

# 5 The Power of the Administrative Decisions of Latin American Presidents

*Magna Inácio, Filipe Recch and  
Carolina Guerrero Valencia*

## Introduction

The powers of presidents and the risks of presidential unilateralism are an ever-recurring theme in Latin American politics. In recent times, emerging trends have reignited fears of executive encroachment and democratic retreat in the region. The growing number of populist, outsider, and anti-establishment presidents (Carreras, 2012; Mudde & Kaltwasser, 2013) has raised concerns about the presidential use of unilateral actions to deal with the political divergences that these governments might face. The militarisation of presidential cabinets and the executive branch in some countries has triggered alarms about the risks of an insulated presidential authority beyond the reach of democratic controls (Scharpf, 2020; Flores-Macías & Zarkin, 2021). Further, the COVID-19 pandemic revived the fear of executive aggrandisement and unilateralism in the context of national emergencies (Inácio et al., 2021).

While such apprehension is understandable, the strong powers granted to the president are a defining trait of Latin American presidentialism and a critical variable for understanding the conditions of government in both ordinary times and times of emergency. However, this feature has perhaps overshadowed the other backbone of presidential powers: the administrative prerogatives of presidents. Scholarship on Latin American presidentialism has devoted much of its attention to the influence of presidents on the legislative process, based on their legislative and appointment powers. A vast amount of literature has shown a considerable variation in these powers and how presidents and their governments use them to pursue their legislative success and policy goals (Shugart & Carey, 1992; Limongi & Figueiredo, 1998). In addition to the power to initiate legislation, ministerial appointments have been strategic for forging policy compromises and for garnering a legislative majority to approve legislation (Amorim Neto, 2006).

However, a president's policy agenda goes beyond their legislative realm (Cohen, 2012). Presidents may want to implement their policy priorities, manage cabinet or coalition conflicts, and advance their distributive

policies to benefit their voters and political supporters. Latin American presidents can do this through legislative initiatives; however, passing new legislation may be costly for minority and/or weak presidents, so presidents will use other means to attain their goals.

We argue that a substantial part of Latin American presidents' policy agenda is effectively executed through the administrative tools granted to the executive. In this chapter, we focus on the executive's administrative powers to issue decrees that regulate laws and execute autonomous decisions. Our analysis is restricted to presidents' decisions and does not consider other types of cabinet administrative decisions, such as ministerial or inter-ministerial ordinances and resolutions. The massive issuance of administrative decrees and decrees for the implementation of law by Latin American presidents indicates the strategic value of these presidents' administrative powers, even for politically powerful presidents (Inácio & Neves, 2018). However, relatively little is known about these powers and the scope of unilateral actions they allow.

A vast US literature demonstrates the relevance that the administrative presidency has for the chief executive to overcome inter-branch conflicts and policy divergence with the bureaucracies (Moe & Howell, 1999; Rudalevige, 2002; Rudalevige & Lewis, 2005; Lewis, 2008; Howell, 2003). This scholarship has provided massive evidence that the president, who in the United States has no power to initiate legislation, resorts to executive tools to influence policymaking at the beginning of the process or at its end. Recent studies have advanced our understanding of presidents' use of such tools to advance some policy proposals, with the tactical agreement of the legislative majority, and also of presidents' use of these tools to bypass a hostile Congress (Belco & Rottinghaus, 2017). Yet the story is even more puzzling, as presidents can pursue these goals using both legislative and administrative powers. This is the case for most Latin American presidents.

What are the incentives for Latin American presidents to use administrative tools to govern? How much discretion do Latin American presidents have in using these executive powers? Do these powers allow the president to implement policies that legislators do not like or on which legislators prefer to avoid leaving their fingerprints?

Answering such questions requires us to take a step back and begin by exploring what decisions are targeted through these administrative powers. This is central to advancing this new research agenda. In approaching this exploration, our research question in this chapter is the following: What is the portfolio of policy goals that Latin American presidents can pursue through unilateral administrative decisions? At this stage, we assume that the content of these administrative decisions is more important than the number of these actions. We argue that an administrative decree is a multi-targeting tool (Inácio & Recch, 2020) that allows a president to take unilateral actions in several policy areas, and at different levels of decision-making. Certainly, congress and the judiciary establish some boundaries and constraints on a president's discretion. However, this executive tool still

can be used strategically by presidents to shape their administrative policy agendas. Hence, we expect that the policy areas and types of decisions that presidents target through these unilateral actions will vary considerably across countries and governments.

In the next section, we explore to what extent the content of administrative decrees varies insofar as the presidential agendas and purposes behind these decrees. For this, we first characterise presidential decree-making in Latin American presidentialism by considering the institutional constraints and presidential policy agendas issued by the 36 presidents who ruled in six Latin American countries (Argentina, Brazil, Chile, Colombia, and Peru) between 1990 and 2017. To identify whether presidents strategically use administrative decrees for different purposes, we analyse the content of presidential decrees using an unsupervised machine learning technique: structural topic modelling (STM). We demonstrate that presidents pay attention to a wide variety of policy areas, that different objectives guide these unilateral decisions, and that the policy areas affected by administrative decrees vary across countries and presidents. Subsequently, we illustrate how presidents implemented unilateral actions under stress during the COVID-19 pandemic, highlighting the case of Brazil as an example. Finally, we discuss how the pandemic highlighted the simultaneous use of these decrees, and their potential for abuse, all over the continent as there was a proliferation of delegation. We wrap up by discussing what can be learned from the case of Bolsonaro in Brazil.

### **How Valuable Are Administrative Decrees for Presidential Unilateralism in Latin America?**

In Latin America, the influence of presidents on the decision-making process occurs through those presidents' power to issue decrees. However, while the regional literature about presidential decree-making has extensively discussed the power to issue *legislative* decrees, there is considerably less attention devoted to decrees for *administrative actions*. This chapter aims to fill this gap by demonstrating that decree-making power encompasses legislative as well as administrative decisions, which are both valuable tools that presidents recruit in the pursuit of their policy agendas.

Therefore, there are two types of presidential decree powers. The first is the power to issue legislative decrees, which enables the executive to take part in the law-making process, on the basis of constitutional or delegated authority to issue decrees with the force of law, with the purpose of introducing or modifying laws. This is the case, for example, for provisional measures in Brazil and decrees of necessity and urgency in Argentina. The literature has analysed the effects of this decree power on law production, executive-legislative relations, and political stability (Shugart & Carey, 1992; Carey & Shugart, 1998; Figueiredo & Limongi, 1999). This distinctive feature of presidentialism in the region ensures that the president has a strategic advantage in controlling the legislative agenda. Legislative

decrees allow the president to change the status quo of policies without prior authorisation from the other branches, and to control the timing of the legislative process.

The second type of presidential decree power in this region – and the focus of this chapter – is the power to issue administrative decrees. Two main types of decisions can be implemented by these decrees. The first are regulatory decrees that define how laws will be executed. Generally, constitutional texts restrict a president's discretionary power by prohibiting both the introduction of new legal provisions and the modification of those that Congress has approved. However, such constitutional texts are silent about a president's strategic decision to regulate only a certain number of provisions of a law, which leaves space for the selective implementation of a legislative decision. The second type are strict administrative decrees that establish conditions for the organisation and functioning of the executive branch and the bureaucracies. These decrees do not depend on the law, but rather on a president's executive authority and, for that reason, are known as autonomous decrees.

Administrative decrees – both law-implementing ones and autonomous ones – constitute a largely unexplored field of presidential decree power in Latin America. The literature agrees that regulatory power is the president's faculty to unilaterally issue general or special regulations (decrees, directives, etc.) for the administration when a country's constitution has not entrusted them to the legislator or, also, to regulate the execution of laws (Bonilla, María del Mar Otero, & de Zubiría, 2016; Trejo, 2015; Vivacqua, 2013; Zúñiga Urbina, 2001). However, there is always some legal ambiguity about the limits between administrative and autonomous decrees, as happens, for example, in the Colombian case, where autonomous decrees can have characteristics of both administrative and legislative acts (Bonilla, María del Mar Otero, & de Zubiría, 2016). The same is true for the Argentine case, where the president issues autonomous decrees on matters within the “administrative reserve zone” that cannot be regulated by law (Vivacqua, 2013).

### ***The Institutional Regulation of Administrative Decrees***

How much discretion does the president have in making administrative decisions? How unilateral are these decisions and who controls them? We consider three aspects that may institutionally differentiate the presidential power to issue administrative decrees and thus indicate the opportunities and incentives for presidential unilateralism.

