

Rules of Procedure as a Cause of Legislative Paralysis: The Case of Costa Rica, 2002–2012

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ABSTRACT

Research on executive-legislative relations in Latin America has focused on the impact of minority presidents and multiparty legislatures on legislative productivity. But an additional deadlock scenario, the blocking of a majority president by a minority through filibustering, has been understudied. This article analyzes filibustering in Costa Rica and explains the legislative paralysis in the wake of the nation's transition to a multiparty system in 2002. Legislative paralysis is seen as a product of the interaction between increased legislative fragmentation and polarization and the legislature's preexisting rules of procedure, which enable legislators easily to block bills they oppose, even when those bills are supported by supermajorities. This argument is tested through a comparison of major economic reforms in the 2000s to the reforms tackled in the 1990s. The role of filibustering, well acknowledged in U.S. politics, should also be studied in comparative politics.

In January 2008, Costa Rican voters approved a free trade agreement with the United States via referendum. Three months later, legislative supporters of the agreement, representing a two-thirds majority of the country's Legislative Assembly, brought to the floor a wheelbarrow containing more than 5,000 amendments, spanning 52,000 pages, made to the first 3 of 13 reforms the country needed to implement to be allowed into the agreement (*La Nación* 2008a). Legislators opposed to the agreement actually had issued the amendments in an attempt to delay a vote on the reforms and cause Costa Rica to miss the deadline for entering into the trade pact. By displaying the amendments, supporters hoped to make a public statement that would shame opponents into ending their filibuster.¹ The filibuster continued, and it was not until one year later that Costa Rica was admitted into the agreement.

The "wheelbarrow full of amendments" has become emblematic of the rampant filibustering and legislative paralysis that have plagued Costa Rica over the past decade, following its transition from a stable two-party system dominated by two ideologically similar parties to a more fragmented and polarized party system. Filibustering extended for years the debate on the three most important economic reforms proposed by presidents over the last decade: overhauls of the tax system during the administrations of Abel Pacheco (2002–6) and Laura Chinchilla (2010–

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14), and the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA-DR) and its accompanying legislation during the second Oscar Arias administration (2006–10). Even though these reforms were backed by multi-party supermajorities (two-thirds of legislators), minorities extended their debate for several years by issuing thousands of amendments, many of them lacking substance. After years of debating amendments, legislators supporting the Pacheco tax reform and CAFTA-DR used their supermajority powers to modify the Assembly's rules to create fast track procedures that made it possible to force votes on these reforms.

This article offers an institutionalist explanation of the causes and effects of the paralysis that has affected Costa Rica's Legislative Assembly since 2002, and analyzes the prolonged legislative debates on the Pacheco and Chinchilla tax reforms and CAFTA-DR and its accompanying legislation. It compares the legislative debate on these bills with that on two comparable reforms debated in the 1990s when the Assembly was dominated by two parties. This study attributes legislative paralysis to the Assembly's internal rules of procedure (Cox 2000), its *reglamento*. These rules, which promoted consensus in a legislature dominated by two centrist parties, have caused deadlock when applied in the current fragmented and polarized party system (Rojas Bolaños 2007; Cornick and Trejos 2009). The rules allow for the issuing and reissuing of thousands of amendments to bills, each of which must be debated and voted on, thereby granting even the smallest minorities the power to obstruct bills they oppose. Thus, the paralysis afflicting the Assembly was not caused by party system fragmentation and polarization per se, but by the interaction of these party system changes with the Assembly's preexisting rules.

Paralysis threatens to generate an unwritten rule whereby, with regard to controversial legislation, only bills supported by supermajorities will be voted on, let alone passed (Alvarez Desanti 2005, 11). It is quite possible that, were it not for the fast track procedures, neither of the tax reforms nor CAFTA-DR's accompanying legislation would have been put to a vote. These procedures constitute the most important tool for overcoming filibustering. However, they fail to tackle the underlying cause of paralysis: the application of preexisting legislative rules in a more polarized multiparty context. While the fast track facilitates the approval of supermajority-backed bills, it does not apply to bills supported by simple majorities (one-half of legislators).

Beyond Costa Rica, this article makes two broader contributions to the study of executive-legislative relations in Latin America. Previous research on executive-legislative relations in the region has focused on the challenges of multipartism under presidential democracies. A central theme has been how to avoid deadlock scenarios in which minority presidents repeatedly clash with legislators. In analyzing filibustering, this article shines light on a subset of deadlock scenarios that has not featured prominently in the literature: cases in which the president has built a legislative majority but still faces deadlock. The article also makes a case for incorporating legislative rules of procedure into institutional research. Legislative rules, an institutional variable that has not featured prominently in prior research on Latin American legislatures, can have a noticeable effect on policymaking.

This study's central argument is explored by in-depth studies based on primary news accounts that trace the legislative debates on three key legislative proposals: the Pacheco tax reform, the CAFTA-DR free trade agreement and its accompanying legislation, and the Chinchilla tax reform. The article then shows how the Assembly's rules historically promoted consensus and compromise under a two-party system. Two alternative explanations of the paralysis are also addressed: legislative fragmentation and polarization (and not the Assembly's rules) and the controversial and unpopular nature of the reforms studied.

THE STATE OF THE LITERATURE

Research on executive-legislative relations in Latin America has focused on the allegedly destabilizing effects of minority presidents in multiparty settings and the ways presidents can achieve majorities through either electoral reform or coalitions. This literature has paid little attention to an important subset of the deadlock scenario, one in which the president and the coalition do possess the votes needed to approve legislation but are blocked or delayed by minorities, what is known in U.S. political science as filibustering. By analyzing the case of Costa Rica, this article aims to extend the study of filibustering to Latin America.

Early work had the goal of explaining why democratic breakdown has historically been more frequent among presidential regimes than parliamentary ones (Mainwaring 1993; Shugart and Mainwaring 1997). It was argued that minority presidents increased the likelihood of executive-legislative stalemate, which in turn made democratic breakdown more likely (Mainwaring 1993; Linz 1994). Deadlock is more likely under presidentialism, which, it was argued, is not conducive to the formation of legislative coalitions. The absence of a constitutional mechanism that can break deadlock, such as a vote of no confidence, increases the likelihood that ineffectual leaders will be replaced extra-constitutionally (Linz 1994; Tsebelis 2002, 321). The breakdown hypothesis has since been discredited. Presidential democracies tend to be poorer and thus more prone to breakdown (Przeworski et al. 2000). Furthermore, democracies that follow military governments are more likely to break down, and military governments are more likely to be replaced by presidential democracies (Cheibub 2007).

