

Brazilian Electoral Reform (III/III): The Perils of Parliamentarism

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“The general will alone can direct the State according to the object for which it was instituted, i.e., the common good: for it the clashing of particular interests made the establishment of societies necessary, the agreement of these very interests made it possible... Sovereignty, being nothing less than the exercise of the general will, can never be alienated, and that the Sovereign, who is no less than a collective being, cannot be represented except by himself: the power indeed may be transmitted, but not the will.”ⁱ

Jean-Jacques Rousseau

Introduction

Perhaps one of the most persisting debates in modern republicanism is the question over presidential, or parliamentary systems. It is the antinomy of the President versus the Prime-Minister, the American model versus the European model, or the New World versus the Old World. In either case, government is nothing else than the expression sovereignty of the general will of the people.

In a republic, political power is transmitted from the people to an elected government in the hopes that representatives are reflective of the general will. Political power, under a social contract, is transferable, but political will is not. Sovereignty, or the exercise of the general will as Rousseau describes, can be expressed or represented government, elected by the general will to mediate conflicts and disputes that emerge within the community. Government acts only in accordance to the general will of the people, and never in lieu of it.

In a presidential republic, the head of government is decided directly by the people, regardless of their origins, or location, in national elections. In a parliamentary system however, the head of government is left to be chosen by public servants elected locally, who in turn, are supposed to entirely express the demands of their constituencies on the national level. By distancing themselves from the people in the election of leadership, parliamentary republics create participatory barriers between the consensual transfer of political power and the execution of the unexchangeable general will of the people.

Criticisms of Parliamentary Republics: Indirect Representation or The Transferring of The General Will

The central point of argumentation between a presidential and parliamentary republic rests on the way in which the people chooses leadership, or how it ultimately transfers its political power to the Executive elected official. On the one hand, in a presidential system, leadership is selected through direct participation of the populace. On the other hand, in a parliamentary system, the power to elect leadership rests much more in the hands of the parliament than the electorate. Thus, in a parliamentary republic, not only the popular political power is transferable as expected, but so is the general will.

Although parliament itself may be composed by the community members' votes, its leadership is not necessarily so. Members of parliament can be elected in a variety of ways ranging from majoritarian to proportional elections, and any variation in between. In majoritarian Westminster, First-Past-The-Post (FPTP) systems, candidates are elected based upon the largest percentage of votes won in each electoral district. On the other hand, in proportional representation elections, the total number of seats are distributed according to the total number of votes received by a certain party, or a coalition of parties. In either case, party leadership is left to be determined by closed elections restricted to party membership. In a presidential system, people can either directly (or indirectly, depending on the mode of the election) decide on a candidate via primaries like in the United States, or, through multiple election rounds as seen in Brazil, Argentina, or France.

Still, open public contestation has always been met with a certain degree of skepticism from liberal democrats who see it as a potential exacerbation of philosophical and ideological differences. Political scientist Juan Linz argues, for instance, that such a dispute found in presidential systems, can aggravate social cleavages within the community.ⁱⁱ However, dissonant arguments and the clash of ideas are essential for producing an effective political culture within the community, which in turn, is paramount for democratic stability.ⁱⁱⁱ Professor Linz's concerns are valid but are nonetheless misplaced. Political standoffs are not exclusive to presidential republics, but common to any pluralist community. Moreover, parliamentary systems do not make the resolution of these disputes easier, it only aggravates it. Parliamentary systems leave the choice over a *national* head of government to be decided in *regional* parliamentary elections. Parliament, entrusted to select the head of government and build a national administration, is selected, in either majoritarian or proportional elections, on the local level. This can lead to conflictual national versus regional interests between locally concentrated, and nationally present, societal groups. The differences between social cleavages that concern Professor Linz can only be exacerbated, in a parliamentary system, by geographical distinct geographical positions.

What ought to be discussed is not just a mere choice of venue where the existing societal

cleavages can assert their ideals. Instead, the debate should center on mechanisms that allow for the insertion of new, otherwise excluded, factions into the political debate, ultimately expanding participation. According to Harvard Professor Roberto Mangabeira Unger, new constitutional arrangements need to be designed in order to expedite political processes, in detriment to constant parliamentary deadlocks, combining repeated elections with frequent public consultation through plebiscites and referendums.^{iv}

Party Politics vs Public Politics

When it comes to evaluate parliamentary republics, it is imperative to distinguish between internal party politics and public politics. Parliamentary republics require the electorate to be involved in the intricacies of closely held party politics as well as in open overarching public politics. This is to say that in order to be able to choose its leader, the people must take part in the internal bureaucracy of party processes as opposed to simply casting their votes in the general elections. The reader must not, however, be inclined to think that party politics is not an important aspect of the general political process. On the contrary, it is an essential facet of it! But only to the extent that general public is equitably granted access without being penalized for doing so.