First, this power is constitutionally regulated in our sample of Latin American countries, in stark contrast to what occurs, for example, in the United States. The regulation varies across countries, but also over time in some of them, indicating changes in the preferences of legislators as well as in the level of tolerance of courts in relation to the president's administrative powers. Regarding the regulation of the power to issue decrees that implement law, there is no significant variation across constitutions in the

region under consideration. The main reason is that these decrees regulate the content of laws that a congress may pass. By contrast, the constitution sets narrow limits on the issuing of autonomous decrees. In some countries, constitutional provisions define which policy areas and decisions can be executed by the direct action of the executive. It is worth noting that the delegation of these powers to the executive changes over time. For example, the autonomous decree was only authorised by the Brazilian Constitution in 2001. This was a compensatory measure for the restriction of the presidential power to reissue provisional measures, which were widely used for administrative decisions. Decisions that create budgetary expenditures or create or abolish public agencies cannot be issued by autonomous decrees in Brazil; they require a law.

Second, constitutions vary with respect to the degree of unilateral power that the administrative decision grants to the executive. While in some countries presidents may issue these decrees on their own, in other countries the signature of other cabinet members, such as the minister in charge of the corresponding public policy area or the Chief of Staff, is required. Although this ministerial endorsement can be a merely ceremonial act in cabinets closely aligned with the president, it can also constrain presidential discretion when there are policy divergences and/or partisan conflicts within the cabinet.

The third aspect is the horizontal control of administrative decrees or, in other words, who can stop or annul these presidential decisions. How does controlling the legality of a presidential decree or regulatory power work? Who controls whom? The answer to this question is complex and varied, as several institutions are involved in the process in each country. Control bodies and procedures vary, not only in their names but also in their hierarchies. The formal design of this arrangement is an important aspect of the presidential calculus about the risks of having one's unilateral actions reversed. The executive's power to issue decrees is not unlimited and is subject to control by different political institutions. The literature has supported the idea that legal-administrative and political controls have a role in protecting the democratic process (Trejo, 2015). In this context, constitutional review bodies become relevant as controllers of the procedural rules established by the constitution. And this role applies not only to the availability of such review powers but also to the opportunities on which those powers can be exercised (Trejo, 2015).

In Table 5.1, we compare the constitutional basis of the powers to issue administrative decrees, the degree of presidents' discretion, and who controls such decisions across the six countries in our sample.

It is noteworthy that different institutions may carry the horizontal accountability in each country. In Argentina, it is the Auditor General of the Nation; in Brazil, the Congress and the Supreme Federal Tribunal; in Chile, the Constitutional Court; in Colombia, the Council of State; in Paraguay, the Supreme Court of Justice, and in Peru, the Constitutional Court. In addition, the process of annulling a decree issued by the president is different in each country. For example, in Argentina, autonomous

Table 5.1 Institutional regulation of president's administrative powers by country

Country	Decree type	Regulation	Degree of unilateralism	Control mechanism
Argentina	<i>Decreto autónomo</i>	Constitutional (Art. 99 p.1)	Unilateral Presidential decision	Auditor General of the Nation ( <i>Auditoria General de la Nación</i> ) (Constitution, Art. 85) Congress ( <i>Congreso</i> ) (Constitution, Art. 59)
	<i>Decreto Reglamentario o ejecutivo</i>	Constitutional (Art. 99 p.2)	Presidential decision endorsed by the ministerial council and the chief of staff	Auditor General of the Nation ( <i>Auditoria General de la Nación</i> ) (Constitution, Art. 85) Congress ( <i>Congreso</i> ) (Constitution, Art. 59)
Brazil	<i>Decreto Autônomo /Decreto regulamentar</i>	Constitutional (Art. 84)	Unilateral Presidential decision	Congress ( <i>Congreso</i> ) (Constitutional Art. 49 .p V) Supreme Court ( <i>Supremo Tribunal Federal</i> ) (Constitution, Art. 102)
Chile	<i>Decreto Supremo</i>	Constitutional (Art. 32. p 6; Art. 35.)	Presidential decision endorsed by a Ministry	Comptroller General of the Republic ( <i>Contraloría General de la República</i> ) (Constitutional Art. 99) Constitutional Court ( <i>Tribunal Constitucional</i> ) (Constitution, Art. 93. P 9)
	<i>Decreto Reglamentario (Reglamento)</i>	Constitutional (Art. 32. p 6; Art. 35.)	President and/or a Ministry control the decision	General Comptroller of the Republic ( <i>Contraloría General de la República</i> ) (Constitutional Art. 99) Constitutional Court ( <i>Tribunal Constitucional</i> ) (Constitution, Art. 93. P 9)

	<i>Decreto Exento</i>	Constitutional (Art. 32. p 6; Art. 35.)	President and/or a Ministry control the decision	Constitutional Court ( <i>Tribunal Constitucional</i> ) (Constitution, Art. 93. P 9)
Colombia	<i>Decreto Reglamentario</i>	Constitutional (Art. 189 p.11)	Unilateral Presidential decision	Council of State ( <i>Consejo de Estado</i> ) (Constitution, Art. 23, p. 2). Congress ( <i>Congreso</i> ) (Constitution, Art. 178)
Paraguay	<i>Decreto</i>	Constitutional (Art. 238 p. 5)	Presidential decision endorsed by a Ministry	Supreme Court ( <i>Corte Suprema de Justicia</i> )
Peru	<i>Decreto Supremo</i>	Constitutional (Art. 118. p. 8)	Presidential decision supported by the ministerial council	Constitutional Court

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*Sources:* Inácio and Neves, 2018; National Constitutions.

decrees can only be modified, amended, or repealed by other decrees of the same or superior legal kind (Vivacqua, 2013, p. 277). A different procedure occurs in Colombia, though, where regulatory decrees must be attacked using a simple nullity action (Urrego Ortiz, 2005, p. 129).

The institution in charge of controlling the issuing of presidential decrees matters, and so does the mechanism by which the control is triggered. In Chile, different institutions can review the legality of decrees depending on a decree's topic. On the one hand, the Comptroller General of the Republic<sup>1</sup> and the Constitutional Court<sup>2</sup> control the lawfulness of the supreme and regulatory decrees. The Comptroller General of the Republic makes the standard control. The court can only hear the matter at the request of any of the two congressional chambers within 30 days of the publication or notification of the contested text. In case of defects that exceed the autonomous regulatory power of the President of the Republic, a quarter of the members of the congress in office may also file such a petition. On the other hand, exempt decrees (*decretos exentos*) are only controlled by the Constitutional Court. According to Article 10 of Law 10,336 governing the Office of the Comptroller General of the Republic, one or more Ministries or Services may be exempted from the process of taking note of supreme decrees or resolutions that grant licenses, holidays, and paid leave or that refer to other matters that it does not consider essential. In the case of supreme decrees, the exemption may only relate to decrees signed "by order of the President of the Republic." This exemption may be granted for and revoked by the Comptroller General, ex officio or at the request of the President of the Republic.<sup>3</sup>

A concrete example occurred with Supreme Decree N°48 of 2007, which dealt with "National Norms on Fertility Regulation" during the first government of Michelle Bachelet, whose controversial decrees were made about the distribution of the morning after pill. At that time, 36 sitting deputies, representing more than a quarter of the Honourable Chamber of Deputies, filed and questioned the constitutionality of these decrees, totally or partially, presenting the case before the Constitutional Court, which declared them unconstitutional. This was a remarkable demonstration that the Constitutional Court has complete competence to control the form and substance of decrees issued by the president at the request of congress (Alvear Téllez & Cisterna Rojas, 2008; Bordalí Salamanca & Zúñiga Añazco, 2009; Marshall Barberán, 2008; Nogueira Alcalá, 2008).

The horizontal control of administrative decree power, either parliamentary or judicial, reinforces the point that this delegation is conditional, as it is in the more studied cases of legislative decrees. The horizontal control of presidential decrees has administrative and political implications.

### *The Presidential Agenda and the Varying Targets of Administrative Decrees*

Presidents' policy agendas vary in terms of their targets, but also in relation to the executive tools that a given president considers most strategically



suited to implementing said targets. While some policy changes depend on the approval of legislative or constitutional decisions, others can be implemented within the existing legal apparatus and through administrative decisions. Since both the priorities of presidents and the malleability of policies for unilateral acts vary, we expect important variations in the content of administrative decrees across presidential mandates and policy areas. Additionally, presidential unilateralism is more intense during the first year in government because presidents often resort to unilateral administrative measures as a means of revoking decisions made by previous administrations and of aligning executive branch agencies with their own presidential agendas.