A more nuanced version of this argument posits that it is not presidentialism *per se* that is deleterious to democracy, but specific institutional features found in some presidential regimes. The success of presidential democracy depends on a relative balance of power between both branches (Shugart and Carey 1992; Shugart and Mainwaring 1997). Along these lines, Lehoucq (1996) argues that having a weak president and a strong legislature explains Costa Rica's democratic consolidation.

Mainwaring (1993) argues that the success of presidential democracy depends on the size of the president's legislative contingent, which is influenced by the number of parties, which in turn is influenced by the choice of electoral rules. Multipartism, he argues, leads to centrifugal competition, which makes cross-party cooperation less likely.

While minority presidents have indeed been the norm in Latin America, empirical work has found that they have actually been quite successful at having their bills approved, albeit less so than majority presidents (Cheibub et al. 2004; Cheibub 2007). Cheibub (2002) has shown that deadlock is far from the predominant condition under presidentialism and is unrelated to the number of parties or electoral rules.

The view that coalitions are rare if not impossible under presidentialism has been all but debunked (Cheibub et al. 2004; Cheibub 2007). Cheibub et al. (2004) found that coalitions were formed in more than half of instances of minority presidential government, are no less successful than majority governments, and are no more prone to breakdown. Coalitions, however, have not been a feature of recent Costa Rican politics.

Research on filibustering has focused entirely on the U.S. Senate, but even that literature remains in its infancy (Wawro and Schickler 2006, 6). Though constitutionally speaking and throughout much of its history, the Senate acted as a majoritarian body, it today operates as a de facto supermajority institution: 60 out of 100 votes are required to enact cloture and bring bills to vote. This is similar, I will argue, to what is happening to the Costa Rican legislature. The topic of filibustering has been ignored by the comparative politics literature on presidentialism and legislatures. Crisp et al. (2011, 430) state that no presidential system they are aware of other than the U.S. allows for filibustering.

Binder and Smith (1997) attribute the growth in filibustering in the Senate to increased party polarization and discipline, as well as to increased workload. Building on the workload hypothesis, recent work has envisioned filibustering as a war of attrition (Warwo and Schickler 2006; Koger 2010). The majority can wait out minority filibusters, but waiting carries opportunity costs, which have increased as legislative workload has expanded. This has increased the effectiveness of filibustering to the point where the mere threat of a filibuster is effective, making 60 votes the norm.

What does this mean for Costa Rica? Recent filibustering has coincided with increased legislative polarization. Whereas during the period 1982–98 the Assembly contained roughly two ideologically similar (Mainwaring and Scully 1995; Lehoucq 2005; Zoco 2006) effective parties, since 2002 it has been composed of an average of three-and-a-half effective parties, including major parties on the right and center-left. The U.S. Senate's experience with cloture raises doubts about the likelihood that fast track procedures with supermajority requirements will decrease filibustering.

While contextual political factors can motivate filibustering, political institutions—namely, the rules that spell out how a legislature operates—are what makes filibustering possible. Cox (2000, 169) defines a legislature's internal rules of procedure as “both the standing orders the legislature may establish for itself and those statutory or constitutional provisions that materially affect the legislature's processing of bills (e.g., urgency provisions in Latin America).” In Costa Rica, where presidents lack urgency provisions, only the former set of rules, the Assembly's *reglamento*, apply. These rules define how the chamber goes about its business, regulating how the agenda is set, the conditions for amending bills, how long debates can continue, and when a bill can be put to vote.

Table 1. Rules of Procedure of the Legislative Assembly

Procedure	Rules and Maximum Time Allotted
Ending debate	No time limit on bills other than government budget. Discussion continues until every amendment is voted.
Bills in committee	
Discussion of amendments	15 minutes per amendment.
Bills on the floor	
Discussion of amendments	15 minutes per legislator per amendment.
General discussion	30 minutes per legislator (first debate). 15 minutes per legislator (second debate).
Justification of vote	10 minutes per legislator.
Reiteration of previous matters	
Appealing a vote	Allowed once. Assembly need not approve appeals but must discuss them.
Reiteration of amendments	Amendments rejected in committee or floor can be brought up again prior to voting. Reiterated amendments can be discussed for 5 minutes.
Quorum	Two-thirds of legislators (38) must be present.

Source: Asamblea Legislativa 2012; Arias Ramírez 2008.

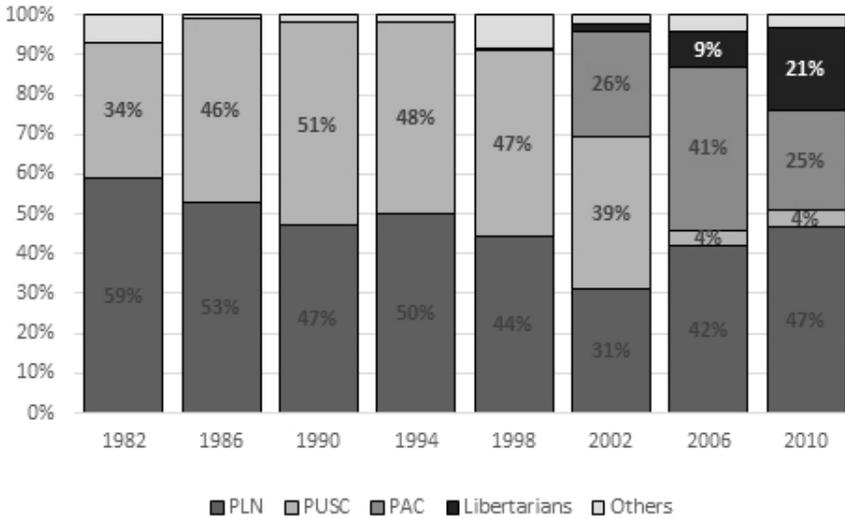
Comparatively speaking, the Costa Rican Legislative Assembly's internal rules are particularly permissive to filibustering (Arias Ramírez 2008). By granting legislators nearly unlimited power to issue amendments and providing generous time allotments for their discussion, Costa Rica's rules make it practically cost-free to filibuster. Filibustering is particularly likely to create deadlock in Costa Rica, where presidents cannot impose voting deadlines and possess very limited decree powers (Carey 1997; Shugart and Mainwaring 1997, 432; Wilson 1999).

Scholars have been skeptical that endogenous rules can have an independent effect on a legislature's functioning. Cox (2000) demonstrates how these rules can have effects, even when simple majorities can modify them. In Costa Rica, where modification requires a supermajority, these rules very much influence policymaking. In showing how these rules have affected a Latin American legislature, this article aims to stimulate further research on the potential consequences of this type of institution.

