

**WHY BRAZIL SLEPT:
THE SEARCH FOR POLITICAL INSTITUTIONS, 1985-1997**

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Introduction

In assessing the performance of Brazilian democracy since 1985, issues of formal institutionalization are paramount. Recent research on Brazilian politics closely accompanies one of the dominant streams of literature in comparative politics, which is the debate on the institutional design of democracy. Brazil has both benefited from and contributed to this debate. There are few countries in the world where academic debates on constitutional design have so decisively influenced the journalistic and partisan arenas as they have in Brazil over the past 12 years, and fewer still where public debate is so sensitive to perceived deficiencies of the existing institutional arrangements. From the reverse angle, the Brazilian experience has proven extremely informative to comparative academic analysis. Brazil is a favorite case study of “new institutionalists” conducting research on parties, legislatures, electoral systems, and executive-legislative relations.

By the mid-1990s, this research program had produced a significant body of theoretically and comparatively informed work on the institutional architecture of Brazilian democracy. Now is an opportune moment for an assessment of this literature and some reflection upon its findings as they relate to the underlying theme of democratization. The purpose of this paper is threefold: to explicate the underlying justifications for the institutionalist approach to Brazilian democracy, to revisit the main institutional variables and evaluate the main arguments in the literature that has appeared to date, and to place these arguments in broader perspective against the consolidation of political democracy in the New Republic.

In the first section of the paper, I treat some theoretical and background issues and sketch out a brief periodization of the “institutional debate” in Brazil. Subsequent sections condense and critique the arguments revolving around four key institutional and constitutional variables: presidentialism and executive politics, the national legislature, the political party system, and the electoral system. The paper concludes with some observations about institutions, governability, and democratic consolidation at the close of the 1990s.

The Travail of Institution Building

Since the advent of the New Republic in 1985, a major fixation of Brazilian democracy has been on how to anchor itself constitutionally and institutionally—i.e., on how to devise more or less permanent “rules of the game” that would make the regime a sustainable one. “Sustainable” in this sense means not only enduring, but also functional. A recurring problem in institutional design derives from the subjective understanding of these two facets of sustainability and the implicit tradeoffs between them. Even if all actors prefer the maintenance of a democratic regime (which is not always true), they are certain to prefer differing outputs. The institutional set that is minimally agreed to by N players may permit the regime to survive but not to “perform well” in the eyes of any single actor, and conversely the institutional set preferred by a given actor may stimulate the regime to “perform well” but not allow it to survive. The arrangements that are eventually settled upon reflect sundry second- and third-best alternatives, and are frequently disappointing and mediocre in the eyes of many—including political scientists. I raise this point as an initial disclaimer concerning the dissatisfaction that pervades much academic analysis of institutional choices in nascent polyarchies.

Thus, institutional design in new democracies presents a collective action dilemma. There are three ways that collective action problems are typically overcome in the early years of the regime. The first is a “restoration” strategy in which the democratizing forces agree simply to adopt an institutional set that existed in the past, for example by

resurrecting a defunct constitution. A second, unattractive way is when the outgoing authoritarian regime imposes institutional rules that hamstring the new democracy and cannot easily be changed. This scenario, resembling post-Pinochet Chile, is undesirable in many ways and has been justifiably criticized, yet it undeniably “resolves”—if only in the short run—the collective action problem of institutional [re]design. If constitutional change is off the agenda in the early years of democracy, for better or worse the democratizing coalition focuses its energy on other matters. Paradoxically, this may have favorable long-term effects for democracy insofar as the first government’s focus is likely to be largely administrative—and in Chile, despite the *leyes de amarre*, postauthoritarian economic and social policy was highly effective (Weyland 1997). (Note, however, that this scenario “resolves” collective action problems only by postponing them, but here the procrastination is mandated and may promote cohabitation and political learning among key actors.) A third way that collective action problems are overcome is when the transition is led by a *majoritarian, coherent, and decisive* democratizing coalition that moves immediately to marginalize antidemocratic actors, to hammer out institutional arrangements, and to implement these arrangements swiftly and unequivocally. This scenario could result from liberal revolutions that fill a power vacuum (Costa Rica, Czechoslovakia) or in the wake of “pacted” transitions like those of Venezuela (Levine 1973, Karl 1986) and Spain (Share 1986, Maravall and Santamaría 1986).¹

Post-1985 Brazil does not correspond to any of the three ideal type “solutions” to the institutional design problem. Rather, it represents a fourth, indeterminate outcome. There was never a possibility of restoring the Constitution of 1946; from the 1970s onward, the democratic opposition demanded a constitutional convention to write an entirely new document. This antirestorationist view was consistent with earlier regime transitions in Brazilian history—the current charter, written by the National Constituent Assembly in 1987-88, is the country’s eighth since independence. In the interlude from 1985 to 1988, the military-imposed constitution of 1967 was, in contrast to Chile’s, easily amendable and did not unduly tie the hands of would-be reformers. More importantly, Brazil was handicapped by the muddled circumstances of the 1984-85 transition, which produced a democratizing coalition championed by everyone and captained by no one. In an early, prescient appraisal of the New Republic, Mario do Carmo Campello de Souza criticized its “invertebrate centrism,” which she defined as a “vast center whose boundaries...are unknown” (Souza 1989: 355). Guillermo O’Donnell argued similarly that the transition never clearly established which actors properly did and did not belong to the democratizing coalition, and described it as a “coalition of all for all” (O’Donnell 1992).

