



Exporting Congress?

THE INFLUENCE OF
THE U.S. CONGRESS ON
WORLD LEGISLATURES

Edited by Timothy J. Power and Nicol C. Rae

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Limits on Exporting the U.S. Congress Model to Latin America

Scott Morgenstern

IN THEIR introductory chapter to this volume, Power and Rae put forth the question about why Latin American legislatures have not developed or adapted institutional structures that parallel the professionalized U.S. Congress. In this chapter, I address this question by taking a rational choice approach, assuming that the political framework influences the incentives and constraints that politicians face. In particular, I argue that differences in the role and institutional structure of the U.S. and Latin American legislatures yield differing incentive structures acting on the legislators. As a result, although the U.S. Congress may continue to export ideas about legislative structure and organization, those ideas will not always align with the preferences of politicians in other countries. Moreover, therefore, will find only a limited market for their products. Moreover, if Latin Americans were to decide to fully import the U.S. founders' idea that a legislature is meant to write legislation and balance the executive, reform initiatives would have to consider attracting legislators interested in fulfilling that role as well as giving those legislators new powers and resources.

Latin America's democracies all have constitutions based on the U.S. model of presidentialism in that their presidents and legislatures are elected separately and on set schedules, the two branches have independent powers, and neither branch can dissolve the other. Beyond these basic traits, however, there are important differences between the U.S. and Latin American constitutions and other features of the democratic framework, such as the electoral and party systems.

As a result of these and other factors, the Latin American legislatures are not coequal branches with the executive; few significant bills that become law are initiated in the legislature, most legislatures cannot increase the budget, and most executives are empowered to alter the legislative agenda or even end-run the legislatures on policy proposals. Given their more limited roles, Latin American legislatures attract very different sorts of legislators than in the U.S. case. As I show in this chapter, many Latin American legislators have only limited interests in becoming policy experts, writing legislation, or even winning reelection. Efforts to style the Latin American legislatures after the U.S. Congress, therefore, could meet resistance from legislators who operate from different incentive systems.

The explanation for the differences in the U.S. Congress and the Latin American legislatures' institutional structures, as well as the expectation that the Latin American legislatures will resist reforms moving them toward a U.S.-style structure, is based on two premises. The first is that legislative institutions result from legislators' pursuit of their rational interests. Mayhew (1974) is perhaps best identified with this rationale, arguing that legislators set up their institution to serve their reelection interests. The resulting system, he argues, provides legislators ample opportunities to claim credit for policy outcomes, take positions on important legislation, and advertise their accomplishments to constituents. As summarized by Bovritz and Hammond (2001), the U.S. literature attributes the structural form of Congress to the legislators' pursuit of their needs for information (e.g., Krehbiel 1991), concerns with the distribution of power and resources (e.g., Weingast and Marshall 1988), and/or their attention to partisan electoral successes (e.g., Cox and McCubbins 1993).¹

The second premise is that the legislative rules, procedures, and practices—collectively the organizational system—that legislators choose in order to pursue their interests will vary according to the institutional context in which they make their choices. That is, even assuming legislators in all countries are interested in control of resources and electoral success for themselves or their party, different institutional contexts (i.e., rules, such as the constitution) will affect each group of legislators' preferences over the organizational schemes (i.e., strategies, such as the degree of autonomy given to committee chairs) employed to meet those goals. In sum, legislators in other countries may review the U.S. strategic plans, but owing to different democratic frameworks, each country's set of legislators will prefer different organizational schemes in the pursuit of their perhaps similar interests.

The two premises suggest that the choices that legislators make in organizing their legislatures are a function of the specific institutional contexts in which they operate. In this chapter, I focus on these issues for Latin America, explaining where their legislators' interests and institutions align with those of U.S. legislators and where they do not. Where they do align, we should expect Latin Americans to adapt strategies or organizational features of the more well developed U.S. legislature. But where those interests or institutions do not coincide, it should be no surprise that Latin Americans will devise unique systems.

In order to develop this argument, the body of this chapter is broken into three sections. The first contrasts the U.S. and Latin American legislators' interests by focusing on the low reelection rates across Latin America and those countries' lack of a long-term, continuous experience with democracy. I argue that these factors limit the Latin American legislators' incentives to professionalize their workplace and the necessary time to do so. Not only do U.S. and Latin American interests contrast, but so do the institutional frameworks that direct how legislators pursue their goals. This is the subject of the next two sections. The first focuses on how constitutional differences affect the legislators' role in elaborating the budget and other legislation, arguing that the constitutions and courts have severely limited the role of most Latin American legislatures in these areas. Members of the U.S. Congress also face some important impediments, but their possible scope of action is much wider. The result, then, is that the Latin American legislators should be less interested in spending time, money, and political resources to develop their own expertise or the staff and bureaucratic institutions to aid them in writing and reviewing complex legislation. The succeeding section then turns to how the party and electoral systems influence legislators' relation with voters and leaders, thereby influencing legislators' preferences with regard to the committee system and other legislative structures. The argument is similar; as a result of the unique U.S. party and electoral systems, the structure of the U.S. Congress—which is a reflection of these systems—should be unique.

