

Marcus André Melo & Carlos Pereira.
*Making Brazil Work: Checking the
 President in a Multiparty System.* Palgrave
 Macmillan, 2013. Pp xx + 212.
 \$ 100.00. ISBN: 9781137310842.

1. Introduction

A specter is haunting Latin America—the specter of multiparty presidentialism. . . . In the early 1990s, as a law student, I was taught, and came to believe, that the combination of a presidential system and multipartism was doomed to failure. When we went out into the streets in 1992 demanding the impeachment¹ of president Fernando Collor, who was eventually removed from office in December 1992, we were certain then that multiparty presidentialism really could not work. And yet, a few months later, in April 1993, in a popular referendum, the people clearly rejected a shift to a parliamentary system.

In retrospect, the impeachment of president Collor has actually been used as evidence that the institutional design established by the 1988 Constitution was working well: if necessary, we could get rid of a president without an institutional crisis. Still, Linz's warnings about the "perils of presidentialism"² have been lurking around Latin America throughout the 1990s. And they still are today.

According to Linz, presidential systems suffer from several problems. The first one is the dual legitimacy: both the president and the parliament are directly elected. When both disagree, gridlock is inevitable.³ The fact that

both the president and the parliament also serve for fixed terms makes things only worse. The second problematic issue, thus, is rigidity.⁴ When presidential systems coincide with multipartism, things can get even worse, some argue.⁵

Marcus André Melo and Carlos Pereira's book, *Making Brazil Work: Checking the President in a Multiparty System*, aims at, among other things, mitigating the association between multiparty presidentialism and democracy failure.

2. Why review a book on the Brazilian presidential system

When the *I·CON* editors invited me to write a book review for a special issue on Latin America, it was not easy to decide which book to pick. Besides the virtues of Melo and Pereira's book, other reasons led me to choose it. First, the current political and constitutional context, following the impeachment of President Dilma Rousseff in August 2016, naturally put the Brazilian presidential system in the spotlight. The second reason is that it strengthens the important trend of studying Latin American issues through an analytical framework that is developed explicitly for dealing with these issues, thus rejecting, or at least strongly mitigating, analyses based exclusively on Western European or US points-of-view. The third reason is that Brazilian constitutional scholars have been neglecting the debate on

Make a Difference?, in *THE FAILURE OF PRESIDENTIAL DEMOCRACY: COMPARATIVE PERSPECTIVES 3* (Juan J. Linz & Arturo Valenzuela eds., 1994).

³ See Linz, *The Perils*, *supra* note 2, at 63; Linz, *Presidential of Parliamentary*, *supra* note 2, at 6–8.

⁴ See Linz, *The Perils*, *supra* note 2, at 54; Linz, *Presidential of Parliamentary*, *supra* note 2, at 8.

⁵ See, e.g., Scott Mainwaring & Matthew S. Shugart, *Juan Linz, Presidentialism, and Democracy: A Critical Appraisal* 29 *COMP. POL.* 449–471, 449 (1997): “. . . presidentialism tends to function better where presidencies have weak legislative powers, parties are at least moderately disciplined, and party systems are not highly fragmented.”

¹ In this text, the term impeachment will be used to refer to the whole process that leads to the removal from office of a president, and therefore not in its more restricted meaning commonly used in the United States, where impeachment is only the first step of the process, which takes place in the House of Representatives, before the trial in the Senate.

² Juan J. Linz, *The Perils of Presidentialism*, 1 *J. DEMOCRACY* 51 (1990). See also Juan J. Linz, *Presidential or Parliamentary Democracy: Does It*

the political and electoral systems established by the 1988 Constitution. Subjects such as the system of government, federalism, law-making process, electoral and party systems, to name a few, have been virtually ignored by Brazilian constitutional scholars in recent decades. As a matter of fact, the same seems to apply to the field of comparative constitutional studies in general: in the last fifteen years, subjects related to fundamental rights, courts, and judicial review, as well as to methodological issues concerning constitutional interpretation, have dominated the international journals on constitutional law, relegating the study of comparative political, legislative and electoral systems into a rather marginal role. This seems to be a further reason for choosing a book on the Brazilian presidential system for review.

3. The structure of the book and its main argument

Melo and Pereira's book is divided into seven chapters and a post-scriptum. Chapters 1 and 2 advance a defense of multiparty presidentialism in general and especially for the Brazilian case. These chapters deliver the core of their argument, which will be presented below. Chapter 3 provides insights on how presidents maintain multiparty coalitions, and the price they must pay for this.⁶ Chapters 4 to 6 present some case studies on how the provision of public goods in Brazilian states is affected by checks-and-balances institutions and political competition, and also on the role of independent regulatory agencies and audit courts. Chapter 7 is the conclusion of the book. Melo and Pereira had the opportunity to add a short, last minute post-scriptum dedicated to the 2013 mass protests in Brazil and their relation to the Brazilian political system. Unfortunately, however, the book was published before the beginning of the second term of President Dilma Rousseff, and the chain of events that led to her removal from office is thus not analyzed.

