Political Reform in Brazil: a critical analysis

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Abstract

This paper makes an assessment of the debate on political reform in Brazil, presenting distinct views and proposals. It focuses on the understanding that reform in this country is not advancing towards a healthier system. On the contrary, politicians have concentrated on keeping rules as they are or conducting the process for their own political gain. Most proposals tend to give more power to an oligarchic political elite. Meanwhile, the main interests of civil society (assuring severe penalties for corruption and punishment for the misapplication of public funds) have been put aside. This work presents a brief historical analysis of the Brazilian political system and the debate among politicians and the academic community on three main proposals that were discussed by the Executive and Legislative Powers in 1995, 2003 and 2013. The overall conclusion this article is that the changes being promoted by the mainstream of politicians: i) do not attack the essential problems of the political system; ii) will enforce a highly oligarchic party-state, even more distant from civil society. Therefore, the conclusion is that political reform must not delay the true consolidation of the democratic process that replaced the military regime nearly three decades ago.

Key words – Brazil – political system – reform – party coalitions – electoral funds

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Introduction

Progress demands a parallel development of political institutions and democracy itself. The need for improvement in the political-institutional framework encouraged academics and contributed for a broad debate on electoral engineering; Executive-Legislative relations and party systems, among others. In the case of Brazil, according to Souza & Lamounier (2006) the reorganization of the institutional framework has been broadly and continuously analysed since the advent of the National Constituent Assembly in 1987.

This debate has been characterized as having two distinct phases. The first starts with the National Constituent Assembly and ends with the first referendum¹ held in 1993. It promoted comprehensive changes in the electoral and party systems. In the second phase, failure in attempts to change the Constitution, combined with new priorities of the Fernando Henrique Cardoso’s government, created the necessity for a new approach to the problem. There was hope that the structural reforms that were directed to certain areas of the economy and state organization would reverberate positively on the Brazilian political system. Accordingly, political reform initiatives were "sliced", individualized and limited to a set of specific points (Souza & Lamounier 2006, p.49).

Since then, several reform proposals were presented, in particular regard to party and electoral systems. However, many of these were responses to circumstantial problems involving elections and/or corruption. Many projects addressed the issue in a fragmented way or without the analytical, historical or comparative basis. Nicolau (2003) highlights that the propositions that have been presented over the years had several problems. Firstly, many of these were individual suggestions of legislators, without the formal support of a significant portion of their peers or the parties in which they belonged. Consequently, these proposals lacked theoretical foundation and were unclear in terms of goals.

In despite of some changes in the Federal Constitution, disputes on reform remain quite current. In this regard, Kinzo (2003, 12) asserts that "the debate on political reform persists, perhaps because, in its essence, the political-institutional framework has never been changed since its emergence as a project in the 30s". Similarly, Hiroi (2005) points out that the Constitutional Revision of 1994 provided no significant modifications. Overall, when formally evaluated, these proposals found persistent obstacles within the political community.

The search for quick solutions entailed an excessive fragmentation of political reform proposals within Congress. In many cases, the issues were addressed separately by various concerned social groups and politicians, wasting valuable time and energy. Consequently, despite the dissatisfaction of civil society with the institutional performance (FLEISCHER, 2008), attempts of achieving a broader reform failed, opening space for minor, and often casuistic proposals.

After this introduction, this paper has the following parts: section 1 will present the mains aspects of the critical view regarding the Brazilian political system. Section 2 will emphasise the arguments in favour of the current institutional structure. Section 3 presents relevant arguments in support for political reforms. Section 4 focus on three political reform proposals that were put to discussion in Congress in separate occasions. Lastly, section 5 concludes by appointing reasons for a certain dose of scepticism about

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¹ Proposed changes in the forms of government the choice between presidentialism, parliamentarism and monarchy.
the possibilities of success on achieving political reforms leading to democratic consolidation.

1. Critical View of the Brazilian Institutional Structure

Owens (2003, p. 23) informs that the French and Latin American experiences demonstrate how presidential systems weakens representation and party cohesion because they consolidate "presidential" parties. In this sense, presidents "exert considerable influence over the legislative." In Brazil, this level of control is so high that it can be paralleled with the Executive dominance found in many parliamentary systems.