Overall, the goal of this chapter is to provide an explanation for why only limited aspects of the U.S. congressional model have been adapted in Latin America. I discuss several areas in which at least some Latin American legislatures have imported U.S. ideas about legislative structure but concentrate on why, in spite of their high level of development, the U.S. structures are generally inappropriate or uninteresting to other countries. The argument could be

considered within the genre of American exceptionalism, since unique aspects of the U.S. political system give U.S. legislators unique interests. Latin American legislators—with different interests—will naturally desire different functions and forms for their legislatures.

Reelection Rates, Continuous Democracy, and Professionalization

For a legislature to adapt new forms or practices, legislators must see an accord between proposals and their interests. An important aspect of their interests lies in whether the legislators foresee long-term legislative careers (i.e., have static ambition) or whether they see their time in the legislature as a relatively short stopover on their way to other elected positions or posts in the bureaucracy, party hierarchy, business, or other areas (i.e., they are progressively ambitious). By and large, U.S. legislators fit the first description while Latin American legislators fit the latter. This pattern is evident from a view of reelection rates. In the United States, around 90 percent of legislators seek reelection, and 90 percent of the seekers are successful. In Latin America, by contrast, the percentage of legislators returning to their posts after an election ranges from 0 percent in Mexico (where reelection is prohibited) to around 60 percent in Chile, and the median rate is surely under 50 percent. This contrast between the U.S. legislators and their colleagues from Latin America should yield different desires among the legislators with respect to the development of the legislature as a professional organization.

Considering the United States across time allows a test of this proposition, since there was a marked change from progressive to static ambition. Polshy (1968) reports that in the pre-Civil War period, turnover rates were at least 50 percent, but began a steep decline by the 1870s. He argues that legislators began seeking longer careers in the legislature when the job became more attractive, partly owing to the larger federal budget that resulted from the government's preparation for and prosecution of World War I. Once the legislators saw serving in Congress as a career, they began formulating an organizational scheme to serve their long-term interests and improve their ability to accomplish their goals. The results were the seniority system, a more complex organizational scheme, greater staff resources, and a decentralization of power in the cham-

bers. These factors, moreover, had a rebound effect that further increased the attractiveness of a legislative job, thus leading even more legislators to pursue careers in the legislature (though they also should have incited extra competition).

The U.S. story stands in contrast to the modal Latin American case. When legislators do not expect to stay in the institution for more than a few years, they have little incentive to expend their time and resources building the institution. Further, given the very low support for the legislatures among Latin American voters and the region's difficult economic situation, pushing for extra resources will not generally endear legislators to voters. Upon election, Colombian president Alvaro Uribe summed up this sentiment: "How is it possible that the Congress continues spending 600,000 million pesos per year in a country that has to close hospitals due to a lack of resources?" (*El País*, June 23, 2002; my translation). Finally, Mayhew (1974) has argued that U.S. legislators have built their organization in ways to aid them in the areas critical to their reelection: credit claiming, position taking, and advertising. By extension, if legislators are uninterested in reelection, they will not see a value in building similar institutions.

These factors go a long way toward explaining the great lack of physical and staff resources (at least vis-à-vis members of the U.S. Congress) available to Latin American legislators. First, many Latin American legislative libraries are inadequate, though this is changing rapidly. Some legislators even lack phones, let alone computers. Unlike U.S. legislative offices that have a virtual army of people to answer letters and queries from constituents, work on different aspects of legislation, and advise on policy matters, most Latin American legislators have little more than a personal secretary and access to the party's staff of advisers. A survey of legislators undertaken by a team from the University of Salamanca highlights the importance of this issue.² In Chile, usually considered to have one of the most professional legislatures, forty-one of forty-eight legislators who answered the question cited a lack of staff or other resources as the principal obstacle to fulfilling their legislative duties (thirty-nine others answered that they did not know). Large percentages of legislators answered similarly in other Latin American cases.

If the legislators recognize this need, why don't they vote themselves larger staffs? In most cases, the answer is not that the president will veto any spending increases, as most legislatures are formally autonomous in determining their operating budgets. An important part of the answer is progressive ambition.

Professionalizing the legislature requires significant investments of time and political resources. When asked, one legislator responded to me that voting to increase the staff support in the Uruguayan legislature would be political suicide, since the legislature is already seen to be wasting the limited public funds. Building a coalition of support for such a project, then, would require a political entrepreneur willing to risk electoral defeats (and outsider status) for the return of a vague notion of professionalization. Progressively ambitious legislators would not perceive personal benefits from the fruits of such a project and would thus be unlikely to lend support.

