
RESEARCH REPORTS AND NOTES

THE LOGIC OF CONGRESSIONAL DELEGATION:

Explaining Argentine Economic Reform*

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This study evaluates the role played by the legislature in one of Argentina's most important economic reforms of recent decades: the reform of tax incentives for regional development. As implemented by the last military government, this system of tax incentives provoked sharp distributive conflicts among provinces. Although a majority of legislators favored reform after the return to democracy in 1983, interprovincial conflicts created bargaining problems that prevented the passage of reform legislation through regular channels. Pro-reform legislators decided instead to delegate reform authority to President Raúl Alfonsín because he shared their interest in containing the fiscal cost of tax incentives. Subsequent uses of this delegated authority by two presidents promoted the interests of the enacting coalition that supported delegation. These findings support the usefulness of delegation models when carefully applied to Latin America and challenge theories that neglect the different ways that legislators shape economic reform.

In 1986 the International Monetary Fund dispatched a special mission to Argentina to study the country's use of tax incentives for investment in underdeveloped provinces (see Sánchez Ugarte and Zabalza Martí 1986).

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After conducting the research, the members of the mission reported that tax incentives had indeed raised the level of economic activity and employment in some of these provinces but at a tremendous fiscal cost to the country. According to their report, tax incentives merely rearranged existing economic activities spatially in a zero-sum fashion rather than encouraging new investment. Many project beneficiaries had found ways to take advantage of the tax breaks without actually relocating to the underdeveloped provinces. Furthermore, such abuses were nearly impossible to monitor because the laws, decrees, and regulations issued over the years to govern the incentive system were complicated and often contradictory. Finally, many enterprises lacking the political connections necessary to secure legal tax breaks simply decided to “promote themselves” (*auto-promocionarse*) and evade taxes, thus augmenting Argentina’s significant problems with compliance. In short, members of the mission found that regional tax incentives were playing a major part in the dramatic fiscal crisis experienced in Argentina in the 1980s.

Despite all these negative consequences, the mission noted, the tax incentives were hugely popular among politicians and politically well-connected beneficiaries, a finding suggesting that obstacles to reform would be considerable. If anything, Argentina’s transition to democracy in late 1983 appeared to have increased policy makers’ appetite for discretionary tax policies, with President Raúl Alfonsín issuing a decree soon after that expanded rather than restricted the scope of regional tax incentives. The IMF mission concluded that the tax-incentive system had proved to be bad economics but great politics and thus was likely to endure in that form. Yet less than five years later, Argentina’s system of regional tax incentives had virtually disappeared, along with the macroeconomic instability that had plagued the country for decades. Moreover, the system vanished as the result of a reform process that is to this day poorly understood.

Observers of Latin America have developed a rich literature in their efforts to account for reforms that eliminate policy favors for powerful groups in society. Some analysts have attributed policy change to the operation of powerful external actors, namely the international financial institutions, and to systemic forces at the international level such as the globalization of capital markets (Stallings 1992). Others have emphasized coalitional politics at the domestic level, arguing that policy makers in Latin America have organized reform beneficiaries into new coalitions to sustain reform while compensating reform losers in ways compatible with the overall shift to market-friendly policies (see Nelson 1989; Haggard and Webb 1994, 16–20; and Smith, Acuña, and Gamarra 1994). Still others trace the adoption of reforms to the concentration of policy-making power in the executive branch and in certain agencies and special “change teams” within the executive bureaucracy (Waterbury 1992, 183; Grindle and Thomas 1991; and Nelson 1990).

What is striking in this literature is the nearly uniform treatment of

legislators as either irrelevant actors or implacable opponents of reform. According to most analyses, legislators either abdicate their constitutionally prescribed roles in the legislative process because they are indifferent to policy outcomes, or they maintain predictably hostile attitudes toward policy reforms and thus must be circumvented if the executive is to enact such reforms. The dominant view of legislators has a long lineage, but it needs to be rethought. Ignoring legislatures made sense when most Latin American legislatures were closed, but this neglect has become increasingly problematic in the current period of democratic consolidation. Admittedly, nowhere in Latin America do legislatures play the strongly antagonistic role played by the U.S. Congress, the reference point for many observers who dismiss Latin American legislatures as unimportant. Still, Latin American legislatures are often much more significant as sites where policy bargains actually occur than one would gather from the extant literature. Analysts know that while these legislatures are rarely proactive like the U.S. Congress, they are not entirely passive. Contemporary legislatures in Latin America probably fall somewhere between these extremes, with much uncharted variation occurring throughout the region.¹

The present discussion of regional tax incentives in Argentina offers a crucial case for the argument that legislators matter in ways that the existing literature has not captured. First, the specific reform process remains unintelligible as long as legislators are left out of the picture. Second, the reform of tax incentives figured prominently in the larger process of fiscal policy change that has won Argentina international acclaim. Because it was a significant aspect of Argentina's overall reform experience, a finding that legislators were important actors must rightfully be interpreted as a challenge to the dominant understanding of economic reform in Argentina. Third, because Argentina has often been cited in the thesis of "delegative democracy" that discounts the policy-making role of legislators, my findings may have broader implications for the terms of the more general debate (O'Donnell 1994; Riz 1996, 164).