Mainwaring (2001) argues that, other factors held constant, the federal system generally favours fragmentation, decentralization and party heterogeneity. Therefore, if the objective is to study the political parties in Brazil, one must keep in mind that they operate distinctively in three state levels (country, member-state and municipal) in a country with continental proportions. Ames (2003) highlights that, while the Brazilian party system demonstrates organizational strength in the municipal and state levels, in the national scene they can rarely be called political parties. Instead, fragmentation and decentralization allowed the formation of highly heterogeneous political associations where the ideological profiles vary greatly between member-states and the respective national leadership. In other words, in Brazilian federalism, the same party may have different ideological profiles in each member-state. Therefore, the ideological view of their national leaders does not necessarily reflect a national party view because, in most cases, it does not exist.

To Kinzo (2003) the statutory requirement specifies that political parties must be national, but in fact, these institutions develop themselves at a local level. Consequently, to achieve growth in national terms, the parties consolidate heterogeneous kinds of coalition support in the state level, hindering the formation of ideologically consistent supporters among the electorate. Despite high fragmentation and heterogeneity of parties, their classification along the ideological spectrum is characterized rather by ideological "differences of tone" than by distinct colours. Following similar argument, Ames (2003) points that the logic of electoral rules and Brazil's federal structure indicate that the political influence within the parties should come from the base and not otherwise. Under this condition, there is a clear possibility that party behaviour at the member-state level hinders the task of consolidating national organizations, federal electoral coalitions and governments.

According to Owens (2003, p. 24), party heterogeneity at the local level tends to weaken party cohesion in the national arena. In this sense, national leaders have a difficult task in building coalitions because politicians tend to follow the orientation of their local leaders. Similarly, Ames (2003) asserts that any electoral coalition built at the state level is able to ensure seats in Congress, regardless of what happens in other member-states or at the federal arena. This aspect encourages parties to establish "catch all" alliances, taking into account almost only the local competition. Thus, the combination of federalism and the electoral system adopted by Brazil tend to carry, to the national level, local heterogeneities and disputes, making it difficult to form a consistent national government basis.

Ames (op. cit.) And Mainwaring (op. cit.) show that the bonds of loyalty built state-wide causes politicians from different parties to cluster and defend projects that favour their member-states, regardless of the party to which they belong or their ideology. To solve such problems, national party leaders have at their disposal several
prerogatives that can be used in order to discipline rogue politicians. Nevertheless, these punitive practices are uncommon. Overall, state and local organizations determine which alliances will be established according to a logic based on its own calculations and electoral affinities. By agreeing to the above arguments, Kinzo (2003, p. 16) claims that Brazilian parties are "loosely organized" because they have at their disposal "insufficient political and organizational resources to encourage the involvement of their representatives (...) ". The concrete evidence of this problem is the frequency in which politicians migrate to other parties.

To Nicolau (2003) the performance of political parties in the Brazilian electoral system proceeds largely from the individual success of their candidates. Consequently, parties strive to recruit public figures (artists, broadcasters, religious leaders, etc.) with high popularity standards in their respective careers fields. Very often this quality overrides the preference for candidates whose ties with the party are historical and concrete.

Mainwaring (2001) believes that Brazilian parties are oligarchic. A small group of leaders dominate them at the national level. The party elites control delegations, and therefore tend to ratify pre-established agreements even before the formal meetings. However, this feature does not guarantee the national authorities full control. State directories have a lot of autonomy and, in general, are controlled in a similar manner. Consequently, local leaders often decide not to support presidential candidates or allies appointed by the national party leaders, favouring an opponent that is considered more palatable.

With the exception to the posts of president and vice-president, applicants to all other elective public offices are chosen by referral or through decision-making processes occurring at member-state level. Therefore, candidates normally feel the need to strengthen their local ties, establishing strong links within the municipality and the member-state. Thus, the Brazilian electoral and party system provide politicians with incentives to freely defend and prioritize their local interests in contrast to the national agenda.

