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The Politics of Senatorial Confirmations: A Comparative Study of Argentina and Brazil

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The Politics of Senatorial Confirmations: A Comparative Study of Argentina and Brazil

Abstract

Though an important function of the Latin American senates, the confirmation of presidential nominations has drawn little academic attention. This paper assesses empirically the way in which two Latin American upper chambers – the Argentine and Brazilian senates – made use of their confirmation prerogatives between 1989 and 2003, namely, if one of deference to the executive proposals or a more active role including both consultation and oversight. To do this, the article first analyses all nominations regarding outcome (confirmed, rejected and withdrawn) and length of process. Then, the similarities and differences are used to advance some explanatory hypotheses. Special attention is paid to the impact of political factors, mainly divided government, and institutional features, mainly the senates' internal rules for the organization of the legislative work.

Key Words: Latin American congresses, Senate, Argentina, Brazil, president-congress relations, congressional oversight, senatorial confirmations, presidential nominations.

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Resumen

El Senado y los nombramientos del Poder Ejecutivo:
un estudio comparativo de Argentina y Brasil

A pesar de tratarse de una importante función de los senados latinoamericanos, la aprobación de nombramientos presidenciales ha despertado poca atención en el ámbito académico. Este artículo intenta comenzar a llenar este vacío de conocimiento efectuando una evaluación empírica de la forma en que dos cámaras altas latinoamericanas –los senados de Argentina y Brasil– utilizaron sus prerrogativas de confirmar nombramientos entre 1989 y 2003, esto es, si un rol de deferencia frente a las propuestas del poder ejecutivo u otro más activo en el que tuvieron lugar tanto negociaciones como controles. Para esto, el artículo analiza, en primer lugar, todos los nombramientos que tuvieron lugar en los dos países con respecto al resultado obtenido (si fueron confirmados, rechazados o retirados) y la longitud del trámite legislativo (la cantidad de días desde la llegada del proyecto al senado hasta su aprobación final). A continuación, el artículo propone algunas hipótesis para explicar las semejanzas y diferencias que se hallaron en el desempeno de los dos senados. Se analiza, entonces, el impacto de factores políticos, como el gobierno dividido, y características institucionales, como las reglas internas de organización del trabajo legislativo.

Zusammenfassung

Die Rolle der Senate bei der Bestätigung von Präsidentennominierungen:
Eine vergleichende Studie zu Argentinien und Brasilien

Obgleich eine wichtige Funktion lateinamerikanischer Senate, hat die Bestätigung der Präsidentennominierung wenig akademische Aufmerksamkeit erhalten. Als ein Beitrag, diese Lücke zu füllen, präsentiert dieses Paper eine empirische Untersuchung darüber, wie zwei lateinamerikanische Senate – die Argentiniens und Brasiliens – zwischen 1989 und 2003 von ihrer Bestätigungsprärogative Gebrauch gemacht haben, namentlich ob sie die Vorschläge der Exekutive lediglich „abgenickt" haben oder ob sie eine aktivere Rolle mit Konsultationen und Kontrollfunktionen eingenommen haben. Hierfür analysiert der Artikel alle Nominierungen und ihren Verlauf, und vergleicht dann Unterschiede und Gemeinsamkeiten zwischen beiden Staaten um Erklärungshypothesen zu formulieren. Besondere Aufmerksamkeit richtet sich dabei auf politische Faktoren (Verhältnis Regierung - Opposition) und institutionelle Aspekte wie das interne Reglement der Senate.

Article Outline

1. Introduction

2. Framework of Analysis

3. Senatorial Confirmations: Rules and Practice in Argentina and Brazil

4. Explaining Confirmation Practice in Argentina and Brazil

5. Conclusion

1. Introduction

The senatorial confirmation of executive nominations is an important function of the Latin American Senates. In effect, the Latin American presidential systems, which as we know were inspired by the U.S. constitution, also mirrored this aspect of their model. With some differences concerning the extent and the type of positions involved, the nine current bicameral systems invariably grant the function of confirming nominations to the upper chambers (Llanos and Nolte 2003). However, no empirical studies have been undertaken to examine how the Latin American Senates have performed in this important aspect of congressional oversight, particularly during the current wave of democratization. This paper intends to shed light on this unexplored area of research by analyzing the way in which two of these chambers, the Senates of Argentina and Brazil, made use of their confirmation prerogatives between 1989 and 2003.

The lack of empirical studies has tacitly consented to the hypothesis of senatorial deference and executive domination in Latin America. In a small reference to Central and South America as countries that had used the American constitution as model, Harris (1968: 7) wrote

that "executive domination of the legislature has usually turned the requirement (of senatorial confirmation) into a formality". From then onwards, this view has not been challenged, but rather confirmed by the works dealing with congressional oversight in the more general sense, or in normative ones, that only state, with no empirical evidence, that the Senate does not comply satisfactorily with its function (Bastos and Martins 2002).

Regarding congressional oversight in general, many works underline the Congress's incapacity (and lack of incentive) to control the executive. O'Donnell's recent works have emphasized the weakness of the mechanisms of horizontal accountability (1998, 2003). As O'Donnell (2003: 35) explains, horizontal accountability takes place when a state agency acts to prevent, cancel, correct or punish the actions (or inactions) of another state agency which are considered illegal for their corrupt or encroaching character. The author stresses that the mechanisms providing for this accountability are far from being strong in Latin American democracies. Other several recent studies have marked the difficulties of Congress to exercise control on the executive power and the bureaucracy (Cheibub Figueiredo 2001; Eaton 2001; Mustapic 2001; Loureiro 2001; Siavelis 2000). Besides, scholars that point to the predominance of cooperation between the Legislative and the Executive branches do not state that Congress plays an active role (e.g. Figueiredo and Limongi 1999). Their argument is based on the premise that there is more predictability than previously stated in the legislative studies – i.e., more control from leaderships over individual members, and that would counterbalance the fragmented nature of the party system in the Brazilian Congress.

Nevertheless, in the past decade, a debate took place in Argentina and Brazil concerning the role of Congress vis-à-vis the executive power, particularly in the production of laws. Within this framework, some authors showed that the executive domination hypothesis had been overstated (Castro Santos 1997; Eaton 2001; Etchemendy and Palermo 1998; Jones 2001; Llanos 2002; Mustapic 2000; Morgenstern and Nacif 2001). Others began to observe that Congress also played a much more active oversight role than initially thought (Mogernstern and Manzetti 2003; Palanza 2005) as well as to analyze the reasons behind a limited (but existing) congressional oversight in Argentina and Brazil (Llanos and Mustapic 2005). In view of this, we should not dismiss the possibility that the two Senates under study, with their strong veto powers, had also played a relevant role as far as nominations are concerned.

Thus, the goal of this article is to explore what has been the role of the Argentine and Brazilian Senates in the process of confirming presidential nominations, namely, if one of deference to the executive proposals or a more active role in which both consultation and oversight have been taking place. As explained in the next section, we draw on the abundant American literature on presidential nominations for both methodological concerns and possible explanations. However, we then take our own way since no comparative study of

nominations has been undertaken until now. In our view, a comparison of Argentina and Brazil regarding the senatorial treatment of presidential nominations is worth exploring. First, it adds substantial empirical evidence on the topic and, in more general terms, on the functioning of the Latin American upper chambers, which have been very much neglected in the legislative studies. Second, the similarities and differences encountered in the performance of the two Senates help to advance some explanatory hypothesis. Since our two cases coincide in organizing the legislative work on the basis of partisan alignments, but differ in the Senate's internal rules framing the legislative processes, the explanatory value of two groups of variables (very much highlighted in the American literature) can be assessed: political factors, mainly divided government, and institutional features, mainly the Senate's internal rules.

