

## **Brazilian Electoral Reform (I/III): What is Being Proposed**

*By Gabriel F. Barbosa,  
Research Associate at the Council on Hemispheric Affairs*

*This is the first of a series of three articles, in which we will attempt to dissect the current debate over the current Brazilian electoral process. Here we will critically discuss the most recent, and controversial proposals to alter the system. Then, we shall demonstrate that political crisis in general cannot be tempered by correcting bureaucratic mechanisms alone, but need to address a much deeper concern over political representation. Finally, we shall end this series debating the endless struggle concerning the most optimal system of government between presidential and parliamentary republics.*

### **Introduction**

Brazil's Congress is rushing to approve a series of legislative reforms to update the country's electoral system ahead of next year's general election, when voters are scheduled to choose a new president, 27 governors, 54 senators, 513 representatives to the Chamber of Deputies, and 1,059 state legislators. Public demand for a reformation of the country's political system gained momentum during the 2013 street protests, when then-President Dilma Rousseff proposed to call a constituent assembly exclusively to discuss the issue, but was blocked by efforts of Brazil's former vice president and current controversial President Michel Temer.<sup>i ii</sup> For Temer, any solution that includes direct popular participation would be considered unconstitutional. Instead, in his view, attempts to reform the existing constitutional order would require going through the current elected legislature represented by the Senate and the Chamber of Deputies.

### **What does electoral reform in Brazil adds up to?**

From Congress' perspective, electoral reforms have become increasingly urgent as the ongoing *Lava Jato* (Operation Car Wash) made public the potential involvement of a slew of the country's elected officials in massive bribery schemes in state companies. A recently released official document from Supreme Court Justice Edson Fachin lists an array of politicians, from all political backgrounds, potentially involved in the scandal.

The list includes the Speakers of both Houses, Senator Eunício de Oliveira and Deputy Rodrigo Maia, besides 24 senators and 42 members of the Chamber of Deputies, the majority which is composed of Temer's congressional base.<sup>iii</sup> In addition, relentless media exposure from the ongoing investigations has, along with a number of highly unpopular austerity measures, contributed to sink Temer's approval rating to 2 percent as of early July of 2017.<sup>iv</sup>

An unpopular illegitimate president coupled with an untrustworthy Congress poses a conundrum to current legislators who are thinking ahead of next year's election. They need to dissociate themselves from the Temer administration, while responding to public demands for a reformation of the country's political system in ways that would allow them to maintain their current offices, or at the very least, retain their chances for reelection.

Proposals being currently debated in Congress reflect this concern. While many proposed bills are not expected to be encoded next year, two intrinsically linked initiatives, regarding a new congressional electoral system and a new system of public financing of campaigns, have already gained a good deal of political support and were approved by the lower house special commission on electoral rules this month.<sup>v</sup> As such, if these bills were approved by October 7 of this year, these new rules would already be valid for the 2018 elections.

## Campaign Finance

The upcoming 2018 elections will be the first general elections since the re-democratization period of 1985 in which corporations will not be allowed to donate to support political campaigns. In September of 2015, the country's Supreme Court ruled it illegal for corporations to donate money to political campaigns.<sup>vi</sup> This is a major shift from the 2014 general elections, when corporate donations amounted to close to four billion BRL, not including additional funding provided by the federal government.

In response to these new rules, politicians have been searching for alternative ways to fund their own campaigns. The initial proposal from the Chamber of Deputies Commission on Electoral Reform included the creation of the Special Fund to Finance Democracy, with the intention to fund future elections, equivalent to 0.5 percent of the country's net tax revenue in 12 months.<sup>vii</sup> However, in a series of recent debates, Congress voted to remove this percentage requirement, in a 441 vote to one, responding to negative public reactions regarding the proposition.<sup>viii</sup> The controversy is based on the fact that, considering the projections for 2017 revenues, the fund could potentially amount to a staggering 3.6 billion BRL, or approximately \$1.9 billion USD, in value.

## Moving toward the *Distritão* Electoral System

In addition to campaign financing, the other issue put forth by the Commission on

Electoral Reform, which is currently under debate in the floor of the Chamber of Deputies, is the reformation of the electoral system for Brazil's legislative bodies.