Both Ames (2003) and Mainwaring (2001) consider that the Brazilian electoral system is quite permissive. Parties are endowed with freedom to build electoral coalitions, favouring the reproduction of other parties. Nicolau (1996 and 2000) points out that (once the voting process is finished) the distribution of seats in a coalition does not take into account the proportional contribution of each party. Votes acquired by an alliance bring no special benefit to the party that earned it. The main consequence is that coalitions function as a new political association, thus, increasing the chances of small and micro-parties getting congressional representation.

The Brazilian party and electoral systems have other features that should be mentioned. First of all, the Political Parties Law (Law 9096/95) leaves entirely to these associations the procedures for selecting candidates, clouding this process. Secondly, Brazil adopts the electoral quotient, a device that serves as exclusion clause that works individually in each member-state for the election of deputies. Finally, because of the open list proportional system, voters have decision making power over which candidates will occupy the available seats. According to Ames (2003) these features hinder the development of the party system. Moreover, after the candidates are elected, attempts to curb possible individualistic or deviant behaviours have a very expensive political cost. Due to these characteristics, the Brazilian proportional representation system undermines government action because it creates an excessive number of "veto players".
According to Nicolau (2003), another hindrance is the overemphasis on representation at the expense of government formation, a common problem of multiparty systems. Election rules enabled the establishment of a large number of parties with minimal representation. Moreover, gave too much room to free will resulting in post-election confusion. Therefore, eclectic multi-party agreements create barriers to governance and distance themselves from the electorate.

All the features above mentioned bring serious consequences. According to Mainwaring (2001) and Kinzo (2003), this level of fragmentation hinders the consolidation of the Brazilian party system. The excessive number and relative size of these organizations influence the nature of electoral coalitions as well as the government. Therefore, it decisively influences the way government policies are conducted because the organization of a ruling majority alliance becomes ever more difficult. Hence, the excessive number of "veto players" increases the possibility of deadlock between the Executive and Legislative powers.

This combination of factors also affect those to be represented. According to Kinzo (2003, p. 18), for the voter, the way parties organize themselves and the characteristics of the election process are unintelligible. The combination between diverse coalitions and "personalized disputes" blurs not only the understanding of the rules, but also the distinction among the competitors involved. Consequently, volatility levels are considered extremely high, not only between successive elections, but also between different moments of the pre-election period. Changes on voting intentions in surveys at different times of the electoral process suggest a "low attachment between parties and the electorate. In other words, the Brazilian political system hinders the executive power and creates problems for the consolidation of a truly democratic regime.

2. Arguments in Favour of the Current Political System

Wanderley Guilherme dos Santos (2003; p. 41) says that "(...) the short-sighted diagnosis of Brazilian society is borrowed from social sciences, in particular the ‘Brazilianist’ literature, totally misguided about the positive dynamics on one hand, and the true crossroads of Brazilian society on the other (...) ", This critical view was supported by other authors. Meneguello (1998) and Schmitt (2000) sought to refute the negative reviews about parliamentary conduct and Congress as a whole, examining the matter from another angle. They used models that allowed comparison between democratic regimes by analysing rules that distribute power within the Legislative and Executive branches. Based on this inquiry, they understand that Brazilian parties are organized and disciplined institutions.

Meneguello (op. cit.) also indicates that Brazilian political parties play a key role in the organization and functioning of the Executive. In addition, her study of the post-1985 Brazilian governments sought to demonstrate that the dynamics of coalitions composed in Congress is a fundamental aspect of the relationship between the Executive and Legislative. Consequently, electoral coalitions are important instruments to facilitate post-election dialogue between these Powers. According to this view, in this countries case, the political dialogue becomes possible only when the various opposing interests choose to accept the principle of reconciliation. Otherwise, there is no government.

Following a similar logic, Figueiredo & Limongi (2001) suggest that political scientists should shift the focus of institutional analysis, changing from parties and
elections to internal Legislative procedures. Their studies deny the diagnosis of government crisis arising from the conflict between an institutionally fragile Executive an inept Legislative due to the lack of necessary party structure. On the contrary, they claim that the Brazilian parties are the "structural axis" of a highly centralized Congress that adapts itself to the predominant role of the Executive Branch.