⁶ This is exactly the question that opens the chapter.

The main argument of the book is a direct challenge to the widespread view that multiparty presidential systems are doomed to failure. Melo and Pereira attempt to show that, at least under certain conditions, multiparty presidential systems may work quite well and ensure a degree of political and institutional stability comparable to many stable parliamentary democracies. The Brazilian coalition-based presidential system could be the best example of this. The authors argue that “[s]cholars have been misestimating the outcomes of these regimes because they have been using theoretical and analytical tools designed to analyze either European multiparty parliamentary regimes or the American two-party presidential system” (at 2). As a consequence, multipartism and strong presidents have usually been regarded as an explosive combination: on the one hand, multiparty governments tend to be unstable and, on the other hand, strong presidents tend to impose their preferences on weak and fragmented parliaments. As Melo and Pereira put it: “experts on constitutional design considered strong presidents to be the black beasts of multiparty political systems” (at 3).

Against this widespread view, they claim that, (1) the formation of governments under multiparty presidential systems does not differ considerably from that under multiparty parliamentary systems;⁷ and, more controversially, that (2) strong presidents under multipartism “may be a precondition for effective government” (at 3). The examples of Chile and Brazil (strong presidents), on the one hand, and Venezuela, Bolivia and Mexico (weak presidents), on the other hand, could illustrate their claim: they consider the former as “the successful models for governance in the Latin American region” (at 3, emphasis in the original), whereas the latter three countries have “performed rather poorly” (*id.*).

What could explain the allegedly successful experiences of multiparty presidentialism in Brazil and a few other countries in Latin

⁷ See José Antonio Cheibub, Adam Przeworski, & Sebastian M. Saiegh, *Government Coalitions and Legislative Success under Presidentialism and*

America? Melo and Pereira argue that three features are central: (1) as already mentioned, a strong president, (2) good coalition management (based above all on tradable goods), and (3) an institutional network able to check the president's discretion (at 4, 25, 159–160, and *passim*).

The first two features have been intensively studied and considered pivotal for understanding the so-called coalition-based presidentialism of Brazil for a long time now, especially since the pioneer studies by Limongi and Figueiredo in the 1990s.⁸ As I see it, the most important contribution of their book is to attempt to show that, in order to understand the success of the Brazilian multiparty presidential system, it is necessary to look beyond the executive–legislative relationship. As a matter of fact, an important difference between Brazil and several other Latin American countries lies precisely in the presence of a network of institutions, both within and beyond the Executive and Legislative branches, which ensure an important degree of accountability. This peculiarity is stressed throughout the whole book and, as already mentioned, three chapters (4, 5, and 6) are mainly dedicated to analyzing the role of some of these institutions.

Making Brazil Work will surely be an indispensable book for those wanting to understand Brazilian multiparty presidentialism. Even those who do not agree with the main argument of the book, according to which Brazilian multiparty presidentialism has been a success, will surely agree that Melo and

Pereira succeeded in delivering an important contribution to this field of study.

Having presented the structure and main argument of the book, in the following sections I would like to briefly present some objections that, so I hope, could foster the debate on Melo and Pereira's book even further.

4. The Brazilian Supreme Court

From the perspective of a constitutional scholar, it may be argued that the book falls short of taking into account the role of the Supreme Court in the network of institutions that, according to the authors, deliver independent checks and balances “capable of curbing excesses and holding the executive branch accountable” (at 160). One could of course argue that the Supreme Court simply does not belong to this network. Throughout the book, however, Melo and Pereira mention the judiciary as one of these institutions (e.g., at 15, 76, 81, 160). Moreover, they clearly state, in the conclusion of the book, that “[t]he Brazilian Supreme Court has proved to be as an effective accountability mechanism” (at 160). For this statement, however, they provide no argument or data whatsoever. As a matter of fact, the Supreme Court is barely mentioned in the whole book.⁹ This would not be an issue in a book on the Brazilian presidential system focused only on the executive–legislative relationship. But since one of the main strengths of Melo and Pereira's book is exactly their emphasis on the importance of the network of institutions that check the president's discretion, the absence of an analysis of the role of the Supreme Court is surely a shortcoming.