Rather than being irrelevant or recalcitrant, Argentine legislators actually served as the principal intellectual authors of the national reform of tax incentives. Because these incentives were highly redistributive among the provinces, reform efforts provoked bitter conflicts among them. Initially, legislators from provinces favored by tax incentives managed to block reform in the Argentine Congreso in the 1980s, even though they were only a minority of all legislators. This outcome would seem to support the broader argument about legislatures being obstacles to economic reform. The story does not end here, however. Realizing that reform could not be achieved via regular legislative channels, a bipartisan coalition of legislators from

1. Important recent attempts to fill this void include Ames (1995), Carey (1998), Crisp (2000), Morgenstern and Nacif (n.d.), and Siavelis (2000).

provinces harmed by tax incentives responded by correctly identifying the president as an actor who shared their interest in reform. Facing significant bargaining problems in the Congreso and perceiving a strong executive preference for eliminating regional tax incentives, pro-reform legislators succeeded in protecting the interests of their provincial constituents by delegating reform authority to the president. Understanding that delegation advanced the interests of a majority of legislators makes possible a more accurate picture of the legislature's role in reform.

The first section will characterize the main features of the system of tax incentives that reformers confronted in the 1980s. The second section will evaluate the bargaining costs that shaped legislators' decision to delegate reform authority rather than engage in detailed lawmaking. This section will also explain why pro-reform legislators believed that they could trust the president as an agent who would promote reform (or why the potential for loss of agency was low). The third section will evaluate how President Carlos Menem used this delegated authority in order to determine whether or not he served as a faithful agent for the pro-reform majority in the Congreso. My purpose is not to dispute that Menem could have simply decreed the reform even in the absence of delegated authority from the Congreso but rather to demonstrate that most of his regulatory decrees were mere uses of this authority. In the concluding section, I will discuss briefly some of the broader implications of congressional delegation in Argentina.

REGIONAL TAX INCENTIVES AND INTERPROVINCIAL CONFLICT

When the military authorities relinquished control of government in late 1983, Argentina's new democracy inherited a tax-incentive system that significantly favored four provinces at the expense of the other eighteen and the federal capital. Explaining how this system was developed and operated will provide a baseline for explaining subsequent reform efforts. In essence, the costs and benefits associated with the tax-incentive system were unequally distributed among the provinces, producing interprovincial conflict that inspired later challenges demanding reform.

Beginning with tax exemptions for salt extraction in Patagonia shortly after independence from Spain, Argentina has compiled a long history of using the tax system for objectives other than the strict generation of revenues (Lascano 1981, 125). In complying with the vague 1853 constitutional mandate that the government introduce and establish new industries (Articles 67 and 107), officials have relied heavily on special tax treatment rather than on cheap credits or other direct subsidies. How government officials use tax incentives reflects the nature of their broader economic agendas and political coalitions of support. For example, tying tax deductions to the expansion of productive industrial capacity reflected President Juan Perón's role in pushing first-stage import-substituting industrialization (López Mur-

phy et al. 1981, p. 9.5). Subsequently, 1958 legislation establishing sectoral targets for tax breaks underlined President Arturo Frondizi's developmentalist orientation in deepening industrialization. Legislation excluding foreign enterprises from the industrial promotion system signaled the return of Perón to office in 1973, just as the inclusion of foreigners in the system after 1976 reflected the pro-foreign investment orientation of the military government that took power that year (Ferrucci 1986, 116–33). Few Argentine governments have resisted the temptation to load up the tax system with promotional incentives. As Jorge Macón has argued, even the last “pro-market” military government outdid its avowedly interventionist predecessors in using tax breaks to promote favored industries (Macón 1985, 161).

Although it can be difficult to make sense of the dynamic and complex landscape of industrial promotion, it is clear that an important qualitative change occurred in the late 1970s and early 1980s. Until the late 1970s, promoted enterprises could be exempted from trade and sales taxes for investing in various sectors and provinces.² Final authority to approve the granting of tax benefits, however, remained centralized in the Ministerio de Economía of the federal government. Bureaucratic turf wars between tax-incentive enthusiasts on the industrial side of the ministry and fiscal watchdogs on the finance side helped keep the use of promotional tax incentives in check (Macón 1985, 159). But in 1979, 1982, and 1983, the federal government delegated the authority to grant federal tax breaks to the governments of the four provinces of La Rioja, Catamarca, San Luis, and San Juan.³

Enabling four provinces to exempt enterprises from taxes levied by the federal government provided these provinces with an incredible opportunity for development. By granting federal tax breaks, they could promote industries, provide jobs, and broaden locally generated tax revenues at the expense of other provinces, the capital city of Buenos Aires, and the federal government. Decentralizing control over the federal tax base dealt a double blow to the remaining provinces and the capital city. First, incentives offered by the four provinces threatened to lure important investors and jobs away from the other jurisdictions. Second, Argentina's revenue-sharing procedures (*coparticipación*) meant that every federal tax incentive granted by the four provinces would reduce the pool of revenues available for sharing among all the provinces and would result in smaller revenue transfers overall.⁴

While the previous system depended on fiscal watchdogs in the fed-

2. The texts of these laws, no. 20,560 of 1973 and no. 21,608 of 1976, appear in *Anales de Legislación Argentina* 33-D (1973):3681–86 and 37-C (1976):2513–22.

3. The texts of the laws appear in *Anales de Legislación Argentina*: for La Rioja (22,021), 39-C (1979):2382–89; for Catamarca and San Luis (22,702), 43-A (1982):4–9; and for San Juan (22,973), 43-D (1983):3959–60.

