991. Another factor that survived this law and had consequences in the first privatization law was the requirement of two evaluation studies made by experts judged as such by the privatization commission. The “real value” of the SOE to be sold could come as the average price between the two figures (Art. 3). In this law of disposal the process of sale or liquidation of the assets was extremely flexible, giving the commission the possibility of ⁴⁵⁹

- 1) Selling of the assets on payment terms accorded by the commission
- 2) Exchange of the assets for any good required in the public administration
- 3) The public asset could be given as part of a payment in case of public debt
- 4) Any other operation determined as viable by the commission

This law is also an extremely discretionary and delegative power tool from the legislative towards the executive, where the former implicitly accepts the unaccountable conditions of the SOEs and the urging need to sell those declared as unproductive for the fiscal health of the administration. The fact that the five members of the commission could be named and removed freely by the president, and that it could determine any SOE (aside from the basic industries) as “liable to any form of privatization”, plus the way through which it would be done, is a deliberate annulment of the congressional oversight. It allowed a bidding process in which a company could be practically given away, if no bidders appeared. Congress, in such a case could do

⁴⁵⁹ Article 4 relies completely on the judgment of the presidentially named commission: “La Enajenación de Bienes a que se contrae la presente ley, podrá efectuarse a través de las siguientes operaciones:

- 1) Venta del bien, con las modalidades de pago que determine la comisión
- 2) Permuta por bienes requeridos por un determinado ente u organismo del sector público
- 3) Dación en pago del bien, por deudas asumidas por un determinado ente u organismo del sector público
- 4) Aporte del bien al capital social de empresas del estado
- 5) A través de otros tipos de operaciones que determine la comisión

Parágrafo Único: corresponderá a la comisión determinar, en cada caso, el tipo de operación mediante la cual se hará la enajenación”

very little about it. Functionally seen, it was a strong congressional delegation given by the ruling party, which was confident that no executive decision would occur without the direct supervision of the CEN, then strongly merged (as never before or after) with the executive administration.

This law of disposal issued in 1987, served later as the basic frame for the privatization wave initiated after 1989 (Villalba, 2002, Interview). Many of the important privatizations during Pérez's second administration were done under its discretionary character; but because Pérez did not have the same sympathy as Lusinchi among fellow party members, nor was he so inclusive with members of the CEN in his administration's decision making, the law was then objected. In order to reinforce its unrestricted character in favor of executive decisions, Congress created a specific commission to accurately follow privatizations. To avoid potential problems, the executive answered by presenting a new draft bill, the law of privatizations, in 1990.

A consequence of the law for the disposal of public sector assets is that it strongly reduced the normative restrictions against privatization. It did little, on the other hand, to educate Congressmen or the people on the need of privatization. Several technical aspects of the process remained unknown due to the novelty of the proposal, and took sometime to develop; such as the capital market development in order to allow a stronger socialization of the sale, and the capitalization of the foreign debt of the company as part of a possible sale technique (Kelly, 1987). The first item, capital market, presented at the time (1987) structural limitations in so far as being Venezuela's stock market one of very small size, number of stocks' handling and absorbing capacity. It had a limited capacity to take in the whole amount of shares state companies could produce if sold to small buyers. Regarding the second factor, debt capitalization, it was thought that this possibility could induce foreign participation; however, those companies that had independently borrowed abroad and had the biggest debts, were normally those where all the ideological, legal and political restrictions existed, namely, the *Industrias Básicas*. Additionally, the exchange rate offered for capitalization deals during the Lusinchi administration, was considered unattractive by potential investors (Kelly, 1985).

2.2.1 The 1987 Law of Disposal of Public Property: a *Ley Habilitante*.

The premeditated option of by passing congressional containment is clearly set in the motive exposure of the law of disposal of public assets (*Diario de Debates del Congreso*, 18/08/86) as follows⁴⁶⁰: “so that all disposal operations referred in this law

⁴⁶⁰ Con la finalidad de hacer más expeditas las operaciones de enajenación a que se refiere esta ley, las mismas estarán sujetas únicamente los requisitos allí previstos y en consecuencia no se requerirán las siguientes autorizaciones:

- a) Autorización del Senado al Ejecutivo Nacional para enajenar inmuebles del dominio privado de la Nación, con las excepciones que establezca la ley (Art. 150, ordinal 2do de la Constitución)
- b) Autorización del Congreso para la enajenación de bienes inmuebles pertenecientes a la nación (Art. 23 de la ley orgánica de hacienda pública nacional)

can be done in a more expedite manner, they ought to be subject only to the requirements there observed and consequently executive members should not have to ask for the following permissions:

- a) Senate authorization to sell public real state with the exceptions previewed in the law (Art. 150, ordinal num. 2 of the Constitution).
- b) congressional authorization to sell public real state property (Art. 23 of the national Finance organic law)
- c) Favourable opinion of the national comptroller's office to be able to sell public property that may be considered unnecessary by the national executive
- d) Authorization of the permanent commission of finance of the Deputy Chamber, after the presentation of the sectorial cabinet of the economic procedure based on a report of the budget office.
- e) Authorizations demanded by the stock market regulations to sell public property in stocks or other commercial papers.

These constraints, normal to any sale of public property before the issuing of the disposal law, clearly show us two things: first, the strong bureaucratic barriers previously set to control any disposal of SOEs even if they were proved to be bankrupt and a permanent source of capital loss for the state; second, if we consider that at the time AD had an absolute majority in both chambers of the legislative, we see the party's open disposition and even alliance with the idea that fiscal deficit and the size of the state could and should be reduced, either through the selling of unproductive property or its restructuring. This is particularly curious because it would be the same party, with almost the same actors that 3 years later would produce a blend of nationalistic and economic arguments to sabotage most of the executive proposed privatization sales. AD changed from being a cooperative party in the legislative, to being rather neutral (1989-1990), to becoming a fierce opponent of privatization and any reduction of the size of the state initiative. COPEI, the biggest opposition party, became in this regard the government's best support.

The rigidity of the above mentioned bureaucratic and probably unnecessary steps, reinforced similar reactions to what had been Pérez's attitude during his first mandate, namely to ignore Congress and decide everything with a stroke of the pen from the cabinet. Just considering the strategy of selling, it would be difficult to obtain those five authorizations on time unless the executive had a total and subservient majority in all congressional chambers; a legislative majority big enough to have named a docile comptroller (they were named after congressional selection of

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- c) Opinión favorable de la Contraloría General de la República para la enajenación de bienes muebles de la nación que, a juicio del ejecutivo nacional no sean necesarios para el servicio público (Art. 24 de la ley orgánica de hacienda pública nacional)
 - d) Autorización de la comisión permanente de finanzas de la cámara de diputados , oída la opinión del gabinete sectorial de la gestión económica, previo informe presentado por la oficina central de presupuesto, para la enajenación de acciones (disposiciones generales de la ley de presupuesto)
 - e) Autorizaciones exigidas por la ley de mercado de capitales para la enajenación de acciones u otros títulos valores.

candidates), something that up to that date, only the statist-populist party (*partido del pueblo*) AD, had done.

The conviction of the AD *cogollo* that something had to be done regarding state restructuring reveals that privatization and the ideas exposed by Minister Arreaza in the bill's presentation were accepted if anything, only to a certain extent. New arrangements over executive privatization dispositions would be done only under CEN supervision, design and scrutiny. Once this situation changed (when Pérez came to power and surrounded himself by technocrats, abandoning the party's tutelage) the CEN directive's decision was to merge itself with the opposition and become an opposition party in Congress, something that proved to be fatal for both the president (impeached for corruption charges in 1993) and for the party, reduced to a symbolical electoral share of less than 20% five years after that.

The argument that this disposal of public goods law could be a form of *Ley Habilitante* is that it deliberately asks Congress to give up its powers to regulate and norm in the area of privatization, on behalf of the potential swiftness of the executive agency. Privatization could happen through decrees issued within the law and its disposition; the extraordinary empowerment given to the president and cabinet members challenged constitutional dispositions and other provisions and attributions existing in some three or more organic laws, but was conceived with time limits. In principle the time lapse asked for was two years starting from the publishing date of the law. The law also granted that by the end of this period, all procedures in due course could be taken to an end⁴⁶¹. To a greater delegation of powers in the final text, the time dispositions projected by the executive (2 years) were not mentioned, giving the law permanent character. Congress included a control article⁴⁶² establishing that the chosen privatization commission should issue semester reports to the finance Minister and to the permanent finance commission of the Senate and Deputy Chambers respectively.

This last item does not refute the fact that there had been an enormous and deliberate executive empowerment, not only to sell public property but to regulate the conditions and form of the sale. The only congressional supervision that could be done was a post-facto one, when incumbent reports were presented. Also, all the legal empowerment that the executive asked for, to purposefully by-pass existent legal texts regulating public property (i.e. *Ley de Hacienda*, *Ley de Presupuesto*) were granted with the only condition that Congress be informed, and that all operations should be object to revision by the national comptroller⁴⁶³.

⁴⁶¹ “En razón de todas estas autorizaciones y opiniones es necesario otorgarle rango de ley orgánica al texto aquí referido, con el objeto de poder aplicarla en su materia con preferencia a otras disposiciones legales vigentes contenidas en leyes con este mismo rango cuyas regulaciones dificulten este proceso”.

⁴⁶² Art. 10: “La comisión deberá informar semestralmente, tanto al Ministro de Hacienda como a las comisiones permanentes de Finanzas del Senado de la República y la Cámara de Diputados, sobre sus actuaciones durante aquel lapso”.

⁴⁶³ Art. 11: “Las operaciones a que se refiere la presente ley no estarán sujetas a otros requisitos distintos a los aquí previstos y en consecuencia para su realización no se requerirán las autorizaciones y opciones previstas en los artículos 150 ordinal 2 de la constitución de la república, 23 y 24 de la ley orgánica de hacienda pública nacional, ni las requeridas en las disposiciones generales de la ley de

Although the exposure by the finance Minister in the preface of the law (18/08/1986) sent to Congress said that “previous legal disposition” stalled the possibility of selling off outdated and unnecessary public property, the idea was also of accelerating privatizations through a law that would by-pass congressional overseeing or at least delay it for sometime. These legal dispositions, though mildly deactivated by the 1992 privatization law and its subsequent reforms, remained in force until 1997, when Art. 30 of the partial reform to the privatization law left most of them inactive (*Gaceta Oficial*, Num. 5.199 *Extraordinario*, 30/12/1997).

2.3 *Ley Orgánica del Régimen Presupuestario* (Organic Budget Law)

One of the main control instances Congress has access to, in order to supervise and to a certain extent exert a form of *a priori* jurisdiction and power balance, is the financial control of the executive through the approval of the budget law. In this law however, public enterprises and autonomous institutes are not contemplated (Art. 12), as they are directly accountable to their ministry of adscription. So the yearly budget disposition approved by Congress in Venezuela did not include the budget of the SOE, however their needs were included in the amount served to their tutelage entity⁴⁶⁴. In this way SOEs remained in a financially uncontrolled limbo and served for party patronage and corporatism.

Regarding the financial frame of the tutelage entities, it includes three main aspects that ought to be regularly scrutinized: budget, investment and debt level. As long as SOE are financially independent, they escape the strongest enquiries either from the legislative, the central government or from the comptroller. Many enterprises existed and acquired independent short term debts, generating an enormous confusion the budget law could not clear. ministerial expenses were dealt with as totals; not counting the number and functions of their supervised SOEs.

In conclusion, the budgets of the central government were approved on a yearly basis by Congress through the budget law, but despite that, the case of the public owned enterprise control was of a different outline, since their reports were seen and approved in cabinet by cabinet members and the president. Therefore it is easy to assume that congressional supervision over the SOEs was dim if at all

presupuesto. En todo caso una vez concluidas dichas operaciones se efectuarán los asientos contables correspondientes y las participaciones a que hubiere lugar, al Congreso de la República y a los demás organismos competentes. Cuando los bienes fueren acciones u otros títulos valores, no serán necesarias las autorizaciones a que se refiere la ley de mercado de capitales. En todo caso las operaciones realizadas conforme a la presente ley estarán sujetas al control posterior de la contraloría general de la república” (*Gaceta Oficial* Num. 3.951 extraordinario, 07/01/1987)

⁴⁶⁴ Art. 61 y 62: Los directorios de las sociedades a que se refiere el artículo 1 de esta ley aprobarán el presupuesto de su gestión y lo remitirán a través del correspondiente órgano de tutela a la oficina central de presupuesto y a la oficina de control y planificación. Dichos presupuestos deberán ser presentados en el lapso entre el 1 de octubre y el 31 de diciembre del año inmediatamente anterior al del ejercicio de los referidos presupuestos.

El presidente de la república en consejo de Ministros aprobará los presupuestos de las sociedades y según lo dispuesto en la presente ley decidirá la parte de las utilidades netas que serán ingresadas en el tesoro nacional y la oportunidad de su entrega. Dicha aprobación no significará limitaciones en cuanto a los volúmenes de ingreso.

existent. The final responsibility fell on the Minister who had a certain number of SOEs registered as dependent enterprises. Ministers had to promote a monthly report on the enterprises and present the national budget office a quarterly report on their development, but even these dispositions left a big gap in the discretionary character with which the SOEs could be managed.

3. State-owned Enterprises in Venezuela and Institutional Oversight Initiatives until 1989

Aside from the strong regulations that guaranteed the executive a free hand in the management of the public enterprises, their budgeting, growth and promotion, after the 1980's the dramatic economic reality of the country made itself present with, for example, the rise of poverty values and the growing administrative deficit to cover the budget expenses. These two patterns were constant variables for every Venezuelan administration since 1978. As a result, many public enterprises were seen through a double optic: on one side, as guilty of economic mismanagement but at the same time, from the government's point of view, as secure labour niches for their supporters. Once the state had grown to such an enormous measure, any trimming could be considered politically insecure.

The governments of Presidents Caldera (1969-1973), Pérez I (1974-1978) and Herrera (1979-1983), had all manifested their desire to produce administrative reforms as a way to solve, or at least unload, some of the weight there was in the centralized and decentralized (autonomous institutes and SOEs) administration. Public enterprises had increased the national public external debt in the 70's and the beginning of the 80's. From the executive side, control measures were no better in accuracy because of the disorganized growth of the so-called decentralized administration and the multiple functions the SOEs were made to fulfil⁴⁶⁵. Each incoming administration had very little notion of what was where or where was who.

As the state of the economy worsened, public enterprises started being subject of evaluation under more meticulous parameters than being the materialization of the import substitution ideal. Perhaps restructuring plans had not been planned rigorously enough since many SOEs stayed as unaccountable bodies despite the changes in administration. However, think-tanks like the Boston Area Public Enterprise Group (Bapeg), introduced new variables into discussion by questioning that SOEs had to be evaluated just like an ordinary (i.e. private) enterprise, since they are (or should be):

⁴⁶⁵ In a paper written in 1984, Villalba refers to the creation of public enterprises almost as an executive ritual to confront a stereotypical reality, namely, the stimulation of market competition. Results were never as expected and the SOEs number kept growing and growing being in many cases not only deficiently managed investments, but faulty and unsuccessful schemes from the very beginning: "The idea is simple. Market X does not work for collective benefit: prices are high, distribution is deficient, products have cheap quality, etc. Thus it is necessary to create a public enterprise to promote the well being of the market and its oily functioning. This could be done through two main mechanisms: 1) the SOE assumes full control or substitutes the market (until then inefficiently attended by the private enterprises); 2) The SOE presents competition to the private enterprise be it in prices or in the nature of products so that the latter is forced to either reduce prices or better the quality of its merchandise. In both cases we see that the ground idea is that market competition can be fostered by the creation of SOEs, or by promoting competition through rivalry" (Villalba, 1984, p.3).

a) essentially similar and b) they ought not to have special financial or subsidized conditions; in short, they should be able to survive under market laws⁴⁶⁶. Most of the controls detected in Venezuela to regulate SOEs, came solely and directly from the executive because due to a long dated tradition (started by the institutional design of the 1961 constitution) congressional supervision over state-led investment initiatives in the form of public enterprises was almost void and structurally inoperative.

During the XIX century (perhaps under a certain Napoleonic influence on the form of the state), Venezuelan presidents initiated public policies directly without any consideration of other bureaucratic instances. Finances and public funds were also managed in this personal way with a strong mix of private and public funds. This autocratic way of governing the country remained almost intact from the end of the XIX century until 1936, when dictator J.V. Gómez died. Subsequent military governments trying to modernize the public government set off a number of measures that would promote development, in a country that had just then glimpsed it had entered the XXth century (Picón Salas, 1960). Part of the initiatives then started included expanding the decentralized administration by creating enterprises, promoted and financed by the state with specific objectives. These new SOEs were Aeropostal, (airline) 1937; Central Bank of Venezuela, 1938; Industrial Bank of Venezuela; Social Security Institute, 1940; and INOS (water and pipes), 1943. After the *trienio*, a brief democratic period between 1945-1948, the system collapsed and a new military government, with stronger interventionist ideas about the economy and a new constitution, nationalized the telephone company (CANTV) in 1953 and started the National Tourism Corporation (first known as Conahotu and the as Corpoturismo); the Venezuelan Petrochemical Institute (Pequiven) 1956; and the regional development bank in Zulia. Initial investment planning and investments were done in metal industries in Guayana (Sidor) and the electricity complex of the Caroní River (Edelca).

Most of these military administrations during the XXth century had no idea of institutional “checks and balances” or specific notions of accountability, to which the investment done in these SOE should be subject to. Enterprises grew without specific objectives and planning guided by the ever rising oil income of the country. To some extent they became labour policies to keep unemployment down, a certain form of unemployment subsidy based on constant financial deficit. As Kelly resumes it: “the Venezuelan state had expanded even before the democratic phase initiated in 1958, to almost all areas in which it has investments today. It grew without ideas of supervision and/or control, without establishing the appropriate accountability mechanisms over decentralized investments beyond the simple ministerial tutelage decreed at the moment of each institutional creation. The nature and effectiveness of this tutelage depended on the degree of attention every Minister would grant and the real control would finally come in budget transfers. This background is important since it norms and shapes the ways in which state and public enterprises interrelate with each other” (Kelly, 1992, p.13).

⁴⁶⁶ Kelly (1985) has a detailed exposition of this in “*Empresas del Estado en América Latina*”.

A symptom of the growing chaos regarding SOE enterprises and their lack of control can be observed in two studies (Bigler, 1981; Grooves, 1966) representing the first ten years of democratic rule. Bigler numbered some 150 SOEs in 1959, whereas Grooves in a specially commissioned report by the administrative commission of the public administration found only 35. Grooves observed the lack of congressional inderence over the SOE and any autonomous institute:

“Neither Congress nor the general comptroller has faculties to revise the finances of the autonomous institutes as they have them to control ministries. Despite that the executive authority is such as to make their authority unnecessary: the president of the republic is the final authority in budget matters (for the SOEs) and it has always been supposed that the executive has and should have wide powers to coordinate systems and procedures, which is the purpose behind placing every institute or enterprise behind a ministry to which it reports. But in reality these planned faculties have been exerted to a minimum and because of that a working autonomy (despite economic dependence) has been instituted in many SOE. The result to this situation is that accountable and auditing controls from the institutes, though they may vary from case to case, have been less effective than those applied by the ministries⁴⁶⁷”.

Grooves was part of a commission that failed to change (or induce a change in) the decentralized administration; since the major symptom, uncontrolled growth combined with loose accountability, was never overcome. One of his final diagnoses was obviously taught by bitter experience: “as far as a reforming commission receives its support from the higher levels of government (this one was created and sponsored by president Rómulo Betancourt 1960-1964) it runs the risk of having its results and itself viewed as work of the former administration by the new presidents. It is necessary to work at inferior levels of the administration to be able to assure institutionalization” (p.184).

At the beginning of the 60’s, the Venezuelan government asked the World Bank to send a commission to diagnose the economic and institutional condition of the country. The report concentrated its conclusions on giving an economic account of the situation but it also made important observations on how the role of the government influenced the whole financial environment. There were intentional observations on the direction public investment should follow, suggesting some areas ought to be left to the private sector. As for public enterprises, it recommended placing them under an autonomous entity separated from the political turnaround, which would pursue placing all SOE in an open competitive environment together with private sector’s initiatives.

After almost ten years during which internal political turmoil affected the country, the *Comisión de Administración Pública*, first created during Betancourt’s government, was re-established under Caldera’s administration (1969-1973) to supervise SOEs and adapt them to run along with the Nation’s Development Plan.

⁴⁶⁷ Grooves (1966) *Reforma Administrativa en Venezuela, Caracas, Comisión de Administración Pública*, pp. 34-35, also quoted by Kelly (1992).

The national development plan projected several legal reforms especially to separate and define SOE from autonomous institutes and passed during this period. The executive designed and passed the “Administrative Career Law” which affected the autonomous institutes providing them with a legal salary rank and other specifications. The Administrative Career Law left SOEs outside of those legal provisions, which promoted future administrations to create SOEs rather than autonomous institutes. On normative terms with SOEs, their directives would have more legal independence and they were structurally easier to modify.

The “Commission for Public Administration” wanted to restructure public administration at “all levels and in all sectors to adapt them to the demands of socio-economic development planning⁴⁶⁸” attending to a vision of state rationalization and control.

Table 4.7

Executive Control Plans over the State-owned Enterprises and Decentralized Administration: Initiatives between 1960-1989	
1.	Comisión de Reforma Administrativa I (1960)
2.	Banco Mundial 1959-60
3.	Comisión de Administración Pública II (1969-1974)
4.	Comisión de Reforma Integral de la Administración Pública (CRIAP, 1974)
5.	United Nations Program (70's)
6.	Sistema de Información para la Evaluación de Empresas Públicas (SIEEP, 1984)
7.	Sistema de Evaluación de Desempeño de Empresas Públicas No Financieras (SEDEP, 1985)
8.	Sistema de Evaluación Convenida del Desempeño de las Empresas Públicas (Secodep, 1987)
9.	Comisión Presidencial para la Reforma del Estado (1984)

Source Clad (1991)

After Caldera, another attempt made to control the decentralized administration during Pérez's government (with its whole transformational ideas for the public administration) created the CRIAP (Integral Reform Commission for the Public Administration) in 1974. The main idea of this new commission was to retake the initiative originally proposed by the World Bank in the 60's, of creating an autonomous entity that would deal with all SOEs and bring an end to the ministerial adscription and tutelage system.

This new scheme projected by the CRIAP found strong opposition in the ruling party and in the cabinet members. They both saw the possibility that ministries would lose a significant amount of power⁴⁶⁹ and patronage possibilities. On the same account of events, Congress (with AD majority in both chambers) intentionally blocked all legal projects provided by the CRIAP to modify the ministerial tutelage system.

⁴⁶⁸ CLAD (1991) documents on Public Enterprise Restructuring, pto. B, Pag. 1

⁴⁶⁹ Some Ministries were more sought after than others precisely due to the amount and economic weight of the SOEs they controlled. The idea that this would stop being so, meant that the patronage political parties like AD maintained with the unions and many of their regional members would disappear.

A parallel effort to the CRIAP initiative occurred during the second half of the 70's when the United Nations provided Venezuela with a program to register all entities of the decentralized administration. This system would sustain itself financially, that is, it would not disappear with the change of administration as had been the fate of all other commissions. This was a significant step, because it had been a common frustration for all former commissions to find that there were no reliable registers of the public property; a fact that meant a significant waste of time having to start all over again. The United Nations' initiative tried to provide the planning ministry with at least a reliable data base to work with. The lack of accuracy in data and registration had increased enormously in the 70's after the expansive investment of the *Gran Venezuela*, when new enterprises were created with massive budget expenditures, but nothing was done about the old and mostly outdated organizational schemes.

The whole period of Herrera (1979-1983) saw no attempts of confronting the growing administrative disorder regarding SOEs except for a commission established in 1982 to tally the number of state enterprises and the amount of debt they had acquired. Organizational propositions like the SIEEP (Information System for the Evaluation of the Public Enterprises) were only reactive initiatives to the debt restructuring problem the government faced after 1982. One of the main problems Venezuelan negotiators found when trying to propose a credible plan to renegotiate the national public debt was that they had no reliable data that specified which public enterprise had taken which debt. Thus the SIEEP and the SEDEP were executive created commissions that tried first to quantify the number of enterprises and their administrative efficiency rather than promote any further reform.

In 1987, the planning ministry in coordination with the United Nations created a computerized system, SECODEP, to provide an evaluation system of the public enterprises and help the executive to control state enterprises and their financial conditions. Another effort to discuss and study the size and function of the state was the executive created commission for the reform of the state, COPRE, 1984, which dealt more with decentralization proposals than with the idea of basic industries and their management. However, because the size and effects of the decentralized administration was a continuous problem with multiple symptoms, Copre did propose a basic industries law and a rationalization process of their activities⁴⁷⁰. Sadly the convulsive moments at the end of the Lusinchi government were not the best timing to agree on the future of the SOEs or their possible restructuring. The proposed law would determine the outlook of the basic industries and a possible solution to their cases. SOEs meant already then a group of bankrupt or almost bankrupt enterprises.

In conclusion, the Venezuelan government has increasingly relied on decentralized agencies to carry out functions for which the set of ministries were not intended. It has counted on them to cover the scope of several public policies, such as credit support for the private sector (Kornblith/Maingon, 1985). Their legal status has several consequences (Crisp, 2000): 1) the entities have their own patrimony, that is,

⁴⁷⁰ Volume 7 Copre, Sosa Franco, 1988.

their capital goods belong to them and not to the public bodies that created them; 2) they have a budget distinct from the state in general with respect to both their income and expenditures; 3) they have procedural individuality, which means they can single-handedly defend their interests before national courts (Caballero Ortiz, 1982).

3.1 SOEs and Public Finances before 1989: The External Debt and the Debt Negotiations

The reduction of the Venezuelan debt between 1983-1987 was of around \$ 9 billion in capital, which is around 21% of the whole amount of debt at the beginning of the period. In global figures the country paid some \$ 30 billion since 1983 for interest and capital amortization, of which \$ 21.9 billion were payments of the public sector and \$ 8.2 billion of the private sector⁴⁷¹ (Rodríguez Mendoza, 1988). These payments were not interrupted despite eventual hardships in the economy and the abrupt fall of the oil prices. According to IMF reports, some of the payments (particularly during 1986, when oil prices went from over \$ 25 per barrel to \$ 12.8) were equivalent to 33% of the debt payments made by all developing countries that year. Needless to say that Venezuela had been destining enormous amounts of the GDP to the debt service, and that most if this debt was not clearly quantified, nor had it been negotiated under the best terms.

The debt crisis found Venezuela in a very difficult situation since the country had recently experienced a significant reduction of its international reserves (Banco Central, various, 1982-83) due to the overpricing of the currency and a strong amount of capital flight. Lusinchi, as one of his first economic decisions, devaluated the currency from 4.3 to 7.5 Bolivars per dollar and his first policies during 1984-85 managed to gain some equilibrium. But just when the fiscal expansion started in 1986, oil income fell by almost half from \$ 13.9 Billion in the crisis-ridden years 1984-85 to \$ 7.6 Billion in 1986. "After that steep drop, the government found commercial banks unusually ready to sign the debt re-scheduling agreement that had been under negotiation since 1983, and that had suddenly become impossible to sustain" (Hausmann, 1995, p.261).

Table 4.8 *Summary of the Macroeconomic Events in Venezuela 1964-1988*

Period	External Situation	Policy Orientation	Principal Results
1964-73	<ul style="list-style-type: none"> Stagnant Oil Income 	<ul style="list-style-type: none"> Fixed Unified Exchange Rates Fiscal Discipline Import Substitution Industrialization 	<ul style="list-style-type: none"> High but falling Rate of Growth (average 6.8%) Very Low Inflation (1.7%) External Balance
1974-76	<ul style="list-style-type: none"> First Oil Shock Higher World Inflation 	<ul style="list-style-type: none"> Expansionary Fiscal Policy Emphasis on Publicly Owned Basic Industries 	<ul style="list-style-type: none"> Acceleration in Growth (95) Higher inflation but

⁴⁷¹ These figures also exist in a special report prepared by the finance ministry when issuing some bonds worth \$ 100 Million. This operation was done by J.P. Morgan in 1988.

		<ul style="list-style-type: none"> • Nationalization and Restrictions on Foreign Investment 	<p>lower than world levels (9%)</p> <ul style="list-style-type: none"> • Larger and declining surpluses in external accounts; balance achieved in 1976
1977-78	<ul style="list-style-type: none"> • Declining Oil Income 	<ul style="list-style-type: none"> • Increase in Public Spending mainly in State Enterprises • Some attempts to cut back Spending and Credit 	<ul style="list-style-type: none"> • Decline in Growth (3.5% in 1978) Major external and fiscal deficits • Extensive Supply Bottlenecks: labour and installed capacity
1979-80	<ul style="list-style-type: none"> • Second Oil Shock • Jump in world interest rates 	<ul style="list-style-type: none"> • Strong Fiscal Contraction (mainly in imports) • Price Liberalization • Wage Increase Law • Some Trade Liberalization • Interest Ceilings do not fully adjust with the rise in world rates 	<ul style="list-style-type: none"> • Growth falls to Zero • Slow Unemployment Growth • Inflation accelerates to record levels (21% in 1980) • Real Exchange Rate appreciates strongly • External Fiscal Balance achieved • Capital outflows begin
1981-82	<ul style="list-style-type: none"> • Oil income very high, starts to fall 	<ul style="list-style-type: none"> • Fiscal expansion in Public Works • Interest rates are freed but monetary policy is expansionary • Large deficits in Public Enterprise sector financed through foreign borrowing 	<ul style="list-style-type: none"> • Mediocre Growth (1%) • High but falling Inflation (16%) • Large Current Account Deficit and massive capital outflow
1983	<ul style="list-style-type: none"> • Fall in Oil Income • Start of Debt Crisis 	<ul style="list-style-type: none"> • Adoption of a multiple exchange rate regime, average devaluation 30% • Import Controls • Contractionary Fiscal Policy • Expansionary Monetary fiscal policy • Generalized price controls are adopted 	<ul style="list-style-type: none"> • GDP falls 5% • Inflation kept at 7% • Large balance of payment surplus Still important fiscal deficit • Large expansion in Money supply • Floating rate depreciates over 200%
1984-85	<ul style="list-style-type: none"> • Oil income stable at lower level (13 Bolivar's to U.S. Dollar) 	<ul style="list-style-type: none"> • Devaluation of Official Rate • Maintenance of Import Controls • Fiscal Cuts • Interest Rate Controls adopted • Price Controls are relaxed • Debt Strategy: simple rescheduling 	<ul style="list-style-type: none"> • After an additional contraction in 1984 (-2%) economy starts to grow in 1985 (3.5%) • Unemployment reaches historic peak • Inflation increases to moderate levels (15%) • Large fiscal and balance of payments surpluses

1986-88	<ul style="list-style-type: none"> • Oil Income Collapses • (8Bolivars to U.S. Dollars) 	<ul style="list-style-type: none"> • Fiscal expansion adopted • Forced financing of Imports • Major devaluation when situation becomes untenable • No change in interest rate ceilings 	<ul style="list-style-type: none"> • Economy grows at 5% average; Unemployment falls back to 7% • Major balance of payments and fiscal deficit • Acceleration of inflation to over 30% • Floating rate depreciates by almost 200% over the period
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Source: Hausmann, 1995.

As we observe from Hausmann's analysis, after two years of spending cutbacks (1979-80) and inspired by the strong impact of the second oil boom which took prices well over 30 dollars per barrel, the government went into old mistakes, deciding to adopt in 1981 an expansionary fiscal policy in 1981, based on a projected increase in oil revenues of 12% per year. This operative fallacy was coupled with the financing of SOEs through international borrowing, with most contracts outside of any congressional or institutional overview and taken independently and unilaterally on short term repayments by the SOE directives. As the policy got under way, the first negative shock of the 80's generated current account and fiscal deficits; because the directive of almost all the decentralized administration rotated every time there was a new government, in the end no one was responsible.

The chart also shows how after 1985 Lusinchi's administration, having gained certain internal economic balance, re-thought its public investment program under the name "*Plan Especial de Inversiones Públicas*" (special public investment plan). The period of 1986-1988 was characterized by a strong fostering of the fiscal policy expansion, more of the same reiterated error of the past, assuming (as always before) high oil prices would maintain at this level. Crisis in this commodity price, and the weight of an enormous list of subsidized products in the economy (product of the variable conversion rate the government had previously implemented) forced a devaluation of 93% of the currency taking it to 14,5 Bolivar's per dollar⁴⁷².

In debt terms, the country had advanced very little. In 1984 it had requested a three month postponement for all payments that were due in short term⁴⁷³. Simultaneously, it had initiated negotiations with an assessment committee formed by those banks which held most of the liabilities⁴⁷⁴. These negotiations lasted almost 4

⁴⁷² In order to compensate the amount of real loss in acquisition power from the people, the government maintained a multiple exchange rate (which was a direct subsidy to many private sector companies), and decreed a salary raise for workers. Subsidies to fertilizers and other agro industrial products were raised and the price control list swelled from 32 products considered of "basic necessity" to 102 (Diario El Nacional, several months 1987)

⁴⁷³ By the time negotiations with the banks had begun (1983), the Venezuelan debt was around \$ 38 Billion (66% of the GDP and 266% of all export income).

⁴⁷⁴ Almost all the big banks of the world: this assessment committee had as co-directors delegations from the Chase Manhattan Bank, and the Bank of America; also representatives of the Lloyds Bank, Banca Nazionale del Lavoro, Banque Paribas, Bank of Tokio, Chemical Bank, Citibank,

years with strong internal discussions but very little real advances. One of the biggest problems was the atomization of the debt which forced a negotiation with multiple actors, and the fact that the renegotiation of payment terms included only time prorogations without other credit acquisitions to stimulate the economy or promote investment⁴⁷⁵ (Rodríguez, 1988).

The so-called singularity of the Venezuelan case acted perversely against the country. Because its payment capacity as an oil producing country was always emphasized, all neighbouring countries reached better agreements with less troublesome quotas per year in contracts that were more “in tune” with their economic realities. The result was that Venezuela had in 1987-88 (once the debt had been “restructured” under Lusinchi) amounts of liabilities not in accord to its payment capacity, but negotiated under expectations that oil prices would remain forever high (Hausmann, 1995).

That the country was going to find the payment conditions very difficult to honour was found out later, since the first IMF agreement was signed in 1984 and the opening payments were accorded for the second quarter of the year 1985. During this period (84-85) the Lusinchi administration had reached, if anything, a precarious balance in the economy (Nissen/Welsch, 1992) However, by the end of 1985 and beginning of 1986, oil prices had started to fluctuate negatively and the government had to ask for a contingency clause in the recently signed contract, since all payments would most likely remain due, unless conditions were softened. Assuming oil prices would rise again in the short term, the new negotiations concentrated only in obtaining delays in the payments, while the previously accorded conditions remained especially severe. In the end, the only change was that of the debt period, which was extended from 12 to 14 years, with a possible extension of 2 years more.

Debt service payments by 1988 represented a 45% of total exports and some 55% of the oil exports. Foreign investment (\$ 66 million in 1988) did not compensate

Commerzbank, Manufacturers Hannover Trust, Morgan Guaranty Trust, Royal Bank of Canada and the Swiss Corporation.

⁴⁷⁵ The financial plan of 1983 included the following points:

- No new loans for the country
- Amount subject to finance: \$16.300 million corresponding to public debt amounts from 1983-1984
- 8 years payment plan and 4 years extension
- Interest calculus and payments on the same base as the original contracts

Despite these proposals the banks did not accept them because the financial conditions of the country were considered particularly weak and because the tradition of Venezuela advised not to negotiate with an ending government but rather with a newly elected one. The banks also demanded an agreement with the IMF which the government did not achieve in 1983. In 1984 a specially created executive commission to negotiate the debt made new proposals this time accepted by both the government and the IMF with the following conditions:

- No new loans for the country
- Amount subject to finance: \$ 20.750 million corresponding to debt from 1982-1988
- Interest rate 1 1/8 over LIBOR
- 12 years payment plan
- No extensions were contemplated and payments would begin with a down payment of \$ 750 Million the second quarter of 1985 and after that 48 quarterly payments (Rodríguez, 1988, p. 287)

the steep unbalance. The government had started to “burn” international reserves in order to counteract the strong economic distortion it had produced, but that clearly was no long term solution. The forecast at the end of the Lusinchi administration was grim: following pre-accorded payments the country had to disburse some \$ 6.1 billion between 1989-93 plus some \$ 3 billion from new liabilities that would expire during that period. This new amount had not been included in the finance agreement⁴⁷⁶. In all, that left the government to come, with an astounding amount surrounding \$ 19 billion to be paid during the 1989-1993 presidential period.

Table 4.9 *Economic Conditions of the 1988-89 Crisis before Pérez II.*

1)	<ul style="list-style-type: none"> • External imbalance: large current account deficit • Lowest level of international reserves (\$ 300 Million) • Short term Central bank Dollar liabilities of \$ 6.3 billion of which 1 billion was already overdue • No international financing plan for 1989
2)	<ul style="list-style-type: none"> • Fiscal deficit reached 9.9% of the GDP was calculated to rise to 12% • Extensive subsidies that increased deficit potential⁴⁷⁷
3)	<ul style="list-style-type: none"> • Repressed inflation and product shortages due to speculative inventory accumulation. • Pressure growing on controlled prices • Imminent devaluation perceived
4)	<ul style="list-style-type: none"> • Controlled interest rates generated financial repression and strong demand for credit mainly to finance inventory accumulation or to pay for capital flight into stronger currencies

Source: *Ministerio de Hacienda* and Central Bank reports (1986, 1987, 1988)

In a similar diagnose to what we show, Naím (1991) observed five problem areas, existing before 1989, namely, 1) repressed inflation⁴⁷⁸; 2) balance of payment deficit; 3) budget deficit; 4) financial controls and 5) state intervention; all of which created the awareness of an imminent chaos in the economy. Most of the solutions were perceived as *pañitos calientes* (warm solutions) to a problem that was both structural and functional and had required a deep reform of the state.

⁴⁷⁶ Mendoza Rodríguez shows how dramatic the picture was: “To the amount of public debt plus interest that had to be honoured, we ought to add the private debt which the government had agreed to assume by giving the debtors cheaper (preferential) dollars. All payments add to some \$11.6 billion during 1989-1993. Interest payments are rather harder to calculate due to the different rates accorded with the different banks. An approximate calculus rounds in \$ 7 billion the amount for interest payments which makes some 19 billion as a total of the payments the government was obliged to honour during the 1989-1993 period” (1995, p.292).

⁴⁷⁷ The subsidy policy situation in the last two years of the Lusinchi administration was financed with international reserve losses, but because these had reached a critical phase they would have to be financed through inflation tax or new loans in the future.

⁴⁷⁸ Repressed inflation and price controls had been a perverse combination for the Venezuelan economy. Although the lists of controlled items changed over time, the operating equation was: the more the government felt inflation was getting out of control the longer the list became (Naím, 1993). One extreme of this policy widely quoted by authors is the decree 1977 (*Gaceta Oficial*) which in 1987 had an extensive number of categories of price regulations from medicines to milk, soft drinks to cinema prices, and basic products whose price could not be altered without ministerial permit.

At the end of the Lusinchi period, the whole public debate was centered on debt payments since the negotiated amounts had become almost unmanageable for any administration to come after 1989. The failure of the agreements with the Paris Club (or debtors club) made the situation worse since most of the payments had to be done in the short and middle run. “Under these circumstances, policy makers face rather stark choices. Imbalances have been allowed to gather strength by postponement of adjustment measures covered through reserve losses, and there may not be enough economic room to finance a more gradual approach” (Hausmann, 1995).

The political campaign started in 1987 already, and after the devaluation of the currency in 1986 the government clearly slowed down its decision capacity in order to cool down the socio-political situation and try to freeze the political state of affairs. First conversations with the IMF started in 1988 once again, to try to secure the possibility of new loans for the country to confront the economic paralysis⁴⁷⁹. Despite that, the common perception was that only a new government could introduce radical changes in policy.

4. 1989: The Great Turnaround. A Radical Stabilization and Adjustment Program

By the moment Pérez had won the elections in 1988, a change of great proportions was sweeping most of the Latin American Countries⁴⁸⁰. The strategy of development based on import substitution and strong state intervention in the production of goods, functioning of the market and redistribution of income, had been abandoned almost everywhere in the region. Efforts to open up the economies, to give more space to private economic agents and to reduce the influence (and size) of the state were starting to change the economic landscape of the region (Paunovic, 1990), which became an open laboratory for the implementation of new variables.

On theoretical grounds, the turn to liberal forms of the economy had a complete background on the anti-Keynesian reactions many economists had after the Second World War. This encompassed the Mount Pellerin Society (1947) and the writings of Friederich von Hayek. Having obtained a Nobel Prize in economy in 1974, many of his works became more famous and better known, among them, *The Constitution of Liberty* (1952), written with the central idea that all state-centered planning system (i.e. socialism as in the so called communist world) was condemned to failure⁴⁸¹. This neo-liberal school received also a strong influence from the so-called neoclassical school of which Milton Friedman, also Nobel award winner, was a well known exponent in the University of Chicago. This economic school had worked

⁴⁷⁹ Strangely enough since the International Monetary Fund has usually been depicted as a common “enemy” for politicians and union leaders in Latin America, the CTV backed these meetings for several reasons; notably so because of the strong bonds between AD and the Union leaders of the CTV and the strong discipline of the party members.

⁴⁸⁰ That year was also a pivotal moment in Argentina with Ménem, and in Mexico with Salinas the Gortari for example.

⁴⁸¹ See his work together with Ludwig von Mises “*Theorie des Sozialismus und Wettbewerbskapitalismus*”.

on anti-monopolistic ideas and the *laissez-faire* of the economy, regaining arguments from Adam Smith to question the notion of the state in the economy.

The first practical contact with this whole spring of liberal ideas in Latin America happened in Chile where, under the authoritarian, US sponsored government of A. Pinochet, after several economic failures in the first ruling years, the government decided to introduce members from the academia who had been in contact with the ideas of the Chicago school as cabinet Ministers, something that later gained them the appellation of “Chicago Boys”⁴⁸². The economic recipe these economists produced is strikingly similar to what later Williamson dubbed the Washington Consensus (1992), which was allotted among third world countries by the International Monetary Fund, IMF, and the World Bank.

In the history of economic reforms in Latin America, the argued influence of vested interests (Krueger, 1993) is a recurrent theme. To those in favor, reforms will never be deep enough; to those against them, they are decisions that ought to have never been taken. Politically seen, for any observer, any reform implementing government always remains either too far or too short of reality, with shrinking support the more the reform program advances. One crucial factor for success is the strength of potential anti-reform coalitions and their ability to affect reforms. In Venezuela, these “transformations” implied the whole turnaround of an oil-rentist mentality established for almost 30 years.

Pérez had been president before and remained in the collective mind as the man of the good times, of the majestic state plans, the huge investment and strong state centralization, all done without implementing major accountability or control measures. His first government years were publicly known as the years of the *vacas gordas* (fat cows), in an allegory to the biblical dream explained by Joseph to the Egyptian Pharaoh. His new approach in the second government was, however, totally different since it consisted in dismantling most of what he himself had instated 15 years before. It was an ambitious economic and state reform program, but the political variable failed him, since many actors⁴⁸³ (cabinet members for example) had no

⁴⁸² Among the ideas implemented by this team in Chile during the 70’s (those widespread by the Chicago school) were the following:

- Non tariff opening for imports
- Liberalization of the financial market
- Liberalization of international capital movement
- Reduction of the size of the state
- Restructuring of the public enterprises
- Privatization of SOEs
- Modification of the legal apparatus regarding the economy
- Fiscal reform to cut down direct tax

⁴⁸³ Two years after the Pérez administration was over, the Woodrow Wilson Center (1995) published a study with many of the original economic cabinet members as contributors and editors, brought together under a suggestive title: “Lessons of the Venezuelan Experience”. The fact that Pérez created not only an institutional and economic turnaround but also moved out of classical political alliances with his own party, AD, surrounding himself by a group of “relatively young, foreign trained and politically inexperienced technocrats” (p.13) had no precedence in contemporary Venezuelan politics. A probable consequence to this as Corrales (1998) notes, is that the ruling party became a new enemy

previous political experience, and the old system (namely the statist nature of AD plus its historical patronage of loyal union leaders) would not give up its powers so easily⁴⁸⁴. Notably so, the political parties⁴⁸⁵ and important segments of the private sector, were expected to be hard to convince. The Venezuelan private sector had grown accustomed to living on or profiting from the state's rents, by courting the politicians in turn; it now had to start courting the market (Naím, 1995). As previous studies show (Malloy, 1977), there is a probable and concurrent relation between populism and corporatism where the state tries to structure interest representations, subsidizes official associations, and controls the demand making and internal governments of these associations. Not exactly so but quite similar, the Venezuelan state did have (through the *Punto Fijo* pact) several of these characteristics. The strong political parties within the pact after the return to democracy (mostly so AD) opted for a formula of state corporatism where certain groups would be subsidized (the union central, CTV and the main business federation, Fedecámaras), and thus centrally controlled. Of course state control, or even party control in the case of AD and the unions, would be deepened and worked as a two way system of association⁴⁸⁶.

entangled in the congressional web. The failures of these initiatives teach us certain lessons while analyzing the events of the 1990's. They are:

Lesson One: Public confidence in civilian leadership is dependent on honest government and the public perception of accountability

Lesson Two: In the process of economic and political reform it is essential to communicate effectively with the public and to avoid raising expectations to unrealistic heights

Lesson Three: Given excessive access to and reliance on the wealth of the State, political parties can become informally privatized and lose their capacity to aggregate and articulate public preferences.

Lesson Four: Decentralization and accountability –creating a sense of citizenship among the populace– are keys to democratic consolidation

Lesson Five: The consolidation of democracy requires competitive, private and unfettered media that responsively serve the public interest

Lesson Six: The social consequences of economic reform are politically significant and must be mediated through the political system and the civil society

Lesson Seven: The role of the military in the political system must be clarified and the institution must be able to express its institutional needs and interests through the constitutional process. To that end a constant open dialogue must be maintained among the military, civil-political authority, and other sectors of the civil society.

⁴⁸⁴ El *Gran Viraje* proposed a whole restructuring of the state and the state's functioning in accordance to the IMF austerity plans. In theory, this meant turning away from the parochial oil protected national market, towards the competitive global market. In practice, it meant dismantling the complex network of protections (state employment, loans, tariffs, price controls, and wage regulations) that had constituted the populist model for more than fifty years. No one, neither the business sector nor the working class was prepared for this change (Coronil, 1997). Least of all the political parties, which had become brokerage interest agencies, rather than institutions representing civil society.

⁴⁸⁵ Corrales observes as a core thesis of his study: "It is not common for ruling parties to turn against their own administrations but it does occur, and it is quite recurrent in the politics of economic reform. This is precisely what happened in Venezuela, and the consequences for governability were lethal" (p.32).

⁴⁸⁶ For the corporatism relation of the *Punto Fijo* Pact see Kornblith/Levine, (1985). Regarding the intertwining of AD with Union leaders this can be proved in many ways: many of the union leaders were later incorporated as cabinet or parliament members. They were also regularly included (before the 1988 electoral reform) as state governors or in important regional posts. Also, party discipline in Venezuela had been traditionally high (Carey, 1992; Crisp 1997; Naím, 1993) Central authorities designated candidates for local offices, they named judges, officers of government controlled unions, professional organizations, university authorities, etc.

Reforms were launched in the context of a deep economic and institutional crisis. The common thought among executive members was that they would be unpopular only during the first phase, since once they started to provide visible positive results, these would ameliorate the harsh effects of the social crisis and party support from different sectors would expand. So, in spite of a rather populist and to some extent conventional campaign (including the expected demonizing of the IMF), Pérez surprised AD leaders with his cabinet appointments leaving out all AD hard liners and traditional party leaders. Instead, he included many non-AD Technocrats, quickly signed a letter of intent with the IMF, and in a matter of weeks, announced the VIII nation's economic plan called *El Gran Viraje*, popularly known as *El Paquete*⁴⁸⁷ (the package).

El Gran Viraje (the great turnaround) was a drastic economic and institutional change from an inward oriented, state based development strategy, to an export oriented model with open markets. Structurally it was composed of those ideas already accorded with the IMF, working on two phases: stabilization measures to cut down inflation (short term measures), and structural adjustment measures to reduce the size and improve the working of the state (medium-long term measures). The first group of measures would concentrate on re-establishing the country's macroeconomic balance while allowing (or engineering) access to international finances; the second part would be a medium-long term policy to reorient the economy and re-dimension the size and involvement of the state.

To begin the process of transformation it was necessary to correct the imbalances in the fiscal, monetary, foreign exchange, commercial and financial sectors left by the former administration (Acuña, 1994). Subsidies had to be removed, inflation curtailed and differentials in the foreign market eliminated (see chart below). Additional steps were: elimination of the fiscal deficit by reducing expenditures, increasing income, adjusting prices and duties for public services and goods (most of them were subsidized), reducing the debt burden and renegotiating it under terms that were compatible with the country's real growth rate and possibilities.

Table 4.10 *The 1989 Stabilization program*

Policy	Measures Adopted	Date
Exchange Rate Policy	1. Unification of the exchange rate 2. Recognition of the letters of credit on imported goods at the old exchange rate to be paid in three years	March 1989 April 1989
Interest Rate Policy	1. Interest rates were freed on all transactions except for agriculture and preferential mortgages. The Central Bank influences the market through	Feb. 1989

⁴⁸⁷ Certain semantic precisions ought to be made here since the word *paquete* and its English analogous term "package" do not have the same communication weight. *Paquete* has a common double meaning that refers to something dubious, prone to deceit. The Planning Minister Miguel Rodríguez later became known as *Paquetico* (little package) to describe him as something more (in negative terms) than meets the eye. The word *Paquete*, sometime before Williamson's idea of proposing a consensus for the IMF plans, also refers to that: a concomitant will to present a uniform solution to various problems.

	<p>money market operations</p> <ol style="list-style-type: none"> 2. The Supreme Court forces the Central Bank to set rates Maximum rate loans set at 37% minimum rate on deposits at 25% 3. Rates increased to a maximum of 42% and a minimum of 30% 4. Rates reduced to a maximum of 39% and a minimum of 27% 5. A new short term zero-coupon bond is created to aid as and instrument of the Central Bank's monetary policy. It is auctioned at the stock exchange. 6. Rates increased to a maximum of 43% and a minimum of 28% 7. Rates reduced to a maximum of 35% and a minimum of 15% 8. Relaxation of controls with a maximum rate of 60% and a minimum of 10% 	<p>April 1989</p> <p>June 1989</p> <p>August 1989</p> <p>Nov. 1989</p> <p>Dec. 1989-Jan 1990</p> <p>March 1990</p> <p>April 1990</p>
Trade Policy	<ol style="list-style-type: none"> 1. Elimination of import prohibition and relaxation of import licensing 2. Reduction and standardization of tariff rates: maximum rates set at 80% for consumer goods, 50% for inputs. Average rates decline to below 40% 3. Adoption of a simplified tariff structure and reduction in rates. Maximum rate was set at 50% for consumer goods, and several branches at 40, 30, 20 and 10% were created depending on the degree of elaboration 4. Liberalization of Agricultural Imports 	<p>March-June 1989</p> <p>June 1989</p> <p>April 1990</p> <p>Mid 1990</p>
Fiscal Policy	<ol style="list-style-type: none"> 1. Public sector deficit targeted at 4% of the GDP. Increase of gasoline prices of 100%, elimination of tariff exonerations 2. Increases in telephone, electricity and fertilizer prices. Government demands additional expenditures in social sectors and in an employment program 3. Government presents to Congress a value added tax law and a reform to the income tax law 4. Congress approves additional spending 5. Budget for 1990 approved but it does not include sufficient investment spending. Deficit targeted at 1% of the GDP 6. Government submits a public credit law to fund additional investments. 	<p>Feb. 1989</p> <p>March 1989</p> <p>Sept. 1989</p> <p>Oct. 1989</p> <p>Dec. 1989</p> <p>Feb. 1989</p>
International Financing Policy	<ol style="list-style-type: none"> 1. Government signs letter of intent with the IMF and asks for financing. It stops principal payments on commercial debt 2. Government signs a three year Extended Fund Facility with the IMF and two policy loans with the World Bank: a structural adjustment policy geared at getting public sector prices in line and a trade policy loan to support the liberalization effort. 	<p>Feb. 1989</p> <p>June 1989</p>

	<p>3. The IMF board reverses its policy of allowing Venezuela to finance itself through arrears, forcing the country into an agreement with banks to make payments current. Expected bank financing falls short by \$ 900 Million</p> <p>4. A debt-to-equity swap auction is adopted with the intention of converting some \$ 600 Million of debt into private sector investment projects</p> <p>5. Venezuela reaches an agreement in principle with the banks on a menu of options that include interest and principal reductions, new money, interest holiday and buy backs.</p>	<p>Sept. 1989</p> <p>Nov.1989</p> <p>March 1990</p>
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Source: Hausmann, 1995

The short term consequences of implementing a “big bang approach” (Hausmann, *ibid.*), were characterized by unexpectedly high recession and inflation, features that are common to similar reform processes in Russia, Poland and Peru. After the price explosion, the common belief was that medium term benefits should emerge since measures corresponded to a complete strategy, embracing additional reforms in the fields of economic integration, foreign investment, debt restructuring, privatization and social programs. This all sought to provide Venezuela with a new institutional framework in the economy that also slowly permeate to politics.

The stabilization stage of the plans was a relatively swift success since the executive using the declared economic emergency as anchor, implemented most of the measures without legislative resistance. The president was constitutionally empowered to issue unilateral decrees once the economic emergency was declared and so he did, but this was paid for with a high socio-political cost⁴⁸⁸ (Naím, 1993). Once the exchange rate differentials were taken to real terms, and most of the subsidies in the economy were eliminated, interest rates went up making private investment unlikely to happen, at least in the short run. Prices went up and inflation in 1989 reached 80%. Just as few of the subsidies were being dismantled (especially heavily subsidized gasoline), and some 15 days after having been sworn in power, Pérez witnessed a massive series of public demonstrations and riots leading to the loss of hundreds of lives in what was later called *El Caracazo*. Aside from these adverse social reactions and the growing opposition of most of his party, at a decree speed that made him famous during his first government Pérez made the transition from the stabilization plans to the structural adjustment program almost concurrently and they both happened very fast. As a cabinet member reported a year later, remembering the events of the stabilization measures adopted:

“The government acted with dazzling speed. The administration eliminated exchange controls and established the free convertibility of the Bolívar (currency), which immediately produced a devaluation of 170%. It freed interest rates which climbed from 13% to more than 40% per year, and liberalized virtually all prices. It

⁴⁸⁸ As Thorp (1999) puts it “In one sense no country was better qualified than Venezuela to benefit from the package of market oriented reforms, and in no other did the package collapse so spectacularly” (p.261).

increased the rates of electricity, water, telephone gasoline, public transportation and most other public services.

The Pérez administration proceeded to remove non-tariff barriers covering 94% of local manufacturers, and eliminate special permits for exports, simultaneously restructuring the tariff system, thus bringing the country's average tariff level down from 35% in 1988 to around 10% in 1990. Yearly tariff reduction rounds were scheduled and rigorously implemented which, together with the country's entry into the GATT, generated the most liberal trade regime in Venezuela's recent history. The authorities also secured the financial assistance of the IMF, the World Bank and the Inter American Development Bank.

At the same time the government started an intensive round of negotiations with foreign commercial banks aimed at reducing and restructuring the country's \$ 19.5 Billion public debt. These negotiations eventually led to an agreement that changed the composition of the debt, lowered annual interest payments and secured a seven year grace period for the payment of the principal amount⁴⁸⁹, (Naím, 1993, pp. 54-55)

⁴⁸⁹ The renegotiation figure that Naím provides here (\$ 19.5 billion), is the amount the government had to produce according to the old debt arrangements agreed during Lusinchi's period.

Table 4.11 *The Original 1989 Consensus*

<ul style="list-style-type: none"> • <i>Fiscal Discipline</i> Large and sustained fiscal deficits contribute to inflation and capital flight. Therefore, governments should keep them to a minimum. • <i>Public Expenditure Priorities</i> Subsidies need to be reduced or eliminated. Governments spending should be redirected toward education, health and infrastructure development. • <i>Tax Reform</i> The tax base should broaden and marginal tax rates should be moderate. • <i>Interest Rates</i> Domestic Financial Markets should determine a country's interest rates. Positive real interest rates discourage capital flight and increase savings. • <i>Exchange Rates</i> Developing Countries must adopt a competitive exchange rate that will bolster exports by making the cheaper abroad. • <i>Trade Liberalization</i> Tariffs should be minimized and should never be applied toward intermediate goods needed to produce exports. • <i>Foreign Direct Investment</i> Foreign Investment can bring needed capital and skills and there fore should be encouraged. • <i>Privatization</i> Private Industry operates more efficiently because managers either have a direct personal stake in the profits of an enterprise or are accountable to those who do. State-owned Enterprises (SOE) ought to be privatized • <i>Deregulation</i> Excessive government regulation can promote corruption and discriminate against smaller enterprises that have minimal access to the higher reaches of the bureaucracy. Governments have to deregulate the economy. • <i>Property Rights</i> Property Rights must be enforced. Weak laws and poor judicial systems reduce incentives to save and accumulate wealth.
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Source: "What Washington means by Policy Reform" in John Williamson, Ed. Latin American Adjustment: How Much Has Happened? (Washington Institute for International Economics, 1992)

The whole set of structural adjustment measures could be grouped in five areas, which are: commercial policy, tax policy, financial policy, privatizations and law reform legislation⁴⁹⁰ (IADB, 1997). In Venezuela the deepest reforms occurred in the realm of trade and finance policies with an abrupt fall of the tariffs and non tariff permission. In the area of finance liberalization measures have led to the elimination of interest rates control, and the dismantling of targeted credit systems as part of the subsidy policy. In the tax area, the reforms had the effect of replacing taxes on foreign trade with domestic taxes such as the IVA (value-added tax). Company taxes were lowered, but effective tax collection, something almost foreign to the oil-rentist mentality, remains still a distant desideratum (Lora, 1997).

Regarding privatization, Venezuela could be included in the slow reformers together with Brazil, Costa Rica, Ecuador, Honduras and Mexico (Lora, *ibid.*)

⁴⁹⁰ This study called "Latin America a Decade after the Reforms" issued by the IADB in 1997, uses a number of the categories previously exposed by Lora (1997) to evaluate the effectiveness of many of the adjustment measures.

although it was one of the few countries in the Latin American region (only eight managed this goal) where privatization income reached at least 1% of the GDP.

Table 4.12 *Economic Reform Programs in Venezuela*

Macroeconomic Stabilization	Structural Adjustments	Social Programs
Exchange rate unification Liberalization of financial markets Price Liberalization Elimination of generalized subsidies External debt renegotiation	Trade opening Public sector restructuring Financial reform Foreign Investment promotion	Direct subsidies Implementation of Public Welfare Programs Unemployment Programs Acceleration of Programs Exemptions for Social Investment Improvement in Social Services

Source: Torres, 1995

Despite impressive macroeconomic figures in 1991 and 1992, Pérez was impeached⁴⁹¹ in 1993. The large fiscal deficit of 1988 was suddenly turned into a moderate fiscal surplus in 1990 (Naím, 1993). The current account deficit became a surplus by 1989 and international reserves went from a historic \$ 300 million in 1987-88 to over \$ 12 Billion in 1990. The only way a president could be impeached in Venezuela was by having the Senate authorize the Supreme Court to start trial. Pérez had isolated his administration once more from the CEN of AD, just as he had done in his first term, and this time the party had reasons to make him pay for it⁴⁹².

⁴⁹¹ Pérez suffered a strong popular riot in 1989 and two coup attempts in 1992. Despite the popular riots of 1989, the government managed to get most of its reforms through and produce some important results in the next two years. The first coup in Feb. 1992 impacted the government more seriously, and afterwards Pérez moved more slowly until finally stopping the pace of the reforms. He left office the next year amid corruption (*malversación*) allegations. To explain his failure several thesis are still debated: Romero (1997) blames the rentistic (oil-rent) mentality of the country and the institutions, which expected a return to the former oil boom years. Naím (1993) and Navarro (1994) explain popular discontent with the inability of the government to instrument an adequate communication policy, which would have made high expectations possible and real. This was also made worse by the attitude of the media. Corrales (1996; 2001) observes that the radical cause of the failure while implementing the measures was the distrust (turned to a confrontational scenario) expressed by the ruling party AD. He claims that Pérez did not include his party as much as it had been used to being included in administrative decisions; and that AD saw in this executive attitude a diminishing scope of their patronage potential. Kornblith (1998) observes that the simultaneous presentation of economic and political reform elements created a tense situation inside AD, which had seen a substantial loss in its brokerage and power capacity in the electoral reform of 1988, despite having won most of the governorships and mayor elections. Murillo (2001) refers to the breaking of the long standing relation between AD and the unions which fractured a long tradition of union restraint while under AD administrations. Further, CTV protests undermined the administration's ability to govern (CTV called the first national strike in May 1989, not to defend democracy, but to protest government policies (and this during an Adeco administration!!!) and boycotted most social and labour programs.

⁴⁹² Pérez presented himself as an ideal scapegoat for AD, the party associated with immense corruption and patronage during the Lusinchi administration. The party deliberately distanced itself from the Pérez administration, trying to demonize the reforms and concentrate all negative public image in the President, who was now being sent to trial.

4.1 Privatization in Venezuela during 1989-1992

When privatizations began in Latin America in the early 80's, the enterprises selected for sale were minor examples of the state's industrial investment, and everything was done mostly surrounded by an experimental atmosphere. Until about 1987, privatizations in the developing countries were confined to small firms in the "periphery" of the public sector avoiding the approach to major investment or core industries (Ramamurti, 1994). Before the end of the 1980's and with the exception of Chile, most governments undertook a slow if somehow reluctant restructuring process of their public sector, frequently achieving organizational results rather than spectacular sales amounts.

Examples illustrate this reality: between 1982 and 1988 the Brazilian government raised about \$ 220 million for privatizations; in a similar period Argentina raised some \$32 million which was equivalent to less than 0.5 of the national GDP. In Venezuela, the state kept expanding, despite plans and certain actions aimed at reducing size of the decentralized administration. After 1989 things would abruptly change in this sense throughout the whole region⁴⁹³.

Privatization has been a key element of the structural reform plan⁴⁹⁴ promoted by both the IMF and the World Bank in Latin America and other third world countries, particularly during the 90's (see Williamson's table). Governments undertaking this measure have pursued a variety of micro and macroeconomic objectives: achieving gains in economic efficiency given the background of poor economic performance of public enterprises in many countries of the region⁴⁹⁵;

⁴⁹³ It has been argued that the whole structural adjustment program was not implemented voluntarily but forced upon countries by the multilateral agencies IMF, World Bank and IADB, which acted as motivational forces with coercing compounds. Ramamurti (1994) observes that while these agencies may have been important in halting the expansion of the state enterprise sector, reducing the amounts of subsidies to these firms or even helping to place some of them on the privatization agenda, the decisions of many governments to apply reforms went far beyond what these agencies were urging and privatization exceeded by far those expectations the international financial community had. In cases like Argentina massive privatizations can be explained as a need to ensure debt payments (first stage), and later to help make ends meet providing fresh cash to reduce the fiscal deficit.

⁴⁹⁴ We have elsewhere stressed the difference between the two phases of the economic adjustments commonly implemented in Latin America. The first phase was economic stabilization, referring to government implemented measures in order to restore balance in several macro economic variables such as inflation, exchange rates, balance of payment and fiscal deficit. The second phase, Structural Adjustments, consists of government implemented changes in how the economy and the state are organized, to make room for private competition in the production and exchange of goods and services. There are some divergences on the accuracy of both terms and whether there was a real separation between them. For other ideas see Haggard/Kaufman 1992, 1995; Krueger 1992; Przeworski, 1991.

⁴⁹⁵ Waterbury (in Haggard/Kaufman, 1992; also in Waterbury/Suleiman, eds., 1990) observes five points that explain part of the problem

- a. The reform, liquidation, or privatization of SOEs is driven by fiscal crisis of varying intensity. The perception of a fiscal crisis is a necessary condition however not *per se* sufficient cause of these changes
- b. The SOE sector in developing countries is the major source of public deficit, which in turn fuels inflation, reduces international creditworthiness, crowds out private borrowers and impedes export promotion.
- c. The SOE sector is the lynchpin of a reputedly powerful coalition of beneficiaries with well established claims to public resources.

improving the fiscal position particularly in cases where governments have been unwilling or unable to continue to finance deficits in the SOE sector, etc. In addition, liquidity constrained governments facing fiscal pressures sometimes privatized with the objective of financing fiscal deficits with the earnings obtained. This has more than often happened in Latin America. Other objectives to justify privatizations have included the development of domestic capital markets, as a secondary effect of the atomized sale of big state companies; these markets could be expanded in order to make them able to absorb bigger operations and counterpart results from the positioning of large SOE in shares⁴⁹⁶.

The transformation of a “state socialist” or an “autarkic and statized” capitalist society into an open market economy presupposes three processes (Lijphart/Waismann, 1994): a) privatization of public firms, b) deregulation and c) the opening up to world markets. Following this view, Privatization was a starting point to changing societies from the inward import substitution model to an export model, with open markets and a new role for the state. This process is not devoid of social risks since privatization, deregulation, and the opening up of the economy, are all impelled by a social logic of differentiation from what had been only state ownership, state regulation and control before that.

One of the first reported impacts of reforms has been the increase of social differentiation in both vertical and horizontal senses promoting strong polarization between rich and poor, and/or between winners and losers within social classes and sectors of the economy and regions of the country (Lijphart/Waismann, *ibid.*). In theory at least, the expected plan is that if an open market economy is successfully constituted from the beginning and reforms are well implemented, these discontinuities may diminish due to two factors: the operation of the market’s self regulatory mechanisms, and the redistributive policies carried out by the state⁴⁹⁷.

d. Much of the SOE “dirty work” of reform and privatization is done in the broader context of structural adjustment through cuts in the public expenditures, hiring freezes and labour shedding.

e. While major economic interests are at stake, and the beneficiaries of the reform and privatization remain unorganized, resistance to change will be reduced by the severity of the crisis, the coherence of the technocratic policy change and the opportunism of adversely affected interests

In the case of Venezuela, though the economic and political crisis continued to be severe, political sectors involved did little to defuse the tensions. The ruling party did not reduce the communication gap between the civil society and the reform compromised sectors and the coherence of some members of the economic team was shadowed by the incoherence of some cabinet members and ruling party Congressmen.

⁴⁹⁶ There is extensive literature on the microeconomic effects of privatization in third world and other countries, namely, Megginson/Netter (1999); Heller (1990); Hemming/Mansoor (1987). Other important aspects of privatization in general fiscal and macroeconomic impact come from Pinheiro/Schneider (1995); Larrain/Winograd (1996). For our purposes we have relied on the empirical studies provided by the World Bank in 1995.

⁴⁹⁷ This equation is far from being certain as many activists of strong neo-liberal solutions supposed. Lijphart/Waismann warn about the likelihood of relying on the appearance of self regulatory market principles or distributive policies by the state: “the transition from a statized capitalist society to an open market economy without strong polarizations could be long and its success is not at all certain” (p.236).

Privatization procedures, when done in a bigger scale and as part of a whole set of reforms (as was the case in Latin America), normally imply a thorough modification of the market structures due to the effects they exert over them. Clear rules, aside from asset sale to guarantee a legitimate competition structure, ought to be considered for later anti dumping regulations, particularly when they substitute monopolies that were in the public administration before (Sela, 1999). State intervention also becomes necessary in the following situations (Mieres, 1996):

- The sale of a natural monopoly
- The sale of a state monopoly without economic justification
- The sale of a SOE to a competitor that would imply the foundation of a dominance position

The process of privatizing state-held assets in Venezuela especially in the beginning (before 1997), was primarily coordinated and executed by the *Fondo de Inversiones de Venezuela*, FIV, an entity created in 1974, which during the strong privatization period of 1991-1995 operated under the guidelines of its own organic law⁴⁹⁸, and the privatization law (1992). Both normative instruments defined the legal framework for privatization in Venezuela after 1992 since before them the state used the law of disposal of public property to accelerate sales without major congressional intervention.

The FIV mission after the great turnaround and its 1991 law (when it became a privatization center in charge of the whole process of SOE selling) could be resumed as follows:

- Management of privatization policy and the transfer of assets from the public to the private sector
- Restructuring of the state-owned companies
- Contribute to the financing, expansion and diversification of the national economy
- Profitable and efficient investment and management of its own assets to preserve their value, as well as developing programs for international cooperation (FIV document).

Before 1991, all privatizations were done under the guidelines of the disposal law of 1987, which required the executive to name a commission in order to deal with the privatization or restructuring of the SOEs. For these purposes, two ministerial commissions were created: one for privatization (presidential decree num. 371), and one for the restructuring of public entities (presidential decree num. 757). Curiously enough, in a country with almost no background in the area and growing political opposition to the idea of selling public property to private owners both from in and

⁴⁹⁸ Through a presidential memorandum on 27/03/91 the president formalized the centralization of the whole privatization process in the *Fondo de Inversiones de Venezuela* (FIV). In this document, all entities of the centralized as well as the decentralized administration should submit (for posterior judgement of the inter-ministerial commission for privatization) those projects and/or plans regarding units under their supervision. This is a reorganized proposal of the end and means of the FIV, which had originally been created by presidential decree in 1974. Administratively it operated with a separated financial statement from the national budget.

outside the ruling party, Venezuela managed to privatize 32 state-owned enterprises resulting in “well over \$ 2 Billion in revenues and the relocation of over 37.000 employees from the public to the private sector” (Document “Privatization Program: An Investment Opportunity” p.1). The most important privatizations both on financial and political terms were the sale of 40% of the shares of the National Telephone Company, CANTV and the sale of 60% of the National Airline, Viasa.