We have divided this paper into five parts. The one that follows this introduction presents a revision of the related literature and explains the framework of analysis. The third section shows how senatorial confirmations are regulated in the constitutions and the laws of the two countries, and presents the quantitative evidence exhibited by our two dependent variables: the outcome (proportion of nominations confirmed, withdrawn and rejected) and process (duration of the process from the day of presidential nomination until the day of senatorial confirmation). The fourth section concentrates on our explanatory variables to understand the similarities and differences of the Argentine and Brazilian Senates in confirming nominations. The fifth section concludes.

2. Framework of Analysis

For the founders of the U.S. constitution, the requirement of senatorial approval for presidential appointments was intended as a safeguard against the danger of abuse of power and as a guarantee of stability. As Hamilton stated in The Federalist Papers No. 76,

> "… a man who had himself the sole disposition of offices would be governed much more by his private inclinations and interests than when he was bound to submit the propriety of his choice to the discussion and determination of a different and independent body, and that body an entire branch of the legislature".

If the senate's power to advice and consent to executive nominations was thought to be "an excellent check upon a spirit of favoritism in the president", it would also act as "an efficacious source of stability in the administration". In other words, the nomination process is consistent with the system of checks and balances established by the American constitution, according to which every branch of government has the power to veto the others' decisions in case of absence of agreement. Within this framework, change is only possible under the

formation of ample coalitions where minority actors have an important negotiation power (Negretto 2002: 42).[1]

The practice of senatorial confirmation has been a matter of debate among American scholars. Since the vast majority of presidential nominations are rarely rejected or withdrawn from consideration in the Senate, for many years prevailed the view that the Senate did not comply with Hamilton's idea, but rather showed deference to the presidential wishes (Chase 1972; Harris 1968; Moe 1987). More recently, however, the conventional wisdom has been challenged both theoretically and empirically. In effect, new theoretical work has concluded that both the Senate and the president have a fundamental role in the politics of appointments. This suggests that the presidents' rational anticipation of the Senate's preferences, or also, the strategic competition taking place between the branches, best accounts for the rare rejection of the appointees (Hammond and Hill 1993; Moraski and Shipan 1999; Nokken and Sala 2000).

In addition, recent empirical work has shown that, while it appears that presidents get their way most of the time, they do not always get it when they want it. By examining the duration of the confirmation process – that is, the number of calendar days extending from the president's nomination to the Senate's confirmation of the nominee – these studies have proved that there exists considerable variation in the length of the processes to confirm them (Hartley and Holmes 2002; McCarty and Razaghian 1999; Stratmann and Garner 2004; Shipan and Shannon 2003). The underlying idea of these works is that increases in the length of the selection process reflect the additional time that presidents spend negotiating, bargaining or simply consulting with senators over the final choice of nominees.

The American scholarly literature identifies three groups of reasons why the Senate delays the treatment of nominees.[2] The first one stresses the characteristics of nominees, namely,

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1 This statement on minority powers is specially truth for the American Senate, where every individual member has a veto power through the institute of the "hold" – request for a temporary delay in considering a nomination or a bill. Other instrument that empowers Senators is the "filibuster", a practice in the floor used to delay debate or block legislation. It is done individually, but it is necessary two-thirds of the votes (60 out of 100) to put an end to it, through a cloture motion. For more on Senate action in the US, cf. Smith, 1989 and Binder, 2003. The Brazilian Senate does not have such powerful instruments for blocking the majority will. But as it does not have a one-party majority, given its fragmented nature, ample coalitions ought to be built, and there are indeed some procedural instruments for the minority. For these instruments, see Lemos (2006).

2 Most of the recent empirical studies on confirmation processes work with statistical models where the weight of a number of explanatory variables (belonging to the three groups mentioned below) is assessed. Conclusions diverge considerably on which of the three types of explanations are more suitable to understand confirmation processes not only because these studies differ in their object of study (some are concerned with supreme court nominations, others with lower courts or executive branch nominations, etc.), but also because the models usually include different vari-

how unknown they are for the Senate, their qualifications for the position, their age, gender, ethnic or racial origin and, finally, their ideology or policy preferences (Martinek et al. 2002; Nixon 2004; Shipan and Shannon 2003). This line of research explores, for instance, whether increasing candidate quality makes confirmation more likely and decreases the duration of the confirmation process; or similarly, whether the confirmation of women and ethnic minority nominees face more obstacles and delays than other confirmations.

However, most of the studies focus on the other two groups of explanations: political factors and institutional features (Binder and Maltzman 2002; Hartley and Holmes 2002; Martinek et al. 2002; McCarty and Razaghian 1999; Shipan and Shannon 2003; Stratmann and Garner 2004). From this point of view, it is examined, first, whether the strength of the political opposition in the upper chamber and the partisan composition of the senate committees are likely to affect confirmation processes: delays will occur in case of divided government and, particularly, when parties are polarized (McCarty and Razaghian 1999; Shipan and Shannon 2003) or, in other words, the Senate will proceed more slowly as it diverges ideologically from the president (Binder and Maltzman 2002). By the same token, threatened by an ideological foe's potential to block the nomination, a president would have an incentive either to negotiate with that senator or to defer action on filling the vacancy – both strategies that would result in lengthy delays before a nominee was announced or confirmed (Binder and Maltzman 2004).

Second, several studies stress that the opposition's opportunities to act against a nominee depend to a greater extent on the institutions framing the confirmation process. For instance, the use of committees to examine the qualifications for nominations provides opportunities to engage in institutional heel dragging. Similarly, legislators who have agenda control are in the position either to delay or speed up confirmations, or to press for the rejection of a nominee. By enhancing or constraining the opportunities of the opposition, the role played by some institutions such as committees' chairmen, seniority, and senate majorities (whether simple, absolute or unanimous) in the appointment process influences both process and outcome (Binder and Maltzman 2002; Hartley and Holmes 2002).[3] Finally, some presidentially

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ables or define the variables in different terms. So far, the three groups of variables that are next presented are constantly revisited.

[3] According to Binder and Maltzman (2002), the degree of delay on judicial nominations varies directly with the senators' ideological incentives (as the Senate diverges ideologically from the president, it will proceed more slowly) and the institutional opportunities. Regarding the latter, two are the critical institutional actors for confirmation processes in the American Senate: the panel chair, who has significant control over the committee's agenda (so that differences between him and the president will increase delays) and the Senate majority leader, who holds the right of first recognition on the Senate floor and has effective veto over executive session (thus, if the opposition party is in the majority delays will occur).

centered institutional characteristics – such as the year of the presidential term and the term in which the president is serving – should also have an impact on the confirmation processes (Martinek et al. 2002).

These studies are of particular relevance to understand the role played by the two Latin American Senates analyzed in this paper. On the one hand, they invite us to pay attention not only to the final outcome but also to the confirmation process. Since the vast majority of nominations are confirmed (and we shall see that our cases are no exception), by studying the confirmation processes we avoid embracing the senatorial deference hypothesis too soon. This also allows us to grasp better the differences between the two countries. For this reason, we have collected data on all nominations taking place in the two countries between 1989 and 2003 regarding outcome (confirmed, rejected and withdrawn) and length of process (number of days extending from the arrival of the executive proposal in the Senate to its final approval).[4] These two variables are then the dependent variables of our study and the descriptive statistics concerning them are presented in following Section 3.