While this argument is relevant to the simple idea of building staff support, the argument is magnified when considering larger support mechanisms that take many years to develop. In addition to U.S. legislators' private and committee support staff, U.S. legislators can demand investigative reports from the Congressional Research Service, the Congressional Budget Office, and the Library of Congress. These institutions developed over long periods of time and are quite costly. It should come as no surprise that legislators with short time horizons and dubious levels of support in the public would not move to drain their country's limited budget to support these types of institutions. Further, few legislatures have a long enough uninterrupted history for such institutions to develop as they have in the United States.

There have been major improvements in recent years, however, many of which are directly attributable to U.S. influences. One of the most notable "export initiatives" has come from the U.S. Agency for International Development's (USAID) program in legislative strengthening.³ The stated goals of the program are to "(1) help build political will to strengthen the legislature; (2) build the legislature's representation, lawmaking, and oversight capabilities; and (3) improve its infrastructure and management so that it can carry out its responsibilities" (USAID 2000a:27). The program has thus given loans and fostered "modernization committees" in several countries. The USAID report gives credit to the new Nicaraguan committee for "the development of a legislative information system, web page, and bill-tracking system" (USAID 2000a:28). It cites assistance to the Chilean legislature in setting up a system to improve correspondence and contact with constituents and touts the USAID program in Peru as an improvement over what exists in developed countries, in that the new program allows citizens to forward their comments on current legislation directly to legislators (USAID 2000a:39). The USAID report also discusses methods for improving committee work, including suggestions for revising rules and staffing.

Among the many other projects that the detailed report discusses is one to develop software to help legislators review budgets and another to establish non-partisan research centers (not unlike the U.S. Congressional Research Service).

Among the many USAID projects is a concern with record keeping and publication of legislative activity. The use and recording of roll call voting that John Carey describes in this volume are part of this initiative, though of course this has not been the only impetus for its adoption. Carey focuses on roll call voting due to its implications for transparency and representation, and it is only a small step to consider such reform as influential in transforming the legislature from a secretive club to a professional institution. Concurring with my perspective, Carey explains how incentives in the party and electoral system continue to lead some politicians to resist this move toward professionalization. But some politicians do have an interest in forcing open legislative records, and since increasingly available technology has helped to eliminate another lingering impediment to roll call voting—the dearth of resources—this practice is becoming more prevalent.

To an important degree, the USAID programs imply some bias toward a U.S.-style of legislative professionalization. Still, the USAID report and other publications do suggest that the programs should take into account and be sensitive to the particularities of the given case. This is crucial, but there is a potential for misinterpreting this proposal; the programs should be sensitive to the needs of the legislators, not just the legislatures. That is, even if there is a recognizable need for legislative professionalization, a USAID program that does not further the interests of the individual legislators will fail to win the enthusiastic support necessary for full implementation. In short, if the collective action problem here is not solved, the public good—a professionalized legislature—will not come about.

The Constitution and the Initiation and Modification of Legislation

The second factor that limits the interests of Latin American legislators in copying U.S.-style organizations is the institutional framework, as codified by the constitution within which the different legislators work. Frameworks influence the strategies by which actors pursue their goals, and thus the constitutions influ-

ence how legislators perceive their roles and pursue the static or progressive ambitions that were addressed in the previous section.

The constitutions of the United States and Latin American countries vary tremendously in terms of the legislative powers and the president's ability to influence the legislative process. In comparison with the U.S. president, most Latin American presidents have a much greater ability to determine the legislative agenda and force or limit particular legislative outcomes (Cox and Morgenstern 2001). This differing power balance of the two branches should greatly affect how legislators see their roles, and as such, it should greatly affect how legislators view their own needs and the needs of their institution. If the Latin American legislators do not see their role as parallel to that of their U.S. colleagues, then they should have little interest in copying U.S. practices or organizational frameworks. The thesis of this section, then, is that the Latin American constitutions inhibit legislative proactivity and without such power, these countries' legislators should have only limited interests in building structures that would aid them in writing bills and overseeing the executive. This idea is consistent with the history of the U.S. Congress, when, in response to the government's expansion around World War I, Congress adopted a new hierarchical committee structure to deal with the much greater workload (see Polsky 1968; Marx 1945).

In the period that the U.S. Congress was developing these structures, Latin American countries were struggling to develop democratic practices, and many of these experiments failed in the wake of the Great Depression. Further at that time the U.S. sent missions to Latin America with the express purpose of limiting legislative power in the name of increased government efficiency (Drake 1989). Though formal democracy now reigns throughout the region, Latin American legislatures continue to maintain the reputation as places to hold debates or ratify executive initiatives, rather than initiate bills, develop budgets, and oversee executive actions (Mezey 1979; Packenham 1970). This reputation even permeates the legislators themselves, as is evident in a battery of questions from the Salamanca survey which asked legislators about how they see their various roles (table 5.1). While most of the surveyed legislators see themselves playing at least a relatively important role in "elaborating laws" and "controlling government action," a large percentage see themselves as playing little role in "elaborating the budget." Chile exhibits the most remarkable difference; while 97 percent of legislators answered that they play either a large or