4.2 The Logics of Privatization within the Great Turnaround

The IMF-approved reform package exposed in the Great Turnaround, was based on three fundamental ideas: a) economic stabilization measures, such as exchange rate unification and price liberation; b) structural adjustment policies, such as trade opening, tax reform and reforms of the state apparatus; and c) compensatory social programs aimed at reducing the effects of the adjustments on low-income sectors of the population. Programs to restructure and privatize state-owned companies were also part of the reform packages since they would provide funds to deepen the stabilization program and the adjustment measures (Torres, 2000).

The fact that privatization had been previously discussed in Venezuela as a feasible alternative but never under its proper name (rather as “SOE restructuring”, “disposal of public assets”, etc.) reveals the concern existing in each administration about the public debt/fiscal deficit problem existing on stronger and growing dimensions after 1983. However, it also shows the political apprehension to hurt nationalistic and statist paradigms (shared by both parties, AD and COPEI) by proposing the sale of state-owned industries because they were also a form of employment subsidy for political party members. Fear of breaking this patronage chance was even deeper than all other concerns⁴⁹⁹. SOEs had been under scrutiny by almost every democratic government and the different commissions created in almost each administration produced reports that served to confirm the cause and dimensions of the problem, but despite this reality, very little achievement was obtained, very little results were produced.

Political parties, aside from benefiting as employment brokers and job agencies for many of their members in the decentralized administration, were well aware that the political support for any real reform (particularly from the Unions) would be meager, and that the probable political consequences of SOE restructuring in a country that after the return to democracy had persistently believed in the myth of “state promoted progress” (Coronil, 1997), would be at least unpopular. The myth of

⁴⁹⁹ Politicians in Venezuela coined a term which clearly depicts their intentions and mentality regarding the need of reforms: *Correr la Arruga* (i.e. move the wrinkle), which refers to a carpet with a bump or a wrinkle where the best solution is to move it further leaving one’s parcel flat but the neighbour’s messy. The wrinkle or bump, remained intact for anyone coming to work on the carpet later on. All this engineering did was buy some time and temporarily save face for the party in power. This metaphor indicates that all administrations viewed their work as a postponement of real reforms, something politically costly that would be done by “the next”, which also made him vulnerable to blame if something went wrong. Oil booms had worsened this mentality fostering the myth of “self solutions” and that things would repair themselves since probably in the end, no changes would be necessary to try to keep everybody happy.

the “state-led progress” created an illusion which had to be destroyed sooner or later by the waking up to reality of the incapacity of the state to manage many of its enterprises and services.

At the end of 1989 the decentralized sector of the economy was composed by 373 entities of which around 50% were enterprises ascribed to a tutorial ministry (CLAD, 1991). Most of them were not *Empresas Básicas* (basic industries) following the division established in the Law of Public Property Disposal, but either state-owned monopolies (airlines, telecommunications, Harbors) or part of the service sector.

Table 4.13 Distribution of the Investment in SOEs

Sector	Percent (%)
Communal and Personnel Services	30
Manufacture	24
Finances	22
Transports and Communication	6
Commerce and Tourism	5
Agriculture	4
Construction	4
Mining	3
Public Services	2
Total	100

Considering the huge number of bankrupt or at least unproductive enterprises owned by the state, the sale or at least their transfer to private administration would seem something logical, simply following market rules. The “Great Turnaround” tried to promote this view⁵⁰⁰ but the fact that the same president had been the promoter of the state-led development project “Great Venezuela” only 15 years before, and that the ideas to promote a deep social and political change had not been discussed deeply enough even within his own party (Coppedge, 1994), provided fuel for political turmoil. Privatization alone was something far more complex than a simple sale of property or cessation of state rights in several sectors, as many state economic agents tried to depict⁵⁰¹. There is, for example, a strong interdependence in three features basic to the evaluation of public service policy and the possibility of concreting a state property sale (FIEL, 1999). To think of a public sale as plausible these premises ought to be attended: a) the design of the privatization process; b) the regulatory practice coming thereafter; and c) the contractual adjustment of the procedure. All of them meant time and political agreement and above all, congressional cooperation.

For all of these steps the executive had to count on an intense and expedite congressional participation at least from its own party; since as much as it is true that most stabilization measures were done at the stroke of the pen⁵⁰² (Naím, 1993), the

⁵⁰⁰ See *El Gran Viraje*, Pág. 15-35.

⁵⁰¹ The obvious need for privatization, a clear way to cut expenses and bring fresh investment to the economy, was part of an aggressive communicational policy of the executive. The FIV issued a big number of leaflets, brochures, books, and posters to explain their goals and the benefits they were after.

⁵⁰² The “stroke of the pen” or the decree power is constitutionally granted to the president in Venezuela when under suspended economic guarantees he issues decrees to rule the country on economic or

adjustment phase needed for anything to go through, either legislative approval, authorization or supervision. Even in the cases of “potentially successful” sales, as the telecommunication sector proved later to be⁵⁰³, the executive needed an imperative participation of Congress in creating the service regulation policy that would rule the service afterwards most especially when, as in the case of CANTV in Venezuela, the privatization dealt with a monopoly.

The changes announced in the nation’s 8th Plan (1989), proposed transformations under four basic arrangements for the rationalization of public services⁵⁰⁴ and of the whole public sector. They were: privatization; task transference; property restructuring and task restructuring. All were thought to be grouped into two great reform programs: the Privatization plan⁵⁰⁵, and the Restructuring of Public Enterprises plan⁵⁰⁶, for which the executive created two inter-ministerial commissions.

financial matters. What Pérez wanted and did not get (in his second period) was a more powerful instrument, a *Ley Habilitante*, which would have given him many more powers to rule in different areas. The stabilization phase of the adjustments was achieved mainly through presidential decrees, but the structural adjustment measures, slower and deeper in content, had to be negotiated with the legislative.

⁵⁰³ The telecommunication privatization in Venezuela can be considered a success due to several factors: first, the sale overcame all possible political resistance which was rather low (Ramamurti, 1994); second, services improved far more than it could have been expected and the facility to obtain access to telephone lines increased notoriously after privatization (Frances, 1994), plus the fact that the sale was made in cash.

⁵⁰⁴ The rationalization of the public sectors in the VIII Plan had the following objectives:

- Reorient the nature of any state intervention trying to concentrate the public function on social welfare while promoting competitive participation of the private economy.

The plan assumed that the advance of this process (the opening of access to the private economy) would produce

- Increase in the efficiency and productivity of the economy to help its insertion in a global context
- Improve the quality of goods and services produced locally and foster the grade of competence to the needs of users and consumers
- Promote capital democratization and improve income distribution
- Raise foreign trust on the Venezuelan economy and create a favourable climate for private and national investment

⁵⁰⁵ The inter-ministerial commission for privatization was created by presidential decree Num. 371, on 27/07/89; it was integrated by the then Ministers of Finance and Development, the Minister of the Investment Fund (acting as president of the commission), the Planning Minister and representatives from the private chamber sector (Fedecámaras) and the unions sector (CTV). Among the objectives of privatization within the 8th plan were:

- capital market development
- employment promotion
- Increase the production of goods and services
- Expand private sector
- Improve quality of public services
- Free financial and management resources from the government
- Interest foreign investment
- Promote competition

⁵⁰⁶ The restructuring of State-owned Enterprises had a parallel commission created by decree Num. 757 on the 01/02/90 and integrated by the Interior Minister, Finance Minister, Planning Ministry (as president), the Minister of the presidential reform commission (Copre), the Minister of the Investment Fund and the general attorney. It was created with the following objectives:

- simplify relation between SOE and the central government

It was the first time in democratic history in Venezuela, that the sale of a SOE to private investors was given its proper name: privatization. This implied *per se* a potential political friction. The Great Turnaround was at the same time another attempt to rationalize public expenses amidst the decentralized administration, something that had been done repeatedly in previous administrations with very little consequences. Politically however, the 8th National Plan made no special reflection on the possible hindrances a non cooperative legislature could mean and Pérez, thinking highly of his own charisma and the persuasiveness of his economic team, thought that all political difficulties related to reform introduction could be easily swept away.

As can be seen from the competences assigned to the ministerial commissions of privatization and state enterprises restructuring, the idea was to advance the sale of already set enterprises, and to encourage the preparation for the sale of other SOEs. The SOE restructuring commission had goals that were similar to former restructuring boards (simplify relations with the central government, adjust prices and tariffs) but also had new ones that complemented the work of the privatization commission and prepared all enterprises to a certain extent, to be susceptible of privatization⁵⁰⁷ (new legal frame for foreign investment, improve the competitive surrounding, market discipline of the SOE's, etc). Privatization was supposed to produce employment, improve quality of goods and services, stimulate economic competition and bring foreign investment into the economy.

Privatization initially concentrated in areas that most likely affected the competitiveness of the export sector, such as ports and telecommunications. It was also a chief policy to bring in domestic and foreign capital and increase the net yearly flows of private investment. While all this happened very rapidly when the programmed sale had been successful, service improved almost as a secondary effect. The telecommunication sector, stagnant in investment and growth since the mid 80's is a good example of a successful sale (Frances, 1994).

By 1991 four commercial banks, the national airline (Viasa), the national telephone company, CANTV, as well as cellular telephone system permissions, a shipyard, the ports, sugar mills and several hotels had been privatized. Their sale was a multiple success since they provided the executive more than U.S. \$ 1.5 billion in less than two years. This positive result went along with the reduction of the fiscal deficit, due to the elimination of these enterprises' expenses in the ministerial budget. After the crucial years of 1989-1990 and with the passing of the privatization law in

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- Restructure particularly those enterprises with most impact on economic competition, fiscal deficit, and quality of life
 - Reduce all financial transfers from the central government to SOEs
 - Adjust all prices and tariffs of products from the SOEs
 - Eliminate the debt transfer between SOEs
 - Improve the competitive environment, market discipline and private investment in SOE
 - Improve the legal frame to encourage foreign investment
 - Assign a new role to the Venezuelan Investment Fund

⁵⁰⁷ Torres (1994) observes that from these two commissions, the restructuring commission began to languish as the limitations and inefficiency of its mission became clear, whereas the privatization commission managed its first tangible operation –the sale of a state-owned bank- in 1990.

Congress, privatization would continue with its specific schedule of transferring state controlled equity to the private sector, as announced by the Investment Fund (FIV) for the following years (1992-94) in the budget bill drafts. This schedule included the projected privatization of: sugar mills, horse racing tracks, a national airline, Caracas' water supply system, a regional power distribution facility, public television network and other SOEs (FIV, reportes varios).

Following this pace meant producing one or more privatizations per month, an example that was hard to find in Latin America (outside Argentina) or in Eastern Europe. To understand the whole scope of what was being done, it is important to consider that privatization at the beginning of the 90's in Venezuela was not an isolated policy, but part of a broader program of economic reforms designed to make the economy "more open, efficient and competitive, granting the market a much bigger role in the allocation of resources in the economy that it previously assumed" (Baer/Birch, 1994, p.23). A rather different picture emerged later, after Pérez's impeachment, when privatization efforts (during 1994-1996) occurred in a decidedly hostile environment to promote a market driven economy⁵⁰⁸.

Table 4.14 *Structural Adjustment and New Legal Frames Introduced by the Executive*

Reforms	Objectives	Dates
1) Commercial Opening: Anti-Dumping Law	Protect national and international producers against dumping practices	1992
2) Foreign Investment Promotion		
3) Restructuring of the Public Sector: Privatization law	Assign the FIV as the privatization entity and rule the destiny of the privatization income	1992
4) Financial reforms: General Banking Law	Promote competition and limit financial and capital barriers	Presented 1992, approved 1993

Source: Gaceta Oficial

Once the inter-ministerial commission was created by decree, the privatization program began in 1990 as part of the reforms that would complement the whole stabilization package agreed by Pérez with the IMF. According to related sources (Torres, 1995; Villalba, 2002, interview) the proceedings began with the smallest enterprises (the first examples were three commercial banks); later it sold some ports, the national airline and the national telephone company, which proved to be the biggest stake. Political instability and a growing hostility against privatizations occurred after the peak of the privatization process, the sale of the telephone company CANTV. This made it almost impossible to continue the privatization agenda and the

⁵⁰⁸ Caldera had a minority in Congress and made a coalition with the party that had opposed privatizations at any cost during Pérez's administration, the MAS. When after two adrift years for the economy with exchange and price controls, Caldera tried to start his *Agenda Venezuela* (a reform plan not that far from the Great Turnaround, if anything less ambitious), sectors from the ruling party *Convergencia*, started to defect and the MAS, with some Ministers in the cabinet, also began to atomize into several fractions. The remaining inner core of the MAS, later completely divided, allied with the former military coup leader turned candidate, Chavez, demonstrating its anti-reform convictions by siding with the most anti-reform of all candidates.

pre planned FIV sale schedule. Privatization became the center of a heated political debate, also of the political campaign, once Pérez had been impeached.

Table 4.15 *Privatization Results (1990-1993)*

Enterprises	% of sold shares	Date	Price (Bs. Millions)
Banco Occidental de Descuento	68.4	15/10/90	9.7
Banco Italo Venezolano	95.6	26/03/91	63.6
Telefonía Celular	100	31/05/91	97.7
Banco Republica	91	02/07/91	61.9
Viasa	60	09/09/91	145.5
CANTV	40	14/11/91	1885.0
Central El Tocuyo	100	26/11/91	3.5
Astinave	88.5	13/12/91	20.5
Hotel Cumanagoto	100	05/02/92	5.4
Hotel Miranda	100	05/02/92	1.2
Central Cumanacoa	100	15/07/92	2.5
Central Río Yaracuy	100	02/10/92	6.9
Cerámicas Cumana	AT	15/10/92	0.8
Hotel Jirajara	100	26/10/92	6.2
Terrenos Aeropuerto Caracas	AT	20/11/92	0.04
Lamforte	AT	20/11/92	0.9
Hotel Tama	100	26/11/92	4.6
Central Tacarigua	100	17/12/92	1.2
Barquisimeto Plastic	AT	03/02/93	0.6
Central Majaguas	81.1	12/03/93	8.7
Parcelas Aeropuertos Caracas	AT	23/03/93	0.09
Banco Popular	100	07/09/93	22.2
Total			2348.7

AT: Funds transferred to the CVF (Venezuelan Development Corporation)

Source: Fondo de Inversiones de Venezuela

4.3 Actors Involved in the Venezuelan Privatization Process

After the Great Turnaround was launched and the quick transition from IMF-agreed stabilization programs to structural adjustment measures started to occur, privatization became one of the cornerstones of the whole economic *paquete*. According to planners (Torres, 1993), it would provide the government with fresh resources in the best case, or if not, at least eliminate the fiscal overweight produced by inefficient or bankrupt enterprises that had become a load in the yearly budget. Pérez changed much of the legal frame through decrees and resolutions, creating commissions and several new provisions. The following actors were part of the privatization process:

Inter-ministerial Commission for Privatization: it was created through decree 371 on the 27/07/89, and integrated by the Ministers of Finance, Development, FIV (as the president of the commission), Planning Minister, the Attorney General and two representatives from the Industries and Commerce Chambers (Fedecámaras), and from the Union Central (CTV) respectively. This commission was created as an advisor to the executive power in the definition, evaluation, and follow-up process of all privatization procedures. The commission started working and designing

privatizations under the “law for disposal of public property”, which granted it a wide range of decision possibilities regarding the privatization procedures.

Fondo de Inversiones de Venezuela (FIV): it was the legally empowered entity (reporting directly to the president) in charge of the design, coordination, execution, supervision and control of the whole privatization procedure. According to cabinet resolution Num. 9 made on 27/03/89, the whole policy of privatization was centred on the FIV which commanded all other entities of the centralized and decentralized administration. To this office they had to present their privatization projects, or their considerations of public enterprises that could be subject to privatization⁵⁰⁹.

Privatization Commission in Congress: this commission produced a detailed follow-up work on privatizations aside from the regular activities of the finance commission and all other permanent legislative commissions. The members worked as comptrollers of the process, especially when studying the privatization of public entities (CLAD, 1991). The privatization law, finally approved by Congress in 1992, observed in its Art. 9 that the executive power must request the authorization of the finance commission from both chambers, Deputy and Senate, for every privatization procedure within at least 90 days before the beginning of the process. Before such specifications, with the law of disposal of public property, the process could be done more swiftly and discretionally. Despite that, the president could still be subject to congressional blocking of the decision to which he had no real veto power if Congress decided to override his decision. The law of privatization suffered later a number of reforms being completely reformed two times more. Most of these reforms and new texts gradually granted a stronger empowerment of the Legislative over Executive initiatives, making the sale of any SOE a tough gambling process for the latter.

World Bank and Inter-American Development Bank: their role cannot be diminished since they have provided loans to equip the commissions (both in Congress as well as in the executive) with hired operative personnel (advisors, technicians), and loans to finance assessment reports, evaluations, value studies, legal and administrative auditing and other requirements in the course of action of the privatization process⁵¹⁰. In 1997, the Inter-American Development Bank started an economic advisors’ office for the parliament in Venezuela as part of a regional project. The idea was to be able to give the finance and economic commissions enough economic counsel to better support policy decisions.

-FOGADE: after the 1994-1995 financial crises, the Fund for the Protection and Warranty of Banking Deposits (FOGADE), participated in the re-privatization of 529 enterprises which were given as collateral to guarantee the payments of enormous liabilities the state had absorbed. Although it is outside the scope of this study to consider FOGADE’s involvement in privatizations (since it was posterior to the

⁵⁰⁹ Caldera (1994-1998) ended the super-ministerial character of the FIV when it was made part of the finance ministry by cabinet decision (30/07/97). That was also a non declared end to all privatization initiatives and policies.

⁵¹⁰ The Eximbank from Japan could also be included here since it provided loans to support the restructuring of private enterprises after 1993; however it is a minor actor in relation to the privatization practices occurred during the Pérez years.

considered privatization procedures and part of a more dense climate against privatization) it is important to deem that according to the *Ley de Regulación de Emergencia Financiera* (law of regulation of the financial emergency) it acted jointly with the FIV to advance privatizing option for the assets it had received.

4.4 Fears surrounding Privatization in Venezuela

Even before the policy had a proper name, obstacles to privatization in Venezuela have varied ever since the idea was being proposed in the early 80's, during the electoral campaigns. Most of the opposition born after 1989 (and later) could be divided into two large groups, namely, those motivated by ideology, nationalists or otherwise believers in the state centered investment promotion; and those motivated by specific interests, most particularly, groups that had benefited from the former rentist state and the exclusive society instated after the *Punto Fijo* pact (Birch/Haar, 1998).

Those moved by ideological concerns against privatizations were part of the so-called social democratic or left wing of the political spectrum; people who still believed in the state as an enterprise and development promoter (López Maya, 1994). After all, the whole import substitution conception and the range of old Cepal (ECLAC) ideas had been applied to full extent during Pérez's first administration. The statist nature of long standing populist parties like AD, and later on the Socialist MAS or the Causa R, explains why these sectors were ideologically touched and hurt by the new conception on the role of the state liberal reforms proposed.

The opposition motivated by special interests represents a political and also private sector class that had grown used to benefiting from the resources of the state directly or indirectly ("party as broker" mentality, for example). The big political parties, partly due to the nature of the *Punto Fijo* pact that deliberately (through electoral system rules) excluded several actors from the socio-political game, and partly due to the nature of the structural politics designed by the constitution, saw themselves if not as direct distributors of power quotas, at least as brokers of other economic interests either in Congress or in the Cabinet (Naím, 1993). This "broker" or "lobbying institution" status of the political parties became real because provisions that required congressional approval usually took a long time and ended up being diluted; or because political influence was needed both inside and outside the political apparatus to participate in the distribution of oil rents (Karl, 1997).

Table 4.16 *Pro-Privatization Arguments*

Arguments Against

<i>Pro-Privatization Arguments</i>	<i>Arguments Against</i>
1) Decrease in existing budget deficits	1) Sell national Patrimony
2) Increase future government revenue	2) Concentrate Economic Power
3) Reduce domestic and foreign debt	3) Endanger Vulnerable Groups
4) Develop Domestic Capital Markets	4) Jeopardize productive capacity
5) Revitalize the private sector	5) Spur Corruption
6) Improve long term condition of the workers	
7) Activate foreign bond and equity markets	
8) Promote competition and efficiency	
9) Improve Social Services	

Torres (2000) observes six types of fears, “both real and imagined” (p.143) that initially raised concerns among supporters and contraries to the initiative of privatization. All of them were reflected in the discussions in parliament⁵¹¹. To those against the idea, privatization could produce:

- Price Increases
- Unemployment
- Monopolization
- Denationalization
- Weakening of the State
- Corruption

From these factors, commonly argued by resistant forces (mostly AD union leaders) in Congress, the first two proved to be right to a certain extent. Since private enterprises that acquired SOEs would start in the economic game without special subsidies, they could not continue to support investment without rationalizing its cost/benefit balance. Thus the increase was likely to happen particularly in heavily subsidized state-owned monopolies such as the telecommunications⁵¹².

Regarding monopolization, the concern existed in Congress that favored economic groups, already powerful enough to buy state enterprises, would close a monopoly on some areas making the rich richer and the poor poorer. This called on attention both for the control of the sale procedure as well as for the posterior regulation of the sector, something that ought to be done by the legislative in association with the executive. Many party leaders, particularly in the case of AD (and the *Partido Justicialista* in Argentina too) saw themselves as guarantors of the social distribution (social democracy), and assumed the populist origin of their party by trying to prevent this expected monopolization from happening (Corrales, 2001).

Two other factors, denationalization and weakening of the state, were commonly used by the congressional privatization commission members in Venezuela as part of the acrimonious debate preceding some sensitive privatizations like Viasa, the national airline. The Congress debate diary (third quarter 1991) reflects the nationalist position taken by several Congressmen and media spokesmen, against the selling of the national identity (El Nacional).

⁵¹¹ Arguably so Torres could point all these factors out due to his experience while being interpellated in Congress when he was President of the FIV. We could interview his deputy Minister, J. Villalba who reinforced this belief observing that he and Torres had been called to Congress more than 20 times in a year. To the fears here outlined, there could be an addition: workers exclusion. This could be considered as a mixed fear of unemployment rise and the endangering of socially vulnerable groups. This was a concern during Lusinchi’s government reflected by Congress in the Law of Disposal, where any worker association (cooperatives, etc) has a clear preference to buy shares when privatizing public property. After 1989 it became a non negotiable point for AD, MAS and Causa R in the interventions of Matos (AD), Márquez (MAS) and Istúriz (Causa R) (See *Diario de Debates Setiembre-Noviembre, 1991*)

⁵¹² The congressional debates show us how many deputies were strongly concerned with the heavy subsidy policy the CANTV had, and how this affected the cost per line. In the case of the national airline the situation was different though subsidies were still present in other ways. Prices for the airline had to be set according to international standards but losses would be absorbed by the state.

Considering that market reforms are likely to be antagonized by a) cost bearing sectors; b) reform skeptics and c) anti establishment sectors, it is possible to understand that many of these arguments were utilized with or without a real base representing one or more of these categories.

From the cost bearing sector, not only the horizontal society tissue would be affected but those groups with congressional representation who would lose specific privileges. These would be: a) in the private sector: access to subsidies, soft loans and sheltered markets; and b) in the union sector: former statist employment protection. Regarding reform skeptics which were the most, considering the government's background and its loose communication policy, they represented those who had little belief in Pérez and his administration. People in this group thought that the reforms were mostly oriented to benefiting a targeted economic group, and that Pérez (who had been close to a legal trial for corruption, saved by only a few congressional votes in his last period) was a man who fostered unclear and corrupt deals. The third sector, or anti establishment sector, was personified by the hard union leadership of the Causa R (López Maya, 1993) and some AD sectors strongly linked to the CTV Union interests. This sector was strongly anti privatization, constantly using most of the populist slogans that could defeat this initiative in the eyes of a crowd supposedly deceived by the government. The motto was that the country was being robbed of its property only to benefit a few; that Venezuela with Pérez's corruption was going to be left out in the cold with a state so weak that national and multinational companies would be able to impose their criteria and laws to the rest of the society; that the state was losing its power by selling everything⁵¹³.

4.5 Methodology of the Privatization Process in Venezuela after 1989

Privatization in Venezuela relates to the transfer of property or management from the public to the private sector (CLAD, 1991; Kelly, 1987). This can be accomplished by various mechanisms defined and regulated by the privatization law (1992), and its subsequent reforms (1993, 1995, and 1997). Before this law was passed, all privatizations (CANTV shares sale for example) were done under the 1987 law of property disposal which was much more executive oriented, diminishing the supervision role of the legislative.

On normative terms according to the disposal law (1987: Art. 4) the disposal of public goods could be done through the following ways⁵¹⁴:

⁵¹³ Most of these arguments, quickly exposed here, have both a real and a theoretical background. As what regards to reality, they were collected from quotes product of news paper revision and the *Diario de Debates* during the second and third quarter of 1991. About their theoretical basis, Coronil (2001) exposes the myth of progress and its consequences some of which would be the equation: reduction of the state, reduction of societal power and staying at the mercy of private unregulated groups.

⁵¹⁴ Art. 4: La enajenación de los bienes a que se contrae la presente ley podrá efectuarse a través de las siguientes operaciones:

- 1) Venta del Bien con las modalidades de precio que determine la comisión
- 2) Permuta por bienes requeridos por un determinado ente u organismo del sector público
- 3) Dación en pago del bien, por deudas asumidas por un determinado ente u organismo del sector público
- 4) Aporte del bien al capital social de las Empresas del Estado

- 1) Sale of the asset under the conditions and terms determined by the privatization commission⁵¹⁵
- 2) Barter of goods that the state may need, or as part of debts acquired by an entity of the public administration
- 3) Giving of the asset as part of payment for debts from an entity of the state.
- 4) Contribution of the asset to the social capital of the state enterprises
- 5) Any other procedure determined by the privatization commission

According to the privatization law (1991) the requirements varied if so, a little more in the technical aspects:

- 1) Transfer of all or part of the shares of a company
- 2) Sale of assets
- 3) Privatization of management through concessions or contracts
- 4) Involvement of private capital in joint ventures and strategic partnerships
- 5) Liquidation

The privatization law (1992), established that funds generated from the sale or concessions of state-owned assets, were to be used by the government for amortization or repurchase of foreign debt (FIV Doc⁵¹⁶.)

Functionally, the methodology for SOE privatizations in Venezuela had three basic steps according to the law of disposal (1987) and the privatization law of 1992: the first move is done only once and the other two occur for every particular case of privatization. Congressional participation is only possible during the last stage, though later modifications of the privatization law (1995) enabled the legislative to act also on point 2.

1) Definition of the Privatization Policy: it is an attribution of the president in cabinet meetings, starting from the proposals made by the inter-ministerial commission. The definition of the policy implies the general pattern of the

5) A través de otros tipos de operaciones que determine la comisión

Parágrafo Único: Corresponderá a la comisión determinar en cada caso el tipo de operación mediante el cual se hará la enajenación.

⁵¹⁵ This “commission” agreed and established by the law was of ministerial character and had enormous powers. Among others, to determine the price of the asset by hiring at least two value specialist firms, but were this not enough or not satisfactory, the commission could determine the price under its own criteria. Kelly (1987) says it eloquently: “The disposal law was extraordinary in some ways. It authorized a five member commission to sell off just about anything outside the so called heavy industries, at a price determined by a variety of methods, including that of present value of future cash flows. This last provision was extraordinary, because few of those who signed it could know its consequences. For many state-owned enterprises, a reasonable estimate of the present value would probably lead to estimates below commonly used criteria such as book value of assets” (p.42)

⁵¹⁶ The FIV document “Privatization Program: an Investment Opportunity” took some of Torres’ (1994) appraisals for the method through which enterprises had been privatized in Venezuela, namely,

- Offerings are public
- Wide distribution of information on privatization opportunities and processes
- Case by case evaluation and application of the privatization criteria
- Sale strategies adjusted to each case
- Adjustment of the form of transfer of assets according to each case
- Transactions are in cash
- Market appraisals
- Involvement of employees and industry participants

privatization program, the clear determination of the sectors and entities subject to privatization, the supervision devices and the follow-up of the program.

2) Execution of the Privatization Policy: it corresponds the FIV as coordinator and president of the inter-ministerial commission (and responsible for the whole privatization strategy) to act as representative of the president and the executive power, following five steps⁵¹⁷. All these aspects ought to be presented both to the inter-ministerial commission and the president who makes the final decision.

3) Political Follow-Up: it is done by Congress through the privatization commission of the Deputy Chamber and through other permanent commissions (e.g. finance). To fulfill this function, Congress is informed by the executive of the privatization cases, makes the interpellations or ministerial questioning it deems necessary, and produces a final report which, in case of not coinciding with the executive's intentions it is not mandatory for the latter to follow.

In practice, the privatization process done in several important cases of state monopolies as well as service assets (hotels for example), followed several steps: First, the preparation phase where the company to be privatized was selected and analyzed by the inter-ministerial commission through the subsequent features⁵¹⁸:

- ✓ Analysis of the company and identification of any restrictions on privatization
- ✓ Definition of the objectives
- ✓ Selection of the method of privatization and decisions on regulations
- ✓ Preliminary valuation of the company: valuation of fixed assets; valuation of the company based on cash flow analysis; evaluation of existing debts and employee commitments
- ✓ Evaluation of legal, financial and capital structure
- ✓ Definition of a plan for worker participation

The next phase included the contracting of studies and advisors, usually from internationally recognized firms. The contracted companies provided various types of services ranging from simple consulting on privatization strategy or industry analysis, to managing most of the process. Once the preliminary analysis was completed, the pre-qualification process began and the interested parties were registered. This stage includes:

- ✓ Definition of conditions for the privatization process

⁵¹⁷ The five steps are:

- Hiring of the consulting firms
- Firm analysis (value studies, enterprise profile, etc)
- Preparation of the sale (formulate the privatization project, hire the investment banks, design the sale strategy and the basis for the transaction, prepare promotion brochures, define all transaction procedures)
- Transfer of the enterprise (pre-qualification of potential buyers, prepare the auction, evaluate and compare offers, define the winner of the bid, prepare documents for the transaction)
- Follow-up and evaluation

⁵¹⁸ Most of these points have been extracted from documents and leaflets made by the FIV, such as "*Proceso de Privatización de las Empresas Públicas de la República de Venezuela –lineamientos generales*" (1994).

- ✓ Public announcement of the process and contact with interested parties
- ✓ Reception of letters of intent and information on the interested parties
- ✓ Definition and selection of criteria for pre-qualification of the interested parties
- ✓ Agreement of the pre-qualification committee
- ✓ Elaboration of the rules and procedures of the sale
- ✓ Public notice of the pre-qualified parties
- ✓ Signing of the confidentiality agreements with the pre-qualified parties
- ✓ Delivering of the memorandum or prospectus

The next stage is the negotiation phase which consists of the following actions:

- ✓ Definition of the data available and the rules governing its use
- ✓ Working sessions covering issues related to the sale
- ✓ Visit to the company's installations
- ✓ Approval of the base price
- ✓ Elaboration and public notification of the base price and date of the public offerings
- ✓ Preparation of bids

On political terms, government overcame potential opposition to privatization by using the disposal law granted to Lusinchi which was less severe than the privatization law the executive later proposed. Another political strategy and methodology used to privatize firms was appointing individuals that shared the president's closed commitment to privatizing enterprises, to the positions of Ministers and state enterprise managers. In Venezuela this is meticulously true for both cases of our study: airlines and telecommunications. The presidents of these firms during the transition from public to private (Quintero in Viasa, and Martinet Mottola in CANTV) were committed to privatization. In this way the team work with their cabinet counterparts could produce faster results.

4.6 Notable features of the Privatization in Venezuela.

The privatization process in Venezuela, particularly during the first two years of the Great Turnaround (1990-1991), implied the fulfillment of a number of targets in SOEs sales as it had been projected for the budget plans presented before Congress in both years. The presented program aims were fulfilled and even exceeded income projections during these two years, something that did not happen again later. In fact, after 1993 all governments have failed to meet any privatization proposed objectives presented to Congress (FIV annual reports). After 1992 and the enormous social and political destabilization that occurred with two military coup attempts, privatization targets have remained basically the same and repeated year after year⁵¹⁹, as a perpetual motto of what should be done with unproductive public enterprises. The list

⁵¹⁹ Privatization of several firms as a goal could be observed in most of the budget proposals during Caldera's second administration, when the FIV pursued other important projects in the aluminium and steel sector. Very little was accomplished outside of the Oil Opening investment, and the sale of the remaining share amount (still in public hands) of the CANTV.

of companies for sale however, has lengthened; as auctions from previous years failed to be completed and new ones were added with the banking crisis of 1994-95 (Torres, 2000).

Congressional opposition to privatization was always existent since 1989 and to a certain extent even expected from most of the statist parties. It was decidedly fostered by some AD leaders under Pérez to disrupt the executive agenda, and increased in later years to the point of making privatization a social taboo. Privatization, a word that was never used before 1989 to define the sale of public assets to private companies, had a very short life as a government proposed policy since after the Pérez years, it became a social anathema associated with the negative effects of the neo-liberal package Pérez and his economic team tried to implement.

The fact that even strong populist administrations like that of Caldera (1994-1998) have submitted to the legislative budget proposals containing income projections from privatizations⁵²⁰, shows that subsequent administrations had no political possibility to get the program through congressional supervision due to the scarcity of existing political will. In the case of Caldera this was even more dramatic since he had a very small fraction of Congress in both chambers with his party, *Convergencia*, and his finance Minister, Matos Azócar, had been one of the champions of the AD counter privatization campaign during the Pérez years. Matos, also Lusinchi's planning Minister and a former union leader, had been the chief of the congressional privatization commission and his position contributed to radicalize all AD opposition against Pérez and Privatization. With such political actors, the environment was not conducive for privatizations as records from years 1993-1995 show.

Some characteristics can be observed in those two most effective and intensive privatization years (1990-1991), which show a relation between the applied methodology and the results obtained.

First, in all cases the sales were carried out through public auctions⁵²¹, which meant there would be an officially agreed minimum price under which no purchase options would be considered⁵²². The prices paid varied from this starting point depending on the macroeconomic context and potential profit of the company and the number of bidding participants (FIV Report, 1992). As a consequence some auctions were declared vacant because of that strategy: bidders withdrew their offers when they found the minimum price too high or uncompetitive. In the case of Viasa only one bid made it to the end although there had been two at the beginning.

Second, most companies were sold to an investor, investor group or strategic partner who purchased between 40 and 100% of the shares depending on the case and the type of sale. The stock market was not commonly used except for the first

⁵²⁰ Yearly budget laws during this period contain the projected income from privatization of several SOEs.

⁵²¹ This detail can be deducted from several documents aside from Torres' account (2000): documents from the CLAD, sources from the finance ministry and the FIV (annual reports 1990 and 1991).

⁵²² Since most of the privatizations of these two years were done without a proper privatization law, this was not a mandatory requirement but a coalition of cabinet opinions on the topic.

privatization⁵²³ (Banco Occidental de Descuento) and later for the second portion of the CANTV shares, however the government reserved for itself in some cases a certain percentage of the stock (CANTV for example).

Among the peculiarities that are common in most cases we find:

- Cash sales
- Sales without company restructuring
- Labor Participation
- Transparency mechanisms⁵²⁴
- Detailed congressional Intervention

When a government announces the privatization of a company it often becomes subject to pressure from potential buyers who might either ask for concessions or favorable conditions for the sale. This situation becomes even more certain when the company to be sold has financial problems. “It is all aggravated by the conditions common to developing countries, which suffer economic recessions and other serious problems such as political instability” (Del Castillo, 1995, p.5). In such an environment one of the common petitions buyers could make is either the concession of a credit or of debt conversion schemes. The Venezuelan government maintained the decision to sell all assets in cash in order to avoid pressures from Congress, and a possible use of the *Ley de Salvaguarda* which still remained a threat to any purchase action that could be deemed as unclear (Villalba, 2002). Congressional oversight, though not specifically framed by a particular law (until 1992), could still make considerable reforms on executive propositions.

Aware of this weakness, Pérez and his economic team pushed for clear privatizations under the structural easiness of the 1987 disposal law. Additionally, any concession regarding discounts or credits given by the state to private firms, would also have presented the problem of nourishing an already “unfriendly-to-the-idea” public opinion; plus converting the state, from the beginning, into a creditor of the new investors⁵²⁵, something that could potentially damage and derail the whole process (Villalba, *ibid*).

⁵²³ The *Banco Occidental de Descuento* was sold through the stock market but in general those operations intended to be accomplished through the capital markets, were notably delayed. A good example of this is the sale of the second package of shares of the CANTV that remained under public administration and that was later released and sold. The small size of the Venezuelan capital market was also a reason to avoid its use in the privatization procedures.

⁵²⁴ Torres (*ibid.*) adds to these categories the “privatization of the privatization process”, meaning that the FIV technicians in charge of the privatization agenda took advantage of the experience and knowledge of the private sector in carrying out the sale of state-owned companies. To that purpose it created in 1990 a centralized register of private firms (both national and international) which would act as database to promote the sales.

⁵²⁵ This case had to be avoided since it had already occurred in the recent past. Frequently in Venezuela (and in other countries) the state ended up controlling a number of companies because the private investors, who received state funds to develop them, either failed in their efforts or defrauded the state. It happened also later in Venezuela when during the financial crisis of 1995, the state accepted a number of private companies as collateral for the loans it gave. Many banks went bankrupt afterwards and could not reclaim their property forcing the state to become proprietor and having to manage a sale of those properties, mainly overrated real estate investments.

Another characteristic of the Venezuelan privatization process was the sale of SOEs “as they were”, without significant labor or administrative restructuring. Rather than being a pursued attribute this was a consequence to the macroeconomic situation of crisis the country was undergoing⁵²⁶. Aside from fiscal barriers to start extra expenditures on SOEs, the fact that restructuring would take time and that many privatizations were occurring quite simultaneously in different countries in Latin America, could create the risk of wasting time and losing investor opportunity, especially in the most competitive sectors such as telecommunications and airlines.

The policy drawn by the FIV in 1990, contemplated only “some” SOE cases as candidates for restructuring; a demanding ladder of considerations played against the idea:

- 1) Restructuring of companies as a prior step to their privatizations only made sense when this would permit or increase competition or when it was the only way a company could be sold.
- 2) Any restructuring to be undertaken would be assumed by those who bought the company rather than by the state
- 3) Except when dealing with a simple restructuring it made little sense to restructure a company to increase its sale price because the associated risks might not be compensated by the potential increase in sale price⁵²⁷.

The congressional variable, with a non-workable ruling party faction could prove decisive to hamper the procedure were it not tight sealed from legislative influence. Had the government decided for a policy of restructuring of the enterprises in order to increase their price instead of direct privatization, this would have created a potential ground for congressional intervention, something that was likely to happen considering the hostile relations between president and legislative (ruling party) and because, once a company had been restructured, the estimate of a real price for it would have been much more debatable. Considering the depth of the 1989 fiscal crisis, the executive could allege it had no funds to start restructuring processes, which in the end would probably not be rentable since the money invested was not likely to be recovered in the sale.

Precisely the fact that many of these SOEs were either run down or unmanageable to a certain extent for the state, is what guaranteed little congressional opposition. Also from those enterprises registered by the FIV as potential candidates

⁵²⁶ This way of thinking has some background in the research of Waterbury/Suleiman, 1990; Bienen/Waterbury, 1989. These authors concluded that efforts to make state enterprise more market and profit oriented will probably fail since the goal of reform is incompatible with the political logic of the SOEs system as it has evolved. The initiative to sell Venezuelan enterprises “as they were”, without embarking in major restructuring processes was on one hand, the acceptance of the reform sector’s weakness to present a long debate on the topic (one that would have lost in the long run), and on the other, the recognition that most SOEs would continue to be burdened with several contradictory objectives that would undermine their economic and financial efficiency.

⁵²⁷ This number of characteristics is exposed by Torres (1995; 2000) and was reiterated to me by FIV Vice president Julián Villalba in an interview (Caracas, Dec. 2002).

for privatization in the so called “first phase”⁵²⁸, few were important for the unions in terms of having a high number of employees. In the case of CANTV for example, it was an overall agreement that required investment to update technology would be massive and, due to the then present conditions, unaffordable for the government’s side. At the same time, even nationalist anti-privatization sectors agreed that the telephone service was so bad that it could hardly improve despite all possible official restructuring (Frances, 1994). Congress accepted, if only partially so, that the government had very little resources for restructuring and that many SOEs would swallow any amount of money without showing tangible improvements. Selling enterprises “as they were”, without restructuring, became a deliberate policy considering that the costs associated with human and financial resources invested in any structural revision were particularly high, plus the perspective of having to deal with congressional commissions all the way⁵²⁹.

Labor participation in the privatization process, and the idea that a number or a significant percent of company shares should be assigned to the workers at special prices (or even through credit acquisition) was not a unique trait of the Venezuelan method of privatization. However, it was one of the countries where workers obtained per law some of the biggest amounts of shares, also under relatively easy conditions⁵³⁰. The Law of Privatization in Art. 10: 1 stated that workers should have a preferential right in the acquisition of shares from a minimum of 10% to a maximum of 20%. Any participation of the workers’ sector over this amount should be done in equal conditions to all other bidding participants⁵³¹.

The transparency of the process dealt mostly with provisions of the privatization law on Art. 15 regarding the destiny of the money obtained. Transparency was observed, before the privatization law, by a follow-up of the disposal law and the obtaining of a referential price through two independent valuing firms as prescribed there. That the process had no further frictions or legislative observations may be considered a sign of methodological success. In 1991 the privatization of a wide array of state-owned enterprises such as hotels, airline,

⁵²⁸ In the beginning of 1991, the FIV published its privatization agenda of the year which included: commercial banks, telecommunications sector, airlines, harbours, marine industries, tourism properties, energy distribution, sugar mills, all in the first phase. Most of them were sold that year and those that were not, stayed under legal scrutiny to be future candidates (Aerpostal enterprise, for example).

⁵²⁹ Because most privatizations were done under the Law of Disposal of Public Property, any other decision to postpone a sale or seek a restructuring process to augment property value would have had (under constitutional command) to deal with congressional observations and decisions. Considering that the pro reform part of the cabinet was not well supported in Congress it would have been an unnecessary risk.

⁵³⁰ In the case of the airline privatization (Viasa) employee participation turned to be another problem. There were three main difficulties: 1) a precarious financial situation when it was privatized, which discouraged employees from purchasing the stock set aside for them; 2) difficulties imposed on the company by the state which continued to be an important partner; 3) the scheme adopted for employee participation (Kelly, 1994; Torres, 2000).

⁵³¹ Among other observations made on Art 15, this Article on the workers’ participation became a strong burden for further process, particularly when the companies had a small amount of staff and had important and expensive equipment for sale. Many a time, most especially in the electric sector, the law statement could not be accomplished, and thus the process aborted; either because the workers could not or simply would not buy the required 10% of company shares.

telecommunications, shipyards, banks and power plants plus new direct foreign investment reached some \$ 2 billion in the non-oil sector. “The figure stands in sharp contrast with the fact that the book value of the total foreign direct investment registered in Venezuela at the end of 1990 was a paltry \$ 3.6 billion” (Naím/Frances, 1995, pp.185-186)

4.7 Privatization and the Political Parties after 1989

Although economists may assume that one of the main reasons to privatize a firm is to improve its performance⁵³², that motivation may be less important in

⁵³² During the 70's and the 80's there occurred extensive debates whether the public or the private administered firms would be more effective or productive. Based on seven sectors that served as comparative grounds Boardman/Vinning (1989) published the following results to sum up the relevant bibliography:

Sector	Public Enterprises More Efficient	No difference or Ambiguous result	Private Enterprises more Efficient
Electric	Meyer (1975); Neuberger (1977); Pescatrice/Trapani (1980)	Mann (1970); Yunker (1975); Dilorenzo/Robinson (1982); Fare et al. (1985); Atkinson/Halvorsen (1986)	Shepperd (1966); Moore (1970); Peltzman (1971); Tilton (1973); De Alessi (1974, 1977)
Water Supply	Mann/Mikesell (1971); Bruggink (1982)	Feigenbaum/Teeples (1983); Lindsay (1984)	Hausman (1976); Morgan (1977); Crain/Zardkoochi (1978,1980); Boland (1980)
Health	Pattison/Katz (1983)	Becker/Sloan (1985); Renn et al. (1985); Tuckman/Chang (1988)	Clarkson (1972); Hrebiniak/Alutto (1973); Rushing (1974); Lindsay (1976); Hsiao (1978); Frech (1976, 1980,1985); Bays (1979); Bishop (1980); Frech/Ginsburg (1982); Fisinger
Garbage Disposal	Pier et al. (1974)	Hirsch (1965); Kemper/Quigley (1976); Collins/Downes (1977)	Kitchen (1976); Savas (1977); Pommerehne/Frey (1977); Spann (1977); Stevens (1978); Edwards/Stevens (1978); Boorsma (1982); Mc David (1985); Lawaree (1986)
Airlines	N.A.	Forsyth/Hocking (1980); Morrison (1981); Jordan (1982)	Davies (1971); Davies (1977); Mackay (1979); Pryke (1982); Findley/Forsyth (1984); Kirby (1986); Forsyth/Hill/Tregove (1986); Gillen/Oum/Tretheway (1989)

explaining why governments privatize large monopolistic firms and particularly, why privatization became so important (almost a *sine qua non* condition) amidst the Washington Consensus set of structural adjustment policies. It is more likely that other variables come into play, namely, the administration's desire to obtain an immediate cash flow to help their budgets and foreign exchange reserves, and/or their need to send a signal to private investors about a significant shift in the economic strategy. Also, the real significance of privatizing monopolies or other big SOEs with an important share in the market, has probably not only a direct impact on managerial incentives creating a more realistic approach to the economy, but an effect provoking changes in the competition structure and the quality and scope of service and production regulation.

In the short run, privatization of monopolies or big SOEs is always likely to be accompanied by the strengthening of regulatory arrangements, because the government's role ceases to be imprecise since it is no longer the owner and service provider. Regulatory norms in Latin America have more social credibility when the government is not at the same time the owner and administrator of the firm (Del Castillo, 1995). In the long run however, it is likely that these regulatory agreements negotiated at the time of privatization, will become increasingly obsolete and incomplete, because of unforeseen economic, technological and competitive developments. In whatever scenario, congressional follow-up of service production and the development of the privatized firm is likely to increase with time.

By the late 1980's, the Venezuelan economic system was undergoing a deep crisis and the political system was showing important signs of stress that included increasing abstention from elections⁵³³ and the thinning of popular support for the traditional parties (Crisp, 1998). This process of party deconstruction⁵³⁴ (common to both leading parties), was provoked by a pervasive growing party elitism that produced a loss of attention to the bases of the party, the common electorate. The two leading parties had already been severely fractured by the 1988 elections. AD saw the candidacy of Pérez as something the party *cogollo* could not stop despite strong efforts signaling the existing resentments from the governmental sector, which clearly supported Pérez's adversary, O. Lepage. Pérez was not a conciliatory figure inside his party despite statistical assurances he could be a winning candidate for AD. In COPEI, the founding and power thirsty leader Caldera had seen his candidacy aspirations truncated by his political protégé E. Fernández, who had obtained the

Railways	N.A.	Caves/Christensen (1980); Caves et al. (1982); Freeman et al. (1985)	N.A.
Financial Institutions	N.A.	Lewin (1982)	Davies (1981)

⁵³³ Abstention as a symptom of discontent with democracy and parties had been growing. For an analysis of the conjunction of these two variables with electoral indifference see Molina (1993; 1995).

⁵³⁴ John Martz (1998) observes the process leading to a general weakening of the party system and to the deconstruction of the whole institutional arrangement occurring through stages where a) doctrine and ideology; b) organization and structure and c) leadership selection is gradually harmed.

candidate nomination instead of him. The *paso a la reserva* (going into the backlines of the party) and departure of the party leader and founder Caldera, with a whole branch of the party that dissented from Fernández, proved not to have been caused by ideological differences but based on power and struggle over political control of the party.

When the second administration of Pérez launched an IMF-consulted economic-orthodox package, it was done and designed unlike all other previous national plans which had been executed in close consultancy with the political leadership of the ruling party. Under the ongoing circumstances, it would have been the executive committee (CEN) of AD. Pérez avoided using the traditional policy approval and party consultancy mechanisms that had worked throughout Lusinchi's period, knowing that unless he took a drastic approach towards the stabilization and adjustment plans, he would not obtain results⁵³⁵. These results, he argued, would be necessary to show the efficiency of the measures. The "neo-liberal package" as it was ideated by the economic team and approved by the multilaterals, would probably not have gone unchanged had it passed through the CEN of AD, which later proved in Congress to have a very divided view of the need of applying market reforms.

Pérez had already shown signs of party independence during his first presidential period (1974-1978), so to many Adecos his behavior towards the party during the second period was an expected reality. This autarkic⁵³⁶ behavior of Pérez would cost him important congressional support⁵³⁷ and in the end, his whole political career since the conflict with AD, a party used to having a big share in the political decisions of its presidents and definitely not one accustomed to being left out of political resolutions, caused that the organization decided to block him widely in parliament resolutions and proposals. In the end they helped to approve the impeachment process in parliament with 2/3 of the chamber vote.

This party-neglecting approach was evident in many ways (Corrales, 2001). First Pérez avoided the transition commission established by his own party, designed to coordinate the transfer of power from Lusinchi's administration and provoke a smooth, party-controlled transition. Second, in the composition of all his cabinets (until 1992), Pérez gave key ministries to people who did not belong to the AD files⁵³⁸. A number of these cabinet members, especially some of the economic team,

⁵³⁵ The thesis that the only way out of the crisis in 1989 was through tough and quick initiatives is shared by several political scientists and economists, notably so, Hausmann (1995) Naím (1993) and Torres (1995), all cabinet members under Pérez at some point; the idea is opposed by Magallanes (1998).

⁵³⁶ The idea that Pérez had isolated himself in the first administration when he used the *Ley Habilitante* to by-pass Congress and his own party, had also repercussions in the second administration; that explains the weariness of some of the AD leaders who trusted little of Pérez's initiatives, thinking that these reforms would not only weaken the state but the party as well.

⁵³⁷ The adverse results of the 1990 regional and local elections for AD sealed this discontent between the executive and its party. Members of the CEN felt they were being blamed for the political choices taken in the executive over which, really, they had had little to say.

⁵³⁸ This is a widely quoted truth; however, Pérez did incorporate AD leaders and party members in his cabinet, some of whom had even been related to Lusinchi's administration (Eglee Iturbe, Roberto Pocaterra, and Leopoldo Sucre in the CVG).

had strong opinions about the AD directives⁵³⁹ who dissented from the reform initiatives. Third, it was during Pérez that a strong investigation was launched to uncover most of the economic excesses of the Lusinchi era when through official exchange control, corruption reached important quotas and a high share of the public attention. Many leaders in AD took this personally since they were being targeted either as active participants or as accomplices of the mismanagement occurred. During Lusinchi, AD was more than ever, part of the government's decisional structure. J.A. Ciliberto, a renowned cabinet member, was publicly accused of corruption, and Lusinchi, who still commanded a whole branch of interests inside the party, had to go on a self-imposed exile to avoid corruption charges⁵⁴⁰.

The ending effect of this institutional divorce was that AD split into three groups: the orthodox sector, those who wanted to stop reforms at once. Many of these party members were in the Executive Committee and were active part of the *cogollo*, namely, those who had had a close relation to the Lusinchi administration (or, like in Matos' case, were also close to the CTV union sectors); the balancers, or those middle sectors that wanted a slower pace in the reforms and a closer dialogue with the executive; and the Percistas, an AD sector that had been close to the president ever since his first administration. This last group was also divided between those completely sponsoring the reforms (many young and some not even members of the party) and others basing their support more on the historical side of the relation. These people were not so persuaded of the benefit of the reforms and were still impressed by Pérez's discourse, fifteen years before, on state-led development⁵⁴¹.

The traditional opposition party to AD, COPEI, had to confront strong internal turmoil in 1989 since the differences between the "new sector", personified by Fernández, and the "old guard", represented by the party founder Caldera, seemed

⁵³⁹ Particularly Rodríguez, the Planning Minister, had a very acrimonious vocabulary against the traditional Adeco leadership calling them "dinosaurs", "unschooled", "illiterate" et al. This had very counter productive effects for the executive and the party itself since the president did not restrain the attacks and created more confusion with his own words, completely divorced in meaning when talking to the press or to the CEN of AD.

⁵⁴⁰ All this happened although the Supreme Court judges were extremely compliant. After the first denunciations, warrants for the arrest of ten top officials from the Lusinchi administration (five of them cabinet members) were issued. The Supreme Court liberated those detained three months after considering that they had not committed crimes. As Rey (1998) puts it: "The results of the RECADI investigations were simply ridiculous and shameful. The principal obstacle was that if the point of the investigations was to identify the guilty then revelations would have to have been made about issues powerful people were interested in keeping secret" (p.123). To a bigger shame, a Chinese who had received dollars at a preferential rate was imprisoned making the whole system seem aloof from reality and trying to find a scapegoat. AD would not forgive this and made Pérez the best scapegoat, trying to survive the decline it was experiencing as a political organization and ruling party.

⁵⁴¹ Corrales (2001) makes an interesting division of the party ranks as they were in 1990, right at the beginning of the Pérez administration: "At the start of the reforms, the orthodox sector included most Lusinchistas such as Lewis Pérez, Octavio Lepage, Paulina Gamus and Manuel Penalver; The intermediate sector had Humberto Celli, Luis Alfaro Uceró, Gonzalo Barrios, Luis Piñerúa, Marcos Falcón and Reinaldo Leandro Mora; among the most well known Percistas there were Hector Alonso López, Antonio Ledezma, David Morales Bello and Carlos Canache Mata" (p. 124) It is interesting that as AD's public image deteriorated, the government secluded itself more; because of this distancing from the party, most of the intermediate sector became a radical antagonist of the executive, openly questioning decisions and even the presidential selection to conform the cabinet.

and later proved to be irreconcilable. Both *eduardistas* and *calderistas* had little in common between them; outside these two main groups there was a rather small and atomized group of *herreristas*, namely, those that had been close to former president Herrera. This last group slowly tried to merge into either the new faction of *eduardistas* or the old guard of *calderistas* since Herrera, after being publicly discredited due to his failed administration secluded himself from party life. This division of tendencies reflected itself clearly in the attitude towards economic reforms: all those sided with Fernández accepted, and to a certain extent supported, most of the economic measures and decisions from the *paquete*; paradoxically they became a legislative fraction the government could count on⁵⁴².

The left side of the political spectrum was occupied (in significant terms⁵⁴³) by the *Movimiento al Socialismo*, MAS, and the *Causa Radical*, Causa R. These two parties surfed on the wave of nationalism the opposition to the *paquete* had generated and gained important political rewards by that. In the case of Causa R, the regional growth it had experienced expanded to a national level when it won several important positions including the Caracas mayor office in 1989. Its very strong anti-*paquete* stand was later popularly rewarded when its presidential candidate surpassed previous estimates becoming the third political force in rank in the 1993 elections. The MAS, also a very strong anti-*paquete* actor and presenting a radical opposition to Pérez's cabinet, allied with Caldera and his quickly formed party, *Convergencia*, in 1993, to gain a number of important cabinet positions⁵⁴⁴.

The Causa R was one of the fastest growing political parties of all times in Venezuela (López Maya, 1998). Precisely due to the internal challenges its sudden growth had created, the party had neither adjusted its internal mechanisms nor created new structures that would permit it to operate efficiently on a national scale⁵⁴⁵. Because the institution's growth had been from the periphery to the center in geographic terms, the party had an atomized directive structure where the legislative fraction seemed to be taking the role of the executive committee. This legislative fraction composed both by some of the original leaders of the party and some of the recent émigrés from other political forces, based its convictions on a full scale support to the workers and complete opposition to new market reforms.

⁵⁴² The attitude of COPEI's Congressmen particularly those that were not *calderistas* was one of pragmatism regarding the reforms. In fact the first privatization law was proposed by a number of deputies from COPEI who wanted to foster a discussion of the law. Another example: when the coup attempt occurred in Feb. 1992, Fernández was one of the public figures who first defended both the system and the regime of economic reforms Pérez was following.

⁵⁴³ Other political forces like the communist party, the MEP and URD were in obvious decline by then, and could count only on meagre (if at all) legislative representation.

⁵⁴⁴ The MAS did not escape the internal turmoil of many other parties. It had a minister during the Pérez administration (labour Minister Lairet) but the core of the legislative representation sided with former *Lusinichistas* and orthodox *Adecos* who openly opposed the reforms.

⁵⁴⁵ Ideologically, the party was anchored in the crisis of legitimacy that had weakened hegemonic *Punto Fijo* actors, like AD and COPEI, which had helped the party grow to represent a national political option. Their directives managed to market the change between being a small group of radicals (R stands for Radicals), to an organization whose honesty and governing achievements at regional and municipal levels (example of Bolívar state and Caracas) were publicly recognized.

4.8 Stages of the Privatization Process in Venezuela after 1989

The privatization process in Venezuela can be divided into four main phases: the pre 1989 efforts; the 1990-1991 sales, perhaps the biggest attempt with also the most impressive results offering the telecommunication and airline sectors as significant steps; the “after February and November 1992 Coup attempts”, which made the government give in a lot of its original policies and surrender to party hard liners who immediately ordered ministerial changes (Corrales, 2001); and the Caldera administration, with two very obscure years (state intervention and economic guarantees suspended, exchange control and price control) at the beginning, and the efforts to make a catch up on foreign investment promotion, mainly in the oil sector with the “*apertura petrolera*”.

During his period and almost constantly since he came to power, Caldera methodically reduced the presence of the *Fondo de Inversiones de Venezuela*, from a super-ministerial entity in charge of all privatization and sales (according to the 1991 law, all ministries had to present its privatization plans to it) to an entity not in charge of privatizations (1995 had a new project of the privatization law), and finally to a mere department of the finance ministry. Privatization, paradoxically, continued to appear in several yearly plans and was part of the budget proposals for almost three years (1994-97) more; however, its practical results never reached those of 1990-991.

According to the CLAD⁵⁴⁶ the results between 1990 and 1995 were the following:

- a) At the end of 1990 there is one privatization. During 1991, the privatization of 7 more enterprises followed.
- b) In 1992, 10 enterprises were privatized.
- c) Between January and June 1993, three companies were privatized
- d) Between June 1993 and June 1994, three enterprises were privatized
- e) Between July 1994 and June 1995, 5 enterprises were privatized

A correspondence between the “state of affairs” detailed below, and the sound failure of privatization to gain political preference in Venezuela can be observed most particularly by relating the slow down in privatizations and the growing anti-privatization or anti neo-liberal, (*anti paquete*) mood in national politics. This was true in politicians, in the media and consequently in the public opinion. The topic generated enormous friction for the government and became a national anathema labelled as anti-nationalist by opposition sectors. This is easily illustrated by the extensive congressional discussions during this time. A normally low productive legislative (see Crisp 1997 in Mainwaring/Shugart; Coppedge, 1994; Crisp, 2000; Nacif/Morgenstern, 2002) produced a record of 3 congressional privatization laws sanctioned, and 4 separate reforms in less than 8 years. In fact, from the project presented by the executive in 1990 and approved by Congress in 1992, little

⁵⁴⁶ CLAD, *Centro Latinoamericano de Administración para el Desarrollo*. This information belongs to a report from Jan. 1995.

resemblance remains on both normative and functional⁵⁴⁷ terms with the last privatization law sanctioned by an atomized Congress during Caldera's administration in 1997.

State of affairs in August 1991⁵⁴⁸

- The privatization program of State-owned Enterprises is developing quite well. A FIV balance on the matter shows at least 39 enterprises in some of the privatization required phases, that is, diagnose stage, profiles or additional studies, prequalification of potential investors, marketing and promotion, and public auctioning.

- The sale of seven sugar mills and the *Astilleros Navales* are programmed for September. The public auction of 51% of the National Telephone Company's shares and the transfer to private sector administration of the water company Hidrocapital are scheduled for October.

- Among those points regarding privatization that continue to be of congressional discussion are:

1. The conditions under which workers of the companies subject to privatization would participate
2. The destiny of all income from privatizations and the sale of public assets: some opinions in Congress observe that this money should be used to amortize capital and debt service, while others argue that it should be used to promote social plans and perfect the mechanisms of privatization of the SOEs.
3. The Approval of the Venezuelan Investment Fund (FIV) Law and the Organic Law of Privatization
4. The extension of the privatization program to other sectors such as education, health, highways (construction, administration and maintenance of routes).

b) State of Affairs in June 1993

- The privatization process continues to develop under the supervision and coordination of the FIV. To this purpose, both a Law for the Investment Fund was approved in Dec. 1991 and the Organic Law of Privatization in March 1992. It is important to outline that the privatization law, determines the destiny of all income generated by the process which can only be used under the following prescriptions (Art. 15 of the 1992 text):

1. Up to 10% max. to amortize capital from the foreign debt contracted before the sanctioning of the law and another equivalent amount to cover the costs of privatization and restructuring of enterprises.

⁵⁴⁷ One main difference in both texts is the role of the FIV, which was the exclusive privatization office in the 1992 text and does not have that rank anymore in the 1998 law.

⁵⁴⁸ This "state of affairs" has a variety of sources one most relevant were the Information Bulletins published by the FIV. There is journalistic testimony during the year from the press archives of *El Nacional* (Feb-Sept. 1991) and *El Universal* (Feb-Sept.). Additional information was extracted from the debate diary of Congress where several ideas pro or against these plans were frequently discussed.

2. Minimum 10% for programs of scientific-technological nature and not less than 15% for education and technical programs.
3. Up to 45% to promote investment in other areas of education and health sectors, for environmental objectives and for social plans referring to infant and mother child care nutrition.

- For 1993, the FIV plans to collect up to \$ 1.643 Million as part of the privatization projection of the year. Objectives are centred in long term investment, concretely enterprises of the electric sector (Enelven-Enelco-Enelbar and Planta Centro) which would generate 86% of the total amount of privatization income for 1993, once the sales accorded for August and November were done. The mentioned amount does not consider additional resources that the State could obtain by the sale of its remnant share package on CANTV, which is valued around \$ 600 million. It is not included because the second privatization phase of the telephone company has been taken out of the general privatization chronogram by the legislative. The privatization of shares could, however, be negotiated in the second semester of the year considering the success on the sale of the first portion of shares.

- In the Budget law for 1994, Bs. 79.339.000.000 are foreseen as extraordinary income due to privatization cases. It is also calculated that the State should receive some 20.000.000.000 as cancellation of debt of privatized enterprises; this also represents extraordinary income.

- By the end of June 1993, the reform of the privatization law which had been sanctioned in March 1992 is of congressional and executive interest alike. Among the possible articles subject to reform are those dealing with the modification of the maximal participative amount for workers of those enterprises subject to privatization, which according to the law had to be between 10 and 20%. These amounts have proved to be rather large in those enterprises that are capital intensive and do not employ a significant amount of workers. Thus, it is improbable that they can buy even the minimum amount of shares stipulated in the law, since their price could be beyond the worker's acquisitive capacity.

- In June 1993, *Fedeindustria*, the chamber representing all small and medium size industries in the country, proposed several reforms in Congress to ask that development of the industrial sector should be subsidized by a *forced amount* of up to 20% of the privatization program's income to be paid with a special income tax of 0.5%.

c) State of Affairs in June 1995

Starting June 1994 with decree Num 138 on "concessions of public works and national public services"⁵⁴⁹, the FIV stopped participating in all privatization procedures done under the concession form since the decree was organic and prevailed over all laws before it, even that of privatization. As a consequence to this decree, all privatizations in the form of concessions should be done through the

⁵⁴⁹ This occurred during Caldera's second administration: *Decreto 138 sobre Concesiones de Obras Públicas y Servicios Públicos Nacionales*, April 20th 1994.

ministry in charge of the enterprise potentially subject to privatization. To fulfil this function each ministry would create a commission *ad hoc* (art. 17 of the decree).

At the end of September 1994, the FIV presents the privatization program for the 1994-1997 period which includes 29 enterprises from the following sectors: industry and services (7), transport and communications (2), electrical sector (5), tourism (7), financial (3) and mining (5).

On December 10th 1994, Congress sanctioned the project of partial reform to the privatization law and sent it to the president for approval.

Starting January 1995, the Venezuelan Investment Fund finances itself with own resources and not with state support, so its expenses do not require the approval of congressional commissions.

On January 20th 1995 the national executive sends Congress the project for partial reform of the privatization law back, arguing that it contains several contradictions regarding the prescriptions of what to do with privatization revenues and the purchase of company shares by workers.

At the beginning of June 1995, the FIV tries to re-launch a privatization process considering the fiscal deficit as an unviable proposition unless the country promotes a credible investment strategy to allow the entrance of foreign capital. This offer considered some 25 enterprises as potential sales candidates.

On June 8th 1995, Congress in joint session approved the report made by the president on the restructuring of the privatization law's partial reform, and sends it back to the executive, making it clear that any income from privatization of public property sales would be used to pay capital and not interest services of the foreign debt.

As deductions to these reports made on several documents from the FIV, from the Congress debate diary and press follow-up of the news, we can detect how the privatization process relented to political pressures from opposing factions after 1993, or perhaps immediately after the coup attempts of 1992. In fact, most political scientists agree (see Naím, 1993; Corrales, 1998; Torres, 1995) that after the coup attempt made in Feb. 92 against Pérez, and the subsequent abandoning of his party in Congress becoming another adversary in the chambers, AD always tried to separate itself from the growing discontent with the adjustments rather than helping the government sail through them. Privatization as policy lost a great deal of ground in the political and public opinion. Internal opposition grew to unprecedented quotas as congressional debates show⁵⁵⁰. Main discussions regarding the law centred on where the resources should go to, and this gave privatization dissidents in the parliament the

⁵⁵⁰ Matos Azócar, then president of the privatization follow-up commission and later finance Minister during Caldera's second administration, was a caustic enemy of any SOE sale initiative as his Congress participations show: "In the case of CANTV, I am not prepared to support the sale of any other action since it is under clear dispositions that it is managed by the men with the best technology; also, the presence of the state and the workers guarantees a social control over the functioning of this enterprise" (*Diario de Debates* 23/06/93 on the discussion to the reform of the privatization law that would allow the executive to sell those enterprises where it had less than 50% share participation)

idea that privatization was a sale to enrich a few, something the public opinion found consonant with Pérez's later impeachment for corruption.

Slowly but effectively, the FIV was dismantled of all its former powers during the Caldera administration. Caldera, who did not show a frontal opposition to privatization at first (further than some campaign slogans⁵⁵¹), worked meticulously to dismantle almost all previous privatizing mechanisms and procedures as had been done through the *Fondo de Inversiones*; he did not stop until this institution became a meagre appendix of the finance ministry through presidential decree by 1997.

Another anti-privatization triumph coming from the party system was the important success of the Causa R in the 1993 elections⁵⁵², gaining then power quotas that had no previous pattern for a third party since 1973 when the bipartisan system grew roots. The Causa R, a party characterized by a Marxist-pragmatic approach (López-Maya, 1998), struggled to increment the presence of the state as development promoter. Most of the strongest opposition to any privatization initiative before 1993 had come precisely from the Causa R, the MAS (socialist party) and AD's dissident faction sided with the executive. Having gained stronger political floor in both chambers after the elections, their opinion that public property should not be "given away" to favor private interests, plus the common perception that Pérez had made a catastrophic and corrupt administration, widened the nationalistic speech Caldera, the winning candidate, did little to defuse.

5. Congress and Privatization Bills

As we have seen in chapter III, the presidential powers in Venezuela are relatively weak if compared directly with other presidential regimes (Carey/Shugart, 1992; Mainwaring/Shugart, 1997). Executives have no special powers but a postponement veto, and they are not allowed to instrument a number of policies without congressional participation (and because of the electoral system, deliberate support from the ruling party).

One of the structural advantages of the 1961 constitution however, was the power the president had to restrict or suspend constitutional guarantees and then issue decrees on specific matters, mostly and most commonly, on economic and financial issues. This power, which can be taken unilaterally (as a difference from the *Leyes Habilitantes* which require congressional approval to delegate power and are set for a specific time) has been a common mechanism for the democratic president to intervene in the economy. The constitutional right to economic liberty (190:6) was suspended almost from the beginning of the democratic period in 1961 by President

⁵⁵¹ One of them: "We will stop the haemorrhage of privatizations" (El Nacional, Dec. 1993).

⁵⁵² La Causa R, a party coming from the mining Unions of Bolívar state (where most of the so-called *industrias básicas* outside the oil production exist), went from being one more of the atomized left political parties in Venezuela, to gaining 18% in the 1988 presidential elections, and from there to a stunning 39.8% in 1993 (Molina, 1995). Conversely to these results they won three seats in the chamber of deputies in 1988 and forty seats in the Deputy Chamber plus 9 seats in the Senate after 1993. During these highly sensitive years for privatization, Causa R also gained the mayor of Caracas, the governorship of Bolívar State and Zulia State, the two biggest and most productive states of the country.

Rómulo Betancourt. Pérez reestablished it in 1991, but he had used its suspension benefits previously to remove Lusinchi's price controls by decree and free the exchange rate. "Without significant congressional involvement, the government proceeded to eliminate licenses and bans on 1900 items accounting for 77% of manufactured imports; lower the highest tariff barrier from 135% to 20%; eliminate restrictions on foreign investments for all sectors except petroleum, mining and banking; restructure and reform many public agencies to make them more likely candidates for privatization; develop parallel bureaucratic structures for delivering public services and eliminate agricultural subsidies" (Navarro, 1994, pp.16-19).

Although Congress was involved at an early state in the privatization process, with COPEI proposing a legislative draft for a specific privatization law in 1990, several sectors did not share the opinion of the economic team that this document was necessary. Instead, a growing hostile tendency towards privatization in general kept the executive-introduced law of privatization from being approved until 1992 (Torres, 2000). So most of the significant privatizations (in terms of income obtained and size of the companies sold) were done without the 1992 privatization law but under the 1987 law of public property disposal.

Torres is of the opinion that the privatization law approved, later modified two times and reissued by Congress until the final draft in 1997, slowed the process sharply right after it was sanctioned⁵⁵³. Although this could be accepted as a possibility, it is also true that by 1992, the best years of the Pérez administration, when part of the legislative was willing to give the administration the benefit of the doubt, were gone for good. The slowing down in privatization decisions can also be related to the growing antagonism raised by the ruling party faction sided with the rival party groups.