On the other hand, the studies revised in this section provided us alternative explanations to understand the Senates' performance. As in the American case, we have reasons to expect a politicized process of confirmation in the two countries, rather than a process of Senate rubber-stamping. Certainly, in the case of coalition governments such as Brazil's, there is no reason to believe that the practice of accommodating the interests of coalition partners excludes the area of nominations. In Argentina, divided governments (the Senate has been controlled by the Peronist opposition during Radical governments) and the heterogeneity of the Peronist Party (normally holding the Senate's majority, this party resembles a confederation of provincial bosses) also suggest that presidents cannot avoid consultation with the legislative branch and that senators have incentives to involve themselves in confirmation processes. Therefore, political factors seem to be crucial to understand the Argentine and Brazilian cases. Additionally, as shown above, the rules and procedures used by the Senate

[4] Due to restrictions in the availability of data, our information on the length of process is restricted to the confirmed proposals. It nonetheless covers more than 90 percent of the cases and, in our view, is where time differences are particularly worth exploring. Additionally, we would like to point out that our initial intention was to cover the whole democratic periods in both countries, but then we left Alfonsín's government (Argentina, 1983-1989) aside because of the difficulties we were facing with the data collection. Excepting military promotions, data on Argentine nominations are available online (www.senado.gov.ar) for 1993 and onwards. For the military promotions as well as for the rest of the period considered here (1989-1993) we rely on information from Congressional Reports, the Senate's Committee of Agreements and the Parliamentary Secretariat. In the case of Brazil, we built our data base with information from the Senate Informatics Service (Prodasen) also available online (www.senado.br).

to confirm appointees give or restrain the opportunity that the opposition has to intervene.[5] Section 4 will show that Argentina and Brazil differentiate considerably in this respect. So, if we find variations in the confirmation processes and outcomes of the two countries we shall be able to sustain that institutional factors are crucial explanatory variables as well. Our political and institutional explanatory variables are defined in Section 4, Section 3 concentrates on the different scope of the nomination politics in the two countries.

3. Senatorial Confirmations: Rules and Practice in Argentina and Brazil

The American constitution gives the president the prerogative of *nominating* officials and to the Senate that of *confirming* the presidential nominations which means, in practice, the right of approving these proposals. Precisely, the American constitution dictates (Article 2, Section 2) that the president

> "… shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments".

In fact, by law, other federal judges, all military promotions of officers, and many high-level civilian officials must be confirmed. As a result, in the last 20 years, the Senate processed an average of 35 thousand nominations a year, most of them for military positions (around 90 percent).[6]

The Argentine and Brazilian constitutions mirrored the American model and created a very similar Senate in terms of structure and functions, including the Senate's role of confirming presidential nominations. Despite this, there are important differences between the two Latin American constitutions and their model. The most relevant for our study is that, whilst the U.S. Constitution orders the Senate's participation in all nominations (except those forbidden by law), the other two constitutions proceed conversely: they require the Senate's

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5 The impact of the internal organization of Congress on legislative outcomes is well documented in the case of Brazil (Limongi and Figueiredo are the most well known researchers in this area). Again, it seems sensible to predict an impact of this variable on confirmations as well.

6 Although in the last 8 years (from 1995 to 2003), the number of nominations has declined sharply, and has stayed under the average (data from the Senate Daily Digest, Office of the Secretary). The Majority Staff Director of the Foreign Affairs Committee in the Senate has affirmed that the only contentious nominations are the political ones, and that the ambassadors from the foreign service rarely face opposition in their approval (Interview to Lemos, on 15th May, 2004).

agreement for a limited number of offices and leave the rest to the President.[7] In both Argentina and Brazil, the Senate has no prerogatives to participate, either confirming or dismissing, in appointments in the cabinet. Article 83 of the Argentine constitution of 1853 (Article 99 after the 1994 reform) determined that the president appointed and removed *por sí solo* the ministers (in the new version, also the Chief of Cabinet), officers of the presidential secretariat, consular agents, as well as other officers whose appointment was not otherwise regulated. The same maintains for cabinet appointments in the Brazilian case, as Article 84 of the Constitution stipulates.[8]

Despite the virtually exclusive appointing and dismissal powers presidents have within their cabinets, the Argentine and Brazilian senatorial confirmation prerogatives in other areas are remarkable. According to the Argentine constitution, the consent of the Senate is necessary for three types of nominations: firstly, for the appointment of all federal judges, inclusive those of the Supreme Court. The constitutional reform of 1994 modified this clause ordering the creation of the Magistrates Council (*Consejo de la Magistratura*), which presents three candidates to the president who has to select one and, in turn, to submit his selection to the Senate's approval. In particular, the appointment of the Supreme Court judges requires the vote of the two thirds of the senators in session. Secondly, the consent of the Senate is demanded for appointment, dismissal and promotion of personnel of the foreign affairs ministry (*embajadores, ministros plenipotenciarios* and *encargados de negocios*). Thirdly, senatorial confirmation is required for the appointment and promotion of the higher officials of the Armed Forces. Besides the constitution, different laws order the Senate's confirmation of an array of positions. These laws have varied throughout the years[9], but they currently

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7 For the Argentine case, consult Dagrossa 1990.

8 Some studies have demonstrated that the cabinet nominations in Brazil are used for building a coalition in Congress (Amorim Neto 2000). That means that this Presidential prerogative, although does not demand Senate formal confirmation, is subject to pressures and demands from the parties in Congress that belong to the coalition.

9 For instance, at times of Yrigoyen's first presidency (1916-1922) a wave of laws initiated in 1876 also demanded the consent of the Senate for the appointment of a large number of administrative officers such as, the capital's major, the governors of national territories, and the directors of the National Mortgage Bank and of the Nation Bank (Dagrossa 1996: 299). All dispositions of this kind were eliminated by law in 1974 (Dagrossa 1990: 43). For some specialists such as the cited Dagrossa, these laws and the similar ones recently passed in the 1990s are inconstitutional.

involve the directors of the Central Bank (since 1993)[10], and the main officials of the Public Ministry (since 1998).[11]

In Brazil, the Constitution states that it is a private prerogative of the Senate to approve presidential appointments for the upper courts (Federal Supreme Court, Military Superior Court, Labor Superior Court, and Justice Superior Court); one-third of the Ministers of the Superior Accounting Institution (TCU)[12]; president and board of directors of the Central Bank; General Attorney; ambassadors; and others established by law. The newly created regulatory agencies that arouse in mid 1990s (and are still coming up) have their directors, presidents and counselors nominations considered in the Senate. That also stands for the Brazilian Agency of Intelligence – ABIN, linked to the Presidential office.