In the current system, members of the Chamber of Deputies, as well as state legislatures, and city council members, are elected on party lists with proportional representation. Different from majoritarian electoral systems, proportional representation allows voters to cast votes for either their preferred candidate, or their favorite party.<sup>ix</sup> Seats are then allocated using the Hare quota according to the total number of votes received by the party, or a multiparty coalition.<sup>x</sup> Candidates who receive the most votes within the party or the coalition are selected to fill in the seats. This has contributed to the emergence in Brazil of a phenomenon referred to as the “celebrity effect,” in which parties select former celebrities or professional athletes to run on the top of their lists in the hopes of attracting many total votes to be distributed among the other candidates. It is worth noting that Brazil is one of a few countries to use a pure proportional system based on districts that juxtapose state or provincial geographical borders. At the same time, it is the only country to have utilized such a system for such a lengthy period (since 1992) with such a large electorate, 115 million in 2002. This is in contrast to other countries that adopted the same model the year before, such as Poland (24 million), Peru (14 million), or Chile, (8.1 million).<sup>xi</sup>

The most controversial proposition that was recently rejected by legislators to replace the official model is a modified version of FPTP named *distritão*. Under this other system, members of the Chamber of Deputies, and other local legislative houses could be elected solely on the number of votes received by the candidate, rather than the party, making state borders the de facto electoral districts for the Chamber of Deputies races, and city limits for city council ones.

This is the second time that the *distritão* is rejected on the floor of the Chamber of Deputies in two years. In 2015, under the leadership of former Speaker of the House, Eduardo Cunha, the proposal had already been shut down by the majority of representatives.

### **Made for Each Other**

The *distritão* system requires the proposed additional campaign funds. It is true that the *distritão* would not alter current district size, but the problem is that candidates would now need to compete for more votes, against each other, without being able to rely on a party, or coalition vote sharing. This would inevitably make campaigns far more expensive -- especially for federal legislators who would need to cover more ground in a state-wide majoritarian race.

Overall, elections have become too costly over the years. Partly because of the lack of public scrutiny over the use of corporate sponsorship has led to the abuse of professional marketing strategies, which helped to cover up the lack of political

substance; and partly because of *quid pro quo* arrangements between candidates and donors.<sup>xii</sup> However, instead of making campaigns cheaper, legislators are just trying to compensate for the loss of corporate financing. In 2014, federal funds available for political campaigns amounted to over 300 million BRL, or \$100 million USD at the time, while the current proposal would potentially increase that amount by as much as 10 times.<sup>xiii</sup> Since the projected value of the proposed fund is set at about 3.6 billion BRL, the cost of public financing of the 2018 election would equate to that of 2014.

## Criticism

Most of the criticism directed at the *distritão* system have focused on three main points. First, the system would prevent congressional composition renovations. According to a recent doctoral thesis published by Marcio Carlomagno of *Universidade Federal do Parana* (Federal University of Parana, UFPR), had the *distritão* system been in place in the last elections, between 88 and 92 percent of congressional members would have been reelected.<sup>xiv</sup> However, the concern behind this argument is only valid if we consider the current, or more recent congressional composition. Undoubtedly, today's Congress is one of, if not the worst, in terms of political inaptitude, or academic credentials. For instance, there are only 36 members of congress, or 6.19 percent hold a Master's degree, while 49 percent come from political dynasties whose parents or grandparents serve or have served as congress members.<sup>xv</sup> <sup>xvi</sup> Consider, for example, one controversial proposal by congressman Eduardo Bolsonaro of the *Partido Social Cristao* (Social Christian Party PSC), whose father Jair Bolsonaro serves as a federal deputy in the Chamber of Deputies in Brasilia, and younger brothers Flavio and Carlos Bolsonaro serve in state and municipal legislatures in the state of Rio de Janeiro. In November of 2015, he put forth a proposition that the State should lend firearms to individuals whose license had been revoked or whose weapons had been confiscated.<sup>xvii</sup> Moreover, an even more latent example of the inaptitude of current legislative officials for holding public office is former Speaker of the Chamber of Deputies, Eduardo Cunha. After being elected as one of the most voted-for members of Chamber of Deputies in 2014, whose mandate was revoked two years later, and who now serves a 19-year prison sentence for his involvement in the Car Wash scandal for money laundering, and other corruption practices.