Parliamentarism, 34 BRIT. J. POL. SCI. 565, 580 (2004): “. . . the difference in the frequency of coalitions, while favourable to parliamentarianism, is not large and . . . the connection between coalitions and legislative success is at best dubious.”

⁸ See, e.g., Fernando Limongi & Argelina C. Figueiredo, *As bases institucionais do presidencialismo de coalizão*, 44 LUIA NOVA 81 (1998); Argelina C. Figueiredo & Fernando Limongi, *Presidential Power, Legislative Organization, and Party Behavior in Brazil*, 32 COMP. POL. 151 (2000).

⁹ The only reference to the Supreme Court in this context is found in the beginning of the book: “It is not uncommon to see the Supreme Court ruling against the preferences of the executive . . . Presidents such as Cardoso and Lula have

5. Does everything work that perfectly?

Even for those who think that, since the promulgation of the 1988 Constitution, Brazilian presidentialism has worked much better than many had expected, the book may sound often rather naive. Everything seems to work almost perfectly. Maybe the impetus to reject, once and for all, the mantra of the “perils of presidentialism” led Melo and Pereira to be sometimes rather indulgent in their conclusions. Despite their warnings, both in the first chapter and in the last page of the conclusion, that they do not claim “that multiparty presidentialism with strong governments is an ideal institutional model” or that, at best, “it can be considered as a suboptimal arrangement that is functional” (at 22); or that the Brazilian multiparty presidential model “is not an ideal or flaw-free system” and that “our emerging democracy still suffers from serious problems such as cronyism, inequality, corruption, and a lack of transparency” (at 163), it is hard to find any reference to these shortcomings in the whole book.

Even the extremely fragmented Brazilian party system seems not to be a real problem. Admittedly, Melo and Pereira have at least two strong arguments for multipartism: (i) “multiparty governments prevent the accumulation of powers by presidents who have to engage in extended negotiations with party leaders” (at 10); and (ii) the political uncertainty associated with multipartism “generates incentives for politicians to delegate independence to courts and similar institutions . . . because they fear that while in opposition they would be better off under an independent institution than under courts that can be manipulated by political rivals” (at 44), thus strengthening the network of institutions that ensures more checks-and-balances in the system.

However, here again the aim to definitively reject some commonplaces concerning mul-

tiparty presidentialism may have obscured some relevant differences between multipartism and extreme party fragmentation. Currently, twenty-seven parties have representatives in the Brazilian National Congress. Since the main claim of the book is that the Brazilian presidential system has worked surprisingly well since the promulgation of the 1988 Constitution, one could of course draw the conclusion that the number of parties is not an issue. Moreover, as Melo and Pereira explicitly argue, “reducing the number of parties in the political arena would actually be counter-productive, potentially enhancing executive dominance” (at 160). A more nuanced conclusion, however, could be: it is true that it may work with twenty-seven parties, but perhaps at too high a price;¹⁰ it would work much better with fifteen or eight or five parties. In other words, reducing the number of parties does not necessarily mean reducing it to two.

6. Is it still working?

After a turbulent period that culminated with the removal from office of President Dilma Rousseff in August 2016, the question remains, “Is it still working?”; i.e., does the presidential system defined by the 1988 Constitution and consolidated in the twenty-five years that followed still work? Since Melo and Pereira’s book was published in 2013, they did not have the chance to answer this question. But they included a post-scriptum in which they comment on the wave of protests that took place all over Brazil in June 2013. In this post-scriptum, the message seems to be the same as in the whole book: everything is still working just fine. To the question “What factors then explain the June 2013 wave of protest all over the country, which at first sight may suggest significant levels of dissatisfaction and malfunctioning institutions?” (at 165), they answer: “the problem is not one of

experienced important defeats in the judiciary where their reform initiatives were considered unconstitutional” (at 14).

¹⁰ As Melo and Pereira themselves emphasize (at 64), sometimes “price” means not only a “political price”, but entails the need to illicitly “buy” support from deputies.

failure of institutional design or dysfunctional political institutions” (*id.*) since protests were “about government performance, not about reforming political institutions” (at 168).

Although it is true that protests were mainly about government performance and the low quality of public services, there were also signs of dissatisfaction with the political system as a whole. The fact that the mistrust of the political parties in Brazil is only slightly higher than in the United States or France (as the authors argue at 169) does not mean that this distrust was not also a reason to protest. After all, one cannot expect people in the streets with banners against a coalition-based multiparty presidential system.