In comparison to Argentina, Brazilian federal judges are not submitted to confirmation, as theirs is a career that starts with public exams. As a consequence, judicial nominations subject to Senate approval include only the superior courts judges and ministers. The same is true for the foreign service, where only Chief Diplomats of Permanent Missions – ambassadors – and high rank officials to some international forums, as United Nations, have to undergo the nomination process. Thus, promotion and dismissal in the Foreign Service and federal judges is not a prerogative of the Senate, but a matter of *interna corporis* decisions. Concerning the Armed Forces (military), it is a private prerogative of the President to nominate high rank officials, and no nomination is subjected to the Senate consent. As a result, there is a much greater variety of positions in the case of Brazil (a minimum of 36 against 22 in the Argentine case) and not much overlapping between the two cases.[13] It seems that Brazil has managed to diversify the senatorial control on the agencies related to economic issues – and social ones, more recently –, while the Argentine Senate has control over more traditional sectors (such as the military). The more salient feature in the Brazilian case seems to be how the military are not subjected to confirmation, and how bureaucracies that in other

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10 The Central Bank is governed by a Director Body formed by a president, a vice-president and eight directors appointed by the president with the agreement of the Senate. Half of the body is renewed every three years, but its members have six-year mandates and can be reelected indefinitely (consult the *carta orgánica* in: www.bcra.gov.ar).

11 The Public Ministry is composed by two organisms, the *Procuración General de la Nación* and *the Defensoría General de la Nación* and has functional and financial autonomy. It was created by the constitutional reform of 1994 (Article 120). The General Attorney and the General Defender are appointed by the Executive with the consent of Senate (which has to approve them with the vote of the two thirds of the present senators). For the appointment of the rest of the magistrates, the General Attorney or the General Defender propose three candidates to the executive power, which has to select one. The nomination of this candidate requires the Senate's confirmation by simple majority of the members in session (Law 24946, Articles 3 and 4, Subsections b, c, d, e and f).

12 Two thirds are appointed by the Senate itself.

13 Further details on the positions subjected to senatorial confirmation can be consulted in the Appendix I at the end of the article.

countries have to comply with legislative control, as the Foreign Service, in Brazil have a discretionary nature.

Let us now turn to our data and see how the two Senates have performed in practice during these fourteen years. Our descriptive statistics show that, although the Brazilian Senate confirms a larger variety of nominations, the Argentine Senate deals in practice with a higher number of nominees.[14] In Brazil, from 1989 to 2003, there were 882 nomination processes initiated. The absolute number is very modest if compared to the United States Senate nomination workload, which summed up more than seven hundred thousand nominations from 1984 to 2003[15], but it can be considered a progress if taken into consideration that Brazil has gone through a military dictatorship from 1964 to 1985. Argentina's numbers are also far away from those of the United States, but still much higher than Brazil's. For the period 1989-2003, the total of nominations reached 4,367.[16] To see the differences more clearly, the Argentine Senate dealt with an average of 312 nominations/promotions per year, whilst the Brazilian Senate only with 58.8. It is important to consider that much of this difference is due to the military promotions in Argentina, which represent 59 percent (2,578 cases) of the total. However, these promotions excluded, the Argentine average of 127.8 nominations per year still more than doubles that of Brazil.

Nevertheless, the outcomes and length of the senatorial confirmation processes show both similarities and differences between the two cases. Similarities are especially notable regarding confirmation outcomes. Certainly, in Brazil, 97 percent of the nominations were confirmed (856 cases) while in Argentina the corresponding rate is 94,2 percent (4,115 cases). Therefore, both countries exhibit senatorial confirmations in more than 90 percent of the cases – rates that are not unusual if compared to those of the United States –, although it is true that it seems to be a little more difficult for the Argentine presidents to obtain the passage of their nominations. Table 1 summarizes this information. As Table 1 also shows, in Brazil, from the 3 percent without approval, or the 25 cases left, 8 died for not being considered[17] plus one *arquivado* (in the table as "rejected"); 13 were withdrawn by the President, and 3 were still in Congress by the time we closed this paper.

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[14] Caveat: The statistics presented in this version of the paper are all provisional. Some differences can appear in the last version to be submitted at the conference.

[15] Legislative Statistics, US Senate, Library of Congress. Because of the workload with the Executive demands, the US Senate holds two calendars: the business calendar, for legislative business, and an Executive calendar, for treaties and nominations. The Senate, by motion or unanimous consent, resolves itself into executive session to consider treaties and nominations.

[16] Actually, our data for 1989 include only the nominations presented by President Carlos Menem to the Senate. Since he assumed power in July 1989, we are only covering half of this year.

[17] Deadline for a legislation to be considered is four years, the Congress length in Brazil (*prejudicados*).

Table 1: Results of nomination process in Argentina and Brazil

	Argentina 1989-2001	Brazil 1989-2003
Confirmed nomination	4,115 (94.2%)	856 (97%)
Rejected nomination	4 (0.1%)	10 (1.1%)
Withdrawn by the President	227 (5.2%)	13 (1.5%)
Under consideration	-	3* (0.4%)
No information	21 (0.5%)	-
Confirmation length (average in days)	51.7 (95.3 without military)	34.6
Total	4,367	882

*Registered as pending in the sources consulted (it may be that they are approved today).
Source: Database from IIK Hamburg.

If we turn now to the length of the confirmation processes, there are differences in our two cases of study. A first assessment shows that this process is slower in Argentina than in Brazil. Two figures are provided in Argentina's case to show that the length of the process almost doubles if we exclude military promotions from our calculations. Excluding the military makes sense if we consider that, for these promotions, the Executive sends a 'collective' bill to the Senate, that is, one which proposes a large number of names. Normally, these names are confirmed altogether, but we found that a few of them have been delayed and even rejected by the Senate, which suggests that military promotions are individually assessed. For this reason, we thought it was worth considering every military as an individual case. Nevertheless, Table 1 presents the average length of confirmation processes with and without military promotions to show that these processes are much slower in confirmation types other than military (see also Table 3 for further information). Regarding Brazil, we need to consider that senatorial committees meet once a week during 9 months (approximately 36 weeks/year)[18]. Thus, 34.6 average days mean it doesn't take more than 5 weeks, average, for the presidential message to lie in the calendar, the public hearing be held, and the voting take place in both committee and floor.

However, Table 2 shows that about 56 percent of the Brazilian bills (496 nomination processes) took more than 35 days to come to an end. Data in Table 3 shows that about 9 percent took more than 140 days (over four times de average), or five months, to be approved. It is very impressive that 75 out of these 78 nominees were ambassadors and ministers for the Labor Superior Court, with only one Military Superior Court Minister, a Superior Justice Court Minister and a General Defender taking the longer time span to be approved. Surprisingly, these two categories are also responsible for the record nomination time: 1 day – one labor judge in 2000, one ambassador in 1989. Than means that processes are not all the same,

[18] Considering ordinary sessions. Extraordinary sessions can be called by the President or by the Senate itself.

they are complex, and that these lengthy confirmations might signal towards a negotiation about the nominee. In the case of Argentina, two thirds of the confirmation processes fall below the average. So, it is quite unusual that the Executive need more than two months to get its nominations confirmed.[19] As in Brazil, most of confirmation processes are quite speedy in Argentina, but the fact that a third of confirmations have required more time than the average number of days indicates that the Argentine Senate also takes its time to examine/negotiate the nominee before confirming. It is worth noting that there are important differences according to the type of nomination, as Table 3 shows.