4. In Argentina, the federal tax bureaucracy collects most of the main taxes and divides the proceeds among the federal and the provincial governments according to criteria decided by national legislators.

TABLE 1 Provincial Shares of the Total "Theoretical Fiscal Cost" of Regional Tax Incentives, 1980–1988

Province	1980 (%)	1981 (%)	1982 (%)	1983 (%)	1984 (%)	1985 (%)	1986 (%)	1987 (%)	1988 (%)
Catamarca				0.2	2.0	6.5	7.3	6.7	8.7
La Rioja	1.0	3.9	12.0	10.1	15.6	11.7	9.4	7.7	10.0
San Juan					0.4	4.3	7.5	5.8	9.9
San Luis				0.6	12.0	36.0	39.4	59.3	69.4
Subtotal of 4 provinces	1.0	3.9	12.0	10.9	30.0	58.5	63.6	79.5	98.0
All other provinces	99.0	96.1	88.0	89.1	70.0	41.5	36.4	20.5	2.0
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: Secretarías de Industria y de Hacienda, reproduced in *Diario de Sesiones de la Cámara de Diputados de la Nación*, 17 May 1988, p. 272.

eral government to keep tax breaks in check, no one in the governments of the four special provinces had any interest in restraint, and the provinces moved quickly to grant incentives (see table 1). As the 1980s progressed, federal tax breaks granted by these provinces gradually eclipsed the tax breaks granted by the federal government for investment in all the other provinces combined.

In delegating authority over the federal tax base, the military government retained two means of protecting its interests. First, because all provincial governors were appointed by the military government at the center, the federal government retained ultimate political control over the provincial officials who had been delegated authority to grant tax breaks. Only with the return of democracy and elections to select provincial leaders did this act of decentralization come to undermine profoundly the interests of the federal government.

In addition to de facto political control over provincial governments, the military leaders in charge of the federal government also introduced specific measures designed to control provincial uses of tax breaks. Although these ultimately failed, the way they failed was important for the later reform. The military government required enterprises seeking promotional tax breaks to calculate their project's "theoretical fiscal cost." Estimating the true fiscal cost of tax incentives is difficult because it depends on how much the promoted firm actually decides to invest. Thus the theoretical fiscal cost is an opportunity cost of sorts, measuring the amount of tax revenues that would have gone to the treasury if the productive resources had been invested in a nonpromoted activity (Macón 1985, 177). In addition to calculating fiscal cost, each of the four special provinces received a quota in the federal budget that it could fill by granting projects with theoretical fiscal costs of various sizes.

Although introduced to achieve greater transparency in the promotional system, the mechanisms of “theoretical fiscal cost” and budget quotas created incentives for collusion between the four special provinces and promoted enterprises. These provincial governments could maximize the quota they received from the federal government by underestimating the fiscal costs of the tax incentives they granted. One strategy used by provincial governments to minimize fiscal cost involved calculating as cost only the tax breaks received in the first year of activity by a promoted enterprise, despite the contractual obligation of the federal government to honor these tax incentives for up to fifteen years. Once granted, these contracts were binding and represented a drain on public revenues for years down the line. This practice allowed the governments of the four special provinces to stretch their quotas and create even greater numbers of beneficiaries and thus a larger political support base, all at the expense of other jurisdictions.⁵

THE DELEGATION OF REFORM AUTHORITY: BRINGING LEGISLATORS IN

In the wake of the 1983 transition to democracy, such lopsided benefits for a few provinces became politically untenable, particularly in the Cámara de Diputados, where representation is more closely tied to population than in the Senado. Predictably, democratization brought pressures to generalize provincial authority over federal tax breaks—every province wanted what the military government had given to the four favored provinces. Equally predictably, President Alfonsín resisted giving independently elected provincial governments authority over the federal tax base. In 1985 he acknowledged the imbalance in the existing system by making additional tax incentives available for investment in the remaining eighteen provinces, but the authority to grant these incentives remained centralized in the federal government.⁶ Not a single project was approved under this legislation, and the four provinces continued to dominate the tax-incentive system, as seen in the pattern depicted in table 1.

With further extensions of provincial authority over federal taxes blocked by the president, legislators from the aggrieved provinces began to consider ways to revoke the special benefits of Catamarca, La Rioja, San Juan, and San Luis. Delegation became an attractive option because of the escalating economic crisis and bargaining problems within the legislature that prevented the passage of reform through normal channels.

5. To illustrate the problem, the head of the DGI office in charge of industrial promotion argued that instead of granting a one-million-dollar project to fill a quota of 1 million dollars (U.S.), provincial governments could grant a million one-dollar projects, each of which would cost the federal treasury much more than a dollar. Author's interview with Juan Fadde, DGI expert on regional tax incentives, 31 July 1996, Buenos Aires.

6. See Decree 261 in *Anales de Legislación Argentina* 1985-A:194–203.

Economic Causes

A deteriorating economic situation after 1987 exposed and accentuated the costs of regional tax incentives for provinces denied the authority to grant federal tax breaks. In that year, federal tax breaks granted by the four favored provinces reduced the pool of tax revenues available for revenue sharing with the provinces by an estimated 11 percent (Artana, Duarte, and Soto 1986, p. 12.16). As a result, most provinces were having to make do with less in the way of federal revenue transfers because of the special treatment enjoyed by the four provinces. Moreover, the soaring fiscal cost of regional tax incentives undermined efforts to eliminate the budget deficit, encouraging the printing of money and inflation. Inflation is a tax that is not shared with the provinces through the revenue-sharing system but accrues exclusively to the federal government. Inflation also reduces the real value of the tax revenues that are shared with the provinces. Thus thanks to both the direct and indirect effects of the tax-incentive system on federal revenues, most provinces were receiving smaller transfers from the federal government. As Alfonsín's administration began to disintegrate with the collapse of the Plan Austral in 1987, more legislators became convinced of the need for reform and the president's strong commitment to revoking provincial authority over federal taxes. It was becoming increasingly clear that a majority of provinces were seriously disadvantaged by the status quo in industrial promotion and that their representatives in all parties shared strong incentives to redress the harm being done to their provinces.