THE ARGUMENT

The paralysis affecting Costa Rica's Legislative Assembly can be explained by a combination of the country's transition to an increasingly fragmented and polarized party system and the Assembly's internal rules of procedure, which were inherited from the days when two parties dominated the Assembly. These rules make it easy for individual legislators who oppose a bill to delay its vote, even when a supermajority of legislators supports it (see table 1).

Figure 1. Presidential Elections, 1982–2010



Source: TSE 2013

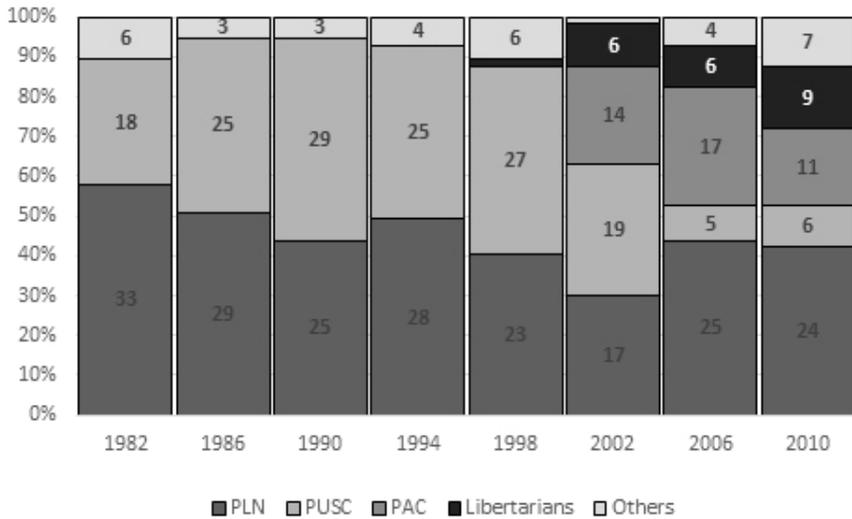
Reform proponents have enacted fast track procedures aimed at overcoming filibustering and forcing bills to a vote. Although these mechanisms offer a means for supermajorities to break deadlock and bring about the approval of widely supported legislation, they do nothing to facilitate the approval of bills supported by only simple majorities. Thus, with regard to controversial bills, a supermajority is becoming the de facto requirement for passing legislation.

Party System Change

The era when the two traditional parties, the historically social-democratic National Liberation Party (PLN) and its rival Social Christian Unity Party (PUSC), dominated Costa Rica’s politics is clearly over. The now-defunct two-party system was one of the most stable and institutionalized in the region (Mainwaring and Scully 1995).² PLN and PUSC evolved into catch-all parties with few, if any, ideological differences between them (Lehoucq 2005; Zoco 2006) and came to control roughly 90 percent of votes during the 1980s and 1990s.

Voter preferences began changing in the mid-1990s. The five presidents elected since 1994 have lacked legislative majorities. With each successive election, nontraditional parties have obtained an increasing share of votes (see figures 1 and 2). The 2002 elections saw the emergence of the first major new party, the center-left Citizen Action Party (PAC), whose success produced an Assembly split into three main blocs, PUSC, PLN, and PAC, as well as a small right-wing Libertarian Movement faction. Paralysis characterized Costa Rica’s first truly multiparty legislature, com-

Figure 2. Legislative Assembly Composition, 1982–2010



Source: TSE 2013

plicating the prospects for President Abel Pacheco's main political priority: tax reform.

These trends intensified during the 2006 elections. PUSC was devastated in the aftermath of corruption scandals involving two of its former presidents. PLN and PUSC together received less than half the votes cast for president and legislators. The incoming Assembly was divided into four blocs. Legislative paralysis continued, complicating the prospects for Arias's main legislative priorities: CAFTA-DR and its accompanying legislation. The 2010 elections further confirmed the Costa Rican political system's multiparty nature. Voters elected the most fragmented Assembly yet, complicating the prospects for Chinchilla's main legislative priority: tax reform.

Rather than speak of electoral realignment, it is more useful to describe Costa Rica's party system as undergoing electoral dealignment, defined by increased electoral volatility, a weakening of party identification, and a decline in the influence of previously salient political cleavages (Sánchez C. 2007). The decline in support for traditional parties has not been tempered by increased support for emerging parties. Whereas in the 1990s, 95 percent of Costa Ricans declared themselves supporters of PLN or PUSC (Vargas Culler et al. 2006, 22–23), in 2012 only one-quarter of voters identified with a party (Alfaro-Redondo and Seligson 2012, 196).

Volatility in the Assembly's composition (Pedersen 1979) surged during the 2002 and 2006 elections, reaching 33.33 percent and 26.32 percent, respectively, before dropping to 14.04 percent in the 2010 elections (see table 2). The effective number of parties in the Assembly (Laakso and Taagepera 1979) increased from 2.30 during 1982–2002 to 3.63 during 2002–14.

Table 2. Key Features of the Legislative Assembly, 1982–2010

Year	1982	1986	1990	1994	1998	2002	2006	2010
Effective number of parties ^a	2.27	2.14	2.21	2.30	2.56	3.68	3.32	3.90
Volatility of legislative composition ^b	19.30%	15.79%	8.77%	10.53%	12.28%	33.33%	26.32%	14.04%
Party system polarization ^c	—	—	—	2.92	3.54	2.79	4.24	4.07

Sources: ^aLaakso and Taagepera 1979, based on TSE 2013; ^bPedersen 1979, based on TSE 2013; ^cDalton 2008, based on Alcántara 2013

Fragmentation was accompanied by increased polarization. Using data from the Parliamentary Elites of Latin America (PELA) surveys (Alcántara 2013) to calculate Dalton's polarization index (2008) reveals an increase from 3.08 (on a 10-point scale) during 1994–2006 to levels above 4.00 during 2006–14.