The involvement of the general public in internal party operations requires yet another layer of participation in the political process that people may or may not be able to fulfill. Optimally, a true democratic republic is able to offer the means by which its citizens can participate in all phases of the political process without facing any negative consequences. In other words, people can invest a portion of their time to politics without putting their personal and professional lives at stake. It is in the best interest of the community, as well as of the individual, that everyone becomes a stakeholder with shared interests in the decision-making process. However, without the proper incentives and foundational institutions in place, implementing additional requirements of personal commitment could eventually prevent the general public from participating in the political process in the most effective manner. A presidential runoff election, for example, or a primary system, allows the community to be more politically mobilized, and integrated, since representation through candidate choosing is more accessible without restrictions of party membership.

Criticisms of Presidential Republics: Centralization of Power

The most usual arguments used against presidential republics rests on the possibility of power accumulation in the hands of the Executive officer. This argument is often structured in two ways. First, because he or she is elected by direct universal vote, the president is seen with possible tendencies towards populist rule. Simply put, from the perspective of certain sectors of the community, the president may pursue policies that

are contradictory to their interests in favor of more popular measures that benefit the masses who may have been the pivotal player in his or her election.

Second, presidential systems have been traditionally portrayed as non-collegial in its decision-making process.^v However, by contrasting recent empirical comparative studies, Araujo et al report, in the article “Measuring Presidential Dominance over Cabinets in Presidential Systems: Constitutional Design and Power Sharing”, that there is evidence to support that this assertion over the power of the president to select (or remove) ministers, underrates the variations that may exist within degrees of dominance exerted by the president over cabinet positions.^{vi} In the case of Brazil, the constitution of 1988, under article 84, gives the president discretion to select and remove federal government ministers, including the Attorney General, and members of the Council of the Republic.^{vii} At first, this may seem to confirm the criticism of presidential systems. However, this fails to consider the fragmentation often found in a multiparty pluralist party system such as that of Brazil. Although the constitution allows for top-down vertical decisions coming from the president to form a cabinet, it must be considered that often, broad horizontal coalitions are formed between executive and legislative candidacies in exchange for TV time, campaign funding, and cabinet positions.

Another subject of discord is the nature of the president’s fixed term in office and the difficulties involved in a possible removal, or replacement of the Executive branch. The only alternative, for the removal of the executive officer, found by early liberal constitutionalists was a provision of impeachment in case criminal activities were proven directly connected to the president. Therefore, unless proven guilty of a crime, a president, in theory, cannot be removed from office.

There are no more than a handful of cases where impeachment proceedings were actually utilized to overthrow a president given the strictness of such process. Brazil is the only country to have utilized impeachment articles to replace a more than one president in a period of less than 20 years. Although the process itself requires a minimum legal base, it is still highly political. Hence, if there is the political will, even without the judicial pillars necessary to sustain a criminal prosecution, a president could, in theory, be removed without the consent of the people. In this case, political power transplanted to the president, can be transmitted along with the general will without consulting with the people, the original holders of power.

Meanwhile, it is argued that in a parliamentary system it is easier to substitute a prime minister without major traumas to government. Professor Donald L. Horowitz, in the article “Comparing Democratic Systems”, counters this argument by stating that the fixed term of a directly elected president is not more likely to cause a governmental crisis than it is for the more flexible term of a parliamentary government. When parliamentary regimes begin with secured majorities, they tend to serve their full terms. The exception occurs when a government calls an early election to take advantage of its transient popularity, or when a coalition is required to form a governable majority.^{viii}

Hence, political stability is not inherent to the parliamentary system itself, but dependent on a number of congruent factors that must take place. What Horowitz fails to appraise is that the ability of parliament to remove a prime minister is in itself proof of the distance that a parliamentary system can have from the will of the people. While discussing the ability or inability to remove a president or a prime minister they do not consider the volition of the populace who may not be in agreement with a replacement in the first place. There are no embedded requirements of a recall referendum on the Executive branch in parliamentary systems. Some countries offer provisions for a recall election on the provincial, state, or municipal levels like Canada, Switzerland, or the United States.^{ix} However, only a few countries, like Venezuela for instance, dispose of the possibility of a recall election for a president on the federal level. It is therefore, not an inherent trait of liberal democracies, the constant involvement of the constituency in the decision-making of its political culture.

In conclusion, political power concentration in the hands of the government is only problematic when it violates the non-transferability nature of the general will. If the alleged concentration of power, transmitted to the president from the people, is exerted to guarantee the entire reflection of the general will, the president is only acting according to the established social contract. In such case, one can no longer speak of concentration of power because the president is merely following his or her democratic prerogative to use the people's political power, entrusted to him or her, in accordance to the people's general will.