Table 2: Confirmation process length in Argentina and Brazil

	Argentina Average: 51.7 days	Brazil Average: 34.6 days
Below	77.4% (3175)	44% (383)
From average to twice	13.2% (542)	29% (258)
From twice to three times	3,2% (131)	13% (112)
From three to four times	1.1% (44)	5% (45)
Four to five times	0.4% (17)	2% (17)
Over five times	4.7% (194)	7% (41)
Total	100% (4103)*	100% (856)

* Due to the lack of information on the confirmation length of twelve names, this table's calculations are done over a total of 4103 confirmed cases

In Argentina's case, Table 3 shows that military are rapidly confirmed. The same has happened with the four cases of appointments to the Supreme Court, while delays have been considerable for the rest of the categories. In Brazil, we can see that regulatory agencies and central bank – key actors for the market – have the least extensive process, taking about two weeks to be approved. Ambassadors are especially problematic, as they represent the absolute majority of nominations – 60 percent –, and have a 75.6 average day.[20] It means that, in Brazil, the Foreign Service career is the one subjected to the highest control, and in spite of being a public service career, it can be highly politicized. Judicial nominations are irregular, with fast Supreme Court and General Attorney confirmations, while Judges and Ministers of Superior Courts takes longer time. The shorter periods that concern the Supreme Court's nominees suggest that, in highly 'political' decisions (with very few positions to 'distribute'), the accommodation hypothesis may be explicative, that is, the Executive will restrict himself to send a candidate proposal that could raise support. That would hold truth for both countries. In any case, what matters here is that, if we exclude the military, the rest of the catego-

[19] If we take the Brazilian average as a reference, 59 percent of the Argentine cases were confirmed in less than 34.6 days.

[20] See a more detailed average processing time by position in Appendix II at the end of the article.

ries show that confirming executive nominations demands more time in Argentina than in Brazil.

Table 3: Selected confirmed nominees and confirmation length, Brazil, 1989-2003, and Argentina, 1989-2003

Officials	Process length (days)	
	Brazil	Argentina
Military	-	25.6*
Ministers and Judges of Superior Courts	36.7	59
Ambassadors/Diplomats	75.6	134.8
Central Bank Presidents and Directors	16.9	110.6
Supreme Court	19	33.6
Public Ministry	15	61.7

* Due to the lack of information on the confirmation length of 12 military names, this average has been calculated on the total of 2,556 cases of confirmed military nominations.

In short, the results obtained in our two dependent variables suggest three important conclusions for our comparative analysis:

1. the two Senates exhibit a similar performance in terms of confirmation outcome, which is characterized by high confirmation rates;
2. there are different patterns of confirmation length in the two cases, being the Argentine Senate slower than Brazil's;
3. there is a similar *internal* pattern of confirmation length in the two cases characterized by a great variation in the duration of the processes, with some nominees demanding days and others years to confirm.

The next section offers our explanations for these results.

4. Explaining Confirmation Practice in Argentina and Brazil

We sustain in this section that political factors are crucial explanations for the two points in which our cases coincide (first and third conclusions in the previous section), in other words, they help us to understand why the two senates confirm most of the appointees, but also why this confirmatory attitude is not invariable throughout the entire period. Three are the political explanatory factors considered here (see Subsection "The Political Factors"): divided government (whether the president holds a majority or not in the upper house), presidential year (that is, the year of the presidential term in which the nominations are proposed to the Senate) and presidential term (whether the nominating president is serving in the first or the second presidential term). Regarding divided government, our period of

study only offers one short example in Argentina: Radical President De la Rúa (1999-2001) did not count on a majority in the Senate. Similarly, in Brazil, Collor was the clearest case of a president lacking a support in Congress. Concerning the latter two variables, we shall see that they are more suitable to explain what happens with longer governments. Although they have been regarded as institutional variables in some studies, in our view they are good indicators of the political difficulties a president face within his coalition/party of support. For instance, second terms are particularly difficult for presidents because alternative leaderships begin to emerge and to prepare for the presidential succession. These difficulties usually translate into the congressional arena and delays and obstacles in the legislative (and confirmation) processes can well be expected during these periods.

To understand the different patterns of confirmation length in Argentina and Brazil we found that institutional factors are the best explanations. Subsection "The Senates' Internal Rules for Confirming Nominations" shows the importance of considering whether the procedures are open (public) or closed (secret), and whether nominations are approved by simple or special majorities. In the case of open procedures, nominations are exposed to interferences from different actors and, so, to delays in the confirmation process; in the case of special majorities, they require a previous political agreement. Both situations confirm the presence of inter-branch negotiations.

The Political Factors

It is known that party variables are important to explain presidential success in terms of legislative outcomes. The question is now if there are also crucial for explaining senatorial confirmations of appointments. This section compares both cases on a quantitative basis.

Table 5 brings the distribution of nominations by President in Argentina and Brazil. In Argentina, Menem has the greatest part because of his ten years of government. His case also shows that nomination processes were much longer during the second presidential term. During De la Rúa's years, it is striking how low is the average length of nomination processes, considering that his was a divided government. De la Rúa's presidency also includes 29 nominations passed in less than a week and even four nominations (judges) passed in zero days (presented and approved in session, *sobre tablas*). These data contrast with the high number of his nominations (around ninety) that were withdrawn, which indicates that, during these years of divided government, there were both inter-party agreements before nominations reach Congress (i.e. cases supporting the hypothesis of presidential accommodation) and cases of conflict between the two branches of government.[21]

[21] See Appendix 4 at the end of the article for details on confirmation outcomes per presidency.

In Brazil, the main difference is due to institutional changes – new agencies that demand the Senate confirmation for their directors and presidents. Therefore, in the first Cardoso administration one can recognize the increase in confirmed positions – and consequently, an increased control over the bureaucracy. Collor de Mello, the impeached president, gets the longest confirmation time, but Cardoso also finds it hard to approve some of his nominees.

Table 4: Processing time by president, Argentina and Brazil

President	N	Minimum	Maximum	Mean
Argentina				
Menem I (1989-95)	2,104	0	554	49.1
Menem II (1995-99)	910	1	1,370	77.2
De la Rúa (1999-2001)	493	0	567	29.6
Duhalde (2002-2003)	370	1	1,050	59
Kirchner (2003)	31	6	113	9.7
Brazil				
Sarney (1985-89)	45	1	216	56.5
Collor de Mello (1990-1992)	144	3	4,114	83.3
Itamar Franco (1992-1994)	109	2	325	71.1
Cardoso I (1995-1998)	237	2	826	60.1
Cardoso II (1998-2002)	274	1	559	67.2
Lula (2003*)	73	5	469	63.7

* Lula data for 2003 only, not for his entire term in office.

Finally, a comparison of the two longest (and completed) presidential administrations – Carlos Menem and Fernando Henrique Cardoso – is worth doing in order to show, for instance, if within the presidential period there are moments in which it is more difficult for presidents to get support. Table 5 compares the length of the confirmation processes per year of government (second presidencies are counted consecutively and marked in grey). In Menem's case, data show, on the one hand, an increasing difficulty towards the end of the first administration: confirmed cases demanded more time to be passed and the number of withdrawn cases also increased. On the other hand, Menem faced more trouble during his second presidency: confirmation processes were then generally longer, excepting the last year

of his administration when the number of withdrawals augmented but the procedural time of confirmations decreased. Three days before leaving office, Menem presented 74 diplomatic nominees that were immediately withdrawn by De la Rúa. In Brazil, Lula withdraw three ambassadors nominated by his antecessor, Cardoso, who had done the same thing, withdrawing 2 ambassadors and one labor court minister (employers`representative) from Franco. Franco had also withdrawn a nomination that Collor de Mello had sent to Senate[22]. This pattern demonstrates the political nature of at least some of the nomination processes.