5.1 Legislators' Views of their Significant Roles

	Number of legislators*	Elaborating laws (%)	Elaborating the budget (%)	Controlling government action (%)
ARGENTINA	126	98	66	88
a lot		58	36	49
a fair amount		40	31	39
CHILE	88	97	55	89
a lot		33	25	31
a fair amount		63	30	58
COLOMBIA	88	98	84	95
a lot		59	45	53
a fair amount		39	39	43
MEXICO	121	96	83	91
a lot		72	52	60
a fair amount		24	31	31
PERU	82	93	70	91
a lot		50	32	49
a fair amount		43	38	42
URUGUAY	67	97	86	87
a lot		70	51	57
a fair amount		27	35	30

Note: Except for the first column, figures are percentage of legislators who answered either "much" (a lot) or "bastante" (a fair amount) to questions about whether these were important aspects of their legislative activity (questions P3602, P3606, and P3604 in the Salamanca survey). The question reads: "Pensando en el trabajo que desempeña como Diputado, ¿cuál es el grado de importancia: mucha, bastante, poca o ninguna, que otorga Ud. durante su actividad parlamentaria a los siguientes aspectos?" The possible answers are "much" (a lot), "bastante" (fair), or "ninguna" (none).

*For some questions, not all legislators answered. The figures in this column reflect the maximum number that answered any of these three questions.

pretty large role in elaborating laws, only slightly more than half answered as such with regard to the budget process.

The responses with regard to the budget process, and to a lesser degree the high number of legislators who assigned only a fair amount of importance to their role in elaborating laws, suggest that the Latin American legislatures have a much more limited policy role than the U.S. Congress. Four constitutional variables have a particular influence in explaining this difference. First, many Latin American presidents are endowed with constitutional decree powers that

allow them to implement legislation without legislative interference.⁴ Others have had extensive powers delegated to them from the legislatures, and others have appropriated "para-constitutional" powers as well (Carey and Shugart 1998). U.S. presidents have executive orders, and these have allowed presidents some important leeway in avoiding the legislature at times (Cooper and West 1988; West and Cooper 1989–1990; Ragsdale and Theis 1997; Mayer 1999, 2001; Morgenstern 2002). Generally, however, the scope of the Latin American presidents' decrees is wider. At least where this is the case (e.g., Argentina, Brazil, and Peru), the legislators have fewer incentives to develop structures that would aid in their independent lawmaking abilities, and perhaps limited interests in trying to review executive decisions or oversee executive operations.

Second, many Latin American presidents are empowered with a partial veto. Presidents with this power can effectively kill logrolling coalitions by dis-emboweling deals made among legislators. When the value of deal making is questionable, legislators should be less willing to organize a scheme that facilitates give-and-take negotiations.

In two countries, Brazil and Venezuela, the president's package veto powers are weaker than in the United States. In these two countries, the president's veto can be overridden by a 50 percent majority and is thus only suspensatory. By itself, this should embolden the legislators to move toward a policy-making mode, but the legislators in these two countries are hindered by decree powers and the party system.

Third, legislators in many Latin American countries face presidents who can determine their agenda through invoking constitutional "urgency" provisions.⁵ Not to be confused with decree provisions that are sometimes termed "decrees of necessity and urgency," urgency provisions allow presidents to force expedited review in the legislature of some bills. Urgency provisions endow presidents with different degrees of power. In some cases, the provisions are merely agenda-setting mechanisms, but an urgent bill becomes law if the legislature fails to act in Chile, Uruguay, and Ecuador.⁶ Even if the bill does not become law without legislative action, the president's continuous use of urgency provisions greatly impedes the legislature's ability to work on its own bills, since the almost limitless executive legislation must come first.

The most striking feature of table 5.1 was the large percentage of Latin American legislators who see only a limited role for themselves in elaborating the budget. This result is tied to the fourth factor affecting the Latin American legislatures' role and organization: the constitutional provisions that limit the

legislators' ability to initiate or modify legislation that affects budget outlays and some other important issue areas. With only two exceptions, Mexico and Argentina, the constitutions of Latin American countries prohibit the legislature from significantly altering the budget or proposing laws that increase government expenditures, though some constitutions allow the legislature to propose increases if they can also specify a source for the necessary funds. The Brazilian Constitution is typical. Article 166.3 states that amendments to the president's budget must be compatible with the multiyear plan and that new projects must be financed through specified reductions in other areas (which cannot include debt payments, intergovernmental transfers, or a few other areas).