Several actors could claim paternity of the New Republic, yet in the 1980s none of them—including the party that seemed to have the best chance, the PMDB—succeeded in imposing a clear agenda, whether in institution building or in any other aspect of democratic consolidation. While the coalition charged with building democracy lacked definition, coherence, and decisiveness, it was united by the common desire to reestablish competitive elections, reoccupy executive power, and wield it (Power 1991). In the first two to three years of democracy, institution building was relegated to a secondary plane—this was visible even in the Constituent Assembly of 1987-88, which quickly descended into a free-for-all of parochial and sectoral demands and produced a document reflecting its chaotic politics and ad hoc procedures (Rosenn 1990). With short-term, individualistic concerns prevailing over longer-term, collective ones, and with a constitution that is a tapestry of egocentrism, it is no surprise that there has been virtually nonstop tinkering with the institutional arrangements of Brazilian democracy. The continuous nature of this process invites a comparison with Sidney

¹ For an alternative, sixfold typology of constitution-making environments in new democracies, see Linz and Stepan (1996), pp. 81-83.

Blumenthal's famous characterization of American politics as the "permanent campaign" (Blumenthal 1982): post-1985 Brazilian politics might be characterized as the "permanent *Constituinte*."

In the first decade of democracy, institutional design never disappeared from the national agenda, but there were four clear spikes or "institutional moments" of controlling importance.² The first of these came in May 1985, only two months into the new regime and only weeks after the death of Tancredo Neves confirmed José Sarney as president. Congress approved Constitutional Amendment No. 25 to the military-dictated charter of 1967. This amendment attacked what then-Senator Fernando Henrique Cardoso nicknamed the "authoritarian debris" (*entulhos autoritários*) bequeathed by the military: it reestablished direct elections for all levels of government and legalized Marxist political parties such as the PCB and the PC do B. It also abolished party fidelity, erased most barriers to the formation of political parties and to their representation in Congress, and allowed multiparty alliances in elections. Within several years the extreme liberalization of the party arena would come to be viewed as a mistake, but in 1985 party fidelity and barriers to party formation were widely viewed as *casuismos* of the military regime. The somewhat overcompensating antiauthoritarian reforms typify what Mainwaring (forthcoming) calls the "democratic libertarianism" of the Brazilian transition: democratization was identified with a form of institutional permissiveness demanding the removal of any and all barriers to the personal latitude of individual politicians.

The second "moment" of activity in institutional design, the National Constituent Assembly, was actually 20 months long. The ANC had a controversial genesis. In 1985-86, politicians rejected the idea of an "exclusive" assembly comprised of jurists, notables, and representatives of societal organizations. President Sarney convened an advisory commission chaired by the eminent former Foreign Minister, Afonso Arinos, which produced an initial draft constitution that was promptly shelved. In the end, Congress decided that the Senate and Chamber of Deputies to be elected in November 1986 would serve jointly and simultaneously as the ANC. The *Constituinte* convened in February 1987 and concluded its labors in September 1988, and the current constitution was promulgated on October 5 of that year. The ANC consumed virtually all the energies of Brazilian politics for two years. First came months of committee work, which became a lightning rod for lobbies and interest groups; then came a first draft in July 1987; then came thousands of amendments, proposals, and popular petitions that led to a second draft; then came 1021 roll-call votes on final amendments between June and September 1988, producing a final document of no fewer than 245 articles. Although the macroeconomic articles of the constitution have earned much notoriety and are the current focus of the Cardoso government, as we shall see the politico-institutional articles have also proven controversial.

The battles of the *Constituinte* were fierce, and some of them were resolved by postponing difficult decisions for future legislatures. After first opting for a "parliamentary" (actually semipresidential) system of government, the ANC backtracked in 1988 and chose to maintain the historic system of pure presidentialism. But the controversy of this decision led to a compromise in which a plebiscite was scheduled for five years later that would decide not only the system of government (presidential or parliamentary) but also the form of the regime (republic or monarchy).³ The run-up to the plebiscite in early 1993 provided the third institutional moment of the New Republic. Newspapers were filled with op-ed pieces; dozens of books and voters' guides to these complex issues appeared on every newsstand; and the presidentialist,

² For a brief introduction to the institutional debate in Brazil, see Sadek (1995).

³ The constitution originally scheduled the plebiscite for September 7, 1993. After the governmental crises of 1992, Congress decided to move up the date to April 21, 1993.

parliamentarist, and monarchist “fronts” received free daily television time for 60 days prior to election day. What was interesting was not so much the predictable arguments over the relative merits of presidentialism and parliamentarism (which in televised commercials were often distorted beyond recognition), but the way in which this debate branched out to incorporate broader issues of institutional design, such as the party system, the electoral system, and the role of the national legislature. The presidentialist forces easily triumphed, receiving 55% of the vote compared to only 25% for parliamentarism (Lamounier 1994: 215-216).