On one side, congressional opposition from the MAS, Causa R and AD had created important variations in the 1992 text that did not grant the executive all the lenience advocated in the law of disposal issued and approved by AD during Lusinchi. In words of Matos Azócar, planning Minister under Lusinchi and chief of the privatization congressional commission:

"I told the Minister of the FIV that the time had come for them to forget the ways of the old parliament, the parliament of the mules where political leaders agreed everything previously and we would come here to raise our hands. The president has declared that it will destine 25% of the privatization income for social expenses because that is what he had agreed with COPEI's general secretary. Nowhere in the world does the president interfere in a law forming process in this way. Sadly and regrettable, our history is now another, not that of *cogollos* but of super-personal

⁵⁵³ Torres adds: "the 1991 law was the result of a long negotiation between government and Congress, with Congress attempting to exercise control over privatizations while the executive branch sought the most liberty and autonomy possible. But as the law was being debated, the government took advantage of the time to carry out key transactions, including the privatization of ports, telecommunications, and the national airline. Thus the most important privatizations were accomplished without the existence of specific legislation, and, moreover, the process slowed down after the law's approval, leading some to identify it as the program's biggest impediment" (p.147)

alliances that pretend to impose on us, Congressmen, their desired pattern of behavior⁵⁵⁴” (*Diario de Debates*, 22/10/91)

During the same intervention, a moment later:

“My party, a sad and internally shaken one due to inner problems, has moved backwards in the conceptual debate of what privatization means. We have turned our back on the problem of the role we want for the state in our country...” “When we look back at Rómulo Betancourt’s postures and ideas we see his political beliefs. He statized due to a fundamental reason: he thought the economic space of a country could not be left to be occupied by the privileged minorities” (*Diario de Debates*, *ibid.*)

The fact that during this session Matos reveals a strong discontent with the idea of privatization shows us the on-going division within *Acción Democrática*, a former statist party with very important functional and historical ties with the unions. Also, the comparison with Rómulo Betancourt is far from casual: Betancourt resembled for the Adecos, particularly those who took themselves for the ideal bearers of the party, the figure of a moral father, of someone who aside from having been president of the nation and president of his party, was never accused of corruption charges as Pérez had been. Pérez had been Betancourt’s secretary and to many eyes, he had betrayed him and his legacy.

Matos in his crafted speech associates “privatization” with the possible strategy of the Pérez II administration to favor a few “apostles”⁵⁵⁵, and to have a previously arranged form to dispose of the income of the sales⁵⁵⁶. His vision is tainted by having been the architect of the nation’s 7th plan during Lusinchi, which was

⁵⁵⁴ This intervention made by Matos is especially important because of two elements: first, what he calls “the parliament of the mules”, or the parliament of the past, is exactly the parliament he faced as cabinet Minister during Lusinchi when AD had absolute majority in both chambers; all political and relevant decisions were taken in the directive committee of AD, making congressional role call a formal routine (Coppedge, 1994). AD Congressmen, a party with a clear Leninist structure and discipline, had everything agreed beforehand in the *cogollo*; people would go to the chambers only to raise their hands for the report. Matos is clearly stating to the executive (and Pérez in particular) that AD would not support him or his policies unless they be discussed and negotiated (as in the old days), in the CEN. Second and most important, he is refusing the idea that both the executive and COPEI supported to destine 25% of the privatization income to social plans and direct subventions to those most affected by the reforms. The government had been widely criticized for not presenting a reform with a human face. Few knew then, however, that in the legislative the major opposition to increasing these amounts for investing in more and better social policies came precisely from the populist parties, as Causa R and the socialist MAS also sustained Matos theses, and proposed this money should be invested in “development plans”.

⁵⁵⁵ During his first administration Pérez was accused of favouring several industrial groups, who latter became known as the “Apostles”.

⁵⁵⁶ This speech was frequently interrupted by applauses both from the opposition as well as from members of AD. Matos grew more aggressive in his accusations insinuating that corruption was a sure end: “We are completely aware of how the economic lobbies were moving and how they were making pressure. To this point that I said, lets make legal and explicit the presence of those lobbies and with that reject all possibilities of secret political lobbies between politicians and economic groups, and campaign financement supported in privatization process and in privatization support” (*ibid.*).

completely State centered and an absolute opposite to everything stated in the 8th plan Pérez was trying to get through.

“We have turned our backs on reality. We have left the workers alone. Many a time I have left aside the president of the legislative privatization commission’s role, and sat down to familiarize with some workers and their problems, and I ask them... Are you aware of the power you have in that negotiation?” (ibid).

COPEI, the main opposition party with 33% (against 48% from AD) in the chamber of deputies and 43% (versus 48% from AD) in the Senate, had presented a project of privatization law by itself and thus supported the main features of the privatization process all along. The Christian Democratic Party, following strong alignment with market policy dictates from Adenauer’s influence⁵⁵⁷, supported the possibilities of implementing in Venezuela a market economy and thus took side with the government, at least regarding privatization initiatives. This would have made everything easier for the reforms to go through but COPEI, just as much as the ruling party, was deeply divided. Also, the “until then” third party, the socialist MAS was against privatization and joined the AD opposition members. As a MAS deputy states in his parliamentary intervention during the privatization law debate:

“I welcome the discourse made by Matos Azócar on this project not only because I agree with its content, but because he is starting a debate in this chamber that it is necessary to break schemes that have served this parliament as a base for establishing rigid disciplines and avoiding the possibility of a frank debate so that those Congressmen could express their opinion in all clarity, even though these may not coincide with the lines drawn by their party or in this case, by the policy drawn by the government since Matos belongs to the government party” (Dip. G. Marquez, *Diario de Debates*, 23/10/1991).

The type of dissidence that Matos and other AD Congressmen showed here would have been unthinkable of and until then, unheard of in AD at any former time. Whenever some important dissidence had clotted some opinion inside the party, strong disciplinary measures had acted to correct possible deviations. AD was precisely because of that, a party that had gone through three structural divisions, having even lost a presidential election due to one of them⁵⁵⁸. It is consistent to consider that the partyarchy (*partidocracia*) that Coppedge (1994) diagnosed two

⁵⁵⁷ Tarre Briceño answered Matos in the privatization debate “In the case of the Christian democracy we have a great advantage, not frustrated experiences such as the one you have seen in Sweden, France or Spain, we talk of successful experiences. Market economy was not invented by Eduardo Fernández (secretary general of COPEI) but Konrad Adenauer and the result of that social market economy is the third economic power of the world...” *Diario de Debates*, Num. 64, p.p 2129-2143.

⁵⁵⁸ Before, in 1969, the party divided since the orthodox line commanded by the founder member Rómulo Betancourt did not agree with the candidacy of Luis Beltrán Prieto but preferred his own protégé, Gonzalo Barrios. Thus, Prieto left the party and founded the *Movimiento Electoral del Pueblo*, MEP.

years after these debates, was based on a rigid party discipline working both institutionally and functionally.

Among the factors we have studied that slowed down congressional production (Venezuela already having one of the lowest of the continent, with 28 bill projects approved per year in average) and prevent it from capitalizing on the structural empowerment given to it by the constitution, the very underdeveloped state and staffing of the legislature (Crisp, 1998) was also relevant. Due to it the legislative had little “fact-finding ability” and little “research capacity” to consult civil society.

Secondly, congressional production and development was hampered as a result of highly disciplined delegations. Crisp’s (2000) assertion on the matter is the exact antithesis of what Matos was proposing (the old ways of parliament), and more so in the direction of the facts. AD had been the party with more presidencies and congressional majorities than any other organization since the 1960 democratic comeback: “Individual legislators were bound by party discipline and therefore could not be persuaded to act otherwise, so there was no incentive for interest groups to lobby them. Individual legislators did not decide their opinion on a bill (they took their cue from party elites), therefore there was no reason for them to have an extensive and professionalized staff” (Crisp, 1998, pp.23-24).

As a consequence of its little research capacity, its separation from civil society and the complete obedience to party discipline, the legislative became a very isolated institution, dependent on previously arranged and crafted political decisions by the main parties’ directives. This is also consistent to what we have shown in previous chapters, that the voter’s choice regarding Congress and candidates was limited by closed candidate selection procedures, which prevented them from choosing among individual candidates from the same party. The closed list in a proportional representation electoral system meant that voters could choose parties rather than individual deputies or senators.

As a consequence, and thus the enormous surprise at Matos’ intervention in the discussion of the privatization law, deputies were accountable to party elites rather than to constituencies and dissents were regularly and harshly penalized unless, as in this case, disagreements with the executive were explicitly tolerated. In fact, the government Matos had just been a cabinet member of, the Lusinchi administration, was perhaps the best example of the party executive committee taking all relevant decisions and having the biggest power quotas in all the Venezuelan democratic time (Coppedge, 1994). Then, due to the vast representation in both chambers which guaranteed AD an absolute majority, no decision could go through if it had not been consulted and approved by the *cogollo*, a word that was precisely coined to explain the harsh vertical structure of AD’s decision making (Coppedge, *ibid*).

In short, Congress became the scenery for strong political opposition against the executive initiatives regarding economic reform, a reality the privatization proposals did not escape. While most of the important privatizations had been done under the law of disposal of public property (1987), Congress discussed between 1990 and 1992 the privatization law and the possibilities of establishing a regulating agency

for the parameter of service prices from the newly privatize monopolies. But as Frances puts it: “most political parties rejected privatization, and statist and nationalist sentiments were strong among intellectuals and the media”.

The executive had failed in showing the public opinion the need to privatize unproductive firms and to revert the statist mentality existing in Venezuela. Torres, who was president of the FIV and had to take part of the blame for the privatization process as one of the technocrats, wrote bitterly about the whole experience a few years later:

“Not all reforms that had to be done were done. Among the most important things that the government has not done or has not been able to achieve are 1) the conformation of a force alliance (political, social and economical) to promote those necessary changes. Contrary to this, the government has acted in extreme isolation not according with the amount and depth of the changes it proposed; 2) The constitution of a homogeneous cabinet, at least harmonized in their vision of the great collective problems; 3) The spiritual direction of the society to orient people in such a difficult transformation. These are probably the biggest deficiencies of this administration since finally the essence of governing, of the act of governing, is the proper guidance of the society, the exercise of leadership on the nation so that these would take the best possible decisions and options, despite of how insurmountable they can appear in the short run. In the case we refer to, the government has dedicated itself almost exclusively to the definition and execution of public policies, and cared very little about employing effective direction and leadership on the society to convince it of the need of these changes; 4) The articulation of a program and political discourse to attack two or three of the most sensitive themes of the public opinion such as corruption, health and personal insecurity. Independent from how big these problems can be in reality, what makes their special relevance is that they are very susceptible of attention from the public opinion and that they all belong to areas that people identify as government duties” (Torres, 1994, quoted in Torres 1995, pp.162-163).

5.1 The Normative Frame regarding Privatization during the Great Turnaround

Documents from the beginning of the Great Turnaround show that the global privatization strategy pursued three basic points for the “rationalization” of the public sector (FIV reports: 1989-1990). The strategies contemplated were first and foremost communicational, directed to inform the public opinion about the benefits and need of privatization⁵⁵⁹. The normative and legal strategy, looking forward to adapting the legal frame existent in Venezuela to the demands of a privatization process also intended to modify some ideas in the subsequent stage: regulation. For the first step the FIV (1989) contemplated passing a special privatization law and a law for the Investment Fund itself that would grant it the powers to consider the viability of all possible sales. For the regulation stage, projects were oriented towards modifying the

⁵⁵⁹ The FIV issued a great number of leaflets and catalogues in several languages to explain the process in detail. Trying to deepen its informative policy, it also organized a forum for Congress members “*La Privatización: Un Diálogo Necesario*”, out of which a book was printed in 1991. Several speakers from different countries (Latin America, Europe and Eastern Europe) could explain and compare their experiences and detail the benefits and errors they had incurred into.

telecommunications law, maritime law, etc. A third strategy would be the labor approach made to guarantee a certain participation of workers in the sale of shares, something that had been promised since the Lusinchi years, and which assured the smallest legal disturbances in the owner change phase from the side of the labor force.

Regarding the sale of enterprises and the normative frame existent in the public sector, definitive importance was given to the following texts:

- Constitution: the constitution made clear that the state had the power to reserve itself the ownership and administration of some industries and services considered of public interest and that it should foster the basic industries of the country. It also disposed that the legislative (both Senate and Deputy Chamber) had to supervise and authorize any initiative of selling public property
- The organic Law for disposal of public goods: it created the first legal background to substantiate the selling of public property. It was used for most of the privatizations during 1990-1991 until the first text of the privatization law was sanctioned.
- Ley de Licitaciones
- Ley de Salvaguarda
- The VIII Nation Plan (Great Turnaround)

5.2 *Ley de Privatización* (privatization law) 1992.

After the disposal law of 1987, the Venezuelan government had no specific legal frame to adjust privatizations and/or solve the restructuring process of the SOEs. The disposal law had several functional inconveniences: it was never assumed as a privatization law and thus it had no special provision for the process other than the authorization to sell bankrupt enterprises, nor did it specify what to do with the income of the privatization sale. Also, it had not contemplated the chance of assigning the stock market a main role as part of the selling privatizations possibilities.

At first, the government thought of creating a special public unit for privatization called Pribeca⁵⁶⁰, but after several congressional setbacks and the confrontation with some of AD's strong men Quintero⁵⁶¹, the first president of the FIV during Pérez's second administration, lost the political battle against the party and was replaced. The common thought he tried to promote was that it would be

⁵⁶⁰ *Compañía de Privatización de Bienes y Empresas del Estado*. This idea was proposed by Quintero, then FIV president, who would later be the president of the Venezuelan Airline, Viasa, in the times of its privatization. One of the main reasons to explain Quintero's failure was that he invested too much political capital trying to get the Pribeca project through, creating enough institutional friction for his dismissal. Both the President and Congress decided for a restructuring law of the FIV in 1991, which turned out to be less expensive.

⁵⁶¹ Quintero's strong drive towards privatization in every enterprise that would result productive to evaluations, made him collide almost frontally with AD's strong man, Sucre Figarella, who had benefited for years from the myth of state led progress with the *Corporación Venezolana de Guayana*, which encompassed most of the biggest unions of the country and many of the basic industries (*industrias básicas*) such as Steel (Sidor) and Aluminium (Venalum). Sucre Figarella exerted direct and indirect (through the executive committee of AD) pressure on Pérez to safeguard his clientelistic niche, and finally won. This man was popularly nicknamed the Czar of Guayana, for all the political power he had concentrated there.

better to reconsider and restructure the role of the FIV, 15 years after it had been founded. This was later partially ratified by the FIV law (19/12/1991), which agrees to name this entity the only one in charge of privatizations.

The first privatization law project named as such was introduced by a group of Congressmen from COPEI, based on the idea that the state's finances were under a heavy burden because of all the unproductive SOEs it had to maintain⁵⁶². The presenters observed that it is due to a collective acceptance of the failure of the state as enterprise owner in fields quite distant from the functions it should concentrate on, that privatization rises as a rational initiative⁵⁶³. The executive project introduced in 1990 and discussed by Congress in 1991, dealt with the same topics but had different approaches to where the income from the public property sale should go to.

Under the 1992 approved text⁵⁶⁴ Congress started having more weight than with the disposal law. Although the decision and selection to privatize would still come from the executive, the new bill stated that both chamber finance commissions should give their authorization to the process of privatization, and these authorizations plus that of Congress as a whole, became a *sine qua non* condition for the whole process to occur (Art. 9 and *Parágrafo Único*). Also two very polemic articles, 15 and 16, dealing with the funds raised by privatization, were finally left to congressional discretion by Art 17 which stated that any incoming funds from privatization⁵⁶⁵

⁵⁶² In the introduction letter signed by Gustavo Tarre, Leonardo Ferrer, Haydee Castillo, Luis Corona, Alfredo Vetancourt and Donald Ramírez, these Congressmen observe that “on the need of alleviating the state from activities that are not indispensable to it and that obstruct the performance of its basic functions, this legal project is destined to present an organized project to give legal securities to investors” (22/06/1990 *Cámara de Diputados*).

⁵⁶³ “The idea of writing a legal project for a privatization law comes from the need to organize this process and to make it subject to norms that guarantee its adequate development; also to produce a reference that creates a procedure with transparency, independent from the discretionary criteria given to public sales by the executive power in turn” Motif Exposure for the COPEI Law Project, *Cámara de Diputados*.

⁵⁶⁴ The law project was extensively discussed during 1991, but Congress reached no final agreement until March 10th, 1992. By July 25th 1991, most of the details had been discussed and the project had received its first two discussions (one in the deputy chamber, one in the Senate) and successive approvals. Congress, and the privatizations commission in particular, had to deal simultaneously with the revision and authorizations to the privatization of CANTV, Viasa and other SOEs while discussing the normative frame for any sales in the future. This legislative gap of being able to privatize without an adequate specific legal frame, is precisely the ground for most of the success in the whole privatization policy both Torres (2000) and Naím (1993) refer to.

⁵⁶⁵ Art. 15, later reformed to other purposes, stated that incoming amounts should be spent in the following manner:

- 1) Hasta un máximo de 10 % para la cancelación del capital de la deuda externa contraída antes de la fecha de promulgación de esta ley.
- 2) Hasta un máximo de 10 % para nuevos procesos de reestructuración y de privatización para lo cual podrán celebrarse convenios a nivel estatal o municipal.
- 3) No menos del 10 % para programas de desarrollo e investigación, científicos y tecnológicos, orientados preferentemente a la innovación tecnológica, el desarrollo industrial, la pequeña y mediana empresa y el fomento de la microempresa.
- 4) No menos del 15 % para educación técnica y formación profesional incluyendo el reentrenamiento de los trabajadores
- 5) Los ingresos provenientes de las privatizaciones no afectados conforme a los numerales anteriores solo podrán ser usados para fines de inversión social:
 - a) equipamiento y dotación para educación pre-escolar, primaria, básica, y técnica, artística y de formación turística debidamente autorizados por el Ministerio de

processes could only be disposed of when approved (and included in the budget law of the following year) by Congress. The law also forbade any kind of publicity regarding privatization (or sale of public goods) without the specific and deliberate authorization from Congress (Art. 20). The executive had to obtain a close cooperation from the legislative if it wanted to sustain a privatization agenda.

It is important to outline that most of what were the definitive discussions about the bill text occurred during the troubled month of December 1991 (the session on Dec. 11th produced a number of significant modifications, especially those related to the destiny of the funds, later codified under Art. 15), a time that was considered of the greatest institutional distance ever between the executive and the ruling party AD⁵⁶⁶ (Corrales, 2001). While the law was being discussed in the commission and chambers, most of the orthodox sector radicals had worked since mid 1991 convincing the moderates, both in the party and in other sectors of the legislative, to change sides⁵⁶⁷ and oppose government reforms in general and privatization in particular (p.147). For this purpose, the orthodox sector of AD sought alliances with non-traditional coalition partners such as the MAS or the Causa R, basing its counter privatization arguments on nationalist and populist calls to defend the country's sovereignty. In many ways the old leadership wanted to use Pérez, the reforms and the SOEs privatization as a public opinion scapegoat to divert attention from intra-party politics since it had been this same CEN that was responsible for delaying all state reforms and economic laws during this and the former presidential period, concentrating only on its self interest as a power broker and on patronizing labour unions and other political groups.

In conclusion, it can be said that the 1992 privatization bill text follows much of the patterns the executive wanted approved, especially those regarding social plan promotion. On the other side, Congress gained a lot of attributions and weight over any executive initiative and decision. This is a contrast to the preceding law, which left many important matters to the discretion of an executive created commission. The text also bears witness to the growing discontent with the idea of privatization at all social levels in Venezuela, a misinformation process that would have no return. Moreover, the rate and depth at which this bill was later reformed, revealed how politically unstable the whole country had become, that liberal market policies, and any trace of them in the laws had to be done away with.

educación; así como los servicios de salud en los niveles de atención primaria y de emergencia

- b) en acueductos, cloacas y programas de saneamiento ambiental en zonas marginales y poblaciones en el interior del país
- c) programas de protección a la infancia, materno infantil y de nutrición.

⁵⁶⁶ "In short, the period between September 1991 and February 1992 was the darkest in the executive-ruling party relations in the history of Venezuela". (Corrales, *ibid.* p.102)

⁵⁶⁷ The main battle affecting the government occurred outside Congress and was fought at the internal party elections for AD in September and October 1991. There, moderates and orthodox sectors of the party joined forces to amalgamate a complete anti-Pérez directive committee; even old supporters of the government like Morales Bello lost party backing.

5.3 Privatization Law: Presentation and Congressional Reforms 1990-1993.

Before the privatization law of 1992, there were no specific normative instruments that would rule the legal proceedings of privatizations. Aiming to solve this obstacle, the executive presented in 1990 a bill project for an organic law, before the Deputy Chamber. The bill was sanctioned in March 1992⁵⁶⁸ after many discussions and reforms made in Congress, and it was not passed as organic law but as an ordinary one. Little time after its approval, several reforms were proposed and passed in the “Law of Partial Reform of the Privatization law in 1993”⁵⁶⁹. After that, in June 1995⁵⁷⁰, more innovations were introduced and a whole new privatization law was issued. In 1996⁵⁷¹, Congress decided a variation in article 22 of the 1995 text to enhance the sale of the remaining pack of shares of CANTV. In 1997⁵⁷², the law is reformed once more receiving some modifications regarding the preferential rights regime and the privatization’s income destiny. Then, in January 1998 the law was issued once and has remained unchanged until now.

On March 10th 1992, the Privatization Law is approved, sanctioned and published in the *Gaceta Oficial* Num. 4.397 (extraordinary). According to the dispositions there established, the law norms over the whole process of privatizing goods or services from the public sector, including (for that purpose) the restructuring of public firms, the modifications of regulatory frames for the industries⁵⁷³, and the transference of shares from public ownership to the private sector. This law invalidates the prescriptions made by the law of disposal of public property.

August 27th 1992, the Senate approves the project to reform the privatization law which includes the regulations for the participation of the stock market and the value price of the physical assets, fixed by two independent value firms for those SOE’s inactive at the moment of Privatization.

November 6th 1992: The “Special Commission for Privatization” of the Deputy Chamber presents a report on the Reform Project for the Privatization law text, later also approved by the Senate. In the first article, it suggests the modification of the Privatization Law for the Special Privatization law⁵⁷⁴.

September 15th 1993: Congress sanctions the partial reform of the Privatization law⁵⁷⁵. This reform observes that several mechanisms of the stock

⁵⁶⁸ *Gaceta Oficial de Venezuela* num. 4.978, extraordinario, 10 de Marzo de 1992

⁵⁶⁹ *Gaceta Oficial de Venezuela* num. 4.364, extraordinario, 22 de Setiembre de 1993

⁵⁷⁰ *Gaceta Oficial de Venezuela* num. 4.927, extraordinario, 30 de Junio de 1995

⁵⁷¹ *Gaceta Oficial de Venezuela* num. 36.075, 30 de Octubre de 1996.

⁵⁷² *Gaceta Oficial de Venezuela* num. 5.199, extraordinario, 30 de Diciembre de 1997.

⁵⁷³ Some sectors had no background in such policies, as for example the electric sector. In relation to the privatization plans in this area the commission to regulate electric energy (*Fundación para la prestación del servicio eléctrico*, Fundelec) was created by decree (decrees num. 2383 and 2384) published in the *Gaceta Oficial* num. 35.010. The creation of these regulatory entities by decrees shows how the executive avoided the presence of the legislative as far as it could. Since regulatory bodies were not part of the sale or even of the property’s administration they could be excluded from congressional oversight.

⁵⁷⁴ Since the privatization law of 1992 had originally not been given the character of “organic” but of “ordinary law”, its rank stayed under other legal instruments. Thus the congressional prevision to make the privatization law the only referent document in the area (CLAD, 1994).

⁵⁷⁵ This reform was published in the *Gaceta Oficial* num. 4.634 extraordinario.

market can be applied to privatization cases and that these could be executed even when the state owns less than 50% of the shares.

September 22nd 1993: the Law of the partial reform of the privatization law is published in *Gaceta Oficial (4634 extraordinario)* where articles 3, 5, 6 7, 8, 9, 14, 15, 16, 17, 19 and three articles numbered as 11, 12 and 22 and are added. The procedure of privatization is substantially changed, introducing congressional authorizations and oversight at almost all steps. Under the new provisions, once the executive has decided to privatize an SOE it has to publish its objective in the *Gaceta Oficial*. Thereafter the FIV should ask for separate authorization from the finance commissions of the Senate and Deputy Chamber to start those proceedings.

5.4 Congressional participation in the Privatization laws

Once the executive embarked on a series of reforms and these started to move quickly (due to the constitutional allocation of legislative powers on the presidential figure) the administration started to accumulate a lot of friction from several political forces. A common complaint was the regime's political isolation and lack of consultancy with those cost-bearing groups most affected by the reforms. The technocratic cabinet, constituted by many apolitical figures separated itself from traditional dialogue methods and reduced almost any counselling plans to zero. Pérez did create commissions with both business and labour representatives, but in these committees the neo-liberal outcome of the decisions was preordained, meaning that they were commissions created to restructure, liquidate and privatize (Crisp, 2000).

The traditional mechanism of the Venezuelan executive to gain decree autonomy based on the suspension of constitutional economic guarantees made it possible for Pérez to move rapidly, particularly during the stabilization phase of the plan (Naím, 1993). This let the executive by-pass lengthy congressional debates and public lobbying for policy modifications. The government moved quickly during the so called "honeymoon period" (right after being elected), acting swiftly before the opposition could react and before the internal grievances in the ruling party had become too strong. It also relied on formerly approved and more compliant legislation. This explains how the government managed to privatize so many enterprises in so little time. Crisp (2000) observes that it was due to the multi-class nature of the Venezuelan political parties that conflict over the neo-liberal package started. This assertion is partially wrong since it equates social class with package approval. Reality proved otherwise since most of the AD's orthodox sector members were particularly well off, but despite that their opposition was radical and very much anti-Pérez oriented. In many ways, after being stigmatized as the corrupt party, AD managed to turn things around making Pérez the scapegoat and political solution, to let off steam gathered previously against the party.

Congressional participation and cooperation with the executive varied a great deal between the 1986 law of disposal and the 1993 first reform of the privatization law. It would continue to fluctuate afterwards, as privatization became more and more a political anathema. The original text of 1987 was much more executive-oriented

than the privatization law of 1992 and this text is itself, less legislative-oriented than the 1993 reform. Each one of the subsequent reforms and new laws of privatization disposed legislative oversight in a stronger degree than the one before. Because these new reforms and laws were sanctioned amidst a pronounced nationalist environment (fostered also by the appearance of new parties after the failed 1992 coups), it was easy for a segmented Congress to unite against a common enemy, namely, the sale of the public property which became, at least during the first years of Caldera's regime, a synonym for the sale of the country itself.

Table 4.17 *Differences between Privatization Laws (1986-1993)*

Details	Law of Disposal of Public Property (1986)	Privatization law (1992)	Partial Reform of the Privatization law (1993)
Price	Determined by a commission formed by 5 members selected from the finance ministry ⁵⁷⁶ . The commission determines who should value the assets and the method to do it. The commission reports directly to the cabinet and the president on the norms of the sale.	Base Price determined by two separate value firms. One should be done of the physical assets and the other on the company's productivity	Base price determined by two separate value firms. One of the physical assets and the other of the company's productivity. If it is an inactive SOE both value calculations should be done on the physical assets.
Method	The commission can determine any method to produce the disposal of public property. Despite that Art. 4 observes four basic types of commercial operation ⁵⁷⁷ : Sale: on the payments condition that the commission determines Exchange: in case of need from another branch of the public sector Settlement: in case of previous debts of an SOE Any other operation considered valid by the commission.	-President decides privatization policies in cabinet and informs Congress within 15 days of the decision. -Executive must seek authorization from the finance commissions of the deputy and Senate at least 90 days before the sale. They should answer within 15 days of the requirement. Silence would be taken as a positive sign. -Congress approves the percentage of shares to be sold.	President decides privatization policies in cabinet and must publish them within three days of the decision. In the next 10 days the FIV will ask for separate authorization from the finance commission of the deputy and Senate. Congress can consider delay and not respond for up to 45 days. Silence is positive. Once Congress authorizes the sale, this decision has to be published in <i>Gaceta Oficial</i> . Congress approves the percentage of shares to be sold and decides what should be privatized.

⁵⁷⁶ Art. 2: "Los bienes cuya enajenación se efectuará conforme a la presente ley, serán determinados por una comisión, adscrita al Ministerio de Hacienda e integrada por cinco (5) miembros y sus respectivos suplentes, de libre elección y remoción del Presidente de la República".

⁵⁷⁷ Art. 4: La enajenación de bienes a que se contrae la presente ley podrá efectuarse a través de las siguientes operaciones:

- 1) Venta del bien, con las modalidades del pago que determine la comisión
- 2) Permuta por bienes requeridos por un determinado ente u organismo del sector público
- 3) Dación en pago del bien, por las deudas asumidas por un determinado ente u organismo del sector público
- 4) Aporte del bien al capital social de empresas del estado
- 5) A través de otros tipos de operaciones que determine la comisión.

We have argued that the Law of Disposal was a *Ley Habilitante* (delegative law) to the executive though not declared as one. From the comparison of the three legislative tools sanctioned with a difference of six years, we observe how the political character and trust over the executive decisions varied considerably. First of all the “commission” mentioned in the 1997 law of disposal is a ministerial commission, named by the president, who also has the power of removal. This commission is totally free not only in determining what should be privatized but also in which way, without any congressional authorization or approval. Additionally, the law does not determine what ought to be done with the income of the sales, something that produced heated debates in all posterior projects during 1991-93. It leaves this and other decisions to the discretion of the executive commission.

The first privatization bill project introduced by COPEI on 22/06/90, was a more evolved concept of the privatization process (the first legal project to use the proper name) since it had a real demarcation of the workers’ participation and the ends to which privatization should be pursued. Art. 5⁵⁷⁸ of this project pondered as pertinent the inclusion of congressional oversight in the whole procedure, both before and after the sale. Based on this initiative, the final text approved by the chambers in 1992 conceived a very similar congressional participation: the president should inform Congress, and the FIV should ask for permission from the finance commissions of both chambers.

Because many of the biggest privatizations during the Pérez administration had been done under the discretion of the 1986 law of disposal, Congress realized it was being left aside. Once party composition had changed in the legislative after the 1988 elections and AD had neither an absolute majority in both chambers nor co-participation in executive decisions, the need to involve the legislative in the ongoing sales of public property became an urgent point.

After the Law of Privatization had been approved (with subsequent changes between 1990 and 1992 when it was finally sanctioned), the idea of congressional authorization, review and approval of the sale method, as well as of the destiny of the income, and the potential involvement of former workers of the privatized SOEs, became torrid debates in Congress. The partial reform of 1993 radically intensifies the presence of Congress and introduces the possibility of congressional delay in the authorization. The posterior law issued in 1995 reduced the presence of the FIV, thus fading executive presence as a whole in the process. These last bills increased congressional oversight in the same proportion they reduced executive single-handed liberties to decide over privatization. The number of bureaucratic steps increased and

⁵⁷⁸ Art. 5 of the COPEI project was the first to introduce congressional control in privatization, thus relating to the constitutional notion that the legislative was and should be in charge of public property and its disposal in a more active concept than the law of disposal of public property had observed. “El Congreso de la República deberá pronunciarse sobre la solicitud de opinión del ejecutivo dentro de los 30 días hábiles siguientes a la fecha de haberse dado cuenta de la recepción de dicha solicitud, en sesión conjunta del senado y de la cámara de diputados. La falta de pronunciamiento expreso dentro de ese lapso se entenderá como opinión favorable en los términos en los cuales fue solicitada”.

in the end, the law reforms of 1997 and 1998 had made the process so complicated that there were no more privatizations.

5.5 Consequences of hostile Executive-Legislative relations for Congressional Control over Privatizations

A most important sign and probably the first to point out important dislocations in the relation executive-ruling party in the legislative from the very beginning, was Pérez's failure to obtain special powers just as he had obtained during his first administration⁵⁷⁹. Pérez did not officially request them, knowing the *cogollo* of the Party was controlled by the Lusinchistas, precisely the AD faction he had defeated when becoming AD's presidential candidate, and the group that was most averse to reforms. The anti-corruption campaign against the obscure manoeuvres with the exchange rate in Recadi during Lusinchi's administration made things no better. So when the Executive committee of AD sat to analyse the poor results the party had obtained in the regional and local elections of 1989, they gave as conclusions precisely the three factors that were in connection with the executive: 1) the economic reforms taken by the government; 2) AD's exclusion from policy making positions and 3) the anti-corruption campaign. For all these causes the implicit wrongdoer according to the CEN of AD was Pérez, who had forced the party to accept the electoral reform of 1988 (Corrales, 1998) and then proceeded to implement an economic reform package with strong austerity measures, all precisely the same year.

In the role of being opposition party, AD started active strategies that reflected themselves in its congressional attitude, and in continuous critics made on the visible effects of the *paquete*⁵⁸⁰. One of the most notable postures of this new "contender position" adopted by the ruling party was the deliberate relaxation of what until then had been a rigid discipline, considered almost of a Leninist party structure, regarding democratic centralism and cooperation with the executive (Martz 1998, 1992; Coppedge, 1994). The executive became the target of almost all party critics, something that had scarce tradition in Venezuela and almost no precedents, since AD had always granted its executives a visible flexibility to make decisions while at the same time it had promoted a blind following of its CEN approved policies. Formerly, dissent to the party's central decisions meant either expulsion or party division, no

⁵⁷⁹ Most disputes between Pérez and the executive committee of AD probably date back to the days of his first administration when, after having obtained the *Ley Habilitante* from his party, he deliberately neglected all traditional consultancy methods just as he would do later during his second period.

⁵⁸⁰ Corrales points out five strategies adopted by AD to attack the executive:

- 1) AD leaders openly questioning cabinet decisions and publicly hunting some of them
- 2) AD relaxed its internal discipline allowing governors and regional party leaders to express their dissent with the government
- 3) AD activated a counter-information campaign against the government
- 4) AD aligned itself with opposition parties or with opposition party leaders
- 5) AD governors refused to implement any kind of reform that had to occur within their jurisdiction

The rift became so wide that at the end of 1991, with tension between both actors at a peak Pérez said publicly he was willing to govern without AD, look for allies elsewhere and even resign party membership (El Nacional, 21/05/1991)

less. Despite those previous circumstances, during Pérez's administration not only part of the congressional instance was active against the executive, but the party directive allowed public protests and marches in a degree only comparable to times when AD was an opposition party⁵⁸¹ (Corrales, 2001). Also, a counter-information campaign started by many party leaders affected the privatization slowly but securely. While anti-privatization sectors inside the legislative were pushing against resources being destined to social plans that would soften the economic impact of the reforms as the executive proposed, they would declare otherwise to the media: "social issues are being neglected; privatizations are being carried out too carelessly"⁵⁸².

As Octavio Lepage, a recognized AD leader said:

"Acción Democrática has always agreed with privatizing enterprises that are state property. Not due to ideological reasons, since we do not consent to the neo liberal proposals. We agree on it because of practical reasons. Which are these reasons?: first, the Venezuelan state has repeatedly shown it is a dreadful administrator; second, the state-owned enterprises produce enormous losses; third, these enterprises encourage corruption since with only very few exceptions, they are managed without previous or posterior control; fourth, the income sources of the state are insufficient to solve so many problems and cover so many needs" (*Diario de Debates*, 22/05/91).

Venezuela's privatization program at its original 1990-92 pace experienced the same abrupt death the Pérez administration did. The government completed only fifteen privatizations between 1992-1993, but all minor in comparison to previous successes (FIV, 1995). Privatization revenues reached a meager \$ 30 million, considerably short of the government's first quarter estimate proposed in the budget of \$ 2.3 billion. This is very interesting, considering Pérez's successor had acquired special powers from Congress but was cautious to use them in privatization of SOEs. "The FIV president declared that opposition to privatization became so radicalized in 1992, that the sale of CANTV would have been impossible if it had been attempted that year. In some cases the privatizations failed because the government could not find interested buyers; in most cases, because Congress, labor and business leaders refused to cooperate" (Corrales, 2001, pp.61-62). Although some privatizations did

⁵⁸¹ Corrales makes a very unilateral approach here to outline the situation of internal division AD was going through. It was perhaps not that the CEN authorized such things, it may have been that it just could not stop them, due to the internal discord level of people who were pro and against Pérez in AD. That the latter were increasing in number could be seen in a newspaper analysis of 1991, a decisive year when Pérez reached most of his last successes; the turn from 1991 to 1992 was of strong distance between the executive and AD, which culminated in February 1992 with an unfortunate coup attempt and the president being gradually left alone.

⁵⁸² Interestingly so, most of the deputies that in the chamber debates proposed that the money coming from privatization ought to go to "research projects", at the same time complained the government was doing little to promote social plans. Special mention deserve those interventions made by Istúriz (Causa R), Márquez (MAS) and Matos (AD) denying or at least questioning the idea that income from privatizations should alleviate the reforms' impact. Despite these postures, Congress did approve a purposed income destination to direct subventions and plans. In retrospective we observe that not only was Pérez's the government with most investment in the social area, but even with internal sabotage the government managed to move a number of effective policies in this field.

occur between 1993-1995, the environment had completely changed and they happened almost “in spite” of the circumstances. Congressional control became stronger and the whole idea of public property sale developed a certain aura of anathema from which it has not yet recovered.

6. Two Examples of Privatization and congressional Reactions: CANTV and Viasa.

In Venezuela, while most of the most important privatizations had been done under the law of disposal of public property (1987); between 1990 and 1992 Congress discussed a new privatization law and the possibilities of establishing a regulating agency to rule on the parameters of service prices from the newly privatized monopolies of the telecommunications company CANTV and the Venezuelan airline Viasa.

Their sale presented a complete reversal in the role of the state as enterprise promoter and what had been import substitution. In this case, both companies were national service providers and part of the state’s new policy towards an opening of the economy, inviting private actors, either national or foreign to participate. Both enterprises had been acquired and created under three fundamental premises: a planning of their investment, a regulatory commission (making the state the owner and at the same time the regulator of the service) and a protection of the economic activity they developed from other external competitors (Gerchunoff/Coloma, 1992). In both cases also, it had been during an *Acción Democrática* government that they had received a substantial boost in investment, and it was now the same party that had to decide their sale on behalf of a leaner, albeit better dimensioned state.

Aside from technical evaluations that demonstrated in each case the need to obtain massive investment (either in equipment or technology) both companies were part of a much bigger national fiscal crisis that directly involved the system of State-owned Enterprises in Venezuela. By 1989, the country had reached a momentum out of which it would have been difficult to come out without considerable resolutions at all level in the shape, function and design of the state and its role as enterprise owner and service provider. As much as nationalization of several industries and services had been a concurrent tendency in many Latin American countries between the 1940-70 years, the 1980’s and 1990’s presented a policy reversal where privatization became a common prescription combined with other reforms to try to aid governments in the region. The economic rationality of the times had changed, observing that the state had to begin “disinvesting⁵⁸³” in order to regain a manageable fiscal balance. Several nations started this tendency and the time difference between the biggest cases in Argentina, Mexico, and Venezuela, for example, was not very

⁵⁸³ This rather peculiar term used to refer to state planning strategies belongs to Jones/Tandon/Vogelsang (1990), who stated that the social level of wealth of the society could be equated with the variation in price from an enterprise’s cost when under private management or public control.

big; so in a way it was a regional tendency if not a world wide one, considering the east European and Asian countries.

In Venezuela, Congress had to deliberate on the matter and was compromised to present a number of answers either to back or to oppose the executive propositions. Once the executive created two cabinet commissions to consider the cases for either privatization or restructuring of SOEs, the Venezuelan legislative created a privatization commission. It also produced a number of laws and delayed others⁵⁸⁴ but in the next two years after 1989, it turned completely against the executive administration, despite the promising figures and positive balances the country's economy was starting to show.

6.1 A Success Story: the CANTV Privatization.

- *Pre-Privatization Years*

The Compañía Anónima Teléfonos de Venezuela, CANTV, Venezuela's telecommunications firm, started as a private company in 1930 created by a concession granted by the development ministry. It began expanding at a certain rate and was able to buy some of its competitors in the telephone service provision of the country. In 1946, the then recently created Ministry of Transport and Communications began with the installation of telephones and telegraph lines. The official competition started to centralize functions and provide services along with other private participants in the telecommunication market.

The common provision of services lasted until 1953 when CANTV was acquired by the government (share acquisition) which afterwards became the sole provider of telephone services in Venezuela (however not yet of all telecommunication services). By this time, almost powerless to compete with such a mighty contestant, CANTV was deeply indebted and unable to buy equipment that would keep up service provision, so the official takeover was a welcome change. This legal situation with the state as direct owner, service provider and regulator lasted until shortly after the return to democracy in 1960. In 1965, Congress sanctioned the law ruling telecommunication services in Venezuela which also created CANTV as a SOE⁵⁸⁵, under the tutelage of the Ministry of Transport and Communications, making it part of the so-called "decentralized administration". Under the new law, the company, which had received the required share transfer from the tutoring ministry, was granted the telephone service provision on behalf of the state, for up to 25 years starting that date.

⁵⁸⁴ Congress deliberately kept back the Value Added Tax proposal the government had sent for approval. This was to many a clear example of the future conflicts, between the Pérez administration and the orthodox sector of AD that were then only beginning.

⁵⁸⁵ Art. num. 3 of this law states the following: "Que los servicios de telecomunicaciones, tales como la telefonía local, la larga distancia nacional e internacional, telex nacional e internacional, radiotelefonía, facsímile, telefonía, telefoto, transmisión de datos y todas las facilidades para la transmisión de programas de radiodifusión y televisión, suministro de canales telegráficos o cualquier otro que en el futuro pueda asignársele al Ejecutivo Nacional, serán centralizados en la compañía anónima nacional teléfonos de Venezuela la cual será la entidad encargada de prestarlos".

The company received heavy investment during the 60's and the 70's, introducing automatic dialling and long distance network. It also continued to acquire other private companies in various related services. It became a national monopoly by 1973⁵⁸⁶ and could somewhat be labelled a success story in terms of market growth until the 80's. Then, partially due to a labour migration to other sectors but mostly due to the fate common to other SOEs, CANTV fell into the hands of political appointees and management became slow while purchases turned into favours for party friendly companies (Frances, 1994). The company, used to higher spending rates during the 70's, started acquiring debt to finance itself. Indeed, the figures were staggering: two thirds of the employees held administrative jobs while one third performed technical tasks. By the beginning of the 80's, the commercialization of telephone lines came near a standstill with an average of 8.2 per 100 inhabitants; quite a low ratio even if compared with other developing countries⁵⁸⁷.

Very much like the other SOEs with a big number of employees, the telephone company was under the command of strong unions and their power was enhanced by the lack of managerial continuity, which meant that there was no time-consistent set of policies. In fact, during the 80's, CANTV had five presidents with an average tenure of two years. To no surprise and in tune with the politization of the firm, corruption spread at all levels, politicized staffing and promotions, and undermined the working morale of the majority. Independent from any financial company figures on service provision or production, the unions continued increasing the number of staff while parties openly used the company as an indirect employment subsidy buying the solidarity and support of the unions.

Table 4.18 CANTV *Pre-privatization Performance Indicators 1987-1990*

Performance Indicator	1987	1988	1989	1990
Number of lines installed (thousands)	1.717	1.770	1.870	1.943
Subscriber lines in service (thousands)	1.374	1.427	1.433	1.456
Public Telephones in Service (thousands)	27	30	32	31
Lines/100 people	8.2	8.3	8.1	8.2
Residential Lines (thousands)	963	1.003	997	1.006
Commercial Lines (thousands)	411	425	436	450
International Calls, Minutes per line	96	101	107	113
Local calls completed (%)	52.8	52.4	48.7	49.4
Domestic Local calls completed	36.7	33.5	30.7	29.4
International Long-Distance Calls completed (%)	20.2	23.2	18.7	22
Hours Telephones are out of service/year	46.1	42.3	51	93.5
Telephones repaired within 72 hours	81	85.1	83.5	72.3
Full-time employees	15.873	16.569	16.469	18.944
Part-time employees	1.183	1.344	2.987	917

Source: FIV, 1991

⁵⁸⁶ The Pérez years during the 70's, were great days for the telephone company since heavy investment was done on equipment. Submarine cables to link the country with foreign countries and satellite dishes such as the Camatagua complex are various examples.

⁵⁸⁷ By the end of the 80's, Telmex, Mexico's telephone company had a number of 5.27 millions of access lines whereas CANTV was stuck with 1.4 million (Baring Securities, 1991).

During the Lusinchi administration and as part of the whole expense cut in the public administration, the operating revenue of the company was drastically reduced and in 1989 and 1990 the company showed losses, mostly due to the burden of serving a debt of around \$ 650 million it had independently acquired. Aside from these financial difficulties there was another obstacle: as much as the investments made during the 70's with submarine cables and satellite dishes had kept the company somewhat technologically updated on international standards, the 80's brought up a strong revolution in the telecommunication world with new digital technology. Microelectronics, fibre optics, satellite and microwave communication almost multiplied the interconnection possibilities making access to telephones easier and easier. The CANTV could not even put its numbers in black least of all think of undergoing a substantial investment without managerial structure, and all possible purchases being controlled by politicized unions. When the possibility of privatization was presented, it did produce a number of anti reform reactions, particularly from those parties that benefited from having influence over the unions, but everyone had to agree the telephone service had deteriorated to a point of no return while under public management.

- *CANTV and the Great Turnaround*

When in February 1989 Pérez signed a letter of intent with the International Monetary Fund, the privatization of telecommunications was not contemplated but only the restructuring of state monopolies⁵⁸⁸. A World Bank report produced in February 1990, showed that CANTV suffered from several structural problems including low service quality, low demand satisfaction and distorted tariffs, meaning that they were unsustainable at international standards. As it had been a main goal of the Pérez's stabilization plan to reach a reduction of all generalized subsidies, the latter (subsidized telephone costs) was heavily criticized. Examples on how to deal with the situation were at sight since several countries had initiated huge privatization plans, including in almost all cases, their telecommunication sector⁵⁸⁹.

At first CANTV was targeted for restructuring, but several changes made the initiation of the sale of the company possible: a ruling by the Public Attorney (July 31, 1990) established that by selling 40% of the shares of the company and placing an 11% in trusteeship, CANTV would become a fully private company. "Consequently it became evident that the privatization of CANTV was legal, feasible even without the passage of a privatization bill by Congress" (Frances, 1993, p.151). This information is consistent with Torres (2000) who admits that the pro-privatization faction of the cabinet profited both from this legal decision as well as from the possibility of remaining under the umbrella of the Disposal Law (1987). All this granted the executive a notably free hand and partially avoided congressional intervention.

⁵⁸⁸ This letter and the fact the IMF did not advice selling telecommunication monopolies were publicly quoted during the debate that tried to show the CANTV's privatization as something "against the constitution". It was then read by an anti-privatization deputy, A. Istúriz. (Diario de Debates, Mayo 1991)

⁵⁸⁹ Countries like Hong Kong, Malaysia, New Zealand and closer, Chile, Argentina and Mexico (see Welenius et al. 1989).

The executive also followed its usual tactic, moving towards privatization by appointing privatization-friendly managers in both the communication ministry, Roberto Smith, and in CANTV, Fernando Martínez Mottola. They had been members of Cordiplan (Smith had actively participated in the elaboration of the “Great Turnaround”) and of the executive created SOE restructuring commission respectively. Both had studied in the US and were familiar with the reform and privatization agenda they discussed with the World Bank mission in order to set guidelines. Corrales (2001) observes that they were given free hand to proceed due to the fact they did not belong to sectors that were targets of reform plans.

Martínez Mottola in 1990 presented Congress with the executive’s plans/estimates regarding several companies and also the results from both cabinet privatization and restructuring commissions⁵⁹⁰. In an extraordinary brief address to Congressmen and the public present, Martínez observed it was urgent that the state should privatize in order to modernize the telecommunication sector, at the risk of having the country lag behind the entire world in technology and service. This, he said, could not be completed through state initiative alone since there were no economic means to confront such a situation.

- *Congress, Parties and Privatization of CANTV.*

With a significant part of the executive cabinet set to promote the sale of the CANTV once it had become a privatization objective by the end of 1990 (FIV report, 1990), Congress adopted first a non-cooperative and then a hostile attitude to reforms in general and to privatization in particular. Observing the cabinet proposals regarding plans for several privatizations, Congress in return created a privatization commission presided by Matos Azócar, the same AD member who had been Lusinchi’s planning Minister between 1984-1986.

Torres, then president of the Venezuelan Investment Fund observed:

“(...) in circumstances in which the government could not count on a congressional majority –as was the case at the beginning of the process- a privatization law could become a true straitjacket, with both congressional and nongovernmental opponents making efforts to delay, impede, or sabotage the execution of transactions that are, in and of themselves, quite complicated. For those governments that enjoy broad congressional support, the passing of a privatization law is a very different experience since support can overcome all kinds of legal and administrative obstacles to selling public companies. This can be seen in the case of Argentina⁵⁹¹” (Torres, 2000, pp. 147-148).

⁵⁹⁰ All these lectures and reports were later compiled in a book “*La Privatización: un Diálogo Necesario*” edited by the FIV in 1991.

⁵⁹¹ Torres certainly refers to the beginning of the privatization in Argentina where Congress abdicated most of its controlling functions to overcome the substantial fiscal and economic crisis the country was undergoing after the Alfonsín years. This period of deliberate abdication or delegation did not last long, and it took a lot of executive management to convince the PJ leaders to join the privatization initiatives coming afterwards and assume them as their own, something that clearly Pérez did not or could not obtain, with the orthodox sectors of AD.

COPEI, the main opposition party supported privatization as did a sector of AD that identified itself with Pérez, but a number of the main leaders of AD were either sceptical or unconvinced. Main opponents to the idea were the socialist party MAS and the union based Causa R. AD and COPEI could, at the time, produce a solid majority to silence any possible opposition, however, it was feared specially in the beginning, that AD could defeat the initiative by setting itself in coalition with smaller opposition parties⁵⁹². By April 1991 and after a number of options discussed in cabinet, direct sale of the company was beginning to be perceived as the best option, considering the chaotic state of the telecommunication sector and the almost inexistent potential of improvement it had for the near future.

There and then, a coalition of congressional members from AD, notably Carmelo Lauría and some others openly identified as *Perecistas* managed to convince the orthodox and unimpressed side of the party to join Martínez from COPEI and his telecommunications initiative. This made a complete difference for privatization to happen because the old coalition of the two parties (*la aplanadora*, the bulldozer) made possible a political overrun of the opposition, who kept warning that the sale of the telecommunication sector was against the nation's sovereignty and against the constitution itself⁵⁹³. The process was far from easy and both the MAS and the Causa R did not cease to attempt to stop the privatization of the telephone company. In fact, the Causa R deputy Istúriz, repeatedly tried to involve in the resistance action those unconvinced sectors of AD, calling them to “remember their party lines as social democrats” and arguing that what was at stake was not the sale of a firm but a whole conceptualization of the state, from a social democratic rentistic form to a neo-liberal proposition⁵⁹⁴.

⁵⁹² To focus on the legislative side of the issue we are deliberately skipping a previous stage where the company was subject of discussions on other terms. After the restructuring option was cancelled and because in 1990 going for outright privatization seemed a “risky decision” (since it was unknown which option the ruling party, AD, would take) other alternatives started being explored as potential solutions for the company. One of them, thought as a mild privatization form, was the use of management contracts with “purchase option”. The telecommunications restructuring group announced this plan by February 1990 observing that their aim was to produce a leasing plan with option to buy a 30% share after two years and that 10% of the shares would be sold to workers. This idea died soon because of the lack of practical grounding and legal assessment of the future of the new firm, and because details such as new equipment acquisition and labour transition remained unclear. Considering all these setbacks, the cabinet's based Telecommunication Restructuring Commission and the FIV, reopened the possibility of producing a clear sale of the shares as soon as possible.

⁵⁹³ As it turned out later, many of these political parties had huge debts with the national telephone company and its privatization would clearly mean they would have to honour those amounts. The debts amounted millions of dollars and had been acquired from years of not paying bills neither in the party houses nor in the congressional factions. Corrales (2001) observes that among the handsome payments AD was offered to support the sale of the telephone company was the exoneration of the debt with CANTV which by then was well over \$ 42 million. Smaller parties in the opposition also had similar amounts; however, they were not offered analogous compensations.

⁵⁹⁴ Istúriz, in a frenzied exposition of facts kept re-calling Matos Azócar's words and ideas and called at that sector of AD that was not so much in favor of the reforms but rather linked to the unions to manifest their dissent even within their party lines. In his effort to discredit the privatization initiative, he related Pérez to a “neo liberal pro-American sector which only wanted to mortgage Venezuela's industries to help Washington's finances”. Regarding the local consume he related the government economically to that of Herrera, one that has always been publicly perceived as the most inefficient of all democratic governments in Venezuela (*Diario de Debates*, 02/05/1991).

Frances (1994) details in a newspaper follow-up story from the months and days previous to Nov. 15, the date assigned to open the bids, how opposition Congressmen tried some of the last minute manoeuvres against what was to be the biggest privatization sale in the Venezuelan history:

“Two last minute manoeuvres happened before the bids were opened on Nov. 15th. The first, related to the congressional approval of the concession contract and the second related to the employee ownership in the company. Although some experts believed that congressional approval of the concession agreement between the government and CANTV was not required, other experts argued otherwise⁵⁹⁵. In the end the government seems to have regarded such approvals as legitimizing and stabilizing for the privatization process, although as feared it gave the opposition party an opportunity to attack the whole idea. MAS, the socialist party, suggested that at least the basic network should remain in the hands of the state and argued that selling the CANTV to a foreign company would result in excessive tariff increases and place basic services beyond the reach of the country’s middle class, not to speak of the poor. The MAS was joined in its general opposition to the privatization plan by the Causa R party, which demanded that concession agreements ought in fact to be enshrined into law by Congress. However the ruling party, AD, with the support of COPEI rejected the idea of enacting a law but agreed to refer the matter to a bicameral commission.

Although the political process was tightly managed by the government, the bicameral commission introduced seven modifications to the concession contract: one of these gave greater powers to the ministry in framing rules for interconnection, the second redefined the conditions regarding the use of private lines, the third clarified that in the case of breach of contract the rules established earlier for the oil industry would apply to the CANTV as well; the fourth elucidated rules for economic compensation and the fifth, rules for arbitration in case of conflict. While amendments of this sort pleased the bicameral commission and seemed to strengthen national sovereignty over affairs related to privatization and in this case the selling of the CANTV, it did upset potential investors like GTE and Bell Atlantic especially on the subjects of economic arbitration and compensation⁵⁹⁶. The GTE was reportedly very upset by these “unilateral modifications”; it considered withdrawing from the process but was persuaded from government officials not to do so. To allow time to sort out these complications, the government delayed the date for submission by two weeks, to November 15, 1991.

In those two weeks the concluding steps were taken at a frenetic pace. First a cabinet meeting chaired by the country’s president unofficially approved the final amendments to the concession contract. Next, at an extraordinary cabinet meeting those amendments were officially approved. The following day, the transport and communications Minister and the Chairman of the CANTV signed the corresponding supplement to the concession agreements, subject to congressional approval. On

⁵⁹⁵ One adviser thought congressional approval was not mandatory since the 1940 telecommunications law authorized the executive branch to grant concessions. However, two other advisors deemed such an approval necessary, with one of them expressing the view that concession contracts signed with CANTV in 1930, 1955 and 1965 had been adopted as laws by Congress.

⁵⁹⁶ It is important to remember that a particularly conflictive law project had been discussed in Congress, which already tainted the possibilities of relaxing labour legislation in the country. The original observations made by the privatization commission had not previewed the recourse of appeal which was later introduced, granting the Supreme Court the role of arbiter in this case.

November 4th the executive committee of AD approved the concession contract by a wide margin and the agreement was forwarded to Congress where some clauses were modified to satisfy the privatization commission⁵⁹⁷. On November 7th the congressional commission approved the final report with a vote of 15-2 and turned the matter to the full Congress. The MAS and the Causa R used every dilatory tactic within their reach to delay approval including filing a judicial appeal against the privatization process. However the civil court declared the appeal for protection inadmissible and ratified the legality of the process followed. President Pérez, on his part, described those opposed to the plan as “old people from the past”. Finally on November 13th two days before the opening of the Bids and after an eight hour congressional debate, the entire chamber meeting approved the concession agreement. A last-ditch attempt by the opposition parties to declare the contract a matter of “national interest” which would have forced a postponement of the openings of the Bids, was defeated in the Senate by 42-2 and in Deputies by 136-18 vote⁵⁹⁸.

At the same time this Congressional agitation was occurring, thirteen international companies⁵⁹⁹ presented their credentials of which eight met the demands the government was setting. By August 1991, the grouping of consortia to present bids had arranged itself in the following manner:

Table 4.19 *Participating Consortia*

Consortium 1	%	Consortium 2	%
Bell Atlantic	37.5	General Telephone and Electronics (GTE)	51.0
Bell Canada Suma Corporation	37.5	American Telephone and Telegraph (AT&T)	5.0
Banco Provincial	12.5	Compañía Nacional Telefónica de España	16.0
Finalven	6.25	Compañía Anónima La Electricidad de Caracas	16.0
	6.25	Banco Consorcio Inversionista Mercantil (CIMA)	12.0

The Bell Atlantic led consortium bid US\$ 1.407 million for 40% of the CANTV while the GTE led consortium bid US\$ 1.885 million.

- Conclusion

Far from delivering a definite account of the Privatization process of telecommunication in Venezuela, the idea is to observe how congressional opposition could have delayed and eventually aborted the whole privatization process proposed, simply by non cooperation with the executive. The latter was defenceless against the initiatives of the congressional privatization commission to introduce modifications

⁵⁹⁷ There were modifications of the economic stability clause which did not guarantee company profitability but rather continuity of service during political changes or natural disasters; and clauses that gave television stations direct access to satellites and reiterated that all users should receive equal treatment in terms of quality of service, prices and access.

⁵⁹⁸ For these figures, the government had already managed to foster an agreement between the opposition party COPEI (who paradoxically was an ally of the idea) and the ruling Party AD, which had orthodox sectors both mildly and strongly opposed to privatization.

⁵⁹⁹ Ameritech, Bell Atlantic, Bell Canada, Cable & Wireless, France Telecom, Detacom, GTE, Nippon Telephone, PTT Telecom Netherlands, South-western Bell, STET, Telefónica de España and US West.

on the concession contract that could have substantially delayed and eventually done away with the whole initiative.

From the very beginning and conscious of the thin ruling party support (plus the fact that not even the multilaterals were convinced that telecommunication monopolies ought to be sold), the executive tried a number of methods to avoid congressional confrontation. congressional opposition took diverse operational strategies: from declaring the CANTV sale as something against the constitution, to trying to declare the telecommunication service sector a “basic industry”, to observing that the country was selling its sovereignty to foreign powers (Marquez in *Diario de Debates*, April, 1991) all of which were arguments that, if accepted by a majority in any of the chambers would have finished the discussion.

The difference and absolute turning point in congressional deliberation took place when AD decided to promote political support joining COPEI in the pro privatization initiative. From a legislative perspective this turning point can be observed in the answer that Deputy D’Ascoli (in name of the political faction) gives to the whole number of proposals against CANTV privatization MAS and Causa R had recommended⁶⁰⁰. The intervention of D’Ascoli together with some other members served to set clear that the ruling party, though not completely convinced of the needs to promote the IMF agreed set of reforms, was willing to cooperate with the sale of the telephone company via privatization; a solution eventually easier than either restructuring or the lease with purchase option possibility. The position of AD became more unambiguous when the CEN accused Matos Azócar of “autonomous militancy⁶⁰¹”, and demanded congressional approval of the reforms regarding CANTV (Frances et al. 1993, p. 67). This separation from Matos’ postulates against privatization, and his gained accusation of being autonomous, meant that the party stood behind the policy at least in this issue, and that Matos and his supporters were being clearly put away from main party decisions. We observe that dissent within the party against the executive and its reform plan was strong in 1991, but not yet overwhelming as it would later turn out to be.

6.2 Privatization of Viasa.

- *Pre-Privatization Years*

⁶⁰⁰ Istúriz (Causa R) , and before him Márquez (MAS), set their request in the following order:

- a) That the Deputy Chamber should immediately suspend the privatization process of CANTV since it was a procedure against the national constitution, the national sovereignty and the social and economic rights of the Venezuelan people.
- b) That the Deputy Chamber declare the strategic character of telecommunications, a tactical sector aligned with the whole idea of national sovereignty
- c) That Congress declare the restructuring of CANTV instead of its privatization, guaranteeing the democratic participation of workers, professionals and technicians of users and all other entities involved in the telecommunication sector.

⁶⁰¹ Considering the iron grip discipline AD had over its militancy, being considered and declared “autonomous”, that is, not following party central lines, was about the worse fate a politician could endure in the party. It meant a sentence to political death by exclusion. Matos eventually left the party, however, both sectors remained distant from the reforms Pérez tried to get through.

The history relating Viasa as a national airline carrier is rather short in comparison to other SOEs. The company had undergone several modes of privatization before its final sale in 1991. Before 1960, there were two Venezuelan airlines: Línea Aeropostal Venezolana (LAV), a state-owned enterprise, and Aerolíneas Venezolanas (Avensa), controlled by the Boulton family and a foreign share of 30% owned by Pan American Airlines. These companies competed for the market, with national and a number of international routes. According to reports, Avensa was in a better economic situation than Aeropostal⁶⁰², though both airlines lacked the technological improvements of others since they did not own jets but only propeller machines (Kelly, 1996).

As part of its expansion plans and the idea of a state-promoted development, the government decided to create a joint venture with Avensa under the name of *Venezolana Internacional de Aviación Sociedad Anónima* or Viasa, mainly focused on the consolidation of the international routes that both airlines had in the past. Aeropostal would then remain a local service while Viasa, with a composite share of 55% owned by the government and 45% owned by Avensa would start to operate internationally. The idea then was that although the government had a majority stake in the shares, the company would have a private administration.⁶⁰³

After this agreement, Viasa enjoyed a period of relative growth, reputation of good service, consolidation of its international route provision, and at the same time, increasing personnel, planes, routes and profits. Viasa's general manager, Machado, was a well known businessman, who came from the electrical sector where his family had important shares and participation. A central problem for the airline by the end of the 60's was the increasing number of the employees the airline was having, which also augmented the number of unions. By 1973, there were six independent unions in Viasa for only 1.430 employees, organizing the pilots, cabin personnel, aeronautical technicians, ground workers and general workers. Politization of the unions had also begun after the end of the 60's and the Christian Democrats, COPEI, had important influence over the unions by the time Caldera was in power (1969-1973).

So it came as no surprise that the different unions started having conflicts not only with the company management but also with each other. The airline had been rated second in service by the International Air Transport Association (IATA), and the conflict and recurrent strikes from the unions soured the environment, particularly the relations between the unions and the management (Kelly, *ibid.*). Part of the union strategy was to attack the private administration with the idea of promoting a "better" public and complete state acquisition. As one union member leader, Vechinetti, of

⁶⁰² Belonging to the state, Aeropostal had been thoroughly exploited during the years of military rule in which little care was taken of its finances or its technological improvement. As a result, by the beginning of the 60's the company had a weaker financial position than its private pair.

⁶⁰³ The government thought at first of a possible alliance with Swissair in which they could share expertise and international routes. The deal however, had no participation in possible financial losses, whereas the contract with Avensa did have this concern. Also, Avensa agreed to eliminate Pan Am from its share holders as part of the arrangement and insisted in the commercial, profit-oriented character of the company. Last but not least, the Boulton group profited from the growing nationalism of the new democracy selling the idea of a Venezuelan company managed by Venezuelans, something that had important echo throughout the media.

proven alliances with COPEI later said: “I recognize that I had the support of the Christian Democrats and of the Caldera government. Caldera’s government allowed more union freedom, and COPEI was very weak at the time of his government. It was looking for ways to strengthen itself in this sector” (Gil Yepes, 1981, p. 13). Amidst this institutional turmoil with union conflicts, critics were directed to the private administration of the firm. In 1972-73 the company presented its first red numbers with a loss of around US \$2 million. It became visible then, something that in the future would reappear as recurrent symptom: the internal problems of the airline had begun to seriously affect its capacity to be a rentable investment.

At the time of the oil boom, the enormous amount of sudden income between 1973-1979 probably masked the deficiencies with a cover paint of money and investment. The total number of passengers flying abroad almost doubled in these years, just as did the number of employees in the airline. Particularly the routes to New York and Miami were very much in demand and passengers settled for any kind of service. The airline had a competitive advantage over any other: it had an indirect subsidy from the government with the very low prices it paid for fuel, at times when the world was amidst an energy crisis and the tendency regarding oil costs after the 1973 Yom Kippur war, was the opposite.

Troubles in the ideas of management became evident by 1974 when Avensa proposed a distribution of profits and the government insisted that the distribution be made in the form of shares, thus forcing an acquisition or takeover. The common idea that the company had to be managed by the state⁶⁰⁴ produced that Avensa was to sell 20% of its shares to the *Corporación Venezolana de Fomento*, a state holding company, and with this the Boulton era ended; despite the fact that they remained with some 25% of the shares until 1980. After 1974, the company assumed a different character as did many of the other SOEs: it was subject to the rules of the political two-party game set in force after 1973: budget controls, state comptrollers, politically named directors and executives, etc.

In general terms Viasa followed what could be labelled as the general trend of the Venezuelan economy during the 70’s and the wake up call of the 80’s with the debt crisis. In simple words, expansion was financed with debt; this strategy was based on the premise that economic growth would never stop (Gil Yépez, 1981). The company had already shown structural inconveniences at the beginning of the 70’s when it incurred into losses. Small profits turned afterwards into large losses, once the boom started to deflate; people saw their acquisitive capacity degraded by successive currency devaluations, and travelling abroad was reduced drastically. In fact by 1983, the year of the first devaluation, a brief foreign exchange crisis produced the closure

⁶⁰⁴ After 1973, Viasa was riding the oil boom reversing lower earnings with growth in the business. Oil prices were going up, income was going up. The same logic that fostered the nationalization of oil, gas, and iron ore, was applied to Viasa, that is: only the government represented the true welfare of the population as a whole, while private industry tended to favor only a few. By then the common thought was that some industries had to be managed either by foreigners or private capital but that period was coming to an end. The state could take its rightful place as owner and administrator of what should be the common assets of the country.

of the market for foreign currencies, and consequently the number of passengers fell by some 38% (Kelly/Villalba, 1984).

With this economic environment plus little structural productivity, Viasa was on the brink of liquidation (El Nacional, Jan 17, 1984). As we have seen in chapter IV, one of the strategies that the Lusinchi government adopted to produce mild privatizations, was to hire executive personnel from the private sector who would bring a better type of management to the SOEs. So Luis Mendoza was brought in, and he could reverse the situation at least on nominal terms, and made Viasa reach a balance in black numbers for the first time in 1985⁶⁰⁵. Despite the positive balance results from 1985 to 1989, several problems still surfaced, namely, some conflicts with the unions (a short strike in 1986 which led to the firing of 8 pilots). According to IATA figures published in the press then⁶⁰⁶, Viasa still had the usual problems of over employment other SOEs had, since it engaged 36 pilots per airplane whereas other airlines used under 20 pilots per unit.

- *Viasa and the Great Turnaround.*

The situation of Viasa in 1989, amidst the great institutional chaos during the Lusinchi government (later unmasked as a huge chain of corruption with the exchange control system) looked exceptionally stable. The companies' figures were all in the black and balances were apparently clear. The government even thought of it as a potentially easy privatization, since airlines were being privatized in many countries and the idea of sound privatization successes would probably consolidate the future of other not so easy SOE sales. However, with Viasa, expectations proved to be higher than reality and after revising financial details the newly elected government began to understand that this success was not an accomplished victory in any sense.

Although Mendoza had brought new ideas to sincere the internal management situation after the oil boom years, the underlying situation of the company was about as poor as it had been in 1972 when it produced it first losses; with the new obstacle that by 1989 the macroeconomic situation was coming to a financial halt, and the stabilization and structural adjustment measures had to be taken to reshape public expenditures. In Viasa and despite Mendoza's measures, "politicians had done what they always do for public managers when given the chance: improve the balance sheet with hidden (and not so hidden) subsidies" (Kelly, 1994, p.251). As FIV reports (FIV, 1989, 1990), and also those from the privatization commission showed, Viasa's apparent financial health depended almost completely on the huge subventions on exports and the vast implicit subsidies (common to most of the country's economy) of the exchange control system operating between 1983-1989. As soon as these financial settlements were removed, Viasa's true pecuniary situation became visible.

⁶⁰⁵ One of Mendoza's greatest successes, was the solidarity he obtained from the unions (Kelly, 1996). Indeed, faced with the possibility of having the company either sold or liquidated, many union members set their conflicts and political interests aside to stand united for the company.

⁶⁰⁶ *Revista Número*, August 26, 1984. Also quoted by Kelly (ibid.), the figures for pilot per plane were: United Airlines 14; British Airways, 18; American Airlines, 17; Iberia, 14; Lufthansa, 21; and Viasa 36

There was also a psychological component to all this masking of real balances which moved politicians to produce subsidies and avoid a definitive solution to the airline. This was also patent during the privatization initiatives in Congress. The airline became known as the “flag airline” and it was seen as a sort of international representation of the country. Letting it sink (namely, be privatized) would indirectly mean, that the government had been so ineffective that it had not even been able to save face with notorious symbols such as the national air carrier⁶⁰⁷. This psychological anchorage had been grounded by the union in the diverse strikes during the 70’s, when the *Gran Venezuela* promoted the belief that the whole country’s development would take off. It was later conveniently used by these unions to gain political lobby, and used also by anti-reform sectors that opposed privatization in general and waved the nationalistic flag in the media.