Bargaining Problems

As the inadequacies of the policy status quo became clearer, a bipartisan coalition developed in the Congreso in 1987 to push for reform. The authors of the bill that emerged, Hugo Socchi and José Bordón, embodied the pro-reform coalition. They represented two economically advanced provinces—Buenos Aires and Mendoza—that were being harmed by the exodus of industries to heavily promoted provinces, and they also represented the two main parties, the Radicals and the Peronists. On the face of it, reform should have been easy for these coalition leaders to steer through the Congreso, given a comfortable majority of legislators from provinces harmed by the status quo. Only 8 out of 46 of the senators (17 percent) came from provinces endowed with federal tax authority, and only 21 of the 254 deputies (8 percent) represented these provinces. Discussions entered in the congressional record about reforming the tax-incentive system suggest that reformers nonetheless faced a number of bargaining problems.⁷

7. For hypotheses on how bargaining and agency costs affect decisions to delegate, see Carey and Shugart (1998).

First, while legislators from the eighteen provinces lacking federal tax authority understood how the policy status quo was harming their interests, they differed over how to correct this imbalance. Some representatives from the less-developed provinces in this group defended the use of special tax incentives as an appropriate instrument for “historic reparations” and asked simply that their provinces be included in the program. For example, a senator from Santa Cruz proposed special treatment for his province, which he claimed was the only Patagonian province not receiving any promotional tax incentives from the federal government. Other representatives supported the general attempt to reduce the cost of tax incentives but then tried to secure special breaks for their provinces. For example, Senator Juan Aguirre Lanari voiced strong support for controlling the cost of tax incentives in the general discussion of reform but proposed nevertheless a modification increasing tax incentives to 100 percent of investment costs in border areas such as his home province of Corrientes.⁸ During the detailed consideration of reform proposals, ostensible reformers faced many such incentives for defecting from the pro-reform coalition.

As a second source of bargaining problems, the internal voting procedures used in the Argentine legislature created real opportunities for this kind of defection. According to these internal rules, two types of votes are held on any piece of legislation: a general vote on the bill as a whole and a series of individual votes on each of the bill’s articles. Thus a legislator from the pro-reform coalition could vote for the reform bill in the general vote and then propose modifications creating special treatment for his or her province in the article-by-article votes. Legislators could then logroll amongst themselves to piece together the majorities necessary to pass these kinds of modifications, essentially killing the prospects for reform.

In addition to voting rules, strategic moves by legislators from the four favored provinces further complicated the use of regular legislative channels as a means of achieving reform. In a defensive mode, these legislators defended the benefits received by their provinces by asserting that the enterprises receiving tax incentives were new industrial ventures and thus cost the national treasury nothing. When legislators from the advanced provinces balked at this assertion, legislators from the four favored provinces countered that even if promoted companies represented a fiscal drain on the national treasury, 65 percent of the companies evading taxes in Argentina were located in the more economically developed provinces. Tolerance of evasion, they argued, was a sort of subsidy for the advanced provinces that made explicit tax incentives for underdeveloped provinces necessary.⁹ Turning to an offensive strategy, legislators from Catamarca, La Rioja, San Juan, and San Luis tried to co-opt their colleagues from the other provinces by

8. *Diario de Sesiones de la Cámara de Senadores de la Nación*, 22–23 Sept. 1988, pp. 3016, 3062.

9. *Diario de Sesiones de la Cámara de Diputados de la Nación*, 27 Apr. 1988, p. 6017.

proposing to generalize authority over federal tax breaks to all provinces.¹⁰ They proposed a transition period that would last until the executive had drafted and the Congreso had approved separate legislation specifying a more restrictive new system. According to this co-optive strategy, once all the other provinces came to enjoy the same fiscal benefits, they would be less likely to approve any more restrictive bill proposed by the executive. This strategy was partially successful: four senators who supported reform in general nevertheless came out in support of this temporary extension of benefits.¹¹

The Case for Delegation

Faced with these bargaining problems, leaders of the pro-reform coalition had reason to believe that regular legislative procedures would result in a bill that expanded rather than restricted tax incentives. This kind of bill would surely have been vetoed by a president in dire need of increasing and stabilizing federal revenues rather than undermining them still further. In the aftermath of such a veto, policy would revert to the status quo, clearly the worst-case scenario for legislators representing provinces lacking federal tax authority. For this reason, proponents of reform were able to make a compelling case for delegation. For all intents and purposes, failing to delegate amounted to preserving the status quo, while delegating would at least enable a majority of legislators to undo the harm done by unbalanced regional tax incentives. Delegation would not deliver any one legislator's best-case scenario (in which only that legislator's province would receive tax incentives), but it would avoid the worst-case scenario feared by most of these legislators.