Table 5: Length of confirmation processes in days, Menem and Cardoso`s administrations

Year of government	Menem (1989-1999)		FHC (1995-2002)
	Confirmed cases	Withdrawn cases	
1° (Menem)	38.3 (293 cases)	0 cases	
	49.4 (289 cases)	0 cases	
	40.5 (256 cases)	0 cases	
1° (FHC)	50 (248 cases)	3 cases	53.8 (87 cases)
	65.7 (552 cases)	19 cases	80.9 (53 cases)
	54.4 (174 cases)	13 cases	41.5 (37 cases)
	32 (292 cases)	15 cases	64.2 (60 cases)
1° (Menem + FHC)	94.6 (248 cases)	2 cases	81.7 (56 cases)
	49.3 (191 cases)	0 cases	54.4(55 cases)
	107 (282 cases)	3 cases	40.2 (79 cases)
	38.2 (189 cases)	75 cases	102.6 (84 cases)

Cardoso`s administration does not present, in general terms, the same pattern as Menem. If there is a lack of support, it is only in his last presidential year, when nominations might have got more political and, therefore, more conflictive. This happened during the 20th Century in the United States Senate: when an administration is about to change, the opposition, seeing there is a possibility for them to make those nominations after the elections, try to stop the president, especially for Supreme Court and Federal Judges positions. This might have been the case. The other interesting feature of the table is that it shows that there is no honeymoon effect for reelected presidents, at least considering nominations. Both presidents had a hard time in having nominees confirmed in their first years of second terms. It also

[22] See Appendix III at the end of the article, non-approved nominees in Brazil, by President.

stresses that difficulties not only occur in times of divided government: unified governments must also negotiate confirmations with the other branch.

The Senates' Internal Rules for Confirming Nominations

Why would confirmations take longer in Argentina than in Brazil? At a first sight it could be argued that the load of work with which the Argentine Senate deals is the answer to this question: having to approve a much higher number of nominations demands more time and delays the whole process. However, as we shall see below, the Argentine Senate counts on a special committee, the Committee of Agreements, created with the only purpose of dealing with presidential nominations. This structural advantage does not exist in the Brazilian Senate where no committee is particularly specialized on nominations. Then, this section will show that the answer seems to lie on other different internal institutions framing the confirmation processes in the two cases. The underlying idea is here that the higher the number of people involved in the screening of nominees – or the heightened level of scrutiny placed on nominees –, the longer the duration of the confirmation process (Hartley and Holmes 2002: 264). In this sense, the Argentine Senate's institutions allow a more participative process than the Brazilian Senate. Besides, institutional changes taking place in the Argentine Senate in 1992 provide additional evidence: we are able to compare not only the performance of our two countries, but also Argentina's Senate performance in two different periods (before and after 1992).[23]

There are important differences between the two countries regarding the process of confirming executive nominations. As stated above, the first one is related to the locus of this process, that is, to the committees in charge of dealing with nominations. In Argentina, the internal processing of nominations takes place in the *Comisión de Acuerdos* of the Senate. This committee was created in a secret session in 1906 and became a permanent committee of the chamber in 1914 (Pitt Villegas 2004). Until that time, the executive's nomination proposals were distributed among the committees according to the topic: the committee of Legislation treated the appointment of judges, the Committee of War and Navy considered the military promotions, the appointment of personnel of financial entities was a matter of the Committee of Finance while the diplomats were one of the Committee of Constitutional Affairs. Nowadays, the importance of the Agreements Committee is widely recognized. In a survey undertaken in 2002, the 52 interviewed Argentine Senators were asked to mention which were, in their opinion, the three most important committees of their chamber: the Agree-

[23] This part of the paper (a comparison of Argentina's 2 periods) is not ready yet because we are dealing with provisional data.

ments Committee was mentioned seventeen times, only after the Committees of Constitutional Affairs, and Finance and Budget, which received forty mentions each.[24]

The Brazilian system works similarly to the old Argentine one, and the American contemporary system. The President sends a message to the Senate, the message is read and published, and afterwards sent to the committee with the respective jurisdiction, according to the statutory rules of the Senate: the Constitution, Justice and Citizenship Committee receives the nomination of Courts Ministers and Judges; the Economic Issues Committee receives the Central Bank nominations and some of the regulatory agencies nominees; the Foreign Affairs and Defense Committee analyzes diplomatic nominations, the Education Committee the Director of the National Agency for the Cinema, so on and so forth.

The second major procedural difference between the countries concerns the publicity of the confirmation processes. In Argentina, this process took place in secret sessions in both the committee and the floor for over hundred years. The secrecy decision was taken by the Senate in 1877 and lasted until 1992, when it was revoked by a new version of the Senate's regulations.[25] In its present writing, the Senate's regulations dictate not only that the executive's proposals for nominations (or promotions) are introduced and approved in public sessions, but also that the whole confirmation process must take place in public audiences. According to Article 22, any citizen has seven days to examine – and, if appropriate, to object to – the merits and qualities of the proposed candidates, although objections are also allowed during the treatment of the proposals in committee. The publicity of the confirmation process is even more stringent for the judicial system nominations. In 1994, the publicity of these confirmations acquired constitutional status (Article 99, inc. 4) and a recent amendment of the Senate's regulations ordered the publication of the candidates' names in the Official Bulletin, the national and local press and Internet as well as regulated the terms and conditions for the presentation of objections from individual citizens and organizations.[26]

Indeed, these features of the confirmation process enhance the opportunities not only for lobby activism (an organized group of diplomats pressing for their promotions, for example) but also for NGO's supervision activities. The latter, in particular, play today a crucial

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[24] See the ranking of Senate committees in the table at the end of the paper. The survey was undertaken by the researchers of the project 'Bicameralism and the Senates in the Southern Cone', GIGA Institute for Ibero-American Studies (IIK), Hamburg.

[25] According to the first Senate regulations, appointments were considered and approved in public sessions between 1854 and 1877. However, Senator (and ex-president) Sarmiento recommended to follow the example suggested by a digest of the American Senate, which he himself had translated into Spanish, stipulating that these decisions had to be taken in secret sessions. The amendment was passed by the chamber in 1877 (Dagrossa 1990: 105-116).

[26] The amendment of the Senate's regulations incorporated several new articles (22bis, 22ter, and 123bis, ter, etc.) and was passed by the plenary on the 2nd July 2003.

role in controlling the human rights records of military personnel proposed for promotion. In 2001, for instance, human right organizations objected to some military by presenting evidence of their participation in the dirty war. As a consequence, their promotion was not approved. A former president of the Agreements Committee has affirmed that it is a current practice of the committee to send the military's CVs to the most important human rights NGOs for examination before confirmation.[27] Our data show that two military promotions were rejected by the Senate, and at least another two were 'postponed', that is, never received approval.[28] On the other hand, our data also show that the above commented regulations for public confirmation processes not always have been respected. Despite the minimal requirement of seven procedural days[29], between 1992 and 2003 127 nominations were confirmed in less than seven days and there are even six cases which received confirmation the same day of their presentation (0 days procedural time). These cases can be found in all governments (see Table 4) and demonstrate that cross-party political agreements have taken place not only in the case of De la Rúa (divided government) but also in the others. The senatorial regulations are again important to clarify this point: floor procedures in Argentina dictate that – excepting Supreme Court members and the higher officials of the public ministry whose confirmation always requires a special majority –, nominations are approved by simple majority, *unless* they jump directly to the floor without previous committee resolution. Indeed, these cases only correspond to the 3.1 percent of the total but they help us to support the accommodation hypothesis: given an institutional framework that favors interferences and delays, speedy confirmations only take place in case of previous political agreement.