Importantly, the incentives for presidents to implement their agendas through unilateral measures also vary according to the type of government – that is, whether it is a one-party or multi-party government – and the degree of cohesion vs. fragmentation within the government. Inácio and Neves (2018) have shown that presidents leading multi-party cabinets issue more decrees when the coalition is less fragmented. Conversely, presidents resort less to administrative unilateralism when there are many parties – in other words, when presidents depend more on the support of their allies' legislative seats. As mentioned earlier, presidents can pursue their agendas through unilateral decisions that can be either legislative or administrative. Given that the legislative decree power has greater potential to change the status quo of policies than administrative decrees, variations in presidents' legislative powers matter. Therefore, it is important to consider whether presidents with fewer legislative powers make greater use of administrative decrees and, if so, for which types of decisions and areas of public policy.

The period from 1990 up to 2017 encompasses important variations in political-institutional environments, economic regimes, and the structures of political and party conflicts. Several studies have drawn attention to not only partisan but ideological alternation in the presidency in the Latin American region. Take, for example, the rise of right or centre-right presidential parties in the 1990s and left-wing parties in the 2000s. These changes triggered important policy shifts led by presidents. Pro-market or neo-liberal reforms dominated the government agenda in several countries in the region during the 1980s and 1990s (Llanos, 2001; Weyland, 2004). Thereafter, increasingly proliferating left-wing governments pushed state interventionism as well as redistributive policies (K. M. Roberts & Levitsky, 2011). A comparison of the policy positions of the presidents throughout the re-democratisation process broadly reiterates these oscillations (Arnold, Doyle, & Wiesehomeier, 2017). However, how presidents pursue their policy agendas varies even among ideologically close presidents (Murillo & Martínez-Gallardo, 2007). While privatisation declined with left-wing governments coming to power in Bolivia and Uruguay, something of the opposite was observed in Chile and Brazil under Ricardo Lagos and Rouseff, respectively. Both of these presidents issued a large volume of

decrees aimed at outsourcing to the private sector, especially in their first terms in office (Polga-Hecimovich, 2016).

Presidents' policy agendas are also sensitive to political moods and oscillate throughout the presidential term. Changes in legislators' preferences (Arnold, Doyle, & Wiesehomeier, 2017) and exogenous shocks (Carlin, Love, & Martínez-Gallardo, 2015a; 2015b) may provoke policy shifts and calibrations of a president's policy agenda. For instance, such changes could impel presidents to use more administrative decrees to overcome unexpected news or challenges during their mandates.

## Data and Methods

To get at our research questions, we use a large dataset comprised of the 251,958 administrative decrees issued by the 36 presidents who ruled in Argentina, Brazil, Chile, Colombia, and Peru between 1990 and 2017. Inacio and Neves (2018) created this dataset via web scraping routines, taking advantage of online repositories when available. Due to limitations on available information, the dataset only includes data for two Colombian presidents, those serving between 2002 and 2017.

Table 5.2 shows the number of decrees broken down by country. Chile clearly stands out, accounting for almost half of the total number of decrees. Presidents in Colombia, on the other hand, had the lowest frequency of decrees issued in the period studied, accounting for less than 4% of the dataset.

Zooming in to look within countries, Table 5.3 shows the total number of decrees issued by each president. In Argentina and Brazil, presidents Cristina Fernández de Kirchner and Fernando Henrique Cardoso, each of whom stayed in office for two terms, issued more than 10,000 administrative decrees each. By contrast, Peruvian presidents in these years issued an average of about 3,000 decrees.

When it comes to the number of decrees issued per year, the picture is much more stable. 1990 saw the fewest decrees issued (2.33% of the total), while 2010 saw the highest number (at 5.26% of the total). This is shown in Table 5.4.

*Table 5.2* Total presidential decrees issued by country

<i>Country</i>	<i>Total</i>	<i>Per cent of total decrees</i>
Argentina	51,991	20.63%
Brazil	24,947	9.90%
Chile	123,002	48.82%
Colombia	9,457	3.75%
Paraguay	22,840	9.07%
Peru	19,721	7.83%
<b>Total</b>	<b>251,958</b>	<b>100.00%</b>

Table 5.3 Residential decrees issued by each president

<i>President</i>	<i>Total</i>	<i>Per cent of total decrees</i>
<b>Argentina</b>		
Menem	17,943	7.12%
De La Rúa	1,517	0.60%
Duhalde	2,233	0.89%
Kirchner	9,137	3.63%
C Kirchner	18,783	7.45%
Macri	2,378	0.94%
<b>Brazil</b>		
Collor	3,320	1.32%
Itamar	2,106	0.84%
Cardoso	10,170	4.04%
Lula	6,058	2.40%
Rousseff	2,470	0.98%
Temer	823	0.33%
<b>Chile</b>		
Aylwin	8,404	3.34%
Frei	22,575	8.96%
Lagos	33,928	13.47%
Bachelet	34,184	13.57%
Piñera	23,911	9.49%
<b>Colombia</b>		
Uribe	2,137	0.85%
Santos	7,320	2.91%
<b>Paraguay</b>		
Rodriguez	10	0.00%
Wasmony	5,080	2.02%
Cubas	4,246	1.69%
Gonzalez	772	0.31%
Duarte	15	0.01%
Lugo	3,875	1.54%
Franco	1,243	0.49%
Cartes	7,599	3.02%
<b>Peru</b>		
Fujimori	4,792	1.90%
Paniagua	499	0.20%
Toledo	4,090	1.62%
García	4,220	1.67%
Humala	4,175	1.66%
Kuczynski	1,945	0.77%
<b>Total</b>	<b>251,958</b>	<b>100.00%</b>

These tables are a useful starting point for investigating our data, but considering that we aim to understand how presidents in different countries make use of decrees, numbers alone tell only one part of the story. Looking at the raw numbers, it appears that the use of presidential decrees in Chile is generally part of the presidential strategy, while in Colombia it

*Table 5.4* Total presidential decrees issues by year

<i>Year</i>	<i>Total</i>	<i>Per cent of total decrees</i>
1990	5,873	2.33%
1991	5,989	2.38%
1992	6,031	2.39%
1993	7,970	3.16%
1994	6,583	2.61%
1995	6,354	2.52%
1996	6,208	2.46%
1997	10,046	3.99%
1998	12,610	5.00%
1999	9,471	3.76%
2000	8,995	3.57%
2001	8,709	3.46%
2002	10,598	4.21%
2003	8,980	3.56%
2004	7,620	3.02%
2005	7,152	2.84%
2006	7,699	3.06%
2007	7,404	2.94%
2008	8,598	3.41%
2009	10,244	4.07%
2010	13,249	5.26%
2011	12,603	5.00%
2012	11,642	4.62%
2013	11,188	4.44%
2014	10,594	4.20%
2015	11,295	4.48%
2016	9,065	3.60%
2017	9,188	3.65%
<b>Total</b>	<b>251,958</b>	<b>100.00%</b>

may not have the same strategic value, although we need to consider the fact that our data on Colombia is related to a shorter period of time. To confirm whether this is true, we need to differentiate decrees by their content – to read and categorise each presidential decree and compare their use in different countries and across time. We used computational text analysis and machine learning techniques to do just that.

We rely on the decrees' abstracts<sup>4</sup> as a summary of their content. We also processed information related to each presidential decree, such as the year of issue, the presidential mandate, the president's legislative powers,<sup>5</sup> and other information related to the documents. We use a topic modelling algorithm to organise and discover the topics of all presidential decrees in our dataset on the basis of word occurrence and co-occurrence. Considering that this is an unsupervised machine learning model, the algorithm extracts or discovers topics without the researchers' direct intervention. At the outset, the researchers need to define the number of topics to be estimated (M. E. Roberts, Stewart, & Airolidi, 2016).

To be more specific, we use structural topic modelling (STM), a method derived from Latent Dirichlet Allocation – LDA (Blei, Ng, & Jordan, 2003), the main goal of which is to estimate the latent topics of a corpus of documents and the topic composition of each individual document (i.e., each presidential administrative decree). The estimation of these topics is based on semantically interpretable word occurrence and co-occurrence across all documents. The algorithm then estimates a mixture of topic proportions for each document – in other words, what percentage of each document is associated with each of the estimated topics. One advantage of using STM is that we can use document metadata to inform topic definition and the estimation of topic proportions (M. E. Roberts et al., 2014).