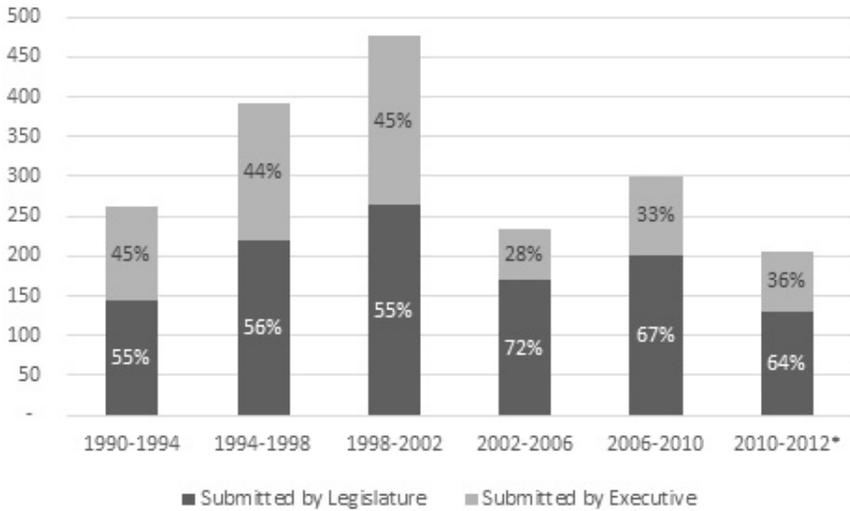
Declining Legislative Output

The transition to a fragmented and more polarized party system coincided with a drop in legislative output and a decline in the Assembly's approval rating. The number of bills approved declined sharply in the period 2002–10 relative to 1994–2002, particularly with regard to bills proposed by the executive (see figure 3). In terms of laws passed, the first half of the Chinchilla administration was the most productive in recent years. However, there was a growing mismatch between the supply of legislation (what gets approved) and the demand, as defined by newspaper editorials and opinionmakers. Only 38 percent of laws approved during 2006–10 were among those cited as high priority (Feoli 2010, 13). This amount dropped to roughly 20 percent during 2010–12 (Gómez Campos and Murillo Chinchilla 2012, 27). At the same time, fewer than a third of bills approved under Chinchilla became major laws with long-term impact on the country's development (Gómez Campos and Murillo Chinchilla 2012, 7).

Perhaps more telling, there has been a sharp increase in the amount of time it takes to approve laws (see figure 4).³ Approval times have been increasing steadily under multipartism. On average, it took 848.1 days to approve a bill during 2010–12, up from 648.2 during 2006–10 and 557.0 during 2002–6. This trend negates an opposite trend of declining approval times during 1990–2002.

The Assembly's reduced productivity may explain its unpopularity. In April 2013, its approval rating dipped to 4 percent, the lowest level since surveying began, while disapproval reached 45 percent. This contrasts sharply with the widespread optimism that surrounded the Assembly at the start of the multiparty era (*La Nación* 2013).

Figure 3. Laws Approved per Legislature, 1990–2012



Source: PEN 2012

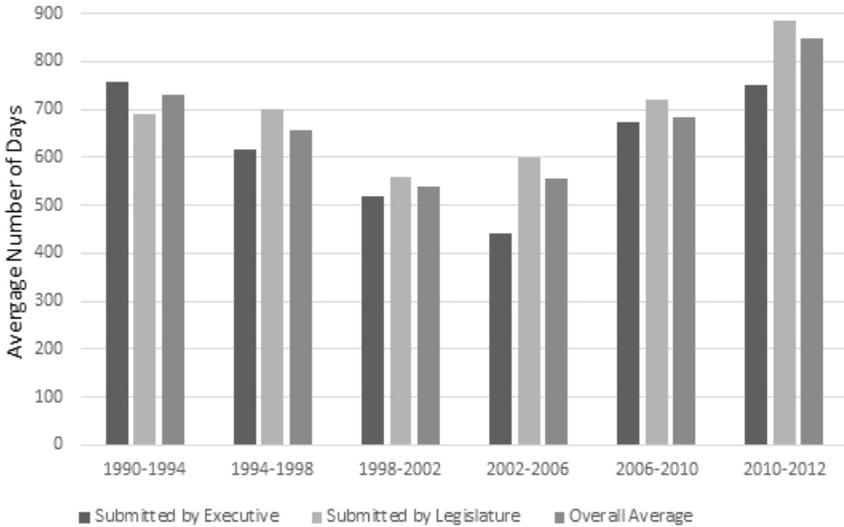
Legislative Rules of Procedure

By themselves, an increase in the number of parties and the ideological distance between them do not explain the paralysis affecting the Legislative Assembly. The explanation stems from the interaction between this new party system and the Assembly's highly permissive internal rules of procedure, its *reglamento*. These rules outline the manner in which the institution goes about its business, regulating, among other things, how the agenda is set, the conditions for amending bills, and how much time is spent discussing each amendment. The Assembly's rules are endogenous in that legislators are free to reform them. However, doing so requires supermajority support.

These rules, which promoted compromise between PLN and PUSC, today constitute a major obstacle to the smooth functioning of the legislative process. Unless the fast track procedure requiring supermajority support is invoked, the rules impose no limits on the maximum time allotted for debating a bill. This grants minority legislators tremendous power to filibuster legislation they oppose through the issuing, discussion, and even reissuing of amendments, as well as the breaking of quorum (see table 1).

The mismatch that exists between the original context in which these rules were applied and the current multiparty reality is the main cause of the paralysis afflicting the Assembly (Cornick and Trejos 2009). Alberto Cañas, a former legislator and one of PAC's founders, concurs:

Figure 4. Average Number of Days Required to Pass a Law, 1990–2012



Source: PEN 2012

The country was never prepared to have four distinct and numerous factions. The Legislative Assembly's *reglamento* ... was created so the opposition could hamper any government action. The leadership of the factions representing the two “big” parties could come to an agreement to make things move forward. (Quoted in Rojas Bolaños 2007, 10)

The consequences of this mismatch became apparent during the 2002–6 legislature when six Libertarian legislators used their power to issue amendments to extend the debate of the Pacheco tax reform for three years. Learning from this example, during the 2006–10 legislature, opponents of CAFTA-DR, led by PAC, adopted similar tactics in an attempt to defeat the agreement and its accompanying legislation. Though the agreement was ultimately approved via referendum, opponents filibustered its implementation legislation for more than a year. And during the 2010–14 legislature, the Libertarians and PUSC delayed the vote on the Chinchilla tax reform for more than a year.

In a study of legislative rules in seven countries, Arias Ramírez (2008, 15) concludes that Costa Rica's legislature exhibits “serious problems” with regard to the amount of time legislators are given to discuss and amend bills. Opponents can filibuster during the committee phase, while a bill is on the floor, and when the Assembly is voting.

The committee phase constitutes the first bottleneck. Opponents can flood committees with amendments that must be discussed and voted on, and if rejected, can be brought up again on the Assembly floor. Committee members are free to

issue as many amendments to a bill as they can draft. Each amendment can be debated for up to 15 minutes before the committee votes on it.

