

Which Political Reform?

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THE LATEST CRISIS in the Senate revealed some tips of the iceberg of imbalances and distortions that affect Brazil's entire institutional system. Perhaps that is why there was so much confusion and so many excesses in those debates, inasmuch as they revealed extremely unpleasant facts for the many of us who have gotten used to the idea of Brazil as a consolidated democracy. Occurring amidst an ongoing process of social and democratic development, the Senate crisis showed that our system of representation enhances flaws and impasses that may bring negative consequences for democracy in our country.

The revelations of those months were focused on the figure of senator José Sarney, recently elected as president of that institution. The door was opened to the light of day the corporatist face of certain senators who, like him, seem more concerned with defending handouts and grants to friends, relatives and employees, than tackling the problems that affect the Brazilian federation. In this case, however, there was something more than corporatism, nepotism and corruption.

In an effort to break away from his critics, José Sarney stated that the crisis wasn't his, but the Senate's, a statement for which he received public support from the president of Brazil himself: "Sarney is not a common man," he said. After this demonstration of support, the Senate president went on to say that he was being criticized for his alliance with the head of the federal government. Thus, in his own way, Sarney revealed at least a part of the truth that came out during the debates. Indeed, the crisis didn't affect only his name, already somewhat scorched by past events, but the entire Senate, whose public credibility has reached the lowest levels.

These months of turbulence in Brasilia consolidated the image of the Senate as an oligarchic institution. This would be serious enough but, alas, that is not the gravest issue. Instances of oligarchic regression are nothing properly new in the history of our unstable democratic development. In the course of the debates, some even proposed suppressing the Senate altogether, considering its existence unnecessary and perhaps even harmful to democracy in Brazil. As precipitated as this kind of proposal may be, it emphasizes the gravity of the situation. But after tempers were placated, another question emerged, namely: what does the Senate crisis reveal about the evils that afflict democracy in Brazil?

Surrogate Senators: A Void of Autonomy

Let us begin with certain points regarding the Senate itself. What can one say, for instance, of the legal ruling that established the strange figure of the

“surrogate senator”? The Senate has today 18 surrogates acting as if they were the actual office-holders – this represents more than 20% of the 81 senators who make up the upper chamber, making their participation far from irrelevant. At least in numeric terms, the question of surrogacy is not a mere detail. Nor is the problem limited to the “misconduct” of this or that member. It is a structural issue, rooted in the institution itself.

The surrogates are figures who received no votes. Many of them are completely unknown to voters. If they are known to anyone, this is due to facts that have nothing to do with the institutional mechanisms that led them to the so-called “upper chamber.” This institutional figure (to which unknown, almost anonymous, politicians seem to cling) has something that foreshadows the Senate’s predilection for furtive maneuvers that was revealed in the denunciation of the “secret acts” [as the press called the internal measures stealthily taken by the Senate leadership, usually to appoint staff]. By law, each senatorial candidate can appoint two unelected surrogates, or substitutes. Although their names can be promoted during the campaign, they cannot be voted on; only the main name of the ticket can be elected.

Can this strange institutional be explained without taking into account the role that surrogates often play in the actual candidate’s campaign? There are exceptions, to be sure, but for many of them the only justification for their inclusion in the “ticket” is the financial support and funding assistance they provide to the actual candidate. Indeed, some are more than mere contributors and actually fund the campaign of the official candidate.

Whatever the personal (and even political) qualities of this or that surrogate, their very existence helps us to understand the Senate’s discredit as an institution. After an election, the surrogate remains available as an ancillary staff member of the actual senator and will take his or her place if the elected official leaves to take on other functions, usually in the federal administration. In such cases, the elected senator will forge ahead while the surrogate remains behind, as a kind of “placeholder,” should the head of the ticket have to return one day.

There have been attempts to justify this system with examples from the experience of other countries. But did we really have to emulate such a precarious foreign institutional figure? Our own experience has several cases of rather peculiar characters being thus allowed to occupy positions in Parliament without undergoing the scrutiny of the ballot box. Or have we already forgotten the pitiful figure of the infamous “bionic senators” [as the press called the senators and governors appointed directly by the President of Brazil during the military regime]? Like the “bionic governors,” that experience did not serve democracy well. We should have learned by now that the surrogate senators, as currently defined by law, serve democracy even less well.

As things stand, the figure of the surrogate senator betrays something very serious about the democratic regime of which they are a part. Like the bionic senators of a not-so-distant past, this institutional figure characterizes

the subordinate dimension of the Senate as an institution. As currently defined, these surrogates are voids in the Senate's autonomy *vis-à-vis* the other branches of government, the Executive in particular, which always concentrates most of the resources and votes. This void in autonomy becomes apparent when the surrogates take on the functions of the elected officials who have vacated their seats by taking on positions in the administration.