The 1988 constitution provided not only for the subsequent reopening of the question of presidentialism, but also for a top-to-bottom revision of the constitution to commence five years after promulgation.⁴ The idea was to simplify the normal amendment procedure by allowing Congress to sit in unicameral session (thus diluting the power of the smaller, more conservative Senate) and pass amendments with an absolute majority of the total membership. By 1993, the very concept of constitutional revision had become ideologically polarized. The center and right parties looked to the revision as an opportunity to remove perceived constitutional obstacles to neoliberal adjustment (which Fernando Collor had already attempted with his *Emendão* strategy of 1991-92), while the left saw the revision as a plot to reverse the conquistas of the 1988 charter. Despite the left’s obstruction, the *Congresso Revisor* finally convened in March 1994, providing the fourth main institutional moment of the New Republic. The revision was paralyzed by a major corruption scandal involving 29 members of Congress (Fleischer 1994; Krieger, Rodrigues, and Bonassa 1994). Investigations dragged on into the middle of the year, by which time the election campaign of 1994 had already begun to heat up. Congressional leaders eventually euthanized the special assembly, putting to rest 5 years of hopes for constitutional reform. Of 30,000 proposals presented in the *Congresso Revisor*, only five were enacted as constitutional amendments. It might therefore appear that this fourth exercise in institutional design had only minor resonance. However, one outcome of the revision—the decision to reduce the presidential term from five to four years while simultaneously maintaining the ban on immediate reelection—is providing much of the current political drama in Brazil, as President Cardoso seeks to amend the constitution to permit him to run again in 1998.⁵

The above is a crude periodization. To draw attention to these four episodes does not imply that institutional issues receded in the interludes. Rather, these four moments were simply spikes or high-water marks of what was more or less a continuous process after 1985. The 1989-92 period, which coincided with President Sarney’s last year in office and Collor’s entire short-lived administration, appears in this periodization to be the least dramatic. This is explained by two factors. First, these years were the period of adjustment to the new constitution. With more than 200 non-self-executing provisions, the charter required numerous items of subsequent enabling legislation, plus the establishment of precedent in a few gray areas; this meant that institutional concerns were diffused across many issues, and (with the partial exception of presidential decree powers) did not converge on any single one. Second, most actors believed that the major institutional controversies would be revisited in 1993 anyway.

⁴ The only qualification is that the revision could not touch certain *cláusulas pétreas* (bedrock clauses), the intentionally nonamendable constitutional provisions that enshrine basic political and civil rights, the federal form of government, etc.

⁵ During the revision, journalistic observers commented that one motivation for reducing the presidential term was concern within the center and right majority of the assembly that Luis Inácio Lula da Silva of the PT—who enjoyed a seemingly insurmountable lead in the early 1993-94 opinion polls—was on his way to becoming the next president.

Four Arenas of Democratic Institution Building: Debates and Controversies

The most efficient way to understand the travail of institution building and relate it to democratic consolidation in Brazil is to examine four mini-arenas that together comprise the most important variables of representation and governance in any polyarchy. These are (1) the system of government (in Brazil, presidentialism) and its repercussions; (2) the electoral system; (3) the political party system, and (4) the national legislature. In stark contrast to only ten years ago, a substantial literature now exists on each of these four aspects of Brazilian politics. The discussion of each aspect will be brief and introductory, with the intent of condensing and assessing the major insights of recent research: for more information, and for the fully nuanced arguments, the reader is referred to the works cited. As the discussion will demonstrate, it is difficult to discuss any one of these institutional variables in isolation from the other three.

Presidentialism. In the past decade, presidential democracy has been the subject of spirited academic debate. Juan Linz's now-classic essay (Linz 1994) made the argument that presidential democracy is inferior to parliamentary democracy for several important reasons. Presidentialism is a winner-take all system in which losers are excluded from power for long periods; it contains no mechanism to resolve competing claims of democratic legitimacy made by the executive and legislature; its fixed term of office makes it much less agile than parliamentarism in replacing bad governments or responding to crises; and it is generally an inflexible system in which crises of government are prone to become crises of regime, thus making presidentialism an especially unattractive option for new, untested democracies (Linz 1994; see also Shugart and Mainwaring forthcoming). Building on Linz, Mainwaring argued that multiparty systems tend to exacerbate the problems of presidentialism: multipartism promotes ideological polarization, makes interparty coalition building more difficult, and contributes to immobilism in executive-legislative relations (Mainwaring 1993a, 1993b). These provocative hypotheses not only inspired a growing secondary literature (e.g. Stepan and Skach 1993; Power and Gasiorowski 1997), but were discussed publicly in a number of democratic transitions, including Brazil's (Lamounier 1994).

Unfortunately, many of the most telling criticisms of presidentialism found resonance in the first decade of Brazilian democracy. The failed first president, José Sarney, turned out to be the poster boy for parliamentary rule—Sarney would never come to power in a parliamentary system, and as prime minister would never have lasted the 60 months in office he enjoyed as president. Sarney overruled economic advisers and caused the failure of the Cruzado Plan; he intervened repeatedly in the Constituent Assembly; he nakedly distributed patronage to his political cronies; he backed military prerogatives against civilian demands for accountability; and he wasted most of his political capital in order to secure a presidentialist constitution and an additional year in office for himself. He was followed by the equally disastrous Fernando Collor. Collor ran as an outsider whose personalistic party held only 3% of the seats in Congress; he antagonized elites and attempted to govern “above” the parties; he implemented a draconian stabilization plan without prior negotiation; he repeatedly abused presidential decree authority; and he was eventually impeached on corruption charges (Weyland 1993). Both presidents epitomized the neopatrimonial, unaccountable style of rule that characterizes “delegative democracy” (O'Donnell 1994).