Once a bill gets to the floor, legislators have four sessions to propose new amendments, each of which can be discussed by each legislator for up to 15 minutes. Legislators can reissue previously rejected amendments issued on the floor and in committee. Each reissued amendment can be discussed for up to 5 minutes.

The voting process is also prone to delays. To become law, a bill must be approved by legislators during two debates. Each legislator can discuss a bill for up to 30 minutes during the first debate and 15 minutes during the second debate. In addition, each legislator gets up to 10 minutes to justify his or her vote. Furthermore, legislators can appeal votes.

Breaking the required legislative quorum represents another opportunity to filibuster. Costa Rica has the highest threshold of the countries studied by Arias Ramírez (2008, 38–39): two-thirds of legislators must be present to initiate a session and hold a vote.

A De facto Two-Thirds Legislature?

In response to filibustering, supporters of the Pacheco tax reform and CAFTA-DR modified the Assembly's rules of procedure to enact fast track procedures by which supermajorities could impose limits on legislative debate and enact fixed deadlines for voting on legislation. The creation of these mechanisms was a long and difficult process involving months of coalition building, overcoming filibustering, and clearing review by the powerful Constitutional Chamber of the Supreme Court, commonly known as Sala IV. Ultimately, these fast tracks made it possible for the supermajority coalitions supporting the tax reforms and CAFTA-DR's implementation legislation to overcome filibustering.

However, the fast track procedures generate their own challenges. For starters, they are difficult to implement. Proponents of a bill need support from two-thirds of legislators, thus ruling out the fast track for bills supported by simple majorities (one-half of legislators). Even though most bills can be approved by simple majorities, the nearly unlimited filibustering power of minorities means that, with regard to controversial legislation strongly opposed by some legislators, only bills supported by two-thirds of legislators can be brought to vote. I argue that the fast track may, over time, cement an informal practice whereby the approval of controversial legislation requires supermajorities. This is precisely what has happened in the U.S. Senate, which, constitutionally speaking, is a majoritarian body, but today operates as a supermajority institution, requiring 60 out of 100 votes to enact cloture and bring bills to vote (Binder and Smith 1997; Warwo and Schickler 2006; Koger 2010). In fact, filibustering in the Senate is more common today than it was before the cloture rule was introduced in 1917.

Because using the fast track requires supermajority support, bills facing strong opposition will have to be watered down to be compatible with the interests of the 38th legislator. As Koger (2010, chap. 2) shows, the effect of the U.S. Senate's clo-

ture rule has been indirect. Needing 60 votes, the majority party preemptively moderates its proposals. Although fast tracks offer a short-term way of overcoming filibustering, they may hamper the majority's ability to govern.

FILIBUSTERING AT WORK: KEY LEGISLATIVE PROPOSALS

As noted earlier, at a macro level, the transition to a more fragmented and polarized party system has coincided with a drop in legislative output, an increase in the time it takes to approve laws, and a reduction in the relevance of what does get approved. We have also seen that the Legislative Assembly's rules of procedure make it easy for opponents of a bill, even those representing small minorities, to delay it through filibustering, even when said bill is supported by supermajorities. Let us now turn to the microlevel, exploring specific legislative debates to analyze how the party system and the Assembly's rules of procedure interact to shape the policymaking process.

To advance our understanding of the sources of filibustering, I utilize a most-similar systems design (Przeworski and Teune 1970). Following the advice of King et al. (1994), the cases selected vary with regard to my key explanatory variable: the interaction between the type of party system (in terms of number of parties and degree of polarization) and the Assembly's rules of procedure. Specifically, I compare the legislative process in the context of three controversial economic reforms during the current multiparty era, the Pacheco and Chinchilla tax reforms and CAFTA-DR and its implementing legislation, to two controversial economic reforms debated during the two-party era, the third structural adjustment loan package (PAEIII) during the administrations of Rafael Angel Calderón (1990–94) and José María Figueres (1994–98) and a tax reform during the Figueres administration. Because the cases concern economic reforms in the same country over a 20-year period, they allow me to control for a range of other potential explanatory factors, which remain constant across all the cases (see table 3). Therefore, there are good grounds to attribute any variation in the outcome of interest, the presence of legislative filibustering, in the current compared to the historical cases to the explanatory variable I propose.

The contemporary cases also serve to illustrate the mechanism through which opposition parties filibuster bills. These cases are not meant to be representative of all legislative debates. Filibustering, though increasingly common, is not the norm. Only a minority of bills are controversial enough to spawn the kind of opposition that motivates legislators to take advantage of the Assembly's permissive legislative rules and engage in filibustering. The contemporary cases show how legislative minorities use the Assembly's rules to issue barrages of amendments and repeatedly break quorum to block bills they oppose, even when those bills possess multiparty supermajority support and constitute a president's main legislative priority.

Table 3. Case Selection Criteria

Variables	Historical Cases (1994–1995)	Contemporary Cases (2002–2012)
	Third Structural Adjustment Loan Package (PAEIII)	Pacheco tax reform
	Figueres tax reform	CAFTA-DR and implementing legislation
		Chinchilla tax reform
Explanatory Variable		
Party system	Two centrist parties	Increasingly polarized and fragmented
Legislative rules	Facilitate filibustering	Facilitate filibustering, amended to incorporate fast track
Control Variables		
President's legislative support	Plurality, no majority	Plurality, no majority
Institutions	Weak presidentialism	Weak presidentialism
	Proportional legislature	Proportional legislature
Controversiality	High (PAE especially)	High (CAFTA-DR especially)

Source: Case studies

The Pacheco Tax Reform, 2002–2006

Strengthening the country's public finances is perhaps the most pressing reform Costa Rica faces. Failure to resolve this challenge hinders the government's ability to address other pressing issues, such as investing in infrastructure, tackling rising crime, and funding social programs.

Before leaving office in May 2002, President Miguel Angel Rodríguez (1998–2002) convened a commission of former finance ministers charged with identifying solutions to the country's fiscal problems. The commission proposed reforms aimed at increasing yearly tax collection by 2.6 percent of GDP, ideas that ultimately became the basis for a proposed overhaul of the tax system. The most controversial aspects of the reform were establishing a value-added tax; proposing that all of an individual's sources of income be added to determine income tax owed, instead of charging different rates for different sources of income; establishing a single corporate tax rate for all firms; and taxing income generated outside the country.