Our preferred model assumes 25 topics and uses covariates only for topic prevalence.<sup>6</sup> The covariates we use are year, country, government type (one-party or multi-party cabinet), year within a given presidential mandate (analysed as first year or non-first year), and a measure of the legislative power of the president in question. We tested models with a range of numbers of topics, starting from an initial manual categorisation that considered six topics and then increasing the number to disambiguate topics that seemed to be covering more than one theme. We rapidly increased the number of topics to a band between 20 and 28, finally settling on 25 after careful consideration of samples of documents from all topics and examining the documents most highly associated with each topic.

We manually labelled the topics after careful consideration of words associated with each topic and the administrative decrees with a high prevalence of each topic. Using FREX, a measurement that considers both word frequency and exclusivity for each topic (Roberts, Stewart, & Tingley, 2019), we tested different topic labels iteratively by consulting with experts from different countries. Figure 5.1 summarises this process and shows the five words most closely associated with each topic.

The set of topics comprises administrative decisions in different policy areas, types of decisions, and audiences affected by them. It is interesting to note that decrees enacted to implement laws, which reflect the legislative agenda approved by congress, do not come up among the most prevalent topics. This points to the large volume of other types of administrative decisions under the discretion of the president.

Figure 5.2 shows the prevalence for each topic while considering the whole corpus of presidential decrees. By far, topic 3 stands out with the highest prevalence. This mainly shows that a substantial portion of the dataset is related to “*exentos*” – decrees from Chile that are not subject to any revision; the abstract of each of these decrees consists of only a single sentence, stating that the decree is in this category. Among the most prevalent topics that these types of decrees include are the concession of benefits to individuals or groups of civil servants, such as the military, and decisions related to the state’s economic and regulatory functions, such as concessions of public services.<sup>7</sup> Beyond Chile, it is interesting to note the prevalence of presidential decisions directed to individuals, civil servants or

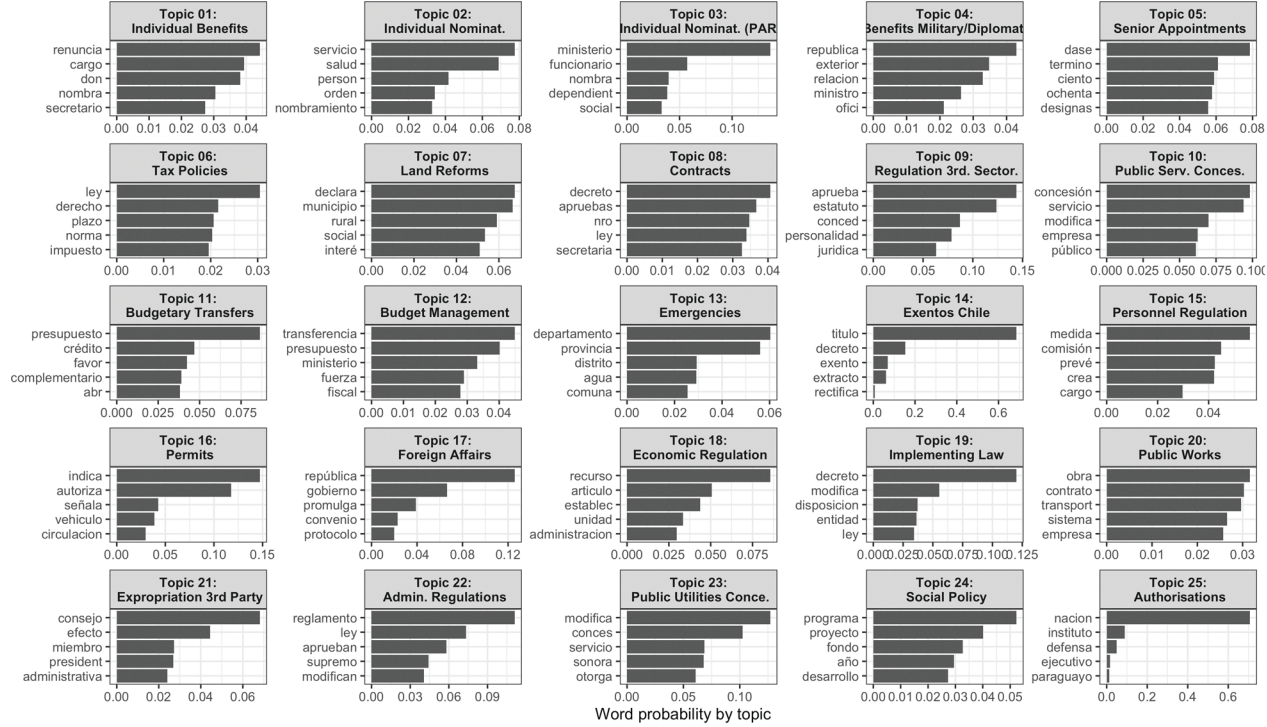


Figure 5.1 Highest word probability by topic.

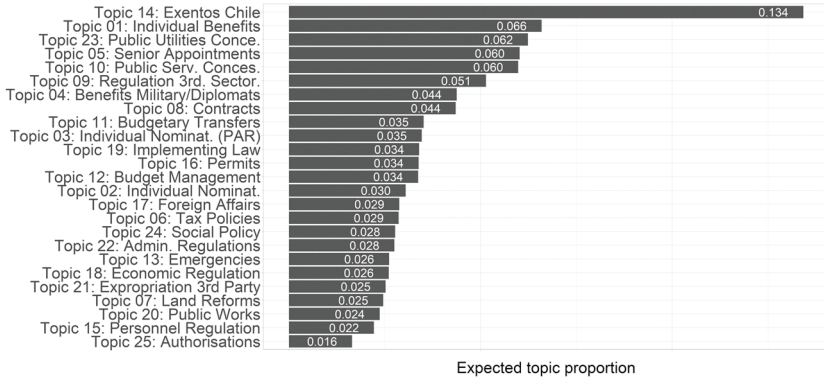


Figure 5.2 Overall topic prevalence across documents for the whole corpus.

not, suggesting a great personalisation of presidential decisions in certain countries. It is noteworthy that the regulation of administrative personnel (topic 15), which is more universalistic and less personalised, is among the topics with the lowest prevalence in our sample.

Is this distribution of topic prevalence similar across countries and governments? In the next section, we explore the data to demonstrate that the variations in topic prevalence reflect not only institutional constraints on presidents' administrative decree power in each country, but also on their policy agendas.

## Results

Taking the averages of all topic prevalences for each document by country, we create what can be understood as the “average presidential decree” by country, shown in Figure 5.3. The differences in topic proportion for each document show that the use of this instrument varies considerably across countries.

Analytically, we can combine some of these topics in order to have a clearer picture of decrees' use in different countries. There are, at least, three clear themes that a subset of the topics can be bundled into: individual benefits (topics 1 through 5), group benefits (topics 6 through 10), and budgetary decisions (topics 11 and 12). Below, we consider each of these bundles of topics, starting with those related to individual benefits (topics 1 through 5).

It is not trivial for presidents to use administrative power to target individuals directly in some Latin American countries. Political appointments to executive posts and the granting of individual benefits, such as pensions and financial aid, can nurture presidential patronage. Notably, the prevalence of administrative decrees concerning personal decisions is a distinguishing trait of the presidential use of this power in Argentina and