Rather than writing a detailed reform proposal, then, the authors of the reform bill proposed a law that delegated some of the most important and controversial aspects to the president. This bill authorized the president to create "a unified system" of industrial promotion, effectively returning authority over granting all federal tax breaks to the federal government. The bill also called on him to establish more transparent procedures through which tax-incentive recipients could claim their benefits.¹² Under the previous system, beneficiaries of tax breaks would simply incorporate deductions and exemptions into their own calculations of whatever taxes they owed the federal government. The bill called for a system in which beneficiaries

10. *Ibid.*, 10 May 1988, pp. 117–26.

11. *Diario de Sesiones de la Cámara de Senadores de la Nación*, 27 Sept. 1988, p. 3080.

12. The bill's authors stipulated that the terms of any new tax incentives must be published and that third parties potentially disadvantaged by these terms must have recourse to a federal body authorized to revoke the incentives. Opponents of the bill argued that this provision alone would effectively prevent the granting of any new tax incentives. See Articles 40–41, *Diario de Sesiones de la Cámara de Diputados de la Nación*, 10 May 1988, pp. 119, 165.

would receive fiscal credit bonds from the government that they could use to pay their taxes up to the amount specified on the bonds (as calculated by the government, not the beneficiary). To create greater transparency and prevent the fraud associated with tax promotions, the bill also established that these bonds would be nontransferable. What the bill did not specify was the set of criteria to be used to determine the amount of these bonds. The authors proposed that bonds be calculated as either a function of value added or company expenditures on salaries and wages but left the decision to the executive branch. Ultimately, the president decided to tie the value of these bonds to the “theoretical fiscal cost” of tax incentives as calculated by enterprises at the proposal stage. Given that enterprises had purposefully understated the cost of their projects, this decision by the president reduced the drain of industrial promotion on the national treasury and significantly advanced the interests of the pro-reform majority in the Congreso.¹³

Defenders of the existing tax-incentive system railed against the bill’s lack of specificity as a shameless abdication of the Congreso’s constitutionally mandated legislative responsibilities. As Senator Alberto Rodríguez Saá from San Luis province argued, in the time spent debating the vague delegation bill, the Congreso could have written a detailed law that would have obviated the need for presidential decrees.¹⁴ These criticisms point to a clear trade-off between detailed lawmaking and the likelihood of genuine reform. A more specific law undoubtedly would have reflected better the preferences of the four favored provinces, just as the decision to delegate increased the likelihood that policy outcomes would reflect the preferences of legislators from all the other provinces.

Because the Cámara de Diputados decided to take a roll-call vote on this piece of legislation (not the automatic procedure in Argentina), it is possible to evaluate how legislators voted. The record shows that in both chambers, the vote followed provincial rather than partisan lines. Data presented on the Cámara de Diputados in table 2 reveal that legislators’ provincial origins are a better indicator of whether they trusted the president with reform authority than their partisan identity in this important fiscal reform. Legislators from opposition parties in provinces harmed by the policy status quo understood that the president shared their interest in cutting incentives even though he belonged to a different party. Conversely, Radical legislators from the four favored provinces correctly perceived that delegation would threaten their interests, despite their sharing the president’s party affiliation.¹⁵ No

13. Interview with Juan Carlos Gómez Sabaini, Secretario de Ingresos Públicos, who drafted the legislation linking bond values to “theoretical fiscal cost,” 14 June 1996, Buenos Aires.

14. *Diario de Sesiones de la Cámara de Diputados de la Nación*, 10 May 1988, pp. 166, 173.

15. This outcome, however, cannot be taken as evidence that party discipline “broke down” because party leaders may have told legislators to vote any way they wanted given that the legislation would undoubtedly pass. I thank an anonymous *LARR* reviewer for making this point.

TABLE 2 How Argentine Legislators Voted on Delegation by Province in 1988

Province	Legislators Voting per Province	Distribution by Party ^a	Legislators Voting Yes	Legislators Voting No	Percentage Voting Yes
Buenos Aires	48	17 PJ 22 UCR 7 other	17 22 4	0 0 3	100 100 57
Capital Federal	13	3 PJ 9 UCR 1 other	3 9 0	0 0 1	100 100 0
Catamarca ^b	2	1 PJ 1 UCR	0 0	1 1	0 0
Chaco	3	2 PJ 1 UCR	2 1	0 0	100 100
Chubut	3	1 PJ 2 UCR	1 2	0 0	100 100
Córdoba	12	3 PJ 9 UCR	3 9	0 0	100 100
Corrientes	4	2 UCR 2 other	2 0	0 2	100 0
Entre Ríos	7	3 PJ 4 UCR	3 4	0 0	100 100
Formosa	5	3 PJ 2 UCR	3 2	0 0	100 100
Jujuy	3	3 PJ	3	0	100
La Pampa	5	2 PJ 3 UCR	2 3	0 0	100 100
La Rioja ^b	4	2 PJ 2 UCR	0 0	2 2	0 0
Mendoza	9	4 PJ 5 UCR	4 5	0 0	100 100

deputy from the four favored provinces voted for the delegation bill, while nearly all Radical and Peronist legislators from the other provinces joined forces to support delegation and reform. In the Senado, twenty-four senators voted to delegate, including opposition-party Peronists from provinces disadvantaged by the tax-incentive system. Six senators voted against the bill, all from the four favored provinces.¹⁶ After years of discussion, a solid majority of legislators thus delegated authority over the reform of promotional tax incentives to a president whom they trusted to be their agent in reform.