Aside from the financial setbacks, several other circumstances forced the inclusion of Viasa in the privatization list: such as the example of other countries⁶⁰⁸, the deregulation of the service for international routes which abruptly increased the number of competitive carriers⁶⁰⁹, and the chaotic economic situation of the country, particularly in 1989. As with other companies, the government acted quickly to foster the sale but without the cooperation of most of the ruling party. In fact, the privatization of Viasa is another success done mostly with people that were not from AD. The history of the names intertwined in the whole political initiative of privatizing Viasa is well described by Kelly (1994):

“The chief actors in the Privatization of Viasa included, most importantly, its president at the time of its privatization, Eduardo Quintero. Quintero, a quiet person, had risen to the position of chief executive officer of Polar, one of the largest and most successful private companies in Venezuela. In the 80’s he became interested in the strategic problems confronting the country and was impressed with the system and scenario-based thinking that had developed out of the planning group at Shell in the 70’s. His first active step was to sponsor a research project at the IESA⁶¹⁰ under the direction of Ramon Piñango and Moises Naím (then Dean of the Business School) to explore the dynamics that were driving public policy⁶¹¹. His next step was

⁶⁰⁷ A confirmation to this is that when Lusinchi liquidated the state holding company *Corporación Venezolana de Fomento* (Venezuelan Development Corporation) that owned Viasa’s shares, these were not slated but transferred to the Ministry of Transport and Communications. This happened because Viasa’s unions and directives managed to be considered as basic or strategic industry, labels which automatically granted official protection at all costs.

⁶⁰⁸ Privatization had been seen until the mid-80’s, as initiatives of conservative and/or authoritarian governments, (i.e. the cases of Thatcher in England and Pinochet in Chile). The liberalization promoted by social democratic leaders such as Gonzalez in Spain and Salinas in Mexico, showed the initiative could be a possibility for other Latin American governments.

⁶⁰⁹ The deregulation of airline travel plus the bankruptcy of some traditional actors (and the introduction of new ones), all made life more difficult for Viasa, particularly in its prime routes, which were those to the United States. In the 70’s, most of those routes were serviced by Pan Am and Viasa alone. But by the beginning of the 90’s the same routes meant a struggle with United Airlines, American Airlines in the international field, and Avensa as a national rival.

⁶¹⁰ *Instituto de Estudios Superiores de Administración*, IESA, where most of the reformists of the 8th Plan came from. Most of them became known as Technocrats or “IESA boys”.

⁶¹¹ Many of the conclusions of this study led to the publishing of a book called: “*El Caso Venezuela: Una Ilusión de Armonía*”, by Ediciones IESA.

to form, together with an impressive group of young, internationally oriented business leaders, Grupo Roraima. Quintero was project director for the Proposition to the Country. Naím established the link between his private sector connections and academic friendships, such as Carlos Blanco, who was a close adviser to the newly elected president Lusinchi.

When the Lusinchi government accepted the idea of establishing Copre, the commission for the state reform, Blanco became its executive secretary, while both Naím and Quintero were selected as commissioners. Quintero threw himself into public affairs activities in Copre and, together with a young talented economist in the Copre staff, Gerver Torres, worked hard on the restoration of constitutional economic rights. In Pérez government (1989-1993) Quintero was named to be the president of the Venezuelan Investment Fund (FIV) the chief holding company for most important state enterprises. He immediately set out on a quixotic campaign in favor of privatizing even the most sacred of industries and planned to liquidate the FIV in favor of a privatization Agency called PRIBE (Empresa Privatizadora de los Bienes del Estado). The head of PRIBE was to be no other than Gerver Torres.

Quintero's enthusiasm gained him some powerful enemies, in particular Leopoldo Sucre Figarella, president of the state holding Corporación Venezolana de Guayana (CVG) and the same gentleman who suggested the full nationalization of Viasa some fifteen years earlier. Sucre won the battle: the president agreed to protect the CVG from Quintero's privatizing drive. In the meantime it was soon obvious that there was no political support for supplanting the FIV, although there was nothing to impede privatization either. Torres, a less controversial figure and one with more talent for getting the politicians to come around to his point of view, saw the political jungle perhaps more clearly than Quintero. In mid 1990 Torres took over the presidency of the FIV and Quintero was named president of Viasa, with the sole mission of carrying out a successful and model privatization in collaboration with Torres at the FIV. Quintero was moved over to Viasa together with Juan Ellis who had worked with him in Polar and had collaborated in the Roraima project, and had served him as vice president at the FIV.

Of course these actors were not operating in the vacuum: the liberalizing network was much more extensive in the Pérez government. Moises Naím played an important role in the cabinet as Development Minister, while his colleague from IESA, Miguel Rodríguez, was Planning Minister. Rodríguez, who attended the macroeconomic policy, charged Roberto Smith with the job of writing up the national plan published in January 1990 and entitled "El Gran Viraje" (the great turnaround). Smith, after gaining fame with the plan, was named Minister of Transport and Communication and would play a critical role with Quintero and Torres in the privatization of Viasa in 1991. Smith was a natural member of the young Turks. A brilliant mathematics student at the Universidad Simon Bolivar, he took an early interest in politics in a leftist student group called Study and Struggle. He formed there a friendship with Fernando Martínez who had come to Cordiplan with him and whom later Smith backed as president of the national telephone company during its privatization. Both had been there Master's degree students in Political Science and both had earned their doctorates in Public Policy in the United States (Smith at the Kennedy School at Harvard, Martínez at Cornell). Smith had worked at Cordiplan (planning Ministry) with Ricardo Hausmann, who had in turn worked on Lusinchi's national plan, later joined Ana Julia Jatar as IESA professor, and was successor to Rodríguez as Minister of Cordiplan. Another supporting actor in the cabinet was Gustavo Roosen. He had been head of one of Polar's division

while Quintero was CEO, was a member of the Roraima Group, and although he was Minister of Education, participated in the cabinet committee on economic policy.

The members of this group, with connections going back to the early 80's were self aware, were committed to bringing about privatization and liberalization, and were able to work together. The key Ministers were Smith, Torres, Rodríguez, Naím and Roosen; Quintero was strategically placed at the presidency of Viasa. Despite their universal lack of political experience and the distrust they tended to generate among traditional party leaders, they enjoyed the full support of the president and were ready to undertake the symbolic and important privatization of Viasa⁶¹².

This view certainly shows the interrelation of some of the most influential political actors in the economic cabinet, those Pérez trusted with the weight of most of the programs. Their names also carried with the discredit of the whole neo-liberal initiative, a circumstance most visible after the coup attempt in February 1992, which brought a strong change in the presidential plans. After that coup attempt, Pérez tried albeit unsuccessfully, to get closer to his party (which he had deliberately abandoned at the beginning), already controlled by members clearly against his administration (Corrales, 2001). One of the conditions the CEN imposed to consider any party help and attention after Feb. 1992 was that he dismissed most of the actors that were associated as creators and architects of the 8th national plan. Even so, and despite trying to gain a middle ground with the ruling party's internal politics, Pérez's fate and that of the whole Great Turnaround were already sealed.

- *Congress and the Privatization of Viasa.*

After the February 1989 riots, the World Bank together with the Inter-American Development Bank produced a structural adjustment loan that required several macroeconomic policy changes from the government. This document stated

- The preparation and implementation of the restructuring of at least 11 SOEs
- The Privatization of Assets equivalent to US \$ 150 million
- A transition phase out of government transfers to commercial state-owned enterprises

Despite this categorization of SOEs, Viasa was not included in the first list of companies to be privatized⁶¹³ but placed as "under study" by the advisory committee of the cabinet privatization commission.

⁶¹² Kelly, J. "One Piece of a Larger Puzzle: The Privatization of Viasa", Chap. IX, pp. 258-261, in Ramamurti (1994).

⁶¹³ Even up to this stage, the word privatization kept being a disgraced one in the Venezuelan political verbal code, to the point it had carefully been avoided by almost all actors, were they public or private. Although it was already considered a necessity to unload the state from unproductive investments since the 1983 presidential campaign, the term was cautiously circumvented by the then presidential candidates who preferred to refer to it as "sales of assets". The 1986 law refers to it as "disposal of public goods", an euphemism to refer to privatization. *Fedecámaras*, the private sector chamber union, sponsored a study of SOEs with the purpose of observing which companies could be "sold" (Kelly/Villalba, 1984). A private group of businessmen, who tried to lobby for an opening of the economy called *Grupo Roraima*, published an "action plan", that is, a document setting a number of proposals but, once again, avoiding the use of the term. Even in a second document published by two members of this group later in 1987, called "More and Better Democracy" kept the same standards (Granier/Gil Yépez, 1987). The second official Roraima report, issued in 1989, recommended that

There was a landmark document produced after a series of meetings organized to explain Congress the real situation regarding SOE privatization⁶¹⁴. Quintero, then president of the FIV, used the opportunity to report Congress about the conditions of Viasa and several results the cabinet structuring commission had reached and could already present. The main constraint Quintero pointed out to consider the restructuring of Viasa unmanageable was time. As he literally reported:

“We are doing a financial audit, a legal audit, a complete financial evaluation of the firm aiming to its future potential under several scenarios. A company cannot change in six or eight months. It is impossible to do the whole restructuring of a firm and give it management information, financial information systems, computer support to manage all those systems...The restructuring of a company that for so many years has accumulated problems in these areas must be done considering horizons of 3,5,7 years and that is why privatization is another answer to the internal problems of Viasa”. (Quintero, in FIV, 1991, p.189)

In these report meetings to Congress held at the end of 1990, the executive presented an up-to-date version not only of Viasa but of many other SOEs considered as “potential candidates for sale”. Quintero even added that advisors for the sale had already been hired⁶¹⁵. This debate was set for the next congressional year on the basis of the singularities of the individual cases. The executive’s attitude became even clearer when after the presentation of the cabinet subcommittee referring to Viasa’s situation the final recommendation was that the government should absorb the \$ 58 million debt in order to prepare the company for a bidding process. By December 1990 and after several capital injections to the company, the FIV had prepared a plan to formalize the debt assumption operation but this had to be approved by the finance commission of both houses in Congress. Once the decision was approved at cabinet level in Dec. 1990, it was formally sent to Congress on April 25th, 1991 (*Diario de Debates*, 1991).

When the opening of Bids was possible on August 9th, the financial audit report of the company was available stating that the owner, namely the main shareholder, should inject the firm some \$70 million more⁶¹⁶. The public opinion was

public enterprises considered strategic should be kept, but all others (“residual companies” is the term used) should be liquidated or sold. “They said all this without using the word privatization” (Kelly, 1994, p.258).

⁶¹⁴ These meetings later published as a book, presented a number of experiences in different sectors, described by many of its protagonists in several countries. Exponents from Spain, Chile, and Argentina were invited to lecture the Venezuelan Congress on the particulars of many privatization cases in their country. This seminar was even prior to the creation of the congressional privatization commission. (*La Privatización: un Diálogo Necesario*, FIV, 1991).

⁶¹⁵ And indeed they had: several national and international firms both on the legal and the financial area (First Boston Bank; Keisai and Associates; Bermúdez and Associates, etc). “The firm of Keisai and Associates undertook a financial analysis of Viasa as a first step in setting the minimum bid amount. Keisai reported that in June 1990, the company had negative capital of some 438 million Bolívares even after a capital injection by the government of 1.5 billion Bolívares” (Kelly, 1994, p.264)

⁶¹⁶ This report and its figures drastically changed the environment of the bid. As we have pointed out, later financial reports outlined the economic unreality the company had been standing on during the

also becoming uneasy due to the media's coverage of the topic and this quickly transmuted into Congress once the discussions began on July 19th 1991.

Most of the congressional discussions about Viasa happened after the debate for the telecommunications (CANTV), and some of them even during the same time. The opposition sectors were basically the same (MAS and Causa R), also the anti-privatization leader Matos Azócar, Lusinchi's ex planning Minister. However, Matos' position was milder this time since his party had already decided to present a weak cooperation towards privatization.

Once COPEI, the main opposition party (but in favor of privatizations) initiated the parade of facts and figures in the Deputy Chamber regarding Viasa's real condition, the information provided was hard to deny. To Hernández's discourse revealing that the company had an already announced crisis presenting losses reaching 1.275 million Bolivars and totalling a number of 5.500 million in subsidies from 1981 to 1990, Matos, president of the privatization commission did not offer substantial opposition as he had done in the case of CANTV, but showed care that this privatization ought to be done in a way not to harm the workers' needs and rights (*Diario de Debates*, 19/07/1991).

Matos, now closer to common party lines, observed the congressional privatization commission had no ideological observations to the idea of the privatization of the company. His opposition this time was based on the fact that the Airlines sector were having a difficult time in general, some of them signing for bankruptcy despite their size and importance, so Viasa had to be considered under these sensitive terms for the airline market. His suggestion was that the opening date for the bids ought to be postponed being august 9th rather too near a date.

As a final move, the privatization commission presented a concluding report, and Torres (FIV), Quintero (Viasa) and Smith (Communications Ministry) were all interpellated; this opportunity served to neutralize the final opposition movements against the airline sale. "Torres promised that the sale terms would be modified to include a more precise account of the nature of worker's participation and to ensure that the value paid would be sourced from abroad. He insisted that the sale price reflected real value and was based on several methodologies: liquidation value, cash flow under future optimum, goodwill, value of routes, etc" (Kelly, 1996, p.267).

- Conclusion

The debate regarding the privatization of Viasa attracted more public concern than the privatization of CANTV because as much as everyone agreed that the telecommunication sector was moving backwards, with little signs of recovery while in official hands, the airline unions had grounded the concept that Viasa was Venezuela's flying flag. Also, the debate about whether the subsidies through cheap dollars and the balances presented during the Mendoza years made everything up, was

Mendoza years since its losses were covered up by the obtaining of preferential dollars. Thus, only two consortia presented offers:

1. a group led by Iberia and *Banco Provincial*
2. a group led by KLM with Northwest Airlines, *Banco Mercantil* and Mendoza (the former president of the company)

a dilemma to both the expert eye and the common public. At a congressional level, once the real financial figures of the company were exposed, major opponents to privatization could do little but to hang onto ideological concerns. AD's position, not yet that of an opposition party as it would become after 1992, showed its tight disciplinary grip with Matos already signalled out and accused of autonomous militancy. All this smoothed congressional opposition. Aside from routine interpellations done to the related cabinet figures, the legislative remained expectant for the outcome of the sale.

Chapter V. Congressional Control and Privatizations in Argentina

It has been argued that the main differential feature between the privatizations carried out during the 80's and the 90's, is the size of the assets sold (Ramamurti, 1994). Following this argument, those state-owned companies subject to sale in the beginning of the 80's would have been small investments operating amidst already competitive markets (the so-called "periphery" of the public sector, Vernon, 1988) and somehow interacting with private companies. Those sold during the 90's on the contrary, would be bigger and many of them, state-owned monopolies. The Argentine case partially responds to this trend.

After the return to democracy in 1983 (and probably reluctantly at first), the Alfonsín administration started observing the need to reinforce the partial benefits obtained through several stabilization plans with deeper structural measures. Privatization was one of such measures but one that was deeply against the political beliefs of the president and the ruling party Union Cívica Radical (UCR), the same institution that had started the state's concentration of public enterprises and services during the 30's.

It was the radical administration (1983-1989), which first started the reorganization and restructuring of the wide (and to a certain point uncontrolled) SOEs administration the democracy had received from the military administration (Clad, 1991; Margueritis, 1999). Many of the efforts of a number of executive commissions during Alfonsín's time, plus two failed attempts to privatize the telecommunications company EnTel and the airline *Aerolíneas Argentinas* cleared the way so that later the peronist party and its leader Ménem could commit to an ambitious privatization plan avoiding former mistakes committed by the radical administration. During Alfonsín, it was congressional opposition that hindered the privatization efforts the executive had already agreed to. The peronist party, the main opposition force at the time, coordinated its network of alliances not only within the legislative but outside it, placing heavy accent on the unions it controlled and on other productive sectors of the society. Congressional support for the proposed privatization bills during Alfonsín was inexistent, from most of the opposition parties, and reluctant from the ruling party.

Congressional apathy during 1987-89 proved to be a fundamental difference that stopped and changed executive plans. This is all the more surprising when we observe that in Argentina the constitution provides a margin for power balance between the executive and the legislative clearly favoring the former. Historical developments during the XXth century, most particularly after the Second World War, contributed to strengthening the primacy of the executive as a ruling factor in detriment of Congress which was seen simply as a bureaucratic requirement in many cases. Adding worse elements to an already difficult situation for the legislative in the post war period Argentina suffered several *de facto* military governments during which any accountability over the executive power was deliberately suppressed. Following their authoritarian principle, military administrations diminished or brought

almost to zero the institutional participation of the judiciary and the national Congress.

The democratic turning point of 1983 looked forward to changing these historical parameters establishing institutional balance functions in order to consolidate the democratic system. Although empirical work exists to support the existence of *hyper-presidentialism* in Argentina (Nino, 1992), it is interesting to observe how the legislative has been able to emerge institutionally from the shadow of tyranny to the point of participating by amending and negotiating in one way or another almost all privatization initiatives during the Alfonsín and Ménem periods. Either by giving deliberate consent, by producing reforms to the projects or by stopping the bill throughout its congressional transit, the legislative became an active veto actor the executive had to argue with.

For the privatization case in particular, any policy aiming to change the structure of the state, most particularly when it is through the sale or transfer of public property, certainly requires congressional supervision and authorization. This is an ingrained possibility stated in almost all Latin American constitutional texts (Georgetown Database of the Americas). For most countries in the region, the policy initiative was in the hands of the executive, but congressional ratification turned out to be an unavoidable step in the process of property change⁶¹⁷. During the heavy privatization stage that started in 1989, the Argentine Congress showed several stages of cooperation with the executive. It went from pure delegation with the laws 23.696 and 23.697, to mild opposition and later a complete confrontation scenario with the cabinet (Llanos, 2002).

The fact that Congress would stage a main role as veto player throughout the whole process of reforms and privatizations, created a steady degree of tension that worked on behalf of the executive's intentions at first; later, it started turning towards the ruling party's interests when both Ménem and Congress consolidated their institutional position in the mid 90's. However, through the manipulation of the institutional tension (reminding legislators they should avoid gridlock) the executive sailed away from the most difficult part of the adjustments in 1989-1991. It must be remembered that during the six years of the first presidential term for Ménem, the Peronists had an absolute majority in the Senate and a working majority in the lower chamber that after 1993 also turned to absolute majority (the only exception being the brief 5 month period when Ménem took power before time, and the Radicals had a slight majority in the deputy chamber). After 1996, at the beginning of the conflictive phase, the peronists had managed to obtain an absolute majority in both chambers, so

⁶¹⁷ This has also deeper roots in the normative framework of any Latin American country. Starting after the Second World War (and in some countries even sooner than that), public enterprises were created to develop commercial and productive activities under different juridical formulae and models. There were the autarchic entities, the state enterprises, mixed enterprises, etc. The program of privatization differed from other structural adjustments because it required new laws that contradicted previously sanctioned legislation. This could not be done without the active participation, or the positive consent at least, granted from the congressional side.

in a way the so-called “conflictive phase” is a distortion of the relations between the president and the ruling party.

1. The Military Legacy: Economic Crisis and First Privatization Attempts

Most of the important crisis episodes of 1989 and 1990 in Argentina, which propelled political consent to move reform decisions forward, had central roots in the developments occurred during the period of military rule 1976-1982, and the Alfonsín years 1983-1989 (Teichman, 2001). The growth of the Argentine state in the decades before the military coup of 1976 had produced a chaotic public enterprise sector, the extent of which was far from clear, particularly because political administrations changed so often and policy continuity was rare. The state itself with its uncontrolled size and administration, may be conceived as a main cause of the crisis that appeared most crudely during the 80's (Canitrot, 1993). Political instability produced negative economic developments and vice-versa.

The main contestants in the Argentine political spectrum after the Second World War were peronism and the armed forces. The military carried out five *coups d'état* between 1943 and 1976, being in power a total of 23 years; most of these military governments declared themselves nationalistic, catholic, and strongly anti-Marxist (Canitrot, 1993). When in power, the military usually allied itself with liberals, advocating right wing economics frequently supported by the entrepreneurial sector. Meanwhile, Peronists ruled the country between 1945 and 1955 and from 1973 to 1976. Peronism usually received the support of the working and lower-middle class and won all electoral contests between 1946 and 1983, when it was defeated by the Union Cívica Radical, UCR.

The last military junta to rule the country before the return to democracy took power in March 1976, imposing a strong authoritarian regime that banned unions and political activities of all kinds, and tried to align itself to neo-liberal policies. Their management of the state and state resources was chaotic on financial terms. The foreign debt grew three times between 1978 and 1981 while most of the private debt was concentrated in a few large banks; a group of industrial firms close to the regime benefited from access to industrial promotion and public contracts. As a result, only 5% of all private debtors were responsible for 79% of the total private external debt. “Even before the Mexican unilateral moratorium triggered the debt crisis in 1982, in Argentina many banks had collapsed and had been taken over by a government whose reserves dwindled, as it artificially tried to sustain the financial system” (Murillo, 2001, p.132).

Despite the need to cut expenditures and reduce the fiscal gap, the adoption of neo-liberal policies by the Argentine military was not complete. A basic reason for this was that the Argentine military institution was less vertical than was, for example, the Chilean. In Chile, Pinochet remained the visible head of the whole public administration, but in Argentina power was shared by the several members of a junta, that is, a group of military generals with power on equal terms and a rotating main authority. Ideologically, the Argentine military was seriously divided at the time and

this made itself recurrently patent in the different considerations expressed by the various members of the military junta that ruled the country between 1976 and 1982. The Military was an institution that had persistent coincidences with neoconservative sectors of the society⁶¹⁸, but also other with nationalistic ideologists that viewed either foreign purchase of state property or loosing state control over the economy as negative (Fontana, 1985). The military institution had a history of business links with civilian political groups⁶¹⁹ and many of these groups, grown amidst a rent seeking environment, also resisted any idea of privatization because “business as usual” (regardless of whether under a military or democratic administration) meant a conception of the state that benefited those with contacts and access to the power decision centers. The interconnection between the military and some civil groups was already close by the time the military seized power again in 1976 and many military officers started to head public enterprises and ministries. There were core nationalists opposed to the idea of privatization or foreign economic intervention⁶²⁰ as well as some that espoused a limited liberalization of the economy (Manzetti, 1993).

The military period was tainted with strong ideological struggle inside and outside the official establishment concerning the functions and role of the state, all under the iron clad façade of the typical authoritarian regime. Peronists' labor groups, though severely repressed and outlawed by the regime did not disappear, nor did their core ratio of influence as a power factor⁶²¹. Economic liberals on the other hand, the economic group linked to the most affluent sectors of the society, feared the still perceptible power of the peronists and their unions and sought their elimination (Mc Sherry, 1997; Teichman, 2001). Paradoxically these two sectors found sympathies within the military institution, the liberals, which favored right wing capital owners and the nationalists, which had links with peronists unions and made business with the SOEs. The nationalist sector was rather most decisive at least regarding privatization, opposing it under the conviction that it threatened national security, because state

⁶¹⁸ According to these neo conservative sectors, the crisis the country had arrived to in the 70's, was the result of extensive state intervention in the economy where the relation between this intervening state and the corporative organizations of managers and workers had created a distortion of the normal working of the economy. Their analysis was based on free market considerations, where the state ought to adopt a more passive role towards the movements of private initiative (Fontana, Chp III, in Boneo, 1985).

⁶¹⁹ It is particularly interesting to observe that another difference from the southern military regimes of Chile and Argentina is that while in Chile few members of the military were sent to occupy public positions, in Argentina many of the Public Administration branches and the SOEs were managed by military staff. “After the military coup of 1976, military officers came to run almost all state institutions: the army, the navy and the air force divided up ministries and public enterprises and most other government positions” (Teichman, 2001, p.99). This situation promoted a division of loyalties and interests, which contributed to the breakdown of the vertical chain of command (Manzetti, 1993).

⁶²⁰ A very interesting example to illustrate the imbrications of the military with the business sector is offered by Wynia (1986): Over the years, the state-owned industrial trust *Fabricaciones Militares*, a group of industries that alone accounted for 2.5 % of the national production, had been managed by military staff. The management of these enterprises had created a “friendly interdependence” between public firms and their private sector clients, to the point that at the time of retirement many military went to work for companies that had been clients of *Fabricaciones Militares* (p.114)

⁶²¹ Many of the military designated as *interventores* in the labor trade unions kept old union leaders as advisors (Gaudio/Thompson, 1990)

companies in strategic sectors would probably fall into the hands of foreigners (Lewis, 1990).

Despite a prominent military cabinet one of the offices that the military did give to a civilian was the ministry of economy, where Jose Martínez de Hoz was appointed. De Hoz was part of the wealthiest sectors of Argentina and had important connections to international finance institutions, something that was at the same time welcomed and seen with a wary eye by different sectors of the military. He tried to convince the Military Junta of the need to start several market reforms and succeeded up to a certain point, but was unable to overcome the inner resistance of the military sector, of those who advocated nationalist and statist ideas⁶²². The same sector had been long linked to a centralized conception of the state, and had profited from business with SOEs and their powerful unions in former times. Because of such existing ideological paradoxes within the military junta and the cabinet, De Hoz's program was "a heterodox and sometimes contradictory blend of price and exchange controls, selective tariff reductions, privatization attempts on one side and state expansion on the other" (Manzetti, 1993, p.131).

The initial economic goal of the military administration was the control of the inflationary spiral, so the first measures were salary and price freeze, reaffirming the state's intervention capacity over the economy. Second to this stabilization plan, other measures tried to partially open the economy through subsidy and tariff reductions⁶²³, internal deregulations⁶²⁴, etc; but paradoxically, pro liberal market measures had to coexist with other policies of strong state intervention over the economy (Schvarzer, 1991).

In the long run, the public sector proved to be extremely complex for the military administrations: one list made in the mid 70's (1976) suggests a total of 747 enterprises controlled totally or partially by the state, of which 347 were of "controlling interest" (Ugalde, 1984). Relating this information with the size and importance of the enterprises we see that the core of the SOEs industry was not that big: only 14 enterprises represented between 61 and 77% of the total public enterprise activity, either measured by their sales amount or by total employment capacity (Schvarzer, 1991, p. 32-34). So public investment was spread and disorganized with no entity controlling the universe of decentralized administration.

A visible effect of the links made between the military and the wealthy liberal sectors was the premeditated weakening of the unions and the erosion of much of their former participation in public policies. This would later be made more

⁶²² The intertwining of military management with union leaders as advisors and the common belief that some enterprises ought to remain under government control due to their strategic character, fostered the stout opposition De Hoz found in some military Generals like Diego Urricariet, *Fabricaciones Militares* head appointee, one of the strong antagonists to privatization initiatives.

⁶²³ The forestry industry received a subsidy, as did the mining industry through a fund set up in 1979 (*Fondo Minero*); while the fishing industry was subsidized through the *Fondo Nacional de Pesca* (Schvarzer, 1981, p.25)

⁶²⁴ The financial sector reform in 1977, which liberalized interest rates and credit from private financial institutions and at the same time eased credit expansion norms, promoted a strong growth of the financial sector.

perceptible through the elimination of the Unions Funds, which until before the Junta took power in 1976 had been made by deposits on state-owned banks; they represented a key source for Union financial power. These links with liberal sectors left another consequence for the Junta and their attempt to reform the economy: the “peripheral privatizations” or privatization of many of the services used by the so-called strategic enterprises. Thus sale of service provisions needed for the biggest SOEs was part of the irregular turn towards market policies in Argentina during the 70’s. Because of the interest division in the military, the side aligned with liberal promoters could not convince the nationalistic side to sell any of the strategic enterprises, not even the smaller ones; but it succeeded in going as far as transferring some services used by the bigger SOE’s to the private sector, which had been until then also provided the state-widening bureaucracy levels.

1.1 Privatizations without congressional Intervention 1976-1982.

In Argentina, privatization has been part of economic policies under both civilian and military governments. Market policies have not particularly been, as it could be argued in Venezuela, a special initiative sought after during the democracy years, while the last military regime had only been nationalistic. In Argentina, related figures sample some 120 SOEs sold to the private sector during the military regime, but in all cases the firms were small. Taken together, their sale accounted for 5% of all Argentine SOE sales (Birch/Haar, 2000). Against a clear definition of the use of the privatization policy for all these cases counts that most of these SOEs were re-privatizations: enterprises that had begun their economic life as private but had subsequently languished financially, and had either been taken over or bailed out by the government.

Added to that and in detriment of what would be a coherent privatization policy by the military junta, it can be argued that the military administration had no accompanying program of economic liberalization and service regulation once the enterprises had been sold⁶²⁵, nor did it show a coherent idea of the consequences in the dynamics of institutional architecture that would occur once the state ceased to be the main entrepreneurial actor. Instead, together with privatization initiatives there were distorting factors in the economic environment, such as the continued presence of high tariffs and other import barriers, multiple exchange rates, exchange controls, restrictions on capital movements, domestic price controls and regulated markets. All of these elements combined secured a counter-productive atmosphere for investment and privatizations in general and thus, the sales of small SOEs had little impact on the behavior of the business sector, which continued to be characterized by “rent-seeking, short on financial speculation and capital flight” (Birch/Haar, *ibid.* p.79).

⁶²⁵ Margueritis (1999) contradicts this assertion in some ways: “The last military government was one of the bloodiest military authoritarian regimes and perhaps the most dogmatic neo-liberal experiment Argentina went through before Ménem. Under the supervision of the International Monetary Fund, a number of restrictive monetary and fiscal measures together with a thorough commercial liberalization and de-regulation of the capital and financial markets was tried on the economy” (p.43).

To these symptoms there was also the ideological gap between advocates of a reduction of the state via free market policies and a nationalist sector of the military. The strongest divergences between the neo-conservatives associated with the military administration and the core group of the junta were those issues regarding the transformation of the state and the size of the state. As a functional premise to preserve a degree of social peace, the armed forces vetoed all policy that could produce unemployment⁶²⁶ (Canitrot, 1990). Privatization remained a questioned policy under these terms. Even some pro reform sectors strongly opposed what they called a *desmantelamiento irresponsable* (irresponsible dismantling) of the public and state property, since it was not clear what would come after, once public property was sold.

So what was reached was a sort of middle ground, in which the privatizations would occur only in activities peripheral to the great SOEs, alleviating the state from a number of services. In 1977 this “periphery privatization”, started by selling or transferring to the private sector what were defined as “non essential services” (Margueritis, 1999). For the main industries and services, considered almost all as “essential”, the state would remain the main provider but peripheral privatizations would alleviate the state from providing a number of secondary services these big industries needed. In the case of the national telephone company for example, this “peripheral privatization” meant the sub-contracting of private firms for activities the state had had to solve before, such as repairs of the external network, provision and equipment installment, vehicle maintenance, telephone book printing, etc. Peripheral privatizations involved then, the contracting out of a variety of auxiliary functions to help the public enterprises. This mild form of outsourcing was supposed to lighten the heavy load produced by the big SOEs without having to completely sell them to private capital. It also benefited a small number of large industrial companies that provided the services and the materials. In a way, these private sector providers were guaranteed a captive market with a number of benefits such as tax privileges, guaranteed payment and overall, easy credit from the national *Banco de la Nación*⁶²⁷.

Another important decision regarding the transference of competence from the public to the private sector was law 18.586, sanctioned in 1980, which established the assignment to provincial governments of the provision of some services that had been created by the central administration. This meant a lightening of the central administration’s obligations not through privatization but by a mild form of federalization of some of the SOEs’ service provision. This would later be called

⁶²⁶ The grounds for such a decision are several. First of all, for reasons of national security and social discontent; also, the armed forces viewed themselves as “protectors” of the society, an ideology under which the military should protect the worker class (Canitrot, 1990).

⁶²⁷ The process benefited a small group of large industrialists but progressively harmed the state because, simultaneous to this divestment process, done through the peripheral privatizations, the state took over itself new responsibilities. An example is the 1979 purchase of the *Compañía Italo Argentina de Electricidad*. This company had a dollar price higher than that received for the sale of all public enterprise shares sold during the period (Schvarzer, 1981; Teichman, 2001). This acquisition of bankrupt private companies had other examples including the airline Austral which would later be privatized by the democratic government of Alfonsín.

privatization. The same year, there was a second important background to the privatization of public enterprises and services, law num. 22.177. This bill allowed the executive to start partial or total privatization of all those enterprises, societies, establishments, etc, where the state had either partial or total property. Although this fact never materialized itself with other than small state-owned firms, this bill (completely executive engineered) is the first decision to try to norm the public property selling procedure; it determined that each privatization process would be carried out by the ministries or public institutions through which the referred SOEs had links with the executive power (Clad, 1991).

In conclusion, if we compare that in 1976 research aiming at determining a total inventory of SOEs had concluded that there were 347 entities in which the state held a major interest, and about 400 in which it had a minor or passive role, there is a contrast with later figures, which means either inaccurate records or that some privatizations occurred in the meantime. By 1982 the central Bank (*Banco Central de la República Argentina*) made an official inventory estimating 297 financial and non financial enterprises of which 148 were national, plus some minor shareholdings not included in the survey. The visible decline in the number of SOEs is the result of the so-called “peripheral privatization” and the general tendency towards a liberalization of the economy that started in 1976 with the military administration, though it did not go much further. The measures that caused this numerical reduction of enterprises were the peripheral privatization and to a minor extent the re-privatization of over 120 small or medium sized firms, and the liquidation of several others (Del Campo/Winkler, 1991; Rausch, 1993).

2. Privatization and the Radical Administration (1983-1989)

The new constitutional elected government in Argentina took office in 1983 amidst a profound economic recession⁶²⁸ that presented a drop in the *per capita* income, an on-going de-industrialization process and an increase in the relative weight of the large diversified economic groups. Many of these groups had developed as public works contractors, or due to state led industrial promotion and other subsidized incentives (Rausch, 1993). The rising and persistent inflation produced numerous policy shifts and successive stabilization episodes in the new democracy. But it took long for the different sectors to perceive the structural constraints implied in the Argentine institutional design as it was, and the operative exhaustion of the state-centered idea of development. A possible cause for the reticence of accepting the exhaustion of the development model is because during the first stage of the Import

⁶²⁸ During the years of the military junta, the external debt grew to previously unknown levels. By the end of 1975 it was around US \$ 8 billion, and in 1983 with the first figures done by the recently elected government, it was over US \$ 45 billion. This growth in public debt did not translate itself into better social conditions or economic growth, rather, most of it was due to mismanagement of the SOEs, and the private debts of the 10 biggest private enterprises which had profited from the military administration. Democracy began with a strong handicap since Domingo Cavallo, president of the Central Bank during the 80's, nationalized the whole of the private debt, a situation that had enormous consequences during the mid and late 80's.

Substitution Industrialization (ISI), and placed in comparison to private industries, public enterprises offered several strategic advantages to the political and socio-economic sector. This had remained so in the collective memory of both parties, and society. SOEs had played a coordinating role in an economic context where dynamic market failures⁶²⁹ had been present. Their acting as “buffers” against socio-economic imbalances and unemployment were considered strategic for economic development by both radicals and peronists (Galliani/Petrecola, 2000).

SOEs in Argentina gradually lost their capacity to influence economic development or economic growth either because they became too staff loaded, or because they were every time more and more expensive to maintain compared to the political and economic benefit they could produce. So finally, instead of being an aid to economic growth or even a tool against unemployment, they became an obstacle to them. The debt crisis of the 1980's contributed to make the dynamism and efficiency decline in the public sector firms more visible, though it is likely that their deterioration on practical terms was well underway before that (Baer/Birch, 1992). In the Argentine case from the beginning of the 70's, public utility prices had fallen below the costs of the SOEs' “factor of production” which is the radical clue to a later bankruptcy of the state⁶³⁰, since companies consume far more than they produce and become deficit producers (Gerchunoff/Canovas, 1994). However this reality, they remained a political tool for long time still, despite their inoperability and high costs: periodically during the 80's the government used the SOEs to control inflation, by allowing the public enterprises' prices to lag behind the continuous increases in price levels. This was blatant in the price policies of EnTel, the National Telephone Company, where prices were periodically arranged to remain under the inflation index, particularly during hyper inflation periods in the 80's.

The debt crisis of the early 80's and the acceleration of inflation, substantially worsened the fiscal possibilities to subsidize this mode of production among SOEs; and the problem, subsidized production to give political and economic results, had become structural in its nature⁶³¹. The fiscal crisis finally (after two critical years, 1984-85) forced the government to reduce the financing of SOEs, since public enterprise investment was a prime target for budget cuts. At the same time, without new technology and qualified staff investments, the quality of the goods and services of the enterprises quickly deteriorated, creating an adverse climate for the possible survival of the SOEs in the long run.

⁶²⁹ Part of the ISI strategy and the common academic discourse was to accept that Public Enterprises served the purpose of correcting the so-called “static failures” of the market, namely, externalities, natural monopolies, etc.

⁶³⁰ Although this deficit was not so significant in the beginning (nor was it uniform in all enterprises), the drop in the productivity index reflected on market prices and in a complex process ingrained in the institutional architecture of the state. It all revealed the slow but irreversible deterioration of the SOEs as development tactic and the ISI model as economic growth strategy.

⁶³¹ Figures that describe the situation are astonishing: between 1981 and 1983 the overall public sector deficit experienced a huge increase. By 1983 the deficit reached 15.6 points of the GDP! (Galiani/Petrecola, 2000)

The Radical government was the first to (gradually) realize the need to complement economic stabilization plans with structural and state design measures in order to obtain long term stable economic effects. However, by the time most of the ruling party in Congress came to grasp this situation, their political capital was running out. Until 1987-88, the overall social conviction and that of many radical (UCR) cabinet members (including the president) was not that deep regarding reforms. Despite their failure to produce state transformations that would accurately reduce the deficit, it is convenient to observe that the problem of the over sizing of the state had already been diagnosed by the UCR, even before electoral times. Its electoral platform for 1983 mentioned the need to privatize enterprises and services. In many cases though, the practical translation was the need to “re-privatize” those enterprises that had coincidentally or otherwise been absorbed by the public administration, not being the product of a “deliberate and planned state acquisition”⁶³².

After successive attempts to reduce the growing inflation during the 80’s, the government had to accept the relation between this variable and the state’s own enormous internal (and unnecessary) expenditures (Margueritis, 1999). It was then that the administration started, albeit mildly in comparison to what happened later, timed liberalization, deregulation and privatization policies. Privatization, which began in 1985, comprised at the beginning firms that had previously been “rescued” by the military administration⁶³³ and almost all these privatization processes were done by decree⁶³⁴. congressional resistance on the issue was almost non existent, since it was a) an issue responding to already announced campaign alignments and b) it was a decision “making justice” on the military past resolutions. On this issue the radical government could count on a lot of social and political support both from its own files and those of the opposition since, due to the illegitimacy and cruelty surrounding the whole military period; it was not difficult to overturn pronouncements (even if they were on the economy) previously made by the *junta militar*.

In 1984, the Alfonsín administration created a commission by decree to investigate and analyze the situation of all enterprises and societies where the state had partial or total ownership. This commission was later transferred to stay under the control of the Ministry of Economy (decree 767/86), to aid potential privatizations like that of Austral Airlines to the company *Cielos del Sur*. Alfonsín also tried other

⁶³² The electoral platform said “the enterprises to be maintained as public are those that provide essential public services and other national interest for which these enterprises may be considered valid. Those enterprises that have become part of the public capital coming from the private sector, ought to go back to being private unless there would be a specific interest or benefit on behalf of the state” (*Plataforma de Gobierno de la UCR*, 1983, chap. II)

⁶³³ The term “rescuing” a firm was used to indicate those firms in financial trouble that had been nationalized or strongly capitalized by the military administration. It was part of Alfonsín’s campaign message to re-capitalize (re-privatize) them again; something he could do almost single-handedly, without the need of specific congressional support.

⁶³⁴ SIAM S.A. Electromechanical by decree 1228/86; Opalina Hurlingham S.A., tile plant, by decree 216/85; Austral Airlines, domestic airline carrier, by decree 1720/86, resolution ME 461/87 and decree 2066/87.

forms than decree created commissions, to better propose privatizations to Congress; for example through the Houston Plan, an idea that would grant oil concessions to private capital companies in order to share risks and benefits of the oil wells exploration and exploitation (CLAD, 1991). This initiative was later left aside when in 1985 the Austral Plan began showing positive signs of economic recovery.

Despite these isolated initiatives before 1986 the idea of privatizations had not reached a higher political status as economic policy than probably being a short term financial solution for public deficit. Privatization was still impregnated by the concept of those “peripheral privatizations”, or a policy suited for selling small, inoperative and to a certain extent unnecessary industries or services, to obtain cash in return. Bigger SOEs were still considered “strategic” and were in consequence left untouched. The whole privatization stage of those firms “rescued” by military lasted from the first months of 1984 to the middle of 1985.

These first privatizations made by the radical administration meant very little on real economic terms to the already difficult Argentine financial situation. They did not provide enough capital to overturn the continuous crisis and they did not alleviate the budget from the fiscal weight of the big bankrupt SOEs. Their sale did not produce important reductions on the state budget, nor did they increase public income through their auction. However, seen in perspective, Alfonsín’s government was the first trying to face the enormous problem of the SOEs’ restructuring. After 1985, he started issuing some decrees trying to regulate SOEs and created for this purpose the Secretary of Control of Public Enterprises (*Secretaría de Control de las Empresas Públicas*, decree num 2452/85) in order to provide the executive with accurate diagnoses of the situation of the decentralized administration. In the same administrative direction went the creation of the Directory of Public Enterprises (*Directorio de Empresas Públicas*, decree num 2194/86), which ended up having full responsibility over a number of SOEs⁶³⁵. A final decree in 1987, num 1842/87, made void any previous legislation (laws or decrees) that in some way or another forbade the private provision of public services. These were all clearly economic liberalization objectives oriented to opening the SOEs to private investment in the long run.

One of the symbolic stabilization plans during this period, the Austral Plan, proved unsuccessful after its initial achievements in trying to contain inflation. However, it managed to put SOEs’ restructuring and liberalization on the agenda, two topics the administration saw as mandatory to deepen and guarantee the sustainability of any further reforms. The *Australito* (next stabilization plan) kept public and congressional attention on those issues. The plan called for intensification in tariff

⁶³⁵ There was practically a ladder of decrees until the executive could finally organize the SOEs sector. After the creation of the public enterprise directory, there was another decree, num 2036/87, trying to unify in one text all previously issued decrees related to the functioning and attributions of the SOEs. In 1988, decree 222/88 was issued and the effects of joining and classifying the whole set of SOEs and their legal nature could be seen as the final step that enhanced the quick privatizations that the Peronists were later able to achieve. This decree represents the final stage of a series of SOEs’ structuring reforms, where the executive completely delegated on the Public Enterprises Directory all those enterprises it possessed, of which it had until then been in charge of through a complicated net of tutelage.

reduction, in the restructuring of the SOEs and, for the first time, the possibility of moving towards the privatization of big public enterprises. Once the *Plan Austral* had failed to control inflation anything further than on short term basis, the idea re-emerged that the executive could sell some public enterprises, not only the small ones, looking forward to both the modernization of the sector (telecommunications and airlines for example), as well as to the gain of fresh resources that would reduce the size of the crisis. In the telecommunications and the airline sector, both set as pioneer plans among the big SOEs, the executive proceeded to sign a letter of intention with *Telefónica de España* and Scandinavian Airlines, guaranteeing them a sale of shares from *Empresa Nacional de Teléfonos* and *Aerolíneas Argentinas* respectively, once congressional approval to the idea was obtained. The institutional machinery was starting to move towards a partial privatization of two big SOEs and the executive and legislative appeared as the two leading veto players on scene.

Strictly seen, these several stages the Alfonsín administration went through (mostly through presidential decrees to clear the legal way) to understand the magnitude of the SOEs problem and begin to quantify and classify its dimension, clearly enabled what was later seen as a rapid privatization process, during the peronist government. The radical administration, after facing strong internal contradictions with many of its original and traditional party principles (for what it implied to start a strong privatization program), decided that stabilization plans, to be able to go further, needed a deeper reform of the public administration. Privatization of many of the SOEs where the state had diversified a substantial amount of investment was one of them. The government started to understand this after two years in office, and began to face the enormous disorganization existing within the decentralized administration, which comprised the SOEs' varied universe. The administration began the painstaking move towards sector organization and responsible entities. Said in other words, it began to work on economic reforms aiming at a long run effect, reforms that would change the state's architecture and conception.

The overall weight of the Argentine public enterprise sector, before the wave of privatizations started after 1989, was approximately 7% of the GDP, an average of 30% of the gross fixed investment (GFI), accounting for 56% of the public sector deficit, 26% of the external debt (around US \$ 58.5 billion), and 2.8 of the total labor force. By the time the Ménem administration took over, it had two notorious advantages to deal with this reality: first, the whole legal register of public enterprises and the ministries they were attached to, and second, the do's and don'ts of the Alfonsín experience when trying to proceed to privatize bigger companies.

2.1 Economic Stabilization Attempts in Argentina 1983-1988

Argentina has had an extensive experience with various stabilization programs after the Second World War, having at least one plan per decade, and more than five during the years between 1980 and 1990. Despite these stabilization attempts, little

had been done on structural adjustments (or second generation measures) to try to tame the root causes of economic instability.

By the time of the return to democracy in 1983 part of the focal point of both political campaigns was that the military administration had left the nation in ruins, increasing poverty and inequality at all levels. It was then rather naively thought by both parties, that democracy would be a panacea for economic ailments (Llanos, 2002), so the Radical Party did little to define specific terms of an elaborate economic policy. Rather, it embraced from the beginning what it had always known, old state interventionism proposing to counterbalance the “unfair” effects of the monetarist policies done under the military regime with a distributive program⁶³⁶. This view had also roots in the conception that the military had administered the nation with no rational pattern, but favoring already strong economic groups it had associated with, forgetting all social compromise.

It must also be acknowledged that the Argentine party system had had one of the largest inactive periods in the whole region, being set aside by the several military coups that ruled the nation after the Second World War. On practical terms this meant that almost all those politicians leading the delicate transition process between the former authoritarian regime and the new democracy, were leaders with a certain background of credibility and social struggle for democracy. For many, democracy and democratic consolidation meant more of the economic conceptions active during the 60's and 70's, based on state interventionism and distributive policies (Palermo/Novaro, 1996). Following these premises, once the radical government started its administration, the first minister of Economy, Bernardo Grinspun, applied an economic stabilization program designed to balance fiscal accounts mainly based on austerity and reductions of the military expenditures. Inflation was to be controlled from the agreement between productive and labor sectors by balancing prices and wages, while economic expansion and income distribution should come from a joint policy of higher wages and lower interest rates (Canitrot, 1993). These policies soon failed because the announced price and wage agreement did not happen, and inflation went to higher levels. The international financial institutions did not back much of Grinspun's policies denying special economic support for the delicate transition process, so finally he had to resign in 1985. Many of the government procedures done in its first political economy design were influenced by what had been campaign goals, namely, to perfect social income distribution and attack poverty. However, problems worsened in the short term, and the government had to face state expenditure and inflation more directly and promptly than it had thought.

⁶³⁶ Perhaps earlier than in any other nation, the idea of market policies or neo liberal restructuring was already discredited in Argentina at the beginning of the 80's, due to the negative associations with the administration of the military junta and the idea of privatization as benefit for only a few. In consequence there were little chances for any deeper reform towards a possible liberalization of the economy. In that sense part of the way to future reforms was already marked. Market policies became associated with the military regime, especially at the beginning of the radical administration.

Table 5.1 *Argentina's Stabilization Programs between 1950-1989*

Minister (launching stabilization and year of Launch)	Administration	Evolution of Annual Inflation (%)	Outcome
Alfredo Gómez Morales (1952)	Juan Domingo Perón (1951-55)	1952 – 38.8 1953 – 4.0 1954 – 3.8 1955 – 12.3	Escalation of Political Unrest followed by coup and interruption of the adjustment program (1955)
Adalberto Krieger Vasena (1967)	Juan Carlos Onganía (1966-70)	1967 – 29.2 1968 – 16.2 1969 – 7.6 1970 – 13.6	massive Riots (the 1969 <i>Cordobazo</i>) and interruption of the stabilization program
Celestino Rodrigo/Antonio Cafiero (1975)	Maria Estela (Isabel) Martínez de Perón (1974-76)	1975 – 335.0 1976 – 347.5	Major unrest (1975 the <i>rodrigazo</i>) including rising terrorism followed by a coup.
Jose Martínez de Hoz (1977)	Jorge Rafael Videla (1976-81*)	1977 – 160.4 1978 – 169.8 1979 – 139.7 1980 – 87.6 1981 – 131.3	Capital Flight, increase in unemployment, massive banking crisis in 1981, interruption of the reforms.
Juan Sourrouille (1985)	Raul Alfonsín (1983-89**)	1985 – 385.4 1986 – 81.9 1987 – 174.8 1988 – 387.7	Hyperinflation and capital flight in 1988-89, premature presidential resignation

Source Corrales (2001); Gerchunoff/Llach (1998).

*Videla's successor tried to implement a stabilization package in 1981 but it ended shortly after 1982 as a consequence of the Malvinas' war.

** During Alfonsín's period a record of stabilization plans were used with temporary effects. Bernardo Grinspun, the administration's first economy minister, half-heartedly agreed to accept an IMF endorsed austerity package in September 1984. The plan lasted until Grinspun's resignation in 1985. Then six stabilization packages were implemented under Sourrouille: the Austral Plan (June 1985); the "second shock" (April 1986); the *Australito* (February 1987); The "Fourth Shock" (July 1987); The "Fifth Shock" (October 1987) and the "Spring Plan" (April 1988)

The first strong package the radical administration presented was the *Plan Austral* in 1985, which proposed a freeze in wages and prices, the creation of a new currency (the "Austral" substituting the traditional "Peso"), aiming to reduce fiscal deficit while keeping a "realistic" exchange rate (Canavese/Di Tella, 1987). The greatest emphasis was placed on maintaining wage restraint and bringing fiscal deficit under control. To that moment, the issue of excessive public expenditure had not produced any major innovative proposal other than "austerity" and "relocation of resources". Privatization of state-owned companies and services had been out of the menu of considerable policies. Even the most orthodox plans proposed by the multilaterals (IMF and WB), spoke of "restructuring" the public enterprise sector rather than privatizing it.

The Austral Plan drew attention to the possible connection between inflation and the permanent and growing imbalance in public accounts, suggesting the need to complement stabilization plans with structural measures. For this purposes several reforms started to take place, namely, a new taxation policy for which Congress

received an executive designed bill project. The *Plan Austral* had also been part of a negotiated agreement with the IMF. It was the first concerted initiative that aimed to restructure the SOE sector, since it was becoming obvious the state would have less and less money to invest on its enterprises and these were becoming an operative burden. Privatization, though latent as a possibility, was not yet seen as a real policy to cover big deficit with fresh money by either the government or the IMF.

The *Plan Austral* failed after more than a year and after a small period of relative success where it had tamed inflation a little, only to succumb to it later again. Industrial production grew, but agricultural producers and unions saw their interests severed and thus protested continually. Alfonsín tended to approach economic problems like political obstacles: he sought a political agreement between productive forces as a long lasting solution to inflation, which was contradictory to the reality that most of the big unions were tightly controlled by the peronists and would not cooperate. Congress also failed helping the government in this direction by not approving new labor legislation with the expedite effort the situation required (Margueritis, 1999). After a very tense period of opposition from many social sectors, the Minister of Economy substituted the fixed exchange rate for a crawling peg or constant devaluation system. That brought the inflation-devaluation spiral back again. In 1986, public deficit grew and the commercial balance deteriorated visibly. It was under this tense environment (February 1986), that the minister of economy declared that the government's privatization plans included petrochemical and steel industries, two of the medium sized SOEs. This was a hard evidence for the executive, to see how the initiative would be taken by Congress. The chambers received a bill in 1986 with this purpose. For the first time, the idea of privatization meant that the executive was considering selling those enterprises it had no money to invest in, and those that required constant technological updating.

As soon as the *Plan Austral* deteriorated after showing some success in 1985⁶³⁷, the radical administration produced another stabilization package, this time named *Australito*, in 1987. In practical words it meant a new wage and price freeze to try to cope with the galloping inflation, while it left the same fiscal and monetary policy the *Austral* Plan had used. The *Australito* also meant a closer attitude from the administration, to try to follow IMF guidelines through a *stand-by* signed agreement. Most important, the *Australito* deepened the already pronounced tendency of the *Plan Austral* to consider privatization as a feasible policy to try to cut fiscal deficit and obtain cash for the sale of unproductive SOEs. If the *Plan Austral* put trade liberalization and public enterprise on the agenda, *Australito* expanded this approach by proposing an intensification of tariff reduction⁶³⁸, restructuring of the public enterprises⁶³⁹ and privatization of public enterprises (Teichman, 2001).

⁶³⁷ The *Plan Austral* had managed to cut monthly inflation down to a 3% during 1985, but was unable to run a long standing control of inflation. The whole Sourrouille strategy had shown some success when inflation had gone from a yearly average of 670% in 1985 to a 90% in 1986. The *Austral* Plan had also contracted the combined public deficit from 6,3% of the GDP to 4,3% in 1986.

⁶³⁸ Although big privatization efforts failed due to congressional opposition during the radical administration, at the beginning of 1988, some months after the issuing of the *Australito*, there was

Table 5.2 *Economic Programs during Raul Alfonsín (1983-1989)*

Economy Minister and Plan	Policies	Relationship with International Financial Institutions
Bernardo Grinspun: Expansionary Program January 1984	Salary increases (12%) Tariff protection Credit for small and medium business increased money supply	Tense: moratorium on debt payments Negotiations under way; unilateral letter of intent; agreement September 1984; falls out of compliance within three months
Juan Sourrouille: Austral Plan June 1985	15% devaluation New Currency (Austral instead of Peso) Wage and price freeze Restructuring of the public firms Trade Liberalization Increase public utility rates Reduce fiscal deficit to 1.5%	New letter of intent with IMF supporting Austral targets; IMF accepts heterodox plan. World Bank initiates increased lending program SECALS to increase exports competitiveness Rescheduling accord with creditors, August 1985
Juan Sourrouille: <i>Plan Australito</i> February 1987	New wage and price freeze Intensified tariff reductions Restructuring and privatizations of public enterprises Monetary and Fiscal Policy same as <i>Plan Austral</i>	Rigorous Stand-By agreement with IMF Argentina falls out of compliance; new agreement in July 1987; again out of compliance; disbursement of funds stopped World Bank SALS for trade, banking reforms plus SECALS
Juan Sourrouille: <i>Plan Primavera</i>	12% Devaluation temporary price truce Increase in public tariffs Three-tied exchange market Privatization Target deficit: 2.4%	Discussions with the IMF for a three year extended facility program; fourth revision of the letter of intent approved. Disagreements between World bank and IMF over targets April 1988, ceases to make interest payments to foreign banks; arrears build up. Fails to reach an agreement with the IMF which refuses request for Stand By agreement; World Bank makes a US \$ 1,25 billion loan; disbursement of much of the loan blocked because of non-compliance

Source: Teichman, 2001.

The *Plan Australito* lasted something more than a year after which several of the persistent economic symptoms of Argentina reappeared, most specially the failure of the administration to honor its debt payments⁶⁴⁰. The government had been

tangible progress in other fields of the reforms such as trade liberalization and tariff reduction: the number of products subject either to quantitative restriction or import prohibition had been reduced by 25%, and the average tariff rate had gone down from 51 to 36% (Botto, 1999)

⁶³⁹ Restructuring of the SOEs is a process that the Alfonsín administration was promoting rather intermittently since 1984, mostly through decrees that aimed to create an entity in charge of the whole SOEs sector. For this purpose Alfonsín had issued decree 414/84, to create a commission in charge of determining the situation of the public enterprises. Decree 2452/85, to assign the Ministry of Secretary the control of the restructuring process; and finally, decree 2194/86 that created the Directory of Public Enterprises (CLAD, 1991).

⁶⁴⁰ The Argentine external debt in the last two decades before the 90's had an explosive growth with three main phases: a) a quick growth period during 1976 and 1978 with a yearly expansion of 19,9%;

promoting several discussions with the IMF since 1987, trying to obtain some endorsement and better terms for its debt payments, something that did not occur. The plan *Primavera* and its currency devaluation was the last effort from the administration to try to send credibility signals to foreign investors. Politically, the government was severely weakened after repeated defeats in Congress. The imminence of the electoral process plus a consistent growth of the peronists in the congressional elections of 1989 let the financial community understand a change in government was something likely to happen in a matter of months. Interestingly though, this institutional struggle between the legislative and the executive shows a veto playing character for Congress that would disappear with the first peronist administration and would not come back until Méнем's second presidential period.

From the evidence gathered we see that stabilization packages and reforms in general tend to collapse not at the beginning of the program, but sometime well into the reforms and usually after some degree of economic improvement has been attained; a time when actors become more insistent on compensation, less willing to make sacrifices and increase their veto capacity to block future reforms that would consolidate the previous (Hellman, 1998; Corrales, 1997). Under this opinion, temporary economic improvement after a difficult period can bring a rise rather than a decline in political unrest, especially when actors move to obtain a bigger power share for the future rather than helping to consolidate the economic situation (Smith/Acuña, 1994). This could be a possible explanation for the political differences that accentuated in Argentina during the period 1983-89, since each stabilization package worked briefly and then collapsed amidst intense political and sometimes social conflict. At the same time, each one left a bitter experience and the feeling that something deeper should be done, but the government lacked the political consensus to conduct such a reform.

The recurrent stabilization plans issued by the Alfonsín administration showed both the government and the opposition that "heterodox" or locally made approaches would not count with the confidence, trust and thus financial support of the multilaterals; and that all stabilization measures, in order to have a long standing result, had to be backed by structural reforms that would re-define the relation of the state as enterprise owner and development promoter. The slow but consistent approach of the radical administration, from a negative attitude towards privatization to a partial acceptance of it, showed the comprehension of some sectors of the ruling

b) an explosive growth phase between 1979 and 1981 with yearly growth patterns of 41,9%; c) and a period of forced debt acquisition from 1982 to 1986 with a 7,7% yearly rate growth (Bouzas/Keifman, 1992). From the beginning of his administration, Alfonsín had pursued to obtain international support based on the fact that the Argentine democracy was new and fragile, and that it needed economic and financial help to become sustainable. This approach failed and the government went from a total suspension of the payments (made in 1984 to evaluate the extent and "legality" of the debt), to a progressive deterioration in the regularity of its disbursements. The relations between the government and its multilateral creditors deteriorated, and the IMF stopped promised central bank aid through its *stand-by* agreement. The *Plan Austral* started to change this reality promoting the intention of the government to update its obligations. The year of 1985 (when the *Plan Austral* was issued) also meant the renewal of the first economic cabinet which had been with Alfonsín since 1983, constituted by those who represented the hard liners of the old radical administration.

party to promote a needed modernization of the state and the economy. By 1986 and after the issuing of the *Plan Austral*, it had become evident both to the government as well as to the opposition that some privatizations had to occur sooner or later in order to alleviate the fiscal load of the state. That it would not be a political triumph of the radicals may have been a deliberate policy of the peronists, who fostered a strong obtrusive policy in Congress and in the unions most of which they controlled.

2.2 Structure of the State-owned Enterprises in Argentina before 1989⁶⁴¹

In Argentina the strong growth of the state sector through the creation or acquisition of diverse enterprises began around 1930. This was most probably due to the effects of the international recession of 1929, which forced the state to intervene actively in the economy in order to reduce negative consequences in the country (Dromi, 1997). At the time, the government imposed severe regulatory monetary policies through the creation of the Central Bank (1935). After 1946, state interventionism acquired a deliberate political character with the conception of the state as a social justice promoter sought by the Peronism. The core idea then and for some time after was the pursuit of income redistribution and an import substitution policy. The state is no longer a “production and service regulator”, but through nationalizations it starts a planned intervention in all strategic sectors of the economy⁶⁴². This initiative was followed by all governments alike radical, military or peronists. Both democratic administrations as well as military regimes that ruled the

⁶⁴¹ This classification is based on the one exposed by the CLAD documents on Restructuring of the Argentine enterprises.

⁶⁴² Conservative Governments (UCR) Created or Nationalized: Fabricaciones Militares (1941, con 14 fábricas grandes y 17 sociedades anónimas); Junta de Granos (1933); Banco Central de la República Argentina (1935); monopolio a favor de Yacimientos Petrolíferos Fiscales (YPF, en 1935); Junta de Carnes (1935); Mercado Nacional de Papas (1933); Caja Nacional de Ahorro Postal (1914); Corporación del Transporte (1936); Comisión Reguladora de la Yerba Mate (1935); Mercado Consignatario (1935); Sociedad Anónima Mixta de Aceros Especiales (SAMAE, 1943); Fábrica Nacional de Envases Textiles (FANDET, 1942); Corporación Argentina de Tejeduría Doméstica (1941); Flota Mercante del Estado (1942) entre otros organismos.
Peronists Governments Created or Nationalized: Ferrocarriles Argentinos (1949); ENTEL (1946); IAPI (1947); DINIE (1947); Depósitos Bancarios (1952); SOMISA (1947); AFNE (1953); INDER (1946); Agua y Energía (1947); FANU (hoy ELMA, 1949); EPEC (1952); DEBA (1947); CNEA (1950); DINFIA (1952); Subterráneos de Buenos Aires (1952); Giol (1954); IAME (1952); *Aerolíneas Argentinas* (1950); FORJA (1955); Administración General de Puertos (AGP, 1947); ATANOR (1950); Empresa Nacional de Transportes (1952); Papel Prensa (1973); Canal 9 (1974); Canal 11 (1974); Canal 13 (1974); Estaciones de Servicio (1975); Ingenios Azucareros; Cervecerías; Fábricas de Caramelos, cerámicas, textiles; Hoteles, entre otras cosas.
Military Governments Created or Nationalized: LADE (1945); Gas del Estado (1945); YCF (1945); Canal 7 (1955); IME (1967); Siam Di Tella (1970); Telam (1969); CEAMSE (1977); Optar (1977) CONASA (1970); Sidinsa (1975); Astillero Domecq García (1979); Satecna (1977); Codex (1972); Italo (1978); Austral (1980); Opalinas Hurlingham (1973); Comarsud (1972); La Cantábrica (1971); Gaby Salomón (1971); La Bernalesa (1972); Cílera, (1972); Hierro Patagónico Sierra Grande (Hipasam, 1969); Tandanor (1970); Petroquímica General Moscón (1970); Petroquímica Bahía Blanca (1971); Petroquímica Río Tercero (1973); Carboquímica (1972); Papel Misionero (1979); Construcciones y Viviendas para la Armada (1966); La Emilia (1972); Frigorífico Swift (1971); Industrias Llave (1971); Tanque Argentino Mediano Sociedad del Estado (TAMSE, 1980); Silos; Hoteles; Aserraderos; Lavaderos; Hosterías; Fabrica de Cerámicas; Fabrica de Zapatos; Confeiterías; Hilanderías y Tejedurías. (Diario de Sesiones de la Cámara de Senadores de la Nación, 26/27 Julio de 1989; pp. 1384-1385).

country during the XXth century increased the number of SOEs either through direct acquisition or through nationalization of industries.

The highest economic concentration reached by the state as owner and regulator of the economy occurred in 1973 (Dromi, *ibid.*), when because of the extensive network of state-owned enterprises purchased or created in the past 40-50 years the state managed to control the market, production, consumption (through consumer prices), investment and general prices for almost all goods. Increasing economic deficit indexes already present by then produced a new legal form, the *Sociedad del Estado* or State Society, which tried to promote and produce a criterion of efficiency in the public administration of the SOEs. By 1975, the public sector was in charge of generating more than 32% of the GDP.

Public utility prices in Argentina have been (more acutely after the economic crisis of the 80's) characterized by a number of structural distortions produced by the on-going deterioration of the SOEs. This decline in functioning capacity was significantly worsened by the crisis of the 1980's, a time when several emergency symptoms became visible, through problems dated back to the 70's or even before (Gerchunoff/Coloma, 1994). Structurally seen these distortions obeyed a number of factors:

- a) a significant gap between the prices charged to residential consumers and those charged to producer firms
- b) a production rate level that did not cover SOE costs
- c) an excessive progressive indexation, specially in periods in which residential consumers were favored at the expense of the business sector
- d) the existence of a large number of specific subsidies, determined by work activity, sector or country region (Galiani/Petrecolla, 2000)

On legal terms, the Argentine decentralized public administration is composed by autarkic entities, state enterprises, anonymous societies (*sociedades anónimas*), societies of mixed capital and state societies.

- The *autarkic entities* have their own legal personality; they are able to administer themselves. The state decides on their functioning and administration regarding legal principles.
- The *state enterprises* are similar to the autarkic entities with the difference they can create their own contract granting regime. Only their directive workers are considered civil servants.
- The *state societies* are those where the state is the main and only shareholder and acts as such. The managers and directors are solely responsible for the results of their work. State societies cover industrial, commercial and service interests.
- *Societies of Mixed Economy* are those where state investment does not have to be the majority. The relation between share holders is as that of commercial partners with the right to veto for both sides. The public side reserves for itself

the presidency of the society and the selection of at least one third of the directives.

- The *anonymous societies* with majority state participation (*sociedades anónimas con participación estatal mayoritaria*) are those where the state reserves for itself at least a 51% of the total of shares, but accepts private capital participation and management when the private investment amount is over the 20% of the total shares.

2.3 Attempting Structural Reforms: the Privatization Bills in Congress 1986-1988.

One of the outstanding steps done by the Austral Plan was that it meant the first definitive move towards a concrete privatization policy from the executive, outside from those re-privatizations or small privatizations it had done in the beginning. The *Plan Austral* had focused it self on (and obtained), a substantial reduction of the combined public deficit from 6,3% to 4,3% of the GDP (Bouzas, 1989). Despite those successes, Alfonsín was rather sure the reform initiatives proposed by his economic cabinet would generate strong reactions in his own party, so he tried to limit the opening of the economy and the privatization plans (Botto, 1999).

Among the ideas exposed during the issuing of the plan by the Minister of Economy (first on Television and later on a transcribed script published on the papers), was the sale of two state-owned industries under the notion that the state could no longer afford them nor could it maintain their technological updating and efficiency requirements⁶⁴³. This exposition and its concomitant sale proposal were beyond everything that had been done until then regarding SOEs: Sourrouille recommended the sale of small enterprises, or the restructuring (via presidential decree) of a number of them. The plan had several internal advantages for the Radical administration: first, it had the support of the management members of these industries; second, in the first stage of the Houston Plan, the sale of the SOEs (in this case, joint ventures for the oil company YPF) was never directly proposed, but only the sale of “peripheral services” related to the firm, such as exploration and exploitation. Most of these plans were considered in “joint venture” with national and international capital⁶⁴⁴.

⁶⁴³ Juan Sourrouille explained first on TV and later in a speech transcription published in the newspapers on Feb. 7th, 1986, that the selling decision taken by the executive affected directly SOMISA (steel sector) as well as *Petroquímica Bahía Blanca* and *Petroquímica General Mosconi*. The main reason for this decision would be efficiency: “the transfer to the private sector will run parallel to the fixing of the rules of game, removing the negative aspects of the national steel industry, with the goal of eliminating the monopolistic features that hinder competitiveness, winning flexibility to operate in a very demanding market and obtaining greater efficiency to make the enterprise’s competitive appearance in the world possible” (A. Canitrot, Economic Coordinating Secretary, in Clarín 23/02/86, taken from Llanos, 2002, p. 52)

⁶⁴⁴ When exposed to the legislative and the public in general, this idea had the benefit that the contracts to grant exploration or exploitation rights in the form of joint ventures implied a number of risks that would also be undertaken by the investing firms. There were also several details within the contract that bestowed the state a number of options and rights.

This speech made by the minister of economy also announced what became true a short time later: the executive would send, for congressional discussion and eventual approval, a privatization bill to obtain the legislative support and resources for such operations. The bill was submitted to the lower house in October 1986, and it proposed the creation of a general normative framework to conduct and regulate through it all future privatization operations⁶⁴⁵. Due to the character of the exposition made by Sourrouille and the fear and distrust Alfonsín had over his own economic cabinet and the reforms, the executive did not even name the bill a “privatization project”, but one seeking the creation of a “National Fund for Industrial Development”. As such, the bill would produce a variety of funding for the state including those obtained via privatization. On this regard and presented as something rather obvious to its objectives, the bill contained an appendix with a list of the enterprises which were considered potential privatization candidates⁶⁴⁶. If the bill managed to pass, the SOEs included in the appendix list would be considered as congressionally approved and would become the first attempts to start privatization.

On this respect it must be said that aside from the whole administrative disorder the radical government found in the universe of the state-owned enterprises, the legislation for an eventual privatization possibility had to be expanded and actualized. The then existing legislation (Law 22.177) dated back to the times of the last military regime and was a very rigid frame for a selling process since it limited the process to a simple executive controlled bidding procedure. Part of the new executive proposal was that a normative tool should include other more modern aspects that had become part and parcel of privatizations elsewhere, such as public auction sales, direct contracting, value selection, etc. The executive included all those new elements in the bill proposal but also wanted a ratification of the old law 20.705, which granted the executive the conductive role in initiating privatization policies⁶⁴⁷.

There were positive sides to the previous military legislation on privatization, viewed from the side of the executive. For example, it granted the executive the sole authority to decide when, where and under which terms, a privatization policy should be conducted. Congress was deliberately excluded from these decisions. Despite such benefits for the executive, the existent legislation also had severe constraints if the privatizations were to be used as part of a macroeconomic arrangement, or aimed to help stabilize the economy in general. One of the main problems was that according

⁶⁴⁵ The government had a difficult task developing the privatization idea because there were strongly opposed cabinet members who managed to delay the procedure.

⁶⁴⁶ The appendix had the following enterprises: *Empresa Nacional de Telecomunicaciones; Empresa Nacional de Correos y Telégrafos; Aerolíneas Argentinas; Agua y Energía Eléctrica; Ferrocarriles Argentinos; Gas del Estado; Yacimientos Petrolíferos Fiscales; Servicios Eléctricos del Gran Buenos Aires; Hidroeléctrica Nor-patagónica; Obras Sanitarias de la Nación; Yacimientos Carboníferos Fiscales; Canal 7 ATC; LRAI Radio Nacional de Buenos Aires; Empresa Línea Marítimas Argentinas; Administración General de Puertos del Estado.* (Diario de Sesiones 22/10/1986 p. 6618).