Institutional features are rather different in Brazil. Indeed, the Constitution orders that the nomination meetings in the committees be public, but it also dictates that the votes will be closed. In the case of ambassadors, both the committee meetings AND the votes are closed to the public. Some constitutionalists argue in favor of the secrecy in the vote as a way of guaranteeing the Senator's free will without bringing conflict (Bastos and Martins 2002). On the other hand, the Senate Statutory Rules states that the presidential message must bring the justification for the choice, and attach the nominee *curriculum vitae*, that will be made public. The candidate must attend a public hearing for answering senators on related issues

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[27] Senator Busti, interview with Llanos, October 2002.

[28] They could be more. We are checking at the moment if those for which there is no on-line information have also been postponed.

[29] Article 22's amendment concerning the publicity of nomination processes was passed on August 12th/13th, 1992. The amendment was unanimously approved as a result of a previous political agreement between Radicalism (in opposition) and the Peronist government in which that party had expressed its concern for recent judicial appointments.

to his/her future responsibilities, and the committee can investigate the candidate and request extra information from the executive branch. The floor procedure is standard for every nomination: public session, closed electronic votes, and there is no way the public can participate formally in the process, as the objection works in the Argentine.

Usually, when one candidate brings a questionable personal or professional issue, it is made public by the press or interest groups, or even a single citizen, that brings the issue to an individual senator. That was the case for Arminio Fraga, former Central Bank President during the Cardoso Presidency, who had worked before for private financial institutions and international investors – namely, George Soros. Some senators contended he might have some conflict of interest. Other notorious case was of the Supreme Court Judge Joaquim Barbosa Gomes, who in the past had an aggression suit from his former wife. Although the courts have decided for his innocence, and he affirmed that it was an event from his private life that at this point was of no relevance for him, his former wife and his son, women's organizations pushed against his nomination, posing he was not suitable for the Supreme Court. A third very famous case was of a nominee for the Military Superior Court, Joe de Alencastro, who was accused by human rights organizations of knowing about torture in his command during 1997 and 1998. They were all confirmed, in spite of the bad press they have got.[30]

In summary, it could be argued that, the differential features of the confirmation processes in the two countries could well be expected to explain the different performance of the two Senates in terms of institutional checks. In Argentina, the process is characterized by its centralization in a committee, the minimal processing times stipulated by the Senate's rules (seven days for presentation of objections) and public audiences and public sessions. These features, we shall argue, enhance the opportunities of individual senators (and particulars) for obstruction and delay. Meanwhile, the features of the confirmation process in Brazil (decentralized in the committees, with minimal processing times, public audiences and sessions – with the exception for ambassadors in the committee-, and closed vote) are structuring a more expeditious process. Therefore, we argue, Argentine presidents face more failures and delays than their Brazilian counterparts or, in other words, the institutional checks work more efficiently in the Argentine case. However, expeditious processes do take place in Argentina as well. Many of these confirmation processes resemble Brazil's – in terms of their closeness or lack of transparency – but it is difficult to sustain that they are indicators of deference to the executive. Rather, since their treatment in committee is being bypassed, they seem to confirm that political agreements have previously taken place.

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[30] *Federal Senate Daily Digest*, May 22th, 2003 (Joaquim Barbosa Gome testimony); March 4th, 1999 (Arminio Fraga testimony); December 9th, 2003 (Alen Castro testimony).

5. Conclusion

This paper is an exploratory analysis on confirmation processes in both Brazil and Argentina, a grey area in the Latin American legislatives studies. As such, it is intended to raise questions that might direct the research in the near future rather than building a broad explanatory scheme. However, some important and even unknown features of these processes and their results were brought up. In the first place, the fact that Brazil has a wider range of positions to be confirmed, although timid in numbers, whilst Argentina has less variety in the positions but a lot more nominations. In this sense, Argentina is keeping a watchful eye in the administration that, in Brazil, is very restricted. This holds truth especially for the military, controlled by the US and the Argentine congresses, but out of hand in the Brazilian case.

Another important finding is that, as expected, there are high confirmation rates in both countries, over 90 percent. Approving Executive nominees seems to be the practice in Congresses – in the United States, Argentina or Brazil. But these approvals do not necessarily mean the Senate does not exert the control it is supposed to: the very fact that there is a margin of highly contentious nomination processes shows the Senate consent is negotiated, and that the high confirmation rates may direct us to the accommodation hypothesis, in which the Executive branch anticipates the possibility of veto and nominates a candidate that might be accepted by the Senate's majority. This anticipation has proved to be important not only during divided governments, when contention is the rule, and in coalition governments, in which majorities are not a natural consequence of electoral results, but also in majority governments such as the Peronists in Argentina.

As the literature points out, approval rates may not be the best indicator of Executive success, and can be misleading as the sole variable. The complementary indicator used – process length – shows some differences between Brazil and Argentina, with a far more expedite process in Brazil: 34.6 days/average, meaning less than 5 weeks, with some processes taking only 2, for the Central Bank and Supreme Court positions, and others taking years. In Argentina, the average varies whether we consider or not the military promotions among our calculation but, in the two cases, it is above the average in Brazil. We have argued that these time differences can be interpreted as a consequence of different institutional confirmation frameworks. The Argentine process is centralized in a committee, there are more veto points (with civil society participation), and the votes are open – an optimization of the legitimacy, working against efficacy. Adding the workload, concentration is a way of keeping the agenda unresolved. On the other hand, the Brazilian process, decentralized, with few veto

points, no civil society formal participation and closed votes takes the other way round – with efficacy working against legitimacy.[31]

Nevertheless, in Brazil there are still cases in which public debate is brought to the table whilst in Argentina expeditious processes do take place as well. Concerning the latter cases, we sustained in Subsection "The Senates' Internal Rules for Confirming Nominations" that there was reason to believe that negotiations were also having place between the two branches of government, those that permitted skipping the committee's discussion. This corroborates the hypothesis of Executive accommodation, and the ones sustaining political factors such as divided government are important for the final outcome. In other words, the Executive does not act alone and must consult its appointments with its political basis/opponents. Our two case-studies show, though, that these political agreements do not necessarily translate into transparency in the confirmation processes and can take place, sometimes against the rules, sometimes hindering society's participation.

The question is here what is good or at least better. A very important consideration in Congress is time – for legislation, representation, control. Legislative procedures are supposed to be slow, as to bring about the best debate and ideas, and cool down passions. Confirmation procedures, although similar in structure, are supposed to be expediting, as there are decisions to be taken or policies to be implemented in the courts, agencies, institutions. A vacant position might bring a lot of burden for the government – or even for the opposition, that can be stereotyped as 'stopping the country'. Thus, the old debate about the necessary balance between legitimacy and governability is present in the nomination process controversy.

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[31] An interesting consequence of the decentralization in Brazil is that some committees specialize in nominations, and have most of their activities linked to the executive business. In 2000, the Foreign Affairs and National Defense Committee held 19 meetings, 18 of which were nomination hearings. Also, the Infra-Structure Committee, in the same year, held 7 nomination hearings, in contrast with 6 legislative meetings (Lemos 2006). In Argentina, the Acuerdos Committee, responsible for the nominations, is considered to be the third most important committee in the Senate hierarchy (Importance of Committees, IIK Survey, 2002). In the institutionalization of the Senate, that might be a new and relevant feature.