On the other hand, not too long ago, between the late 1980s, and early 2000s, the Brazilian congress enjoyed the presence of distinguished members such as former president and union leader, Luis Inacio Lula da Silva; the first and only congressman in the history of Brazil of Indigenous descent, Mario Juruna; and anthropologist and former vice-governor of the state of Rio de Janeiro, Darcy Ribeiro, besides countless other prominent lawmakers like economists Roberto Campos and Delfim Netto. Therefore, congressional membership renovation for renovation's sake is an innocuous criticism that fails to render any credence in the absence of necessary foundational institutions to produce qualified politicians. Former Speaker of the Chamber of Deputies

and presidential candidate, Ulysses Guimaraes, once famously noted that “if you believe the current congress to be bad, wait for the next one.”

Second, all sides of the political spectrum have attacked the *distritão* system based on the fact that it is only utilized in a handful of “insignificant” countries. Take for instance the following statement from *Poder 360*, an influential Brazilian political blog: “There is a vast shortage of potential supporters of this tragic innovation... since it is in usage in only 4 countries, 2 *Muslim* [author’s emphasis], and 2 insular – Afghanistan, Jordan, Vanuatu, and Pitcairn Islands.”<sup>xviii</sup> Or, consider this statement, made in a highly ironic tone, taken from a YouTube promotional video by a progressive state legislator from Rio de Janeiro, Marcelo Freixo of the *Partido Socialismo e Liberdade* (Socialism and Liberty Party PSOL): “Where is the *distritão* system applied today? Only in Afghanistan, Jordan, and two small countries in Oceania.”<sup>xix</sup> Such a line of argument is not only intellectually lazy, but also loaded with prejudice, to say the least. Simply because one system is restricted to only a few places does not necessarily mean that such a system is unworthy of consideration. For instance, the *distritão* could make perfect sense for small republics, where there may be difficulties in congregating enough people under a single ideological banner to form a party such as ancient city-states like Athens or modern-day Pitcairn Islands. Conversely, if another system is commonly replicated, it does not make it automatically suitable. Instead, countries should adopt, the argument follows, models from *consolidated democracies*, as if such models do not present grave problems in themselves. The issue here is that it distracts the public from comprehensively understanding the serious issues posed by the *distritão* system by steering the debate with empty rhetoric and abstract terminologies.

Third, and perhaps most importantly, FPTP systems have an inherent bias to replace the party with the individual. Since the system shifts the distribution of congressional seats from proportional to majority allocation, it turns the political campaign into individual competition rather than ideological contestation. Furthermore, because of its winner-take-all voting system, FPTP favors larger parties in detriment of smaller parties and minorities, forcing a natural gravitation toward a broadly based two-party system.<sup>xx</sup> Such a tendency is only aggravated under presidential systems where broader coalitions could become harder to form. And since parties are becoming ideologically broader, they have a propensity to form internal factions in lieu of what would have been the role of smaller parties under proportional representations. This can potentially discourage the need for party unity in congressional voting.<sup>xxi</sup>

## Conclusion

The propositions put forth by the Chamber of Deputies’ Electoral Reform Special Commission also includes a number of other initiatives which are expected to be approved without much further deliberation such as the prohibition of political coalitions in proportional elections, and the inclusion of a minimum threshold

requirement for granting access to campaign funds. Today, any party with at least one represented official can have access to public financing of political campaign. Under the new proposed legislation, parties would be required to have elected at least 10 officials to the federal Chamber of Deputies.

Regardless, these are only minor procedural adjustments that fail to solve the larger conflicts present in the current Brazilian political system. Campaign financing, and the electoral system are two of the most important issues facing the Brazilian electorate today, but they are far from being the only problems, which require a more comprehensive assessment of democratic shortcomings. Political parties based on consensual ideological affinity are essential to modern republicanism. Although individual representation could be advocated for, under some circumstances such as small republics, it becomes extremely difficult to defend in a pluralist multicultural society with diverse groups representing distinct interests. By rushing through these reforms without proper popular consent, Brazilian lawmakers take the risk of making a bad system worse while indulging in their own seats of power.

Next, in the second article of this series on the Brazilian Political system, we will discuss the foundational problems that exist in the current system to illustrate that the political crisis in Brazil is not limited to one country or another. Rather, it is a crisis rooted on the shortcomings of liberal constitutional democracies in both the developed and developing worlds.