⁶⁴⁷ The basic idea of the privatization law proposal of October 1986 was in some ways an expansion of the two already existing laws. On one side it wanted to include several aspects drawn from the experience of privatization immersed countries (Costa Rica, Mexico), and on the other, it wanted to confirm, through a new legislation, the pre-eminence of the executive to determine the extent and conduction of the policy.

to this old normative frame, in Art. 10 of the law 22.177 it was established that all funds obtained through the sale of SOEs would go to the national treasury, with the exception of those shares that were in the hands of other SOEs. These shares, given the case, would have to be paid to those SOEs that owned them. The problem was that the shareholding SOEs (those having shares of other public companies) were mainly the big petrochemical and oil companies, all controlled by *Fabricaciones Militares*, a conglomerate of enterprises strongly reinforced at the time of the military administration. If the then actual law were to be followed, all incoming money from the privatization or joint ventures of the exploration and exploitation services of the oil company YPF would have ended up in *Fabricaciones Militares*, a holding with already declared financial problems⁶⁴⁸. The official idea to counter-act this prevision was the creation of a fund for industrial growth and restructuring, so the arriving money could be better disposed of.

Something also persistent in the official discourse particularly before 1986 was the idea of strategic industries and the state as development promoter. Although the radical party had gone a long way in trying to understand the economic reality in Argentina during the 80's, values and beliefs of state intervention in the economy were deeply anchored within many sectors of the party. In the motif exposure of the 1986 law⁶⁴⁹, the executive observed that privatization was one of the ways through which the state could intervene in the economy, guaranteeing national development and thus trying to gain the hard liners' agreement and vote. "Strategic industries" would remain in the public domain, though priorities for their ranking had changed. As Llanos puts it: "Some strategic areas of the economy changed according to the pace of technological transformation. Because of these changes, many goods that until recently were connected to national defense now had other uses. As a consequence, the entrepreneurial state had to adjust to this by relocating resources from the older strategic areas, such as the petrochemical industry, to the new ones, biogenetics, cybernetics, etc." (Llanos, 2002, p53) The rationale used by the government was that amidst a shortage of resources, privatization of the older and less needed sectors of the economy would provide the resources to foster the investment in the new ones.

By the time Congress received this privatization bill, the correlation between growing fiscal deficits and inflation and the expenditures of the SOEs on the economy were clear for many legislators. Before this first initiative introduced by the cabinet in 1986, Congress itself had proposed 8 privatization bill projects to handle with the SOEs financing problem. For example, in favor of widening the executive faculties to rule the process were those initiatives taken by Hugo Socchi (UCR) in July 1985; the provincial Senator Gabriel Feris (PAC- Corrientes) in July 1985; and the projects of

⁶⁴⁸ The petrochemical sector was heavily controlled by *Fabricaciones Militares*. It was a sector formed by 9 mixed enterprises with an approximate value of US \$ 600 million (as for 1985), of which a 43% was controlled by the private sector and the rest, 57%, by the state. Of this total shares in the hands of the public administration, 29% were in the hands of *Fabricaciones Militares*. In case of a potential privatization and according to the terms of the law then active, *Fabricaciones Militares* would have had to receive the equivalent price to this number of shares (Badia, 1991).

⁶⁴⁹ Introductory message to the bill, sent on October 1986; p. 6675 from the Deputy Chamber sessions.

the deputies M. Alsogaray and F. Clerici (both UCeDe members) in April and September 1986. All these projects varied substantially in their approaches, but were consonant with the idea of privatizing and of granting the executive an important role in the initiative and policy implementation in order to be more expedite and quick than a case by case discussion in Congress would be.

Against the initiative as it had been stated in the law until then, that is, that the executive could act in a unilateral manner, were the projects presented by the *Partido Justicialista* and the Christian Democracy, both of which suggested the elimination of the existent laws and the creation of a bicameral commission to follow and assess privatizations. The spirit of these initiatives meant a more thorough empowerment for the legislative based on the constitutional prescription that Congress should regulate over state property. These projects were presented by several deputies with some peripheral divergences, but they all had similar core ideas. The projects belonged to J. Manzano (PJ) in July 1985; Senator E. Ménem (PJ) in August 1985; C. Auyero and A. Conte (Democracia Cristiana) in May 1986 (Twaites Rey, 1994). These last proposals, from the PJ and the Christian Democracy, were in favor of strengthening congressional control over the privatizations from the very beginning, and granting a legislative bicameral commission the powers to oversee the whole process and the capacity to veto it.

These proposals were many times individual and group initiatives, but in almost all cases they were far from representing the opinion of the whole party they came from. This was particularly so in the cases of the UCR and the PJ, where there existed party members that opposed any kind of privatizations however presented⁶⁵⁰. The ruling party, the UCR, had an important majority in the deputy chamber until 1987 but despite that, it could not unite itself behind the idea of selling either public property or services, and an even more conflictive point were the open divergences about where the incoming money should go.

Due to this intra-parliament politics, Alfonsín's administration saw the first cabinet privatization initiative die under friendly fire in the deputy chamber; it failed to go through this first stage precisely because it could not count on the necessary support from its own ruling party members. Not being able to present a united front on the topic and without a law that would change the specific destiny of the incoming money (result of the privatizations), the government lost interest in promoting the petrochemical joint ventures (Houston Plan) it had advertised until then⁶⁵¹.

Table 5.3 *Argentina Distribution of Seats in Congress between 1983-1989*

Chamber of Deputies		
Total Number of Seats	PJ Seats (%)	UCR Seats

⁶⁵⁰ Many Congress members, especially those from the ruling party, conditioned their approval to a slight opening in the selling of some services (or in the case of joint ventures with private capital as in the Bahía Blanca petrochemical industry). Their idea was that the administration would later re-invest this income in more SOEs, or in those state administered services that needed investment (Botto, 1999)

⁶⁵¹ The Alfonsín administration tried to sell the enterprise Polisor later on, and some other petrochemical complexes also, but it failed not least because of the unstable economic situation.

(%)			
1983-1985	254	111 (43.7)	129 (50.8)
1985-1987	254	62 (24.4)	129 (50.8)
1987-1989	254	97 (38.2)	114 (44.9)
Senate			
1983-1986	46	21 (45.7)	18 (39.1)
1986-1989	46	21 (45.7)	18 (39.1)

Source Molinelli/Palanza/Sin, 1999

After this first approach, privatizations became an official initiative again in 1987 under a new minister of economy and a new stabilization plan. It is arguable whether this time their discussion was purely an executive idea or had to do with the failure of the Austral Plan and the beginning of the *Australito*, when foreign banks holding most of Argentine's debt insisted on an arrangement that would offer the SOEs as financial collateral to their agreements⁶⁵². However, the procedure promoted by the executive was different this time, trying to learn from past failures. The executive concentrated the whole process under the direction of only one cabinet member: Public Works Minister Terragno. The government excluded all previously created organisms in charge of the privatization leaving only the Public Enterprise Directory in charge, where Terragno named Losowiz, a personal friend as director. The directory of public enterprises had widened powers to act as legal representative of the SOEs, with the idea to reduce the bureaucratic ladder of veto actors within the cabinet and diminish the conflict possibilities between ministerial competences in order to accelerate the presentation of the bills to Congress.

Supported by the existing legislation, the executive started to move towards privatization following the scheme of selecting potential partners to sell a number of the shares of both EnTel and *Aerolíneas Argentinas*. The state would sell part of its ownership in the two enterprises and would give up their administration, transferring managerial command to the purchasing company, but would still maintain control as majority shareholder.

Terragno sent the two bills to Congress, also including the proposal that workers could receive up to a 9% of the total of shares of the company. The method chosen by the executive to do these sales was a direct contracting procedure based on letters of intent the government had signed with *Telefónica de España*, for the telecommunications sector, and Scandinavian Airlines for the case of *Aerolíneas Argentinas*. The turning point was that both agreements required congressional approval and authorization, on which the executive was naively counting. Contrary to the first proposal in 1986, these two bills were introduced in the Senate where the Peronist Party had shown a slight interest at the beginning⁶⁵³. The deputy chamber

⁶⁵² This idea of the SOEs as warranties or collaterals, was part of the *stand-by* agreement the government signed with the IMF in 1987 through which it agreed to start deep structural changes, a restrictive monetary policy, gradual opening of the economy and the acceptance of the supervision of this measures by the World Bank (Tedesco, 1994).

⁶⁵³ During the congressional interpellations done to Minister Terragno in order to obtain more details regarding the proposed privatizations, several senators of the Justicialist Party showed a passive

was deliberately avoided also due to the internal problems regarding the possibility of privatization, already visible in the ruling party⁶⁵⁴. Despite a promising beginning, the coming electoral environment and the successive economic failures of the government let these projects drown.

To a certain extent, the delay regarding these bills can be related to the reality that in the Argentine Congress. There operated the “unanimity rule” (Mustapic/Goretti, 1991) regarding privatization. The fact that there was an almost clear political parity of forces, with the Radicals controlling the lower and the Peronists controlling the upper chamber, gave the parties the possibilities to neutralize one another, something they both consciously and deliberately avoided after the return to democracy. As Mustapic/Goretti (ibid.) explain, this “unanimity rule” running in the Argentine Congress during Alfonsín’s Government implied that the major parties committed themselves to expressly avoiding institutional gridlock between Congress and the Executive in the name of democratic consolidation. Functionally, it implied that those issues that provoked serious dissent between the major political forces would be postponed indefinitely (p.31).

Privatization bills in Congress during Alfonsín’s administration ran such a fate, but they did so going through several stages: at first, there was a clear misunderstanding on the extent of the country’s economic problems from the side of the ruling party and some cabinet members, which produced a faulty presentation of the privatization project and needs; second, the government had had too many successive economic failures, which in turn created a negative environment and background for the possibility of deeper reforms, such as privatization. The ruling party was not clear on the plan that was to follow in order to sell SOEs nor did it agree with some cabinet members and their mild liberal proposal, which shows how the division of criteria was widely spread. Only when the economic crisis had become too steep, it did agree albeit reluctantly, to second the executive proposals in Congress. By then, precious time had gone by and the Peronists had won a stronger participation and voting power in Congress after the 1987 elections, so they could now stop any executive initiative in the legislative.

Indeed, the acknowledgement of the extent of the Argentine economic crisis was something both the ruling party and the opposition took time to seize, while the core vote of the two big parties (the traditional leadership) had always been against reforms and did not feel committed to restructure the state. The fact that many of these changes were to some extent seen as imposed by agreements with the multilaterals (which exerted a constant pressure on the executive due to the irregularity of its debt payments) was also something Congress reacted against. Once

approval to his ideas (Botto, 1999). In fact, between the months of December 1988 and March 1989, Terragno seemed to have conquered a legislative agreement with several justicialist senators (Tenev, Britos, Del Valle Rivas, Gurdulich, Murguía, Rubeo, Sánchez and Molinas; Botto, ibid.)

⁶⁵⁴ Throughout a long period in 1987-88, strong divergences can be found in the press between Ministers Terragno, Sourrouille and the president of *Aerolíneas Argentinas*, Horacio Domingorena. The latter sharply criticized the methods proposed by Terragno to try to sell the Airline’s shares (see Clarín, 02/09/88).

more, the idea that the ruling party did not accompany the executive in time of reforms, did not feel part of the executive and was not conscious of its decisive support role became patent in the radical party.

2.4 Privatization and the Political Parties 1983-1989

Alfonsín and his closest political staff, and with them a big proportion of the Radical Party, probably lacked the ideological conviction and method needed for the economic reform of the state (Canitrot, 1993). This postulate is consistent with the idea of the political parties that felt themselves as “custodian of the state properties” and “founders of the democracy”, institutions to which neo-liberal values were rather foreign and threatening (Corrales, 2001).

In the case of the Radical party, a significant study variable is that they had not shared or been in power for a very long time, and had nothing to hold onto but their old conceptions of state design: those involving import substitutions and distributional policies with strong state intervention on the economy for example. The radical party leaders both openly and under closed doors, rejected the British Thatcherian model and its orthodox monetary policy, but presented no coherent economic alternative to it other than repeated calls to fiscal austerity. Another element is that perhaps Alfonsín placed too much hope on the purely political factor during his administration. He probably expected more international economic cooperation to help maintain and consolidate democracy in Argentina. Back to a harsh reality when he was given a cold shoulder from the international financial institutions unless he proceeded to reform the state, he started to propose some reforms. As Canitrot describes it: “Even at the end of his government, when Alfonsín sent a Congress proposal for privatization of the airline and the telephone state companies, and deliberately favored other public sector reforms, he seemed to act more out of political necessity than true conviction. Apparently uncommitted, Alfonsín relied on the technical capacities of his economic team to administer the state crisis without solving it” (Canitrot, in Smith/Acuña/Gamarra, 1993, p.85).

To all political forces and especially to the ruling party, it later became obvious that reforms had to be done, otherwise all economic stabilization plans would remain futile and a failure in the long run. When Alfonsín became president in 1983 he inherited an economy in shambles with a fiscal deficit around 16% of the GDP. His first minister, Grinspun, brought this deficit down to 9% and the second, Sourouille, with the aid of several shock adjustment measures and currency devaluations took it to 1% in 1986. This was the time when the Austral Plan rendered its best results, 1985-86. However, all these achievements proved to be superficial because they had been attained through emergency measures that could not be sustained over a long period of time⁶⁵⁵.

⁶⁵⁵ Aware of the lack of conviction in many ruling party members, the cabinet played the risky card of sending a strong tax reform to sustain the fiscal reduction it had achieved through the stabilization plans. The reform was approved but it did not render the expected effects. After that failure and despite administrative efforts, fiscal revenues declined and continued to fall until the end of 1990. Although fiscal expenditures were reduced year after year as part of the austerity programs preached by the

Another problem was that the radical party became weary of those proposing any kind of liberal reform. Juan Sourrouille, the second economic minister of the Alfonsín administration, faced credibility problems in the lines of the Radical Party. He had first been the secretary of planning since almost the beginning of the Alfonsín administration and from there came most of the members of what became the “new economic team”. People that had worked with him in Planning later accompanied him to the Ministry of Economy. Despite this involvement and relative antiquity in the administration, party pressures to the executive against this economic team were a constant issue from the radicals. “With only few exceptions the team members were not considered part of the radical party. This proved to have some disadvantages, at least at the beginning. We were considered intruders and it was necessary to prove that we were trustworthy. Moreover, the president had to convince the party that it could trust us, and that took time” (Machinea, 1990, p. 14). Part of the problem was simply that Sourrouille and his team had replaced Bernardo Grinspun, one of the traditional Radicals and hard liners in the old beliefs of the party. He had been in charge of the Ministry of Economy until then and his economic policy (based on the traditional alignments of the party) had failed, but he and a number of hard-liners did not feel defeated.

Argentina had a strong dominance of a two party model between 1983 and 1995, which theoretically guaranteed the president enough legislative support but at the same time, the functional prospect of depending more and more on the backing of the ruling party. Because privatization was disregarded and considered an unnecessary policy by the radical party at the time when it had an absolute majority in the deputy chamber, the executive could not get the first privatization project through then; nor did things improve once the party understood the need to privatize since by then the *Justicialistas* had enough support to ensure a working majority through coalitions in the deputy chamber.

The consideration that Argentina’s party system was polarized⁶⁵⁶ in the 80’s and thus had difficulties to pursue reform (Haggard/Kaufman, 1995), stands insufficient to explain the situation regarding privatization in the legislative. Inter-party relations here seem to have played a lesser role than executive-ruling party relations. The opposition, embodied mainly by the peronist party, followed the statist line that was ideologically expected from them. Once the executive realized the need to start reforms, the radical party, then with a majority in the deputy chamber and working possibilities in the Senate, did not go along and Alfonsín missed the clear support of his party to start a deeper reform program.

We know from previous studies (Kohli/Shue, 1994; Evans, 1995) that when the ruling party accompanies the executive in the introduction of reforms, it acts as a social facilitator aside from the policy voting back up it can produce in Congress. The

government, fiscal deficit went back to higher figures reaching 8% of the GDP in 1988, while monthly inflation rate averaged more than 10% from 1987 to 1988.

⁶⁵⁶ The literature on Argentina’s historical polarization resulting from irreconcilable positions between Peronists and Liberals or even Peronists and not peronists is extensive. Representative samples are found in Halperin (1994); Cheresky, (1991); Smith, (1991); O’Donnell, (1973).

endorsement is then crucial in several ways since it provides the executive with two important tools: a) the possibility of neutralizing societal resistance and b) it boosts credibility on the executive and the executive initiatives (Corrales, 2001). In addition, harmonious relations between executive and ruling party could diminish reform skeptics in the opposition spectrum. The party forces gave government and opposition a mutual veto capacity (at least until the 1987 elections), since the lower chamber had a radical majority while the Senate was under peronist control. So the government had to count on intra-party cooperation, something difficult to enforce around privatization in the first years of the Alfonsín government.

In Argentina, the series of stabilization plans from the 70's onwards show that every new plan provoked the resistance of the cost bearing groups, namely, the social groups that would share the heaviest toll of the reform program. A better comprehension (from the radical party leaders) of the initiatives the executive was trying to follow once Grinspun's efforts failed in 1985 (and when Sourrouille introduced the Austral Plan at the end of that year), would have probably facilitated actors inside and outside Congress to cooperate with the reforms and made the mentioned toll lighter for any social group.

In contrast to the idea that strong parties cannot harm governance in presidential systems⁶⁵⁷ (even more in Latin American presidential systems where institutional resources are almost totally executive oriented), Argentina is a good example that despite many presidential legislative resources, not counting with the ruling party's approval on reforms can be very destabilizing for the presidency. The very mild cooperation of the radical party, which hindered the application of deeper solutions to the crisis, made the administration unable to cope with the fiscal deficit. Due to the economic chaos and the hyper-inflation crisis in 1989, Alfonsín had to resign and give power up before the end of his constitutional period.

Table 5.4 *Bills initiated by the Executive 1983-1989 and Congressional Results*

Year	Lower Chamber		Upper Chamber		Congress		%
	Total	Law	Total	Law	Total	Law	
1983	51	40	2	2	53	42	79
1984	96	72	33	29	129	101	78
1985	36	19	95	86	131	105	80
1986	59	27	36	20	95	47	49
1987	68	35	25	23	93	58	62
1988	31	13	35	30	66	43	65
1989	59	33	23	13	82	46	56

Source: Molinelli/Palanza/Sin, 1999

As the chart shows, congressional opposition stiffens naturally after 1987 when the radical party lost the majority it had in the deputy chamber. But the year immediately after the Austral reforms were introduced, 1986, is also a very difficult

⁶⁵⁷ See Huntington (1968)

moment for the government. This year shows one of the lowest averages for executive bill projects accepted and approved. It was also the year of the first privatization initiatives done by Alfonsín. Clearly, the Radical party could have done more than it did in favor of the presidential policy initiatives but no one, not even Alfonsín himself, was convinced of the economic liberalization as a solution to the economic problems (Canitrot, 1993).

In conclusion it can be stated that the main obstacles to reform were the privatization laws issued during the military regime. These laws pre-directed the resources that would have been obtained from privatizing SOEs, and would have invested them into other SOEs linked to the Ministry of Public Works and/or the Ministry of Defense. Second, the monopoly character of the main petrochemical and steel industries that Alfonsín tried to privatize, impeded their sale possibility since they were not on the potentially privatizable list of enterprises that Congress had received, but were an isolated item to consider (Botto, 1999). The government failed to create an environment favorable to privatization in Congress and did not call for the necessary party discipline in the legislative, showing the public opinion that even the cabinet was strongly divided on the issue of selling SOEs⁶⁵⁸.

At the time the second attempt to privatize SOEs reached the legislative, done through the executive signed letters of intent with Scandinavian Airlines and *Telefónica de España*, the radical party started behaving differently but it was then probably too late. These propositions made by the executive in 1988, implying the sale of 40% of the shares in the companies meant almost the same losses for the radical party as the first proposition they had not accompanied in 1986. Overall it involved losing support from the working sector where, although the peronist were a majority, the Radical Party stood as second force. Aside from that, the intra-party situation had changed after 1987, probably due to the electoral results. The defeat in the election where the party lost the absolute majority it had had in the lower chamber, made it realize the people's growing support towards the peronist party that was capitalizing on the divisions between the executive and the ruling party.

2.4.1 The Radical Party

Aside from engaging itself in trying to normalize the whole socio-political situation and pursue the consolidation of democracy after the military regime, the other big goal of the Alfonsín administration was to promote growth and stability in the economy. In this field, the situation had deteriorated notably after the military administration and the debt crisis of 1982.

The radical party, *Unión Cívica Radical*, had been absent from any public administration office for a very long period and did not have a clear diagnose of the economic problems and their depth (Mustapic, 1998). As the crisis situation developed, those party members in charge of cabinet positions in the cabinet managed to grasp part of the on-going structural problems within the economy, but a great

⁶⁵⁸ The issue of strong party discipline in the Argentine Party system is a long discussed one. See Siavelis (1997); Jones (2002)

portion of the party remained distant from a clear judgment and based their decisions only on ideological settings. The Radical party was commanded by hard line historic members (*líderes históricos*), who viewed their mission as one of issuing distributive policies; something the military had failed to do. Most of these Radical Party members viewed the whole idea of liberalization of the economy and privatization of SOEs as a desertion from their original responsibility, which was to guarantee fairness amidst a state led development model. The fact of winning the 1983 elections over the peronists made them think they were being called to do things correctly and maintain Argentina in the democratic path. Thus for all these reasons they did not go along with the government when, after issuing the Austral Plan, it hesitantly decided to move towards a privatization policy in 1986.

Alfonsín had announced during his campaign in 1983, that he would re-privatize those enterprises that had been acquired by the state in the times of the military junta. With this promise he clearly meant those companies that had been bought at the expense of national resources despite the fact they were already bankrupt. For this idea, although it was mainly an executive decision in the implementation, he could count on party support. The situation was easy to understand and obeyed the logic of dismantling the decisions of the military, which were viewed as the causes of the socio economic problems the country was living.

However, if anything could unite the historic leaders of the UCR, it was their ideological aversion to privatizing SOEs. When a commission of the Ministry of Economy in charge of the reduction of the size of the state proposed the sale of those SOEs “that did not imply strategic products or services for the country” (Botto, 1999, p.86) in 1984, the cabinet simply dismissed the suggestion not considering it a top priority in the economic decisions. This first economic cabinet was formed by “traditional” radical leaders, who proved to be, together with the deputy chamber controlled by the UCR, a strong obstacle for privatization⁶⁵⁹.

Immediately after the Austral Plan, when the economic team led by Sourrouille started to work, the party began feeling distant from the decisions and the proposals made by the technicians in the economic cabinet. In part, the party echoed much of the dissatisfaction expressed by the cabinet, which was strongly divided on the question of privatizing either services, as was suggested in the Houston Plan, or other industries, such as the Petrochemical plants Bahía Blanca, General Mosconi and Belgrano. The executive wanted a joint venture promotion to assure fresh resources in the exploration and exploitation of certain minerals, and at the same time relieve the

⁶⁵⁹ “En el ámbito del ejecutivo los intereses en pugna se multiplicaron. Para los funcionarios radicales la idea de vender las empresas de producción constituía no solo una claudicación ideológica en términos pragmáticos sino también una pérdida de poder interno a favor de los equipos técnicos y sectoriales recientemente incorporados al gabinete, a la vez que una amenaza a importantes fuentes de recursos materiales. A pesar de que existieron muchos y diversos funcionarios radicales que contradijeron en los hechos las directivas dadas por Economía en materia de achicamiento del Estado, la oposición en esta área provino de figuras de primera línea del gabinete nacional: el Ministro de Defensa y el Secretario de Energía. Además de verse involucrados en la puesta en marcha de la iniciativa de reforma, estos dirigentes habían sido con Alfonsín, los fundadores de R y C, y argüían tener iguales títulos que el presidente para definir los lineamientos de gobierno” (Botto, 1999, p. 94).

fiscal burden these companies produced on the budget. But even this mild cooperation schemes demanded a deliberate legal structure and the political will to proceed. The traditional radical leaders mistrusted the private sector, which had benefited during the times of the military regime. Anyway, the government created an *ad hoc* reinvestment fund (*Fondo de Reconversión*), thought to channel incoming resources from privatization and avoid having to give them to the minister of defense or of energy, due to the existent privatization law.

By the time the first privatization bill arrived in Congress, several Congressmen had been working on legislative proposals some of them from the radical party; but this toleration of the privatization idea expressed only a minority view. Division grew between the executive and the ruling party with none of the sides doing something to ease the situation. For party members the crisis remained within the government: “the problem was that it (the UCR) was not part of the government; rather it was the group of technical members of the government (i.e. the economic cabinet) who were in charge of creating the new policy” (Llanos, 2002, p.59). Part of the further allegations made by party members against the executive and its deliberate isolation, was that they remained so foreign to any economic decision taken by the cabinet that they were first informed by the newspapers, on any initiatives taken than by ministers themselves.

Despite this on going scenario in the party lines, the immediate consequence of the legislative election 1987 defeat was an internal crisis in the UCR between those that openly questioned the economic initiatives of the government and those that suggested the party should get more involved. As it was, the party was obtaining the worst of both worlds: it did not offer support to its own executive as a ruling party in Congress, and it was being punished in the suffrages by the people (De Riz/Smulovitz, 1990). Thus, when the executive changed its SOEs selling strategy centering the whole privatization initiative in one office and under one man’s supervision (Rodolfo Terragno, Minister of Works and Services) and presented a new possibility of privatization addressing Congress as main actor, the Radical Party understood better the support role it should play.

Resistance and division meant that the radical leadership was not completely convinced of modifying its traditional beliefs on the topic of reforms, but it understood the party had to stop being a barrier to executive initiatives or both would pay for the political consequences. This pragmatic change in party alignment was the outcome of two reasons:

a) After presenting the second round of privatization in 1987-88 with the *Australito*, the executive managed a better strategy to draw the party closer to itself; it also made clear to the party leaders that there was a strong consensus from the public opinion around the idea of privatizing in order to obtain a better service in (for example) the telecommunications.

b) The proposal made by Terragno in 1987-1988 of selling 40% of the selected companies (telecommunications and airline), was somehow a more digestible idea to the hard line anti-privatization members of the party. This plan differed from

the 1986 ideas and the Houston Plan in many objectives since it implied only a “partial sale” of the SOEs. It would be a transaction where the state would keep the majority of the shares in each company and thus not give up its decisional role.

2.4.2 The Peronist Party

The peronist party, *Partido Justicialista*, was constant in presenting an absolute opposition to any privatization program presented by the executive during the radical administration, except for those of the “re-privatization” which entailed a rupture with the past authoritarian administration of the military junta.

The opposition against privatization by the peronists, though constant, became more visible when the radical administration introduced this policy in its new plan, the *Australito*, in 1987. Before that, the Radical party had managed itself to silence privatization initiatives, in which very few of them really believed. After the failure of the Austral Plan and most of its long ranging policies, international banks and the World Bank itself started harshening conditions for future loans. The government’s solution was to sign a “*stand-by*” agreement with the International Monetary Fund where the administration accepted that SOEs would become assets of warranty for the debt⁶⁶⁰.

Since it was a clause in the letters of intention signed by the executive with both *Telefónica de España* and Scandinavian Airlines that the executive would seek congressional authorization for the share sale, the peronist party was ready to use its party influence in the upper chamber to stop the project. The radicals could, at the time, count on a favorable position in the lower chamber where a coalition of votes could get the authorization through. But the Senate was controlled by the *Justicialistas* who took two basic arguments against the privatization initiative proposed by the Works Minister Terragno: a) the need to defend national interests against foreign capital penetration; and b) the lack of transparency of the whole privatization process the executive was trying to carry out⁶⁶¹.

⁶⁶⁰ We have already indicated the significance of this agreement and the repercussions it had, to promote the introduction of privatization as a discussion topic again in the official agenda. The agreement was signed by the government in July 1987 and meant a compromise to start a policy of deep adjustment, a restrictive monetary policy and the constant supervision of all these measures by the World Bank inspectors.

⁶⁶¹ One of the most extreme positions contrary to privatization was that of *Justicialista* Senator Eduardo Ménem, brother of Carlos Ménem, who would later be elected president. He vehemently opposed any move in this sense arguing it was the sovereignty of the country that was being sold. Against the second wave of privatizations proposed by Minister Terragno in 1987-1988, when a partial sale of shares plus the management of the company was being negotiated, E. Ménem said in a classical example of populist rhetoric: “Aquí no solo se trata de privatizar en el sentido de transferir parte del patrimonio nacional a empresas extranjeras, sino que también se transfiere el poder de decisión que es lo mas grave. No sólo se esta disponiendo del patrimonio nacional, se esta afectando el poder de decisión de la nación sobre cosas fundamentales. Aquí hay además, un problema de soberanía. No se puede aceptar que el precio de mercado lo va a determinar el Banco Internacional de Reconstrucción y Fomento. Nosotros no le tenemos confianza. Y además le pregunto al señor Ministro: en ese precio de mercado, cual es el precio que tiene la soberanía? Yo le contesto que la soberanía no tiene precio, no se vende, no se enajena ni se debe poner en peligro. De lo que pueden estar seguros es de que el Justicialismo no les ha puesto ni les pondrá, a las empresas públicas la bandera de remate, porque esta

One of the strongest enemies to even mentioning the word privatization in Congress was Eduardo Ménem, brother of Carlos Ménem, the future president. Most of the critics made by Senator E. Ménem against Terragno's privatization proposals during the *Australito* were not very original and rather borrowed from former criticism made by radical party. He supported his view saying that with the sale of a share package from the telecommunications and the airline company, as Terragno proposed and the executive had compromised itself to do in both letters of intentions, the state was not only privatizing the company but giving up its management.

But even strong anti-privatization positions like this, had later to be softened by the *Justicialistas* when both political parties started being aware that the public opinion was beginning to be in favor of the privatization initiatives. Then the *Partido Justicialista*, not abandoning its opposition to the plan and trying to find a middle point between their negative to cooperate and the mounting pressure from the public opinion, argued it was not the policy itself they were against, but the way in which it was being planned by the radicals⁶⁶².

By 1987, the Peronists were well aware that privatization was an imminent reality if any credible agreement was to be signed with the multilateral financial organizations. The polls also told them they had a great electoral chance in 1989, observing that the UCR's popular support was sinking with every election. They were also aware that the party had control of the biggest and most important unions⁶⁶³, which was an operative plus for both opposing privatization (as they did during Alfonsín) or starting it in the future. This last factor, the unions' loyalty to the peronist party, was also decisive for the international investors Scandinavian Airlines and Telefónica to withdraw their offer. Knowing that the peronists were strongly placed in most of the union's directives, and because this party had denied any possibility of congressional authorization even to a partial privatization, the companies feared that a future peronist government (as polls showed it was likely to happen after 1989), would probably not acknowledge the validity of the privatization agreement signed with the radical administration. These companies also feared that the peronists could promote sabotage in the transference of management command from the side of the unions.

3. 1989: Hyperinflation and Year of Political Crisis.

The year 1989 marks a turning point in the Argentine democracy and administration. It was an election year and the end of a series of cyclic failures in the

en juego la soberanía del estado". (Interpelación al Ministro Terragno, Diario de Sesiones de la Cámara de Senadores, 27-28/04/88)

⁶⁶² The executive was conscious of the turn in favor of some services' privatization shown by the public opinion. Thus, by the time the Senate wanted to interpellate Terragno, he requested his interpellation to be broadcasted on TV to show viewers the blatant peronist legislative obstructionism to the proposal.

⁶⁶³ That the Peronists were counting on the union's support is made evident in a quote of the person who then was a Justicialist Deputy and later would become Minister of Economy, Domingo Cavallo. "Peronism will not talk about privatization. It will privatize, and it will do it with the endorsement of all the unions". (in Botto, 1999, p.108)

economy made by the radical government. Following the sequence of relative success-failure of all economic proposals made, the last stabilization plan issued by the radical administration, the *Plan Primavera*, soon faded leaving the country with unsolved structural economic tribulations. Alfonsín faced a number of growing problems since 1987: rising tensions with the military sector, the loss of control of the deputy chamber (formerly a radical bastion), incompetence to deal with the economic problems, and the notorious distrust of the international financial community (Acuña, 1995). As much as the country had experienced a slight improvement after the Austral Plan and started showing a different face after 1985, the lack of adjustments related to deepening this plan became notorious by 1987. The successive defeats of the executive bill proposals in the legislative regarding privatization meant going back to “more of the same”: periodical stabilization plans and social conflict scenarios⁶⁶⁴. Also, the progressive deterioration of the UCR’s voting support made the party concentrate on electoral objectives, leaving the concerns of a state reform as a second priority.

At the end of 1987 and after several cabinet changes, the government produced a tax reform and public service price increase to fight the growing fiscal deficit, but these measures did little more than swell the already strong recessive tendency of the economy. Despite signing a letter of intent with the IMF in 1987, the government lacked the institutional control to really start the structural changes there agreed. Inflation that year peaked over 400% and the real income of the population deteriorated quickly (Acuña, 1991). The *plan Primavera* appeared in August 1988 as a product (or attempt) of a *concertación* (agreement) between productive and working forces, one example more of Alfonsín’s idea to control inflation and economic recession through political agreement. It meant a negotiated truce between the industrial (*Union Industrial Argentina*) and the commerce sector (*Cámara Argentina de Comercio*) to control prices, public service provision, and a potential devaluation of the currency. “Despite obtaining an initial reduction in the inflationary spiral, the primavera plan failed because this temporary agreement exacerbated already existing distributive conflicts. The agriculture sector and the workers were clear losers whereas the great industrial firms and the financial sector were evidently benefited” (Margueritis, 1999, p. 50).

The already difficult economic situation was worsened by an increase in consumer prices by the end of 1988, which in turn created a strong pressure on the exchange rate. This should have brought the ruling party to work together to overcome those issues, but by that time most of the radical administration and its legislative representation were more concentrated on their electoral survival than on the national economy. Elections were then a matter of months away (they were programmed for May, 1989), and the party had experienced a steady decline in all

⁶⁶⁴ “Las fantasías hegemónicas que hicieron creer a un importante sector del Alfonsínismo que 1983 era el punto de inicio de un nuevo movimiento mayoritario destinado a completar la serie iniciada por Irigoyen y Perón, se diluyeron frente a objetivos más urgentes y modestos: controlar precios y militares, así como tratar de no hacer un papel demasiado malo en las elecciones de 1989. En este contexto la reforma del estado paso, comprensiblemente, a un segundo plano” (Acuña, 1995, p. 123)

public polls since 1983. Two other elements aggravated the whole situation even more: first, in February the Industrial and Commerce chamber decided to break their agreement with the government on price control (made for the *Plan Primavera*), and second, the World Bank decided to stop any further loans to the country. Under these conditions, growing pressure over the exchange rate and rising inflation plus the impossibility to count on fresh currency loans in the short term, the central Bank could do little to stop the capital flight and inflation climbed to a yearly projection of 936% in a few months.

Politically, the atmosphere was very tense. Both parties were concentrating their forces on the coming elections, which would decide over the nation's president and a few months later over the legislative proportions in Congress. The unions had taken the street as a sign of strong opposition to the political economy of the government, following their associate's discontent and direct instructions from the *Justicialistas* (Murillo, 2001). Important financial groups exerted pressure over the economy enough to make the whole structure tumble.

3.1 Elections and Institutional Pact.

The Peronist party had used the last years of the 80's decade to revise some of its internal politics and to a certain point, ease their tradition of a vertical structure inside the institution. After the strong defeat of 1983 and understanding the party could also be vulnerable and beaten, several reforms appeared in the internal structure of an otherwise vertical organization. In 1988, preparing for the national presidential voting, the party held its first internal elections to select a candidate. This election delivered as winner one of the provincial governors until then: Carlos Ménem. He had been governor of his native province, la Rioja, where he had a record of strong populism and unaccountable administration (Cerruti, 1993).

Ménem had already started a group inside the peronist party to revise the internal politics after the electoral defeat of 1983. His political campaign, even before being the justicialist party's official presidential candidate, sent clear signs of populism to national and international observers. He promised more of the same many presidential runners had already done, in order to win popular affection: debt moratorium, Latin American Unity, internal reconciliation⁶⁶⁵. This message, appealing to the core populist values in the Peronist belief, helped create a very unstable economic environment after he won, since investors expected the worst in an already unpredictable and critical environment as was the case with Argentina in 1989 (Acuña, 1995). In fact, after the May 14th election and with Alfonsín still in the *Casa Rosada* (Government Palace), social unrest became a daily motto; the country was shaken by riots, strikes and the perception that the economic situation had gone completely out of control. One month before the elections (April), wholesale priced

⁶⁶⁵ Ménem's presidential campaign was in many senses, a symbol of the typical opportunism and populism that tainted Latin American Politics. During the 80's, pope John Paul II travelled with a peculiar security auto called "papamovil". Likewise, Ménem travelled throughout the country in what he dubbed the "Ménemovil". About several bizarre acts part of a typical populist electoral campaign, see Cerruti (1993).

goods reached a 58% higher price than the previous month, while consumer prices rose a 33%. This tendency worsened in May with 104%, in June with 114,5% and 196% in July (Acuña, 1991).

The political scenario could hardly be worse: there was a president in office with no powers to help the country out of the crisis; his party had very little control of the legislative, while all the previously proposed economic policies and a record number of five economic shock stabilization plans had failed; the recently elected candidate, not yet in office, made clear a populist “more of the same and far from any real reform” program. It was then calculated that inflation would soar over 2000% from April 1989 to March 1990, while the GDP had already fallen 5,1% on real terms and the external debt had increased 10% that year (Fernández-Arias, 1997).

With the political and economic situation under such severe crisis and a waiting period of seven months before the elected candidate would take office (elections occurred in May, but presidential and legislative power transmission should be done in December), the situation seemed dangerously tense for the survival of the whole democratic system. Under those extreme circumstances the two biggest parties, UCR and PJ, came to a governance agreement in which president Alfonsín also participated as an additional step. He resigned in June 1989 to allow a faster presidential transition⁶⁶⁶.

The agreement between the two parties later had a number of implications aside from presidential resignation. It was signed as a political compromise by the two presidents of the parties UCR and PJ, Edison Otero and Antonio Cafiero respectively, and the heads of their Senate and deputy representation⁶⁶⁷. Alfonsín accepted to resign on behalf of the stability of the system, aware as he was of the institutional weakness his administration portrayed, and the number of months that awaited the country with a growing expectation and uncertainty for the short and middle run.

⁶⁶⁶ The letter is dated June 30th, 1989 and it literally says: “Honorable Congreso de la Nación: tengo el honor de dirigirme a vuestra honorabilidad a fin de presentar mi renuncia al cargo de Presidente de la nación Argentina. El 12 de este mes en un mensaje dirigido al pueblo de la República expliqué detalladamente los motivos que han determinado mi decisión. Ellos se resumen en una profunda convicción. El espacio para la acción de gobierno en funciones se encuentra demasiado acotado para enfrentar con probabilidades de éxito, problemas en los que cualquier demora acarreará mayores padecimientos para todos...”. Also that same day, the resignation of the vice president Victor Martínez, is presented before Congress. This document stated: “La sociedad Argentina se encuentra hoy ante hechos de singulares características: cuenta con un presidente y un vicepresidente en ejercicio y, desde el 14 de Mayo, con un presidente y vicepresidente electos en procesos electorales y comicios absolutamente limpios. Se suma a ello el recambio en la conducción mayor entre fórmulas de distinto signo político y que la asunción de las nuevas autoridades debe inicialmente tener lugar después de un período que se juzga demasiado largo, máxime teniendo presente las demandas de planes y medidas en el campo económico que a su vez exigen inmediatez, continuidad y permanencia, mas allá del corto plazo. Se impone pues la conveniencia y la necesidad que, a la mayor brevedad, la fuerza política hasta ayer en la oposición pase a ejercer el oficialismo y viceversa, para continuar de esta manera trabajando todos en las nuevas posiciones donde nos toca actuar, para consolidar la grandeza de la nación”. (Diario de Sesiones Cámara de Diputados, 08/07/1989).

⁶⁶⁷ For the Senate there were the names of Alberto Rodríguez Saa (PJ) and Antonio Nápoli (UCR) and for the Deputy chamber, Jose Luis Manzano (PJ) and Cesar Jaroslavsky (UCR). Diario Clarín 16/06/1989

Table 5.5 *Argentina: Distribution of Seats in Congress after 1989*

Chamber of Deputies			
	Total Number of Seats (%)	PJ Seats (%)	UCR Seats
Jul. 89-Dec. 89	254	97 (38.2)	114 (44.9)
Dec. 89-Dec.91	254	120 (47.2)	90 (35.4)
Dec.91-Dec. 93	257	116 (45.1)	84 (32.7)
Dec. 93-Dec.95	257	127 (49.4)	84 (32.7)
Dec. 95-Dec.97	257	131 (51.0)	68 (26.5)
Dec.97-Dec.99	257	119 (46.3)	66 (25.7)
Senate			
July 89-Dec. 89	46	21 (45.7)	18 (39.1)
Dec. 89-Dec. 92	46	26 (54.2)	14 (29.2)
Dec.92-Dec. 95	48	29 (60.5)	10 (20.8)
Dec. 95-Dec. 98	72	37 (52.8)	18 (25.7)

Source Molinelli/Palanza/Sin 1999

This institutional pact agreed between the two biggest political forces had significant effects in the immediate handling of the crisis and the government's successful outcome. The first part of the accord stated that it would be convenient that the president resigned since his abilities to implement any tasks were clearly diminished, and because Méнем, who had just obtained a 47% of the whole vote share, could start economic policies with a higher degree of popular credibility. But the resignation of the president, once it happened, did not affect Congress and the chamber parity of forces, which had to remain as it was until the end of legislative terms in December. Thus, the second part of the agreement referred precisely to the accidental cooperation of the Radical Party with the new government, in what was already considered as an "emergency period" for democratic survival.

The reasoning for this premeditated congressional cooperation was that the new president would start to govern without congressional support and would therefore be unable to promote strong and quick solutions to the crisis. "The agreement especially affected the chamber of deputies, because in political terms it meant that the Radicals would only provide the number of legislators necessary to form the constitutionally required quorum. Since they had 114 deputies and were consequently the first minority, the agreement consisted in guaranteeing their presence to begin the discussion of the bills, but only to a maximum of 75 people so that the Peronist position would turn out to be predominant" (Llanos, 2002,p.77). This arrangement assured that the *Justicialistas* would always have a majority in the deputy chamber; and having already a favorable proportion of legislators in the Senate, the outcome was closer to whatever policy the president and the ruling party had worked out. This numerical agreement was also a reflection of the proportions the chambers would have in December when bi-annual legislative terms came to an end and legislative party proportions would follow the May electoral results.

3.2 Congressional Delegation on the Executive

The congressional delegation made through two open instrumental laws, 23.696 and 23.697, shaped the beginning of Ménem's government and its successful transition out of the peak of the 1989 crisis. Ménem obtained an unprecedented support from the legislative in the months of July-August 1989 (not yet officially controlled by his party), with the Administrative Emergency Law (or State Reform Law), authorizing the privatization of many SOEs, and the Law of Economic Emergency, which froze all state subsidies (and subventions) for a period of 180 days extensible to an equal length of time on executive petition.

During Ménem's first years (first administration) a deliberate movement to isolate himself and concentrate political power in the hands of the executive is observable. Some of these measures were taken on behalf of the expedite determination and need to solve economic problems the government should show, but others revealed strong autocratic tendencies of the newly elected president⁶⁶⁸. One of the most commonly described self empowerments was the appointing of many technocrats, with little party reference, either as cabinet members or as *interventores* (appointees) for the SOEs that were subject to privatization. These *interventores* were only accountable to the executive and could be named by the president (as authorized by the State Reform Law Art. 2); their powers were considerably high since they could remove and replace staff, create reform commissions, and decide whatever may be necessary for a privatization.

Retrospectively seen the strong delegation made by Congress in 1989 also had circumstantial roots. Once Alfonsín had found his cabinet (and himself) powerless to confront a deteriorating political and economic environment as that of the second quarter of 1989, he envisaged the possibility of resigning and allowing the winning candidate to assume the post before time. Members of the winning Justicialist party and those of the Radical Party, in office until then, signed an agreement to guarantee legislative cooperation for the new government. This accorded legislative majority would be an advance of what the May 89 elections had already shown. Because the president had assumed power six months before, this critical period should have legislative support so that the new administration could better face the crisis with appropriate legislation. Once the agreement had been signed, a team of legislators of the new government directed by Roberto Dromi (future minister of Public Works and so-called the "Privatization Czar", Teichman, 2001) set to prepare a group of legal instruments which finally was separated into two specific channels to instrument the socio-economic reform the new administration had in mind: The State Reform Law (*Ley de Reforma Administrativa* o de *Reforma del Estado*,) and the Economic Emergency Law (*Ley de Emergencia Económica*). Botto (1999) argues that the State Emergency Law, later numbered 23.696, was but an expansion of the project that, as a purely legislative initiative, the Peronist J. Manzano and the Radical Socchi had

⁶⁶⁸ Ménem concentrated on increasing his institutional powers through several means. "Firstly, the executive retorted to necessity and urgency decrees; secondly, it dealt with obstacles coming from the judicial system by controlling the composition of the Supreme Court. Thirdly, it increased the centralization of power within the confines of its own branch of government" (Llanos, 2002; p. 86).

worked out during Alfonsín's government, at a time when Privatization was beginning to promote a growing legislative debate.

President Alfonsín and his Vice President Victor Martínez had presented their resignations on June 30th; Ménem had quickly prepared his inauguration speech for July 8th, and five days after on July the 13th he was sending Congress the project of the *Ley de Emergencia Administrativa y Reestructuración de Empresas Públicas*. This project underwent two discussions in each chamber and was sanctioned in a record time of less than one month. At first sight it may seem that the delegation and endorsement given to the executive through the bill was not a calculated fact from the legislative. However, this law had many common elements with the project Socchi and Manzano had presented before in 1986 regarding privatization, and included fixed time periods to allow it to function only temporarily. The Manzano/Socchi project had been a pure legislative initiative but fell into oblivion since it was not supported by either of the two big parties, or better said, it had only gained the support of minorities in both organizations.

With the state reform law and its free hand for the executive to privatize state-owned enterprises, the legislative was reviving an already discussed problem. The peronists had always been aware that when time came, it would probably be their chance to score important decisions regarding the sale of deteriorated SOEs; having a working majority in the lower and a clear majority in the upper chamber the situation seemed convenient to empower the executive. The peronists knew the crisis in general and privatization in particular required quick and precise decisions and they could be better reached through cabinet resolutions rather than congressional discussions. The point shows how the idea that SOEs had grown to be too expensive and unproductive (they were the main cause for extraordinary budget expenditures), and the burden of a growing deficit were already common notions for many Congressmen. This problem could be, so said the executive to argue for power delegation in both laws, challenged with private participation in the economy.

Another advantage, aside from the economic crisis, for the delegation to occur in such a brief period of time and with so few reforms done on the executive presented draft, was that the president of the Senate (a traditional justicialist bastion since the return to democracy) was Eduardo Ménem, the brother of the new President, Carlos Ménem. When the UCR started to express some of its critics a week after the executive had handed in the law, Eduardo Ménem presented a muscular defense of the delegation text observing that due to the crisis, the options were very few and perhaps none at all⁶⁶⁹.

Most of the resistance shown by several UCR Congressmen regarding the open empowerment these two laws represented was based on questioning how much

⁶⁶⁹ "Las opciones que tenemos son muy escasas. Creo que hasta el camino que tenemos para avanzar se ha estrechado tanto que las opciones son muy pocas. Y tan pocas son las opciones que yo podría afirmar con seguridad que si el 14 de mayo se hubiera impuesto el candidato del partido radical lo que este hubiera hecho en materia de reestructuración del estado no hubiera sido muy distinto de lo que estamos tratando ahora" (Eduardo Ménem, intervention before the Senate. (Cámara de Senadores de la Nación 26/07/89; p.1312).

congressional oversight there should be. The UCR position based its allegations on the logic that “the more delegation, the more controls there should be; the bigger the number of legislative faculties for the executive the bigger the amount of responsibility on what is being done” (Berhongaray, intervention before the Senate 26/07/89; *Cámara de Senadores* p. 1331). In fact, as Senator Berhongaray appointed, the bill project that the executive presented had a delegation of congressional faculties that by far exceeded those needed to start a privatization program. Senator Ménem in defense of the executive presented bill repeatedly reminded the UCR Congressmen of the agreement they had signed, and their compromise to facilitate the executive initiatives through Congress⁶⁷⁰. A failure to do this would mean a breaking of the accord, and the blame for any worsening of the crisis before the public opinion⁶⁷¹.

A very interesting detail is that many of the presidential decisions taken at the time regarding the state reform law remained a secret for the party directives. Ménem’s approach towards the party was with “half opened arms” (Corrales, 2001, p. 127). Although his attitude to the party was not a complete neglect, it was not a full cooperation scenario either. In fact, because the president was fighting a credibility gap trying to convince international and national actors, he pursued alliances with market oriented business groups (B&B) and center right parties like the UCeDe, all contrary to the traditional interests and beliefs of the peronist party. The first moves made by the executive were crucial appointments of public posts the most amazing of which was that of Miguel Roig (who had been president of Bunge and Born, the largest Argentine Multinational firm) as head of the Ministry of Economy, and that of Alvaro Alsogaray (a UCeDe directive) as a presidential adviser for debt matters. This attitude was very much against the traditional behavior of peronist presidents who had maintained a confrontational attitude to large capital groups.

As a consequence, despite having offered a complete endorsement of the first executive initiatives presented to Congress in July and August 1989, the peronist party felt left aside. Ménem did not involve the party directives in any decision-making at the start of the reforms. Parties (the *Justicialista* included), were informed on equal terms as the rest of the society and there were no previous meetings to uniform criteria on the decisions⁶⁷². As a result, the PJ separated into three main

⁶⁷⁰ Senator Berhongaray (UCR) said during his intervention: “Hemos asumido el compromiso político de facilitar en esta etapa de transición la sanción de todas las leyes de índole económico-social que requiera el nuevo gobierno de la república. El compromiso asumido públicamente lleva a determinar que debemos facilitar –lo cual no significa que debemos coincidir ni mucho menos avalar- todas las disposiciones que se tomen; pero debemos ubicarnos en un escenario similar al del 11 de Diciembre próximo. Me refiero fundamentalmente a un escenario parlamentario que permita al ejecutivo actuar como si ya estuviéramos en el 11 de Diciembre”. (*Cámara de Senadores*, 26/07/89, p.1326)

⁶⁷¹ Several of the justicialist interventions made during the legislative discussions in July 1989 tried to pursue the blaming of UCR members for the on going economic crisis.

⁶⁷² Since the first days of the Ménem administration, PJ legislators and party members complained about their difficulties to access the cabinet. When the executive alliance with B&B collapsed in December 1989, Ménem did not use the opportunity to incorporate more party members in the cabinet. “In January 1990, the dissenters among the PJ had had enough from the government and its deliberate indifference: approximately 20 peronist legislators, the so-called group of eight, quit the party in protest”. (Corrales, *ibid.* p.128)

sectors: those who decided to align themselves with the executive; those who were appalled by Ménem's turn "to the right" and cohabitation with neo liberal policies betraying the whole peronist legacy; and an in-between group of party members who felt upset about the executive's attitude towards the party, and by its un-consulted economic plans and pronouncements; but nevertheless decided to grant it (on behalf of party discipline), some credit in order to let it solve the crisis (Corrales, *ibid.*).

Because of strong differences between the executive and the ruling party, the period 1989-1991 in Argentina was a complicated one. However, the legislation that the government had obtained in 1989, with a six months period amendable to another six months more, granted the executive enough margin of maneuver to start the heaviest toll of the reforms and most particularly, the privatization program. This should not be seen in isolation since privatization, at the speed and discipline the administration committed to it, showed national and international investors how far Ménem's government was prepared to go in implementing economic reforms.

In sum, privatization was an already discussed topic in the Argentine Congress when the Administrative Emergency Law arrived. The new components were the economic crisis and a deliberate empowerment on the executive figure to dictate which SOEs would be potential to privatization and the ways they should be privatized. Congress in Argentina was well informed on the matter and knew that privatizations, if they were to happen, had to occur at the stroke of the pen, rather than at the pace of separated discussions (case by case) in the two chambers of Congress. congressional oversight during the special period that the law envisaged would be limited to a bi-cameral commission to study the process of privatizations done by the executive. The peronists had already been very conscious during the radical administration that privatization and liquidation of some of the SOEs in worst condition was imminent for any recovery of the economy to happen. They opposed fiercely to the projects presented in 1988 knowing it would be a political triumph they could score in the near future, especially when public opinion, regarding some public services such as water provision or telecommunications, was shifting in favor of privatizations. Secondly, the fact that the May elections created a favorable legislative scenario for the peronists, forced the radical party to accept the assembly working percentages that would be installed in December already in July when Alfonsín had resigned. Only under such conditions was delegation possible.

3.3 Delegative Laws 23.696 and 23.697

These two laws were the instruments that allowed Ménem's government to apply most of the structural adjustment measures Washington (International Monetary Fund and World Bank) had proposed, many of which the radical administration before him had failed to accomplish. The launch of these economic reforms occurred in the middle of a severe crisis in 1989, which the executive was able to use in order to obtain majority legislative support, and the deliberate authorization to deal with possible solutions to the emergency on its own terms. For the next year and half, congressional oversight and control over the executive regarding state and economic

reform was limited to a small bicameral commission of “six plus six” (senators and deputies), with very limited institutional empowerment to interfere as long as both legal texts lasted since their decisions were non relating (*no vinculantes*) for the executive to follow. Congress maintained its regular powers and sessions, but it agreed to delegate a strong amount of decision making on the executive aiming to make state reform implementation a lighter task, so as to curtail the effects of the economic crisis.

The arguments provided by president Ménem for the State Reform Law presented on July 13th 1989 (the first of the two delegative laws presented before Congress), stressed five important points that expressed the importance of this legal tool for the reform of the state and also its potential effectiveness to fight the economic crisis through structural changes. These points were:

1. The executive power had the deliberate purpose to reinstate into private domain those activities and services that could be better performed there.
2. Many of the purchases and acquisitions of private enterprises were wrong decisions producing a growing expenditure of public money
3. The public sector lacks the resources to produce a socio-economic transformation to expand those enterprises’ potentials
4. State-owned Enterprises that had been wrongly administered and produced losses, offered inefficient services which as a consequence, affected all users/consumers
5. The state had no funds to incorporate new technologies into these SOEs and thus they do not perform their roles adequately nor can they reach their objectives, which is to promote social benefit and wealth⁶⁷³

⁶⁷³ These are excerpts from the letter Ménem sent to Congress together with the legal draft Roberto Dromi had elaborated (Cámara de Senadores, 13/07/1989, pp. 1088-1089). The points as Ménem exposed them were the following:

1. El poder ejecutivo nacional tiene el propósito, enunciado en varias oportunidades, de restituir el área de la economía privada, en la medida y forma que resulte conveniente la realización de las actividades que cumplen dichas empresas.
2. A lo largo del tiempo el Estado siguió absorbiendo actividades que podría haber prestado el capital privado y durante ese proceso siguieron creándose nuevas empresas petroquímicas, carbo químicas, carboníferas, mineras, de navegación y aeronavegación, hoteleras, industriales y comerciales, incluyendo áreas sin ningún interés político-social o geopolítico estratégico. En ese intenso proceso de participación estatal, fueron sucediéndose normas como las leyes 17.705 y 18.832 por las cuales el sector público absorbió la conducción y los pasivos de empresas privadas declaradas en quiebra o en concurso de acreedores, produciéndose una creciente dilapidación de recursos públicos.
3. En la actualidad el sector público carece de los recursos necesarios para llevar a cabo una transformación económica social que permita desprendernos del atraso y el subdesarrollo y expandir y desarrollar nuestras potencialidades económicas
4. Las empresas públicas mal administradas presentan cuadros económico-financieros graves, acusan déficits acumulados y crecientes, y prestan servicios ineficientes que agobian a quien debe ser el destinatario de los mismos: el usuario.
5. El estado no esta en condiciones de incorporar nuevas tecnologías a los servicios públicos, ni de aumentar las ofertas a nuevos usuarios que carecen de servicios esenciales. En consecuencia no cumple uno de sus objetivos generales que es el de asegurar el bienestar general.

The State Reform Law, also commonly dubbed the “privatization law”, num. 23.696, declared the executive should name an “*interventor*” (Arts.2 &3), who would be responsible and accountable to the minister of the area he had been named from. The *interventores* (designated by the executive), had enormous possibilities to both fire staff and/or make any internal arrangements they considered necessary in the company that would be subject to either partial or total privatization. They also had the power to declare any company “subject to privatization”. Regarding this point, in the text it is stated that to be privatized, any SOE should be declared “subject to privatization” (Art.8) and that this could only be a decision of the *interventores*. Once this stage was reached, Congress (not only a special bicameral privatization commission but the two chambers) would be informed and consulted.

Normally, *interventores* were designated without congressional interference, either from peronists who were privatization friendly, or from members of other parties who were in favor of the idea or represented a positive partnership for the government. The figure of the *interventor*, and its institutional character by being an executive designated (and thus executive accountable) individual, allowed the president to establish alliances with other parties and sectors of the society. A classical example would be the inclusion of some members of the *Unión de Centro Democrático*, UCeDe, which enabled Ménem to integrate them into cabinet and later count on their legislative support.

Aside from those provisions made to empower the executive in any decision regarding privatization, and the decision to consider any enterprise potentially privatizable, the law 23.696 included a ready made appendix with a significant number of companies considered “subject to privatization”. By passing the law, and we have already seen the very special circumstances under which this text was discussed, Congress delegated oversight functions on the privatization procedures, since sales would be coordinated by the cabinet and the *interventores*, and delegated supervision on the enterprises and their sale, since they were already included and approved in the text⁶⁷⁴. This appendix as such was nothing new to Congress because

⁶⁷⁴ The discretionary addendum presented as “Anexo I & II” had such vast a list of enterprises included, that the executive would not need to require any special permissions to carry out other privatizations in the following months or years. The list is as follows:

I Privatizaciones o Concesiones

-Empresa Nacional de Telecomunicaciones	Concesión/Privatización
-Aerolíneas Argentinas	Privatización Parcial o Total
-Optar	Privatización
-Buenos Aires Catering	Privatización
-Empresa Líneas Marítimas Argentinas	Privatización Total o Parcial
-Yacimientos Carboníferos Fiscales	Privatización Parcial/Concesión
-Conarsud	Privatización
-Dirección Nacional de Vialidad	Concesiones parciales o totales de reparación
-Ferrocarriles Argentinos	
Transporte de Pasajeros y Carga	Concesiones
-Infraestructura o Servicios	Concesiones
-Empresa de Correos y Telégrafos	Concesiones
-Yacimientos Petrolíferos Fiscales	Concesión, Asociación y /o contratos de locacion en áreas de exploración o explotación

the radical administration had formerly tried to propose a list of SOEs that could be privatized in an appendix presented in 1988 by the Minister of Public Works, Rodolfo

	Sociedades Mixtas para áreas de recuperación asistida
-LS 84, TV Canal 11	Privatización
-LS 85, TV Canal 13	Privatización
-LR 3, Radio Belgrano	Privatización
-LR 5, Radio Excelsior	Privatización
-Todos los medios de comunicación administrados por el estado exceptuados LS 82 Canal 7; LRA 1, Radio Nacional; Radio Difusión Argentina al exterior y las emisoras que integran el servicio nacional de radiodifusión	Privatización
-Subterráneos de Buenos Aires	Privatización/Concesión Parcial o Total
-CEAMSE (Cinturón Ecológico Área Metropolitana Sociedad del Estado)	Privatización/Concesión Parcial o Total
-Casa de Piedra	Concesión Parcial o Total
-Servicios de Prestaciones Culturales Recreativas y mantenimiento urbano de la Municipalidad, ciudad Buenos Aires	Privatización/Concesión Parcial o Total
-Junta Nacional de Granos unidades de campana Elevadores terminales (portuarios)	Privatización/Concesión Parcial o Total
-Administración General de Puertos Administración y provincialización	Concesión total o parcial de puertos o instalaciones portuarias principales o accesorias
-Casa de la Moneda	Privatización Total
-Talleres Navales Dársena Norte	Privatización Total
-Ex Planta Industrial expropiada mediante ley 19.123	Privatización Total
-Compañía Azucarera Las Palmas	Privatización Total o Parcial
II Transferencias a Jurisdicciones provinciales o municipales mediante convenio	
-Obras sanitarias de la Nación	
-Dirección Nacional de Vialidad	Rutas Nacionales de Interés Provincial
-Gas del Estado	Redes de distribución
III Ordenamiento Institucional Empresario	
-Obras Sanitarias de la Nación: creas un ente tripartito entre la municipalidad de la Ciudad de Buenos Aires, Gobierno de la Provincia de Buenos Aires y Obras Sanitarias de la Nación	
-Empresa Nacional de Combustible involucra: YPF, Gas del Estado, YCF	
-Empresa Federal de Energía Eléctrica involucra: Agua y Energía Eléctrica, Hidronor y Generación de energía de otras empresas nacionales	
IV Concesiones de Servicios de Distribución y Comercialización (prioridad sector Operativo)	
-Gas del Estado	
-SEGBA	
-Agua y Energía	
-Obras Sanitarias de la Nación	

AnexoII

I Privatizaciones o Concesiones

Forja Argentina sociedad anónima	Privatización
Carbo química Argentina sociedad anónima mixta	Privatización
Petroquímica Río Tercero sociedad anónima mixta	Privatización
Polisur sociedad anónima mixta	Privatización
Monómeros vinílicos sociedad anónima mixta	Privatización
Petropol sociedad anónima mixta	Privatización
Induclor sociedad anónima mixta	Privatización

Terragno. This list, however, meant by itself a further empowerment given to the executive. It qualifies the president to proceed to privatize “en masse” (as Ménem later did), without having to discuss case by case with the legislative.

The main topics included in the law 23.696 are⁶⁷⁵:

- Intervention in public agencies and public corporations (Art. 2)
- Change in the legal structure of public corporations (Art. 6)
- Rules and proceedings for the privatization of public corporations (Chapter II, Arts. 8-20)
- The “participative property program”, which involved rules for special share holding by employees of, and suppliers to public corporations that were privatized (Chapter III, Arts. 21-40)
- Executive powers and rights regarding privatization, such as the power to establish tax exemptions for privatized corporations, the power to determine that the state would take upon itself the debts acquired by those corporations while privatizing only the assets, and the power to repeal those laws that created monopolistic privileges hindering privatization (Art. 49)
- Rules for public emergency agreements and contracts (Art. 49, *Descomposición del Contrato*)
- Rules for annulment and renegotiation of public contracts (Art.54)
- A two year suspension of enforcement of court judgments against the state for payments (Art.50)
- A labor emergency plan (Art. 59).
- congressional approval for the privatization of enterprises considered subject to privatization

In a sense, the consideration of congressional involvement, aside from the permanent bicameral commission created by the law (Art. 14) to judge on the procedure of the privatization more than on the cases, is rather superficial since the law itself presented enough privatization possibilities to keep the executive busy for even more time than the delegation contemplated. The executive was also trying to make clear that the only way to overcome the strong crisis of 1989 was by assigning the cabinet with privatization decisions and that it needed to consider all those SOEs included in the appendix. Due to the crisis, these privatization or potential privatization decisions would have to be taken in a more expedite way than congressional discussions would allow. The delegation consolidated the opportunity for the executive to do all privatization via decree, as Ménem did.

Another consequence of the extraordinary executive empowerment that occurred through this state reform law is that through the designation of the *interventores* the executive initiated a “parallel administration” only accountable to itself (Margueritis, 1999). This had deeper effects than expected: *interventores* were executive-designated staff which had absolute powers to fire/hire staff, or produce reforms in any way inside those enterprises considered for privatization. They could replace those reluctant to cooperate with the reforms with loyal pro reform

⁶⁷⁵ Ferreira-Rubio/Goretti in Sugart/Carey, 1998.

appointees, “or form special reform commissions with the participation of group interests” (Llanos, p. 89, 2002). The state reform law set a negative milestone for what would be the future of the executive and its relations with other institutions. The excessive use of decrees done by the president both within and out of the scope planned by the law, started a tendency towards executive isolation that, despite a period of relatively calm institutional relations before Ménem’s reelection in 1995, created a tense and frictional atmosphere between legislative and executive.

The law of economic emergency, 23.697, presented a few days later than the state reform law, was also addressed to taming the fiscal crisis of the state but through the reduction of civil rights over the economy in times of emergency. Its measures aimed at producing an immediate reduction of excessive public expenditure by drastically cutting a long established policy of subsidies in many sectors. Many of these subsidies were concentrated on the industrial promotion sector, grouped as subventions and general subsidies for production.

The Economic Emergency Law (23.697) dealt with the following policies:

- The suspension of public subsidies and benefits
- The suspension of industrial incentives through tax exemptions
- The suspension of incentive programs for mining activities
- A modification of the rules for foreign investment
- The use of credit bills to pay tax drawbacks
- A tax on fuel consumption
- Gas and oil royalties
- Compensation for public debts
- Reform of the stock market rules
- Labor dismissal and compensation policies for the public sector
- The sale of unnecessary public real estate

These two laws empowered the president to start a number of reforms via decrees⁶⁷⁶.

4. Privatizations under the first Peronist Administration

By mid-1989, the Argentine economic crisis (with record levels of foreign debt, negative growth, capital flight and a runaway inflation) had reached a critical point of no return. In May 1989, the Radical presidential candidate, E. Angeloz, lost to Carlos Ménem, candidate of the peronist *Partido Justicialista*, who took office in June due to Alfonsín’s resignation and the UCR-PJ agreement to tame the economic crisis.

Once in power and with a presidential campaign marked by strong populist speeches, the flagship of the new administration to try to bring national and international confidence back in, was privatization. The first attention would be given to those SOEs providing public services that were virtually bankrupt, losing

⁶⁷⁶ Regular decrees, meaning those product of the delegation of power for example, ought not to be confused with Necessity and Urgency Decrees, NUDs, which are those where the president takes congressional functions for himself arguing a particular contingency situation.

significant amounts of money per month and providing either poor services in return or no service at all (Saba, 1998). The announcement of the sale of public enterprises, thought still shocking, was nothing new to the Argentine Congress or public opinion. They had heard it before and the initiative was likely to come back again. Having inherited a bankrupt state, the new administration had a small range of possible options to confront illiquidity. The sale of SOEs had been, since the return to democracy, a targeted effort to bring some fiscal discipline and structural adjustment.

The instability of the radical years (1983-1989) and the hyperinflation bouts of 1989 helped many people understand the crisis of the state-led development model and helped also to create a discussion ground for the acceptance of reforms that aimed at reducing the size of the state. Structural reforms that had to go deeper than the periodical stabilization plans the governments had executed until then. Ménem had little option in the new administration but to try to cut losses in the public administration expenses, and SOEs, publicly plagued by financial insolvency, mismanagement, unions and political manipulation, became a possible target for the government both in the need of restructuring them or for their privatization.

The dismantling of the entrepreneurial state, something the radical administration had tried since the launch of the Austral Plan in 1985, and later with the *Australito* in 1987, was beginning to be perceived as necessary and convenient by the public opinion (Palermo/Novaro, 1996). This change of heart was verified through public opinion polls conducted during the conflictive years of 1989-1991, which showed a growing support for privatization and market deregulation, two of the most important measures proposed by the IMF and WB (Mora y Araujo, 1991).

Structurally seen, privatizations during the 90's were proposed on the same (but inverted) image of the nationalizations in the 40's. Then nationalizations were seen as the solution to many economic problems and as instruments to settle fiscal unbalances. Privatization propaganda worked on a very similar basis: the rationale behind the idea was that the sale of the SOEs would do away with hyper inflation, state administrative inefficiency in anything but its basic goals, and improve enterprises' lack of productivity while helping to regulate fiscal unbalances (Gerchunoff/Canovas, 1994). Aside from this, there was a clear and imminent urgency in the economic arena: Argentina in 1990 was a country without possibilities to obtain international credit, due to the incongruence between debt service amounts and yearly budgets. Privatizations could help (and they did) regain international confidence by providing extraordinary debt payments via purchase of debt papers as part of the selling deals. At the same time, privatizations meant an instrument to avoid the hyperinflation spiral by bestowing the government with cash. Under official logic it became clear that if assets were sold for cash (as in the case of the oil reserves), the government would receive money to reduce the internal gaps of expenses it had in the budget. If assets were ceded for debt papers as it later turned out (in a mixed arrangement of debt papers and cash: telecommunications, airline, electricity and gas), then the government would find itself in a better position to renegotiate

international liability obligations and also in the long run, reduce the burden on public expenses⁶⁷⁷.

The Argentine privatization process did not find after 1989 (and until 1993 at least) major ideological opposition. On one side it had been a largely discussed topic during the radical government, and on the other, learning from past mistakes (and despite having two open delegative tools to start the privatization program by decree) Ménem created a “pro reform” coalition that included the country’s leading business conglomerates, media (TV and printed), academic think tanks, small conservative parties (UCeDe for example) and the most important industrial interest groups in the private sector to reinforce the policy proposal (Gibson, 1997).

Once the first successes were tangible (the telecommunications company EnTel was the first privatization experiment), Ménem could also draw support from the multilateral lending agencies (IMF, WB and IADB) to show Congress and public opinion the country could both renegotiate its debt and seek international loans again. A relevant factor in the Argentine privatization process is that it was done by the peronist party, running against everything Perón had done during the 40’s. With a past of nationalizations and populist administration, Ménem’s alliance with center right political forces (which openly supported reforms), was determinant for international confidence together with the first results that proved the government’s clear-cut determination towards reform⁶⁷⁸.