Even if we accept that senators do, indeed, need surrogates, some other mechanism must be devised so that their proxies are submitted to the scrutiny of the ballot-box. We could assume, for instance, that the second most voted candidate becomes the surrogate of the front runner. What must not go on is the current situation in which the surrogate is no more than a hireling of the elected official.

The Subordinate Position of the Federation

The Senate crisis reflects the question of the autonomy of Parliament, including the Chamber of Deputies, whose flaws vie with or supersede those of the Senate. Earlier, during the post-1964 dictatorship, worse than the strange institutional formula of the surrogate senator was the institutional casuistry that led the federal government to confer statehood status to areas that had previously been territories of the Republic. Since then, the greatest risk has been not only the Senate's subordinate position, but the subordination of the Federation itself to the Executive.

A certain inequality in parliamentary representation is acceptable in a democratic federation when it derives from legitimate historical reasons. For instance, the discrepancy in representation of some large states in the southeast and some small states in the northeast. However, the unequal representation of the states becomes a glaring injustice if it results from casuistry but is nevertheless perpetuated. The military regime, in order to preserve its own power, wrought this change and took Congress' historical inequality of representation to unsustainable levels for any democracy that takes its founding principles seriously.

Let us begin with the Senate, which has had to live with this anomaly since those fateful days: senators from the newly-created states could be elected with a few thousand votes, whereas senators from historical states might need hundreds of thousands, perhaps even millions of votes to be elected. And that was not all. During the same military regime, this change was supplemented by another one that granted *eight* representatives in the Chamber of Deputies to each former territory, a much higher proportional representation than warranted by their population.

The result is that today, in the new states that emerged from those former federal territories (and, more recently, also in Tocantins), the ratio of population per representative is much lower than the national average. If all Brazilian states, including the new ones, are taken into account, the national average is currently 370,000 inhabitants per representative. In Acre, Amapá and Roraima, however,

the ratio falls to less than 100,000; in Rondônia and Tocantins, it reaches 200,000, a little over half the national quotient. In the country as a whole (26 states and one federal territory), 18 units of the federation have ratios of more than 300,000 inhabitants per representative.

A Casuistic Culture

In this distortion-laden representative democracy, we also find, from time to time, proposals for reforms. Unfortunately, as mentioned above, these reforms are inspired by the same casuistic distortions that, in principle, they should rectify. In the absence of a national debate that considers the institutional system as a whole from the perspective of improving democracy, a new expression has been coined for this uninterrupted succession of ill-fated attempts: together, they form a “sliced up, blotched up political reform.”

These casuistic attempts increase year by year as part of the self-preservation efforts of those in power. Over time, dictatorial casuistry has blended with other types of casuistry born of democratic circumstances, combining to produce results that often aggravate the problems they are supposedly meant to solve.

A clear-cut example of “democratic” casuistry are the “provisional measures” (PM) established by the 1988 Constitution. The PMs were said to have been based on an Italian design to empower the Executive branch to face exceptional emergency situations and circumstances. Their ratification (or rejection) by Congress is postponed until after the “emergency.” This means that the PMs, even while conforming to the spirit of the law that created them, have involved serious risks from the very beginning, since their ratification (or rejection) only takes place after they are already in effect.

With regard to the Brazilian provisional measures, however, the situation is even worse. In Brazil, both chambers of Congress often remain stuck in their own affairs or work exceedingly slow, so the Executive branch gradually transformed the “provisional measures” into “routine measures.” Thus, although conceived in a democratic milieu, the PMs have increasingly come to resemble the decrees of dictatorial periods. To be sure, today’s PMs have built-in deadlines for consideration by Congress, beyond which the agenda of the Parliament is to be “locked.” This clause was intended to speed up parliamentary action. Most of the time, however, Congress remains sluggish, thus paradoxically making an even more pressing case for the use of additional MPs.

This casuistic culture actually obeys a certain logic – a logic that over time has produced our current institutional system, namely, a strong presidential system, a feeble Parliament and a Federation that is unbalanced or practically inexistent. Through a succession of crises and casuistic attempts to overcome them, we have arrived at an imperial-type presidential system with authoritarian resources at its disposal if and when there is no democratic wherewithal to carry out its projects. The sway of the federal Executive over most of the states is evident: the control is exerted through a complex network that distributes power

and resources that are seen as prizes (the suppression of which is often seen as punishment). Today, this imperial power to assist or chastise is exercised in thousands of municipalities spread over the vastness of Brazil.

A Great Electoral Democracy

Alongside so many flaws, our fragile democracy is nurtured by a few sparse virtues. It is impossible to deny that we enjoy voting freedom – and this is nothing new. We long ago forsook the easy-to-defraud “quill pen elections” of the First Republic [1889-1930]. We have also forsaken the common election practices of the Second Republic [1930-1937], which might have been free but often had dubious vote counting, not to mention past restrictions, particularly under the weight of the Cold War, that limited or banned the political participation of certain ideological segments. Today, at least from the electoral point of view, Brazil is one of the largest democracies in the world.