As mentioned in the beginning of this review, after the removal from office of President Collor in 1992, we came to believe that the Brazilian presidential system works so well that we could get rid of a president without any institutional crisis or democracy breakdown.¹¹ However, it seems that this argument has always tacitly implied that Collor’s case was truly exceptional and that it would probably not happen again. But it did. And some peculiarities of how it did may challenge the view that multiparty presidentialism in Brazil is working just fine. Some features of this second impeachment may have opened the gate for a more frequent use of this extreme measure, and this would be at odds with the idea of a working presidential system.

First, it is not hard to impute an impeachable offense to a president. As a matter of fact, this happens quite frequently. At the end of the day, the chances of an impeachment trial to take place have more to do with how strong the presidential coalition is in the legislature

than with the fact whether the president committed an impeachable offense or not.

Second, unlike parliamentary systems, in which a vote of no confidence implies either the formation of a new government within the parliament or a call for new elections, in presidential systems in the case of an impeachment, the vice-president takes office. In the Brazilian multiparty presidential system, the president and vice-president usually belong to different parties; the vice-president normally belongs to a coalition party. At least in theory, in certain circumstances there may be incentives for the party of the vice-president, especially if it is a strong party, to initiate or at least to support an impeachment trial. The case of Dilma Rousseff is quite illustrative. The speakers of both the Chamber of Deputies and the Federal Senate belonged to the same party as her vice-president, the PMDB (Partido do Movimento Democrático Brasileiro [Party of the Brazilian Democratic Movement]). The speaker of the Chamber of Deputies (where impeachment trials begin) was a political enemy of president Rousseff and did everything he could to advance the impeachment trial.¹² When the time was right, the vice-president and his party officially left the government coalition and took many other small parties with them.

But the third and last move had yet to occur. Although article 52 of the Brazilian Constitution is quite clear when it establishes that the removal of the president from office entails the “disqualification to hold any public office for a period of eight years”—and therefore stresses that impeachment and removal from office, unlike the vote of no confidence in parliamentary systems, are a punishment for wrongdoing—the Federal Senate decided differently in the case of President Rousseff. With the blessing of the Chief Justice of the Brazilian Supreme Court—who, according to the constitution, shall preside over the impeachment

¹¹ This argument can also be found in Melo and Pereira’s book (at 166): “Brazil has, after all, managed to impeach a president and achieve smooth power alternation at the national level” (this statement is also a direct reply to Linz’s argument that impeachment and vice-presidential succession, which have “worked so well in the United States, *may not function so smoothly elsewhere*”; Linz, *The Perils*, *supra* note 2, at 65; emphasis added).

¹² As Melo himself puts it: “The impeachment trial is the culmination of a tug of war between Rousseff and Eduardo Cunha of the PMDB, the speaker of the Chamber of Deputies” (Marcus André Melo, *Crisis and Integrity in Brazil*, 27 J. DEMOCRACY 50, 53 (2016)).

trial in the Senate—the Senators decided to split the vote: President Rousseff was removed from office, but was not disqualified from holding other public offices. If she wants to, she may run as a candidate for any political office in coming elections. Splitting the vote was an effective way of convincing those senators who, though willing to vote for removing her from office, deemed that sending President Rousseff to eight years of ostracism would be too harsh a punishment.

The decision to split the vote, taken in the final moments of the impeachment trial, may have tremendous consequences. Admittedly, it does not necessarily mean that the presidential system in Brazil is not working and will not work in the future.¹³ However, by creating a sort of *impeachment-lite*, it may weaken the constraints on resorting to this extreme measure in the future. In this case, even if the system may still work, it will work differently. It would be another game. The price to pay for maintaining a stable coalition may be higher. Not only the opposition but also coalition parties (especially that of the vice-president) may now resort to an impeachment trial at any moment. After all, even though impeachment continues to be “a very uncertain and time-consuming process, especially compared with a simple parliamentary vote of no confidence,”¹⁴ it may become much less drastic and traumatic than we might have thought.

It is of course way too early to make any predictions. Maybe it will take another quarter of century—or longer—until the next impeachment process. Maybe the system will continue to work as it has always worked: unexpectedly successfully, to use Melo and Pereira’s words. As a matter of fact, the government of President Temer (the former vice-president of Dilma Rousseff) seems to follow the same rules and constraints that they clearly identified in their book. Although clearly not enjoying

the popular support of former presidents like Cardoso and Lula, and even of Rousseff in her first term, he has managed to build a stable government coalition, which already ensured him important victories in the National Congress. Additionally, the institutional network that, according to Melo and Pereira, is vital to check president’s discretion, seems to be working. The Supreme and the Electoral Courts, particularly, as well as the Federal Public Prosecutor’s Office may give Temer a hard time in his last two years in office.