Appendix 1: Officials subjected to Senatorial Confirmation in Argentina and Brazil

Position	Argentina	Brazil
Diplomats	Embajadores Extraordinarios y Plenipotenciarios	Chief Diplomat of Permanent Missions (ambassadors)
	Ministros Plenipotenciarios de Primera Clase	Permanent Representative at United Nations
	Ministros plenipotenciacios de Segunda Clase	Delegation Chief at United Nations (Education)
	Political appointees (Article 5 Law 20957)	Senior Representative to International Organizations
Judges	Supreme Court	Supreme Court
	Jueces de Cámara	Justice Superior Courts Ministers
	Jueces de Primera Instancia	Military Superior Courts Ministers
	-	Labor Superior Courts Ministers
	-	Labor Regional Court of territories and the Federal District*
Military	Army	-
	Navy	-
	Air Force	-
Central Bank	President, Vice-president	President
	Directors	Directors
Public Ministry	General Attorney	General Attorney
	Procuradores Fiscales	General Defender
	Fiscales Generales	
	Fiscales ante los jueces de primera instancia	-
	Fiscales Auxiliares de las fiscalías de primera instancia y de la Procuración General	-
	General Defender	-
	Defensores Oficiales ante la Corte Suprema	-
	Defensores Públicos de Menores e Incapaces	-
	Defensores Públicos de Menores e Incapaces Adjuntos and others	-
Regulatory agencies		National Agency of Telecommunications – ANATEL
(Presidents, directors and Counselors)**		National Agency of Electrical Energy – ANEEL
		National Agency of Telecommunications – ANATEL
		National Agency of Water – ANA
		National Agency of Suplementar Health – ANSA
		National Agency of Cinema – ANCINE
		National Agency of Suplementar Health – ANS

		National Agency of Ground Transportation – ANTT
		National Agency of Water Transportation – ANTAC
		National Agency of Sanitary Control – ANVISA
		National Agency of Oil – ANP
Governors and Deputy Governors***		Federal District
		Territories
High Rank Executive Officials		General Attorney at the Administrative Counsel for the Economy – CADE Ministry of Justice
		President and Directors of the National Department for Transportation Infra-Structure – DNIT – Ministry of Transportation
		President and Directors of Development Agency for the Northeast Region – ADENE – Ministry of National Integration
		President and Directors of the Development Agency for the Amazon Region – ADA – Ministry of National Integration
		Brazilian Agency of Inteligence – ABIN – Institutional Security Office at the Presidency
		President and Counselors of the Securities and Exchange Commission of Brazil – CVM – Ministry of Finance
		Counselor of the Administrative Counsel for the Economy – CADE – Ministry of Justice
Auditing Institutions		One third of Ministers of the Superior Auditing Institution (TCU)
		Counselor of the Auditing Institution for the Federal District

* Currently not in use, since there is no territory in Brazil at the moment, and the Federal District elects its Governor since 1990.

** President here is also used to refer to General-Director.

*** Idem note 10.

**** Idem note 10.

Apendix 2: Detailed approved nominations in the Brazilian Senate, 1989 to 2003, by office

Cargo	No de Aprovacoes	No de dias em tramitacao (media)
Conselheiro Anatel	9	30.8
Conselheiro do CADE (Ministerio da Justica)	23	29
Conselheiro do TCDF	2	70
Delegado permanente do Brasil na ONU	1	72
Defensor Publico Geral – Defensoria Publica da Uniao	4	18.75
Diretor da Agencia de Desenvolvimento do Nordeste	4	11.75
Diretor Agencia de Desenvolvimento da Amazonia	5	30.5
Diretor da Agencia Nacional de Aguas	5	39.6
Diretor da ACINE	3	10.3
Diretor da ANEEL	6	16.3
Diretor da Agencia Nacional de Saude Suplementar	6	35.6
Director de la Agencia Nacional de Transportes Aquaviarios	2	12
Diretor da Agencia Nacional de Transportes Terrestres	7	26.7
Diretor da ANVISA	8	41
Diretor da ANP	8	28.5
Diretor da CVM	1	128
Presidente da ANATEL	1	13
Diretor do Banco Central	41	16
Diretor Do DNIT	9	16.3
Diretor-Geral da ABIN	2	104
Diretor-Geral da ADA	2	34.5
Diretor-Geral da ADENE	2	30.5
Diretor-Geral da ANP	3	18.6
Diretor-Geral da ANT Aquaviarios	1	12
Diretor-Geral da ANT Terrestres	1	11
Diretor-Geral da DNIT	3	18
Diretor- Presidente da ANA	1	41
Diretor-President da ACINE	1	51
Embaixadores	504	75.6
Chefes de delegacao ONU-Educacao	2	22
Governor of States	2	24
Governor of Federal District	1	133
Juiz TRT	5	42.2
Ministro TST – Empleados	17	40.1
Ministro TST – Trabajadores	14	43.1
Ministro do STJ	38	28.9
Ministro do STM	28	42
Ministro do STF	12	19
Ministro do TCU	4	26.2
Ministro TST	6	21.8
Ministro TST – Togado	15	43
Presidente CVM	1	6
Presidente do Banco Central	10	17.8
Presidente do Cade	3	41

President ANATEL	1	15
General Attorney of the Republic	7	15.1
General Attorney (CADE)	4	42
Senior Delegate to International Organization	1	15
Suplente Ministro Classista do TST (employers` representative)	9	52.6
Suplente Superior Labour Court Minister (workers` representative)	8	36.4
Ministro TST (lawyer quota)	1	35
Vice-governor of the Federal District	1	133
Total	**855**	**34.6**

Appendix 3: Unapproved appointees, Brazil, 1989-2003

Government	Year	Nominee	Reason	Process length (days)
Sarney (1989)	-	-	-	-
Collor de Mello (1990-1992)	1992	Labor Court	Withdrawn	90
Itamar Franco (1992-1993)	1993	Ambassador	Withdrawn	43
	1993	Ambassador	Withdrawn	26
	1994	Ambassador	Died	282
Cardoso I (1994-1998)	1995	Ambassador	Withdrawn	221
	1995	Ambassador	Withdrawn	217
	1995	Labor Court(employers)	Withdrawn	19
	1996	Ambassador	Withdrawn	73
	1996	Superior Court(workers)	Withdrawn	188
Cardoso II (1998-2002)	1998	Labor Court (worker)	Died (end of session)	1,979
	1999	Justice Superior Court	Died (Justice decision)	594
	2000	Ambassador	Withdrawn	81
	2000	Labor Court (employer)	Died (end of session)	326
	2000	Labor Court (employer)	Died (end of session)	337
	2000	Labor Court (employer)	Died (end of session)	337
	2000	Labor Court (employer)	Died (end of session)	337
	2000	Labor Court (employer)	Died (end of session)	337
	2000	Labor Court (employer)	Died (end of session)	337
	2001	Ambassador	Died	4,114
Lula (2003)	2003	Ambassador	Withdrawn	187
	2003	Ambassador	Withdrawn	183
	2003	Ambassador	Withdrawn	315

Apendix 4: Final outcome per president, Argentina, 1989-2003

		Final Outcome				Total
		Approved	With-drawn	Rejected	No information	
President submitting nomination	Menem	2,104	50	0	13	2,167
	Menem II	910	80	2	3	995
	De la Rúa	493	93	1	1	588
	Duhalde	370	4	1	2	377
	Kirchner (until 02/04)	241	0	0	0	241
Total		4,118	227	4	19	4,368

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