Yet, in Brazil, free elections coexist with an enormous gap between the representatives and those they represent. Surveys tell us that many voters quickly forget the name of the representatives they voted for in the last elections – who, in turn, quickly forget their campaign promises when elected. This is particularly true for parliamentary elections, and especially for the Chamber of Deputies, but also for state legislatures. On the other hand, this does not happen in majoritarian elections, in which, at least on the popular side, mass adhesion seems ruled by more long-lasting sentiments and, perhaps, by a more attentive memory.

Besides the freedom to vote, no doubt a particularly healthy element in a democracy, especially in a fragile one, we should also bear in mind the action of the press and of the media in general. In spite of their frequent reproof of politicians – and perhaps for this very reason – the media has reduced the gap between the representatives and those they represent. Not by chance, “secret acts” remained common practice in the Senate for a long time. Why? Because the greatest fear of politicians who think only of preserving their own power (and of the many who are merely dishonest) is not the electorate per se, but public opinion, which is formed by the debate in newspapers and in the media.

The effects of this type of control by the media are felt more in large cities and, above all, among the middle class. It can be said that they take more time to reach the poor, especially those in the poorest regions the country. But, overall, the media has an undeniable impact on controlling the institutions of the State and, ultimately, on the voting disposition of a large part of the population. It should be pointed out that cities – and large cities in particular –, being more exposed to modern media, are significantly changing, and for the better, the image that can be built of democracy in Brazil.

Representation and Voting Systems

Brazil has a combination of two voting systems: the majoritarian, for the Executive branch and the Senate, and the proportional, for city, state and

federal legislatures. The proportional representation system of open-list voting was adopted in 1930 and took into account the revolution's criticism of "quill pen elections" that always ensured victory for the dominant party (or oligarchy). This electoral system, which emphasized freedom of opinion and the right of expression for minorities, was adopted in the elections of 1932, 1934 and 1935, and was consolidated with the re-democratization of 1945.

According to the rules of proportional representation, voters choose their preferred representative from a party's list of candidates, who dispute with candidates from lists of other parties. These lists, one for each party, are known as "open lists" and the names they contain are mere suggestions to voters, who can freely choose among them. Another feature of these lists is that they are valid for only one district, namely, the state of the federation where the candidate officially lives [the "electoral domicile"].

Although all methods of electoral choice have problems, these seem to have been worsening in Brazil over the 70-odd non-continuous years the various methods have been applied to the Brazilian circumstances. Currently, the first major problem with the system lies in its application to districts with very large populations (as is the case of most states). These districts are the same electoral units that elect senators and governors, the difference being that the latter are submitted to the majority system in which the winner is the candidate with the most votes. If there are two positions to be filled, as happens with senators in certain elections, the second most voted candidate is also elected.

In the proportional system, according to some scholars, choosing a candidate from an open list tends to intensify the competition for votes within the party to which he or she belongs. Instead of encouraging competition between parties, the proportional system tends to turn the party itself into an electoral battlefield. According to one researcher, "a candidate's main adversaries are those on his or her own list, not those from other parties" (J. Nicolau).

Thus, the campaign of each candidate tends to become eminently personal, and the meaning of the party under which he or she enters the competition becomes less relevant. Some experts have observed that the candidates themselves acknowledge their campaigns have a predominantly personal character and that their parties play only a secondary role in them.

The worst aspect of the proportional system in Brazil's current circumstances, over and above the undermining of political parties, is the risk of rendering the voters themselves irrelevant. This derives from the fact that open list voting is combined with electoral coalitions and with a peculiar mechanism of distributing the "leftovers."

Therefore, parties tend to organize their lists by choosing one or a few candidates with the alleged ability to "pull in votes," who engage in a parliamentary election as if it were a mass election. This is perfectly tenable, since the candidates, in principle, compete all over the state. A "vote-pulling" talent may well obtain a supply of votes that will benefit several other candidates from

his party, who by themselves would not achieve the minimum number of votes to get elected. Combined with electoral coalitions between different parties, this has a surprising effect: voters do not know which candidates their votes helped elect.

It should be noted, however, that, overall, electoral systems engender doubts and a wide range of uncertainties. The alternative of simply replacing “open list voting” with “closed list voting” might grant excessive power to party leaderships. Without proper checks and balances, enhancing the significance of political parties could create still another mechanism to benefit existing party oligarchies.