These types of provisions, of course, prevent the legislature from initiating any project that involves expenditures and severely limit the ways in which the legislature can modify executive proposals (Baldez and Carey 1999). Siavelis (1997) cites an example in Chile where the legislature could not deal with maternity leave, since it would have repercussions for Social Security, an area of exclusive executive initiative. Another example comes from the Senate debate regarding a reform of Chile's banking system. The legislators debated the bill at length (the debate covers hundreds of pages over several days in each house), but the legislators were very conscious of the prohibition on changing the executive-initiated law in any way that incurred on the state new expenses. The only time expenses were mentioned in the more than sixty pages of Senate debate that I reviewed was when legislators questioned whether the committee's proposal had an unconstitutional effect on expenses. The head of the committee and the subsecretary of hacienda (often translated as "interior" but equivalent to the economics or budget ministry) quickly assured the floor that the measure in question affected the method of payment but not the amounts. The lengthy debate, then, focuses more on technical issues than important political questions.⁶ Perhaps the clearest example here regards the numerous laws that the Chilean Congress has initiated to erect various monuments. Even these homages fall under the constitutional restrictions, and thus the monument to Juan Bosco required a donation from the government of Italy, and the bill authorizing a statue in remembrance of Pablo Neruda called for financing from private donations.

The Chilean experience appears to differ sharply from that in Argentina, where the constitution does not prohibit the legislature from proposing bills that imply new government costs. According to the database compiled by a team in Salamanca, Spain, there were 521 bills proposed by either the House or

Senate between late 1994 and early 2001 (the second presidential mandate of Carlos Menem) that were either vetoed (56) or eventually became law.⁷ Unlike the database that details the bills discussed in the Chilean legislature, the records for the Argentine legislature show, the Congress proposing—and passing—important legislation, much of which did necessitate new government expenditures. Further, the debates in the legislature did deal with expenditures.⁸ In the debate over the 1999 budget, for example, the minority committee report called for a significant increase in spending for retirees, among other areas. While the majority rejected the minority report as fiscally irresponsible, numerous other amendments were proposed during the floor debate, some of which were accepted by the committee and subsequently approved by the floor.

Given the very different roles of the legislatures, it is not surprising that the organizational system that they set up to deal with the budget or other important pieces of legislation vary in comparison with the U.S. case and among one another. The U.S. Congress relies on the Congressional Budget Office to elaborate a fully comprehensive budget, which it could implement without regard for the president's proposal. It sets up its committees to review alternative spending possibilities and assure that members' districts' needs are accounted for. Finally, it has a hierarchical leadership system that works to assure that the budget stays within reasonable spending limits and that national needs are considered (Cox and McCubbins 1993).

The Latin American legislatures do have budget committees and policy committees that review executive initiatives. These committees, however, work under severe time pressure and do not generally attempt to formulate alternative comprehensive budgets. In Uruguay, for example, the legislature carefully reviews the budget and adopts numerous amendments. The committee, however, has only forty-five days to review the budget, and the committee members do not have personal or party-based policy, economic, or accounting advisers.⁹ As a result, the legislators have to rely on the executive branch for policy information or analysis of policy proposals. For these reasons, the vast majority of the amendments were technical in nature.

The Argentine congressional budget committee is organized and acts somewhat differently. In part due to hyperinflation, the Argentine Congress did not seriously review the budget until 1992. In 1992, Congress changed the total spending only minimally (8 million pesos of a 35.7 billion peso budget), but it did succeed in funding some new programs (at the expense of "undisclosed" cuts in the president's budget). In 1994, Congress only added two amendments, which

were subsequently vetoed. But legislators also succeeded that year in eliminating a key provision in the budget that would have allowed Menem sweeping powers to reshape the economy by privatizing state enterprises without congressional approval. This limited role did not necessitate an elaborate advisory or support system, and legislators had little more than personal assistants.¹⁰ The parties, however, did develop extralegislative think-tank-like institutions to support their legislative contingents, though according to Mark Jones (personal communication), the most successful of these ran with just three people and two computers. The legislature still has failed to develop a support system, and the executive therefore continues to dominate the process.

One final area that is severely affected by the degree of power held by legislators is the lobby system. When legislatures hold limited ability to mold legislation, lobbyists will spend few resources on legislators. They will, alternatively, turn to the executive branch, putting pressure on the bureaucrats who write the legislation. While this type of lobby system may be of value since it suggests that (supposed) technical experts will write legislation rather than election-minded legislators, the bureaucrats' lack of accountability to the voters, their questionable technical abilities, especially in the absence of rigid meritocratic systems, and their separation from the exigencies of legislative coalition building also suggest normative problems.