Presidentialism in Brazil

In its recent history, Brazilian democracy has twice experimented with plebiscites concerning different systems of government. Twice the Brazilian public was asked to choose between the official presidential system and a parliamentary alternative. And twice, by large margins, presidentialism prevailed. Thirty years and a series of political convolutions separate the two constitutional referendums of 1963 and 1993. Now, a little more than 20 years since the last plebiscite was held, new talks are emerging around the subject of a possible change in systems. Only this time, voters might not be convoked to express their personal will. Since the Brazilian constitution of 1988 was established with the provision that any alterations in the then-system of government were to be ultimately decided through the national referendum of 1993, some jurists argue that to discuss any new changes, a general vote would be required.^x Others state that such discussion is only viable under an entirely new constitution.^{xi} However, several legislative proposals, currently under debate in the Brazilian congress, could potentially alter the system of government, even without a direct public consultation, by simply introducing an amendment to it.^{xii} The current *de facto* president, Michel Temer, has expressed his personal approval of a change into either a parliamentary or semi-presidential system, similar to that of France, and stated that he believed the current parliament had the authority to do so without going through the ballot box.^{xiii xiv}

Why would a discussion over a system of government, previously rejected twice, emerge for the third time in 50 years? Moreover, why would a parliament with 37 percent of its members currently under investigation from charges that range from corruption to murder be entrusted with the prerogative to alter the way the people chooses its leader?^{xv xvi} Finally, why would the president himself consider such a parliament to have not only the authority, but the competence, to make these changes?

All of these questions appear to be at least rhetorical in nature. Nonetheless, this is precisely why there should be an inquiry into the motives that necessitate their asking. In the first part of this series on Brazilian electoral reform, we discussed the reasons why current Brazilian legislators are attempting to reform the national electoral process to salvage whatever is left of a moribund political system, while ignoring the prospects of worsening an already controversial system. In the second part, we attempted to illustrate that, at the core of current Brazilian political crisis, lies a much deeper question of resentment and lack of representation in politics in general--not limited to Brazil alone. Here we attempt to illustrate how a parliamentarian government would further exclude the people in Brazil from the political process, at the same time as reinforcing the existing problems of legitimacy and representation.

In Brazil, the vast majority of the poor are excluded from the centers of power. The masses often have no alternative to communicate to the authorities besides their right to vote, directly and unrestrictedly, for the head of government. The economy is still dependent on the informality of the domestic market, and the consensus of international trade. At the same time, Brazilian politics and society remain highly patrimonialistic. The ones who own property, and the means to produce, are still the ones who hold political power, and any service, or benefit gained by the people is still regarded as a simple exchange of favors. The only chance for the greater part of the population to engage in the political process is through the direct election of the head of government without interferences from parliament.

The Executive and the Legislative Bodies in Brazil: An Unstable Relationship

The recent impeachment proceedings in Brazil has revealed a great deal of institutional dependency of the executive on the legislative branch. In order to secure votes favorable to the impeachment of President Dilma Rousseff, Vice-President Michel Temer awarded cabinet positions to members of parliament belonging to parties that were on the opposition, as well as parties that had been previously on Rousseff's political base.^{xvii} This serves to illustrate that the problem is not of the system itself, but the fragmentation of parliament by political parties that now function as business cells. An exchange for a parliamentary system would only aggravate this problem by increasing the leverage held by the legislative in the composition of governmental coalitions, at the same time decreasing the level of accountability between parliamentary *selected*

Executive officials and Legislative *elected* officials. Aside from the more traditionally ideological parties such as the *Partido dos Trabalhadores* (Worker's Party, PT), the *Partido Social Democrata Brasileiro* (Brazilian Social Democratic Party, PSDB), the *Partido Democrata Trabalhista* (Democratic Worker's Party, PDT), the *Democratas* (Democrats, DEM), and the *Partido do Movimento Democrático Brasileiro* (Brazilian Democratic Movement's Party, PMDB), a shadowy group composed of 13 minor parties hold together 43 percent of the Chamber of Deputies. The group, known as “*centrão*” (large center), is outspokenly non-ideological, and has no clear political platform.

During the height of former president Luis Inácio Lula da Silva's popularity, the *centrão* would often vote with the PT. Later, when president Dilma Rousseff's administration began to derail, they were quick to switch sides, voting in block for her impeachment. After helping to halt criminal charges against Michel Temer that needed congressional approval, the block publicly requested an increase in the number of cabinets held and a “differentiated treatment” from the president.^{xviii} In the current system, it is clear that the dissipated nature of the Brazilian congressional composition already has enormous sway over government formation. Simultaneously, since most of congressional members are elected by broad coalition-based proportional vote, there is an evident lack of answerability from elected officials to their alleged constituencies.