A second alternative would be to complement closed list voting with another mechanism to increase voter control over the destination of their votes. This could be achieved by adapting to Brazilian conditions the system used in German parliamentary elections, by which voters have the right to choose two candidates for Parliament. First, voters would choose a candidate (the party’s only candidate), who would be competing with other candidates, each individually representing their own party in a less populous district. Secondly, voters would also cast ballots for the party list of their predilection.

Like the Brazilian electoral system as a whole, the two voting systems are combined: the majoritarian for choosing candidates in a district, and the proportional for choosing candidates from a list. The aim is to ensure, in each district, the greatest possible affinity between the representatives and those they represent; and to guarantee, in the list, freedom for minority viewpoints. Majority elections would be retained for senators, mayors, state governors and the president. As for parliamentary elections, the current scheme of a single district would be abandoned in favor of smaller districts within each state, the size of which should meet the democratic criteria of proportionality.

“Majoritarian democracy” and “delegative democracy”

If, with regard to Congress, we must speak of an oligarchic democracy, with regard to elections for executive positions – and even for the Senate, at least in some states –, we must speak of mass democracy. This is particularly true for presidential elections, but also for governorship elections in many states, especially those with large populations. As for the Senate, this is perhaps one of the reasons why this institution, always formed through majoritarian elections, has, in spite of everything, become more transparent than the Chamber of Deputies, where the flaws and faults are probably similar, if not greater.

The characteristics of presidentialism in Brazil coincide on many points with the scholarly description of “majoritarian democracy”, in contrast with “consensual democracy” (Arend Lijphart). Instead of a consensual democracy that, in principle, calls for participation in government decisions of everyone affected by them, majoritarian democracy understands that democratic government is “majority rule” and that those excluded from the government should form an opposition. In Brazil, it is hard to distinguish how much the predominance of majoritarian democracy over a possible consensual democracy

derives from the cultural and ideological milieu, and how much is a phenomenon of the institutional organization of the Republic. But it undeniably occupies a dominant position, with features such as: preponderance of the Executive over Congress; mandates of a party that, being subordinate to Executive, prevails over its own “power base”; control of Central Bank by the Executive etc.

Whether because Parliament has been discredited or due to the merits of the presidential system itself, popular preference is clearly on the side of majority vote systems. Certain signs of this predilection had already appeared in the 1963 referendum when, in face of a self-serving parliamentary regime, the option to return to a presidential regime was hugely victorious. The same happened in 1993, when 55% of the population rejected parliamentarism as a political regime and chose presidentialism instead.

However, majoritarian democracy in Brazil, divided between parliamentary oligarchies and executive officials chosen by the masses, suffers from ailments typical of what Guillermo O’Donnell called “delegative democracy.” Although one can say that every representation involves delegation, delegative democracy is characterized by situations in which there is an enormous gap between the representatives and those they represent. Strange things happen in this void, established by tradition and by long-lasting institutional vices; it is as if those who are supposedly to be represented offer a “blank check” to those who are supposedly to represent them. Clearly, such “delegation” is enabled by the voters’ feeling of identity with the candidates to executive positions.

However, what we seek to emphasize is something else, namely, an overgrowth of personal content and an almost total absence of political content and programs. One of the traits of delegative democracy is that voters can be almost equally forgotten by their leaders as they are forgotten by the parliamentarians they elected – whose name, by the way, voters are usually unable to remember. When the campaign is over, candidates for the Executive often forsake the programs they had propounded. The same happens, and even more so, after they are elected and have become part of government, when past promises are playfully referred to as “campaign boasting.” In the end, what a candidate bequeaths to voters are not proposals for government programs, but his or her personal image – somewhat changed, perhaps, and somewhat damaged at times, but always ready to be nurtured again by the traditions of Iberian personalism in a country such as ours.

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The difficulties to be faced in a political reform are obvious. Inasmuch as parties have become irrelevant to any truly significant issue and voters are hardly ever remembered in any discussion of this nature, the interests of those who manage to get themselves elected will obviously prevail both in electoral legislation and in other frail points of the system. As far as can be foreseen, we will remain submitted to the self-preservation logic of a patched-up system and to

the uncertainties generated by our culture of casuistry. Therefore, I believe that, once again, the only alternative is to appeal to public opinion. Only through a debate that enlightens people with regard to institutional problems can we arrive at a genuine reform.

ABSTRACT - The crisis, revealed once again by the events in Brazil's Senate, forces us to acknowledge the existence of institutional distortions that have accumulated in the Brazilian political system over decades. The oligarchization of the main Parliamentary institutions – whose members are chosen by elections based on an old-fashioned system of proportional representation – is evidence of this. One of the bases of this crisis is an increasingly wider gap between the representatives and those they represent, together with the acknowledged frailty of political parties and of the party system itself. The oligarchization of Parliament is combined with Executive officials elected by a majoritarian system that follows a “delegative democracy” model.

KEYWORDS: Democracy, Political Parties, Representation systems.

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