Four stages can be clearly distinguished in the Argentine privatization process, each one characterized by the needs of the administration and the destiny given to the funds obtained: first stage: canceling public debt; second stage: easing short term constraints; third stage: emphasis of allocative efficiency; fourth stage: placing financial goals first (Galliani/Petrecola, 1996). The first stage was largely used to cancel public external debt and convince skeptical observers. It was a move directed to the multilateral agencies and all those in doubt of the successful implementation of privatization. The sale of EnTel and *Aerolíneas Argentinas* are significant examples, since those were sectors with the most substantial rate increases and the least restrictive regulatory frameworks.

⁶⁷⁷ Gechunoff/Canovas (1994) sustain that privatization in Argentina was more a macroeconomic tool than part of the prescribed structural adjustments aimed at increasing national productivity in the long term. Observed during the first period of the justicialist administration (1989-1995), the relation between privatizations and the set of policies aiming at economic stability has changed. “In a first stage (1989-1990) privatizations served to pay important amounts of external debt and produce a new negotiation with the several banks (that would be the Plan Brady); in a second stage (1991), privatization of public assets (mainly that of oil reserves and the minority share package of a telephone company) provided the resources that the government needed in order to establish a stabilization package without charging the inflationary tax; in a third stage (1992-1993), once stability was gained and with the reduction of urgencies in the public sector, authorities could better plan and perform the design of their privatization policies” (ibid. p.9).

⁶⁷⁸ Ménem included two of Alvaro Alsogaray’s (UCeDe leader and former presidential candidate) economic reform mottos:

- 1) The state is incapable of solving socio-economic problems; therefore, the economic and legal institutions created to sustain ISI and welfare policies have to be dismantled.
- 2) The private sector is the only sector that can promote development and should be allowed to pursue its goal in the freest fashion possible (Alsogaray quoted by Saba, 1998, p. 260)

In the second stage, revenues from the oil reserves plus those obtained from EnTel's second round of share sales relaxed the government's short-term cash constraint, which happened when the convertibility plan (1991) established the exchange rate as the nominal anchor (1 peso = 1 Dollar) of its new stabilization program. The first stage took place during the crucial years of 1989 and 1990, when Ménem was trying to find a position that would allow him new international credibility; the second occurred at the end of the delegative period and the beginning of the convertibility plan in 1991. The third stage begins after the signing of the Brady Plan⁶⁷⁹, which indicates a new turn in the relation between Argentina and the international economic community. After having managed to balance the budget and renegotiated international debt compromises, financial goals were (for the first time since the return to democracy) relegated to a second place and allocative efficiency of the resources was given more attention. During this third stage the government concentrated on those reforms that would take more political stamina, as for example the reform of the social security system. The fourth stage occurs after 1995 and is characterized by the return of the financial goal as the main objective once the economy entered a recession that year, after four years of consecutive growth.

In retrospective the whole process kept moving after a convincing start when it managed to put a number of successful privatizations together. Otherwise these four stages could not have occurred. Two pieces of legislation were fundamental in producing the grounding of the reforms that swept Argentina in the 1990's (see points 5.3.2 and 5.3.3): the State Reform Act, 23.696, and the Economic Emergency Act, 23.697. The first law authorized the president to decide how/ by whom and when would privatizations occur aside from allowing the possibility of enlarging the number of executive accountable figures with the *interventores*. These president named trustees were in charge of the whole number of SOEs for 180 days and their contracts could be renewed for a similar period. The State Reform Act contained an appendix that authorized the executive the immediate privatization of 32 SOEs (of different sizes and importance) and others that remained potential to be sold (Manzetti, 1999). The Economic Emergency Act was in some ways complementary to the State Reform Law: it allowed the executive to change the internal organization of the state-owned companies (mergers, dissolutions, etc). In the context of the structural adjustment reforms, privatization was part of a broader effort so the Economic Emergency law by considering the suspension of state subsidies (Art. 2) and the elimination of industrial and mining promotion schemes (mostly through the elimination of tax incentives) also affected privatization by making SOEs harder to maintain for the state.

4.1 Ménem's adherence to the Washington Consensus

⁶⁷⁹ The Argentine Brady agreement, named after the U.S. Secretary of the Treasury, Nicholas Brady, was the first accord in which a debtor country acceded without paying interest already due (U.S. \$ 8.3 billion by the end of 1992). The agreement reached allowed Argentina to reduce both the servicing of the debt and a cutback of the debt stock itself. After the Brady agreement the private and the public sector were again able to access capital markets.

One of the main problems Méнем had to face at the beginning of his government was the innate lack of international credibility a Peronist administration produced in the national and international economic community. Up to that date, all previous Peronist governments had favored union interests and increased public expenditures (precisely what Alfonsín's administration was blamed for having done), and they were not associated with favoring an open market economy in any way. The whole expansion of the state's investment and the idea of the state intervening in the economy had received a boost in every peronist government until then.

It was mainly because of this policy background and the fight against that notion (not to forget the consideration of the international opinion) that privatizations became a flagship for the new administration to show deliberate (and to a certain point politically "unrestricted", since it incorporated several politicians from opposition parties as executive members⁶⁸⁰) commitment to reforms. Privatizations in Argentina had been an ongoing topic since the Austral Plan in 1985, which was made to reduce the fiscal costs of so many unproductive SOEs that had accumulated in the last decades. The justicialist administration thought of that benefit and the possibility to present a new face to the international community, which had suspended all loans to the previous government a short time ago. The situation was better in one sense now. The peronist administration received a more organized idea of the whole SOE spectrum. The radical administration, before launching the privatization ideas included in the *Plan Austral* (or later in the *Australito*), committed itself to organizing the numbers of existing SOEs and to classify them according to their legal nature leaving them, at the end, under the tutelage of only one entity (Decrees Num. 414/84; 2452/85; 2194/86).

However, despite having obtained the legislation it had considered necessary from Congress, the economic situation in Argentina under the peronist administration took time to improve. The government tried from the beginning to create alliances with powerful economic groups and other sectors⁶⁸¹, to overcome the difficult fiscal situation. The first plan known as BB (the initials of the company the first minister of economy came from: Bunge&Born), was oriented to cut the size of the state and produce a strong deregulation of the economy, all part of a so-called "orthodox package" of stabilization measures, but it failed soon after being launched. By the end of 1989, the Argentine economy was under heavy financial speculation, accompanied by conflicts in the unions, the industrial sector and the agriculture. The second

⁶⁸⁰ The deliberate alliance sought by Méнем with members of the liberal party Unión del Centro Democrático, UCeDe, made a strong impression on his real commitment to skip party boundaries and compel his whole administration to following the orthodox assignments coming from Washington. Details of the terms of this alliance with the UCeDe implied offering Alvaro Alsogaray the Argentine Embassy in Washington D.C. (which Alsogaray did not accept), and placing his daughter, Maria Julia Alsogaray, as chief *interventor* in the case of EnTel. On retributive terms, the UCeDe became an electoral ally to the *Justicialistas* and a crucial partner and collaborator in congressional voting (Margueritis, 1999).

⁶⁸¹ From the selection of the ministers that would form the executive cabinet, to the diverse consultations Méнем made with several important economic sectors and institutions (the Church, the Military, the Media), it became clear the government was trying to promote a wider alliance to support all the coming changes (Margueritis, 1999)

semester of 1989 comprised difficult months where the executive was preparing itself for the wave of privatizations that would occur later, but had to face a day to day crisis of lack of resources to administer.

Even with the approval of the two delegative laws (23.696 and 23.697) in Congress, the economic trust of the industrial and the productive sector was hard to obtain in a country that had known financial and economic instability for the whole time since its return to democracy in 1983. In January 1990, amidst a strong inflationary crisis and strong financial speculation, the Plan Bonex was announced. This plan reduced liquidity and increased recessive tendencies already existent in the economy. Inflation peaked again and a new package of measures was announced with a strong liberalizing component and fiscal reductions (Margueritis, 1999). By this time imports were deregulated, first privatizations were starting to appear, and all protection and subsidies to local industry were cancelled. Industrial production received a parallel boost with the starting of the common southern market, Mercosur.

After a difficult closing of 1990 with a military rebellion against the government, the economic situation showed little signs of recovery. During the second semester of 1991 the new minister of economy, Domingo Cavallo, started another anti-inflationary shock: the *Plan de Convertibilidad*⁶⁸². This plan meant a very strong revolution in the internal economy that equaled the currency on a “one to one” parity basis with the dollar, and forbade the government to create more money to cover the internal deficit, thus also straightening the yearly budget proposition on real terms and leaving behind a tradition of fiscal deficits and inflation. Immediate and mediate results showed positive symptoms of economic recovery: the dollar maintained the parity value and inflation decreased abruptly reactivating industrial production and product demand.

⁶⁸² The selected mechanism to promote stabilization freed the currency in the exchange market; the currency lost four zeroes and was named “peso” again. In practical terms it meant that 10.000 Australes became 1 peso, and that this amount was equivalent to one dollar. The mechanism that provided for this was called *Caja de Conversión*, which established that the Central Bank would maintain the monetary relation 1:1 with the dollar, and that printing money to cover fiscal deficit was forbidden. On macroeconomic terms it must be said that Cavallo also profited from the incoming amounts of money from the privatizations in 1990 and 1991, and the saving that each one of those sales produced (not being part of the state’s expenses anymore) in the state’s economy afterwards.

Table 5.6 *Economic Reforms under Carlos Ménem 1989-1999*

Economy Minister	Policies	Relationship with International Financial Institutions
Manuel Roig and Nestor Rapanelli (July- December 1989)	Law for the Reform of the State granted by Congress gives executive the power to privatize through decree Economic Emergency Law Price agreement between government and Private sector Import duties reduced 15%	Negotiations with the IMF resume in August IMF approves a tough Stand-By plan (US \$ 1.4 Billion) World Bank resumes disbursements of trade policy loan, opens office in Buenos Aires, and carries out intensive dialogue with Argentine officials although no new loans are approved.
Ermán González (January 1990- January 1991)	Privatization moves forward Average tariff rate from 26 to 17% Plan Bonex converts short term domestic debt into medium term external debt Drastic cuts in state expenditures, lay offs; Increase in public utility rates; Omnibus Decree increases the power of the Economy Minister to carry out reform	Fails to meet Stand By criteria for fiscal deficit; IMF stops disbursement of funds, proposed plan of adjustments unlocks IMF funds Loans from the World Bank for Public Sector reform (restructuring, privatization of public enterprises, administrative reform, provincial financial reform) Intensive dialogue with the World Bank
Domingo Cavallo Convertibility Plan (January 1991- July 1996)	Monetary base fully backed by Central Bank reserves Tax Increase; public sector budget cuts By 1994 most of the important public enterprises had been privatized including telecommunications, airlines, petroleum, railways , electricity, gas, military hardware companies Social Security privatization Drastic reduction in tariffs: average level lower than 10%; end to most non tariff barriers; complete deregulation of prices Two labor laws providing some flexibility; 1995 adjustment (second reform of the state)	Continued difficulty with IMF targets Negotiations for a Stand By and Extended Facility program with private creditors successful providing for debt relief under Brady Debt relief of US \$ 2.55Billion and 21 billion refinanced World Bank return to high lending policy in 1992, contributing US \$ 750 million for Brady World Bank disbursement of US \$ 5 billion between 1992 and 1996 Last structural adjustment loan in 1995
Roque Fernández (July 1996- October 1999)	Continues Convertibility Plan Congress changes tax bill and resists privatization 1998 labor flexibilization law Provincial state reform and privatizations Creation of regulatory agencies for privatized companies	Argentina gets waivers on targets in Stand By agreement with the IMF IMF pushes labor flexibilization Agreement for a three year extended facility program; granted waivers on fiscal targets World bank loans for Health services, for provincial decentralization 1999: request another extension on fiscal target from the IMF

The *Plan de Convertibilidad* brought long term changes in the Argentine economy and had tenacious negative effects despite the consuming boom seen at the beginning. One of the long term negative effects that the economy started to show several years later, was that most of the deficit reduction had been obtained through privatizations and public staff reductions. When these two income sources ended, the country found it hard to make ends meet. By the end of Ménem's first administration all adjustments made to restrain public spending had not been enough to stop a growing public deficit. For years these had been taken care of with the money coming from the SOEs' sales. But because the whole privatization program was meeting stronger congressional resistance after 1995, and at the same time about to come to an end, not many more resources were likely to come from it⁶⁸³. Economic recession was also hard to fight: after the initial boom produced by the economic liberalization and the entrance in the Mercosur, the internal industrial production fell consistently and the salaries declined 24% on real terms between 1989 and 1995⁶⁸⁴. Last but not least, there was corruption. The Ménem administration was tainted by public fund mismanagement and corruption through discretionary and unaccountable procedures from the very beginning. Economic reforms and particularly privatizations were signaled as portraying discretionary procedures allowed by the executive, in order to re-establish economic stability.

Ménem's adherence to the Washington Consensus was somehow twofold: on one side he did follow many of the prescriptions (i.e. privatizations, liberalization of the internal market) but on the other he went much further than what had been stipulated. Moreover, ideas like the convertibility plan were never seriously discussed nor set as a blueprint by the international financial institutions, due to the fear that initiatives like these had not been tested and could provoke social unrest. In this sense we see how the government, based on the conditions of a deep economic crisis, issued drastic measures and had room for autonomous decisions only constrained by the presidential will. This became obvious later when Ménem started using reforms to punish his adversaries and patronage his supporters⁶⁸⁵: by means of austerity measures he worked to deprive antagonists of access to patronage; through access to favorable privatization deals or, what was more common, proceeds from the sale of public enterprises (Gibson, 1997). Although the international financial agencies did condition the application of reforms, the actors had a lot of room for decision and they used it (as in Ménem's case) to go much further than had been financially prescribed

⁶⁸³ The government issued new debt in 1995 increasing its total amount (internal and external) to 95.600 million dollars. From this total amount, 87.580 millions were due to the external debt. The evolution of the external debt during Ménem's administration is consistent and progressive, except for those payments made at the beginning of the privatization program: 65.260 millions owed in 1989; 62.230 millions in 1990; 65.400 millions in 1991; 67.780 millions in 1992; 74.470 millions in 1993 and 82.330 millions in 1994 (Source IADB, 1995).

⁶⁸⁴ FIEL, *Fundación de Investigaciones Económicas Latinoamericanas*.

⁶⁸⁵ This idea is also found in Geddes (1994), who argues that the willingness to adopt tough stabilization measures depends on chief executives who rise to power as outsiders and who distribute the costs and benefits of reforms in order to weaken their adversaries and at the same time reward their supporters.

by international institutions. The adherence to the consensus is relative, subjective and with a lot of decisional room in favor of the government.

4.2 The Privatization Program

In Argentina, as in many Latin American countries, the universe of SOEs was wide and mostly undocumented until the end of the 80's, but it was structurally clear that at the core of it were around a dozen large firms that dominated the market, some of them being monopolies. The size and monopolist character of some SOEs had been a burden to their privatization in many countries and it proved to be also a difficulty in Argentina. Many of this massive SOEs had operated in sectors considered as "strategic" and had remained until then, unassailable for privatization particularly from local investors.

The size of these gigantic SOEs at the time of a sale was a large inconvenient because local buyers and investors lacked the funds to buy them and in many a case they lacked also the expertise and technology to conduct their management. So in a way, it was over understood they had to be sold either to consortia or to foreign companies. In Latin America, particularly at first, stock markets proved to be small compared to the SOEs sizes. They could not absorb (especially at the beginning of the privatization process when the stock-market was still growing) the whole number of shares that would be placed in the market.

At the same time, most of these huge enterprises were in a decadent financial condition so that governments that had thought of privatizing them⁶⁸⁶ faced an uphill way to ensure the process. They had in most cases first to restructure the firms, then negotiate deals with the workers and their union leaders, then clean up the firm's finances, then redefine the future regulatory environment (this started to occur only after bitter experiences from the first privatizations); later, market the firm (nationally and internationally) to potential buyers and finally close the deal in the best terms possible (Ramamurti, 1994).

⁶⁸⁶ I refer to the enterprises in plural here since the case of a core number of big SOEs that were considered strategic and acted as monopolies, was common to other Latin American countries.

Table 5.7 *External Debt of SOEs (U.S. \$ Millions for December 1989)*

Sector	Short Term	Long Term	Total
Fuels & Energy	3.118,6	9.630,8	12.749,5
Fuels	1.958,8	6.273,5	8.232,3
YPF	1.172,0	4.432,0	5.604,0
Gas del Estado	697,0	1.708,7	2.405,7
Y.C.F.	89,8	132,8	222,6
Electric Energy	1.159,8	3.357,4	4.517,2
Agua y Energía Eléctrica	699,0	1.914,0	2.613,0
Segba	146,3	637,3	783,6
Hidronor	314,5	806,1	1.120,6
Transport & Communications	389,4	3.110,3	3.499,7
Transports	363,4	2.337,5	2.700,9
Ferrocarriles Argentinos	137,2	828,9	966,1
<i>Aerolíneas Argentinas</i>	91,4	681,6	773,0
AGP	1,7	2,4	4,1
Elma	133,1	824,6	957,7
Communications	26,0	772,8	798,8
ENTEL	26,0	764,2	790,2
EnCoTel	0,0	8,6	8,6
Total	3.508,0	12.741,2	16.249,1

A common feature of the Argentine privatization process was the persistent tendency to centralize the whole practice in the hands of the executive (either the president himself or an especially designated cabinet minister), while minimizing the involvement of the legislature or any other controlling actor. This deliberate isolation of the executive most palpable at the beginning, happened regardless of cases where the ruling party had either an absolute or a working majority in the chambers. In Argentina, the biggest privatizations of the first stage 1989-1991 were done through executive decrees, following two broadly based laws passed under the economic emergency of 1989. The whole institutional conception was that the executive had to deal with the restructuring and privatization of unproductive SOEs at the stroke of the pen rather than at the debate speed of the legislative.

The Ménem privatization program began in 1990 with the sale of the national telephone company EnTel and *Aerolíneas Argentinas*, the national airline⁶⁸⁷. After

⁶⁸⁷ The telephone company was divided into two regional units and sold to the national telephone company of Spain (*Telefónica de España*), Italy's Stet SpA, Frances Telecom and a consortium of Argentine creditor banks including Citicorp and JP Morgan. The buyers paid U.S. \$ 1.2 billion (\$214 million in cash and \$ 5 billion in debt with a market value of around \$ 900 million) for the 60% of EnTel that was privatized in November 1990. A year later, the remaining 30% in the hands of the state

that, the government transferred to private administration either through privatization or concession: television channels, petrochemical firms, a railway route, some state-owned oil companies and the biggest national highways. The steps occurred more or less in the following sequence: in 1991 the government privatized the oil reserves; in 1992, steel firms, electricity (generation and distribution firms), water Service Company, the national gas company, the undergrounds of Buenos Aires and some more electric plants. In 1993 it privatized the state oil company (Yacimientos Petrolíferos Fiscales, YPF), the access routes to Buenos Aires, and continued with the privatization of the electric centrals. Throughout the whole decade of the 90's the fiscal revenues for privatization reached a total amount of U.S. \$ 23.849 million.

In a way, two main privatization waves could be determined from the starting point of the delegation the executive received in August and September 1989. Dromi (1997) names these stages the foundational phase, including the years 1989 and 1991 in the whole context, considering the next a continuing stage, from 1992 to 1997. This perception is only accurate when considering privatization in isolation; for congressional control we have determined other subsequent stages that developed from the institutional interplay between the executive and legislative. The foundational stage begins with the state reform law and the decree 1105/89, which regulated the whole procedure to guide the state reform and the privatizations. To this stage belong the privatizations of EnTel, *Aerolíneas Argentinas*, railway Rosario-Bahía Blanca, the concessions for the highways (10.000 km, *programa de reconversión vial*), the main contracts for central and secondary areas of YPF, the sale of the shares from Polisur Argentina, Monómeros Vinílicos, Petropol mixed society and Induclor. Also TV channels 11 and 13, radios Belgrano and Excelsior.

The second or continuing stage comprised the privatization of Obras Sanitarias de la Nación, Water and Electric services, Segba, Hidronor, Gas del Estado, the share package of YPF, Somisa, the highway access to Buenos Aires, Railways General Urquiza, San Martin, Roca, the Underground and Metropolitan Railways.

(10% was programmed to be sold to the workers) was sold in the stock market for U.S. \$ 2,057 billion, almost twice the price of the original 60% (Thwaites Rey, 1993).

Table 5.8 *Privatizations in Argentina 1990-1992*

Sector/Enterprise	Conditions of Ownership Transfer
EnTel (Telecommunications)	Horizontal Breakdown and sale of 60% of the shares to consortia Public flotation of 30% of shares of Telefónica and Telecom
<i>Aerolíneas Argentinas</i> (national airlines)	Sale of 85% of the shares
Natural Gas	Vertical and Horizontal breakup Concession in two transportation companies Concession in eight distribution companies
Broadcasting Stations LS 84 TV Channel 11 LS 85 TV Channel 13 Broadcasting Radios	15 year term concession
Petrochemicals Polisur Petropol Induclor Monómeros Vinílicos Petoquímica Rio Tercero	Outright sale of state shares 50% partnership in four central areas
YPF S.A.	Partnership contract in central area, Santa Cruz I Partnership contract in central area, Santa Cruz II
Undersecretary of Combustibles	Concession of 28 marginal areas (first package) Concession of 28 marginal areas (second package) Concession of 22 marginal area (third package)
Roads and Highways	Concession of right to toll in 10.000 km of Federal roads
Railroads	Concession of the Rosario-Bahía Blanca Railway Concession of the Delta-Borges Railway Concession of the Buenos Aires Inter-urban and urban railways
Hotel Llao-Llao	Outright sale
IDLE State-owned Real Estate	Sale of 431 properties
Tandanor (Shipyards)	Outright sale
Altos Hornos Zapla (Steelworks)	Outright sale
Segba (Electricity Company in Buenos Aires)	Vertical and Horizontal breakup in seven business units Sale of four generation units 95 year term concession of three distribution cos
Buenos Aires Subways	Concession
Water Services (Buenos Aires)	Concession
National Grid (electricity)	Concession
Agua y Energía Eléctrica (electricity company nationwide)	Vertical and horizontal breakup. Sale of generation units. Transfer of distribution units to provinces.
Terminal Elevator of Buenos Aires Harbour	Concession
Terminal Elevator of Neuquén Harbor	Concession

Liniers Livestock Market	10 year term concession
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Source: Abdala in Baer/Birch (1994)

The ways through which investors could pay for the SOEs and services they acquired, varied in time. At first the government was very concerned with the need of cutting down its external debt in order to promote international credibility for the international financial institutions. The use of discounted debt in Argentina's privatization program allowed an unusual benefit for investors, though a likely burden too. The economic benefits derived from the process were the following: the nominal sale price of the firm was presented high (according to the valuing of the assets), while the price that was actually paid by the buyer was reduced by the proportion of foreign debt bought in papers and its discount (real price) in secondary markets. In other words, the nominal price of the state enterprises could be set high but this value was cut-rate on real terms when debt papers were bought on the secondary markets at lower prices. Because of the deep discount made on Argentine debt (papers) in these secondary markets, foreign participation (and local flight capital that had been placed abroad) was encouraged to take part in the bids and the government was able to make significant reductions in its foreign debt amount while at the same time generating the repatriation of gone funds.

The burden of the whole procedure could be time and expertise related: not everybody found enough debt papers at convenient prices to make the whole operation productive. At the auctioning of EnTel for example, one of the groups had to retreat arguing it had not been able to find enough debt papers to make the price⁶⁸⁸.

⁶⁸⁸ In the case of EnTel seven groups presented their auctioning proposals but after the executive changed some of the selling conditions, only three remained. *Telefónica de España* won in both cases (zona sur and zona norte) and chose to remain with the zona sur. Bell South, the second offering company was granted the zona norte but although given special time lapses, it had to draw back since it could not buy enough debt papers.

Table 5.9 *Financial Results of the Privatization Process 1990-1993 (U.S. \$ Millions)*

Sector/Form of Sale	Cash Transference	Amortization	Transferred Foreign Debt	Total Liabilities	Amortization of Foreign Debt
Telecom/Sale of Stock	2.279,0	1.264,3	-----	3.543,3	5.029,0
Airlines/ Direct Sale	190,1	394,1	-----	584,2	1.313,8
Railways/Concession	-----	-----	-----	-----	-----
Electricity/Direct Sale	1.283,1	1.258,5	1.003,0	3.544,6	2.516,9
Harbors/ Concession or Direct Sale	12,3	-----	-----	12,3	-----
Roads/Concession	-----	-----	-----	-----	-----
TV and Radio/Concession	-----	-----	-----	-----	-----
Petroleum/Sale of Stocks	1.806,8	-----	-----	1.806,8	-----
YPF/ Concession	3.040,0	953,3	-----	3.993,3	1.271,1
Gas/ Direct Sale	658,0	1.498,9	1.110,1	3.267,0	2.997,9
Water and Sewage/ Concession	-----	-----	-----	-----	-----
Petrochemical/ Sale of Stocks	53,5	26,8	-----	80,3	132,0
Ships/ Direct Sale	59,8	-----	-----	59,8	-----
Steel/ Direct Sale	143,3	15,9	250,0	409,2	30,0
Public Real State/ Direct Sale	3,2	5,8	-----	9,0	13,0
Other/ Direct Sale or Concession	4,5	0,7	-----	5,2	3,3
Total	9.533,6	5.418,3	2.363,1	17.315	13.307,0

Source: Frenkel/Rozenwurcel in Lijphart/Waisman (1996)

In conclusion, the privatization plan in Argentina was executed tailored to the executive's temporary needs. This is particularly true when observing the sale conditions stipulated in the *pliegos de venta*. Debt papers were sought and accepted

when international image was the main objective; cash payments when solving internal deficit problems was the most acute inconvenience. The first stage (during the delegation period), followed the political timing needed to certify the newly elected executive and its deliberate intentions to go on with economic reforms, sometimes even further than the international financial community expected. No regulatory frames were prepared and the executive named *interventores* were given too much of a free hand to improvise and “prepare” the company for a sale. The normative clauses for each sale were extremely discretionary, done under decrees to rule the conditions of the sale and, when the range of the law remained short for regular decrees, through Necessity and Urgency Decrees, NUD. In this first stage, debt papers were used as preferred currency which simultaneously benefited the government and the investors. This debt purchase could in a way be seen as a deliberate strategy to guide the administration to a renegotiation of the nation’s foreign debt, something that occurred after the signature of the Brady Agreement, two years after the beginning of the privatization program.

The second stage (continuing stage) had a better planned approach: SOEs were segmented in diverse business units (cases Gas del Estado and Segba); cash payments were preferred, since the debt problem and the credibility factor were already a secondary issue, but coming to terms with the internal fiscal account became a priority for the administration. Something that characterizes this stage is that the government begins to create regulatory frames and control organisms for privatized public services. In contrast to the first stage, when all decisions had been discretionally taken, the government started being aware that lack of transparency could play against the whole privatization program still to come. Many international investors were wary to participate unless they were granted direct access to the executive, where in the end all decisions would be taken. This perception of “discretionally led” procedures greatly reduced the number of aspirants and played against the process in general. Thus, the decision of sending privatization bills to the legislative after the delegation period ended. This decision had two main functional meanings: on one side, the government needed the institutional legitimacy that legislative oversight and approval would bring, and on the other, Ménem realized that if privatizations were going to continue (and the Brady plan of 1991 contained specifications it should last some years more) he had to promote the inclusion of the ruling party in the decision making. Until then, the executive had managed most of the decisions with the support of the liberals and technocrats convinced of necessity of the reforms, and with the know how to execute privatizations. With the delegation period coming to an end, Ménem had to count on the support of his party, which was also consistently growing in legislative power after the 1991 elections.

- Concessions: another form of Privatization

One of the side effects of the massive congressional delegation the executive received in Argentina during 1989-1990 was the modification of the law num. 17.520 ruling over concessions granted by the executive to administer public property. Law

23.696 observes both privatizations and concessions as instruments of the state reform, so in a way, this text annulled the former 17.520 and authorized the executive to proceed also in this sector.

While a privatization procedure implies the transference of public assets via sale to private investors, a concession is the transference of administrative power to a private user (Ongaro/Cena/Carluccio, 2001). Concessions usually operate in two modes: a) the concession of public services is given by the state to a particular, for a specified period of time. Users pay for the service provided; and b) the concession of public work: the administration hires a private company, which obtains economic benefit through the exploitation of the concession.

The state reform act modifies the law 17.520, allowing the president to give concessions for the exploitation, administration, repairing, widening, and conservation of public works or services. So Ménem gave by concession the highways (red troncal vial nacional⁶⁸⁹), radio and television stations (canales 11 y 13; radios Belgrano y Excelsior). In 1990 and later, licenses for new television channels (Telefe and Arterar); the Railways (ramal Rosario Bahía Blanca; Ferrocarril Gral. San Martín y Remanente Ferrocarril Gral. Sarmiento; línea Gral. Urquiza; línea General Roca; línea Mitre; Ramal Delta-Borges); the Obras Sanitarias de la Nación⁶⁹⁰; all autoways accessing the capital Buenos Aires⁶⁹¹; the horse track; the river ways; ENCOTESA (Empresa Nacional de Correos y Telégrafos) and the national Airport System.

4.2.1 Forms of the Privatization Program

The State Reform Act, num. 23.696 had a number of instruments to produce the transference of public services and goods to private administration and provision and conduct the state reform. The most important were: privatization, concession by state initiative, concession by private initiative, license and permission, provincialization, municipalization, program of co-participated property, cooperativization, location and administration⁶⁹² (Dromi, 1997).

Privatization: Art. 11⁶⁹³ of the state reform law empowers the executive to proceed on the transference of public goods to the private sector. For this purpose the state reform law specifies the executive can build, create, and transform societies and properties. These privatizations could be done through direct sale of assets or by sale of shares

⁶⁸⁹ Highways were conceded through decree 2039/90; the executive thought to charge these companies for the administration of the motorways; something it later eliminated in another decree 527/91.

⁶⁹⁰ Decree 1167/97

⁶⁹¹ Decrees 2637/92 and 1638/94

⁶⁹² This is a direct translation of the legal forms used which are: privatización, concesión por iniciativa estatal, concesión por iniciativa privada, licencia y permiso, provincialización, municipalización, programa de propiedad participada, cooperativización, locación y administración (Dromi, 1997, p.32).

⁶⁹³ Art. 11: "Facúltase al poder Ejecutivo Nacional para proceder a la privatización total o parcial de servicios, prestaciones u obras cuya gestión actual se encuentre a su cargo, o la liquidación de empresas, sociedades, establecimientos o haciendas productivas, cuya propiedad pertenezca total o parcialmente al Estado Nacional, que hayan sido declaradas sujetas a privatización..."

Concession by State Initiative: Art. 11 also empowers the executive to decide on the concession (partial or total) of those goods owned by the state. Concessions operate in two forms either by a) concession of public works and b) concession of public services.

Concessions by Private Initiative: Operatively seen, it is a prior stage to the state initiative concession. The law envisages that private investors or companies can request the concession of a specific service and present their application with the entrepreneurial background they may possess in the area.

License and Permission: very much like the concessions, the state can give specific authorizations for the exploitation of determinate services to private investors. These applications must, however, contain time specifications (how long the license is valid to operate), geographical limits, the terms and obligations the licensed company would oblige itself to, and others.

Provincialization: the law has envisaged this possibility particularly for cases where a judicial transference of the administration of several services might make them more effective. This has been thought for gas distribution networks, sanitary services and highways.

Municipalization: the municipalization of services was mainly contemplated for the provision of sanitary municipal services, mostly in highly populated urban areas. For example the law envisaged a creation of an entity conformed by the municipality of the city of Buenos Aires, the government of the Buenos Aires province and the Obras Sanitarias de la Nación (Dromi, 1997).

Cooperativization: The state reform law would give preferences in the acquisition process to any bid presented by an organized association of workers, consumers or producers interested in purchasing state property or service provision. The premise for such a preference is that the interested group be organized in the form of cooperatives or service providers.

Location and Administration: in these cases the state can transfer the administration of services to a private investor with or without a purchase condition. The private administration of state-owned firms is one of the first steps used to privatize goods when other solutions are not possible.

4.2.2 Methodology of the Privatization process 1989-1991

The whole methodology scheme for privatization as it had been done before 1989, was changed by the provisions stated in the Law for Administrative Emergency, or State Reform Act, num 23.696. Once this law was issued by parliament, the executive received the following power delegations in order to proceed with the privatization of SOEs:

Intervention: the executive was allowed to arbitrate and decide on any entity of the public administration for a period of 180 days that could be extended for a period of equal length (Art. 2°). It was also empowered to name an *interventor* (a trustee) to run the enterprise and consider whether it ought to be privatized or not and the terms under which the privatization should occur.

Reorganization: the *interventor* named by the executive could reorganize the enterprise/public society/ he is assigned to. He is also empowered to reduce staff or hire new personnel if required, while in charge of the executive conduction of the intervened enterprise. He must follow close instructions from the executive power and/or the ministry to which he has been assigned (Art. 3).

Transformation: The law 23.696 allows the executive to produce any necessary legal transformation on the legal personality of the SOEs it considers (Art. 6)

Creation of new Enterprises: the law also empowers the executive to dispose directly of the creation, fusion, liquidation or transformation in any way of the existing public enterprises or societies, restructuring their objectives as necessary (Art. 7). The law also granted the executive the capacity to privatize totally or partially all those enterprises considered candidates for privatization. Once the executive has chosen the modality through which the privatization should be carried out, it is the executive itself and most particularly the minister in charge who proceeds to select the best suited method⁶⁹⁴.

4.2.3 Agents in the Privatization Process after 1989.

1) Executive power: according to the administrative reform law it is the executive power that is empowered to carry out all restructuring and privatization needed. For this it is allowed to grant total or partial concessions, create or liquidate existing enterprises, societies or any other investment or property of the nation.

1.1) Interventor, assigned to each enterprise. He/She is in charge of administering the SOE as well as of any details concerning its potential privatization

1.2) Tutoring ministry, to which the SOE has been assigned. They must observe the actions of the *interventores* and their outcome

1.3) The Finance secretary of the Ministry of Economy⁶⁹⁵, which presents/briefs the rest of the cabinet with the proposals regarding the transfer of SOEs to provincial governments through agreements; the restructuring, privatization or liquidation of all organisms and the market regulation of regional products

2) Legislative Power: The law observes only the creation of a bicameral commission composed by six senators and six deputies previously elected by their respective chambers. This commission ought to coordinate the privatization supervision between the national Congress and the executive power.

⁶⁹⁴ The law 23.696 observes in Art. 16 and 18 a number of methods. Most commonly:

1. Licitación pública, con o sin base
2. Concurso público, con o sin base
3. Remate público, con o sin base
4. Venta de acciones en bolsas o mercados del país
5. Contratación directa

⁶⁹⁵ Secretaría de Hacienda del Ministerio de Economía

3) Tribunal de Cuentas de la Nación and Sindicatura General de Empresas Públicas⁶⁹⁶. These are both external controls to the process and they can only act *a posteriori* in case of a determined irregularity.

4) Unions: according to Art. 41 of the Administrative emergency the unions can start independent negotiations with the groups acquiring SOEs in order to avoid traumatic transitions in the labor system.

5) Subsecretaría de Privatizaciones del Ministerio de Economía y Obras y Servicios Públicos. This public branch was created in 1991 (decree 2408/91) to control the promotion of the whole privatization process. Thus it was in charge of the publication of monthly and yearly reports, the collection of all documents implied and of informing the bicameral commission of Congress about the advances of SOEs transferences. As the privatization process started decreasing its initial speed, this *Subsecretaría de Privatizaciones* was dissolved and its functions transferred to the *Subsecretaría de Gestión Empresarial* of the Finance Ministry; but even this office was dissolved in 1996.

4.2.4 Normative Frame of the Privatizations in Argentina after 1989.

It can be argued that the privatization process in Argentina has undergone several stages. These stages can also be classified according to the kind of relation existing between the executive and the legislative power. It is also most important to observe the legal frame the privatization procedure had, both in the beginning, with the delegative tools given to the president by Congress, as well as later, when Congress started regaining its supervisory attributes. Among the most important legal instruments to rule the transfer of public property to the public sector we observe:

- Law 23.696 of administrative emergency, issued on August 17th, 1989. This became one of the basic tools for the beginning of the privatization process, and also the legal mechanism that allowed the massive amount of industries privatized. Its scope was the reform of the state as Dromi/Ménem later announced (Dromi/Ménem, 1994)
- Law 23.697, issued on Sept. 19th, 1989, of economic emergency complements the administrative emergency law in so far as it creates and determines more favorable conditions for the privatization process. It also eliminates the subsidies and subventions to SOEs, as well as all special regimes of industrial promotion for them. It opens the economy to foreign investment and reduces all tariffs.
- On October 20th, 1989, the executive states the rules (*reglamento*) of the economic emergency law by decree number 1105/89, through which it allows ministers and secretaries of the presidency to delegate to inferior organisms the competences given to them in order to speed up the privatization process.
- On March 26th, 1990, the executive issues decree number 544/90 through which it extends the intervention in all public entities, enterprises and societies already described in law 23.696 for a period of 180 days more.

⁶⁹⁶ The *Sindicatura General de Empresas Públicas* has its own law, num. 21.801

- On May 24th 1990, the executive issues decree 991/90 through which it regulates that the ministry of economy will be the only one in charge of channeling acquisitions, hiring and other service requirements for most of the public sector. This move provoked a more deliberate centralization of functions in the ministry of economy in order to have a better numerical control of the state enterprises.
- On July 10th 1990, the executive issues decree 1276/90, through which it rules mandatory to inform the ministry of economy about all privatizations that may involve obligations related with the nation's external debt.
- On July 23rd 1990, the executive issues decree 1398/90 through which it declares subject to privatization or potential to be privatized all enterprises, societies, and establishments related to the Defense Ministry. This was a particularly important move since as we have seen previously, *Fabricaciones Militares* was an enormous conglomerate of enterprises related to the military sector that had been deliberately protected during the military junta administration (1976-1982). They held shares of other SOEs and according to previous legislation, in case of privatization of any entities or societies on which they had shares, the incoming amounts should be reimbursed to *Fabricaciones Militares*.
- On August 22nd 1990, the executive issues decree 1605/90 through which the administration extends the congressional delegation for the administrative emergency law for one year more starting on August 23rd 1990.
- On September 5th 1990, the executive issues decree 1757/90 to "Rationalize Public Expenses". This decree reiterates the functions of decree 991/90 and also authorizes the privatization of the judicial services of the state enterprises and those of the central administration.
- On October 19th 1990, the executive issues decree 2220/90 through which it further extends for 180 days those interventions granted and delegated by Congress through article 2° of the Law 23.696.
- On November 12th 1991, the executive issues decree 2408/91 to publicize the privatization and public enterprise investment and concession opportunity program. This decree eases private access to information and participation in the related auctioning process.
- On December 5th 1991, the Ministry of Economy and of Public Works disposes through a cabinet resolution (Num. 1610), that all privatization procedures, or those related to concessions of public industries should be done under a fixed set pattern of administrative acts to guarantee the timing of the procedures (Clad, 1995)
- On March 8th 1996, Congress issues Law 24.629 that establishes the rules for budget execution and administrative reorganization. This law delegates on the executive the faculty to proceed with the privatization of activities related to peripheral services and those in charge of the central administration. This delegation excludes privatization of public enterprises, Universities, Public

Banks or financial institution, public entities regulating service provision (*entes reguladores de servicios públicos*) and others (see Art. 8). This law represents a very different conception from the previous stages of privatization since Congress does not openly delegate its functions anymore. On the contrary, the legislative comes back to a negotiating point with the executive and recovers (if not deepens) its authority in overseeing the sale of public enterprises.

4.3 Presidential Power in Argentina: Decrees, Vetoes and Legislative Delegation

Historically (and thus not a specifically new characteristic after 1989) the Argentine executive has been able to establish itself as the dominant institution in the whole political decision making process. Because of his use of decrees even when they were not a constitutional resource, it is often cited as the paradigm of hyper-presidentialism and a dominant executive. This is partially true since the simple use of decrees is not an invasive condition from the executive on the legislative authority of Congress. It is relevant to consider why the legislature has not acted when it could have, and which institutional or interest prerogatives prevailed in the assembly's decisions.

Chapter III presents us with a number of institutional resources Congress can use to curtail executive single handed decisions and legislative pretensions. For example, one of the most common congressional control tools in all Latin American democracies, the budget law, was recurrently not used by the Argentine legislature despite being an effective (and constitutional) mechanism of control available for them since 1991. As seen in chapter III, because of the irregularity in authoritarian and democratic administration, and the fiscal and economic disorder in the Argentine administration, the president never presented a budget until 1991. By 1994, when the legislature produced several observations on the draft received they were deleted via partial veto, which allowed the president to approve only his endorsed part of the bill. The delegative period of 1989-1991 had also arranged power allocations for the president in budget matters. The Economic Emergency Law gave the president the authority to change the budget, eliminate subsidies for industrial promotion, modify tax collection, end legal discrimination against national or international investors, alter the system of federal bonds and reorganize the social security agency. As if these were not enough special powers, Ménem used the Necessity and Urgency Decrees “as policy making devices whereby the executive presents legislative proposals that circumvent the principle of checks and balances, replacing the rule of law with presidential fiat” (Ferreira-Rubio/Goretti, 1997, p. 34).

It is interesting to see that the Argentine Congress did not react against Ménem's first use of the Necessity and Urgency Decrees (pre-1994), a time when they were not thoroughly legal and in many ways unconstitutional. The legislature never made a concerted effort to restraint the presidential decree power⁶⁹⁷ despite

⁶⁹⁷ It is very important not to mix regular decrees with those of *Necesidad y Urgencia* which, issued under special circumstances had to (pre 1994 constitution) be sent for legislative confirmation later.

having the resources and the constitutional might to do so⁶⁹⁸, since Necessity and Urgency Decrees had to be ratified by the legislative (Manzetti/Morgenstern, 2000). This is relevant information when we observe that although the executive initiated most legislation, the legislature has had an appreciable index of self generated laws and had, between 1983-1989 approved only 40% of the executive initiated bills. NUDs could have been more seriously objected.

From the beginning of his term in 1989, Méнем realized he needed to centralize power in the presidency to manage the crisis quickly and effectively. This centralization was also part of his idea of government, and the management he produced to apply economic reforms. To secure this centralization and presidential decision-making, Méнем steadily used the decrees he was legally empowered to use plus those Necessity and Urgency Decrees for areas outside this empowerment. Regular decrees ought not to be confused with NUDs since they are part and parcel of the regular constitutional or legal authorization given to the president so he can legislate, whereas NUDs respond to legal initiatives outside the regular executive legislation scope and thus they have to be ratified by Congress. The use of this special type of decrees allowed the executive inherence in matters constitutionally reserved to the legislative. Ferreira-Rubio/Goretti (1997) identify sixteen groups of policies covered by NUDs issued by Méнем⁶⁹⁹

1. Taxation: taxes, other duties, exemptions, tax benefits
2. Salaries: salaries, labor hours, salary negotiations and pensions
3. Public Debt: creation, redefinition of the terms of the Treasury Bills
4. Trade: trade, marketing, import and export regulation
5. Transport: deregulation: land, sea, river and air transport rules; labor conditions and ship registrations
6. Nation/Provinces: relationship between the nation and the provinces, tax distribution and public service transfers
7. Real Estate Privatization: sale of unnecessary public real estate
8. Civil and Political Rights
9. Public Agencies: restructuring public corporations, labor rules and dismissal compensation
10. Proceedings against the State: suspension of litigations against the state
11. Electric Energy: emergency, benefits, and price policy
12. Promotion of Industry: tax and regulatory incentives

Regular decrees stem either out of delegation tools, such as laws 23.696 and 23.697, or from areas where the executive is constitutionally empowered to legislate following its sole criteria.

⁶⁹⁸ This theoretical observation made by Manzetti/Morgenstern is important because it is institutionally and constitutionally correct. Reality however, shows that one of the first moves made by Méнем after being elected was to seek submissive powers others than that the executive already had. Any complaint made by the legislative, aside from representing a declaration of war between the president and the ruling party, would have faced an executive biased Supreme Court, as the one Méнем worked to forge.

⁶⁹⁹ Between 1989 and 1994, before the new constitution, Méнем issued a total of 336 NUDs covering a wide range of issues such as taxation (72), salaries and wages (39), public debt (29), trade (10), transport (21), real estate privatization (22), litigation against the federal government (5), industrial promotion (8), civil and political rights (8), public agencies (32), relations between federal and state government (6) (Ferreira-Rubio/Goretti, 1998)

13. Mega NUD 435/90 and those related to it
14. Mega NUD 1930/90 and those related to it
15. Mega NUD 2284/91 and those related to it
16. Others

Aside from the circumstances surrounding their issuing, decrees had to be submitted for later legislative approval, but the situation in Argentina during the 90's was disorganized in favor of the executive: 51% of the NUDs were not even identified as such by the government, but they were used to enforce or repeal laws without specific congressional delegation⁷⁰⁰. "Between 1989 and 1992, four out of ten NUDs were promulgated when Congress was in session and the others during congressional extraordinary sessions⁷⁰¹. In both situations, the president should have sent the legislation to Congress but Ménem ignored the whole matter. The president's disregard for due process is also demonstrated by the fact that in 25% of the NUDs issued in the 1989-1992 period, the executive failed to inform Congress, as mandated by the constitution" (Verbitsky, 1993, p. 169). Many of the decrees stated expressly that they should be related to Congress as a precondition for their validity but the president never did⁷⁰². In a conclusion over the data collected from the first peronist presidential period, Congress took no action at all in response to more than 90% of the NUDs issued by president Ménem.

Congress had several reasons not to act against the president and his NUDs. First there had been a pact of forces between Ménem and the leaders of the peronist party, to support presidential initiatives. Having said that, endorsement did not mean submission and the legislative was demanding a bigger participation in decision and policy making. Ménem's engagement with the ruling party looked for an active exchange with the legislative but on negotiating terms already designed by him (Corrales, 2001). "After 1991, the PJ tended to react by seeking negotiations with the executive and later endorsing the decrees. Second, NUDs and either their invalidation or deliberate backing placed the peronist party in a difficult situation against the other parliament representations. Third and most important, in many cases NUDs anticipated legislative proposals and they were issued without debate. According to this last point, mentioned by Ferreira-Rubio/Goretti (1998) who also quote Deputy Jorge Vanossi (PJ), there could even have existed a tacit agreement between the executive and the ruling party after 1991 with majority in both chambers, to pass by

⁷⁰⁰ In 1989 out of a total of 30 NUDs, the executive recognized 18 as such. In 1990, it recognized 32 out of 63; in 1991, 59 of 85; in 1992, 36 of 69; in 1993, 15 of 62; and from January to August 1994, 6 of 27 (Ferreira-Rubio, Goretti, 1998, p. 43)

⁷⁰¹ The congressional provisions for presidential decrees in the 1853 constitution was preserved usually for circumstances when Congress was not in session and the president had to issue urgent legislation. The provision entailed that these resolutions would later be sent to the chambers for ratification (Bidart-Campos, 1996).

⁷⁰² How many NUDs were effectively communicated to Congress? Not all of the NUDs that included the clause "give notice to Congress" were communicated. In 1991, for example, of the 85 NUDs issued, only 21 (25%) were communicated to Congress, although the "Give notice to Congress" note appeared in 66 of the NUDs. Of the 59 decrees that the executive recognized as NUDs, Congress was notified of only 16 (27%); the other 5 that were communicated to Congress, were not recognized as NUDs.

decree those regulations and bills that were most conflictive and time consuming. In a way, passing laws by decree guaranteed a certain speed and overall discretion from public debate that the executive and the ruling party sometimes wanted⁷⁰³. NUDs were present in such outstanding numbers also because of this parliamentary support. During Ménem's administration, the PJ managed to have a majority in one of the chambers and later, in both of them, which left the opposition with little capacity to react and having to accommodate to the president and the ruling party's agreements.

Once the delegation period was over, Congress started to gain some of the lost territory in policy and law making. This is visible in the number of discussions needed for each privatization bill during the immediate post-delegation period, and the amount of maneuver and attention needed from the executive to pass laws. After 1991, when the peronist party obtained an absolute majority in the chambers, that did not automatically work in favor of the executive. So Ménem opted for congressional intimidation and forced cooperation tactics: Congress had to pass the executive sent bills without major modifications otherwise the executive would implement them through NUDs; and if the Legislative dared to change them, the executive would veto them either totally (if modifications were that many) or partially (deleting congressional observations).

Aside from these aggressive means, the executive also turned to pork barreling when relations with the legislative started to weaken, and dissensions within the ruling party began to become noticeable. This was the case when the media started reporting about special benefits to some legislators and some provinces, concerning the privatization of the oil and gas companies (Vidal, 1995). As Manzetti/Morgenstern (2000) put it: "for most of his term, large industrial urban areas in the provinces of Buenos Aires, Cordoba, Mendoza and Santa Fe suffered the brunt of market reforms. However, Ménem assured a steady amount of pork-barrel programs for poorer provinces of the interior, as a way to retain their legislator's support in Congress to offset an eventual defection from urban area representatives" (Manzetti/Morgenstern, *ibid.* p. 30). Verily, in the early 1990's, the poorest provinces accounting for only 32% of the Argentine population earned nearly 56% of federal revenue transfers as opposed to the four most populated provinces (mentioned above), which despite having a population of 67% obtained only 44% of federal revenues (Eaton, 2000).

Both patronizing and pork offerings to the poorer provinces, which had a higher number of representatives in proportion to their population, was easier and cheaper for the executive than assistance to the most populated areas. The latter demanded more complicated, elaborated and expensive policies. So, the attention to less populated areas ensured that the chambers would resist any possible individual defection since the Senate was formed by a regular number of representatives per

⁷⁰³ The exact quote from Vanossi presented by Ferreira-Rubio/Goretti (1998) is as follows: "The worst thing is that the majority of the NUDS are bills the Congress could have passed because the executive had enough parliamentary support. Why then did the president use the decree? Because of fear of public debate. It was more convenient to do them secretly" (Ferreira-Rubio/Goretti, 1998, p.54)

province, while some populated areas remained seriously underrepresented in the deputy chamber (see chapter II).

Table 5.10 *Policies Covered by NUDs by year*

Policy Area	1989	1990	1991	1992	1993	1994	Total
1. Taxation: taxes, other duties, exemptions, tax benefits	2	7	23	17	21	2	72
2. Salaries: salaries, labor hours, salary negotiations and pensions	18	9	3	0	2	7	39
3. Public Debt: creation, redefinition of the terms of the Treasury Bills	5	14	5	3	1	1	29
4. Trade: trade, marketing, import and export regulation	0	0	0	5	3	2	10
5. Transport: deregulation: land, sea, river and air transport rules; labor conditions and ship registrations	0	0	3	8	7	3	21
6. Nation/Provinces: relationship between the nation and the provinces, tax distribution and public service transfers	0	0	0	4	1	1	6
7. Real Estate Privatization: sale of unnecessary public real estate	0	3	6	3	7	3	22
8. Civil and Political Rights	2	0	2	1	0	3	8
9. Public Agencies: restructuring public corporations, labor rules and dismissal compensation	1	11	7	5	5	3	32
10. Proceedings against the State: suspension of litigations against the state	0	0	5	0	0	0	5
11. Electric Energy: emergency, benefits, and price policy	0	4	1	2	1	0	8
12. Promotion of Industry: tax and regulatory incentives	0	3	3	1	1	0	8
13. Mega NUD 435/90 and those related to it	0	7	5	0	2	0	14
14. Mega NUD 1930/90 and those related to it	0	5	11	6	0	0	22
15. Mega NUD 2284/91 and those related to it	0	0	4	3	1	0	8
16. Others	2	0	7	11	10	2	32
Total	30	63	85	69	62	27	336

Source: Ferreira-Rubio/Goretti, 1998

Another most effective means to overcome legislative resistance that Ménem persistently used was the Veto. Granted by the constitution, the Argentine president has access to it both in a partial or total manner. Partially, the president could choose from the bills presented those aspects he considered more relevant and then send them back for congressional oversight. Totally, the veto sent the law back to the chambers for a complete re-design and reconsideration. Between 1989 and 1993, out of the 625 bills passed by Congress, the president vetoed 37 completely and 41 partially.

In the 1994-1997 period, the president vetoed 87 bills of which Congress overran 14. The appearance of congressional overrun vetoes after 1994 is far from casual. As we show later (see 5.5.4), the relations between executive and legislative degenerated in a conflictive phase where Congress started questioning and openly defying Ménem's privatization policy and other decisions. The overrun of presidential vetoes was one expression of such rebellious attitudes. In the case of partial vetoes, the executive normally promulgated the law with the parts it found convenient, thus contradicting the constitutional prescription which mandated that the amended bill should be sent back to the chamber of Congress where it had originated (art. 72). Congress also refused to approve partial vetoes (see airport privatization).

In conclusion, aside from the already strong legislative powers given to the president by the constitution, Ménem used a number of extra constitutional powers profiting from the strong economic and institutional crisis of the beginning of the 90's in Argentina⁷⁰⁴. When the crisis became manageable (years 1993 and after) it became more and more difficult for the executive to convince the legislative of the need of additional privatizations. One of the reasons there was not an institutional crisis between powers, is that the legislative maintained a certain compliance degree and played a blind eye to presidential excesses (cases of the NUDs for example), which could otherwise have been reverted.

5. Congress and the Privatization Bills after 1989.

This stage of the analysis focuses on the institutional dynamics of privatization, namely, on the interplay between the executive and the legislative at the time of receiving and sending privatization law drafts between 1989 and 1997. Far from being a steady period, the situation and performance of the institutional interplay between these two actors was very uneven, fluctuating according to the socio-political circumstances surrounding each privatization law. Argentina, like other Latin American countries, had a big number of state-owned enterprises of which only 14 were of significant size. Many of them belonged to sectors considered strategic or related to the state's realm for security and sovereignty reasons. This was understood in similar ways by the radical party and the peronist party both of which had helped create the universe of state-owned enterprises throughout their administrations in the past years.

The crisis situation of 1989 and the period beginning there after, reinforced many of the premises the radical party had learnt by force during its presidential period: that stabilization plans, in order to last longer, required adjustment that would

⁷⁰⁴ Ménem used all kinds of extra-constitutional means to impose the executive's will over congressional resistance: Vidal (1995) recalls the case of the privatization of *Gas del Estado* in 1992, done at the end of the delegative phase of the legislative and the beginning of the cooperative phase, in which both the ruling party and the opposition started looking forward to participating in the state reform. During the debate of the bill, the radicals tried to force Ménem to bargain by depriving the bill of the necessary quorum for the vote in the deputy chamber. At this point some impostors slipped in the voting session and provided the necessary quorum, which allowed the peronists to pass the conflictive bill (see Vidal, 1995, pp.122-128)

modify the structure and function of the state⁷⁰⁵. Using a very special period and economic situation, Ménem managed to obtain two delegative instruments that allowed him a rapid implementation not only of the stabilization plan the critical situation demanded, but adjustments on the state's structure to continue them. Privatization was, among these adjustments, the flagship that would help the administration recover international confidence, renegotiate the external debt and manage a fiscal equilibrium, all in a matter of two years (1990-1992).

During the first peronist presidential period, two stages can be clearly diagnosed in the executive-legislative institutional relations. At first, with the economic emergency as a premise, the president obtained the state reform law and the economic emergency law. These laws complemented each other in a way and had the common purpose of delegating on the presidential figure the power to make decisions regarding the enterprises owned by the state. For this purpose the bill included an appendix with a number of the most significant enterprises. These laws followed the legal pattern required for any legislative delegation of power: they were time and subject constrained. Congress agreed to pass them due to the urgency and the practical consideration that a case by case decision such as the legislature would do, with a minimum of four discussions per bill project, would take too long and probably weaken the democratic consolidation of the country.

The second period starts precisely when the delegative period ends. Once the government had made clear its intentions towards following prescribed reforms and complying with its international obligations, the government's fiscal and financial situation started to change. Argentina was able to sign a renegotiation of its external debt in 1991 with the Brady accord and that year, amidst some other turbulences, the new minister of economy Doming Cavallo, introduced the Convertibility Plan, the last of a series of stabilization plans done by the government, that planned to equal the currency on a 1:1 parity with the dollar, plus other modifications that impeded the central bank and the government in general to print money that was not backed by the gold reserves of the nation. This transformed an age old tendency to produce inflation but at the same forced a fiscal sincerity the government planned to secure with further privatizations.

⁷⁰⁵ "It is convenient to remember that during the government of Alfonsín, structural reforms could not be applied not only because the interrelation between context, ideas and resources played against this initiative, but also because it took too much time to men and institutions to bring them into their diagnose and make it part of the official agenda. Structural reforms were never a priority objective for the radical administration and thus, they did not generate the much needed capacity and political will to produce a coalition support and face peronist opposition". (Margueritis, 1999, p. 278).

Table 5.11 *Parliamentary Procedure of the Privatization Laws*

N°	Privatization Bills	Approval	congressional Procedure Duration (day/month/year)	Congress' amendment	Partial Veto
1	State Reform	Yes	1 month (13/07/89 to 08/17/89)	Yes	No
2	Ministry of Defense Assets	Yes	17 months (23/07/90 to 04/12/91)	Yes	No
3	AHZ (defense)	Yes	1 month (27/07/90 to 23/08/90)	Yes	No
4	Electricity Industry	Yes	6 months (13/06/91 to 20/12/91)	Yes	Yes
5	Gas Industry	Yes	11 months (13/06/91 to 20/05/92)	Yes	Yes
6	Oil Industry, YPF	Yes	17 months (04/04/91 to 24/09/92)	Yes	Yes
7	<i>Mercado de Hacienda</i> (cattle market)	Decree	18/09/91		
8	Ports	Yes	20 months (27/09/90 to 03/06/92)	Yes	Yes
9	<i>Caja de Ahorro</i> and BANADE (banks)	Yes	10 months (03/12/91 to 30/09/92)	Yes	No
10	Pensions	Yes	15 months (06/05/92 to 23/09/93)	Yes	Yes
11	YPF (2 nd Round)	Yes	1 month (01/03/95 to 22/03/95)	Yes	No

Source: Llanos 2002 and Data from congressional Reports

This second stage, the so-called cooperative phase (Llanos, 2002) was defined by the end of the emergency period and the launch of a number of bills that attempted to take the reform of the state even further. One basic reason forced the government to look for congressional approval: public certification. Among the most common complaints against the delegative phase during which many of the privatizations included in the appendix of the state reform bill had been done, were the observations (many times in the media) against a sum of discretionary and unaccountable procedures which had led to public scandals.

The first stage was marked by the urgency to show definite results, and produce enough debt payments through privatizations to convince international markets and multilateral institutions that Argentina was ready to re-enter the international economic community and obtain loans and credits. A world it had been severed from when it was isolated due to its several defaults during the radical administration. During this stage the president controlled a pyramid of delegations only accountable to him and had both the formal cabinet and a parallel cabinet, the *interventores*, completely empowered to do whatever was necessary in order to produce the selling of the SOEs. Apart from this structure of power, congressional oversight had been reduced to a bicameral representation of six deputies and six

senators with *decisiones no vinculantes* (non-binding decisions), that is, whatever resolution this commission arrived to and sent to the executive via a specified report, the latter was not obliged to follow it since the decisions of the commission were not mandatory.

Table 5.12 *Interpellations made in the Senate 1983-1996*

Year	N°	Month	Minister	Topic	Hours
1984	1	May	Economy	Economic Improvement	11
1985					
1986	1	July	Defense	Military Trials	7
1987					
1988	1	April		Public Services. EnTel	10
	2	Mayo		Privatization Public Services Energetic Policy and Floods	21
1989					
1990	1	August		Public Services: Privatizations	15 (three sessions)
1991					
1992	1	August		Public Services: Privatization <i>Aerolíneas Argentinas</i>	7
1993	2	June Dec.	Interior	Economy and Public Works.	7
				Privatization YPF Federal Intervention to Santiago del Estero	4
1994					
1995					
1996	1	April	Economy	Taxes	7

However, the lack of transparency of the delegation period made things more difficult for the government if it were to continue with the transformation of the state via privatization. If the first stage determined a boost on the credibility over the government's determination to follow reforms, the second had to be more careful about the ways of the privatization procedures and how to promote an environment of fairness and regulatory frames for those services sold. If during the first stage fixed dates were the most important concern for the executive, in the second the trustworthiness on the clearness and cleanness of the process had to become a priority. congressional support would provide social calm and heighten public approval both to local as well as to international observers.

In addition to these concerns, the arrival of Domingo Cavallo to the cabinet as Minister of Economy made a clear division in the privatization policies and in the implementation of the adjustments in general. From his entrance until 1993, a number of very important privatizations were concluded, and although the ups and downs of the administration's finances still determined a great deal of the privatization's pace (the government was starting to use the new income to balance the internal deficit), the critical days of the economic emergency were long gone. The economic situation continued to be difficult but was more manageable than in 1989 or 1990, so the

government could not use the crisis as excuse to speed up privatization bills in Congress anymore. On the contrary, as much as the economic situation had calmed in comparison to former years, corruption scandals were increasing in size and number (Margueritis, 1999, p. 130) and the government realized it had to look for congressional reassurance, and an active participation in the production of regulatory frames for the services privatized, not to be left alone with the blame of wrongdoings at the time of selecting auction candidates or making selling decisions. *Interventores* would continue to have a strong word in either the restructuring or the sale of the SOEs they were in charge of, but the president would seek congressional support and voting for each privatization bill in the future.

One of the main variables that differentiate the first and second period, the delegative and the cooperative phase of the Argentine privatization program, is the executive's need of credibility and procedural transparency to restrain corruption scandals. These irregularities were born out of a constrained oversight capacity of other institutions over the executive, and the lineal (vertical) accountability of all the privatization structure to the presidential figure. This high degree of decisional power concentration permitted resolutions not always based on rational calculus or economic efficiency. In the second period Congress claimed for a degree of independence it had lost during the delegation phase and wanted to participate in the design of the state done by the executive. So despite approving the entire executive-sent initiatives, Congress wanted a major involvement in the writing of the bills. The president realized he had to engage the ruling party more in the decision making of the executive, otherwise what had been certain reluctance from peronist party members to grant privatizations in socially sensitive areas could become open opposition and veto power in the assembly.

There is a third episode in the institutional relation of the executive and the legislative during the 90's regarding privatization that became notable in the issuing of further policies. After the second phase (cooperative) and near the re-election time (considering the possibility of a new constitution that would allow presidential reelection) the government started focusing on the political variable more and more rather than on pure economics. The economic crisis, despite the recession of the mid 1990's that seriously affected Argentina, expressed itself only in very mild terms during the campaign and politics and state design was regaining a more ideological character. This third period, so-called a conflictive phase (Llanos, 2002), although blatantly obvious after the beginning of Ménem's second presidential period, could be traced back to the introduction of the law for the privatization of the social system.

This bill was first introduced by the executive on June 5th 1992 but it became obvious to everybody that it would be a very hard piece of legislation to get through the congressional chambers, mainly because of the convergence of interests there pictured. This bill and its final version, later questioned and reformed by the executive, signals the beginning of strong differences between the executive and the ruling party, which accentuated the congressional veto possibilities and the threat of the executive to use unilateral powers. To get the social system reform bill through,

the government had to use all its political capacity to make Congress come along after its designs, including direct forms of pork barreling and patronizing, calls for party discipline, etc.

Three cases depict each one of the stages for the executive-legislative relations mentioned here, amidst the numerous cases of state-owned enterprise privatization: EnTel⁷⁰⁶, the first privatization and a clear example of the delegative phase of the institutional interplay; Yacimientos Petrolíferos Fiscales, YPF, the oil company, where the government looked for congressional certification and social credibility, but had to introduce two bills, being the first totally defeated in the chambers and the second, seriously modified. Although the second proposal made by the executive had been completely re-designed to answer long term provincial demands, further modifications took place during the legislative process. The amendments that later resulted in the final text were somehow the price the executive paid for getting the bill approved and achieving the sector's structural transformation within a framework of institutionalism and legality. The third case is the reform of the social system. Just as much as the privatization of YPF could be taken as an intermediate stage between the first and the second period, the reform of the social security system began in the second stage but its development revealed symptoms of the third, namely, the conflictive stage. This was perhaps the most negotiated and most rejected of all the privatization bills before 1995, where both ruling party and opposition strongly confronted the executive's initiatives. A bill project where legislative opposition showed that, if the peronist party had absolute majority in both chambers, it meant it was basically and overall ruling party opposition.

5.1 The Radical Party

One of the common characteristics of both the PJ and UCR are the relative high levels of party discipline⁷⁰⁷, most visible and measurable in legislative behavior during the 90's. From the beginning of the peronist government in 1989, the radical party assumed the gravity of the economic situation and fully cooperated with the emergency reforms done in the first two years. The party while in government, had taken sometime to realize the need of several changes that could go further than the regularly implemented stabilization plans, but once the 1989 pact between the two parties was accorded, the cooperation facilitated reforms⁷⁰⁸.

The radicals saw how Ménem and the peronist party started proposing and applying many of the reforms they had formerly opposed, the same reforms the radicals had tried to espouse, which had perished in the congressional arena as a consequence to this stiff justicialist opposition. In fact, the appendix of the State Reform Act included more or less the same SOEs that Minister Terragno had tried to get through the chambers, though rather unsuccessfully, in 1988. Because of this

⁷⁰⁶ EnTel is also explained in 5.6.1 as a specific case in order to produce a direct comparison with the airline and telecommunications sector privatization in Argentina and Venezuela.

⁷⁰⁷ Jones (2002) calculates as 86-87% that of the Radical Party and 94-95% that of the Peronist Party.

⁷⁰⁸ This is a general appreciation of what happened. There were dissenting manifestations but the peronist party managed to remind radical Congressmen of the need to act jointly towards reforms.

coincidence in the aim of reform measures, the radical party saw itself as a pioneer of the needs to implement reforms. During the delegation period and through the *ad hoc* created bi-cameral commission, they presented a moderate opposition comparing many of the peronist initiative proposals to those they had previously elaborated⁷⁰⁹.

Most of the opposition presented by the radical party to the privatization schemes made later by the government dealt with a modal opposition rather than a ground one; they were concerned with the strategy and not with the idea itself. Because the party had been the first advocating the need of privatizing SOEs it could not contradict itself so openly. The party still had illiberal pockets (Corrales, 2001) which opposed most of the privatizations and the reforms in general, but due to the consecutive electoral defeats in 1987-1989-1991, these factions were the smallest in the party.

As legislative importance grew for legitimizing privatizations and once the president realized he could not maintain a purely unilateral agenda, the opposition's weight also augmented. The radical party stayed active during the incorporation of those legislative reforms made to privatization initiatives presented by the executive after the delegation period, but it saw its influence abridged by the consecutive electoral defeats it had suffered since 1987, which made it lose the majority it had in the deputy chamber. By the end of the first presidential period, the radical party had little word in Congress compared to the peronists who had gained absolute majority in both chambers.

5.2 The Peronist Party

After the seemingly unexpected defeat of 1983, the peronist *Partido Justicialista*, PJ, invested a lot of time in working on two main objectives: consolidating an opposition force and restructuring the old party model. In fact, the whole process of candidate selection from which Ménem resulted victorious five years after this defeat, was the first base election made in the history of the party, revealing how much the institution was trying to change itself. The opposition years during Alfonsín's administration somehow consolidated a party structure, at least in

⁷⁰⁹ When the executive sent the state reform bill in August 1989, the radical party, which had until then tried to prepare a whole privatization policy, presented its own version with points it alleged had been neglected by the executive:

- 1) It showed a special concern with the employment consequences of privatization, so that it emphasized the importance of consultation with the unions, the necessity of agreements on decisions regarding labor reorganization, as well as the creation of unemployment insurance.
- 2) It rejected every reference to an emergency not only because it was incompatible with a structural reform but also because it led to the avoidance of the interference of control mechanisms and the use of bidding processes.
- 3) It expressed the state's obligation to abolish privileges and monopolistic clauses and stressed the role of regulatory laws wherever the concentration of supply and demand was unavoidable.
- 4) It explicitly excluded external debt capitalization from any privatization case.
- 5) Instead of adding a list of assets that could be privatized with a single bill, it ruled every privatization should be carried out by a specific law. (Llanos, 2002, p.114)

Congress, which would attach to party discipline and try to present a united front against the radical rivals.

By the time of the 1989 crisis, the party was well aware of the necessary measures and reforms it could propose and had enough experience from the radical's practice of the need to present deeper adjustments than regular stabilization plans. To a statist-populist party like the peronist, well linked to the unions and other popular sectors, three main strategies opened as possible ways once their candidate had won the presidency. There could be three scenarios between the president and the ruling party: a) a party-neglecting approach: the executive overlooks the concerns of the party and attempts to produce reforms by-passing the ruling party; b) a party-yielding approach: the executive cedes to the demands of the party, especially of the most conservative sectors of it, essentially abandoning the reform program or following dictates that run according to the party's directives; and c) a party-accommodating approach: the executive negotiates some compromise with the party granting political concessions in return for the party's consent to implement some reforms (Corrales, 1998).

Theoretically seen, each one of these possibilities presents advantages and disadvantages and the executive-ruling party relations in Argentina during Ménem went through several of these stages. A party-neglecting approach has the disadvantage of producing an isolated executive, which can probably produce some quick reforms but these are likely to be single-handed and unaccountable decisions, thus perhaps not held up by the rest of the society. The second possibility, a party-yielding approach, resembles partially what happened during the radical administration: Alfonsín could not convince the founding sectors of the radical party of the need of the reforms until very late and the party exerted a marked resistance against cabinet decisions in Congress⁷¹⁰. So in the end, he had to comply with some of the party's demands, first changing his cabinet ministers and then softening reform propositions sent to Congress. In the case of the privatizations planned, this is easy to observe in the lack of congressional interest awakened by the first privatization schemes, those sent after the Austral Plan in 1986. The last possibility, a negotiated scenario between forces, has the advantage of producing a middle ground and a boost for the reform credibility (counting on the support of the ruling party both inside and outside the congressional arena), but has the drawback of curtailing the depth of the reforms by consenting them to be negotiated⁷¹¹ (Corrales, *ibid*).