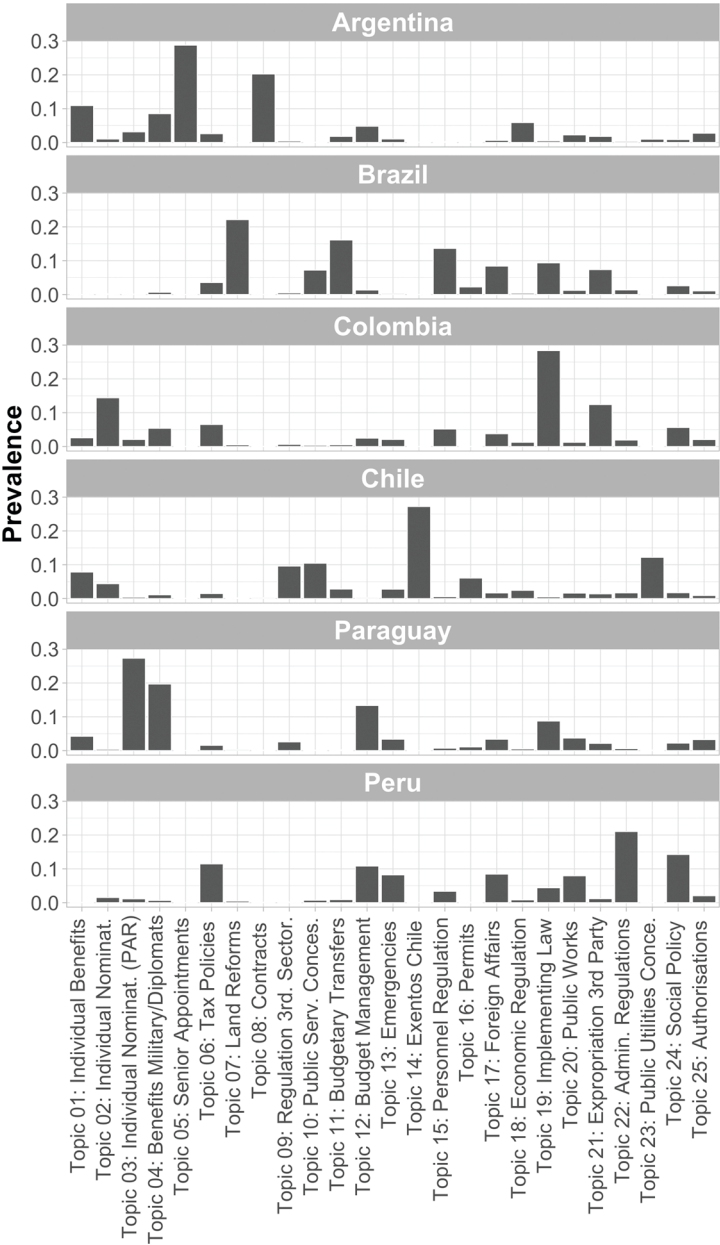
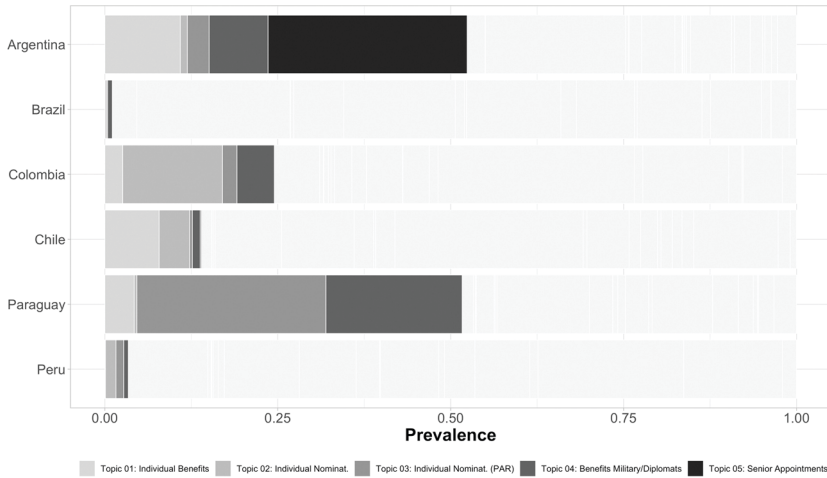


Figure 5.3 Average topic prevalence by topic and country.





*Figure 5.4* Average topic prevalence by topics related to “individual decisions” and country.

Paraguay. Additionally, the high proportion of individual decisions related to military personnel is paramount in three countries: Argentina, Paraguay and Colombia. Appointment decrees for Federal Executive positions in Brazil are issued separately, mostly through ministerial ordinances, which are not included in this database, and, as such, a residual prevalence of this topic is observed in the case of Brazil. The Brazilian president issues separate executive appointment decrees and hence we see a residual prevalence of this cluster of decrees in this country. Figure 5.4 highlights the average topic prevalence for topics in the “individual benefits category.”

The second set of topics we have bundled (topics 6 through 10) refers to distributive and regulatory decisions that can potentially affect different groups and areas of public policy. Here, we grouped administrative decrees on taxes, activities of non-governmental organisations, concessions of public services, public contracts, and land reforms. Figure 5.5 depicts the average topic prevalence of these topics. A significant proportion of the decrees on this type of decision is observed in Argentina (taxes and public contracts), Brazil (land reform and public service concessions), and Chile (regulation of the third sector and public concessions).

The power of the purse is seen as a crucial advantage of Latin American presidents that allows them to negotiate with parties and legislators, and also with subnational governments and interest groups (Raile, Pereira, & Power, 2011; Meireles, 2019). Budget laws regulate presidents’ discretion in this matter, yet presidents can take some unilateral decisions by administrative decree. They decide how and when to execute public expenditures and to transfer resources between ministerial portfolios or government programs. The prevalence of budget transfers is interesting in the case of

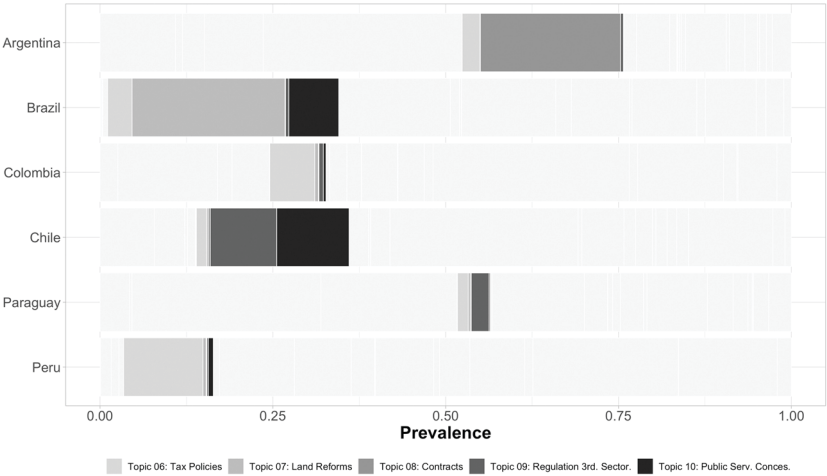


Figure 5.5 Average topic prevalence by topics related to “groups decisions” and country.

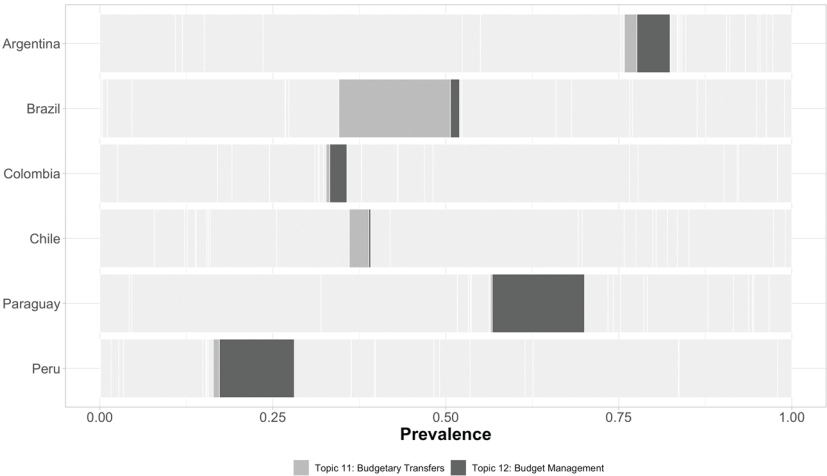


Figure 5.6 Average topic prevalence by topics related to “budgetary decisions” and country.

Brazil.<sup>8</sup> This mechanism allows the Brazilian president to use budget control as a tool for managing the cabinet, which includes the decision on the size of the budget share that cabinet members will get as part of coalition politics. In the other countries in our corpus, budget management seems to be a way that might presidents have to take direct action in this policy area, as shown in Figure 5.6.

Does topic prevalence reflect the constitutional limits on presidential power to issue administrative decrees? Our findings show that, although a country's legal definitions for the use of presidential administrative decrees determine the overall use and constraints of what can be done within countries, the content of administrative decrees not only varies across countries but also varies considerably across presidencies within countries.