Based on the study results of roll call votes in the Deputy Chamber between the years 1989 and 1994, the authors above assert that the high rates of party indiscipline disclosed by the literature are not based on empirical studies. Additionally, that the Chamber of Deputies behaved in a highly cooperative manner towards the Executive. As a matter of fact, bills endorsed by the government were processed more rapidly and approved in their great majority. Thus, they conclude that Congress does not function as barrier to governmental action.

Also motivated by roll-call studies, Fabiano Santos (2006) analyses party behaviour in Brazil, stating that it is consistent and reasonably disciplined in the governing side and highly disciplined along the opposition. He also defends the Brazilian “Coalition Presidentialism”, claiming that it is highly democratic. In his view, our political model maximize accountability in the figure of the president. It also takes full advantage of representation through the combination between the separation of Powers, political pluralism and a proportional system. This implicates in the positive need for negotiation between the Executive and the various tendencies that comprise the Legislative.

Figueiredo & Limongi (2001) also contribute to the debate about party fragmentation. They came to the conclusion that there is a consistent pattern of the party coalitions that complies with the ideological continuum (divided between right, centre and left). Secondly, that the combination between party fragmentation and a government minority in Congress does not necessarily result in disapproval of bills held by the Executive Power. Therefore, a high party fragmentation does not imply parliamentary standstill. Thirdly, the party frame reveals a high nominal division concealing a low real fragmentation. Their research indicates that small and micro-parties do not have power to veto, blackmail or influence the voting results. Regarding the high level of indiscipline assigned to the Brazilian Legislative, these authors argue that, although party leaders do not have effective instruments to consistently punish unruly behaviour, they are still favoured by the House Regiment.

Accordingly, party leaders control both the composition of the Legislative’s most important seats and its agenda, thereby restricting possible individualistic attitudes and creating the necessary foundations for party structuring. Ultimately, migrations happen with considerable frequency, but within parties with affinities along the ideological spectrum. Therefore, these relocations do not bring great consequences to Legislative performance. Desposato (2006, p. 77) declares that, in other countries, party migrations effectively destroy the meaning of their labels, raises the costs of informing voters and eliminates accountability. In other countries, these movements represent a "threat to the very essence of democratic representation." However, in the Brazilian scene, the motivations that lead to these exchanges (career advancement; personal disagreements; access to funds and roles etc.) combined with a disciplined and ideologically consistent behaviour, means that party migration is “not the threat that it seems to be”.

Roma (2007, p. 379) presents a similar argument, asserting that the reviews on the undisciplined legislative behaviour “are limited to normative questions”. Furthermore, critics did not take their time to address the legislative performance of
representatives who switched parties or how they behaved (comparatively) in terms of votes and support to party ideology.

Based on extensive statistical analysis of various legislatures, Roma (op. cit.) stresses that the representatives, regardless of being "loyal or deserters", present a similar performance with regard to the support for the party's agenda. Therefore, the Federal Chamber presents similar (and high) rates of discipline and cohesion for the government and the opposition. Moreover, most of the changes are ideologically consistent. He claims that more than two-thirds of party changes occurred within the ideological party block, be it left, centre or right. For every 10 migrants, only one drastically brakes this barrier, moving from right to left or otherwise. Although agreeing that a large number of representatives switch allegiances, this author emphasizes that they continue to behave in a way compatible with the profile of the political party for which they were elected. He concludes by noting that, in Brazil, "party infidelity is less harmful to voter preferences than is commonly believed."

Klein (2007, p. 16) states that the imperfect characteristics of political institutions motivated many countries to implement reforms, many of which did not achieve the expected results. In the Brazilian case, "(...) exalted speeches argued that the situation 'would not get worse than it is'. Yes, it can." In his view, Bolivia and Venezuela are examples that closed list transfers "sovereignty from voters to the party leadership", creating "communication difficulties" between them and resulting in "dramatic withdrawal" of voters from politics. Furthermore, this author highlights that, in Brazil, sympathy towards parties exceeds the world average, surpassing several countries that use the closed list system. He then questions the relationship between low party identification and the open list model. Concerning the intra-party competition, Klein (op. cit., 66) also states that the different treatment of candidates (such as the unequal division of media time) shows that an informal ordainment of the list already occurs. Therefore, concludes that, instead of going through great lengths to change the electoral system a “rational organization of the list can avoid intra-party competition.”