The Courts' Role in Enforcing Limits on Executive Authority

In addition to this greater scope of powers, Latin American presidents have had, at least historically, more success in resisting challenges to their authority than have U.S. presidents. This success, which has often allowed abuses of authority, is endogenous to the question of the legislature's role, and it is therefore necessary to explain this phenomenon. A full answer would have to include issues such as collective action problems, leadership issues, and resources, but here I focus on the role of the courts in adjudicating between the branches. The main premise is that Latin American courts have lacked the power of judicial review and have been less independent from the executive than in the U.S. case, thus facilitating executive victories over the legislature. This is not meant to imply, however, that the U.S. courts have fully constrained U.S. presidents. The courts have sometimes blocked U.S. presidents' actions, but a 1987 ruling (discussed below), with some surprising parallels to a later Argentine decision, made it very

difficult for the legislature to overturn executive decisions. As a result, while some Latin American constitutions afford their presidents a greater scope of powers in comparison with the U.S. case, the ability of the presidents to make their decisions stick is often similar. Latin Americans, further, have recently seen their judiciaries displaying new levels of activism and independence, which may heighten their legislatures' role in the policy process by limiting the executive's ability to impose policies autonomously.

The courts' debilities are clear in the case of Argentina, where the Freedom House (2002) sees "an abject absence of professionalism in the judiciary." Helmke (2002) finds that the Argentine courts have ruled against the presidents with some regularity, particularly when the president was in a weak position. But it is still clear that the presidents have been able to clean house or pack courts throughout the country's history. It was after such a packing that the court made its infamous 1990 *Peralta* ruling that validated Menem's continual use of decrees of necessity and urgency (DNUs), with only insignificant limits. In that case, which dealt with a decree related to transference of term deposits into public loans, the court ruled that the separation of powers was violable when necessary and that the DNUs were valid if the Congress did not pass laws to contradict them and there was a "serious social danger" that could only be dealt with through a decree (Ferreira Rubio and Goretti 1998). The first part of the decision thus justified the use of decrees; the second part debilitated Congress's efforts to overturn the executive's legislative actions; and the third part left the presidents to interpret where they might apply decrees.

The *Peralta* ruling, as noted, was parallel to, if not imported from, a 1987 U.S. Supreme Court decision (*Immigration and Naturalization Service v. Chadha* [462 U.S. 919]) that ruled legislative vetoes unconstitutional. Thereafter, if members of Congress disapproved of a bureaucratic rule or executive order, they, like their Argentine counterparts, had to pass a law—subject to an executive veto—in order to overturn the decision (Cooper 1983; Leigh 1984).

In spite of the Latin American courts' historical lack of independence and inability to impose their review of legislation, recent reforms have led to significant improvements. For example, Furnish (2000) argues that recent reforms in Mexico may help its courts develop an effective system of judicial review, and the courts' new independence since the end of PRI rule may greatly improve their independence. The Brazilian courts have also seen great change since the country's return to democracy in 1985. There the court has gained the power to review the constitutionality of laws and decrees and strike them down.¹¹

Under the 1988 reforms, the president, the executive committee of the Congress, a political party, a governor, the Brazilian Bar Association, or several other specified actors can request that the court review a law in the abstract, without a specific case in dispute.¹² Prior to 1988, the court could only use this technique if requested by the procurator general, who was a direct agent of the president (Rosem 2000:301). Still, since the legislation-like decrees are constitutional in Brazil, this new power has not prevented presidents from making frequent use of decrees. Finally, in striking down important pieces of the government's attempts to deal with the economic crisis (such as a cut in salaries and pensions of government employees, the proposed conversion of dollars to pesos, and the plan to freeze bank accounts), as well as the proposed rules for the presidential primary election, the Argentine justices have recently shown not only independence but antagonism toward the executive.

In sum, the courts' general powerlessness or unwillingness to limit executive actions has reinforced the imbalance between Latin American presidents and the legislatures. This imbalance, however, must be put into the context of the U.S. Supreme Court decision that also reinforced the president's ability to prevent Congress from overturning executive decisions. Further, Latin American courts have begun to develop independence from the executives and exert their authority. While this new activism may help limit executive abuses, Latin American courts cannot be expected to generate a U.S.-style balance between the executive and legislature, owing to the constitutions that grant much more authority to Latin American presidents.

The Influence of Electoral and Party Systems on Representation, Leadership Roles, and Committee Systems

The next institutions that affect the legislatures' roles are the party and electoral systems. These institutions impact the legislative process by providing incentives and constraints for legislators, as well as influencing the patterns by which legislators are likely to coalesce behind policy proposals. The unique U.S. system, again, can only serve as a limited model for other cases.

Mayhew (1974) and Fiorina (1989) built a model of the U.S. Congress that shows reelection-minded members of Congress building a committee system to serve their reelection needs. The model also explains how these legislators built a bureaucracy in response to constituent interests. In addition to Mayhew's

famous simplifying assumption of legislators as "pure reelection seekers" are implicit assumptions that legislators compete in single-member districts, that legislators are not beholden to leaders to win a place on electoral ballots, and that there are two dominant political parties. None of these assumptions generally holds when considering the Latin American cases. In this section, I focus on how the differences in the party and electoral systems alter legislators' strategies in pursuit of their reelection or career goals. These different strategies affect legislators' relations with voters and their party leaders, thereby also affecting their preferences over organizational schemes.