The diagnosis of Brazilian presidentialism under Sarney, Collor, and the early Itamar Franco was therefore alarming. One question that emerges is whether these problems resulted from personal qualities of these leaders, from the web of institutional incentives imposed by minority presidentialism, or from some combination of these two factors. Authors such as Abranches (1988) and Mainwaring (1993a) have emphasized the institutional setting: Brazilian presidents

lack consistent party support in Congress, forcing them to form and reform cabinets and legislative coalitions on a mostly ad hoc basis, thus leading to erratic and unpredictable policy outcomes.

In a series of recent articles, Figueiredo and Limongi (1995a, 1996) question the idea that presidents cannot govern in this environment. They find that presidents usually get what they want in Congress. They claim that “parties matter, and presidents negotiate with parties and not with [individual] legislators and/or supraparty groups” (1996: 29); that “behavior on the legislative floor (*plenário*) is predictable and consistent” (1995a: 516); and that “minority presidents possess the means to obtain legislative support through negotiations with the parties” (1996: 33).⁶ However, their methodology of using roll-call votes qualifies their conclusions. The traditional legislative game is played alongside at least three others: a “decree game” in which presidents legislate via iterated decrees that often spend months in a parallel universe before being put to a vote (Power forthcoming); an “appointment game” in which cabinet posts and other nominations are used to influence party in support Congress (Amorim Neto 1995); and a “patronage game” in which pork barrel, government concessions, president-governor relations, debt forgiveness, etc., are all “massaged” to effect the desired legislative outcome (Ames 1995b). All four games frequently entail foot-dragging, blackmail, and brinksmanship on the part of parties and individuals. The simultaneity of these games means that the nature, scope, and content of the legislation may change significantly between presidential proposal and legislative ratification, and the final floor votes do not capture this dynamic. Until we have a more holistic view of executive-legislative relations in Brazil, the conclusion that legislative behavior is predictable and consistent seems a bit premature, and the environment is probably less propitious for presidents than Figueiredo and Limongi suggest.

The Afonso Arinos Commission, the Constituent Assembly, the policy failures of Sarney and Collor, the accession to power of two vice presidents in the space of seven years, the diffusion of academic critiques of presidentialism, the demonstration effect of foreign parliamentary transitions (particularly the Spanish), and the plebiscite of 1993 all ensured that the presidentialism debate was carried on nonstop. As Lamounier (1994) has documented, the debate was somewhat bifurcated: support for parliamentarism was always stronger among various segments of the national elite (especially in the National Congress, where it enjoyed overwhelming approval) than within the mass public.⁷ Mass attitudes in the late 1980s and early 1990s did, however, move toward increasing awareness of and support for parliamentarism, although this trend was quickly reversed when the plebiscite got under way. In their free television spots, both the Parliamentarist Front and the Presidentialist Front distorted the ideas of the opposing side, but the presidentialist propaganda was far more effective (presidentialism being more accessible to the average voter). Presidentialists charged that parliamentarism would deny voters the right to choose the head of state. This charge was irresponsible, since the Parliamentary Front actually endorsed semipresidentialism with direct election of the president, but the accusation was devastating in that the right to vote for president—absent in Brazil between 1960 and 1989—had only recently been won. The plebiscite turned out to be a yawner.

Much political, academic, and journalistic energy was expended between 1985 and 1993, but the debate is now over. Presidentialism triumphed. The decision may have been the wrong one (e.g. Linz and Stepan 1996: 181), but the debate should now direct itself toward a different issue: how Brazilian presidentialism can be improved within the system the people elected. Most of the proposed remedies actually concern Congress, the party system, and the electoral system, as

⁶ The translations from the Portuguese are mine.

⁷ Among academics and political scientists, there appeared to be strong support for parliamentarism, but presidentialism also had prominent defenders. For an excellent introduction to the academic debate in Brazil, see the exchange between Maria Hermínia Tavares de Almeida and Luiz Felipe de Alencastro published in CEBRAP’s journal, *Novos Estudos*, in March 1993.

discussed below. But there are two outstanding issues that relate to the presidency per se. The first is the existence of the *medida provisória*, a kind of presidential decree that is supposed to expire after 30 days unless Congress converts it into law. Presidents view this as an invaluable tool, and since 1988 they have expanded their paraconstitutional decree power, but legislators view this as abuse (Power forthcoming). Numerous reform proposals are currently under discussion, including limiting the president to one reissue of a decree. The second main issue is that of the presidential term of office. In the ANC, Sarney had a five-year term written into the constitution; in 1994, the *Congresso Revisor* reduced this to four and did not alter the ban on immediate reelection. Cardoso, following a regional trend, is attempting to remove the ban. There are persuasive arguments on both sides of this issue: those opposed say that Brazilian executives would abuse the power of the state to secure reelection, while those in favor say that a single four-year term is too short and that the possibility of reelection allows voters either to reward or to punish their leaders. As I write, the pro-reelectionists seem likely to prevail.

The electoral system. Brazilian election laws have undergone substantial change in the New Republic. Suffrage is now universal, with illiterates receiving the vote in 1985 and the voting age lowered to 16 in 1988. Voting is compulsory for all but illiterates, 16- and 17-year-olds, and persons over 70, and the potential electorate is now approaching 100 million. And in the first decade of democracy, voters had plenty of chances to exercise their rights. Direct elections for mayors of major cities were held in 1985, and for all cities in 1988, 1992, and 1996. Senators, deputies, governors, and state legislatures were elected in 1986, 1990, and 1994. Presidential elections were held in 1989 and 1994. Including runoffs and the 1993 plebiscite, voters in large cities could have been called to the polls as many as 15 times between 1985 and 1996.