On taking office, Abel Pacheco made the package his top priority. In July 2002, in an attempt to build broad-based support for the reform, Pacheco created a special commission of legislators, government officials, and members of civil society tasked with improving the earlier proposal. The commission concluded its work in December 2003. Over the next two years the package moved in and out of legislative committees, where opponents, led by the six Libertarian legislators, subjected it to more

than 5,500 amendments (*La Nación* 2006a). As a pressure tactic, during much of 2004–5, Pacheco conditioned CAFTA-DR's submission to the Assembly on approval of the tax package. Pacheco finally submitted the trade agreement in October 2005 without seeing the tax reform approved.

Mounting frustration over congressional paralysis led proponents of the tax package to reform the Assembly's rules to create a fast track procedure for bills possessing supermajority support.⁴ The new procedure, enacted in May 2005, imposed limits on the length of time allotted for discussing amendments. To qualify for the fast track, two-thirds of legislators had to vote to grant a bill expedited status. First proposed in September 2004, its implementation was delayed for eight months as a result of filibustering. On its approval in January 2005, the fast track was submitted to Sala IV, which ruled it constitutional with the caveat that it could be used only for bills requiring simple majorities (Zúñiga 2006, 35). Although it was the product of a multiparty legislative consensus, the fast track was controversial. The legislative rules were modified midway through the debate of a bill with the explicit purpose of facilitating the vote and approval of said bill, an action that may be questionable from the perspective of the rule of law.⁵

The tax reform was sent back to committee with the goal of removing the aspects requiring supermajority support, and it finally reached the floor in May. The expedited procedure limited the amount of time that could be used for discussion of amendments but did not limit the number of amendments that could be issued. Thus, even under the fast track, legislators had to process thousands of amendments. Supporters succeeded in forcing a vote and, in February 2006, nearly five years after first being proposed, the reform was approved in the first debate.

At the request of opponents, the reform went before Sala IV, which ultimately ruled it unconstitutional on procedural grounds, citing that several aspects required a supermajority to be approved while the fast track was valid only for bills requiring a simple majority (*La Nación* 2006b). Despite efforts to make civil society a stakeholder and to forge a multiparty coalition, the Pacheco administration and its legislative allies came up short.⁶

The CAFTA-DR Free Trade Agreement, 2005–2009

Negotiated in 2003 and signed in August 2004, CAFTA-DR aims to promote trade and investment between the United States, Central America (minus Belize and Panama), and the Dominican Republic by consolidating the region's access to the U.S. market, further reducing trade barriers, and strengthening investor protection. CAFTA-DR's approval involved more than the ratification of the agreement's text. Also at stake was the approval of its implementing legislation—13 laws and treaties required for entry into the agreement. This legislation covered a wide range of issues, including the controversial opening of Costa Rica's state-owned telecommunications monopoly to private competition and the strengthening of intellectual property rights.

The agreement has been a controversial and polarizing issue in Costa Rican politics. After it was finally submitted to the legislature in October 2005, the agreement

languished for nearly two years before ultimately being approved by just 3.2 percentage points in a referendum in October 2007. It would take another 15 months before the implementing legislation was approved and Costa Rica formally entered into CAFTA-DR.

Opposition to CAFTA-DR was spearheaded by PAC but also included a broad societal coalition that encompassed labor unions, students, and environmentalists. The requirement that the country open its state-owned telecommunications monopoly was particularly divisive, and constituted the main source of opposition. Opponents rightfully argued that they were not consulted prior to the Pacheco administration's decision (Spalding 2006). Beyond the agreement's content, opponents worried that it would make permanent the neoliberal development model (Willis and Seiz 2012, 138).

Election season was under way when CAFTA-DR was submitted to the Assembly. The 2006 elections gave CAFTA-DR the votes it required: Oscar Arias, a strong proponent, won the presidency, and two-thirds of incoming legislators supported it. But a supermajority proved insufficient to force a vote.

In December 2006, after 13 months in the Foreign Relations Committee, the agreement was sent to the floor. Aware that CAFTA-DR would be filibustered, in January 2007 supporters used the fast track procedure created during the tax reform debate to force a vote on and approve a second fast track procedure, one valid for international treaties and bills requiring supermajorities.⁷ Approval of the second fast track was made possible by the support of the Libertarians, who conditioned their votes on adding a clause excluding tax reforms from the new procedure. PAC, which had cast the decisive votes in favor of the first fast track, opposed the new procedure and unsuccessfully tried to derail it. This marked the second time in less than four years that legislators had changed the rules of the game midway through the debate of a major piece of legislation in order to overcome filibustering.

However, in April, one month after the fast track was finalized, opponents of the agreement were authorized to collect signatures for an eventual referendum on CAFTA-DR. Had the referendum's backers taken the full time allotted for the collection of signatures, Costa Rica would have missed the initial deadline to join CAFTA-DR. Originally "adamantly opposed" to holding a referendum (Weitzenkorn 2007), Arias expedited the process by personally requesting the referendum and thereby eliminating the need to collect signatures. Legislators jumped on board the proposal, which allowed them to "wash their hands" of the matter (Altman 2011, 197–99).⁸

The October referendum broke the legislative deadlock surrounding the agreement but did not ensure the approval of the implementing legislation. Despite promises not to prevent a vote on these bills if voters approved CAFTA-DR, PAC and other opponents issued thousands of amendments and repeatedly broke quorum (*La Nación* 2008b). In response, a coalition supporting the agreement, comprising two-thirds of the Assembly, used the fast track procedures to force votes on the bills. Costa Rica was finally admitted to CAFTA-DR in January 2009.

Contrary to what Sánchez-Ancochea (2008, 193) has argued, intense civil society opposition and a fragmented party system were not the only reasons behind the

Assembly's inability to vote on CAFTA-DR. Pacheco's wavering attitude toward the agreement and delay in submitting it to the Assembly squandered initially strong public support and gave opponents time to organize (Spalding 2006).⁹ However, legislative rules that facilitated filibustering were a key factor in explaining why five years passed between the end of the negotiations and Costa Rica's entry into CAFTA-DR.

The Chinchilla Tax Reform, 2011–2012

Costa Rica's economy slowed substantially in the aftermath of the 2007–8 global financial crisis, leading to a sharp increase in the fiscal deficit during Chinchilla's first year in office. In this context, fiscal reform again became the overriding priority. As with the Pacheco reform, the government overcame an uphill struggle to build a supermajority of legislative support, only to have the bill declared unconstitutional by Sala IV because of problems with the way the fast track procedure was used.

Submitted to the Assembly in January 2011, this new reform package sought to increase government revenues by 2.5 percent of GDP. The most controversial components of the reform were subjecting private health and education to the value-added tax, reducing the number of tax-exempt basic goods, and taxing previously exempt free zone companies.