In Figure 5.7, we can easily observe that different policy priorities have directed presidential attention in our sample of countries. For example, in Argentina, from Menem until Duhalde's government, the largest proportion of decrees issued was on public contracts (topic 8). After this period, during Cristina Kirchner's administration especially, there is an increase in individual decrees for political appointments (topic 5). In Brazil, the expropriation of land for agrarian reform was a prevalent decision in presidential decrees in several governments, most notably during Cardoso's administration (1995–1999; 1999–2003). During the subsequent government of the left-wing Workers Party (PT) (under Lula [2003–2007; 2007–2011] and then Rousseff [2011–2016]), presidential attention turned to anti-cyclical policies, mainly between 2008 and 2014, with different government priorities. This led to a greater proportion of decrees for the execution of

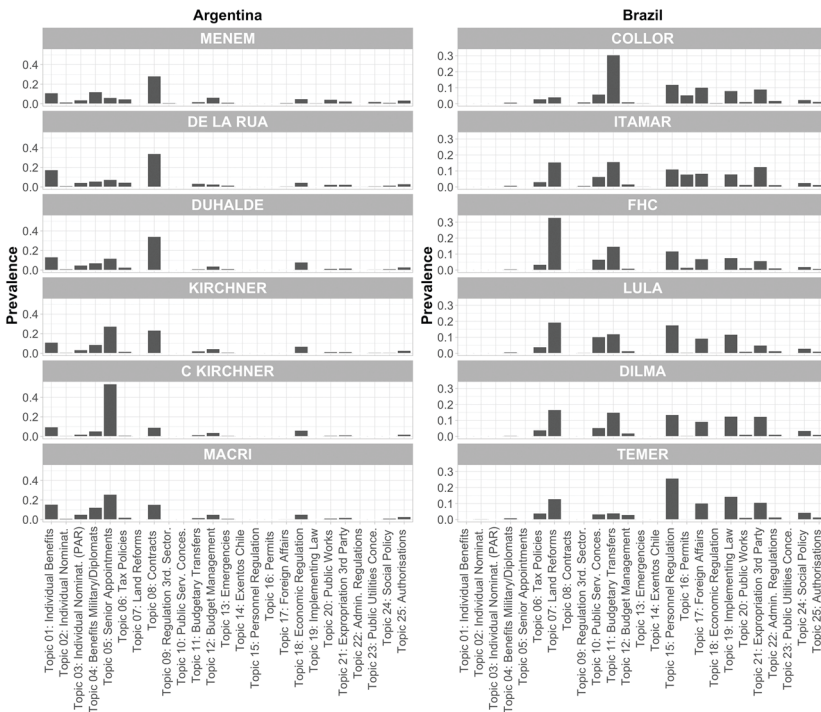


Figure 5.7a Average topic prevalence by topics and country.

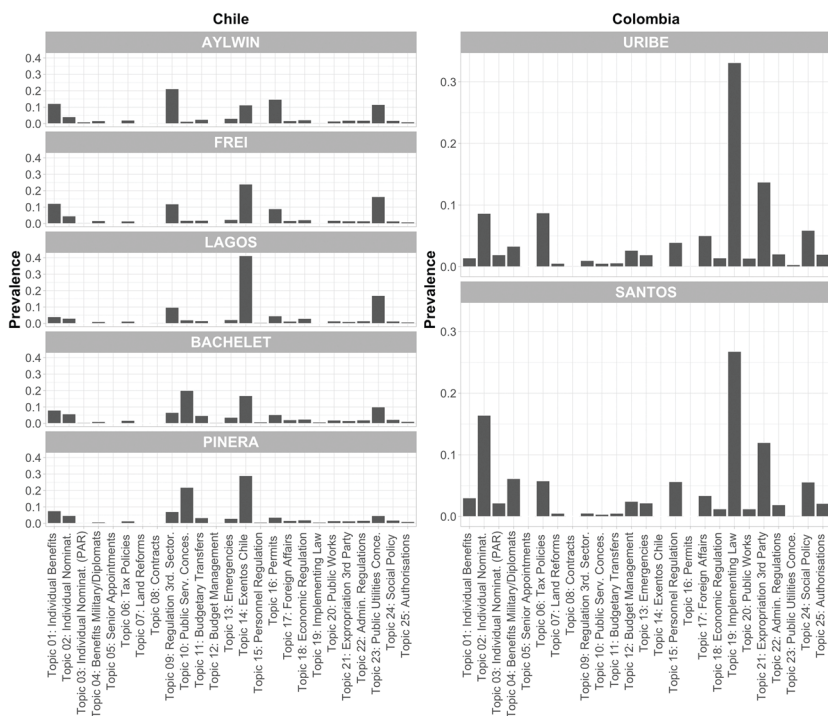


Figure 5.7b Average topic prevalence by topics and country.

public works and, especially in Rousseff's government, the expropriation of land for infrastructure investments (hydroelectric plants, roads). Among the Chilean presidents, there are considerable oscillations in presidential attention and the decisions executed through administrative decrees. In the case of Colombia, the content of the decrees of the two analysed presidents, Uribe and Santos, is quite similar. However, the greater prevalence of individual decrees under Santos is noteworthy. In the Paraguayan and Peruvian cases, the prevailing topics change over the period, with a lower proportion of individual decrees and a higher proportion of budget decrees among the most recent presidents, but with variations between them.

Striking and discrete changes in topic prevalence are clearer when we look at our topic clusters, as we did previously. Figure 5.8 details the variations within countries related to the cluster of individual decisions. Although these decisions concentrate most of the issue of administrative decrees in Argentina and Paraguay, some governments have made greater use of these decisions. The large proportion of these types of decisions in Cristina Kirchner's government contrasts with the previous and subsequent administrations. Similarly, the reduction of these decrees in Duarte's

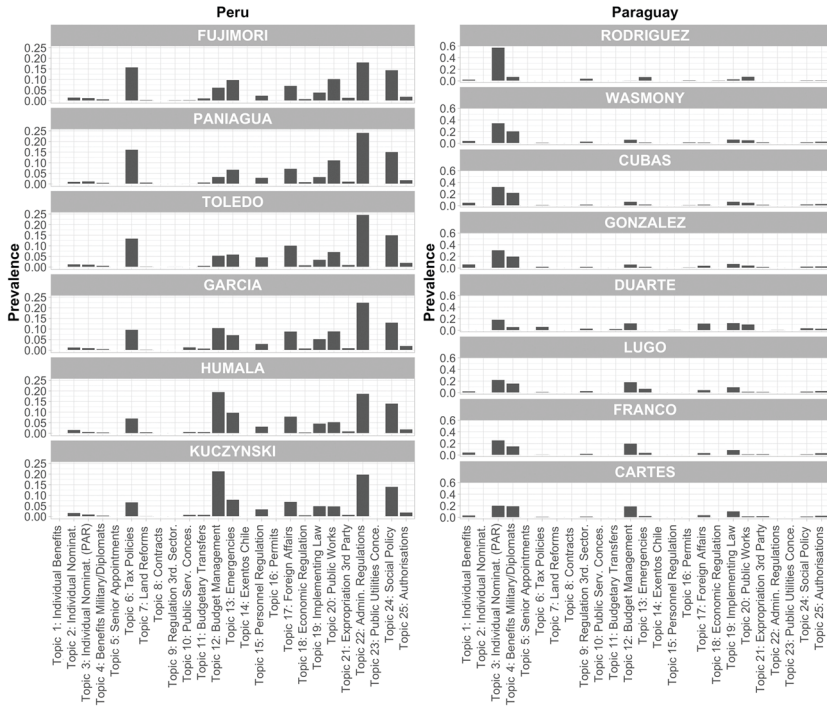


Figure 5.7c Average topic prevalence by topics and country.

and Lugo's governments in Paraguay is government specific because we see that these individual decrees increased in subsequent administrations.

In the case of the second cluster, depicted in Figure 5.9, it is possible to see that presidents target different sectors and groups through administrative decrees. The focus on the regulation of the third sector by the first presidents and the prevalence of public service concessions among the latest Chilean presidents is noteworthy. Even though it is beyond the objectives of this paper to verify whether these oscillations are associated with specific cycles, such as the renewal of concessions at a certain point in our time series, it is very clear from our data that each president's bundle of administrative decrees varies significantly.

Finally, in relation to the cluster of budget decrees, shown in Figure 5.10, there are discrete variations in the prevalence of this matter among the presidents of each country. In Paraguay and Peru, this topic is more associated with the most recent governments. By contrast, this type of decision, especially budget transfers between ministries, has oscillated throughout the Brazilian governments, with an accentuated drop in Temer's administration.