The country uses a number of different arrangements depending on the political office in question. Presidents are now elected in a two-round majoritarian system, with the top two finishers advancing to the second round. The same holds for governors and mayors of the largest cities, while senators are still elected in first-past-the-post contests. These arrangements are mostly noncontroversial. Rather, it is the electoral system used for the Chamber of Deputies (that is, 513 of the 594 national legislative seats) and state assemblies that has generated the most heated debate in the New Republic. In most PR systems, parties present closed and ranked lists of candidates for a given number of available seats, and voters choose among the party lists. Seats are awarded to the parties in proportion to the share of votes received by each list. In the Brazilian variant of PR, known as “open-list” PR, parties do not rank their candidates. Voters vote for individuals rather than for parties. These individual votes are summed to determine the number of seats won by each party (or coalition of parties), and the election of a given candidate depends on his/her performance relative to other members of the same party or coalition.

The implications of this system are several. First, in the absence of a party list the role of party organizations is weak. The system promotes intraparty as much as interparty competition, and individualism predominates over programmatic concerns (Mainwaring 1991). Because legislators do not feel that they owe their mandate to their party (Power 1997), they are likely to behave in a undisciplined manner. And although legislators frequently represent informal bailiwicks or nonterritorial constituencies (Ames 1995a, 1995b), they are all elected at large within the states, meaning that there is substantial confusion regarding the identifiability and accountability of elected representatives. Laws that permit coalitions of parties to run more candidates than the number of seats available further distort the process: they make it difficult for all candidates to have access to free television time and for voters finally to settle on a single candidate (Nicolau

1993: 108). The confusion results in huge numbers of blank and spoiled ballots, recently approaching 40% of all votes cast (Power and Roberts 1995). In sum, open-list PR appears to weaken the parties, undermine linkages of accountability, and alienate voters.

The prospect of reform has sparked a growing literature on electoral systems in Brazil.⁸ The main alternatives to the current system are: party-list PR, which would reduce electoral personalism and strengthen the role of party organizations; the single-member district plurality system (SMDP), used in the United Kingdom and the U.S., which increases identifiability and accountability; and the German-style mixed system, which combines elements of both PR and SMDP. The German system has consistently won the most support from elites. In 1993, 58.2% of federal legislators supported the mixed system, 39.7% supported PR, and only 2.2% supported SMDP.⁹ However, when asked “if Brazil maintains a system of proportional representation, would you prefer that the order of candidates on the list be determined by the party, or would prefer an open list (as exists now)?”, some 68.2% preferred the open-list variant of PR.¹⁰ This strongly suggests that if the mixed system is imported from Germany, the proportional side of it will likely be adapted to the Brazilian tradition of electoral individualism.¹¹

If the current system of open-list PR is so vilified, why hasn't it been changed before now? This is explained partly by missed opportunities and partly by collective action problems. Departure from the status quo generates tremendous uncertainty among politicians. The left parties and small parties fear that their candidates may not be competitive in single-member districts (as is the case in the United States). They also fear that opening the door to electoral reform could pave the way for adoption of a German-style electoral threshold that would exclude small parties from the Congress. Candidates whose votegetting patterns are spatially dispersed, such as media personalities, or who have nonterritorial constituencies, like evangelical ministers (Ames 1995a), are understandably fearful of districts. There is generalized uncertainty about how district lines would be drawn and to whose advantage. Finally, although candidates may favor alternative systems in the abstract, they may balk when it comes to tampering with a system that, despite all its defects, at least got them elected the last time around.

Apart from open-list PR, there are three other aspects of the current electoral system that have generated controversy in the New Republic. The first is a set of incentives conducive to extreme multipartism; these are discussed below in the context of the party system. The second is the scandalous disproportionality in the distribution of seats in the Chamber of Deputies. The smaller states are overwhelmingly overrepresented, while São Paulo—the most populous—is underrepresented to the tune of 40-odd deputies. In 1989, the vote of an inhabitant of Roraima was worth that of 33 *paulistas* (Nicolau 1992: 229). Because small states have a built-in majority in Congress, this situation is virtually unalterable.¹² The third issue of note is compulsory voting. The growing weariness of elections and the mounting totals of

⁸ See, among others, Lamounier (1990, 1991), Lima Júnior (1990, 1991), Nicolau (1993), and Pedone (1993). The best introduction in English is Mainwaring (1991).

⁹ From a survey conducted by the author among 185 federal legislators in May and June 1993. In the previous legislature in 1990, the same survey question (N=249) found similar results: 39.5% PR, 49.2% mixed, 11.3% SMDP.

¹⁰ In 1990, the equivalent figure was 72.0% in favor of the open-list variant.

¹¹ Germany, by way of contrast, uses party lists. For illustration of how the German system might be adapted to Brazil, see Nicolau (1993).

¹² In a little-known episode in the ANC, a coalition of small-state legislators almost succeeded in adopting the *voto federativo ponderado*, a method of presidential election copied directly from the U.S. Electoral College. This would have imparted a decidedly conservative bias to future presidential elections. The amendment received 246 votes for and 225 against, but fell short of the absolute majority of 280 voters (ANC vote 316, March 22, 1988).

invalid votes have led to calls to make voting voluntary. Elite views on this issue appear to be deeply personal: they do not overlap with any obvious cleavage within the Brazilian political class.¹³ But in the past few years there has been a slowly growing acceptance of voluntary voting, and it may well be adopted before the end of the decade. Recent elections and polling data suggest that this could have important political implications: the effective electorate would likely be more educated and urban, thus weakening traditional conservatives and populists and strengthening the left and center-left. But the decline in participation would be undesirable from the perspective of normative democratic theory (e.g. Lijphart 1997).