In a presidential system, cabinet members are not required to be part of the Congress, as do most Westminster parliamentary systems.^{xix} Nonetheless, as mentioned above, cabinet positions are held as bargaining chips to accommodate disputes in the formation of government coalitions. This is often used by political scientists to illustrate the weaknesses of a presidential cabinet over a parliamentary one^{xx}. The argument considers that such compromise, in presidential systems, to be detrimental to the democratic process because members of parliament are elected officials and not simply appointees of the president. There are two grave misconceptions in this line of argumentation. First, a member of congress may or may not be an “expert” in the area to which he or she is appointed to. Winston Churchill, for example, had never served in the Royal Navy, but in the British Army, when he was appointed First Lord of the Admiralty in 1911. Often, but not always, in presidential systems, cabinet members are professionals in their areas of expertise when they become part of an elected government. In another example, Celso Furtado, under a presidential system, received his PhD in Economics from the Sorbonne in Paris before becoming Minister of Planning under President Goulart from 1961 to 1964. When we consider the United States, we find that economists usually occupy the Department of Treasury, while career politicians serve in the Department of State. Hence, there is ambiguity on both sides, and it not clear that one appointment system works best than the other.

Second, when casting a vote for the president, the electorate understands that they are not casting a vote for a single person. Rather, they comprehend that, included in the various attributions of the president, is that of his or her ability to choose their cabinet. Therefore, electoral legitimacy does not solely rest upon congressional officers, but upon

the president as well. Furthermore, in more strategically sensitive positions, such as the Ministries of Finance, Foreign Relations, Labor, and Planning, where a higher degree of scrutiny is involved in the selection process, the president's options are often made public before the election itself. In a parliamentary system, this is never the case, and cabinet positions are distributed on the bases of coalition composition after the election.

Potential Problems of a Parliamentary System in Brazil

Finally, it is important to highlight two important facts about a potential parliamentary system in Brazil. First, as demonstrated throughout this article, parliamentary systems are an indirect system of government. After the elections of 2002, conservatives in Brazil, who now leads the talks about a potential change in the system, have lost four consecutive general elections for the federal executive office. At the same time, the current *de facto* president Michel Temer, a conservative who openly campaigns for this change in the system, is the third president, since 1985, to take power indirectly. First, vice-president Jose Sarney became president when indirectly elected president Tancredo Neves passed away in 1985. And second, Itamar Franco, took over after the impeachment of then elected president Fernando Collor in 1992. Curiously, all three, Sarney, Franco, and Temer, belong to the same party, the PMDB. In essence, conservatism in Brazil has a long history of securing power indirectly. Therefore, not surprisingly, they are now the ones attempting to change the system.

Second, as the name suggests, in a parliamentary system, executive power is secured by the parliament. Since the general elections of 2010, a greater number of political parties have increased their presence in Brazilian political culture. In 2010, 22 of the existing 27 political parties elected at least one congressional member. In 2014, there were 28 of 32 parties with at least one elected official in Congress. Because congressional fragmentation increased, the leverage that parties held over the formation of governing coalitions in Congress also increased. Furthermore, given the nature of the Brazilian political party system and its contempt toward ideological platform and overall discipline, parties began to auction support in exchange for campaign funding or pork barrel, redirecting control of congress from the established coalitions to the highest bidders.^{xxi} Combining these two points: an opaque opposition with neither a winning political platform, nor a convincing propositional campaign; coupled with an aggressive divisive power hunger parliament, it is not difficult to understand the motives behind the ongoing possibility of a systematic change in Brazilian politics.

Conclusion

Democracy, whether as a system of government, or simply as an ideology, rests on the assumption that political power is, or should be, reserved for the *demos*, or the people. Parliamentary systems were created to circumvent this fundamental definition by

placing barriers between the common interest and the decision-making power in directing and implementing those interests. It is not enough for people to be represented, if their expressed demands are not. Furthermore, it is not sufficient to have a parliament in charge of selecting a *de juris* leader if the *de facto* will of those who hold the ultimate political power, are not in accordance. There cannot be any improvements in political systems if power, rested on the people, is shifted away in the first place.

A government of technocrats, or of gentlemen is only a way to express a classist argument to sustain that people do not have the capability of self-governing. A presidential system attempts to reduce this problem while a parliamentary one seeks to enforce it. If it is true that democracy is the ultimate goal, then communities, in Brazil and elsewhere, should attempt to build on systems that can bring representatives and their constituencies closer together, and not farther apart. The Brazilian presidential system is fraught with problems, but it should be corrected by relying directly on its own people, instead of indirectly on its representatives.

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