Thus, although the picture I paint of the current political and constitutional moment in Brazil is definitely less rosy than that of Melo and Pereira,¹⁵ it is a fact that, for a country that until 1988 was accustomed to a high degree of political, institutional and constitutional instability, Brazil seems to have survived the second presidential impeachment within only twenty-five years. This is undoubtedly quite an achievement, since in a not so distant past, such political turmoil would probably have ended in military intervention and suspension of the constitution. But the question whether the Brazilian political system is still working remains open. In the present context—besides the presidential impeachment, recent investigations conducted by the Federal Police and the Federal Public Prosecutor’s Office revealed that at least one third of the members of the

¹³ It is not possible to analyze here the vexing question as to whether President Rousseff did or did not commit any impeachable offense. However, I do not think that the answer to the question is central to the reasoning developed here.

¹⁴ Linz, *The Perils*, *supra* note 2, at 65.

¹⁵ It is of course possible that Melo and Pereira would also paint a different picture of the Brazilian political system after the impeachment of President Rousseff. But maybe not. Writing in February 2016, when it was virtually certain that she would be removed from office, Melo stated: “. . . these storm clouds have a silver lining. For, grave as they are, they have put on vivid display the strength, independence, and public trust enjoyed by the country’s web of judicial and public-accountability institutions and highlighted the free and energetic nature of the media in a country that only three decades ago was held under lockdown by a military dictatorship. Politics and the economy are in a crisis, but looking beneath the turmoil we can glimpse the power of the rule of law and see Brazilian constitutional democracy’s institutional resilience and fortitude” (Melo, *supra* note 12, at 50).

National Congress as well as several members of the current presidential cabinet are suspected of having received bribes from the biggest engineering and contracting companies in Brazil—it is hard to be optimistic like Melo and Pereira.

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doi:10.1093/icon/mox032

Adriana Vidal de Oliveira. *Constituição e Direito das Mulheres: Uma Análise dos Esterótipos de Gênero na Assembleia Constituinte e suas consequências no Texto Constitucional*. Juruá Editora, 2015, 473 pp. BRL 129.90. ISBN: 978853624939-1.

Adriana Vidal de Oliveira's book *Constituição e Direito das Mulheres* is worth reading for various reasons. First, the book constitutes a serious intellectual effort to reconstruct the 1987–1988 National Constitutional Assembly (NCA) debates around women's rights in Brazil through the lens of Judith Butler's concept of performative act. Second, the book is a significant contribution to the law and gender literature in Brazil, exploring ways in which the legal and political discourses reinforce patriarchy, while, at the same time, subverting it in favor of subaltern groups. Third, the book contributes to the constitutional law field, because it comprehensively maps women's participation in the most recent constitution-making process in Brazil. The author's ultimate (and ambitious) goal is to demonstrate how the idea of Brazilian woman was created through discourse, including legal discourse, and how the feminist movement is able to partially subvert this idea in the struggle for women's rights. In this endeavor, Oliveira analyzes the minutes of five NCA sub-commissions, identifying and examining the disputes, contradictions, and negotiations related to women's rights, and how they

influenced in the drafting of the 1988 Brazilian Constitution.

The book starts out by presenting a theoretical framework, based on Judith Butler's notion of performative act. Oliveira ventures into John Austin's speech act theory in order to explain "how to do things with words,"¹ which informs Butler's view on subjectivity and identity formation. In short, Austin collapsed the distinction between performative and constative utterances, asserting that language goes beyond merely declaring something as true or false. In fact, every time one utters a sentence, one wants to achieve something and wants the audience to recognize that. Speech is a *social practice* in which the speaker and his audience are involved. For a speech act to produce the intended effects, it must meet what Austin calls "felicity" conditions: the speaker must have the power to make the utterance; the circumstances in which it takes place must be appropriate; and the conventional procedure used to produce conventional effects must be conducted correctly.

Judith Butler's appropriation of performativity takes on a Foucauldian turn and analyzes the way power shapes bodies through language. Oliveira reminds us that Butler's main argument in her feminist theory is that gender is not something someone *is*, but rather it is something someone *does*. To become a gender is a painful and long process of naturalization of differentiations produced over bodily pleasures. According to Butler, "[g]ender is the repeated stylization of the body, a set of repeated acts within a highly rigid regulatory frame that congeal over time to produce the appearance of substance."² Indeed, legal speech, as well as religious and scientific speech, which intend "to describe" men and women, are loaded with normative and excluding effects. Not only do they establish gender identities, but they also establish power relations within normalized genders, creating hierarchies. Butler describes this "performative" associa-

1 JOHN L. AUSTIN, *HOW TO DO THINGS WITH WORDS* (2d ed. 1975).

2 JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* 45 (2008).