The political party system. Of all the institutional variables in Brazil, it is the party system that has generated the greatest dissatisfaction and the loudest calls for reform. Brazil is an extraordinary case of party weakness (Lamounier and Meneguello 1986; Mainwaring 1995; Mainwaring forthcoming).¹⁴ In their recent comparative study of 12 Latin American party systems, Mainwaring and Scully (1995) used four main variables to measure the comparative degree of system institutionalization: the stability of patterns of party competition, the depth of partisan roots in society, the degree of legitimacy accorded to parties in determining who governs, and the cohesiveness of party organizations. Brazil received the lowest possible score on three of the four indicators, and its composite index of party institutionalization placed it near the bottom in Latin America (Mainwaring and Scully 1995: 17).

The main problems usually cited in Brazil are the degree of party system fragmentation and the internal weakness of the parties. To a large extent, these problems are a product of the permissive electoral system discussed earlier. There is no national electoral threshold, and multiparty alliances are permitted. Thus it is easy for small parties to attain representation in Congress. In combination with the predominantly regional and local basis of Brazilian politics (Hagopian 1996), the low barriers to party formation encourage the emergence of parochial, personalistic, and machine-based parties. Open-list PR is fratricidal, and the electoral system contains other features that weaken the authority of party leaders over their candidates (Mainwaring 1991). The practice of party-switching is rampant among elected officials (Nicolau 1996a, 1996b). Party fidelity was abolished in 1985 and is now voluntary; the only major party that now practices it voluntarily is the PT (Keck 1992; Figueiredo and Limongi 1995a). To some extent the permissiveness of party and electoral rules is a reaction against the military dictatorship, which forced politicians to join “artificial” parties and imposed draconian fidelity rules (Power 1997). But a widespread consensus now exists that reformers overcompensated in instituting such a permissive environment. The number of parties represented in Congress increased from 5 in 1983 to 11 in 1987 to 19 in 1991, and approximately one in three federal legislators switched parties in the 1987-91 and 1991-95 legislative sessions. President Collor’s party was a piece of personalistic fiction; President Franco did not belong to one. Electoral volatility is staggering in comparative perspective (Coppedge 1995, Mainwaring and Scully 1995). For all these reasons and more, party system reform has been under constant discussion since the late 1980s.

Despite their well-known reputation and defects, it is important to remember that Brazilian parties are not all alike, nor are they irrelevant. Anti-party orientations are much stronger on the right and in the center, while the smaller left

¹³ When the issue was put to a vote in the *Congresso Revisor*, compulsory voting was maintained by a margin of 236 to 193 votes (*Folha de S. Paulo*, March 15, 1994).

¹⁴ An excellent introduction to recent literature on parties and elections is Lima Jr. et al. (1992). For historical background on the party system see Souza (1976) and Lamounier and Meneguello (1986). For parties and elections under authoritarian rule, see Jenks (1979), Lamounier (1984, 1989), Kinzo (1988), Diniz (1990), and Von Mettenheim (1995). On the New Republic, see Kinzo (1993), Nicolau (1996a), and especially Mainwaring (1995, forthcoming). Other useful studies include Lamounier (1990) and Lima Júnior (1993). Behavioral studies of parties include Kinzo (1989), Figueiredo and Limongi (1995a, 1996), and Ames (1994). The uniqueness of the PT is amply documented by Keck (1992).

parties exhibit far greater degrees of internal cohesion and discipline (Mainwaring forthcoming). The PT in particular is impressively organized (Keck 1992). Even the catch-all parties do at times behave like parties: Ames (1994) demonstrated the importance of local party networks in the 1989 presidential election, and Figueiredo and Limongi (1995a, 1996) have shown that parties do have consistent ideological profiles in legislative voting. Parties do matter, but they could clearly matter more.

The main remedy for the party system, as suggested earlier, would be an overhaul of the electoral system that would remove some of the main antiparty incentives. In June 1995, apparently believing that Congress was too distracted by Cardoso's economic agenda to concern itself with political and electoral reform, the independent Supreme Electoral Tribunal (TSE) took the unprecedented step of announcing its own package of party-strengthening proposals: a German-style mixed electoral system with a national threshold, a return to party fidelity, and sanctions against politicians who change parties. This sweeping agenda was never viable in toto, but it did stimulate legislative debate. Three months later, Congress passed a new political parties statute (Law 9096 of September 19, 1995) that contained several mini-reforms. Parties can no longer be legally chartered without demonstrating national penetration (*caráter nacional*), defined as the winning of at least 0.5 percent of the national vote for the Chamber of Deputies (with at least 0.1 percent in one third of the states). This is still permissive in comparative terms, but it will eliminate some of the *legendas de aluguel* (literally, parties for rent) that spring up at every election and award their nominations in exchange for money or votes. To win official recognition in Congress (*funcionamento parlamentar*, necessary for leadership and committee privileges), parties must now win 5 percent of the national vote, with at least 2 percent in one third of the states. Legislators who switch parties will now automatically lose their parliamentary privileges (but not their seat). As for party fidelity, the new law authorizes sanctions against transgressors, but does not make them mandatory.