The reform was initially dead on arrival, facing opposition from the main opposition parties. PUSC and the Libertarians immediately threatened to produce a "wagon full of amendments" to block it (*La República* 2011). The government responded by making concessions aimed at winning over moderate opponents, most notably PAC. In September 2011, Chinchilla entered into negotiations with Ottón Solís, PAC's founder and leader, who conditioned his party's support on 18 changes, 17 of which Chinchilla ultimately accepted (*La Nación* 2011a).

With PAC on board and following the cajoling of several smaller parties, a supermajority of legislators voted in September to activate the fast track. A special committee was created on October 6 and given five weeks to study and amend the bill. Opponents issued more than 4,500 amendments (*La Nación* 2011b), causing the commission to miss its November 15 deadline. To complete the discussion of the remaining amendments, Edgardo Araya, the PLN legislator chairing the committee, extended the committee's mandate until November 17, at which point the majority endorsed the reform and sent it to the floor.¹⁰

The decision to extend the special committee's mandate, which legislators justified on the grounds of protecting the rights of minorities by ensuring that every amendment was discussed and voted, doomed the reform. Opponents argued that the commission's actions after its original deadline were void. In their opinion, the committee's vote endorsement had no legal standing, and therefore the reform had to be remanded to the Finance Committee. In March 2012, legislators voted to approve the reform in first debate. At the request of opponents, the bill was sent to Sala IV. Less than a month later, the court declared it unconstitutional. Siding with the opponents, it justified its decision by the special committee's failure to meet its

deadline, as well as a failure on the part of the government to publish the final text of the reform (*La Nación* 2012a). For the second time in six years, Sala IV brought down a tax reform, citing problems with the manner in which the fast track was implemented.

Concerned that curtailing the discussion of amendments risked invalidating the process, supporters of the reform extended the special committee's deadline, an act that in itself invalidated the entire process. As the experiences of both tax reforms show, the fast track is a fragile instrument that, if not used correctly, can bring down a bill. However, it remains the only tool available to supermajorities that face determined filibustering.

Legislating During the Two-Party Era

The manner in which interparty disputes over major economic reforms were addressed in the cases analyzed above contrasts sharply with how similar disagreements were resolved when the two traditional parties dominated Costa Rican politics. The legislative debate surrounding the PAEIII during the Calderón and Figueres administrations exemplifies how the traditional parties dealt with disagreements and overcame the threat of filibustering.

Negotiated in 1993 between the Calderón administration and multilateral lenders, PAEIII consisted of a series of loans aimed at financing further economic liberalization and the ongoing reform of the Costa Rican state. PLN legislators prevented the package's approval during the Calderón administration (Jiménez Castro 2000, 415).

Figueres inherited PAEIII. In line with his campaign promises, he renegotiated parts of the package (Sánchez Sánchez 2004, 268). However, PUSC opposed the renegotiated PAEIII (Jiménez Castro 2000, 442–43). To overcome the impasse, Figueres negotiated directly with Calderón. As a result of the now infamous Figueres-Calderón “governability pact,” Figueres adopted PAEIII as originally negotiated. With the support of most PUSC legislators, PAEIII was easily approved. This episode demonstrates the ability of the two traditional parties to overcome disputes and approve economic reforms.

Another example took place toward the end of the Figueres administration. Figueres's attempt to enact a tax reform was met with stonewalling from PUSC. To overcome potential filibustering, Figueres negotiated with PUSC presidential candidate Miguel Angel Rodríguez (*La Nación* 1995a). Following the meeting, PLN agreed to support several PUSC initiatives in exchange for an end to filibustering, making possible the tax reform's approval (*La Nación* 1995b).

The dragged-out legislative debates of PAEIII and the Figueres tax reform exemplify the slow but consensual nature of Costa Rican policymaking. Existing legislative rules served the country well by preventing sudden policy shifts. Still, compared to the contemporary cases, these episodes reveal a qualitative shift in the way conflicts are handled. During the 1980s and 1990s, PLN and PUSC reached compromises that allowed major economic reforms to move forward. Given the

power legislative rules granted the opposition party to enact major reforms, presidents were forced to seek the opposition's tacit approval, if not its support.

Rules that once promoted consensus now obstruct even supermajority-backed policies. The key difference between the 1990s and the 2000s is that in the former, one relevant opposition party represented nearly half the electorate. It was only natural for that party to have a decisive say in major reforms. Today, a party representing a small share of the electorate can demand as much say as did the opposition party during the two-party era.

Alternative Explanations

Explanations based on an increased number of veto players (Tsebelis 2002) and the combination of a minority president and a multiparty legislature (Mainwaring 1993) are less effective at explaining these cases than the explanation proposed in this article. To be sure, a greater number of parties in the legislature and the growing ideological distance between them made it harder to get the votes needed to approve reforms. Still, despite lacking legislative majorities, the last three presidents built supermajority coalitions in support of their main legislative priorities. When necessary, presidents made concessions. Pacheco incorporated the opposition and civil society into the tax reform process. To gain PAC's support, Chinchilla made major changes to the tax reform. Presidents and party leaders even succeeded in enforcing party discipline, which has been notoriously weak in Costa Rica (Carey 1997; Wilson 1999).

The delays these bills faced were not caused by lack of votes, but rather by filibustering, which in turn was made possible by the legislature's rules. The factors at work were not just the number of parties and the distance between them but also the institutional context in which they operated, a context defined by legislative rules of procedure. Under a two-party system, these rules forced compromise between the major parties. Under a multiparty system, they have been used to block even supermajorities.

The delays in the reforms studied here could be interpreted as a reflection of how controversial or unpopular they were. As major economic reforms, the bills were bound to generate opposition. The "central political dilemma" of economic reforms is that even though they may benefit society as a whole, they negatively affect specific groups, which will attempt to block them (Haggard and Kaufman 1992, 18). At the same time, beneficiaries tend to be uncertain about whether they will actually benefit and are thus prone to status quo bias (Fernández and Rodrik 1991).

The reforms studied were controversial. Tax increases are, almost by definition, unpopular. CAFTA-DR was deeply polarizing and was narrowly approved via referendum by fewer than fifty thousand votes. Thus, it may be argued that CAFTA-DR's legislative supermajority did not accurately reflect the national political climate. As such, activating the fast track with the purpose of ramming the agreement through the legislature may not have represented the "will of the people." A similar mismatch between the distribution of legislative seats and the public opinion

occurred in 2000 when PLN and PUSC approved an unpopular bill aimed at opening the telecom monopoly but were forced to backtrack amid widespread protests.¹¹ Perhaps the rapid approval of CAFTA-DR would have produced similar protests. This, however, is speculation. What is known is that before the referendum was announced, Arias and his allies were attempting to implement a fast track procedure and rapidly approve CAFTA-DR but were unable to do so because of filibustering. Arias initially opposed holding a referendum (Weitzenkorn 2007).