Lyne (2005) informs that, if fidelity is indeed a problem for representatives, party exchanges should flow from the orderly to the undisciplined. In his research, the obedient parties had the smallest losses due to migration. On the other hand, the most undisciplined had the highest losses. Finally, he suggests that the incentive for parties to organize themselves around programs is strongly influenced by variables other than the electoral law or rules governing legislative behaviour. Therefore, further studies are needed to make more accurate “analytic distinctions” of links between parties and voters.

3. Reply in Support of Changes in the Political System

Giusti (apud. Mainwaring, 2001) suggests that the works of Figueiredo and Limongi (2001) opened doors to the advancement and refinement of the diagnostics on party and political representation in Brazil. However, it presents misconceptions and therefore should not justify abandoning the sceptical view concerning this country's political system. The first misconception involves the need of a clear distinction between cohesion (consensus on policies to be implemented and trust ties) and discipline (submission, coercion, intimidation, threats). Second, the roll call is the final moment of a lengthy road that involves negotiation between various actors. Therefore, the control exercised by party leaders does not override every negative effect of the electoral system because they are not limited to what happens in Congress. Similarly,
Owens (2003, p. 16) also asserts that voting represents the final stage of a long decision process that consists also in dialogue and negotiation within and between parties before the matter is appreciated. Therefore, polls show “only the visible preferences of legislators.” Moreover, supporters of the current political model ignore that an important part of parliamentary function implies “non-decision making” or the careful manipulation of the legislative game, removing from the agenda potentially dangerous topics. Ultimately, establishing mathematical figures for the levels of cohesion and discipline is an arbitrary task.

In the same vein, Ames (2001) argues that some important points seen in Figueiredo and Limongi (op. cit.) need to be highlighted. Firstly, compared with neighbouring countries (Argentina and Venezuela, for example), party discipline in Brazil is lower. Additionally, if dissidents have many party options to migrate, eventually, the pressure on party unity will be diluted. Secondly, the model in question is not multivariate, based only the level of discipline of each party. Ames (op. cit.) points out that disciplined voting can simply mean satisfaction with compensations obtained along the bargaining process. To characterize a party as disciplined implies a multivariate analysis that must take into consideration ideology, electorate profile and how many years of public life a politician accumulated, among other traits. Hence, disciplined voting in Brazil occurs due pressures from the electorate, uncertainties involving election results and a high level of patronage.

Rosas (2005) tried to verify if Latin American party systems are organized according to ideological lines. Based on the comparative analysis on the positioning of legislators from 12 countries on various topics (compiled in 1997), he emphasises that, in the Brazilian case, legislative disorganization extends to the field of ideology. The party spectrum is not structured by an economic dimension clearly divided between left and right. At the same time, the cultural dimension involving moral and religious issues has only marginal influence. In addition, political issues do not appear to divide the Brazilian parties. In his conclusion (op. cit., p. 846), the author argues that policy choices result from the interaction between the politicians own preferences, the institutional constraints faced and links with the electorate. He concludes that one cannot estimate the success of certain instruments to preserve “ideological purity” without understanding, firstly, the “idiosyncrasies” that shape a given political arena.

4. Three Proposals for Political Reform in Congress

Despite the controversy among scholars, and in an attempt to deal with the problems observed in the political praxis, several committees were established in Congress since 1988. Fundamentally, the main goals of these committees were to define the priority issues to be analysed and, subsequently, suggest reforms in legislation and the political system infrastructure. Reform proposals were frequently put back into discussion every time a corruption incident caused further dissatisfaction with the political system. This paper deals with two committees and one work group, as shown below.

Firstly, the Internal Committee of Political and Party Reform, stablished by the Senate in the year 1995. Secondly, the Special Committee for Political Reform, created by the Chamber of Deputies in 2003. Finally, the Work Group for Political Reform, formed by the Chamber of Deputies in 2013.