Although this law does not go nearly as far as the original TSE proposals, it does represent an advance over the extreme permissiveness in the party and electoral arenas that prevailed between 1985 and 1995 (Porto, 1995). But there is a limit to how far Brazilian politicians will go in delegating power to parties: even if the mixed electoral system is adopted, which is likely before the decade is out, the proportional side will probably remain open-list. The two key remaining reforms are the ones that the TSE proposed and Congress ignored: party fidelity and a national vote threshold for legislative representation. But such a threshold would have little effect on party fragmentation if the law maintains the current practice of allowing multiparty alliances in PR elections (Nicolau 1993: 108). As Cardoso's proposed political reform amendments are only now taking shape, it is too early to speculate on these provisions. In the meantime, however, most Brazilian observers continue to believe that the party system as currently constituted can neither effectively represent nor govern.

The national legislature. The final institutional arena to be discussed is the National Congress. As mentioned earlier, it is difficult to discuss any one of our four institutional arenas in isolation of the other three, and this is perhaps most obvious in the case of the national legislature. The Brazilian Congress is in many ways a product of the three foregoing variables: presidentialism, the electoral system, and the party system.¹⁵

¹⁵ On Congress see Abreu and Mattos Dias (1995), Ames (1995a, 1995b), Baaklini (1992), CEBRAP (1994), Figueiredo and Limongi (1994a, 1994b, 1995a, 1995b, 1996), Fleischer (1994), Krieger et al. (1994), Novaes (1994), and Power (1996). For introductions to legislative procedure, see Coelho (1989) and Barros (1995).

On balance, the performance of the National Congress was disappointing in the first decade of democracy. The one major exception to this was in the Collorgate scandal of 1992, when Congress demonstrated impressive competence in amassing evidence of Collor's corruption, removing him from office, and swearing in his successor, all in a democratic and constitutional manner (Weyland 1993). Apart from this moment of glory, Congress has received poor marks. The complaints against Congress are many, but can mostly be reduced to one basic concept: inefficiency. Congress is slow and unproductive, and most (approximately 75%) of the legislation it eventually approves originated in the executive branch. This inefficiency derives from both external and internal factors. The dominant presidency and the abuse of decree power means that Congress is saturated with a legislative agenda that is not really its own. Its internal agility is handicapped by the internal weakness of the larger parties, which in turn results from the electoral system. Legislators themselves are the product of this electoral system, and as such they often tend toward extreme individualism. These factors cause inefficiency, which in turn causes executive impatience, which in turn leads presidents to use decree authority and divide-and-conquer strategies. Prior to the Cardoso government, which is adept at negotiation and has achieved undeniable successes in economic reforms since 1995, executive-legislative relations took the form of a vicious circle.

Congress has routinely been excoriated by frustrated presidents, but it is also true that legislators themselves are dissatisfied. Recent academic research and public symposia (CEBRAP 1994; Abreu and Dias 1995) on the Brazilian Congress have shed light on some of the reasons for parliamentary dissatisfaction. These range from the media (perceived as hostile and unfair), to internal rules, to the inevitably oligarchical power structures in the two chambers, to the city of Brasília itself. A valuable insight is offered by Figueiredo and Limongi (1994a, 1994b, 1995b), who in their recent work have argued that politics in the New Republic has featured two simultaneous and competing national agendas. The agenda of the executive branch has been macroeconomic stabilization; the agenda of the National Congress has been social action. This bifurcation is especially dissatisfying for legislators given that the executive agenda always takes precedence: the president either gets what he wants (Figueiredo and Limongi 1995b), or at the very least dominates the legislative calendar (Power forthcoming). The profound individualism of Brazilian legislators (Mainwaring 1991; Novaes 1994; Ames 1995b) leads to collective action problems that intensify this perception of powerlessness.

It is important to recall that Congress has a dual image: it is the outstanding symbol of popular sovereignty in any democratic regime, but it is also the symbol of the political class. The image of the political class impacts the image of Congress, and vice versa. In Brazil, as polling results consistently show, both images are overwhelmingly negative. Whatever capital Congress gained through its handling of Collorgate was lost a year later, when a scandal on the Budget Committee ended in the expulsion of 18 legislators. Congress' approval rating is consistently low, and support is lowest among the young and college educated.

The crisis of Congress is not merely an abstract issue of institutional design: it has important implications for democratic legitimation. Support for the legislature is clearly associated with support for the regime. In a large-N survey conducted in 1993, Moisés (1994) found that citizens' evaluation of the performance of the National Congress was the second best predictor of overall satisfaction with democracy, which he found to be low (see also Linz and Stepan 1996). The only stronger independent variable, among two dozen he tested, was the approval rating given to the incumbent government of Itamar Franco. This is an interesting finding, because normally one would expect a more instrumental evaluation of democracy, based on individual-level economic satisfaction, as in the "specific support" concept of political

culture theory. The centrality of the National Congress in Brazilians' assessment of the political order suggests that institutions "matter" not only in constitutional design but also on the broader plane of symbolism and legitimation.

Unlike the other three institutional arenas discussed above, there is no obvious reform agenda for Congress that is properly an internal, legislative matter. Rather, the renaissance of the Brazilian Congress depends more than anything on exogenous variables. These would include the curbing of presidential powers (especially decree authority), the reduction of party fragmentation and the strengthening of party organizations, and the adoption of an electoral system that would restructure political recruitment to attract less individualistic, more accountable politicians to the national parliament.