***By Gabriel F. Barbosa,***

***Research Associate at the Council on Hemispheric Affairs***

***Additional editorial support provided by Aline Piva, Assistant Deputy Director and Head of Brazil Unit, and Liliana Muscarella Research Fellow***

---

<sup>i</sup> IBOPE “85% da população é a favor da reforma política” 08/06/2013 <http://www.ibope.com.br/pt-br/noticias/Paginas/85-da-populacao-e-a-favor-da-reforma-politica.aspx>

<sup>ii</sup> Lourenço, Luana Agência Brasil 06/25/2013 “Temer diz que Constituinte específica para reforma política é “inviável” <https://agencia-brasil.jusbrasil.com.br/noticias/100580346/temer-diz-que-constituente-especifica-para-reforma-politica-e-inviavel>

<sup>iii</sup> G1 Globo <http://g1.globo.com/hora1/noticia/2017/04/lista-de-fachin-tem-governadores-senadores-deputados-e-ministr.html>

<sup>iv</sup> Telesur 06/21/2017 <http://www.telesurtv.net/english/news/Brazils-Michel-Temer-Hits-a-New-Low-With-a-2-Approval-Rating-20170621-0031.html>

<sup>v</sup> Fernanda Calgaro G1 Globo <http://g1.globo.com/politica/noticia/comissao-da-reforma-politica-aprova-distritao-para-eleicoes-de-2018-e-de-2020.ghtml>

- 
- <sup>vi</sup> Renan Ramalho G1 Globo <http://g1.globo.com/politica/noticia/2015/09/supremo-decide-proibir-doacoes-de-empresas-para-campanhas-eleitorais.html>
- <sup>viii</sup> Fernanda Calgaro G1 <http://g1.globo.com/politica/noticia/camara-retira-da-reforma-politica-valor-de-fundo-para-custear-campanhas.ghtml>
- <sup>ix</sup> Majoritarian elections, also known as winner takes all result in elections where the candidate with the highest percentage of votes is elected to office.
- <sup>x</sup> The Hare quota is an equation often used in political science as a benchmark to determine election results in proportional representation systems.
- <sup>xi</sup> Nicolau, Jairo “The Open-List Electoral System in Brazil” *Dados – Revista de Ciencias Sociais* v.49 n.4 pp.689-720 2006.
- <sup>xii</sup> Fernanda Krakovics and Chico Goes O Globo 08/06/2014 <https://oglobo.globo.com/brasil/empresa-jbs-friboi-a-maior-doadora-das-campanhas-de-dilma-aecio-13517327>
- Erich Decat and Fabio Fabrini Estado de Sao Paulo 05/07/2015  
<http://politica.estadao.com.br/noticias/geral,empresiteiras-do-cartel-doaram-r-78-milhoes-a-pt-e-psdb-em-2014-imp-,1682741>
- <sup>xiii</sup> Justica Eleitoral do Brasil <http://www.justicaeleitoral.jus.br/arquivos/tse-distribuicao-do-fundo-partidario-duodecimos-2014>
- <sup>xiv</sup> <http://www1.folha.uol.com.br/poder/2017/08/1910993-citado-em-parecer-da-reforma-politica-diz-que-distritao-e-desnecessario.shtml>
- <sup>xv</sup> Congresso em Fogo “Congresso: 652 parlamentares, apenas 1 pos-doutorado” June, 2011  
<http://congressoemfoco.uol.com.br/novo-congresso/congresso-652-parlamentares-apenas-1-pos-doutor/>
- <sup>xvi</sup> Medeiros, Etere Agencia Publica de Reportagem e Jornalismo Investigativo February 2016  
<http://apublica.org/2016/02/truco-as-dinastias-da-camara/>
- <sup>xvii</sup> Revista Super Interessante <https://super.abril.com.br/ideias/os-piores-e-os-mais-curiosos-projetos-de-lei-dos-nossos-deputados/>
- <sup>xviii</sup> Luis Costa Pinto Poder 360 08/11/2017 <https://www.poder360.com.br/opiniaio/congresso/distritao-e-a-tragica-perpetuacao-do-mal-na-camara-dos-deputados/>
- <sup>xix</sup> Marcelo Freixo Midia Ninja 08/18/2017 <https://www.youtube.com/watch?v=4H8IsRAGUjI>
- <sup>xxxx</sup> Salomon Orellana “Electoral Systems and Governance: How Diversity can Improve Decision Making” Routledge Press New York, NY 2014
- <sup>xxi</sup> Arend Lijphart “Patterns of Democracy. Government Forms and Performance in 36 countries” Yale Press New Haven, CT 2012