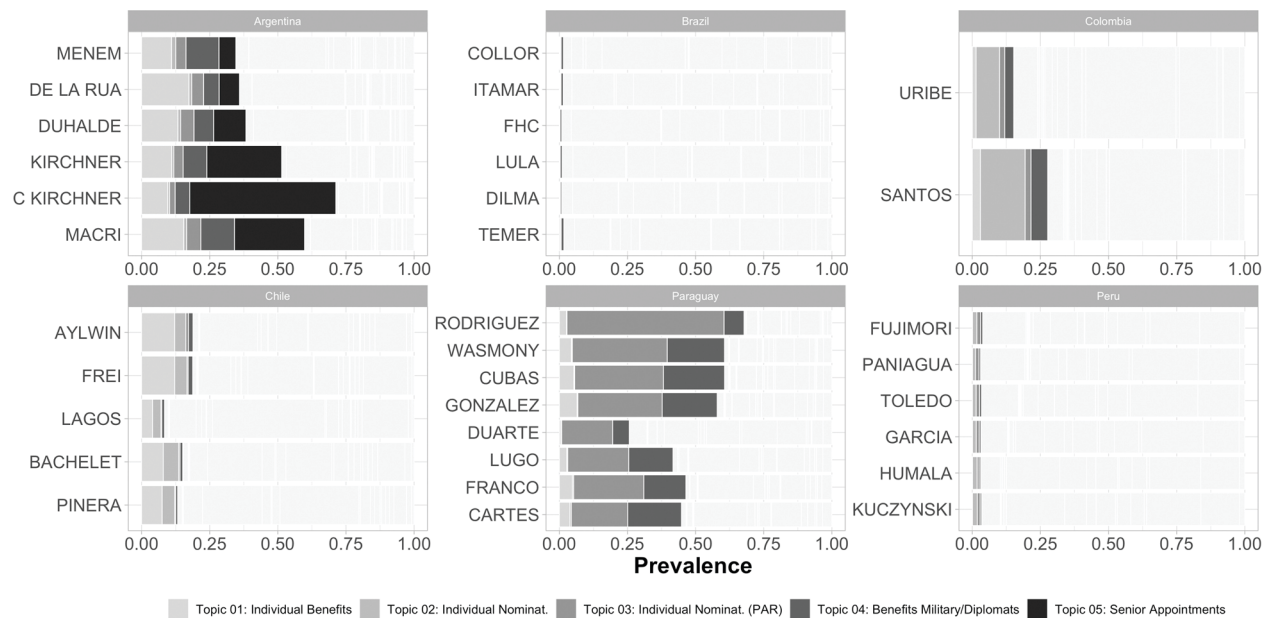


Figure 5.8 Average topic prevalence by topics related to “individual decisions” and country.

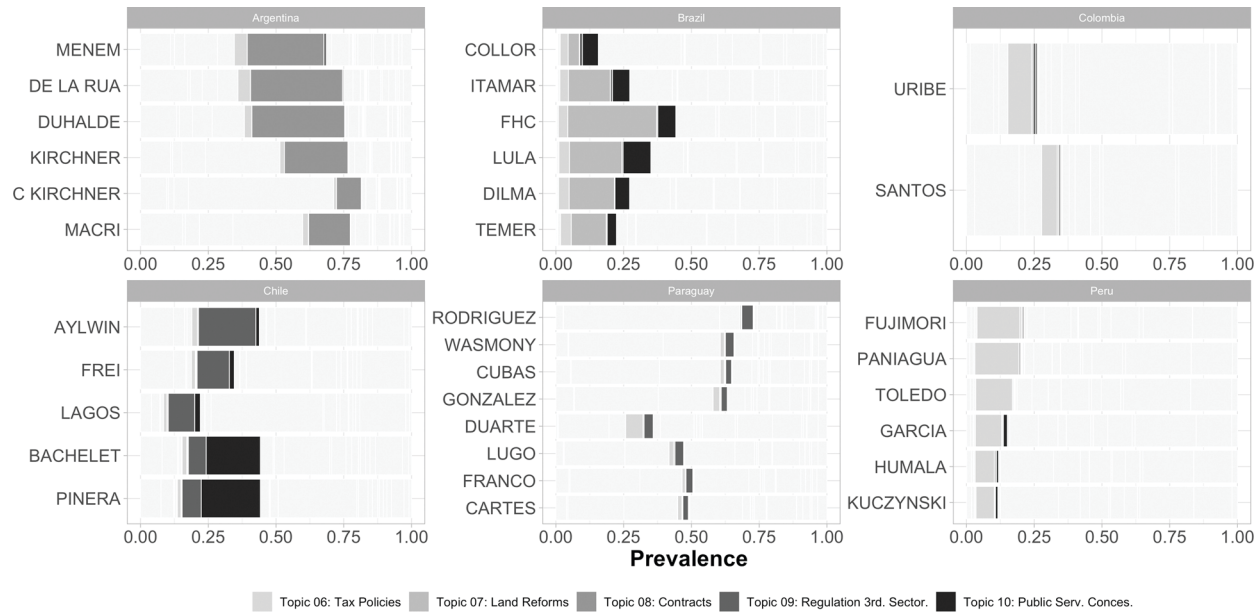


Figure 5.9 Average topic prevalence by topics related to “groups decisions” and country.



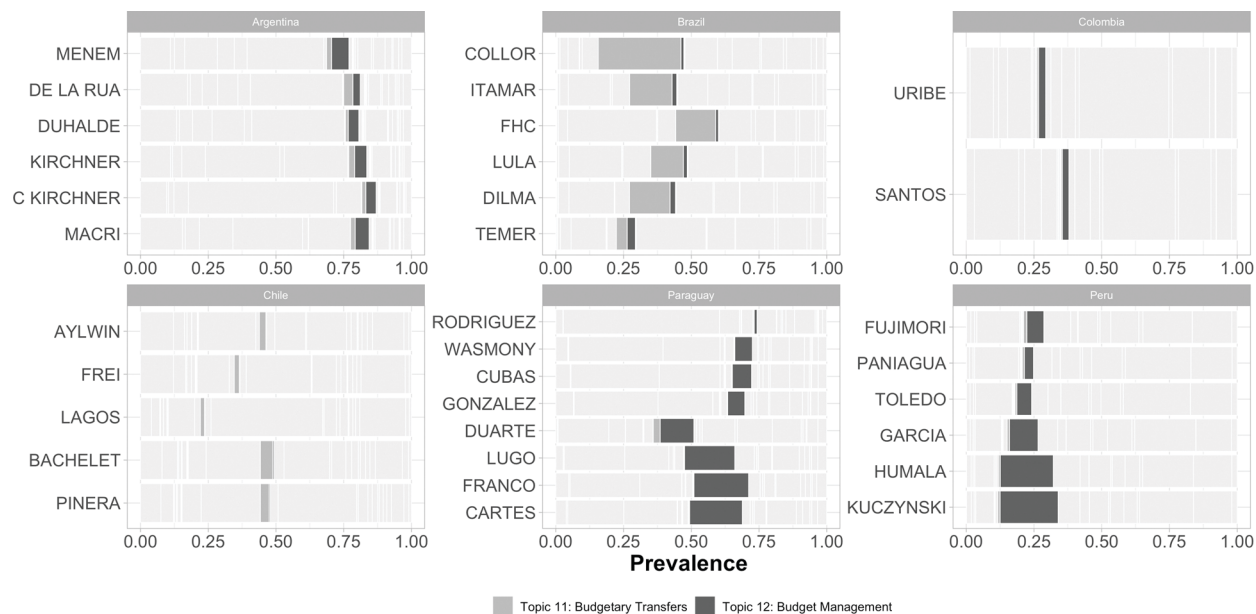


Figure 5.10 Average topic prevalence by topics related to "budgetary decisions" and country.



## **COVID-19 and Unilateral Presidential Actions**

As we have shown earlier, there is great variation in how presidents use administrative decrees, even within the six-country focus and the 27-year time period under consideration. We now turn our attention to the use of these decrees in Brazil during the COVID-19 pandemic to show how decrees allow the president to manage specific policy and political priorities and to better understand where the focus of the presidential attention is when governing. The COVID-19 example is interesting for two reasons. First, this pandemic was an exceptional context that required fast and exceptional actions typically using emergency decree powers. Second, the health and sanitary emergency required actions primarily from the executive branch, thus putting pressure on this branch to exercise leadership in response to the crisis.

Meanwhile, the case of Jair Bolsonaro in Brazil is particularly interesting because *active inaction* was the central marker of this president's approach to the pandemic. Bolsonaro defended herd immunity and rejected policies of social distancing as well as restrictions on economic activity from the beginning. His administration during the pandemic was characterised by a lack of decision-making, by delays in the issuance of related decrees, and by paralysis in critical policy agencies; in parallel, his administration actively blocked or sabotaged emergency policies enacted by Congress and state governments to fill in the vacuum left by this presidential (in)action. Our data shows how Bolsonaro delayed or used only sparingly his decree powers to coordinate national efforts to implement sanitary measures, to expand the capacity of the public health system, or to create economic aid and relief programs.

Politically isolated and controlled by congress and Brazil's supreme court (Supremo Tribunal Federal, or STF) in his first year in office, Bolsonaro initially took the pandemic as an opportunity to test the limits of his unilateral powers. He bet on institutional confrontation to gain more room to manoeuvre and first tried to reshape inter-branch and federative relations in his favour. His moves merged inaction in relation to the COVID-19 pandemic with attempts for power-grabbing to advance his own personal agendas.