The 1995 Committee finished its work in November 1998. It evaluated proposals from the Senate, the House of Representatives and the Superior Electoral
Court. Thus, the Final Report can be seen as a point of consensus amidst its members. Among the topics discussed, it is worth noting the following: i) the prohibition of electoral coalitions in proportional elections; ii) party loyalty; iii) electoral performance (barrier clause) and the concept National Party; iv) optional voting; and v) campaign funding (SENADO FEDERAL, 1998)

The 2003 Special Committee for Political Reform drafted the Law Project PL 2.679/03. It tried to significantly modify the structure of the Brazilian political-institutional apparatus by: i) exchanging the open list for the closed (preordained) list in proportional elections; ii) Introduce exclusive public financing; iii) eliminate party coalitions for proportional elections, introducing, as an alternative, party federations; iv) reducing the percentage of the barrier clause (which would be used from 2006) from 5% to 2% (CÂMARA FEDERAL, 2003).

The 2013 Work Group for Political Reform produced the Proposal of Amendment to the Constitution (PEC 352/2013). Although legislative elections remained proportional, it was suggested that: i) candidates compete in member-state divisions (between four and seven) defined by the Superior Electoral Court. This proposal also: ii) created new rules regarding party coalitions by creating federations of parties that would need to work together throughout the entire legislature; iii) altered campaign finance law, giving the parties the right to choose between exclusively public, private or mixed funds; iv) established performance clauses for candidates and parties; v) defined a minimum term for party affiliation and criteria for new party registration; vi) submitted the changes in the electoral system to a referendum (CÂMARA FEDERAL, 2013).

Below are discussed the different approaches made by each commission or work group to i) The electoral system and coalitions in proportional elections; ii) Electoral Performance (barrier clause) and national party concept; iii) Party affiliation deadlines for candidates iv) Optional vote and; v) Campaign finance. Other points contained in these proposals are not covered here.

a) The electoral system and coalitions in proportional elections

In its Final Report, the 1995 Special Senate Committee proposed the adoption of the Mixed Proportional formula in legislative elections. Among the arguments used by politicians in favour of modifying the Brazilian electoral system were that: open list proportional prevents the strengthening of political parties; promotes an increase in "individualized" elections; leads to intra-party electoral competition; does not favour party cohesion. This proposal sought to guarantee more adequate representation of the various regions, further voter/representative proximity and ensure minority representation. Concurrently, it understood that coalitions should be annulled on grounds that parties must have their own electoral performance.

The 2003 Special Committee for Political Reform maintained the proportional system, but with closed list. It advocated that this would be an easier exchange compared to the mixed system proposal because it would mean a smoother transition. Moreover, it would end internal competition and strengthen the parties. This proposal also endorsed the elimination of party coalitions for proportional elections based on the fact that it would hinder exclusively public finance. Furthermore, these alliances generated confusion among voters. Therefore, party federations would be created and needed to work together for three years.
The 2013 Work Group for Political Reform also understood that legislative elections should remain proportional. However, it tried to approximate candidates and voters by dividing electoral constituencies in 4 to 7 parts, depending on the size of its population, simulating districts. Supporters of this proposal believed that this would reduce election costs. Instead of eliminating party coalitions, this project also created a long term deal between parties. Before elections they would need to form federations and work side by side for the next four years.

b) Electoral Performance (barrier clause) and national party concept

The 1995 Special Senate Committee did not propose any change concerning performance barrier since the Law 9.096/95 already contained such a clause, scheduled to take effect in 2006. This committee concentrated efforts on ensuring access to party funds and free election broadcasts (radio and television) only to parties with electoral performance results high enough to warrant them parliamentary function in Congress. Because of the pressure exercised by small parties (with influence in the current government) and in an attempt to guarantee the proposal’s success in Congress, the PL 2.679/03 reduced the percentage of the barrier to be instituted in 2006 from 5% to 2%.

Since the PL 2.679/03 was not voted in time, the 5% clause contained in the Law 9.096/95 was maintained and would start to function at the 2006 general election. Because of it, several party mergers occurred. The Supreme Federal Court (STF), over a decade after the creation of the Law 9.096/95, accepted a Direct Unconstitutionality Action (ADIN) 1351-3, declaring this barrier clause unconstitutional (SUPREMO TRIBUNAL FEDERAL, 2007).