⁷¹⁰ As Geddes (1994) very well points out, incumbents usually have doubts about efficiency oriented reforms because they bear the political costs of whatever the results may be. In the case of ruling parties they resist reform production because cuts in spending affect their patronizing possibilities and affect the advantages of office holding. Reforms also produce a contraction period after they are implemented which makes parties extremely vulnerable for re-election possibilities. In the case of Argentina, legislators for example face at least twice as many electoral contests as the president, who under the 1853 faced a non-reelection scenario. Those ruling party members depending of the vote from affected groups will likely produce vote retaliation against party representatives.

⁷¹¹ There are also common grounds for populist parties like the peronist, and strong reform advocates:

- 1) Populist and neo-liberal approaches have labeled enemies identified among those who have profited from the disorder prevalent in the past. They seek to mobilize those groups upset and affected by the pre-existing economic model of development.

In Argentina, the peronist party assumed the 1989 crisis as a moment when decisions had to be delegated to the executive. It is under this conviction that the legislative faction of the party produces a congressional force pact with the radical Congressmen. Once Alfonsín resigns and Méнем, the elected candidate, assumes the presidential mandate before time, he turns to the first model or party-neglecting approach despite being backed and empowered to proceed as he wished. The president deliberately ignored the party concerns once he obtained the laws 23.696 and 23.697, by trying to build alliances with powerful groups of the private sector (his first economic minister came from the Bunge&Born corporation), and reform convinced parties such as the UCeDe which had been until then, at the other side of the political spectrum of the peronist ideals.

The party reacted fiercely against this attitude and presented signs of internal unrest⁷¹². That translated itself into internal differences and an atomization of the legislative support. Privatizations were at the center of the conflict because they were completely carried out by the executive and its side cabinet of *interventores*, leaving Congress with a small instance of a bicameral commission which had non-incumbent decisions in the process. The peronist party had strong union support in most of the SOEs privatized and was approached for answers it could not provide. However, discipline levels remained high as Jones (2002) has explained, and the party maintained a functional united front in the legislative during the most difficult part of the delegation period. In fact, the most important factors to lead the party out of the way of a non cooperative instance with the executive were the presidential leadership, and the first visible effects of the reforms. These started to become perceptible in the economy after 1991.

Because this executive isolation could not last too long, the president soon promoted a transition, seeking a party-accommodating structure. After some of the first privatizations had succeeded, it became obvious that the executive was going to need the legislative substantiation of new proposals in order to be able to offer certain transparency and credibility in the process. In 1991 the party started a whole *aggiornamento* strategy to update its leaders on the plans already accomplished by the executive, and on those it planned to follow in the short run. As the reforms were starting to render fruits, Méнем sought to involve the ruling party in the parenthood of the whole reform process for common political success. The president also

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- 2) The reform implementation process offers these parties the possibilities to present themselves as pioneer forces in the consolidation of democracy, and bring modernization to the nation via the renewal of its structures.
 - 3) Both populist parties and neo-liberal reformers are convinced of promoting social good, which is a most utilitarian view of power where the old traditional parties see themselves as guarantors of the welfare of the whole society.

⁷¹² By January 1990 Argentina was undergoing a new hyperinflation crisis which had not yet been tamed. Unsatisfied with the executive postures towards the party a group of legislators (known as the *Grupo de los Ocho*) rebelled against party discipline because they did not approve reforms as they were being carried out by the executive, and most particularly the privatizations. The party remained immovable from its discipline principles despite severe doctrinal differences with the president so these legislators resigned, while party criticism deepened against Méнем's isolation (Palermo/Novaro, 1998).

negotiated a deeper involvement of the party in the legislative drafting accepting that ministers and cabinet members in general would go to Congress and present written reports more often, while legislators would be allowed to make more amendments on the executive sent bills⁷¹³.

Another fact that convinced the ruling party of backing executive plans was that the peronist party started to receive the side effects of the reforms by means of electoral reinforcement, with the legislative victory of the 1991 elections. The tacit functional pact between ruling party and executive became stronger as the congressional back up offered by the party increased and the president could count on an absolute majority in the chambers. The party, on the other hand, changed from pure delegation, watching presidential decrees go by, to a co-participative intervention in legislative drafting; although at the end of this teamwork it was clear that the executive reserved itself the power to veto any legislation and do away with any inconvenient modification.

The party remained disciplined almost until the beginning of Ménem's second period, something that becomes observable through two elements: the provision of quorum for bill discussions, and the roll call votes, which evidenced legislators' commitment to party obedience. One important exception that reveals the turning point from a cooperative legislative with ruling party was the pension reform, a delicate subject even for loyal pro-reform legislators. Not only was this bill project strenuously discussed, but the peronist party failed to provide quorum for it in the first meetings. The pension reform was finally approved, more or less containing the executive's dispositions but it marked the new congressional attitude that became common after 1995.

5.3 Other Political Forces

After the return to democracy, the Argentine party system had rotated around two main parties and other minor political forces mostly from the provinces. The 80's saw a consolidation of this two party model while during the 90's, the radical party entered a continuous weakening process that, together with the militants that abandoned the peronist party, reinforced other political groups that until then had been insignificant. Jones (1997) observes that it was mainly due to the dominance of the two parties that the system ensured a normal and successful operability for the reforms to occur, and that the presence of a multiparty system would have been a strong obstacle to overcome. Additionally, the nation's federal framework reduced the winner-take-all nature of the electoral system by providing areas of local autonomy. These pockets of autonomy granted the existence of smaller parties that operated regionally and managed to assemble important support.

⁷¹³ "After 1991 the authorities from the ministry of economy gave the most frequent depositions in Congress in recent Argentine history, consistent with this tacit new pact between president and ruling party. These new rules pleased the PJ. Allowing PJ legislators to present modifications to laws gave the PJ both a say in the reform process and an opportunity to save face vis-à-vis their clients. The *you modify-I veto* formula proved more functional to the clientelistic interests of the party than the *you watch-I decree* scheme that prevailed during the first years of the reforms". (Corrales, 1998, p137)

From the nationwide political parties, one that granted important support to the reforms from the beginning was the *Unión del Centro Democrático*, UCeDe, a liberal center-right party that supported both the stabilization measures and the structural adjustment from the beginning. Their members also provided the know-how for privatizations (as in EnTel where M. Alsogaray was designed *interventor*). Their vote support was rather meager but it did offer a lot of relevant back up outside the ruling party, which was important to show to the public opinion.

Two things characterized the other political forces outside the *Partido Justicialista* and the *Unión Cívica Radical*: their small and insignificant proportion of votes in the chambers, and their incapacity to come together even when having similar approaches to the policies discussed. They also did not maintain a homogeneous position within their own rank. In other words, Congressmen representing smaller parties, as their political career was not guaranteed, were easy to pork since individual actions rather than collective approximations were their main common feature. Llanos (2002) observes that individual negotiations had for these legislative members the side benefit that they could force the executive to negotiate case by case with each legislator pushing up the price of their votes.

5.4 Privatization and Congressional Support (Three Phases)

The institutional relations between the executive and the legislative during Ménem's presidential period, which comprises the massive privatizations (in amount and size of the assets), could be defined and divided in three main steps: the emergency period, with a submissive Congress that had handed in all its legislative capacity and supervision powers to the executive; the time after the economic emergency period (cooperative phase), with a legislative institution trying to participate more actively in the drafting of privatization laws (and the reform of the state) while the executive was in need of institutional legitimacy for those processes; and the third and last stage, the time after the re-election period (post 1995), when the relations between the executive and the legislative became rather conflictive.

By inference, congressional support projects to the relations between the president and the ruling party and, to a lesser extent, its capacity to bring in other sectors and produce coalitions. The second and the third stage are not so easy to define as the first, which is unilateral with only a symbolic legislative representation exerted through a 12 member bicameral commission. Although in the second phase there is a temporal landmark to identify it (the cessation of the emergency laws), the development of congressional power is slow and observed only through time and case analysis. The second stage is best exemplified by the privatization bills (2) sent for the privatization of Yacimientos Petrolíferos Fiscales, YPF, while the third, or better said a transition to the third phase, is best seen with the privatization of the social security and retirement system. Once the third phase consolidated, the legislative became a difficult and overall slow territory of approval for executive bills.

Delegative Phase: Privatization of EnTel⁷¹⁴. Once he had obtained the passing (in less than two months) of the state reform and the economic emergency acts, Ménem named Maria Alsogaray as *interventor* of EnTel to start moving towards its privatization. This was a pilot program and the executive was not so clear how it should be done, only that there was a set schedule to do it. The economic emergency of the executive was a leit-motif for the whole sale since EnTel could not be restructured and had to be sold “as it was”. At the beginning of 1990, Ménem signed four decrees that determined the framework under which the company ought to be sold⁷¹⁵. Because it was a leading case, the procedures to sell EnTel were very much a consequence to the petitioners’ demands, both national and international (multilateral agencies, banks, foreign governments). So the conditions for the sale, specified in a *pliego de condiciones* (selling conditions) were changed several times (see Gerchunoff et al, 1994). Speed prevailed over transparency and the whole sale mechanism, at the top of which there was the president himself, worked vertically. The privatization net worked under two coordinated teams: the president and the team led by Alsogaray. Confidential procedures (such as those that characterized this period) helped and harmed the privatization of other companies. They helped because in a sense the lack of veto players produced a boost of the decision making and because some actors felt encouraged to participate, since they had privileged access to the structures of decision making. It harmed the process because other actors started being suspicious over the lack of transparency and their exclusion of a process moved mainly by presidential or political influence.

There was no congressional participation and even if the bicameral commission (specified in the state reform act) would have acted against the sale, its decisions were of indicative character, not mandatory for the government. This absence of control was in some areas particularly notorious: The change in the administration of EnTel, once it was handed to the *interventor* Alsogaray, and the consequent launching of the privatization process for the enterprise led to drastic modifications in the operation of the firm and caused a number of specific phenomena. Once the *interventor* started to work, all of the managerial attention in the firm was given to the possibility of a transfer, neglecting all other concerns derived from regular administration (Gerchunoff/Canovas, 1993). Another characteristic of the pre-privatization period in EnTel was the increase of pulse prices, a phenomenon also linked with the possibility of the company’s sale. Gerchunoff/Canovas (ibid.) observe that the connection between increased prices and privatization is based on the fact that one of the objectives of the firm’s administration during 1989-1990 was to be able to hand the firm over with profitability rate margins, or at least real prices on international terms.

⁷¹⁴ The privatization of EnTel is used here as an example of the privatization during the delegative phase. For more details on the sale’s procedure and the company itself as an example of SOE management see 5.6.1

⁷¹⁵ These decrees established among other things that for the privatization, EnTel would be divided into two firms, north and south; also that 10% of the shares would remain reserved for the employees of the company, 5% for the cooperatives and associations and 25% to be offered in the stock market.

Second Stage: cooperative phase. The privatization of YPF. By the time Argentina started democracy and the radical government began in 1983, Yacimientos Petrolíferos Fiscales was the biggest Argentine public enterprise with a production equivalent to 10% of the whole GDP⁷¹⁶. On production levels it was ranked the fourth in sales in the whole Latin American region. However, during the military administration the debt of the company had grown from U.S. \$ 324 million in 1975 to 5.700 million in 1983 (Margueritis, 1999). The reasons for this huge debt and a permanent budget deficit were basically the debts other SOEs maintained with YPF, and the artificial prices the governments forced on the products of the company. Regarding staff, YPF portrayed the classical ailments of the state-owned firms: the company had 6.795 employees in 1930 and reached 50.555 in the 1950's with the same ratio production *per capita*. These amounts of personnel decreased, and by 1984 the company had 33.725 with a production of 18.797.000 barrels.

The peronist government decided to initiate the privatization of the oil sector based on the planning done during the radical administration with the Houston Plan, a program thought to auction low production areas which included a whole new regulatory frame for joint ventures between private investors and YPF. Because of the specifics of the field, the privatization of the oil company and the oil wells demanded more expertise than previously discussed cases. The executive was then forced to ask for more opinions and actors according to the particulars of each case⁷¹⁷, which widened the debate and the opinions on how the privatization should be done.

The privatization plan was issued through decree 2778/90, transforming YPF into an anonymous society with new internal ruling, which allowed the firm to transfer part of its assets to private investors, not specifying how many or under which limits, but granting the executive absolute discretion on the matter⁷¹⁸. The executive wanted the congressional certification in a very sensitive area, as oil exploitation and commercialization was for Argentina. The privatization bill was sent to Congress in April 1991, with already made decisions that YPF should resign its control over under-exploited and un-exploited areas, and the guarantee of seeking joint ventures for further oil exploitation. One feature the executive proposed bill did not solve was the provinces' participation in the oil exploitation via royalties⁷¹⁹. This last issue

⁷¹⁶ Petroleum activity in Argentina dates back to 1907, when the first oil reserves were discovered. Although the private sector participated in some joint ventures, particularly at the beginning, oil exploration, exploitation and marketing became primarily a state investment. In 1922, Yacimientos Petrolíferos Fiscales was created, centering all activity there. Curiously, during the Perón administration (the most state-centered model), some joint ventures with private capital for oil exploration and exploitation were sought, but with no results.

⁷¹⁷ Regarding oil wells the government started by giving licenses over areas already exploited by YPF; converting old contracts into new permissions and concessions and joint ventures with YPF.

⁷¹⁸ There had been other decrees but this one was a major step. Former decisions were: decree 1055/89, allowing private oil companies to sell oil on a national and international market; 1212/89, authorizing the imports of oil products and the installation of refineries and gas stations; 1589/89, with specifications to deregulate the market, eliminating import and export tariffs.

⁷¹⁹ Provincial demands went back to 1967, when the government approved the *Ley de Hidrocarburos* (Num. 17.319), admitting that those provinces where the oil fields were located deserved extra compensation for the exploitation of their oil fields. The law assumed a percentage between 5 and 12%, but in reality it was never regularly compensated.

provoked the direct participation of several Congressmen and the insecurity for the government that, even if the bill managed to pass both chambers approvals, there would not be future legal demands from the provincial governments requesting their share in *regalías* product of the oil exploitation, and other previous dispositions of the Hydrocarbon Law.

The bill as it was originally sent by the executive had to be withdrawn and re-introduced with a number of technicalities to avoid the problems of the first version, which had not determined anything on the provinces royalties' participation. The second presidential bill declared YPF subject to privatization and its capital converted to shares, 51% belonging to the state, 39% to the provinces and 10% to be acquired by the workers or company's personnel. The financial urgencies of the executive marked the tone of the lobbying made on several Congressmen. The stand-by agreement signed with the IMF in 1991 promised to reach a budget surplus of at least U.S. \$ 300 million which were mostly expected out of the privatization plans. By mid 1992, the project had gone to the Senate and after some negotiations it was approved with the peronist vote and the absence of the radical party members.

Among the important amendments the law suffered while in the chambers was the consideration that the funds obtained from this privatization should be used to capitalize the pension system, something that was urgent for the Congress members since the following year, 1993, would be an electoral year for the legislative (Margueritis, 1999). Interestingly though, most of these reforms (Art. 23 for example) were proposed by peronist legislators in defiance of the blind discipline that had guided the party until then, but the bill was placed in the middle of a loyalty division for the members of Congress: if to the party or to the provinces that had elected them. The growing participation of Congress in the privatization bills and decisions and in the proposal of policies and amendments of drafts presented by the executive opened a new institutional dimension for the legislative and a wider game for interest participation. The executive had to accept, in order to promote greater transparency into what until then had been labeled as discretionary procedures, the participation of a larger number of actors (with their concomitant interests and opinions), something that complicated the decision scenario both concerning timeframes and contents of the future law.

In the end, the executive defended many of its positions regarding the privatization of the oil company with vetoes, which also tried to curtail the functional expansion of the assembly by amending its legislative production. It vetoed the creation of a special privatization commission proposed by Congress to monitor the privatization of YPF arguing there was already one, created by the State Reform Act; it vetoed Art. 17 as it had been approved, which tried to deepen the oversight capacity of this commission; it vetoed Art. 23 observing that the incoming money would not be for an increase in the pensions system but for a capitalization of it, contrary to the dispositions agreed by Congress. In conclusion, despite having had to present two drafts for congressional analysis and having accepted a number of modifications to the original project, the executive, by means of the partial veto still managed to get its

share deleting what it thought inconvenient in the bill approved by Congress. This method would become more difficult later as congressional “viscosity” swelled.

Third stage: Conflictive Phase⁷²⁰. Privatizing Pensions.

Like many other SOEs and services, the foundation of the modern social security system in Argentina received an enormous boost during the 1940’s, when it extended its benefits massively as part of a number of public policies destined to guarantee and better social distribution. Law 14.370, issued during the post war peronist administration, started the system for distribution for the social security saving plan. The *Instituto Nacional de Prevision Social* was created following a homogenizing idea, it would be in charge of establishing uniform criteria for the pensions and retirement legislation.

A short time after these developments, the system started showing signs of distress when constant inflation had eaten the possible return amounts of the deposits, the evasion of the contributions was too high, and retirement age was too low to allow the savings render any profit (Margueritis, 1999). By 1967, several reforms were introduced to try to make the system more operative and reduce the amount of evaded capital; due to increasing red figures, the retirement funds were close to collapse. At the beginning of the 80’s, the whole system dragged a constant deficit and the retirement amounts were meager when expressed in international currency. Evasion and not demography continued being the great problem: in 1986, deliberate avoidance of what should be regular payments reached 48% of the working population. The pension system had undergone several reforms during its five decade existence and it also received some restructuring during the radical administration of 1983-1989. However, being the most sensitive topic of all due to its social context and the nature of the major parties, a complete transformation of the working premises the system was based on (least to mention the idea that it could be privatized) was a public anathema for both radicals and peronist parties until the 90’s. This item had not been included by Terragno in the appendix of SOEs with potential privatization possibilities nor was it incorporated in the state reform law Nr. 23.696.

A turning point to the whole perception of social security administration as provided by the state in the previously stated condition came from the Convertibility Plan and the *Caja de Conversión*, which converted the currency in a 1:1 parity with the dollar, forcing the government to administer itself with the money it had in gold

⁷²⁰ The privatization of pensions is viewed as part of the second stage of privatizations by Margueritis (1999), arguing that it belongs to those where Congress started having a clearer range of influence and intervention in the policy design and the bill reform; they are considered part of the cooperative phase by Llanos (2000; 2002) in so far as it is a case not part of the open conflict scenarios when legislative decisions openly challenged executive propositions (as happened later with some privatization bills after 1995). I have decided to include the pensions’ privatization case based on the Clarín (30/04/1993) appreciation: “The most negotiated bill among the government’s rank and files, the most rejected by the opposition, the one that failed more often to reach a quorum, the one that arouse more speeches once the law debates had begun, and the one that obtained approval at 2am in the chamber of Deputies” (Llanos, 2002, translation, p. 143). Although a final agreement was reached, in comparison to those cases post 1995 where the institutional gridlock became a possibility, both sides had open confrontation rounds and the executive had to use many forms of buying the ruling party’s votes, either through direct patronization or pork offerings to some Congressmen.

reserves. The government had to rationalize its expenses in the future since it could not follow former mechanisms of creating inorganic money to finance itself or the decentralized administration (via printed money), creating inflation.

At first the government thought it could move the usual way with the pension system, that is, restructuring first and then privatizing via decree. The system was restructured reducing its number of active staff to almost half among other measures to make it more effective. Then Ménem thought it wise to privatize it via decree but was quickly convinced to do otherwise, since many ruling party members would not approve that move and would threaten to block his decree (Margueritis, 1999). The issue was one of the most sensitive topics for the peronists and one that was somehow emblematic for any worker's party as the peronists thought themselves to be. The administration was forced to open a debate involving actors with a word in the process, which meant unions, parties and technical advisors, and this showed in a way that, although the executive controlled the rhythm of the discussions it could not control their outcome. The first privatization bill was sent to Congress in June 1992, proposing a system resembling the Chilean experience and counting on the support of the private sector and the center right parties plus some convinced ruling party members to produce the necessary quorum. The project was revised by the finance and social security commissions and, though ideological consensus was reached that the social security system needed to be reformed, the draft sent by the cabinet was not widely supported. To make things worse for the social environment of this presentation, the executive could not count on the economic situation as collateral support for the approval of the bill, so against an adverse reality in parliament, it opened a session of winning sympathies (pork) with several reluctant members of the ruling party, but withdrew the project in the end.

The executive sent a new bill to Congress in August 1992, with a number of the modifications suggested to the old project already incorporated⁷²¹. The executive's position was caught between a rock and hard place since the implementation of the privatization system was part of a loan agreement reached with the International Monetary Fund, and this forced its commitment to produce some results even if it was through the institutional veto game with Congress. Articles 39 and 40 of the draft had centered most of the public attention and the congressional discussion, dealing with specifications regarding the administration of the incoming money amounts collected from the pension system and the habitual volatility of the Argentine financial market. At one point the Minister of Economy plus a sector of the cabinet thought of proposing the emission of a decree to by-pass the most strenuous moments of the negotiation, but he faced stiff opposition from the presidents of the

⁷²¹ The project included a number of modifications to the bill introduced in June, and acknowledged some of the criticism it had provoked. The age of 45 was eliminated as the age limit between the new and the old system; restrictions were made to the investment that the Administradoras de Jubilaciones y Pensiones, AFJP, could undertake with funds from the contributors.

deputy chamber and the Senate⁷²². This confrontation between executive and legislative reveals two main aspects:

- a) The executive was almost powerless to solve the situation by decree as it would have wanted, avoiding congressional discussions
- b) The privatization policy was seen as an initiative from the Minister of the Economy, and rather separated from the presidential figure itself. The fact that the president's brother, who was the Senate's president, rejected this initiative and threatened the bill with a veto, meant serious questionings to the social security privatization proposal and to Minister Cavallo's reforms.

This law presented also a serious problem for congressional quorum which could repeatedly not be reached due to disagreements inside the ruling party. The director of the social system admitted having gone to Congress 32 times to explain the need and details of the process (Margueritis, *ibid.*). The second draft was approved in the deputy chamber in May 1993, but the executive had to rely on a number of pork provisions and article negotiations (plus the promise of not vetoing them later) with a number of ruling party members. Once in the Senate, the Minister of Economy was still optimistic considering that no matter the number of concessions granted for the general approval of the bill, the executive could later progressively reform the whole law via specific decrees. The draft stayed in the Senate for four months and was finally sanctioned (with partial veto on polemic points of the legislation introduced by Congress) in October 1993, while a new project was almost immediately sent to the Senate in order to modify Article 40, which had been changed during the negotiations.

In conclusion, the social security reform presents a transition stage in the executive-legislative relation during the Ménem period and in the executive-ruling party relations. The open institutional conflict revealed, first, the executive's determination to proceed with the reforms; second, that the legislative was not opposed to the idea of a deep reform in the social security, including a possible privatization of it, but to the ways in which the policy was presented by the Minister of Economy. In a way, it was a reversion of the scenario Terragno faced in 1988 with similar critics. The Legislative showed a bigger capacity to stop the executive's advances and many of the modifications it made remained in the definite text.

5.5 Conflict Cases: Privatizations and Congressional Control after 1995

The political conditions in Argentina between 1989 and 1995 had changed drastically. In July 1995, Carlos Ménem started his second presidential period to which he was entitled after a reform of the constitutional text done in 1994⁷²³. Institutionally, the executive power also gained a new officer through this reform with

⁷²² These conflictive moments are explained by several authors, notably Margueritis who observes that both Eduardo Ménem and Jorge Matzkin (Senate and Deputy Chamber presidents respectively) were opposed to Minister of Economy Cavallo's idea of solving the problem through a decree. It also shows the level of internal discomfort in the peronist party.

⁷²³ In Art. 90, the new Constitution states: "the president and the vice president hold office for four years and can be re-elected for one consecutive period..."

the presence of the cabinet chief, a figure in charge of dealing with the relation between executive and Congress, named by the former but politically responsible to the latter. Because of this disposition, Congress was entitled to dismiss the cabinet chief with a censure vote equivalent to the absolute majority of the two chambers of Congress. Aside from obtaining the Presidency, in the legislative the election had also been favorable for the peronists. Having historically controlled the Senate (where they had had an absolute majority since the return to democracy in 1983), by the time the president took power in 1995 he could count on the absolute majority of the ruling party in both chambers.

To a certain extent, the peronist party and the president himself were capitalizing on the economic benefit the population perceived after the control of inflation and the strength of the new currency following the *Plan de Convertibilidad* in 1991. Inside the ruling-party however, once Ménem won his second term, many leaders began to direct their future plans towards their own aspiration for power. This caused a fracture in the sealed discipline observed until then, and the presence of voting divergences that brought some of the executive's bills in Congress to a stalemate. To solve an institutional gridlock situation regarding some of the drafts sent by the executive that the legislative could not approve, some executive members resorted to judicial courts and one case, the airports' privatization, even ended up in the Supreme Court. The institutional set-up still favored a strong executive, but differences with Congress could delay and thus weaken all constitutional powers of the president by means of legislative viscosity (Blondel, 1993).

Regarding the economic situation, the government still had some privatizations in mind, along with an austerity program to shield itself from the recession known as the "tequila effect" (the devaluation of the Mexican currency). The reforms, after being applied with such strength and speed from 1990-1995, were now being questioned for producing more costs than benefits. Truly enough, the Argentine social situation, though with some macroeconomic variable in black figures, still had explosive social proportions when unemployment reached 18.6% of the economically active population by 1995 (Llanos, 2002). Although the fiscal accounts had improved in 1992 and 1993 as a result of direct payments done with the incoming money from several privatizations, fiscal problems reappeared again in 1994 and the overall economic picture was of a fragile stability.

Table 5.13 Privatization Bills: congressional Results (1989-1997)

Privatization Bills	First Ménem Presidency	Second Presidency (1 st half)	Total Bills
Approved Bills	10	2	12
Non Approved Bills	0	1	1
Non Approved Decrees	1	2	3
Total of Bills	11	5	16

Privatization remained the official resource to gain fresh and quick money: a fiscal deficit trouble-shooter. However, by 1995 the impact of the first privatizations

was noticeable and those sales made without second thoughts and without appropriate regulatory frames, had left the country with some services that had improved very little or nothing at all despite having at least doubled their prices. Parallel to that, the common opinion started to spread in the public that privatization (and the other adjustment measures) only favored those wealthier sectors of the society (by giving them access to have even more) while the poor were more socially excluded day by day. This reality plus the fact that the population already knew the president and somehow knew what to expect from him, caused that the second presidential period had no acclimatization or honeymoon phase but a direct course to action. The privatization agenda saw 5 bills either sent to Congress or discussed between the executive and the legislative, but the outcome was far from the submissive Congress Ménem had dealt with in his first presidential period.

From the privatization bills discussed in Congress during the period between 1995 and 1997, three were openly rejected by the legislative, something that had not occurred before during the peronist administration. We have shown examples of amendments and corrections made to the executive bill drafts by some legislators; this had taken time and patience but in the end Ménem had obtained some results. After 1995 the institutional conflict situation would expand to bigger proportions. Even for those bills that managed to get through both chamber discussions (the Mortgage Bank and the Argentine Nuclear Plant), congressional behavior was everything but smooth and they were significantly modified in the chamber of deputies, mostly by members of the ruling party. It became clear that the peronist party, until then a follow-the-leader tightly disciplined organization, was starting to look after its provincial interests (nuclear plant case) and wanted a deliberate free hand in policy modifications to be able to pursue and satisfy its own interests. These two privatizations could happen, only when the executive changed many of the objectives and articles of the bills to comply with his fellow party members⁷²⁴.

⁷²⁴ The privatization of the nuclear plant produced the coalition of many southern province deputies who acted together against what they considered an initiative that could harm the Patagonia by ruling deposits of atomic waste residues. "Their opposition, based on ecology, economics, tourism and respect for federal sovereignty, was effective to provoke the failure of the first plenary session". (Llanos, 2002, p. 164)

Table 5.14 *Congressional Procedure of Privatization Bills (Conflictive Period)*

Privatization Bills	Approved	Congressional Procedure Duration	Modifications	Vetoes
Postal service	No (decree)	Detained in the lower chamber	-----	-----
Nuclear Plants	Yes	26 months, from 18/01/95 to 02/04/97	Yes	Yes
Airports	No (decree)	Detained in the lower chamber	-----	-----
Hydroelectric Dam	No	Detained in the lower chamber	-----	-----
Mortgage Bank	Yes	9 months, from 10/10/96 to 02/01/97	Yes	Yes

The other three cases, the postal service privatization, the hydroelectric dam Yaciretá and the Airports, were instances of open conflict between the two institutions. We have outlined the social security privatization as a conflictive case, but at the end of which there was a certain accord between forces. In the cases mentioned, the accord was never reached but imposed and in many of the cases there was a substantial delay while the projects stayed in the congressional chambers.

Postal Service privatization. The postal service (Encotel) was one of the SOEs included in the appendix of the delegative law 23.696. It was considered for a privatization via concession from the beginning, but the government decided to restructure the whole service and the regulatory framework (of the whole postal range of services) to make it real and attractive for investors in terms of prices. Due to the structural reorganization it underwent, Encotel became a limited company, Encotesa, and five years after the original intention to privatize it (included in the 1989 appendix of the law), the postal service was prepared for sale.

Several things are remarkable from the beginning. This is the first privatization bill initiated by the legislative, in fact, by the peronist fraction in the Senate. The draft had two parts, first a regulatory framework for the service and development of postal activities and second, details stipulating the concession terms Encotesa should be handed in with. The bill as it was first presented, was passed without major delays in the Senate and sent on average time to the deputy chamber for a routine consideration. There it underwent major changes due to inconveniences found in the text by the Minister of Economy, Domingo Cavallo. The Minister rejected the law project and accused some Senate members of having and supporting monopolistic alliances with financial groups indicted of illegal activities.

Although the deputies corrected many of the articles of the Senate elaborated draft following Cavallo's suggestions, the Minister remained unhappy with the text and averse to its ruling, to the point that, with the approval of the text being imminent, he appeared before Congress to speak in a debate that was also broadcasted on radio and television. Cavallo argued that the privatization of Encotesa, under the terms proposed by this Senate initiated bill, would mean the consolidation of a number of cartels that wanted to monopolize the postal service in Argentina.

The impact of his speech was such that the whole process was abruptly stopped. Even when the executive asked for a new privatization project to be discussed, Congress (the ruling party) would not hear of it, while the opposition did not produce the necessary quorum even for discussion. Both peronist and radical political interests were hurt by this drastic maneuver. The solution to the impasse with the cabinet and a no-go situation between both institutions came from an interpretation of the 23.696 text: the *interventor* decided that the company, having being included in the appendix before, belonged to a group of enterprises the executive was empowered to decide on via decrees, and so it did. Ménem abandoned the aspiration to issue a congressional law and signed decree num 265/97⁷²⁵. Congress did not accept this decree as legal and reacted against it, taking the issue to court where it lost the appeal. The accusation made by members of the radical party was that the executive was interfering with congressional work, issuing a decree on a bill that was currently under discussion.

An obvious conclusion is that, for the first time since his arrival to power, Ménem's hegemony and alleged legal autocracy was being questioned by the parliament despite his party having an absolute majority in both chambers. It is not consistent to blame this institutional friction only on the arguments presented by the opposition since the ruling party had, if it wanted to, congressional control over both chambers. Moreover, members of the ruling party started breaking the discipline patterns that had characterized peronist party behavior during the previous presidential period. Those accusations issued by the Minister of Economy against several senators confirmed frictions between the legislative and the executive and within the cabinet itself. The Minister was fired short after this incident and if not mainly, partly because of it. It was the first privatization bill initiated by Congress, and the first time a member of cabinet accused the drafters of open corruption, or in any case of favoring corrupted alliances.

The Airports privatization and the Hydroelectric Dam. In August 1996 the Senate passed two laws that had been introduced by the cabinet chief: the bills for the privatization of the airports and the hydroelectric dam Yaciretá. Simultaneously, the deputy chamber was working its way through the Nuclear Plant bill. The latter became law, after an average interval for consideration in the chambers, while the other two projects remained under discussion in several legislative commissions. Congress did not give a concrete answer in these cases but remained uncooperative, rotating the bill proposals.

In a way, the privatization of the airports was linked to that of the postal service since one of the companies the minister of economy had denounced as non-transparent (though auctioning for the post), had a concession in the airport service granted during the radical administration, which should last 20 years.

⁷²⁵ Decree 265/97, *Boletín Oficial*, 25 de Marzo de 1997. The decree established the concession of Encontesa in compliance with the requirements of law 23.696 where it had been included in the appendix of enterprises to be considered. The plan included a participated property program to give the workers an interest of 14% of the social capital.

The hydroelectric dam was a bi-national investment with Paraguay with whom an accord to start privatization was signed. The protocol both countries reached demanded congressional authorization from both sides under a specified period of time. In this case, the main opposition came from peronist legislators from border areas with Paraguay who saw a loss in the possibility of privatizing the biggest infrastructure project of the country and a notable source of employment in the area. The executive bill managed to get through the Senate, with consequent delays, but could never make it through the lower chamber, where political opposition was so constant and consistent that the time previewed in the bi-national protocol expired without having accomplished congressional approval.

Being a multinational affair and not having complied with the time set in the protocol, the executive decided to look for private management for the firm and a private investor to complete what was left to do in the construction project. This investor would receive a percentage of the right to commercialize the energy. The result was a “middle ground” solution between the privatization proposition made by the executive and the negative given by the legislative; but in the end it meant an institutional defeat for the executive’s initiatives.

Regarding the airports, the president decided to use an old strategic weapon: the Necessity and Urgency Decrees, but congressional reaction proved him times had changed. Between 1989 and 1994, Ménem had issued hundreds of NUDs amidst certain congressional indifference and despite their authorization by the 1853 constitution only for very exceptional circumstances. The privatization bill for the airports had remained in the chambers for more than a year in an evident form of institutional gridlock similar to the one used against Minister Terragno in 1988. The legislative deliberately increased its viscosity levels when it did not want to cooperate and also when it wanted to avoid open institutional confrontation with the executive.

Once it was issued, the decree was rejected by Congress and taken to court where Congress members accused the executive of overrunning congressional functions since the law was still under discussion, at least technically. “The solution taken by the executive did not satisfy and a group of opposition deputies took the case to court in order to stop the process. The judge supported their arguments: the decree was unconstitutional because the state reform law established that privatizations had to be authorized by Congress and because the 1994 Constitution (Art. 42) stated that public service regulatory frameworks had to be approved by law. The decision was upheld by the chamber the executive appealed to” (Llanos, 2002, p. 176).

The executive appealed to this decision and took it to the highest instance, the Supreme Court, where Ménem was sure of obtaining a favorable decision. He did, but a few days later the peronist party lost its majority in the lower chamber with the 1997 elections.

6. Two Privatization Cases of 1990: EnTel and *Aerolíneas Argentinas*

EnTel was an integrated telecommunications monopoly covering almost the entire territory of the Argentine republic, and was privatized after being divided into

two separate entities to stimulate competition between the two purchasing consortia (Gerchunoff/Coloma, 1993). The mechanism chosen was bidding of 60% of the shares (the rest would be divided between a percentage of shares for the workers and a portion that would be traded in the stock market), and the form of payment selected was part in cash and another part in external debt papers. The acceptance of this payment mode had already been discussed with multilaterals (IMF and WB) and Congress, and some of the assessment companies that had been hired⁷²⁶.

The principal features of the bidding process (changed by the executive several times on the way) were the following:

- The firm is reorganized into two separate enterprises, each of which acquires the concession to provide service in certain areas. The idea was a division of the northern and southern parts of the country to avoid the selling of a monopoly and to create a mirror competition scenario between the two companies
- Sixty percent of the shares were put up for sale and the remaining forty percent would be offered to the workers (10%), to small cooperatives (5%), and to public sale (25%)
- A base price of US \$ 1.672 million was set for the entire enterprise, so 1.003 million would be the 60% to be paid, assets US \$ 214 million, partly financed (\$380 million) and the rest in international debt papers.
- The government assumed all the firm's liabilities

Aerolíneas Argentinas was the flag carrier air service company of Argentina and had a market reserve on domestic traffic. Its privatization was done through bidding of 85% of the capital and in general maintained the firm's former privileges and led to an increase in its power over the domestic market because the purchasing (and only bidder) included the owners of the other internal carrier (private airline) Austral.

Although the privatization process began in 1989, there are two important preceding events that deal with the sale of airline carriers in Argentina: the privatization of Austral, and the project to sell part of AA to Scandinavian Airlines. These two episodes took place during the radical administration of Alfonsín and they obeyed the reality that since 1983, *Aerolíneas Argentinas* (in terms of net worth) had become an enterprise with negative figures. The company's weight of liabilities increased by the year, and this condition worsened during the period 1983-1987.

When the peronist government started its massive privatization program, it was clear that the airline carrier would be one of its first objectives. Congressional oversight was reduced; however, it remained active and denounced obscure proceedings calling for more transparency from the cabinet and *interventores'* decisions. Minister of Public Works Roberto Dromi (dubbed the "Privatization Czar") had to face two congressional interpellations, a cabinet division and a confrontation against the Minister of Economy E. González, to be able to move this privatization

⁷²⁶ Morgan Stanley and Banco Roberts were hired as financial consultants. Coopers&Lybrand and Hartenek&López worked on the valuation of the assets.

on. From these interpellations, the first rendered positive results since it forced Dromi to compromise on accepting the *Banco Nacional de Desarrollo's* (Banade) value of the airline company instead of the older value established during Minister Terragno and the radical administration. There was a differential value of 15% despite the fact that the older valuation of assets had been done only a year before. The second interpellation called for an interruption of the process since there was only one bidding group left (the other two had resigned), but the president urged by the need of results, intervened in favor of the Minister of Public Works and the sale happened without other legislative inconveniences.

6.1 The Quick Privatization of EnTel

EnTel was the first privatization undertaken by the government of Carlos Ménem and because of that it carried a number of signals for world market and local investors with it. It was done in less than a year and half, and the re-arrangements observed in the company during the preparation process revealed certain discretionary elements from the official sector that, rather than helping, certainly harmed the process since investors were unsure of what to expect (Margueritis, 1999). This tendency to move quickly, the unilateral initiatives and the way the whole procedure was carried out, revealed the determination of the government to go on with a privatizing agenda as part of the structural adjustments, an agenda that would supplement the stabilization measures taken by the administration. At this stage of the Argentine political process, the administration was operating freely based on the agreement between the two biggest political forces (the radical UCR and the Peronist PJ) that had granted the president with two delegative laws.

Telephone service industries in Argentina can be traced back to the XIXth century⁷²⁷ but it is in 1946, under the Perón administration, that foreign and private telephone companies were forced to sell their communication firms in Argentina to the government. Forty four years later, another Peronist government sold the telecommunication company owned by the state to private investors. Most notably, Carlos Ménem and the party that a few months before had blocked from their congressional seats the possible sale of the company proposed by the Union Cívica Radical (then the ruling party), turned 180 degrees from their campaign promises and sold the national *Empresa Nacional de Telecomunicaciones* in a record 14 months.

The nationalization of the service, done in post world war II years by Perón, ended in Argentina's telecommunications sector what had been some sixty-eight years of private control. It indicated a complete turn towards state expansion and intervention of the economy deliberately pursued by the government. The telecommunications sector in Argentina, one of the first in the continent, had grown

⁷²⁷ Several researches (Gerchunoff et al. 1992) observe that EnTel (founded much later) was the continuation of what had been the *Union Telefónica del Río de la Plata*, which had been created in 1866 out of the fusion of the *Societe du Pantelephone de Loch* and the companies *Gower Bell* and *Continental Bell*. These companies had been operating in Buenos Aires since 1880. The *Unión Telefónica del Río de la Plata* was later (1929) acquired by the *International Telephone and Telegraph Corporation*.

complex and politically sensitive by the 1930's. It became big enough to call on government attention, so in 1936 the government initiated a progressive economic intervention of the sector with several decrees⁷²⁸ (Petrazzini, 1994). When the Perón government bought the assets and the controlling shares of the *Unión Telefónica*⁷²⁹, the logics were that telephone and telegraph services were “essential for the economy and the defense of the country, since they constitute the nervous system of the nation. It was an anachronism incompatible with the sentiments of national sovereignty and the level of domestic development that this nervous system was not property of the Argentine nation” (Perón's speech quoted in Donikian et al. 1990, p. 31).

Due to the lack of expertise in telecommunications from the official sector, ownership was initially mixed and the new firm operated under the name of *Empresa Mixta Telefónica de Argentina* (ETMA). Communications started growing to have a bigger and more definite role in the state's conception of control and security and required direct supervision. With ideas such as these, that telephones ought to be “an essential public service” (Petrazzini, *ibid.*) the government nationalized the ETMA under the name of *Teléfonos del Estado*⁷³⁰. After that, the *Dirección de Teléfonos del Estado* set as policy to purchase all the telephone servers existent nationwide, as it did in a period comprising the years 1948-52⁷³¹. Like other countries in the region, Argentina created a Ministry of Communications with a Secretary of State Telephones in 1949. In 1956 the Enterprise *Teléfonos del Estado* changed its name to *Empresa Nacional de Telecomunicaciones* (EnTel), which continued to expand its service and had, in the mid 70's, a total 92% of the market control (Klein, 1994).

- *The 1976-1982 Military Regime*

Like in the Venezuelan example, after the 1940's public enterprises became the main instrument of investment and accumulation of capital for in coming governments either authoritarian or democratic. During the following decades the SOEs (so-called decentralized administration) continued to be a central part of the development model based on the internally oriented import-substitution industrialization. A short time before their privatization, these enterprises had a common number of symptoms: increasing bureaucracy, many of them were over

⁷²⁸ Decree 91698/ signalled the initiation of the state intervention and the regulation of the Argentine telecommunications. Things went much further with the populist government of Perón and the state expansion and state intervention in the economy he promoted (Petrazzini, *ibid.*).

⁷²⁹ The government paid \$ 95 million for both shares and assets but the company continued under the managerial care and supervision of the International Telephone and Telegraph (ITT) for sometime more (Telser, 1990).

⁷³⁰ Although Congress had already endorsed the purchase of the shares and equipment of the ITT, issuing a law (Num. 12.864) for that purpose, the final step of the nationalization was done by decree in 1948 (Decree num. 18885/48), which specified that the newly created company would operate under the tutelage of the *Dirección de Teléfonos del Estado*.

⁷³¹ This firm and what would later be EnTel, was in charge of almost all inter urban networks connecting cities and the most distant regions in the provinces, and the monopoly of communications to regions abroad. A partial exception to this hegemony was the area covered by *Compañía Argentina de Teléfonos* (CAT), a private enterprise with a concession to operate in six provinces with a total market share of 7% of the whole universe of users, and some 1% of the market covered by small local telephone cooperatives (Gerchunoff, 1994).

capitalized, overstaffed, and operated under a system of distorted prices. As a consequence to this, their productivity and the quality of their services were in decline, and competence with international market products or service quality was unthinkable except for a few cases (Ramamurti, 1994).

Another problem was that the management of the company was strongly tied to domestic politics and the national political variations. In the case of the national telephone company, the chief executive and other senior managers were directly appointed by the Argentine president and therefore vulnerable to the waves of political change that regularly swept the political scene. From 1950 to the late 1980's, twenty-eight different executive directors headed EnTel under twelve different presidents (Petrazzini, 1996). This instability in the top managerial position diluted any sense of responsibility and any possible long term commitment on the part of the managers, who viewed their participation in the firm either as a prize for their political loyalty, or as a transitory stage in their administrative careers⁷³².

The military regime that started in 1976 tried to advocate a neo-liberal economic orientation to a certain extent, and wanted to roll back the centralized developing model by launching a program of economic restructuring that also aimed at dismantling the former state intervention apparatus over the economy⁷³³. Some of the SOEs became visible targets for privatization (or at least restructuring) initiatives, since the state had between 900 and 1000 enterprises in which it had partial or total ownership. Despite this figure, only fourteen⁷³⁴ of them represented between two-thirds and three quarters of the total economic activity of the SOEs universe. In addition there were regular complaints concerning telecommunications saying that the service was centralized by the most densely inhabited territories and provinces, leaving vast regions of the country unattended while at the same time service quality was very poor.

In coherence with the military initiative, the first privatization plan affecting telecommunications started in 1977 and was known as "peripheral privatization". It implied the sub-contracting of private partners for service provision considered as "non-essential", such as vehicle repairing, equipment maintenance, etc. The initiative became a landmark in Argentina since it was a practice later reinforced by the Radical government after the return to democracy in 1983⁷³⁵. The second attempt of partial

⁷³² Instability in managerial positions was nothing new in the Argentine's Public Administration: between 1940 and 1980, the average tenure was 13.7 months for Ministers, 12.2 for Secretaries of State and 14.1 months for Provincial Governors (Oslak, 1990)

⁷³³ To a certain extent this was later a tendency in the southern cone, since in Chile Pinochet also sought to advocate market policies. As the import substitution crisis in the 70's showed symptoms, the policy debate was once more addressed to displace the developmentalist economic culture with a re-emergence of the laissez faire doctrine promoted by the Chicago School (Schamis, 1992). We speak of re-emergence because in the Argentine case they had already operated in the market, before the nationalization wave done by Perón after the Second World War.

⁷³⁴ Among them *Aerolíneas Argentinas*, EnTel, Yacimientos Petrolíferos Fiscales (YPF), Gas del Estado, etc.

⁷³⁵ Gerchonoff/Coloma (1994) observe that these "peripheral privatizations" done during the military government created a significant landmark to solve practical problems within the firm and also regarding service provision. In fact, when mobile telephones appeared in the mid 80's, they were

privatization, also during the military junta, was rather more complex in scope since it involved the private provision of the international and intercity services. A project like this would have required the legal reform of the whole telecommunications regulations, where there were clear norms against private service provision of the telecommunications (Margueritis, 1999).

This second scheme was not approved by the whole cabinet and bounced back due to sectors of the military that were not convinced the state interventionist model should be given up, particularly in a political moment that was becoming more and more averse to the military junta. Regarding the first point, the disagreement between cabinet members, the Argentine military, unlike the Chilean case, were not clotted around a leading figure. This had ideological consequences, since many of the different members of the Junta had divergent conceptions on where the economic policy should lead to. Many were clearly opposed to a growing private participation in the economy (Fontana, 1990). Also, the lack of legislative expertise from the military government, made it perceive the telecommunication sector as one too complexly regulated and any decision, prone to falling into legal contradictions. So this second privatization plan was left aside.

- *EnTel during Alfonsín's government (1983-1989)*

Alfonsín's main agenda in the beginning aimed at the consolidation of democracy and clearly privatization was not part of it (see 5.2). At least not in the first years, where it was far from being considered a relevant issue in the policies the president implemented after his election (Llanos, 2002). Rather, privatization started gaining official attention once the administration realized the need of structural changes to support any stabilization program. Deeper reforms had to be applied to the economy if economic stabilization was to last⁷³⁶. In fact, because privatization had been on the military junta's agenda and everything related to the military past was negatively viewed, the sale of public companies was far from being a main issue except for those cases of companies that had been seized by the military in order to protect them from bankruptcy⁷³⁷.

The government became closer to the idea of privatizing state companies around 1986 when it introduced the first privatization bill in Congress. The idea was

automatically absorbed by private investors as the peripheral privatization tendency was maintained during the UCR government 1983-1989.

⁷³⁶ "We are not going to define ourselves as monetarists, but as structuralists with great fiscal and monetary discipline" (Alfonsín, 1983; translated by Llanos, p.112). Sometime later, after the failure of Alfonsín's stabilization plans for the economy, it became clear that macroeconomic stabilization plans alone were insufficient, since they did not correlate the fiscal expenditures with inflation by attacking the core issue of unnecessary expenses. Governments with fiscal constraints like the Argentine, found it hard in the 80's, to obtain loans. Many of these loans were tied to severe conditions that implied reforming the economy.

⁷³⁷ An inter-ministerial commission was set up through presidential decree in 1984, to work on the identification of enterprises that did not provide services considered of national interest (or social benefits) that would justify state ownership. They could be returned to the private sector, where some of them had previously been. All these cases were minor in size and relevance and the biggest, Austral Airlines, a local air carrier, was sold in 1987.

to create a better framework for privatization improving existent legislation. The bill was not even presented as a “privatization law”, but as a tool to create the National Fund for Industrial Development, for the funding of which the selling of some public enterprises could be considered. The bill at the time had an appendix with some enterprises that, because of their strategic character, would be excluded of being considered potential privatization cases⁷³⁸.

Despite this decision in 1987, one year later, the UCR administration started taking measures towards the increase of private capital participation in the telecommunication sector⁷³⁹. The ministry of economy felt encouraged by public opinion polls⁷⁴⁰ to send three new bill proposals to Congress and expect positive results. These bills were considered part of the structural reforms of the *Plan Austral*, issued by the government a year before to tackle inflation. The executive initiated discussions and negotiations to sell 40% of the EnTel shares to *Telefónica Española*, a Spanish telephone company. To this purpose it signed a letter of intent aiming to create a mixed enterprise with the Spanish firm. The agreement would imply the payment of \$ 750 million, with \$ 500 paid in cash and \$250 million paid with debt bonds. These conditions, never to become real due to peronist legislative opposition, were very similar to those that were later finally used to sell the enterprise, namely, EnTel would keep its monopoly character (however, this time divided in two regions), it would be sold in a mixed deal of cash and debt papers, telephone price rates would be increased before the sale, equipment imports would be liberalized and the state would have to deal with the remaining debt of the company.

Despite these similarities between the 1987 executive proposed plan and what later became the final selling conditions, the moment the executive tried to privatize EnTel in 1988, it faced a strong opposition from the Unions (where the Peronist party had a strong presence), from the Peronist party, from the private sector and from groups of the Radical party itself. In conclusion, all scenarios were negative for the executive to start privatization: Congress did not even bother to answer the privatization bills presented by the executive, while outside Congress organized opposition towards privatization was strong enough to generate different lobbies (Gerchunoff, 1994). First there were the unions, which were concerned with the preservation of the labor sources; second, business sectors accustomed for years to obtaining all kinds of privileges from their relationship with SOEs. They were also opposed.

⁷³⁸ Among these enterprises were: *EnTel, Empresa de Correos y Telégrafos, Aerolíneas Argentinas, Gas del Estado, Yacimientos Petrolíferos Fiscales*. Cámara de Diputados (1986).

⁷³⁹ The executive issued a decree authorizing the participation of private firms through concessions given by the Secretary of Communications.

⁷⁴⁰ Minister Terragno, who was in charge of privatizations, was repeatedly interpellated despite the fact that the legislative had no special concern in moving the privatization bills. Because there were certain practical backgrounds of assets being transferred to the private sector, and because service quality had deteriorated so blatantly, public opinion started to show considerations towards the idea of privatizing EnTel. Terragno wanted to use this public opinion tendency to isolate the Peronists in Congress before the nation, asking that his interpellation were broadcasted on national TV.

- *Congress and the Privatization of EnTel during Alfonsín (1983-1989)*

In the early stages of the reform program, when the government was selling small companies that were facing financial problems (as it had promised during the campaign) there was no special or deliberate congressional opposition to the official privatization preparation. However, when the government announced plans to sell two of the largest state enterprises, EnTel and *Aerolíneas Argentinas*, the Peronist Party, the Unions, local telecommunication equipment suppliers and the ruling party UCR joined and managed to block privatization reforms in the public sector. The lack of strong official commitment to the idea, with open dissidence to privatization within the cabinet, also weakened the possible support that could have come from international and/or domestic private investors and strengthened the attitude of opposition forces.

The privatization of EnTel as an executive made proposal to Congress had the same destiny that all four privatization bills issued during Alfonsín shared: the executive prepared and sent them to Congress but there was no political force or even will to make them go through. Despite the interpellations made to Minister Terragno in 1988 (Minister of Public Works) and Minister Jaunarena (Defense), which tried to show certain legislative movement around the idea, there were enough frictions inside congressional fractions not to let any of these bills go through. Also and most important: both the *Unión Cívica Radical* (UCR) and the *Partido Justicialista* (PJ) had agreed on a “Unanimity Rule Pact” (Mustapic/Goretti, 1991), to avoid institutional gridlock after the return to democracy⁷⁴¹. This pact implied in practice that parties would be committed to avoiding a total institutional paralysis by approving a good number of bills per year; but it also meant that those issues that were source of strong disagreement between parties would either be left aside or postponed indefinitely. This being said, it was unlikely that an innovative policy such as privatization, one that ran against many traditional interests and ideas in both of the main parties, would have caused these organizations to assemble a coalition behind it, especially when we consider it was against the deeply rooted belief of the state as development promoter, something that these two parties, UCR and PJ, shared as conviction and as previous government experience.

Regarding the party map of the legislative, the ruling party began with important shares in both chambers they later progressively lost to the peronists. The ruling party was internally divided over the issue of privatization, since many leaders felt it was the wrong policy to follow⁷⁴². Also, due to the several economic stabilization plans applied by the executive, there was a great degree of skepticism

⁷⁴¹ Mustapic (2002) presents an answer to Linz’s (1994) remarks on the causes of institutional gridlock. She observes that Argentina, despite the fact of presidents Alfonsín and Menem having a working majority in Congress and additional structural problems such as hyperinflation and military insubordination, they did not experience the feared gridlock mentioned by Linz (see Nacif/Morgenstern, Eds., 2002, pp. 23-25).

⁷⁴² At the beginning of the period, Alfonsín’s first Economy Minister, Bernardo Grispun, represented to a great extent the beliefs of the old guard of the Radical Party. He adamantly opposed IMF’s solutions for stabilization and believed more in what was then dubbed as a Neo Keynesian Approach, namely, tackling income distribution, low inflation and economic growth.

and uncertainty on how or where to move after that stage. Divisions over state reform decisions were present at all party levels, although the government managed to keep the discipline stake high⁷⁴³. However, discipline peaks indexes were not high enough to obtain the whole faction's support of when the radicals still had a majority in the lower house in Congress (at the time of the 1986 bill).

The Radical party, on the other hand, felt it had been left aside by the executive and demanded more participation in the privatization policy design (Petrazzini, 1996). Some leaders even complained they found out about the cabinet's decision through the press (La Nación, 30/03/88), outlining the distance not only between executive and legislative, but between executive and ruling party. Llanos (2002), observes that Alfonsín had also created a great deal of isolation from Congress and the unions, since he was too concentrated in the consolidation of democracy as a purely institutional factor. Truly enough, Alfonsín began his period with a confrontational approach to many groups he observed, had to be democratized in order to remove the authoritarian tendencies they could harbor, and their verticality in decision making, which made them prone to political manipulation. He confronted the military by seeking to punish their human rights violations; the peronized unions, with a bill passed to influence their internal democratization.

The *Justicialistas*, the other important force in Congress, maintained a constant "rejection position" towards the privatization policy proposed by the president. This was already perceptible with the 1986 bill introduced by the executive who, as we have seen, did not even present itself as a pure privatization bill but it created a list of "basic enterprises" of strategic character. The *Justicialistas* promoted ministerial visits to Congress and a number of interpellations, but the law proposals were not even seriously discussed. When the public adopted a more favorable attitude towards the privatization of EnTel, the Peronist party directed its criticism not to privatization itself but to the ways through which the executive was pursuing the policy⁷⁴⁴, thus diverting the possible tension from the idea itself to procedure

⁷⁴³ Dissidence from the executive ideas was discussed and expressed but in a milder form. The radical party had already been discussing a privatization bill in Congress before the executive sent its own. But big sections of the party felt this issue was in conflict with its traditional principles, thus it can be said it did little to help the bill project introduced in 1986, a time the Radical party had a majority in the lower house and could have done much more for it.

⁷⁴⁴ Despite this apparent softening of the Peronists, Senator E. Ménem mentioned all the rules a privatization ought to follow to be possible:

- a) Procedures to make any privatization had to be according to the law, that is, bidding for all cases.
- b) Companies in economic areas regarded as "essential" to the country's development should not be sold
- c) Public services should not be sold due to their social profitability and importance for national sovereignty.
- d) The state could sell companies with deficits, but not profitable ones.

These elements, especially the first one regarding sales only through bidding, were very restrictive and part of old legislation that dated back to the days of the military junta. E. Ménem said during his intervention the same day that the Peronists were not against privatization *per se*, since it was a neutral policy, but that they were against the ways it was pretended to be carried out. (*Diario de Sesiones*, 08/09/88).

formalities. The party may then have observed privatization could be a potential success they wanted to score themselves⁷⁴⁵ (Margueritis, *ibid*).

- *Ménem and the Privatization of EnTel*

The premises for the discussion of the privatization of the telecommunication sector in Argentina were basically three: the industrial structure and necessary technological improvements; the property of the telecommunications sector (i.e. how much property should the state keep); and the new regulating functions derived from the sale of a monopoly in the service sector (Gerchunoff/Coloma, 1992). However, the financial urgencies of the newly elected government prevailed throughout the whole process (even over these points of the debate), and conditions for the sale were changed on the way only to obtain the sale despite other, more elaborate reasons. “This (the financial crisis) was the most important *non written rule*” (Margueritis, 1999, p.165). In September 1989, the president formally announced that the telecommunications sector would be the first public utility to be put on the auction block⁷⁴⁶. Being the first, it would also be the pilot project to show the president’s real commitment to reform.

After obtaining special legislative authority from Congress through the State Reform Law, Ménem proceeded to declare some enterprises under study, and those potential to be privatized were assigned *Interventores*⁷⁴⁷. In the case of EnTel, Maria Alsogaray, the daughter of a prominent opposition party member, was named *interventor*. At the same time, three consulting commissions were created with members of the private sector: one economic, one legal and one technical⁷⁴⁸. A singularity of the Argentine privatization process is that there was no special agency either created or entitled *ad hoc* to care about privatizations once they started. In this sense, Argentine privatization differs from similar state reforms in other developing

⁷⁴⁵ Margueritis (1999) observes that several actors within the Peronist party already thought of privatization as something possible and since people were supporting it (as in the case of the telecommunications) it could be successful to a certain extent. They wanted to make it part of their future policies, so they denied the radicals what could have been a certain political triumph (see p. 162).

⁷⁴⁶ The executive proposed the following package:

- Divest EnTel: the company would be divided for a better sale.
- Liberalize the Telecommunications Market
- Attract foreign direct investment: 60% of the company would be sold. The remaining 40% would be divided among EnTel workers (10%), local telephone cooperatives (5%) and national and international stock market (25%). At first the government wanted a cash sale. This was modified to accept the inclusion of debt-equity swaps
- Eliminate subsidization

⁷⁴⁷ An *Interventor* in the Argentine Political system was a direct appointee of the president to a particular institution to solve an institutional crisis affecting the entity. *Interventores*, for that reason, were temporary executive directors with special powers. Alsogaray came from the UCeDe, the party of free marketers, traditionally opposed to Peronist welfare and statist policies.

⁷⁴⁸ From the three created commissions, the technical commission was a mixed one. It had participants from the private sector and from EnTel to assess on the sale. The work of the privatization team was also enhanced by the expertise of several local and international firms such as Morgan Stanley&Co. , Banco Roberts (financial advisors); Cooper&Lybrand, Hartenech&López provided technical advice; Deloitte, Haskins& Sells, Touche&Ross and Ruival, Otono&Asociados helped with the financial evaluation of EnTel.

countries. For example in Venezuela, the *Fondo de Inversiones* was the managerial center of all the sales; in Mexico it was the Finance Ministry with a specially created *Unidad de Desincorporación* for the sale of State-owned Enterprises. Alfonsín had produced the Directory of Public Enterprises by decree in 1986, but the peronist administration made little use of it since the list of potential SOEs cases for privatization in the state law was extensive enough. In the administration's view, the way to a successful and quick process of privatization required 1) the insulation of the process from broad political participation⁷⁴⁹; 2) an offering attractive enough to overrun the critical conditions of both the company and the country (Petrazzini, 1996). None of these clauses required the creation of a special entity.

The naming of Alsogaray as *interventor* had several advantages for the government. First, her father was an important figure in the liberal party Union de Centro Democrático, UCeDe, and they belonged to a social sector convinced of the need of privatization. Second, the fact that Alsogaray herself was a convinced pro-privatization actor, set her in advantage to most of the peronist party leaders not yet completely convinced of the process and over all lacking the procedural "know-how" that many of the technocrats the government employed already had. Third, her designation sent a clear signal to international observers of the unambiguous will of the administration to proceed with the adjustment phase in general and with privatization in particular.

The internal situation of EnTel regarding human and managerial resources presented at the time (1989) important distortions. Although the number of staff always fluctuated between 45.000 and 48.000, the last period before privatization revealed inadequate proportions of the managerial staff with a reduced number of technical workers (Gerchunoff et al., 1994). Financially seen, the situation of the enterprise was operatively good but with a negative final result derived from the comparison between real prices and the exchange rate⁷⁵⁰ (Gerchunoff, *ibid.*) The company had, before being privatized, 3,5 million telephones installed, 3 million operating regularly; 47.000 employees, 75 lines per employee. The working operative density was 10 lines per 100 inhabitants.

Based on the law to reform the state, the executive issued decrees to promote the sale of EnTel in 1989, also four decrees to set up the general frame of the sale of the company creating with them two companies to be sold, the north sector and the

⁷⁴⁹ This was a main lesson taken from the previous attempts during the Alfonsín years: the government had to shield itself against domestic pressure and concentrate power on the president and the *interventores* (Cowe, 1991; Petrazzini, 1993). Due to the two delegative laws (and most particularly through the state reform law), the whole congressional oversight and veto could be avoided, and a complete privatization process done by decree.

⁷⁵⁰ "In 1989 there was a great inflation in Argentina and to promote a lowering in the future inflation index from the economic agents we reduced the tariff index: if inflation was 20% in one month then we indexed it to 17%. Due to this delay in real prices the company could never carry out its development and maintenance plans. So the social image of the company was very bad because service was bad. It was bad because it was expensive and at the same time, unreal. If inflation was 10% then we increased tariffs 9%, and then it was expensive but unreal because it could not let the company improve" (Klein 1994, p.66).

south sector⁷⁵¹. Debt bonuses were finally accepted as part of the payment and the sale conditions were based on a price of \$ 1.672 million for the whole company which implied \$ 1.063 for the 60% to be sold. This ought to be paid as follows: \$ 214 cash, \$380 million under financial agreements, and the rest in debt-swap bonds⁷⁵²(Gerchunoff et al., 1994).

In June 1990, the Ménem administration was finally able to announce that Bell Atlantic had won the bid for the northern area and *Telefónica* from Spain for the southern, however, Bell Atlantic withdrew its bid at the last minute when its financial partner, Manufactures Hanover, was unable to acquire enough Argentine debt papers to support their offer. “Pressed by the unexpected circumstances, the government finally granted the northern region to STET France Cables and radio consortium. Each consortium now controlled 30% of the former EnTel while the remaining 40% was divided between EnTel workers (10%), national and international stock market (25%) and telephone cooperatives (5%)” (Petrazzini, 1994, p. 129). The prices paid were US \$ 2.720 million by Telefónica and US \$ 2.308 million by STET/Telecom⁷⁵³.

By mid 1992, the state still had the 10% of the share that ought to have been sold to the workers before the transference of EnTel to private owners. It finally distributed them in 1993. The privatization of the telecommunication sector in Argentina proved to be extremely profitable for the purchasers. In the first two years, the new private companies obtained a net profit of 12.9% (Gerchunoff et al., 1994). Telefónica Argentina had a net profit of US \$404 million while Telecom had US \$238 million. Put together, these amounts are more than what the Argentine government received for the 60% of EnTel.

- *Congress and the Privatization of EnTel (1990)*

By the end of 1989, many sectors of the Peronist Party had abandoned a dogmatic position against privatization as they had shown during the Alfonsín years, and they seemed more inclined to accept the possible privatization of the Telecommunication sector.

Guillermo Klein, vice minister of communications, expresses the cabinets considerations:

“The new government came to power with an agreement made by the two biggest parties. It obtains the law 23.696, a general law that enables the executive to

⁷⁵¹ “To create the technical possibilities of this sale the decretismo was crucial. Global decisions on how to privatize were done through executive decrees and several obstacles were thus overcome. EnTel was close to financial collapse twice and that would have aborted the whole privatization process and seriously damaged the executive intentions” (Margueritis, 1999, p.173).

⁷⁵² At first the government wanted a “cash only” sale for the telephone company, but later the idea of swapping debt bonds gained more support among cabinet members. In the end it became the definitive variable since the company who won was the one with more debt papers in hand.

⁷⁵³ Because of the amounts paid with debt swap bonus the total price of the company came to about \$ 955 million. Compared to privatized companies in other countries Argentina received the lowest price per line in service, US \$ 800 per line. Other countries reference are Telekom Malaysia \$ 3.357 per line; CANTV (Venezuela) \$ 2.900 per line; TelMex (Mexico) \$ 1.653 per line; Telecommunications Jamaica \$ 1.873 per line.

carry out a whole assets and services privatization policy without having to go back to Congress to evaluate or debate. That gives the process enormous dexterity. Regarding EnTel there is a specific frame: the executive power created several decrees. In that moment the situation was of great economic instability: there was high inflation and the government used the privatization to underline that Argentina was entering into a new era. The model used was debt bond swap since Argentina was highly indebted". (Klein, 1994, International Symposium about "Privatizations in South America").

Opposition, embodied mainly by the radical party, questioned some steps of the process but this could hardly harm it in any way since the delegative laws allowed the executive to sell this and other companies by decree, select the procedure through which the privatization would be carried out, and choose any instruments or actors for the formula selected. Another relevant issue is that the bicameral commission, the only institutional oversight possible, after questioning all procedures and having intense internal debates, closed its discussion without producing a final report. One of the reasons to explain this behavior is that the executive called on party discipline so that peronists in the commission (the composition was balanced six and six) would neutralize the radical opposition.

Despite this final invalidation of the opposition in the bicameral commission, they had presented the public opinion with some elements regarding the sale of EnTel. One of the first complaints that the commission presented was that of the price and the profit return rate. The *interventor* Alsogaray was interpellated on 09/03/90 and after some discussion the *pliegos* (conditions) of the negotiation were changed accepting a return rate of 16%. A second observation made by the bicameral commission was concerning price increase in the telephone service. The *interventor* announced a shock increase which raised the price more than 90%; that was more than what had been agreed with the international purchasing firms in the *pliegos*⁷⁵⁴. In a way and despite enormous power depletion due to the delegation laws Congress still had cooperative ways to reinforce institutional control but party discipline made it remain neutral.

Margueritis (1999) observes there was a large chain of actors and interest lobbies of which the legislative was probably the last link. External actors to the privatization became visible with the intervention of the North American, French and Italian embassies supporting their bidding companies⁷⁵⁵; the World Bank and the International Monetary Fund, having provided loans for technical assessment in the restructuring of the SOEs, also followed the process closely. They all became veto actors, and all had an implication in the various changes of attitude of the government expressed in the sale's conditions detailed in the *pliego*. Congress did not act even when the government increased telephone bill prices more than 60%, in order to bring prices closer to international "reality" and make the start less traumatic for the new

⁷⁵⁴ Considering a study on telephone service prices prepared by FOETRA (Buenos Aires' Telephone Union), the first price increase occurred in March 1990 when the telephone impulse was raised to US \$ 0,016; in mid June this was again raised to US \$ 0,021 and in October it reached 0,035 (*Informe sobre la Restructuración de la Tarifa del Servicio Telefónico*, 21/10/94)

⁷⁵⁵ Several newspapers illustrate this point: Clarín, 26-30/10/90; La Nación, 10-25/10/90.

enterprise in the Argentine market. Neither did it speak when the unions expected an institutional and public back up in order to guarantee labor stability.

- *Conclusions*

The privatization of EnTel occurred after two previous failures, or perhaps three, if we consider the initiatives tried out by the Military Junta on the matter. The reasons for those failures, during the democratic period, were both congressional apathy and deliberate opposition. Because Argentina was a strong presidential system the thesis grew that only with great accumulation of institutional power could the executive insulate the project and make it invulnerable from dissident political forces. However, it is important to see that Alfonsín had all these presidential powers but less party support than Ménem later had, and that the Radical party felt itself excluded and unconvinced while Ménem, after a first stage of isolation, quickly tried to include the party in the structural reforms.

From the conceptual classification of the Argentine privatization process (Galliani/Petrecolla, 1996), EnTel covers the first two stages. On the first stage it was part of those sales programmed to pay external debt, and those where the results meant more than the procedures. It was also part of the second stage because, at the time of the second share package sale, its privatization had effects posterior to the introduction of the Convertibility Plan in 1991, the land mark to separate privatization stages and somehow also to congressional behavior patterns.

The government's goal when issuing the convertibility plan was to stop inflation, which it did by limiting the operational autonomy of the Central Bank and its capacity to create money through the expansion of domestic credit. The plan also had consequences over the privatizations deals made since it declared illegal any form of indexation of contracts, including the one that specified the sale of EnTel. Under its original terms, the buyers had been guaranteed certain prices and return rates indexed according to yearly inflation. At this time (1991-1992) there was a regulatory agency at work, and it blocked the attempts of the government to counteract the impossibility of indexation created by the convertibility plan with other benefits. The same situation happened with other privatizations done before 1991, but either Congress or a regulatory agency created *ad hoc* intervened to stop the executive of favoring investors.

Decrees were the fundamental instrument through which the government confronted its worst enemy: the economic and credibility crisis. To a certain extent, privatization was also a legitimization policy for the regime to show its commitment to reform, and the privatization of EnTel was a central paradigm. Typical ingredients before the sale were the lack of international credibility, of institutional resources and of expertise. congressional oversight was noisy at first, with several questionings and debates, but it rapidly diluted and ended up in nothing since the bicameral commission had non binding decisions. The ruling party closed files with the executive, granting it unconditional support to the point that the bicameral commission, which could have been a veto player in the procedure, did not render a

final report. Discretionary negotiations and political personalism guaranteed a quick albeit not very profitable (on economic terms) sale.

6.2 The Privatization of Aerolíneas Argentinas

The second big privatization in terms of investment and employed staff that the Ménem administration did at the beginning was *Aerolíneas Argentinas*. Aside from the case of EnTel, the airline had long been a candidate for privatization but the radical government in charge before the Peronists had not been able to complete the privatization task, mainly due to insolvable congressional obstruction and a general media campaign against the sale (Gerchunoff/Coloma, 1993).