16. *Diario de Sesiones de la Cámara de Senadores de la Nación*, 22–23 Sept. 1988, pp. 3062–65, 3069, and 3070.

TABLE 2 (continued)

Province	Legislators Voting per Province	Distribution by Party ^a	Legislators Voting Yes	Legislators Voting No	Percentage Voting Yes
Misiones	6	2 PJ 4 UCR	2 4	0 0	100 100
Neuquén	4	2 UCR 2 other	1 0	1 2	50 0
Río Negro	2	1 PJ 1 UCR	1 0	0 1	100 0
Salta	4	2 PJ 2 other	2 0	0 2	100 0
San Juan ^b	3	2 PJ 1 UCR	0 0	2 1	0 0
San Luis ^b	3	3 UCR	0	3	0
Santa Cruz	5	2 PJ 3 UCR	2 3	0 0	100 100
Santiago del Estero	6	3 PJ 3 UCR	3 3	0 0	100 100
Tucumán	6	2 PJ 3 UCR 1 other	1 3 1	1 0 0	50 100 100
Tierra del Fuego	1	1 UCR	1	0	100

Sources: Data compiled by author from the following sources: *Diario de Sesiones de la Cámara de Diputados*, 10 May 1988, p. 131; and *Camara de Diputados de la Nación: Su composición y comisiones* (Buenos Aires: Secretaría de la Honorable Cámara de Diputados, Imprenta del Congreso de la Nación).

^a Partido Justicialista (PJ) and Unión Cívica Radical (UCR)

^b One of the four provinces favored by the military government with the ability to award tax incentives.

IMPLEMENTING REFORM VIA DECREE: THE PRESIDENT AS CONGRESSIONAL AGENT

Although President Alfonsín was delegated decree authority by the legislators, it was actually his successor who wielded this authority to decree reform. Amidst the deteriorating fiscal situation that regional tax incentives had exacerbated, Alfonsín was forced to turn over his office six months early to Carlos Menem, the Peronist candidate who had won the presidential elections in May 1989. This replacement of a Radical President by a Peronist President might appear to have threatened the interests of the legislative majority that had voted to delegate, but only if the potential for loss of agency is understood as mainly a function of party identity. In this episode, however, party identity did not reveal as much about the potential

for agency loss as the province represented. Like Alfonsín, Menem had much to gain by revoking provincial authority over federal tax breaks.

Rather than subverting or circumventing the legislature, Menem's decrees were entirely compatible with the interests of the pro-reform majority in the Congreso that had delegated reform authority in the first place. From the standpoint of legislators who had identified the chief executive of the federal government as an actor who could deliver reform, delegation was a success. Given Menem's reelection ambitions and the extent to which they depended on his delivering fiscal stability, this president had strong reasons to deliver the type of reform desired by the coalition. Even though his home province of La Rioja was one of the four provinces originally endowed with federal tax authority, Menem moved aggressively to eliminate regional tax incentives.¹⁷ This protagonism in the reform of tax incentives brought numerous charges of semi-authoritarian "rule by decree" of a sort that critics alleged was undermining democratic institutions.¹⁸ Indeed, some of Menem's decrees appear to have exceeded the authority granted to him, creating real cause for concern about presidential misuses of delegated authority in Argentina. Yet careful examination of the period following July 1989 reveals that some of Menem's most important measures were approved by the Congreso as laws and that most of his decrees were straightforward uses of previously delegated authority that cannot be cited as clear evidence of hyper-presidentialism.

First, in August 1989, the Congreso approved economic emergency legislation that suspended all regional tax incentives for a limited period. In this omnibus bill, the Congreso also delegated sweeping powers to the president to modify the budget, rearrange personnel among bureaucracies, and collect outstanding debts between various state entities and private-sector enterprises.¹⁹ Yet the articles of the bill that refer to tax incentives are specific in stipulating the exact percentage of benefits to be suspended and procedures to compensate beneficiaries after the emergency had been overcome. In the version of the emergency bill that Menem sent to the Congreso, he proposed suspending 100 percent of value-added tax exemptions and 25 percent of income, capital, and net-wealth tax exemptions granted under all existing promotion legislation. These percentages were cut by half in the Senado, where the head of the governing Peronist bloc was a powerful senator from San Luis, one of the four favored provinces.²⁰ This example from the economic emergency bill suggests that detailed lawmaking can weaken

17. Note, however, that La Rioja was also the beneficiary in the 1990s of a disproportionate share of discretionary transfers from the federal government via the *Aportes del Tesoro Nacional* (ATNs). See Fundación CECE (1998).

18. Critics include Coria (1993), Dalla Via (1993), and Núñez (1989).

19. The text of this law appears in *Anales de Legislación Argentina* 49-C (1989):2458–79.

20. *Diario de Sesiones de la Cámara de Senadores de la Nación*, 8–9 Aug. 1989.

reform legislation when provincial interests are at stake, much as advocates of delegation feared in their earlier discussions of reform.

The economic emergency legislation provided a six-month suspension period and authorized the president to extend it for an additional six months. Menem used this provision in a lengthy and controversial Decreto de Necesidad y Urgencia (DNU).²¹ Although other elements of this “mega-decree” undoubtedly usurped some congressional prerogatives, extending the suspension of tax incentives for another six months was spelled out in the economic emergency law passed by the Congreso. When the one-year period ended in September 1990, however, Menem issued a follow-up decree further delaying compensation for an additional year. In September 1991, another decree delayed compensation for yet another year.²² Menem likewise used decrees to extend the ban on granting any new tax incentives.²³ Although these decrees were not covered by congressional legislation, they were certainly compatible with the interests of the legislative majority because they dramatically contained the fiscal costs of tax incentives.