Bolsonaro asked the STF to extend the validity of "provisional measures," the type of executive decrees that have the force of law, claiming that the exceptional rules adopted by congress during the pandemic violated the constitutional requirement to deliberate on the provisional measures.<sup>9</sup> The STF denied this request and reinforced congress's power to adopt extraordinary rules to react promptly to the executive's decisions. Bolsonaro also alleged legal uncertainty in making emergency decisions and called on the STF to guarantee that the prevailing Law of Fiscal Responsibility would not be applied to emergency measures.<sup>10</sup> The STF reiterated that this law already rules on this exceptionality, but it did not compel the president into any particular action. For its part, the president put pressure

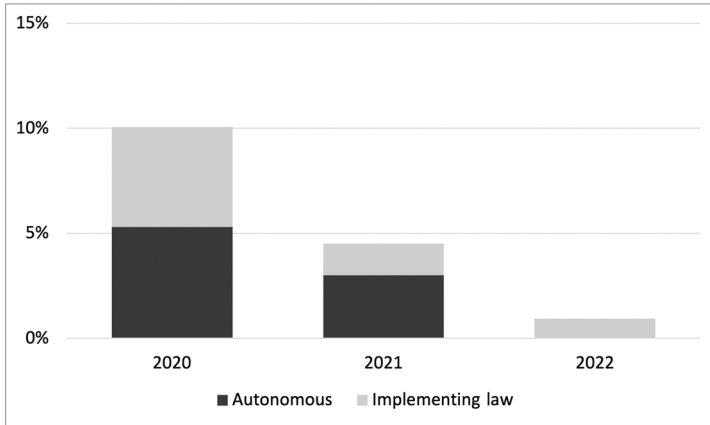
on congress to approve a constitutional amendment number 106 that established special rules (“war budget”) for public spending during the state of calamity. Trapped by horizontal oversight, Bolsonaro escalated his polarising rhetoric and blamed congress and the judiciary for the paralysis of his administration.

Congress and the STF reacted promptly to preserve checks and balances mechanisms and to avoid the costs of the president’s strategy of not making decisions while accusing them of tying his hands. Congress and the STF prevented any interruption of their activities through remote voting and live-streamed floor sessions. Congress made all the main decisions related to the pandemic, which pressured the president to issue the decrees that regulated these initiatives. There was also a parallel increase in provisional measures because the executive is obliged by the constitution to initiate certain budgetary decisions. Below, we comment first on the provisional measures and then on the administrative decrees approved during the pandemic.

During the state of emergency in Brazil, which lasted from March 2020 to December 2020, 137 laws were enacted. The executive was the author of 62% of those laws (85) due to the large number of provisional measures (44) and budget laws (39) that are the exclusive initiative of the executive, in addition to only two ordinary laws. Legislators proposed 44 ordinary laws and took on the burden of proposing and passing costly laws that rely on supermajorities: three constitutional amendments (war budget) and five complementary laws (such as the program to guarantee resources for federative units to tackle the COVID-19 outbreak), as well as the creation of emergency aid for poor and unemployed people. In multiple instances, the legislature exercised its veto power over the unilateral legislative measures of the executive: of the 108 provisional measures issued by the president during 2020, 52 lost effectiveness because congress members deliberately failed to put these measures to a vote on time, an unprecedented behaviour.

Bolsonaro used unilateral administrative actions selectively during the pandemic. Despite being in the presidency, he refused to lead the state response, which plays into why the number of pandemic-related decrees was so low. In 2020, the first year of the crisis, 10% of administrative decrees were pandemic-related, decreasing to 4.5% in 2021 and 2.5% in 2022.<sup>11</sup> Figure 5.11 shows the distribution of COVID-19 decrees by type (i.e., whether they are decrees that implement laws or autonomous decrees). This data shows that, as far as unilateral administrative decisions are concerned, the president’s attention was not on the pandemic. In 2020, the most critical year of the pandemic, decrees implementing laws correspond to almost half of the total of decrees issued, indicating that the executive’s moves on the pandemic were largely pushed by congress.

A critical vector of the president’s inaction was the paralysis of executive agencies. Initially, Bolsonaro delegated powers to the ministry of health to handle the emergency while he publicly denied the severity of the epidemic and antagonised social distancing measures. Strongly diverging from the ministry’s management of the pandemic, between April and June 2020



*Figure 5.11* Percentage of COVID-19-related decrees by year and type – Brazil, 2020–2022.

*Note:* Own elaboration; data gathered until July 18, 2022.

Bolsonaro fired two ministers whose recommendations were aligned with the WHO and the larger scientific community. Ultimately, Bolsonaro politicised the ministry by appointing a military loyalist as health minister, who acted in accordance with the president's political positions and remained in office for a year during the most critical period of the pandemic.

Meanwhile, Bolsonaro was very active in blocking governors and mayors who implemented restriction measures. Pressed to take urgent measures to prevent the collapse of health services and without national guidelines on how to do this, some subnational governments adopted stay-at-home orders and suspended economic activities. Bolsonaro reacted to this policy divergence by trying to grab power on federative issues. He issued a provisional measure subordinating decisions on social distancing and economic restrictions to federal agency approval. This decision was challenged and then partially overturned by the STF, as members of the federation are constitutionally empowered to make these decisions concurrently with the federal government. In addition, a number of decrees defined the essential activities that should not be affected by restriction measures, in open contradiction to and delegitimising the subnational governments' actions. Such measures were widely used by the president to blame subnational governments for closing down economic activities.

This brief discussion of the issuing of administrative decrees in Brazil during the COVID-19 pandemic reinforces our argument about the multiple targets that presidents have when they resort to unilateral actions. In Bolsonaro's case, the president's unilateral actions reflect not only his refusal to lead a response to the pandemic, but also his moves to block the actions of those who did wish to mount a reaction.

## Final Remarks

This chapter analysed, in an exploratory way, the issuance of unilateral actions by a subset of Latin American presidents executed through administrative decrees. We argue that administrative decisions are valuable to presidents, and that they amplify the executive's powers vis-à-vis the other government branches and political institutions. Nevertheless, little is known about how presidents use this multi-targeting tool and enhance presidential discretion and presidential unilateralism beyond legislative decisions. To move towards addressing this gap, we discussed the regulation of presidential discretion in administrative matters, indicating the potential of issuing law-implementing and autonomous decrees to pursue a president's policy agenda.

Administrative decrees represent a massive source of presidential decisions that remains largely unexplored. Current techniques for the automated analysis of texts as data mitigated one of the barriers to the systematic study of these decisions and the production of more comprehensive theories on presidential powers and policymaking. In this chapter, we use this strategy to identify and compare the contents of hundreds of thousands of abstracts of presidential decrees issued by the presidents of six Latin American countries over the past 30 years.

The results show that these decrees vary both between and within countries, providing important evidence that presidents already vested with broad legislative powers also resort to administrative prerogatives to execute their policy agendas successfully. Furthermore, we have shown that the objectives pursued through the issuance of administrative decrees can also include strategies of retaliation or inaction by presidents in response to the moves of other political actors. The pandemic highlighted the simultaneous use of these decrees, and their potential for abuse, across the continent.

## Notes

- 1 Article 99 of Constitution (reformed in 2005).
- 2 Article 93 numeral 16 of Constitution (reformed in 2005).
- 3 The details of the topics exempted from control have been supplemented by Resolution 6 (2019) and Resolution 7 (2019) issued by the Office of the Comptroller General of the Republic.
- 4 Brazilian decrees abstracts were translated to Spanish using automatic translation and revised by the researchers, so that all texts used in the analysis were in the same language.
- 5 This is a measure of presidents' legislative power by Negretto (2013), which is built on several variables that measure the agenda-setting and constitutional legislative powers vested in the president of each country. The normalised scores range from 1 to 100 and the average score is 61.8.
- 6 All models were tested and run using the R package *stm* (M. E. Roberts, Stewart, & Tingley, 2019).

- 7 Because for this research we were only able to grasp the information available in the abstracts of the decree, we are unable to provide further details on the content of the exentos in Chile. However, this first incursion into the topics allowed us to highlight their importance for future research.
- 8 Brazilian presidents may revise budget laws to allocate new revenues or request authorisation for extraordinary expenditures. The president must issue a decree opening additional budget credits, however, only after congress has approved it.
- 9 ADPF 663 03/24/2020. See <https://portal.stf.jus.br/processos/verImpressao.asp?imprimir=true&incidente=5881118>
- 10 ADI 6.357, 03/26/2020. See <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=754438956>
- 11 Decrees issued up to July 2022.

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