As noted, the controversial bills analyzed are not representative of the entire universe of bills. They are, however, emblematic of a growing challenge to Costa Rican governability. Opposition parties, and in some cases even individual legislators, increasingly are filibustering majority-backed bills they oppose, many of which are only mildly controversial. In the last two years alone, legislators used barrages of amendments to block bills on in vitro fertilization, clinical drug trials, drunk driving, and allowing U.S. ships to dock at Costa Rican ports, as well as the country's trade agreement with the European Union. And it is not just the opposition that is filibustering. In November 2012, a PLN legislator issued 500 amendments to block a proposed plebiscite on redrawing provincial borders. This monthlong standoff escalated when another PLN legislator issued 50 amendments to a reform that would have granted greater fiscal autonomy to the first legislator's district (*La Nación* 2012b).

There is some evidence that voters are opposed to filibustering. A survey conducted in March 2008, five months after the referendum, showed that most voters wanted CAFTA-DR's accompanying legislation to be implemented. Forty-three percent disapproved of PAC's performance in the legislature, up from just 13 percent in August 2007 (*La Nación* 2008c).

CONCLUSIONS

Costa Rica's transition to a more fragmented and polarized party system has made the Legislative Assembly more representative of the diverse interests in society. But this change has come at the cost of reduced governability. Indeed, Costa Rica's new party system has ushered in an era of legislative paralysis. This article attributes this paralysis to the interaction between the new multiparty system and the Assembly's preexisting internal rules of procedure. It has argued that the recent paralysis threatens to generate an unwritten rule whereby, among bills that generate strong opposition from minorities, only those supported by supermajorities (those eligible for the fast track) will be voted on, let alone passed.

By the mid-1990s, traditional parties faced a more educated and independent electorate. At the same time, electoral incentives that led PLN and PUSC to target the median voter created opportunities at the right and the left ends of the political spectrum. Lehoucq (2005, 153) takes this argument further, contending that the similarity between the two traditional parties led to an excessive "ease of relations" between them that opened the door to corruption. Corruption, real and perceived, helps to explain recent discontent with the Costa Rican political system (Alfaro-

Redondo and Seligson 2012, 112). Further evidence of this discontent includes increasing abstention, weakening support for the political system (Seligson 2002), and growing distrust of political parties and politicians.

Seligson and Martínez Franzoni (2010, 331) partially attribute discontent to poor legislative performance and the fact that no president since 1994 has had a legislative majority. While it expanded the range of options available to voters, the end of bipartism in the Assembly has produced, as Lehoucq (2005, 151) predicted, a more fragmented and less experienced legislature. This, in combination with the Assembly's preexisting rules, has resulted in legislative deadlock, and helps explain why, in recent years, support for the legislature (*La Nación* 2013) and the political system (Alfaro-Redondo and Seligson 2012, 125) has reached its lowest recorded levels.

As shown by the cases of the Pacheco and Chinchilla tax reforms and the debate on CAFTA-DR and its accompanying legislation, even when legislative consensus is forged, legislative rules allow minorities to filibuster easily. This is a novel development that breaks with the pattern of the two-party era. PAEIII and the Figueres tax reform show that in a less polarized legislature, the credible threat of filibustering forced the majority party to negotiate with the opposition. Because fewer actors were at the table and they shared an ideological common ground, the compromises they reached allowed reforms to move forward.

More speculatively, legislative paralysis has created a vacuum that appears to have been partially filled by nontraditional decisionmaking institutions, namely Sala IV and civil society through its power to request referendums. While the former takes decisionmaking out of the hands of democratically elected representatives, the latter transfers it directly to voters. The court ultimately decided the fate of the tax reforms, declaring them unconstitutional as a result of problems with the very fast track procedure that made it possible to overcome filibustering and vote to approve them. The court's influence has increased as paralysis has restricted the legislature's ability to act. This echoes Hammergren's finding (2007, 228) that courts take a more active role during instances of legislative paralysis, as well as Tsebelis's assertion (2002, 222) that policy stability increases the judicial branch's discretionary authority.

The electorate narrowly ratified CAFTA-DR in a nationwide referendum. This test run of direct democracy allowed legislators to avoid deciding on a politically toxic issue (Altman 2011, 197–99), but may have done more harm than good to Costa Rica's democracy (Willis and Seiz 2012). And even then, the referendum did not prevent the agreement's opponents from filibustering against the implementing legislation.

The case of Costa Rica demonstrates that the role of the filibuster, well acknowledged in U.S. politics, should also be studied in comparative politics. This article has also shown the effects that legislative rules of procedure can have on policymaking. Research on the effects of political institutions has come a long way over the past two decades. My hope is that this article has shown the effects legislative rules can have on the functioning of a legislature and, in doing so, will prompt other

scholars to consider them when analyzing legislative behavior. Whether legislative rules can help explain outcomes in other legislative settings is an empirical question to be addressed in future research.

NOTES

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1. Filibustering is defined as “legislative behavior (or a threat of such behavior) intended to delay a collective decision for strategic gain” (Koger 2010, 16).

2. During the period 1950–82, competition was bipolar, but the party system is best described as multiparty with PLN as the hegemonic party (Hernández Naranjo 2007). Consolidation as a two-party system occurred in the 1980s following the merger of several parties into PUSC.

3. I am indebted to Steffan Gómez and Juan Guillermo Murillo of the Estado de la Nación program for generously sharing these data.

4. Article 208 bis. of the *reglamento*.

5. This was brought to my attention by an anonymous reviewer.

6. The constitutionality issues the fast tracks face can be partly attributed to the inexperience of Costa Rican legislators, most of whom are freshmen. This was brought to my attention by an anonymous reviewer.

7. Article 41 bis. of the *reglamento*. Enacted in 1999, it was deemed too cumbersome to use before being reformed.

8. On the referendum process, see Raventós Vorst 2008; Willis and Seiz 2012.

9. In February 2004, one month after negotiations concluded, 64 percent supported CAFTA-DR (*La Nación* 2004).

10. The legality of extending the committee’s mandate was supported by two rulings by the Assembly’s Technical Secretariat (*La Nación* 2011c).

11. While Sala IV ultimately declared the reforms unconstitutional on procedural grounds, this happened three weeks after the government had frozen the bills and agreed to at least five months of dialogue (Hoffman 2008).

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