In addition, Menem also used delegated decree authority to design a new system of tax incentives, as called for in the delegation bill. For example, one set of decrees regulated the use of the fiscal credit bonds that were intended to increase transparency in claiming tax breaks. Mistakenly issued as “urgent and necessary” (and thus a “lawmaking decree”), Decree 2054 of 1992 is the most important of these measures in outlining specific procedures for the provision of any such bonds.²⁴ In no way does the decree subvert the instructions of the Congreso as laid down in earlier legislation on the subject. This decree established a system of “current accounts” to keep track of how enterprises use their fiscal credit bonds to pay taxes and how many bonds remain for this purpose at any given time.²⁵ To establish a current account, promoted enterprises had to comply with an earlier decree that had tightened up the informational requirements facing beneficiaries and required that each beneficiary submit to a full financial audit.²⁶ For companies that had abused the tax-incentive system, much of this information turned out to be difficult to provide.

The decree regulating the new current account system also authorized the tax collecting agency, the Dirección General Impositiva (DGI), to run this system. Due to the agency’s bureaucratic identity as guardian of

21. See Decree 435 in the *Boletín Oficial*, 6 Mar. 1990, pp. 4–7.

22. See Article 1 of Decree 1923 in *Anales de Legislación Argentina* 51-D (1991):3960.

23. This ban was initially legislated by Law no. 23,658. In *Anales de Legislación Argentina*, see Article 8 of Decree 1033/91 in 51-B (1991):1959; Decree 1923/91 in 51-D (1991):3960; Decree 1927/93 in 53-D (1993):4266; and Decree 505/95 in 55 (1995).

24. For the argument that many Decretos de Necesidad y Urgencia are mistakenly issued as such rather than as regular “rule-making decrees,” see Molinelli (1995).

25. See Article 8 of Decree 2054 in *Anales de Legislación Argentina* 52-D (1992):4143.

26. This earlier decree is Decree 1355, issued in August 1990.

the national treasury, this change limited abuses, but it was criticized by defenders of tax incentives as changing the rules of a game already in play (see Coria 1993, 824–25). Enabling tax inspectors from the DGI to investigate project beneficiaries pleased legislators who wanted reform, particularly in the early 1990s when confidence in and fear of these inspectors peaked. The DGI closed businesses for tax evasion and produced record levels of tax revenue. Most significantly, this role for the DGI was explicitly provided for in the delegation bill discussed earlier. Endowing the DGI with control activities was vital in the overall reform effort because tax inspectors were more skilled in controlling tax evasion and noncompliance than any other officials in the executive branch.²⁷

More controversially, DNU 435 of March 1990 threatened some important contractual rights. Under the old and much abused system of tax incentives, promoted enterprises were exempt from the VAT not only on their sales but also on their purchases of inputs.²⁸ Due to the credit and debit features of the VAT, exempting suppliers of promoted enterprises from this tax led to a black market in VAT fiscal credits. Menem's decree, however, eliminated the VAT exemption for suppliers of promoted enterprises, who subsequently had to calculate VAT liability as did all other companies. This change provoked an outcry among defenders of the tax-incentive system, who argued that the decree represented a "true confiscation of property rights" and that "industrial and promotional policies were being taken out of their natural forum: the Congreso Nacional" (see Dalla Via 1993, 505–6, n. 30; Bertazza 1990). In evaluating whether Menem's decrees served the interests of the legislative majority, however, this decree clearly reduced the scope for tax evasion associated with the system of regional tax incentives.

Argentine legal and economic journals have published many articles arguing that Menem's reform of the industrial-promotion system threatened juridical security and undermined acquired contractual rights (see Coria 1993; Dalla Via 1993; and Núñez 1989, 973). Although the president's decrees made tax incentives granted by earlier *de facto* governments less attractive and some decrees transgressed the parameters established by covering legislation, they did not run roughshod over congressional preferences. To the contrary, most of these decrees simply implemented the more general legislation that the Congreso had already passed. The most effective way to evaluate whether delegation was successful may be to compare what the tax-incentive system actually cost the federal treasury with what it would have cost in the absence of Menem's decrees. Table 3 reports fiscal savings of 7.9 billion dollars (U.S.) from these decrees between 1990 and 1995. These savings in turn resulted in greater revenues being available for automatic

27. See the argument made by Aguilar Caravia (1987, 171–75).

28. Under the bond system established by the delegation law, for the suppliers of promoted enterprises to continue to receive the benefit of exemption, the promoted enterprises would

TABLE 3 *Estimated Fiscal Costs and Savings of Carlos Menem's Reform Decrees (in Millions of U.S. Dollars), 1991-1995*

	1990	1991	1992	1993	1994	1995
Fiscal cost of tax incentives before policy reforms	2,661	2,888	3,085	3,521	3,232	3,256
Savings from policy reforms						
Suspension of incentives	210	420	630	840	1,050	1,260
Penalties for noncompliance with Emergency Law 23,697	0	0	0	353	0	0
Suspension of VAT input credits (Decree 435)	308	340	0	0	0	172
Reduction in tax incentives (Decree 2054)	0	0	0	925	879	822
Total savings	518	760	630	2,118	1,929	1,910
Fiscal cost of tax incentives after policy reforms	2,143	2,128	2,455	1,403	1,303	1,346

Source: World Bank, *Argentina: From Insolvency to Growth* (Washington, D.C.: World Bank, 1993), p. 59.

transfer to all the provinces, a main goal motivating the initial decision to delegate back in 1988.