The proposal of 2013 re-established a clause performance. Only parties that obtained at least 3% of the total valid votes in 2014, 4% in 2018 and 5% in 2022 would have access to radio and TV time, public funds, staff and physical space in the Lower House and Senate. The idea was to gradually increase the demand upon parties in order to consolidate them.

c) Party affiliation deadlines for candidates

The 1995 Commission proposed, for the cases of first affiliation, a minimum period of electoral domicile of 2 years and 1 year of party membership. For those who were already affiliated to another party (except for situations of merger or participation as a founder of another association) the membership should be of at least 2 years. This proposal would have a direct impact on party loyalty, requiring from politicians calculations of electoral opportunity and putting brakes on party exchanges. The 2003 proposal did not attend this question.

The 2013 proposal went in another direction, reducing the period of party membership to six months before the election. Since none of these proposals received adequate support in Congress, prevailed the previous understanding. Today, in accordance with the Election Law (Law No. 9.504/1997), applicants must still prove they have a party affiliation and voting domicile one year in advance of the elections (TRIBUNAL SUPERIOR ELEITORAL, 1997)
d) Optional vote

To the 1995 Special Senate Committee, one specific argument in favour of voluntary voting was that, until then, no one had been penalized for not voting. This meant that politicians were not willing to punish electors for not participating. This Commission held consensus that to poll should be seen as a right and not a duty. However, voter registration remained an obligation. The 2003 proposal did not attend the matter. It would resurface as a right with the 2013 proposal.

Corroborating this vision, Soares (2004) pointed out that about 52% of people consulted in surveys responded that would not attend the polls if voting were to be optional. Moreover, in another study that takes into account the level of education of the respondent, over 72% of those with university education defended optional voting.

On the other hand, according to Oliveira (1999), in the Brazilian case, electoral abstention would cause the socially disadvantaged segments to remain drastically under-represented. In this sense, compulsory voting safeguards a minimum standard of political participation. Lijphart (1997) shows that, by requiring attendance, the system ensures that the largest possible number of citizens opin on matters of their direct interest, bringing to the public space those who would did not (spontaneously) have individual motivations to do so. The aggravating issue for the Brazilian case is the fact that it has an extremely uneven social structure. In this perspective, to end compulsory voting would remove one of the few equalizing elements of the Brazilian democratic system.

e) Campaign finance

There are many arguments against and in favour of public financing of parties and campaigns. According to Mayer et al (2004), public funding has a number of features that enhance the elections: it allows applicants that lack their own resources to have real competing conditions; reduces weight of money from private sources, releasing competitors from their main contributors; diminishes time spent on fund gathering; helps decrease office holder advantage, thus contributing to open and balance the electoral game; ensures survival of small parties. In addition, to Pierre et al (2000) there is no evidence that subsidies are responsible for the "petrification" of party systems. Scarrow (2007) points out that there is little evidence that public subsidies inhibit the emergence of new parties or cause instability. Thus, its introduction could lead to increased ideological and programmatic diversification.

In contrast, Zovatto (2005), asserts that a reform must take proper care not to restrict the alternation of power or "criminalize" politics, resulting in the deterioration of the legal framework. In the same vein, Duschinsky (2001 and 2006) emphasises that the dependence on state funds, in fact, stimulates political "professionalism" and reduces dependence of parties on its contributing members. Furthermore, declares that excessively severe penalties can have a political effect so powerful and devastating to the point of never being properly managed, rendering it useless (i.e. the case of compulsory voting in Brazil). This evidence can be found by looking at the amount of "reforms of reforms" that were introduced in France, USA, Italy and Germany, some of many examples of cases where the introduction of new rules on political financing produced unexpected or even adverse effects.
Speck (2005) notes that, in the Brazilian model, the limits for individual and corporative political funding are, respectively, 10% of income and 2% of revenues in a year. In this context, those who have more resources available can influence the process through more robust contributions. Accordingly, a small fraction of the electorate contributes to election campaigns. In contrast, corporations contribute with nearly 60% of all donations to candidates for the Chamber of Deputies. Therefore, many contenders rely exclusively on a single donor. To him this state of affairs demonstrates the important role of economic power in financing elections.