First, no Latin American country currently employs a U.S.-style single-member-district system, and the systems that they do employ vary greatly.¹³ All employ some variant of a list system, thus giving leaders some power in choosing or influencing candidate selection. This significantly alters the relation between the legislative rank and file and their leaders. Different hierarchical relations, in turn, should alter the necessary or desired organizational structures.

These different electoral systems also affect the relation between legislators and voters. Where leaders closely control candidate nominations or legislators' future careers, legislators should display more loyalty to leaders than to constituents. Campaigns therefore focus more on parties relative to candidate personalities, and once elected, these legislators may pay much less attention to local constituencies than in the U.S. case.

These different relations with the voters yield very different responses from the legislators with regard to their roles in representation and legislation. Mexico provides an example of how less-personalized campaigning, plus a lack of interest in reelection, affects legislators' "homestyle" (Fenno 1978). Through interviews, legislators demonstrated very different interests in maintaining contact with voters and working on local issues. Some saw "case work" as beneath them, while others enjoyed it and saw positive benefits from that role. The no-reelection rule meant that the legislators could ignore constituent service, but the parties, which are interested in reelection, could not. As a result, they took a greater role in setting up systems to provide these services. The PRI attributed great importance to serving their constituents, and they therefore set up a well-staffed office dedicated to such work. The PAN also had a constituency service office, but it was understaffed, with a single legislator in charge of all constituent petitions.

The Salamanca surveys are also suggestive of legislators' differing views about their representative roles. Table 5.2 details the responses to a question

5.2 Who Legislators See Themselves as Representing

	Number of legislators	All citizens (%)	All partisans (%)	The district (%)	The party (%)
Argentina	127	65	7	26	2
Chile	87	46	2	51	1
Colombia	83	65	4	30	1
Mexico	122	88	*	9	2
Peru	82	72	4	24	0
Uruguay	68	51	19	16	13

Note: The Uruguayan version of question P28 in the Salamanca survey reads: "De las siguientes opciones que le voy a mostrar a continuación, señáleme, por favor, la quien cree Ud. que representa durante su actividad parlamentaria? — A todos los uruguayos; A todos los votantes de su partido; A todos los electores de su departamento; Al partido político al que pertenece."

*This was not a possible response in Mexico.

about who the legislators see themselves as representing. There is an important degree of variance across cases, with a much greater percentage of Mexican, Peruvian, Argentine, and Colombian legislators giving a "politically correct" response about representing all citizens in their country than in Chile or Uruguay, and a much larger percentage of Uruguayans answering that they see themselves as representatives of the party or partisans than anywhere else. The two nonfederal cases were at the opposite extremes in terms of the percentage who answered that they represented their province or district, with just 16 percent answering as such in Uruguay and 51 percent in Chile. In the federal countries, only about 25 percent of the legislators in Argentina, Colombia, and Peru and 9 percent in Mexico answered that they saw themselves as representatives of their districts. These views should yield very different patterns of voting in the legislatures and different demands by the legislators with regard to their access to resources for their constituents. It should also affect the legislators' campaigning strategies, both in terms of their "permanent" campaigns and the actual campaign season. Constituency service and interests in securing pork to feed the districts, for example, will look quite different across the cases, as will the use of campaign funds.

Another question from the survey asked about the importance of obtaining resources for the legislators' home states (table 5.3). In Argentina and Uruguay a fair percentage of legislators (26 and 23 percent, respectively) saw this as having little or no importance, but 85 percent of Mexican legislators, 93 percent of the Colombian representatives, and every Chilean legislator answered that this was quite an important role (having either *mucha* or *bastante importancia*).

5.3 Importance to Legislators of Securing Resources for Home State or District

	Number of legislators	Important (%)	Fairly important (%)
Argentina	127	48	26
Chile	89	90	10
Colombia	88	70	23
Mexico	124	57	28
Uruguay	67	46	31

Note: Question P28 in the Salamanca survey reads: "Qué grado de importancia, mucha, bastante, poca o ninguna, concede Ud. durante el desarrollo de su labor parlamentaria, a conseguir recursos para su Estado?" Here "important" refers to legislators who answered "*mucha*," and "fairly important" indicates responses of "*bastante*." This question was not asked in Peru.

Aside from the incentive system working on legislators, the collective action aspects of multipartism versus the U.S. bipartism limit the applicability of the U.S. model in other countries. In the United States, a partisan majority votes to install a legislative leader who, within limits of the delegation, controls the agenda, determines committee assignments, and generally runs the chamber's business. Further, that majority leader can be the focus of negotiations with the other legislative house or the president, as that person can, to an important degree, speak for the legislative majority. Where there is no majority, the chamber and committee leadership will have more circumscribed powers, and the majority versus opposition dynamic will look quite different.