IMPLICATIONS OF DELEGATION

By uncovering the hidden but decisive role played by the legislature in a crucial aspect of economic reform, this research note challenges the literature on Argentine politics in two ways. First, it suggests that Argentine legislators might be more relevant as policy-making actors than most studies of executive-legislative relations allow. What appears to be a clear-cut case of a president usurping power from the legislature, either against this body's will or due to its indifference, turns out to be a more complex story about economic policy reform. Although the Argentine legislature lacks many of the institutional capabilities needed to participate more proactively in policy design (such as a more technically sophisticated staff), legislators can still shape policy outcomes in a variety of ways. Sometimes they do so by

have to transfer some of the bonds they received from the federal government. Yet the delegation law had also established the nontransferability of promotional bonds in order to reduce fraud. Allowing such transfers would have respected the contractual rights of suppliers but greatly undermined the stance of fiscal austerity taken by the pro-reform majority of legislators.

endorsing policies that the executive could simply decree into law, as occurred with the Congreso's landmark passage of the *Ley de Convertibilidad* in 1991 that ushered in the current period of price stability (Corrales 1997). At other times, legislators closely review the details of policy proposals designed in the executive branch and successfully alter these proposals according to their own electoral interests (see Eaton n.d.). In the reform episode discussed here, a legislative majority successfully pursued policy change not by writing detailed laws but by delegating authority. The larger point to be made is that in assuming executive dominance and legislative irrelevance, analysts run the risk of overlooking the various channels through which the legislature participates in policy making. Documenting these channels of influence may offer a more balanced picture of executive-legislative relations in Latin America.

Second, this research note has suggested that within the legislature, partisan identity is not the only factor that explains voting behavior. Compared with many of its neighbors, Argentina's high level of party discipline has often led to the conclusion that partisan identity is the only significant factor determining how legislators vote. For example, scholars of Argentine federalism have long lamented the great extent to which national party discipline has undercut legislators' ability to represent the interests of their provinces and the interests of the provinces as a group against the federal government.²⁹ According to this argument, legislators routinely follow the national party line even when it undermines provincial interests. In the reform of tax incentives, however, I have found that legislators' policy preferences clearly reflect their provincial origins and that legislative outcomes cannot be understood without reference to legislators' provincial interests. This finding suggests the need for more research on the conditions under which provincial interests might trump party discipline.

Beyond Argentina, this research also has implications for the way that delegation models are used to understand legislative behavior in Latin America. At the most basic level, the research offers more evidence for the argument that delegation can be an effective means for legislators in Latin America to solve some of the problems they face as lawmakers. In this sense, delegation "worked" in Argentina because it made a particular reform outcome possible that might not have been achievable otherwise. This case study also suggests that in trying to measure bargaining problems and the potential for agency loss, a focus on institutional factors must be coupled with an appreciation of the importance of contextual factors. With respect to bargaining problems, for example, this study shows that party discipline is not a direct function of electoral rules but may change depending on the policy stakes. With respect to loss of agency, policy context (interprovincial fiscal conflicts in this case) may do a better job than party identity, executive vetoes,

29. See for example, Bidart Campos (1993) and Pírez (1986).

or independent courts in explaining why some legislators embrace delegation while others prefer detailed lawmaking. Depending on the policy issues at stake, the fact that a legislator shares a party label with the president may not guarantee that delegated authority will be used in ways that advance that legislator's interests.

In arguing that a majority of legislators successfully delegated authority to the president to reform tax incentives, I am not claiming that the president was an insignificant actor. The president's policy preferences were crucial in the story told. President Alfonsín's strong aversion to any extensions of provincial authority over the federal tax base enabled reform leaders to build a strong case for delegation in the Congreso. Second, while President Menem's decrees represent the authorized use of delegated reform authority in all but a few cases, I do not dispute convincing evidence that Menem has usurped authority in other policy areas (Ferreira Rubio and Goretti 1998, 34). My purpose here is simply to point out the limits of the usurpation argument in an important area of reform.

Finally, the argument that delegation succeeded in this case because it served the interests of a legislative majority should not obscure some of the dangers facing delegation in Argentina more generally. Particularly worrisome is the absence of institutional protections such as independent courts that help legislators guard against executive misuses of delegated authority. The literature on delegation in more institutionalized settings like Japan and the United States suggests that without such protections, delegation does not occur. When Argentine legislators delegate, they do so without these protections. Although none of President Menem's decrees on tax-incentive reform were incompatible with the interests of the enacting coalition, that group would have been powerless to protest any decrees that conflicted with its interests. Thus for the faithful execution of their policy preferences, legislators depended entirely on correctly identifying the overlap between the president's policy preferences and their own. Identifying a coincidence of interests was relatively easy in this dramatic case of tax reform because the policy status quo was directly threatening the political interests of the president and a majority of legislators. But in many policy areas, identifying presidential preferences is likely to be a much trickier matter, particularly considering the relative inability of the Argentine legislature to produce policy information. Unreliable information and confusion about the president's policy preferences should make delegation a less attractive solution to some of the challenges facing legislators as lawmakers today.

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