However, during Ménem's presidential period, the extreme and continuing pressure from the huge external debt that Argentina had, promoted the idea of starting to consider selling unproductive or expensive SOEs not only for cash but also for market based solutions such as debt-equity swaps, in order to convert loans into equity investments⁷⁵⁶. In the largest Argentine privatizations there was an inflow of external funds earmarked for "cash payments", to finance part of the initial investments to which the contributions of the debt papers was added (cases AA, and the Petrochemical Industries). This had operated so from the beginning and cases like EnTel showed the outright sale of national assets to generate funds for redeeming the external debt and bring it to negotiable terms. In the end, debt papers became such a decisive strategy that it was their purchase that decided the winner in the telecommunications sector (Grosse, 1991, 1994).

The privatization of the national airline proved a complicated matter despite the exceptional powers in the hand of the executive at the time. Aerolíneas was an important carrier in the Latin American region while Iberia, the main investor amidst the purchasing group, was the seventh carrier in Europe. Both Airlines were state-owned and in particularly weak financial conditions largely due to strong competition and the recession operating in the airline market. The Argentine government was looking for a purchaser that could bring in financial resources in order to make the carrier a more competitive airline, both in the region and worldwide. Iberia on the other hand, wanted to expand its international routes to a level other European carriers already had.

Before its privatization, *Aerolíneas Argentinas* was considered a middle size carrier in the international market, being the second biggest of the South American continent (Coloma/Gerchunoff, 1992). Following International Association of Transport Airlines (IATA) figures for the period, just before the sale of the company, years 1987-1989, the airline made 63.000 trips per year, with a round figure of 60 million kilometers. The total number of planes was 30 with an average of 100.000 flight hours. By that time the company had a total of 10.000 employees and a debt of over \$ 741 million by 1989, divided in \$ 646, 37 million as financial debt and \$ 94, 98

⁷⁵⁶ In the beginning, the government had sought only cash sales; however, the mounting debt pressure and other elements such as the hyper-inflation crisis of 1989, forced the government to hear other options.

million due to airplane leasing contracts. This debt had been contracted even before the democratic period in 1983. Before, the company had used international loans, which after the interest rise of 1982 became almost unmanageable.

- *The Years before 1989: First Privatization Attempt*

Aerolíneas Argentinas was founded as a national air carrier in 1949, under the government of Juan D. Perón and, until its privatization in 1990, it operated as a national company. The firm, as part of the integration of power promoted by the government, combined the routes, airplanes, and other assets of a number of regional airlines that had operated in Argentina before that time (Grosse, 1994). The legal frame regulating the operation of the airline were in laws number 17.285 (1967) and 19.030 (1971), which include the aeronautical code and the air policy law. The air policy law (*Ley de Política Aérea*) granted *Aerolíneas Argentinas* the right to be the only flagged air carrier within the territory and the ownership of at least 50% of the internal market. There was another air carrier, Austral, that shared with AA the exploitation of the internal routes. Austral was founded in 1971 and nationalized during the years of the military junta to avoid its complete bankruptcy. It became a temporary companion of AA, in the hands of the Ministry of Transportation. It remained a property of the state until 1987, when it was privatized⁷⁵⁷.

The idea to privatize *Aerolíneas Argentinas* for the first time was almost coincident with the re-privatization of Austral, a process that concluded in 1987 with the sale of this local airline to *Cielos del Sur*⁷⁵⁸ S.A. Alfonsín's government had committed itself to a process of economic rationalization mainly by cutting additional expenditures. *Aerolíneas Argentinas* was steadily increasing its passives since 1983, and the government thought it wise to go a step beyond the diverse stabilization plans it implemented, by selling poorly performing state-owned companies partially or totally. When accepting international assistance from the IMF and World Bank in 1986, in the context of the country's massive foreign debt, the government agreed to begin movements in the direction of privatizing both EnTel and AA (Thwaites Rey 1993). Putting action to words, the government holding company that controlled *Aerolíneas* during Alfonsín, the *Directorio de Empresas Públicas* (DEP), held several meetings with European carriers that were looking for "cooperative agreements", which meant agreements encompassing both technical assistance and route linkages.

In 1987, the government initiated more detailed discussions with the Scandinavian SAS, signing an agreement memorandum⁷⁵⁹ in February 1988. The idea

⁷⁵⁷ There were a number of enterprises that the military Junta had acquired in order to avoid their bankruptcy. Austral was one of them. The radical government had promised to privatize them and it did without major congressional interference, since most of the cases were small and re-privatizations rather than sales of public property.

⁷⁵⁸ As an interesting background in property selling operations, Gerchunoff/Coloma (in Gerchunoff et al 1992), observe that the selling of Austral is far from being considered a success since the company that finally purchased the assets did not comply with all the requirements the sale contract asked for.

⁷⁵⁹ The agreement memorandum was signed by *Aerolíneas* President, Horacio Domingorena; Public Enterprise Director, Horacio Losovitz; Minister of Public Works, Rodolfo Terragno and SAS President, Jan Carlzon.

was to sell 40% of the airline to SAS for a global price of \$ 204 Million of which \$ 100 Million would be paid immediately upon congressional approval for 20% of the airline. The government would retain 51% of the airline and 9% would be sold to employees of the company. Following the ideas of the memorandum, SAS would be able to purchase the other 20% in the following three years and obtain the right to provide international air transport from Argentina on the same level that AA had had. The firm would keep the name and the flag in offices and planes.

As seen, the main object of this agreement was the achievement of efficient operative and administrative technology for the Argentine company, plus fresh income resources for the executive. The agreement would allow AA to start on a better ground to compete in the European market, and allow SAS to enter the Latin America market. However, this proposed contract with Scandinavian Airlines was subsequently challenged and questioned by the main owner and president of Cielos del Sur, E. Pescarmona. Pescarmona presented another bid to that one agreed by the government proposing alliances with two European partners, Swissair and Alitalia, placing with them a combined offer for AA⁷⁶⁰.

- *Congressional Reaction to the Alfonsín Privatization Proposal.*

Most of the decision cycle to privatize *Aerolíneas Argentinas* during the Radical government occurred during the last term of 1987 and the first semester of 1988. As the year progressed, resistance was growing from opposition parties and unions. Most of the opponents to the idea thought of it as a matter that should be left for after the electoral process, which was scheduled to happen in May 1989. Another relevant fact is that three of the five unions representing the whole of the airline workers were under control of the peronist party, and the party alignment on the issue was clearly one of absolute opposition with no return.

The sale of AA to SAS became also a campaign issue when the peronist candidate, Carlos Ménem, included this sale as one more of the “failures” the Alfonsín administration was leaving behind. With the tight control of the peronists over the unions and their majority in the Senate (and the reluctance of some nationalists among the radicals), by September 1988 it was clear that the deal would not make it through the congressional chambers. At the same time, the deteriorating economic conditions of the country were seen as a disadvantage for the negotiations, which would then be overshadowed by the administrative hurry to obtain money (Thwaites Rey, 1993).

The questionable conditions of the re-privatization of the other airline, Austral, played against the government’s intentions too. Austral’s deal was used as an example of an unfavorable sale operation. There the *Justicialistas* had a strong standing point since Pescarmona, the main purchaser of Austral, allegedly did not comply with the

⁷⁶⁰ Grosse (1994) observes that to try to frustrate the government’s efforts to sell AA to SAS, the Pescarmona group presented Minister Terragno an offer in July 1988. The main damage was done through a strong press campaign he created to support his counter offer. While the SAS never obtained congressional approval, the Pescarmona bid was not even taken seriously as a formal purchasing proposal but rather seen as a calculated media scandal.

contract's requirements. This negative negotiation experience added to the fact that *Aerolíneas Argentinas* was the flag carrier, and "due to its social profitability and incidence on the national sovereignty should not be sold" (Senator E. Ménem, 08/09/1988, *Diario de Sesiones*).

Llanos (2002), observes that there was a clear absence of diagnosis on the gravity of the economic problems from the leading parties. Both the *Partido Justicialista* and the *Unión Cívica Radical* had been banned (ibid. p.67) from the political scene for many years (during the several authoritarian regimes that ruled the country after WWII), and could hardly exist as organizations at all. In conclusion they had not had the opportunity to stay in power for long. This could have affected their vision of the problems they started to become acquainted with in the 80's, and made them seek solutions they used to know in the 60's for the critical economic crisis of the post-authoritarian situation⁷⁶¹. In other words, the enormous economic crisis of 1989 could have been smaller if there had been a cooperative political will to act against it.

- *Privatization in 1990. The Ménem administration*

The re-privatization of Austral and the offer made by the Scandinavian airline SAS in 1987, started creating a momentum that, together with the worsening conditions of the economy during 1989 made the privatization of *Aerolíneas Argentinas* possible (Gerchunoff/Coloma, 1993). With the change of government and amidst a severe fiscal crisis, the privatization idea was retaken, but this renewed attempt encountered further difficulties: the company was in poor financial shape and losing around US \$ 10 million per month in 1990 (Grosse, 1994). The market conditions for the airline industry had also weakened world wide, and many international carriers were admitting either bankruptcy or serious operational losses.

So, while the first round of discussions the Alfonsín government had had in 1988 attracted the initial interest of almost a dozen airlines, the second round made during Ménem's government produced only Austral in consortium with Iberia as a viable candidate for acquiring *Aerolíneas*. The initial set of conditions (*pliego de bases y condiciones*) for the privatization of *Aerolíneas Argentinas* was approved in March 1990, but it was modified by the executive in the following months. It stated that the sale of the company meant the transference of 85% of the total shares, and that the employees and the state would remain with the rest. The price established for the whole company was US \$ 623 million (US \$ 529,6 for the 85%), observing that from the global sum and just like in the EnTel case, some of the amount could be paid in debt bonds and some in cash.

Although several groups had shown interest, by the time the envelope opening (dated for June 1990) started, there was only one valid offer made by Iberia and some

⁷⁶¹ "In addition, the military dictatorship had critically influenced their views, contributing to the discredit of any attempt at structural economic reform, and therefore, confirming the need to return to old distributive policies. Consequently, the acknowledgement of the severity of the crisis in Argentina was a process gradually experienced by those in charge of taking economic decisions, but not accompanied by the rest of the ruling party". (Llanos, 2002, p.67)

local investors. Negotiations between the government and Iberia came to an agreement very little after, when Iberia offered to buy 30% of Aerolíneas directly, its banking partners from Spain (Banco Central Hispano, Cofivacasa and Banesto) would buy 19%, a group of Argentine investors⁷⁶² (including Pescarmona and Austral) would buy 36%, Aerolíneas Employees would receive 10% and the Argentine government would keep a 5% of the total number of shares. Upon the formal acceptance of the bid in November, the purchasing consortium contributed their agreed initial payment of US \$ 130 million in cash, which was to be followed by an additional investment of 130 million in ten equal parts over the following five years, along with the redemption of approximately US \$ 2.1 billion of Argentine foreign debt to be purchased in the secondary market.

The airline was privatized through decree 1591/91, including not only the direct assets of the company but all participations it had in tourist services and catering. This decree transformed the airline in a *Compañía Anónima* (prior to this moment it had been a state society) but it kept all other symbols and licenses it previously had. According to Aerolíneas' financial statements, the first payment was made on Sept. 28, 1990, at Banco de la Nación's New York's office, approved by decree 2438/90.

- *Congressional attitude to the Privatization of Aerolíneas Argentinas*

After Congress had signed the government's proposal for the law for state reform it became clear that, at least during the period marked by the law it would be the president and the cabinet who would directly control the restructuring of the public sector. The state reform law, number 23696, was presented in July 1989 and included in an appendix with a number of state-owned enterprises potential to either concession, mixed society or privatization. *Aerolíneas Argentinas* was categorized in this appendix as candidate for "partial" or "total privatization". By signing the bill, Congress had accepted the premise that privatization was an issue that ought to be done at a quicker speed than regular congressional legislation production allowed. Giving the executive the authority to restructure the public sector to the executive meant that the legislative considered that the urgency of the moment (the hyperinflation of 1989), did not allow time to discuss each privatization case individually. The state reform law granted the executive the possibility to solve inconveniences through decrees rather than laws.

Following the airline's privatization case, the bicameral commission foreseen by the law presented its first observation report on 15/03/90, monitoring that during the bidding process there had been alterations in the procedural order and disvalue in the rating of the firm. The executive had used a rating fixed by Minister Terragno, from the times of the radical administration, and not one from the Banco Nacional de

⁷⁶² The Argentine investors included Enrique Pescarmona, owner of *Cielos del Sur* (parent company of Austral Airlines), who agreed to buy a 17% of the privatized Aerolíneas. Other local investors were Amadeo Riva and Francisco de Vicenzo, owners of construction companies who agreed to buy 8, 5% each, and Alfredo Otolora buying a 2%. This made the total of the local 36% (Grosse, *ibid.*).

Desarrollo as the Law 23.696 stated. The difference between both valuations was significant and reached a 15% in favor of the company⁷⁶³. The commission interpellated Minister Dromi (Public Works), who was rather averse to answer the commission. The opposition threatened with taking the whole issue to court and Dromi went to Congress where he compromised himself to change the value offered as base price for the Airline. In July 1990, Dromi decided to continue the bidding process though there was only one offer made. At the beginning, three investing groups had shown interest on the airline, but by mid 1990 only one remained really interested⁷⁶⁴.

The bicameral commission suggested the bidding process to be suspended, reorganized and issued from the start once more. That produced two additional complications: the Minister of Economy, E. González, agreed with the bicameral suggestion creating a slight divergence in the cabinet, and second, Iberia (the biggest shareholder of the remaining group) warned it would withdraw its petition if such a request was seriously considered. With all this pressure, Dromi was interpellated in Congress once more where he had to explain the meager benefit conditions of the negotiations for the state. Dromi's argument against the bicameral commission's proposal was that the state was in need of privatizing its bankrupt enterprises and that to reach such a goal it had to adapt and soften its conditions (exposed in the *pliego de condiciones*) to real market terms. He also blamed the Minister of Economy for delaying the presentation of the waivers (debt permission papers) as something that could make investors doubt and possibly retreat. Ménem supported Dromi's version over González, and the privatization was postponed for some time. In general we observe that Congress, despite having lost all its reactive powers (Shugart/Carey, 1992) and remaining only with certain oversight capacities (the state reform bill decreed the creation of a bicameral commission consisting of six deputies and six senators), could still render some effectiveness in promoting clearness and accountability from the executive. The commission produced pertinent observations on the value of the firm and made suggestions on the whole auctioning procedure based on the technical gaps left by the executive. Despite an almighty executive, it tried to present a certain balance and control, perhaps certain accountability of what otherwise would have been a total discretionary process.

- *Conclusion*

The dubbing of the Aerolíneas privatization as a nightmare (Grosse, 1994), is probably an accurate notion applicable to the mismanagement the airline suffered

⁷⁶³ The Banco Nacional de Desarrollo (Banade) calculated the whole share package composed by the airline (operating routes and 29 airplanes), the tourism company OPTAR and 50% of the Catering Enterprise S.A. in US \$ 529 million; the Multinational Consultant Sherson, Lehman & Hutton and the Morgan Bank (refinancing agent of the external debt that AA had) estimated in US \$ 433.5 million for the same assets. The latter had been proposed by Terragno a year before (Blanco, 1993).

⁷⁶⁴ One of the most common excuses presented by the renouncing groups was that they found there was too little time to comply with all the rules and most particularly, to buy so much spread second hand public debt papers so quickly. The first company to abandon the push was American Airlines; later Alitalia and Varig did the same.

after it was privatized. A few months after the agreement, it had to be partially re-statized. From the congressional point of view, both the Aerolíneas and the EnTel cases can be described as “issues under the state reform law”, which also means minimum legislative participation and abridged responsibility over the process. All necessary decisions were taken through presidential decrees. EnTel and AA are both instances where the executive had to make an impact on the national and international community showing impressive results in the shortest period of time possible. Again, this premise is valid to explain why some researchers find the sale of the airline as an illustration of the danger of getting the wrong foreign partners in terms of capital, technology and management (Del Castillo, 1995).

The lack of active congressional oversight, other than that of a small bicameral commission, allowed the executive to act too quickly and without second opinions most of the time. This privatization highlights the need to devote enough time to scrutinize potential buyers (domestic and international), raises important doubts on whether international SOEs should act as purchasers and shows the dangers of unintentionally ending up with a private monopoly⁷⁶⁵. As a consequence, the negotiating conditions were defective, the government lost money during the operation and four years after the sale it had to raise its previously reduced ownership stake from 5% to 33% because the airline’s domestic investors were not able to increase capital requirements of the company (Recio, 1992).

⁷⁶⁵ A major buyer in the privatization of *Aerolíneas Argentinas* was the Pescarmona group, which had detailed information on the airline since both, AA and Austral, shared the tourism business. With the purchase of Aerolíneas by the owner of the domestic airline Austral (Pescarmona) the domestic airline sector became a monopoly until another operator started to work later on.

VI. Conclusions

This study began with the idea of comparing the control resources over the executive that legislative powers have in Latin America, using a particularly sensitive case as were privatizations during the structural adjustment period commonly known as Washington Consensus. It also aimed to present an up to date state of the related literature in political science. By evaluating the most relevant written works and researching two case studies we have observed how Congress behaved using its institutionally prescribed powers and other resources to try to balance power with a mighty presidential figure.

Privatization has been a key element of the structural reform plan promoted by both the IMF and the World Bank in Latin America and other third world countries, particularly during the 90's (see Williamson's table). Governments undertaking this measure pursued a variety of micro and macroeconomic objectives: achieving gains in economic efficiency given the background of poor economic performance of public enterprises in many countries of the region; improving the fiscal position particularly in cases where governments have been unwilling or unable to continue to finance deficits in the SOE sector, etc. In addition, liquidity constrained governments facing fiscal pressures sometimes privatized with the objective of financing fiscal deficits with the earnings obtained. Other objectives to justify privatizations have included the development of domestic capital markets, as a secondary effect of the atomized sale of big state companies; these markets could be expanded in order to make them able to absorb bigger operations and counterpart results from the positioning of large SOE in shares.

Legislatures had to act in privatization cases mainly because of the constitutional disposition that obliged them to interact with the executive. Thus we said structural adjustments forced executive-legislative veto playing possibilities. In case this principle was deliberately by-passed, the Legislature became a nominal actor with almost no voice and the veto game was reduced to only one player. In Argentina, such an institutional agreement between Congress and executive, fostered largely by the peronist party, occurred in 1989 principally to allow the newly elected president tools and decisive speed to tame the economic crisis, but it was also learning from bitter experience. A few years before and during the radical administration, congressional apathy during 1987-89 and non cooperation proved to be a fundamental difference that stopped and changed executive plans regarding privatizations. In Venezuela, congressional control revealed during the 1980's and the 1990's to be more associated with party discipline and teamwork with the executive, from the side of the ruling party, than an individual institutional initiative from Congress, following constitutional prescriptions. During the 80's and the beginning of the 90's, when AD had either an absolute or a working majority in the legislative, congressional control became a punishing tool for a president who either willingly or not, disobeyed party lines or distanced himself too much (as was the case with Pérez) from the party's directives. In those cases Congress could make use of a set of political resources to put considerable political pressure on the executive.

In Argentina, the fact that Congress could stage a main role as veto player throughout the whole process of reforms and privatizations as it did during Alfonsín's government (despite being a minor figure in comparison to the executive) created a steady degree of tension that worked on behalf of the executive's intentions at first; later, it started turning towards the ruling party's interests when both Ménem and Congress consolidated their institutional position in the mid 90's. In Venezuela, the difference in party behaviour by the ruling party between the administrations from Lusinchi to Pérez, is a relevant variable to show how much the legislative cooperation can become decisive, mostly when the ruling party had the legislative weight of *Acción Democrática* during the 1980's and at the beginning of the 1990's.

- The Development of the Legislative in the Presidential Democracies of Latin America

Performing a historical observation of the executive-legislative relation phenomena, several studies stand out from which, on comparative terms, Blondel (1973) and Mezey (1979) develop particular institutional terminology to attempt to classify legislatures according to their empirical outcome. Although the variables considered to explain legislative behavior vary, the studies are mainly centered on evaluating policy making and the margin of social support they have as institutions. Mezey conceptualizes legislatures as "an elected body of people that acts collegially and has at least formal, however not exclusive, power to enact laws binding on all members of a specific geopolitical entity" (p.6, 1979). His study starts from the point that the policy-making strength of a given legislature determines its institutional characteristics and role play predominance; this develops together with the positive image and support the legislature may have as an institution rooted in the society.

Previous to his attempt, Blondel (1973) also developed a four point scale to classify legislatures. The gradation made by Blondel reviews the strength of the legislature compared to that of the executive on the basis of whether or not the right of censure stays in the hands of the legislative, and whether or not the executive has the right to dissolve the legislature. The prove spectrum of two extreme possibilities in the democratic role play of the institutions. Blondel's classification however, remains distant from an exclusive focus study on presidential systems His arrangement mixes parliamentary and presidential systems to the extreme that in one of the categories, the fourth, he groups the United States' Congress together with the Parliaments of Western Europe, despite their normative and operative attributions being so distinct. The associative reason to this arrangement is only that they are both qualified to veto some executive proposals and initiate law projects by themselves.

Except for Costa Rica, which stays together with the United States in the *active* legislature rank in several studies, most of the rest of the legislative bodies in Latin America are *marginal*, *vulnerable* or *reactive* legislatures. The performance of the active legislature (strong policy making powers and strong support) is one of involvement at all stages of law making. Vulnerable legislatures are among those that have had scarce social support despite their constitutional empowerment to act. In

reactive legislatures, only parliamentary regimes are considered, whereas the term marginal legislatures is characterized by the lack of congruence between the behavior of the legislators and the expectations of both mass publics and executive centered elites. Minimal legislatures, a last classification, stand mostly for totalitarian regimes.

To this classification, Shugart/Carey (1992) and Mainwaring/Shugart (1997) add three variables to define the power balance between legislatures and executive in presidential systems. They are a) legislative powers of the executive; b) executive powers of the legislature and c) partisan powers of the executive. This classification leaves little room for discussion towards a normative proposal for an assembly type. It rather focuses all attention on the empirical results produced by the country-studies done until then. The normative discussion operates only on the constitutional design each country may offer. Cox/Morgenstern (2001) set a three subtype form currently applied to the Latin American institutional discussion and used in this study. Democratic assemblies can insert themselves into the policy making process in one or more of three basic categories:

- d) Originative, by “making and breaking executives”, meaning that they also share most of the responsibility and decision making power.
- e) Proactive, by initiating and passing their own legislative proposals
- f) Reactive, those who limit themselves to amending and/or vetoing executive proposals

From the Cox/Morgenstern (2001) classification made sometime after, Latin American legislatures stand out as pure reactive types, however not minimal or dysfunctional. The meaning of reactive here is applied to presidential models in which the legislature’s action is rather a consequence or condition of presidential or cabinet initiative. Empirical results (Mustapic, 2002; Ferreira-Rubio/Goretti, 1998; Jones 1997) show also that this reactive role leaves legislatures an open space to adopt a certain policy bargaining mode with the executive.

A less optimistic perception is that the ordinary policymaking process in Latin America is a distinctive form of bilateral veto game, which in many ways exhibits features that are intermediate between the classical role models of presidentialism and parliamentarism. This duality of qualities is partially what most authors have perceived as “Latin American Presidentialism” (from the diagnosis of Latin American Presidentialism as *hyperpresidentialism* by Nino, 1992, to the “Legislative Controlled Executive” of Brewer-Carías, 1985, in some Latin American Nations).

There is another classification created particularly to suit the Latin American cases made by Taylor-Robinson/Díaz (1999). After a detailed analysis of the Honduran Congress, these authors conclude that the formerly used classification proposed by Mezey stands inadequate. Under Mezey’s assortment, most Latin American legislatures remain under marginal or vulnerable categories due to their poor performance in policy making. Also the minimal, marginal and vulnerable types, assume the continued and potential occurrence of a democratic breakdown (Taylor-Robinson/Díaz, p.614, *ibid.*).

In general terms, the typology to classify legislatures needed to be evaluated under the current context of third wave democracies. The new sorts proposed are

1) Active Legislature (as exemplified by the U.S. Congress). Here, the variable to consider is the set of independent means through which each Congressman can win elections. This frees deputies “from strong demands of loyalty to either executive or their party”, and thus affords them the possibility to pursue their own (or their constituents’) preferences; even when these preferences stay in conflict with the president’s agenda.

2) Secondary Policy Making Legislature. In this type of legislature, the deputies’ incentive to act independently is constrained by their means of getting elected and re-elected. Any legislative political career requires the support and backing of party leaders rather than the public, making legislators or parliament members dependent on the amity of those leaders.

3) The third category is Mezey’s Reactive Legislatures, exemplified by the British parliament in which the Prime Minister’s party has a clear majority. In this type of legislature, party control over who receives nominations for important electoral positions on the party list, or who gets the chance to run in “secure” districts, allows the party to have the loyalty of the deputies.

The perception resulting from this research is that Latin American Legislatures have evolved despite a deep-rooted tradition of strong presidencies and vertical command from the executive. This is consistent with other research on the topic such as that of Morgenstern/Nacif (2002) who consider Latin American legislatures as reactive with proactive presidents. In our opinion this model does not always work so. Legislatures, based on the relation between the ruling party and the president, can become more or less attached to party discipline and thus to a cooperation instance with the executive. They can also act independently and ahead of executive initiatives. In both of our case studies, Venezuela and Argentina, the legislatures had prepared a number of privatization bill projects even before the executive had decided to introduce one. In fact, in cases like Argentina, there was a constant technical feedback between legislative and executive on the quality and specifics of such legislation. In Venezuela the main opposition party during Pérez, Copei, had also presented a draft to regulate what they saw as an imminent reality to overcome the 1989 crisis. This shows proactive assemblies when there is enough party interest and enough resources to consider a subject.

The importance that many authors give to the institutional bargaining between the executive and legislative is relative to the kind of relations the president has with the ruling party. As we have seen, in most legislative electoral systems in Latin America the winning president also pulls a considerable number of Congressmen with him, something described by Linz (1994) with the “the winner takes it all” principle. If the ruling party has a potentially cooperative scenario with the executive, and they have a strong majority (either working or absolute) in the chambers, patronizing would remain at the level of the ruling party and not extend to the rest of the assembly. In fact, reforms may become a plus since they can help the president

support his party and isolate his opponents, by giving ruling party members access to the launching and working out of the reforms. The strategy to be able to succeed in passing reforms through the legislative will be defined by the sort of assembly the president anticipates and by the level of relations with the ruling party. The tactics to pass the different bill drafts will oscillate accordingly, from unilateral measures to integrative powers with the legislative.

One important difference not always outlined in this research is the professional capacity, and resource access of the legislative. One of the biggest institutional handicaps Congress has against the executive in Latin America is the very low technical level and access to resources legislators may have. Many legal drafts require a high level of expertise to be discussed. The technical resources and knowledge is weak in most parliaments of the region and that makes accurate legislation impossible. Ignorance is many a time a cause for institutional delegation to the executive or, even worse, for delay in the passing of needed laws.

- The Role of the Legislative as Policy Veto Player

If legislative and executive powers are structurally engaged in a strong bilateral veto game, then their connection and interrelation can be expressed under the spectrum of possibilities of dual veto players (Tsebelis, 1995; Cox, 2001). Using the classification made by Mainwaring (1997) and Cox/Morgenstern (2001), made on substantial empirical evidence, the operative sequence in a reactive assembly may be as follows. “The president proposes one or more policies; the legislature either accepts, amends or rejects some of his proposals; the president can either bargain, take unilateral action or seek to undermine the assembly’s ability to veto proposals” (Cox/Morgenstern, p.173). The bargaining process implies either concessions in proposed policies, or the gaining of favor from parliament majority or simple vote buying through pork barreling or patronage. The unilateral action alludes to the uses of presidential constitutional attributions (decrees, special delegative laws, veto).

One of the major theoretical problems of power separation is the observation that the bigger the number of veto players in a process is, the greater the possibilities of irresolution or indecisiveness in policy making. Following Tsebelis (1995), we define a veto actor as a person, political party (or faction of political party) that exercises a veto (total or partial) on whatever relevant issue, by itself, based on the institutional or legal empowerment he/she/it has received to be able to do so. Focusing on the veto capacity of the government actors the dual legitimacy that both legislative and executive have in presidential democracies, becomes the most serious problem in presidential democratic governance. To break the gridlock possibility among two equally powerful actors, the tendency in many constitutional texts and electoral systems is to favor the presence of an important number of presidential party seats in Congress. This can be done directly through an electoral law or indirectly by controlling the timing of such elections

One of the decisive elements that have helped avoid institutional gridlock in many Latin American countries is precisely that the presidential party has almost

always obtained a relevant majority in both chambers. Then the problem of a potential gridlock is transferred to another sphere, namely, the intra-party politics or the partisan powers of the presidential figure. The extent to which the presence of a second legislative chamber helps make this achievement (of an overall absolute legislative majority or near majority) depends on the a) electoral laws of the system; b) electoral formula used to select the executive; c) the timing of the executive and senate elections (as well as term lengths) and d) the formula used to allocate senate seats.

Another important point regarding the number of veto players and the overall relation between legislative and executive power is party fragmentation. The political consequences of the number of political parties in a party system have been subject of considerable debate precisely assuming whether they can be a burden-to or rather a consequence-of multi interest representation. However, a higher number of veto players inside the legislative does not automatically increase the potential for dissent and an eventual gridlock with the executive. From the first studies (Mayer, 1980; or Taylor/Herman, 1971) there seems to be substantial evidence on behalf of stability for systems with low levels of multi-partism, which tends to follow the obvious assumption of “the fewer actors, the easier the agreement”. This variable has also been coupled with better accountability by Powell (1982). The aim would be to signify that accountability is greater and easier in a two-party system, regardless of whether it is a presidential or parliamentary government, than in a multi-fractional one.

In presidential systems, high levels of multi-partism may reduce the size of the president’s legislative contingent and increase the likelihood that the president will lack a majority or a near majority. Where the president lacks legislative support, effective governance will be more difficult. He might be forced either to assume constitutional ways to overlap Congress or turn to patronage and negotiation with coalition party leaders. Mainwaring/Shugart (1997) consider that one of the most important questions in executive-legislative relations in presidential systems is the relative size of the presidential party. Their outspoken judgment is that significant party fragmentation becomes a problem for presidential systems since they impede a possible majority for the president. He would in turn have to rely on coalition.

The relative power of the executive and the legislature are a function of the constitutional grant of powers given to each actor, and the partisan control of the government branches. Constitutionally allocated powers include, for the parliament, the vote necessary to override a presidential veto, legislative initiative, legislative control mechanisms (Interpellation, censure, etc), and veto or influence over the yearly budget law project. For the president it is the decree power, the ability to influence/modify the legislative agenda, exclusivity on certain legal domains to introduce projects and also the budget making process. The partisan control of the government branches, which in presidential systems means the partisan control either through coalition, patronage or direct pork barreling, includes four basic possibilities

(Crisp, 2000): the president's party has a majority, the president's party has a plurality, an opposition party has a plurality or an opposition party has a majority.

In presidential regimes, the flow of policy making is normatively adhered to the idea of power separation, out of which veto playing among actors sets the bases for the whole idea of checks and balances. In general terms, a separation of powers can be thought of as the extent to which different components of government have the ability to exert influence through the exercise of a veto on the formation of public policy. This defining feature of the presidential system and its consequent veto game between equally ranking institutional actors, can also be found in parliamentary systems (see Tsebelis, 1995; or Tsebelis/Money 1997) in the form of bicameral structures or federal structures. All these branches of power can exert validating vetoes to one another.

The Cox/Morgenstern (2001) classification divides in four the subsequent types of legislatures according to their reactive capacity, interests, and their role as dual veto players. The type of legislature present in any institutional design is what will shape the executive-legislative relation. Therefore, it stands *a priori* as a decisive element very much defined by the amount of support the president receives from his party. Parliaments can either be *recalcitrant*, *workable*, *parochial-venal* or *subservient*. In Argentina and throughout the years of the privatizations during Ménem's initial presidential period and the first years of the second, we observed the transformation of the legislative from a completely compliant scenario (subservient), to a cooperative one (workable), and finally to a conflictive (recalcitrant) situation where several bills did not even manage to get through the assembly despite the ruling party having majority in the chambers. In Venezuela, the legislative was taken by surprise to a certain extent in the beginning and was forced to cooperate on the basis of previously approved legislation. The Disposal Law of 1987 gave strong unilateral power to the executive and Pérez held on to that to pass most of his privatizations in the next two years after he became president in 1989. This bill enabled his one-sided approach and diminished the role of the legislative considerably. When Congress managed to recover from the surprise the speed of many reforms had caused, it started to reflect the frictions occurring in the ruling party against the president. It was a subservient assembly in the particular case of the privatizations, which later evolved quickly to being a recalcitrant assembly.

- Meta-Constitutional Powers of Presidents and Assemblies

One of the pivotal arguments in our thesis is that Presidents exert important influence on the legislative both through their special powers, as acquired via the constitution, and their share of partisan powers. To this approach the Legislative may react, following the institutional possibilities it has access to, and in the particular case of the Latin American Democracies, to the level of cooperation existing between the ruling party and the president.

The model exposed by Nacif/Morgenstern (2002), based on the conception of possible power shifts by the executive, implies the transformation of the executive-legislative relation according to four possibilities:

- e) Changing in the use of unilateral powers
- f) Changing in the use of integrative powers
- g) Evidence that the use of powers varies according to assembly support
- h) A Typology of Presidents and Assemblies

a) Under the concept of central oscillation, the idea of *unilateral powers* as exposed by Nacif/Morgenstern is close to the pro-active concept divulged by Carey/Shugart (1992). It refers to those legislative powers of the executive to change or introduce policy, which can be used without the concurrence of the legislature. For a better understanding of the variation in the use of constitutional powers by the president, it is necessary to consider the level of assembly support he obtains, and most specially the conditions of his relation with his own party.

When a president faces a hostile majority in the assembly he will have diminished chances of implementing his policy goals via statute (except cases of pact or coalition as in Ménem's first months when Congress agreed to delegate on behalf of the strong economic crisis, see Mustapic, 1998; Llanos 1998). On the opposite side of the spectrum (as in the case of Mexico during the one-party regime of the PRI) when presidents enjoy massive assembly support due to either party discipline or pork barreling, the separation of powers has been overridden (Ames, in Nacif/Morgenstern, 2002) by the president's political strength (partisan powers). Moreover, this assembly support is further accentuated if the president is able to control candidate selections and/or elections to the assembly, distribution of pork to members of the assembly, and (case of Mexico, exposed by Weldon, 1997) the post assembly career prospects of sitting legislators.

b) The change in the use of integrative powers is the agenda initiative authority the executive has in most Latin American democracies. In this region (as already explained in chapter I) constitutions allow most presidents to set the policy agenda either by sending special/exclusive proposals to be considered by Congress or by prioritizing some bills over the regular internal procedures of Congress. The idea of integration powers means a stark convergence of interest and purpose between both, executive and legislative. Be it through constitutionally ascribed powers or by presidential power control over the legislative, the result is the integration of purpose between the two institutions. This has been fostered by figures like the *suplicante* (substitute Congressman) in Latin American parliaments, which is an empowered persona to substitute a legislative member while on leave because, for example, of executive duties.

c) This point, evidence of power use according to assembly support, is mostly reinforced by Amorin-Neto's (1998) conclusions on the evidence found in a study of 75 cabinets by 57 Latin American presidents from 10 countries over the period 1946-95. Here the data seems to show a correlation between the level of cohabitation between president and assembly, and the number of party members included in the

executive cabinet (normally a pure presidential choice). On the contrary, presidents who knew in advance their lack of support and the need to rest on unilateral coercion and initiative, surrounded themselves by technocrats and politically independent members (Collor's case is paradigmatic as well as Ménem's second term). This understanding reveals the need to create patronage when the possibility of support through party or coalition members exists, and work "*de espaldas al congreso*" (turning their back on Congress) when the prognosis is that almost all moves will face eventual legislative viscosity.

d) Cox/Morgenstern's (2001) classification of President and Assemblies, later used in Nacif/Morgenstern (2002), starts from the empirical fact that a president's level of support in the assembly will have a large impact on his policy making strategy. The question is whether to seek a cooperative and statutory implementation of goals, by governing with the assembly, or a non-statutory implementation (by being either unilateral or dominant). The cross chance of possibilities here shows that presidents can be dominant or important according to their constitutional provisions, and coalitional or nationally oriented. All types according to and in response to the assembly's nature, and the organization of the legislative.

In Venezuela, Congress has the power to legislate in areas of national concern and "over the functioning of the distinct branches of national power" (Art. 139). It is granted the power necessary to make it a key institutional player in public policy making. Ordinary sessions run from March to July and September to November. This schedule can be altered by an absolute majority vote of the chambers in joint session (Art. 155); the call for extraordinary sessions by initiative of the legislative is contemplated. Congress is enabled to question ministers (Art. 199) and revise their yearly account of expenditures out of which investigations can be (and have been) initiated. The Senate has the exclusive power to initiate discussions of treaties, to use national troops for overseas missions and it is expressly required to authorize the sale of state owned property.

Despite the means of deliberate constitutional empowerment, in the Venezuelan case the executive has consistently dominated legislative initiative. This is an interesting fact considering that presidential (formal) constitutional powers are comparatively few. The president's powers are far from the extremes in other countries; however they enable him to name cabinet ministers without congressional approval (Art. 190) and until the year 1989 when some amendments were made, the president could name all state governors by the same article. In the area of legislation the president and his ministers have the right to propose legislation (Art. 165); and ministers have the right to address Congress at any time and participate in the parliamentary discussion of legislation (Arts. 170 and 199).

The proactive power of the president in Venezuela is mild in comparison to countries like Argentina or Chile where the constitutions grant stronger and more discretionary powers to the executive figure. A strong difference also can be observed between the so called reactive powers of the executive (Shugart/Carey, 1992). The

veto is a radical empowerment present (and used) in the Argentine Constitutions while in the Venezuelan case it is only a suspense veto over legislation.

The case of Argentina where the president has enormous legislative powers does not imply they can be used only at will. "One of the reasons Ménem was able to use his Necessity and Urgency Decrees (NUD), powers so frequently was that the opposition did not have a majority control of either house in Congress. If they had had the power to veto initiatives in either house, as had the PJ in the Senate during Alfonsín's government, Ménem's use of this tool would surely have been much more moderate" (Mustapic, 2002, p.45). Because of certain differences within the ruling party objection and a more severe form of control started to occur after 1995.

Colonization of the party hierarchy (Palermo/Novaro, 1996; Acuña, 1994) is another initiative the president can seek when he has the constitutional empowerment to negotiate and pork barrel party members in Congress. Before the electoral reform of 1988 in Venezuela, presidents could choose all governors and local authorities nationwide, a decision that normally favored regional ruling party leaders as likely candidates for these posts. In Argentina, it is also frequently argued that Ménem's success in obtaining party support was his colonization of the party chain of command, something he did by imposing his own executive work from the beginning and the executive economic views as a must for certain public posts.

The constitutional design in Venezuela after the 1988 electoral reform and the already existent structural inhibition of presidential re-election after a pre-determined five year period, created the impression to some researchers that presidents gradually lost authority over party actors (Coppedge, 1994). This is contravened by the fact that two presidents have been re-elected since the return to democracy in 1959, thus remaining important figures in their party. Also, the fact that Venezuela has an oil rent model of economy has made the president a pivotal individual in the distribution of resources and party patronage when in office. Part of this analysis developed by Karl (1997) shows that in Venezuela, the design of patronage networks could clearly be observed in the drastic increase of current expenditures against capital expenditures. "Much of this increase is attributable to expenditures for personnel: the time-honored means of sustaining clientelist loyalties" (ibid. p.104). Thus the institutionalization of privileges (at the top of which stood a strong presidential figure) produced a mixture between the idea of the government and the state. "In Venezuela these clientelistic rules first established and then reproduced the entitlements of parties, organized labor, and the capitalist class, entrenching these interests in a new status quo" (Karl, ibid. pp.104-105).

This concentration on the patronage possibilities from the executive is not unique. Cheibub-Figueroa/Limongi (2000) observe that the image of a fragile and weak executive blackmailed by opportunist legislators (i.e. also party leaders) who obtain new appointments and positions for each vote is rather inconsistent. The executive, with the resources it controls is in a more advantageous position. Most cabinets are formed by formal agreements between party leaders and the president

“who then become the main brokers in the bargaining between the president and the legislators” (ibid. p.165).

In the case of Argentina and following the latest studies on executive-legislative behavior (Llanos, 2002; Corrales, 2001; Mustapic, 2002) we observe that legislative support has to be won more by direct negotiation and involvement than due to (as was the case in Mexico pre-1997) pure presidential party power. In Argentina during and right after the marked delegative phase between 1989 and 1991, the ruling party played an important role by participating in the passage of all important privatization laws. Corrales (2001) observes that more than settling for his extraordinary powers or his position in the party, Ménem’s first attitude was one of trying to involve his own party in the application of the reforms.

- Time as a Variable for Control

One of the common situations faced by the executive was a brief truce period immediately after the elections called the “honeymoon” period, namely, a time the president was given to adapt to the new office. This could be extended if his popularity maintained high indexes. In such cases, congressional control and the confrontation within were eventually delayed and legislators avoided challenging the executive. The political opportunity to exert congressional might, considering the preponderance of the presidential figure in Latin American countries, seemed to coincide with a weakening of the popularity of the president. This popularity usually decreased in direct proportion to the time in office.

More than often did the assembly air the problems through the media to the public opinion asking for indirect support against what would be seen as arbitrary measures from the cabinet or the president himself. This is consistent with Madison’s ambition theory since political ambition in this case, or the possibilities of securing a better position for the future is opportunity and thus time oriented.

In Venezuela, despite the brawny opposition presented by the ruling party, this became obvious only after the popularity of the president started to wane and people realized he did not respond to their expectations of bringing back the “golden years”. It is true also that the directives of the ruling party were taken by surprise to some extent by the determination of the president to pursue an IMF-agreed program against all odds. In the legislative arena the divisions within the party, present from the very first moments, took some time to materialize as the sectors that were radically against convinced those that were still undecided whether to confront the president or not. In Argentina likewise, the opposition against Ménem began to be consistent and most articulate both in the legislature and outside it when ruling party members started thinking about their own careers rather than on the political situation which by 1994 had been almost tamed. At the appearance of a second economic crisis in 1996 and the announcement of more economic measures the party started to distance itself stiffening their possibilities of control in the legislative and giving the president a smaller acting ground.

- Party Discipline

Party discipline remained one of the institutional factors that prevailed to determine congressional control. To some extent this should be seen as a symptom of developing democracies, where the degree to which members of a given party's congressional delegation vote as a bloc or vote independently can be observed. It is also a sign of democratic development and democratic consolidation because party discipline is regularly a by product of the electoral design. Three features that determine party discipline, control of the candidate selection (for any post), control of the order through which members are elected from a party list and the whole political career of the candidates, are elements that sound rules for the party system and the electoral system could alter.

In Latin America there is still perhaps too much discretionary power given to power directives who, hampered by a tradition of personalism and centralized power, exert their authority undemocratically ruling the party from the top. For this type of party structure, party discipline is a rigid response to pre-accorded decision in the chain of command. In some ways it eases governance problems, since the president must negotiate with fewer actors to obtain a substantial backup. Cases like Venezuela though, have proved that systematic isolation from the bases of the party left directives attached to old models and without a clear idea how to interpret new political realities.

- The Ruling Party support

Market reform introduction forced traditional labor-oriented and populist parties like the PJ and AD to go against many of their long-established distributional principles in the economy, and fed their enemies with arguments from the enormous contradiction the launch of market-oriented measures by these parties implied. A consequence seen in Venezuela after 1991, the ruling party leaving the state alone and withdrawing important support in parliament voting for structural adjustment measures, made reform implementation twice as hard. The executive on the other hand, tended to isolate itself more and more with the aid of non-party technocrats. This forwarded more signs of separation between institutional powers to both opposition and moderate party leaders, who began to doubt whether it was politically convenient to defend the government. To all eyes the state was being guided without a ruling party.

According to Corrales (1998) the state-without-party condition, a situation that was potentially possible both in Argentina and Venezuela during the implementation of the reforms, happened only in Venezuela because of a deliberate and calculated party rebellion against governmental procedures. The executive in Argentina avoided this by elements of force such as decrees, but also by incorporating the Peronist party as co-author of the reforms. It scored notorious successes in the first three years of government; when the inflation spiral was tamed, the party could benefit (and thus better its results in subsequent elections) from the public opinion's support of the reforms.

In the circumstance of a serious disturbance between legislative and executive branches within the ruling party, it is most likely that the dissident sector will maintain recalcitrant positions to try to obstruct the acting of the president in Congress. The case can be even more complicated if aside from a non-cooperation scenario between executive and legislative we have a multiparty Congress instead of a two-party dominated one. Following the conclusions exposed by Mainwaring/Shugart (1997), that a multiparty system creates more difficult conditions for coalition or for significant majorities in the legislative, we could argue that an atomized and hesitant ruling party will turn Congress into a serious impediment to reform.

Differences between the executive and the ruling party may also have consequences in cabinet composition, since many posts in statist parties had usually been given as a reassurance to high ranking party members. This can become worse if aside from institutional isolation, the ruling party turns to deliberate disobedience and contradiction with the executive. Sabotage in the legislature becomes a real possibility in the hands of the ruling party. On the other hand, the very few cabinet members that could exist sent by the party (and first and foremost party loyal) may behave as obstacles to the reform program.

In the presence of structural reforms as is the case of this study, being privatization one of the most legislative influenced measures since it involves the sale of public property, the connection with the ruling party is a decisive influence in the achievement of most proposed policies. In Argentina, the introduction of the program had a very different outcome although reforms had to undergo similar resistance in the beginning. Congressional participation and support varied through the years, considering that the first period of the Peronist administration was characterized by a profound imbalance created by the critical economic situation. This forced the two most significant parties to unite against the rampant economic emergency after Alfonsín's efforts had proved fruitless with several stabilization plans. This first stage was marked by the economic emergency and the automatic renewal of legal instruments through which the legislative had empowered the president to act swiftly aside from congressional encumbrance. By the time both laws 23.696 and 23.697 had ceased to exist, Ménem incorporated the PJ leadership closer into his plans rather than provoking a conflict scenario. This brought congressional factions from the ruling party into the planning and design of the reforms.

- Venezuela: Privatization as Anathema

Congressional control reveals during the 1980's and the 1990's to be more associated with party discipline and teamwork with the executive from the side of the ruling party, than an individual institutional initiative from Congress. During the 80's and the beginning of the 90's, a time when AD had either an absolute or a working majority in the legislative, congressional control became a punishing tool for a president who either willingly or not, disobeyed party lines or distanced too much (as was the case with Pérez) from the party's directives. In those cases the legislative

could make use of a set of political resources to put enormous political pressure on the executive.

Regarding Congress and its real checks and balance possibility, although this institution was constitutionally empowered to a variety of actions and control tools (among which there was the fact of overriding presidential veto with a simple working majority) it has been an institution with limited financial or human resources at its disposal. The Venezuelan Congress has not been completely able to modify or, in many a case, even understand the laws originated in the cabinet by the technicians working in the ministries. A direct consequence to this lack of expertise and a subsequent product of the strong party discipline promoted by the pacted democracy and the partyarchy environment of the whole political game, is that congressional production has been outstandingly low even in comparison with other Latin American presidential systems and their seemingly weak legislatures (Crisp, 2000).

Because of the electoral system and executive/legislative election taking place on the same day with closed lists, the winning presidential candidate was likely to pull the members of his own party into Congress. These members had already been decided in rank and order by the central party directives with no previous internal election. In return the ruling party members in Congress exercised closed lines of obedience (under the euphemism of party discipline) to the directives of the CEN (Executive Party Central), from which the whole political life of the legislative members depended. Were this party discipline principle not in force for some individual or group, the CEN would immediately expel the rebel, the heterodox assemblage or promote, as it did in the past, a party division.

A further step of empowerment the legislative could give the executive was the *Leyes Habilitantes*. Originally thought to allow the president to produce quick legislation on urgent matters, this congressional abdication of the legislative activity became also the product of negotiations between party directives and the president. These *Leyes Habilitantes* which enabled decrees in economic and financial matters were most likely to occur when the ruling party had an absolute majority and legislative initiative was kept to a minimum; this minimum being closely supervised and concerted with cabinet members by the party central. A considerable exception to Adeco presidents not receiving the *Ley Habilitante* from Congress was Pérez during his second period. The reasons were the mistrust he triggered in many party members and the fact that several party directives started to act and react against his economic proposals.

According to Art 139 of the 1961 constitution, it is the National Congress that exerts or should exert oversight and control over the national administration. Art. 230 extends this faculty to those autonomous institutes and public corporations where the state may have interests. Aside from the *post factum* possibilities of control which could lead to congressional investigations and formal legal accusations, or those *during factum*, such as interpellations and questioning procedures to cabinet members, Congress could anticipate and to a certain extent intervene in many executive manoeuvres and designs through the crafting of the budget law. The budget plan was

crafted by the executive on a yearly basis but had to be approved by the legislative and could be modified accordingly. In the Budget Law (1990) all branches of the public administration were contemplated except public enterprises (Art. 12) which reported directly to the executive through their ministry of adscription (*tutela ministerial*). This left State Owned Enterprises, SOEs, with a particular economic independence that later helped to explain their massive debts and unaccountability. Part of the decade of the 1980's implied massive economic and financial efforts to bring all these enterprises to be up to date in the official records since they had become a parallel administration by themselves.

One of the structural advantages given to the president by the 1961 constitution was the power the president had to restrict or suspend constitutional guarantees and then issue decrees on specific matters, mostly and most commonly, on economic and financial issues. This power, which can be taken unilaterally (as a difference from the *Leyes Habilitantes* which require congressional approval to delegate power and are set for a specific time) has been a common mechanism for the democratic president to intervene in the economy. The constitutional right to economic liberty (Art. 190:6) was suspended almost from the beginning of the democratic period in 1961 by President Rómulo Betancourt. Pérez reestablished it in 1991, but he had used its suspension benefits previously to remove Lusinchi's price controls by decree and free the exchange rate. This suspension of economic guarantees helped the president to pass Congress while issuing the first steps of the stabilization plans agreed with the international financial institutions. "Without significant congressional involvement, the government proceeded to eliminate licenses and bans on 1900 items accounting for 77% of manufactured imports; lower the highest tariff barrier from 135% to 20%; eliminate restrictions on foreign investments for all sectors except petroleum, mining and banking; restructure and reform many public agencies to make them more likely candidates for privatization; develop parallel bureaucratic structures for delivering public services and eliminate agricultural subsidies" (Navarro, 1994, pp.16-19).

Congress in Venezuela (in a similar way to Argentina) was involved at an early state in the privatization process, with COPEI, the main opposition party proposing a legislative draft for a specific privatization law in 1990. This draft, although short lived, was an exception to regular proceedings of Congress, usually a reactive institution. Several sectors inside and outside the chambers did not share the opinion of the economic team and part of the opposition that such a document was necessary. Instead, a growing hostile tendency towards privatization kept the later executive-introduced law of privatization from being approved until 1992 (Torres, 2000). In conclusion, most of the significant privatizations (in terms of income obtained and size of the companies sold) were done without the 1992 privatization law but under the 1987 law of public property disposal. This was not completely at odds with the government's intention since the 1987 law, given to Lusinchi by a cooperative AD directive, allocated much more power on the cabinet and the presidential nominated figures ad hoc.

The Venezuelan legislative remained mainly a reactive veto player, very influenced by the vertical commands of the party directives and very sensitive to political patronizing. Among the factors we have studied that slowed down congressional production (with 28 bill projects approved per year in average) and that prevented it from capitalizing on the structural empowerment given to it by the constitution, were the very underdeveloped state and staffing of the legislature. Due to it the legislative had little “fact-finding ability” and little “research capacity” to consult civil society. Secondly, congressional production and development was hampered as a result of highly disciplined delegations. AD had been the party with more presidencies and congressional majorities than any other organization since the 1960 democratic comeback: “Individual legislators were bound by party discipline and therefore could not be persuaded to act otherwise, so there was no incentive for interest groups to lobby them. Individual legislators did not decide their opinion on a bill (they took their cue from party elites), therefore there was no reason for them to have an extensive and professionalized staff” (Crisp, 1998, pp.23-24).

As a consequence of its little research capacity, its separation from civil society and the complete obedience to party discipline, the legislative became a very isolated institution, dependent on previously arranged and crafted political decisions by the main parties’ directives. This is also consistent to what we have shown in previous chapters, that the voter’s choice regarding Congress and candidates was limited by closed candidate selection procedures, which prevented them from choosing among individual candidates from the same party. The closed list in a proportional representation electoral system meant that voters could choose parties rather than individual deputies or senators. Regarding control and control possibilities for the legislative over the executive, the constitution produced a mild presidentialist version in comparison to other governments of the region. But the consequences of a politically pacted democracy and the lack of real links between the society and the political parties, plus the inexistence of real democracy within the party system, it all made this constitutionally set of instruments artificial.

The word privatization appeared in Venezuelan politics after the *Gran Viraje* though it existed in milder forms throughout the whole decade of the 1980’s. Parties did not react adversely to it more than they did to any other policy until it became part of a state re-design. Pérez included it in the structural adjustment goals Venezuela started seeking after 1989 and it produced its major results in two intense years, before the ruling party started acting against the president. The relations between Pérez and AD had already been conflictive for over a period of time and his independence of the party could be traced back to his first administration, when he was granted a *Ley Habilitante* and showed no consistent loyalty to the party directive in return. At the time of his second administration, when he hoped to produce a complete change of the development model and state design, this party-neglecting approach was evident in many ways (Corrales, 2001).

First Pérez avoided the transition commission established by his own party, designed to coordinate the transfer of power from Lusinchi’s administration and

provoke a smooth, party-controlled transition. Second, in the composition of all his cabinets (until 1992), Pérez gave key ministries to people who did not belong to the AD files. A number of these cabinet members, especially some of the economic team, had strong opinions about the AD directive who dissented from the reform initiatives. Third, it was during Pérez that a strong investigation was launched to uncover most of the economic excesses of the Lusinchi era when through official exchange control, corruption reached important quotas and a high share of the public attention.

Many leaders in AD took all this personally since they were either being deliberately excluded from a range of radical changes or targeted as active participants or as accomplices of the mismanagement occurred during the previous administration. Truly enough AD was more than ever, part of the government's decisional structure during Lusinchi. J.A. Ciliberto, a renowned cabinet member, was publicly accused of corruption, and Lusinchi himself, who still commanded a whole branch of interests inside the party, had to go in a self imposed exile to avoid corruption charges.

The ending effect of this institutional divorce was that AD split into three groups: first the orthodox sector, those who wanted to stop reforms at once. Many of these party members were in the Executive Committee and were active part of the *cogollo*, namely, those who had had a close relation to the Lusinchi administration (or, like in Matos' case, were also close to the CTV union sectors); second, the balancers, or those middle sectors that wanted a slower pace in the reforms and a closer dialogue with the executive; and third, the Perecistas, an AD sector that had been close to the president ever since his first administration. This last group was also divided between those completely sponsoring the reforms (many young and some not even members of the party) and others basing their support more on the historical side of the relation. These people were not so persuaded of the benefit of the reforms and were still impressed by Pérez's discourse, fifteen years before, on state-led development.

Congress became the scenery for strong political opposition against the executive initiatives regarding economic reform, a reality the privatization proposals did not escape. While most of the important privatizations had been done under the law of disposal of public property (1987), Congress discussed between 1990 and 1992 the privatization law and the possibilities of establishing a regulating agency for the parameter of service prices from the newly privatize monopolies. Despite all that, most political parties rejected privatization, and statist and nationalist sentiments were strong among intellectuals and the media.

The executive failed in showing the public opinion the need to privatize unproductive firms and the urgency there was to reverse the statist mentality existing in Venezuela. It failed to convince the party to take a historic stand on the issue too. Torres, who was president of the FIV and had to take part of the blame for the privatization process as one of the technocrats hired directly by the president, wrote bitterly about the whole experience a few years later: "Not all reforms that had to be done were done. Among the most important things that the government has not done or has not been able to achieve are 1) the conformation of a force alliance (political,

social and economical) to promote those necessary changes. Contrary to this, the government has acted in extreme isolation not according with the amount and depth of the changes it proposed; 2) The constitution of a homogeneous cabinet, at least harmonized in their vision of the great collective problems; 3) The spiritual direction of the society to orient people in such a difficult transformation. These are probably the biggest deficiencies of this administration since finally the essence of governing, of the act of governing, is the proper guidance of the society, the exercise of leadership on the nation so that these would take the best possible decisions and options, despite of how insurmountable they can appear in the short run. In the case we refer to, the government has dedicated itself almost exclusively to the definition and execution of public policies, and cared very little about employing effective direction and leadership on the society to convince it of the need of these changes; 4) The articulation of a program and political discourse to attack two or three of the most sensitive themes of the public opinion such as corruption, health and personal insecurity. Independent from how big these problems can be in reality, what makes their special relevance is that they are very susceptible of attention from the public opinion and that they all belong to areas that people identify as government duties” (Torres, 1994, quoted in Torres 1995, pp.162-163).

- Argentina: Congress recovers itself

After the return to democracy in 1983 (and probably reluctantly at first), the Alfonsín administration started to observe the need to reinforce the partial benefits obtained through several stabilization plans with deeper structural measures. Privatization was one of such measures, but one that was deeply against the political beliefs of the president and the ruling party Union Cívica Radical (UCR), the same institution that had started the state’s concentration of public enterprises and services during the 30’s.

It was the radical administration (1983-1989), which first started the reorganization and restructuring of the wide (and to a certain point uncontrolled) SOEs administration the democracy had received from the military administration. Many of the efforts made by a number of executive commissions during Alfonsín’s time, plus two failed attempts to privatize the telecommunications company EnTel and the airline *Aerolíneas Argentinas* cleared the way so that later the peronist party and its leader Ménem could commit to an ambitious privatization plan, avoiding former mistakes staged by the radical administration.

During Alfonsín, it was congressional opposition first from his own party and then from the peronist side, that hindered the privatization efforts the executive had already agreed to. The cabinet was also a highly divided instance. The peronist party, the main opposition force at the time, coordinated its network of alliances not only within the legislative but outside it, placing a heavy accent on the unions it controlled, and on other productive sectors of the society. Congressional support for the proposed privatization bills during Alfonsín was inexistent, from most of the opposition parties, and reluctant from the ruling party.

Alfonsín and his closest political staff, and with them a big proportion of the Radical Party, probably lacked the ideological conviction and method needed for the economic reform of the state. This postulate is consistent with the idea that founding political parties felt themselves as “custodian of the state properties” and “founders of the democracy”, institutions to which neo-liberal values were rather foreign and threatening. Both the *Unión Cívica Radical* and the *Partido Justicialista* felt the same regarding those issues at the beginning of the 1980’s.

Argentina had a strong dominance of a two party model between 1983 and 1995, which theoretically guaranteed the president enough legislative support but at the same time, the functional prospect of depending more and more from the backing of the ruling party. Because privatization was disregarded and considered an unnecessary or inconvenient policy by the radical party at the time when it had an absolute majority in the deputy chamber, the executive could not get the first privatization project through; nor did things improve once the party understood the need to privatize since by then the *Justicialistas* had enough support to ensure a working majority through coalitions in the deputy chamber.

In contrast to the idea that strong parties cannot harm governance in presidential systems (even more in Latin American presidential systems where institutional resources are almost totally executive oriented), Argentina is a good example that despite the president having many resources to legislate, not counting with the ruling party’s approval and support on reforms can be very destabilizing for the presidency. In the end this non cooperation in Congress leads to a defeat no matter how big the hyper-presidentialist powers of the executive can be. The very mild cooperation of the radical party, which hindered the application of deeper solutions to the crisis, made the administration unable to cope with the fiscal deficit and it made the whole cabinet drown. Due to the economic chaos and the hyper-inflation crisis in 1989, Alfonsín had to resign and give up power before the end of his constitutional period.

The Radical government was the first to (gradually) realize the need to complement economic stabilization plans with structural and state design measures in order to obtain long term stable economic effects. However, by the time most of the ruling party in Congress came to grasp this situation, their political capital was running out. Until 1987-88 and the very critical economic symptoms revealed in these years, the overall social conviction and that of many radical (UCR) cabinet members including the president, was not that deep regarding reforms. Despite their failure to produce state transformations that would accurately reduce the fiscal deficit, it is convenient to observe that the problem of the over sizing of the state had already been diagnosed by the UCR, even before electoral times. So the causal relation to many unproductive SOEs and excessive fiscal spending, had been rationalized. The electoral platform for 1983 had already mentioned the need to “privatize enterprises and services” but in many cases the practical translation was the need to “re-privatize” those enterprises that had coincidentally or otherwise been absorbed by the public

administration, not being the product of a deliberate and planned state acquisition. Privatizing basic industries and enterprises of service provision was another matter.

When the commitment to privatize became a decisive point in the executive agenda and the government had already signed agreements with international companies to sell a percentage of the telecommunications and the airline company, the congressional delay to produce these bills can be related to the “unanimity rule” regarding privatization initiatives. The fact that by 1985-1989 there was an almost clear political parity of forces, with the Radicals controlling the lower and the Peronist controlling the upper chamber, gave the parties the possibilities to neutralize one another, something that both consciously and deliberately avoided after the return to democracy. This “unanimity rule” running in the Argentine Congress during Alfonsín’s Government, implied that the major parties committed themselves to expressly avoid institutional gridlock between Congress and the Executive in the name of democratic consolidation. Functionally, it implied that those issues that provoked serious dissent between the major political forces would be postponed indefinitely.

Once it started, after the two delegative laws conceded to the president in 1989, the Argentine privatization process did not find (until 1993 at least) major ideological opposition. On one side it had been a largely discussed topic during the radical government, and on the other, learning from past mistakes Ménem created a “pro reform” coalition that included the country’s leading business conglomerates, media (TV and printed), academic think tanks, small conservative parties (UCeDe for example) and the most important industrial interest groups in the private sector to reinforce the policy proposal.

Four stages can be clearly distinguished in the Argentine privatization process, each one characterized by the needs of the administration and the destiny given to the funds obtained: first stage: canceling public debt; second stage: easing short term constraints; third stage: emphasis of allocative efficiency; fourth stage: placing financial goals first. The first stage was largely used to cancel public external debt and convince skeptical observers. It was a move directed to the multilateral agencies and to all those in doubt of the successful implementation of privatization. The sale of EnTel and *Aerolíneas Argentinas* are significant examples, since those were sectors with the most substantial rate increases and the least restrictive regulatory frameworks.

In the second stage, revenues from the oil reserves plus those obtained from EnTel’s second round of share sales relaxed the government’s short-term cash constraint, which happened when the convertibility plan (1991) established the exchange rate as the nominal anchor (1 peso = 1 Dollar) of its new stabilization program. The first stage took place during the crucial years of 1989 and 1990, when Ménem was trying to find a position that would allow him new international credibility; the second occurred at the end of the delegative period and the beginning of the convertibility plan in 1991. The third stage begins after the signing of the Brady Plan, which indicates a new turn in the relation between Argentina and the

international economic community. After having managed to balance the budget and renegotiated international debt compromises, financial goals were (for the first time since the return to democracy) relegated to a second place and allocative efficiency of the resources was given more attention. During this third stage the government concentrated in those reforms that would take more political stamina, as for example the reform of the social security system. The fourth stage occurs after 1995 and is characterized by the return of the financial goal as the main objective once the economy entered a recession that year, after four years of consecutive growth.

Once the delegation period was over in 1991, Congress started to gain some of the lost territory in policy and law making. This is visible in the number of discussions needed for each privatization bill during the immediate post-delegation period, and the amount of maneuver and attention needed from the executive to pass laws. After 1991, when the peronist party obtained an absolute majority in the chambers, that did not automatically work in favor of the executive. So Ménem opted for congressional intimidation and forced cooperation tactics: Congress had to pass the executive sent bills without major modifications otherwise the executive would implement them through NUDs; and if the Legislative dared to change them, the executive would veto them either totally (if modifications were that many) or partially (deleting congressional observations). Aside from these aggressive means, the executive also turned to pork barreling when relations with the legislative started to weaken, and dissensions within the ruling party began to become noticeable.

In conclusion, aside from the already strong legislative powers given to the president by the constitution, Ménem used a number of extra constitutional powers profiting from the strong economic and institutional crisis of the beginning of the 90's in Argentina. When the crisis became manageable (years 1993 and after), it became more and more difficult for the executive to convince the legislative of the need of additional privatizations.

Congress was starting to exercise its powers after the delegation period, a time during which it had been almost completely silenced. The first stage had no place for congressional deliberation and case by case study since it was marked by the urgency to show definite results. The country had to produce enough debt payments through privatizations to convince international markets and multilateral institutions that Argentina was ready to re-enter the international economic community and obtain loans and credits, a world it had been severed from when it was isolated due to its several defaults during the radical administration. During this stage the president controlled a pyramid of appointees only accountable to him and had both the formal cabinet and a parallel cabinet, the *interventores*, completely empowered to do whatever was necessary in order to produce the selling of the SOEs. Apart from this structure of power, congressional oversight had been reduced to a bicameral representation of six deputies and six senators with *decisiones no vinculantes* (non-binding decisions), that is, whatever resolution this commission arrived to and sent to the executive via a specified report, the latter was not obliged to follow it since the decisions of the commission were not mandatory.

If the first stage determined a boost on the credibility over the government's determination to follow reforms, the second had to be more careful about the ways of the privatization procedures, and how to promote an environment of fairness and regulatory frames for those services sold. If during the first stage fixed dates were the most important concern for the executive, in the second the trustworthiness on the clearness and cleanness of the process had to become a priority. Congressional support would provide social calm and heighten public approval both to local as well as to international observers. So, one of the main variables that differentiates the first and second period, the delegative and the cooperative phase of the Argentine privatization program, is the executive's need of credibility and procedural transparency to restrain corruption scandals. These irregularities were born out of a constrained oversight capacity of other institutions over the executive, and the lineal (vertical) accountability of all the privatization structure to the presidential figure. This high degree of decisional power concentration permitted resolutions not always based on rational calculus or economic efficiency.

In the second period Congress claimed for a degree of independence it had lost during the delegation phase, and wanted to participate in the design of the state done by the executive. Although empirical results show that the legislative ended approving the entire executive-sent initiatives during the second period, reforms made on the drafts show that Congress wanted a major involvement in the writing of the bills. The president realized he had to engage the ruling party more in the decision making and plans of the executive. Otherwise, what had been certain reluctance from peronist party members to grant privatizations in socially sensitive areas, could become open strong opposition and veto power in the assembly.

The institutional relations between the executive and the legislative during Ménem's presidential period, could be defined and divided in three main steps: the emergency period, with a submissive Congress that had handed in all its legislative capacity and supervision powers to the executive; the time after the economic emergency period (cooperative phase), with a legislative institution trying to participate more actively in the drafting of privatization laws (and the reform of the state) while the executive was in need of institutional legitimacy for those processes; and the third and last stage, the time after the re-election period (post 1995), when the relations between the executive and the legislative became rather conflictive.

By inference, congressional support projects to the relations between the president and the ruling party and, to a lesser extent, its capacity to bring in other sectors and produce coalitions. The second and the third stage are not so easy to define as the first, which is unilateral with only a symbolic legislative representation exerted through a 12 member bicameral commission. Although in the second phase there is a temporal landmark to identify it (the cessation of the emergency laws), the development of congressional power is slow and observed only through time and case analysis. The second stage is best exemplified by the privatization bills (2) sent for the privatization of Yacimientos Petrolíferos Fiscales, YPF, while the third, or better said a transition to the third phase, is best seen with the privatization of the social security

and retirement system. Once the third phase consolidated, the legislative became a difficult and overall slow territory of approval for executive bills.

Political conditions in Argentina between 1989 and 1995 changed drastically. In July 1995, Carlos Ménem started his second presidential period to which he was entitled after a reform of the constitutional text done in 1994. Institutionally, the executive power also gained a new officer through this reform with the presence of the cabinet chief, a figure in charge of dealing with the relation between executive and Congress. This officer would be named by the former but politically responsible to the latter. Because of this disposition, Congress was entitled to dismiss the cabinet chief with a censure vote equivalent to the absolute majority of the two chambers of Congress.

Aside from the Presidency, national elections had also been favorable for the peronists in the legislative. Having historically controlled the Senate (where they had had an absolute majority since the return to democracy in 1983), by the time the president took power in 1995 he could count on the absolute majority of the ruling party in both chambers. This became both an advantage and a challenge since many of the stark opposition shown to further privatization bill drafts started coming from inside the party lines.

To a certain extent, the peronist party and the president himself were capitalizing on the economic benefit the population perceived after the control of inflation and the strength of the new currency following the *Plan de Convertibilidad* in 1991. Inside the ruling-party however, once Ménem won his second term, many leaders began to direct their future plans towards their own aspiration for power. This caused a fracture in the sealed discipline observed until then, and the presence of voting divergences that brought some of the executive's bills in Congress to a stalemate. To solve an institutional gridlock situation regarding some of the drafts sent by the executive that the legislative could not approve, some executive members resorted to judicial courts and one case, the airports' privatization, even ended up in the Supreme Court. The institutional set-up still favored a strong executive, but differences with Congress could delay and thus weaken all constitutional powers of the president by means of legislative viscosity (Blondel, 1993).

Regarding the economic situation, the government still had some privatizations in mind, along with an austerity program to shield itself from the mid 90's recession known as the "tequila effect" (the devaluation of the Mexican currency). The structural IMF agreed reforms, after being applied with such strength and speed from 1990-1995, were now being questioned for producing more costs than benefits. Truly enough, the Argentine social situation, though with some macroeconomic variables in black figures, still had explosive proportions when unemployment reached 18.6% of the economically active population by 1995. Although the fiscal accounts had improved in 1992 and 1993 as a result of direct payments done with the incoming money from several privatizations, fiscal problems reappeared again in 1994 and the overall economic picture was of a fragile stability.

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