Nacif's (2002) account of the change in the structure of the leadership committee of the Mexican legislature, the Gran Comisión (GC), is instructive of this change.¹⁴ Prior to 1997, Mexico's PRI held a solid majority in the Congress and used the GC—which was a mere extension of the party's leadership—to dominate legislative activity. But when the PRI lost majority control in 1997, the GC changed faces. Using their new control of the GC, the members of other parties demanded changes to the legislature's whole structure. Most important, the PRI no longer maintained majority control over the GC or any other committee, and committee chairs were rotated among the three main parties. Nacif further reports that prior to the change, the PRI leadership circumvented the committee process when politically expedient, while post-1997 committee-level coalitions have been a necessary part of the legislative process.

Chile's committee system shows that even with a majority actor in the legislature, there are viable and perhaps preferable alternatives to the U.S. model. In addition to holding the presidency since the inauguration of democracy in 1990, Chile's center-left Concertación has maintained majority control of the

legislature. The coalition, however, has faced a problem in using the committee system to serve legislators' reelection interests that is complicated by the multiparty nature of the coalition. Their solution has been to rotate the committees' chairs among coalition members, so that each legislator could claim credit and advertise to his or her constituents. Perhaps this shows the limits of Mayhew's oft-cited phrase about the difficulty in imagining a better organizational scheme than the U.S. Congress if the institution were nothing but a reelection machine.¹⁵

A final aspect of the party system that affects legislative organization and functioning is the independence of the legislative party from the executive. Even when U.S. presidents have enjoyed a partisan majority in the legislature, they frequently have had trouble winning support for their initiatives. Latin American presidents, by contrast, often direct their legislative contingents and thus face limited pressure by legislatures when their parties do control a majority of legislative seats. There would not likely be much movement toward the development of oversight mechanisms in Hugo Chavez's Venezuela, Carlos Menem's (or Juan Perón's) Argentina, or Alberto Fujimori's Peru. As an example, even though a new constitution in 1994, which gave Menem the right to run for reelection, gave the Argentine Congress the right and obligation to set up a committee to oversee executive decrees, the necessary enabling legislation for the oversight committee was not passed.

Of course, the opposite system also exists in Latin America, where multipartism leaves presidents with very limited support in the legislature. These cases might be propitious for an interest in developing oversight of the executive, but collective action problems could inhibit the formation of the requisite structure or the necessary cooperation among the otherwise competitive parties.

The Limits of U.S. Exports

It is undeniable that Latin American legislatures have modeled important aspects of their systems after the U.S. case. They have moved toward a system of permanent rather than standing committees. They have begun to use roll call voting on a more consistent basis and have improved their bill-tracking systems. Veteran consultants from U.S. campaigns have directed Latin American elections, thus yielding U.S.-style media battles and phone banks. Further, USAID has sent advisers to many Latin American legislatures, directly (but often flexibly) exporting U.S. expertise and models. Latin American legislators, however,

will only buy the parts of the U.S. organizational models that fit their needs, and those needs vary significantly since each country operates under quite different institutional frameworks.

The institutional frameworks, however, are not fixed and could bend to reflect new exigencies. In earlier years, U.S. missions exported a role for legislatures that was rejected in the producing country, pushing Latin Americans to concentrate power in the executive in order to improve efficiency in the policymaking process (see Drake 1989). Today there are still great concerns with efficiency, but there is also thought about the democratic process. In the past, Latin American legislatures were considered places to debate, express discontent, recruit for the executive, ratify and legitimate government decisions, or decide upon distribution of resources (see, e.g., Baakini 1992; Mezey 1979; Kornberg and Musolf 1970; Kornberg 1973). Abuses of power by decree-wielding presidents and statements like those of Colombian president Uribe suggest a continued prominence of this view. However, recent and successful efforts in numerous countries to reform constitutions and shore up the Latin American legislatures in other ways also suggest that at least some policy-makers in both North and South America have come to accept a new assumption about the proper role of the legislatures. This shift in assumptions is perhaps related to arguments about how the concentration of power in the executive cheapens the democracy and inhibits democratic consolidation (O'Donnell 1994; Shugart and Carey 1992; Ordeshook and Shvetsova 1997).

If the purpose of the institutions changes, so, too, must the organizational scheme. In order to make such a move, Latin Americans must deal with the institutional frameworks that inhibit or prevent a significant policy role for the legislatures, overcome resource limitations (which are not unrelated to the low esteem in which the public holds the legislature), maintain their democracies long enough for the new institutions to take hold, and attract politicians into the legislature who are motivated to fulfill the new roles. These pieces of the reform project are all necessary and interrelated. It would be insufficient to reform the constitution to allow, for example, the legislature to play a bigger role in the budget process without simultaneously considering reforms of the electoral institutions that would attract legislators with the political interest to use their legal powers fully. Further, motivated and legally empowered legislators would also need significant resources in order to build a large and supportive infrastructure. In short, would-be reformers must consider both the resource and power deficiencies of the Latin American legislatures and the incentive systems acting on the legislators.