Brazil 1985-1997: A Decade of Dysfunctional Institutions

As this brief review has illustrated, Brazil spent the first 12 years of its democracy in a virtually continuous debate about the design of its political institutions. Three initial observations can be made. First, many of the main national political institutions are dysfunctional: they have objective deficiencies that have been pointed out repeatedly not only by academic political scientists, but also by the politicians who use and inhabit these institutions. Second, debate over the proper redesign of these institutions consumed an extraordinary amount of political energy in the early years of democracy. Third, reform was minimal in relation to the energy expended. These observations in turn generate three concluding questions. (1) If there is so much dissatisfaction with current institutional arrangements, why has there been so little change? (2) What are the implications of underdeveloped and/or suboptimal political institutions? And (3) where does Brazil go from here?

As for the first question, institution building was clearly relegated to a secondary plane in the first two to three years of New Republic, a crucial window of opportunity for any democracy. Politicians gave a high priority to tearing down authoritarian-era institutions that impinged on their personal freedom, but they gave less thought to building sustainable replacements. This was a clear case of overcompensation against the confining party and electoral laws of the military dictatorship. Having been excluded from most posts of executive power for two decades, politicians were intent on reoccupying the state apparatus and wielding state power. Within several years, the newly permissive institutional environment became difficult to reform, as many entrenched interests—especially personalists, populists, members of small conservative parties, and members of the large catch-all parties—came to prefer the gelatinous status quo. The new democracy quickly spawned what Douglas Chalmers (1977) called a "politicized state," a political system which political institutions are viewed instrumentally. This is an environment in which mutual mistrust of motivations leads to collective action problems, and where institutional reform—if it occurs—is likely to be characterized by incrementalism and recrimination. The *Congresso Revisor*—which was obstructed, postponed, and then died with pending business—is a prime example.

The second question concerns the costs of delayed institutionalization. These were unquestionably high. Economic management in 1985-1994 was a slide into near-collapse, punctuated by seven failed stabilization plans. In this period Brazil had the world's highest cumulative inflation rate, personal incomes were stagnant or declined, and growth was negative in the 1990-1992 period. Most diagnoses of the Brazilian disease cited the lack of political conditions for macroeconomic stabilization, and analysts began to speak of a crisis of governability. The weak party system and the inefficient Congress seemed to preclude the building of the kind of political and societal support that would be necessary for stabilization and renewed growth. Fernando Henrique Cardoso's adroit implementation of the *Plano Real* in 1994 showed

that the crisis could be tamed by negotiation, enlightened leadership, and patience; however, eight years had been wasted. And when inflation was brought under control in 1994-1995, the executive simply shifted its attention to other macroeconomic issues, not to issues of political institution building. The focus shifted from short-term economic stabilization to long-term economic reform via constitutional amendment, in a prolonged effort to rid the charter of many of its statist provisions. This is the sad irony of the “permanent *Constituinte*.” Most of the political capital spent in 1987-88 was used in the making of a new constitution; in the 1990s, most political capital has been spent trying to unmake the same document.

Where does Brazil go from here? What are the prospects for reform of the main national political institutions? Speculation is difficult. On the positive side, in both academic and political circles there is heightened sensitivity to the importance of institution building. Sustainable democracy is now seen as contingent on reforms of the party and electoral systems. There is evidence, for example, that in the 1990s, politicians have modified their attitudes and become more favorable to party-strengthening reforms (Power 1997). Also on the positive side, the advent of moderate economic growth with low inflation *may* provide a more hospitable environment for political engineering. But it remains to be seen whether the Cardoso government and legislative reformers will seize this window of opportunity. In 1995 and 1996, economic reforms drove the national agenda, and in 1997 the reelection amendment was added to these. A package of institutional reforms (the *reforma política*, in current parlance) is slowly taking shape via consultations among the government, the Congress, and the TSE. But reelection, social security, administrative, and other constitutional amendments have a higher priority, and if these drag on then the *reforma política* may well be postponed to the (presumed) second Cardoso term. The postponement of institutional reforms has occurred previously in the New Republic, and has always come to no good.

Another reason to maintain low expectations about the *reforma política* should by now be clear: there are important interrelationships among the main variables of institutional design. Reform of the party system depends on reform of the electoral system; the willingness of presidents to surrender legislative prerogatives depends on the increased efficiency of Congress; but Congressional reform, in turn, depends in part on a reduction in party fragmentation and alteration of political recruitment patterns, and so on. Because all of these variables are linked, an effective package of institutional reform would have to address all of these arenas *simultaneously*. This is a challenging task. But if there is a master key to all the various doors of *reforma política*, it probably lies in electoral system reform, which—if it successfully attacked the corrosive effects of open-list proportional representation—would quickly reverberate throughout the institutional architecture of Brazilian democracy.

Supporters of Brazilian democracy must guard against complacency. In the three years that Fernando Henrique Cardoso has dominated Brazilian politics, his impressive leadership skills and the resulting economic turnaround have caused the “G-word”—governability—virtually to disappear from the political lexicon. That is a mistake. Since 1995, it is undeniable that the president has stitched together a working political majority and has won major victories in (macroeconomic) constitutional reform. But the underlying political structures are no different than they were in 1993, when Brazil had apparently reached the end of its rope and rumors of a coup abounded (Linz and Stepan 1996: 178). Without deep and meaningful reform of national political institutions, Cardoso’s governing majority remains a house of cards, and one that has been built over the fault lines sketched above. The lost decade of economic development may be over, but the lost decade of institutional development has now gone into overtime.

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