Samuels (2006) insists that political parties and political campaigns in Brazil are already publicly funded through party funds, grants that legislators receive employ people in their offices and to publicize their works, as well as free airtime. With the advent of public funding, the national party leaders would inevitably favour certain candidates over others, changing the decentralized logic of campaigns, permeated by local issues.

Ribeiro (2006) declares that public funding should be implemented only if combined with the strengthening of the Electoral Justice. This means internal restructuring; increased funding for law enforcement and punishment; revision of the banking legislation. Otherwise, it would be difficult to monitor the use of public resources in campaigns and easy to circumvent existing or future laws. Speck (2005, p. 150-151) follows the same path, noting that “independent and skilled public agencies are needed fulfil this task.

In this regard, Taylor (2006) affirms that the Electoral Court has made little progress in order to inspect and, above all, punish parties and candidates. In this respect, Reinaldo dos Santos (2003) asserts that only 0.3% of the enquiries result in conviction by electoral crime. Sadek (1995, p. 67) explains that this is due to acknowledged performance shortcomings in terms of technical, material and human resources. As an example, Taylor (op. cit., P. 150-151) declares that, in 2004, the Superior Electoral Tribunal (TSE) had available only five employees to engage in the monitoring of party accounts nationwide. On the same period, this institution spent around R$ 1 million (about US$ 300.000 at the time) to renew its fleet of official cars.

Another problem associated with the Brazilian Electoral Court is that it frequently intervenes on the electoral law, contributing to the “judicialization of politics”. Based on the analysis of electoral legislation in Brazil since 1922, Ribeiral (2003) notes that the Supreme Electoral Tribunal (TSE) is responsible for constant changes and new procedural rules. This author affirms that, since 1994, several elections were marked by legal dissimilarities and political favouritism. In addition, numerous omissions were found in Law nº 9504/97. Teixeira (2004) asserts that the “Annual Criterion”, established in the Electoral Law, is perfunctory, giving room for active judges to influence the "political game". This oversight generates political instability. Examples can be seen in the “verticalization of elections”, enforced in 2002 and maintained in 2006, as well as the Clean Record Law of 2010.

5. Concluding remarks

It is a fact that the Brazilian political system needs adjustments. Despite the clash between those in favour and against the current model, our citizens, in many ways, showed their dissatisfaction with the “modus operandi” of the political class. Nevertheless, most of the reform proposals continue to favour the interests of the political class instead of effectively making the system more democratic, fair and
efficient. The various categories of public funding and the implementation of closed lists fall into this category since they serve the interests of party leaders, but not necessarily the voters.

Creating a performance barrier and eliminating party coalitions in legislative elections has a dual effect. On the positive side, they create mechanisms to limit the growth and advancement of small rent-seeking parties whose main objective is to sell their political support to the highest bidder. On the negative side, it dramatically slows the renewal of the party system and further strengthens political elites with consolidated power.

Alternatives as changes in mandate duration, dates and deadlines have a high political and procedural cost but no real value in terms of democratic advancement. Instead, reformers should focus on consolidating democracy through: enforcing active and conscious voter role through massive electoral law education; strengthening the Electoral Justice so it can effectively monitor and punish political actors in a country of continental proportions; adjusting the electoral law to prevent the "judicialization of politics"; increasing the degree of electoral accountability;

On the contrary, what we have seen, in most cases, are reform proposals that reduce democratic competition and accommodate special interests rather than contribute to institutional and democratic consolidation. Since there is no neutrality or consensus about such proposals, a certain amount of scepticism is advisable regarding the implementation of major improvements, as well as their effectiveness. In this context, it would be sensible to promote a gradual sequence of low-cost reforms that enables actors and regulatory agencies to build a political system based on consolidated experiences.

References


_____. It’s their party, and we pay for it. The Sunday Times. October 22, 2006. Available in: http://www.timesonline.co.uk/tol/comment/ article608907.ece. Retirado em 15/05/2008.


HIROI, T. Bicameral politics: the dynamics of lawmaking in Brazil. Pittsburgh, 2005. 252f. Thesis (Graduate Faculty of Arts and Sciences). Political Science, School of Arts and Sciences Institute, University of Pittsburgh.


