

## CHAPTER 3

---

# Participation as Representation: Democratic Policymaking in Brazil

*Thamy Pogrebinski*

That political representation faces a crisis has become an old and worn-out claim. It is a claim as old as political representation itself, the essential principles of which have been translated into a set of institutional devices that have remained in place almost intact since the eighteenth century (Manin, 1996; Urbinati, 2006). If the structure of representative government has not been significantly modified since its inception, one can perhaps assume that some of the symptoms of crisis (low electoral turnout, rising political apathy, distrust in political institutions and actors, decrease of party membership and mobilization, proportionality deficits of electoral systems, etc.) may simply be indications of a transformation in how political representation expresses itself.

We are certainly witnessing one such transformation in contemporary politics. In recent years, one can increasingly observe the emergence of concurrent models of governance. Participatory and deliberative models of democracy have frequently been proposed as alternatives supposedly capable of correcting the purported flaws of representative government and its institutions. Strong engagement with participatory and deliberative designs of democracy has become an observable trend within academia, as suggested by an extensive scholarly work (Pateman, 1970; Mansbridge, 1983; Barber, 1984; Cohen, 1989; Fishkin, 1991; Habermas, 1998; Gutmann, 1996; Bohman, 1996; Dryzek, 2000; Fung, 2003; Avritzer, 2009; Sintomer, 2007; Geissel, 2009), which has extended itself beyond the university to other spheres. Governments have increasingly institutionalized new participatory practices and deliberative experiences around the world.

Brazil has always followed in step with this trend, especially since 1989, when the participatory budget was first implemented in Porto Alegre; it became a standard case study on this topic and was replicated by other cities in Brazil and abroad. Since then, several participatory experiments propelled by the 1988 constitution and by the democratic governments that followed it—notably the presidency of Luiz Inácio Lula da Silva—have been increasingly institutionalized. Such experiments range from the more traditional (referendums and plebiscites) to the less well-known, such as the public policy conferences. They encompass the restructuring and expansion of previously existing initiatives, such as national policy councils, public hearings, and local administration councils as well as the rehabilitation of less notorious practices, such as audit offices and discussion and negotiation roundtables.

In observing these new democratic practices in Brazil and abroad, one quickly notes a consistent attempt to expand citizen participation beyond the right to vote. The main underlying assumption of these initiatives is to allow citizens to become more directly involved in the administration of all things public, particularly the design, implementation, and control over public policy. The expected outcome of these practices is to enable citizens to express their preferences in a way that is not directly mediated by political parties and professional politicians.

This much is clear, yet there are other truths to be uncovered. If the new democratic practices expand direct citizen participation, this does not mean that traditional political institutions have become less apt to represent them. Participative practices strengthen democracy by broadening the role of citizens. However, evidence indicates that this does not occur at the cost of diminishing the role of political representation and its institutions.

The relationship between representative and participatory practices of democracy is not trivial. Its clarification is necessary in order to avoid academic opportunism, prejudicial as it is to ideas, or political opportunism, harmful as it is to institutions. Those who suppose that political representation faces a crisis typically become engaged in the defense of participatory and deliberative models of democracy as a means of delegitimizing the legislative branch, jeopardizing its capacity to express popular sovereignty. However, the emergence of new democratic spaces, as well as of new actors involved in the administration of public goods, can be perceived as a means of strengthening political representation rather than a sign of its weakening.

The aim of this chapter is to support the above arguments through a study of arguably the major participatory experiment currently being held in Brazil: the national public policy conferences (*conferências nacionais de políticas públicas*). The national policy conferences consist of participatory spaces designed to deliberate on guidelines for the formulation of public policy at

the federal level. They are summoned to convene by the executive branch through its ministries and secretariats, are organized according to policy areas and issues, and involve the equal participation of representatives from the government and civil society. The NPC consist of meetings at the municipal, state, or regional levels, and the aggregate results of the deliberations occurring during those stages are the object of deliberation in the national conference itself, attended by the delegates from the previous rounds. This culminates in the production of a final document containing the guidelines for the design of public policy—the result of a long process of deliberation and consensus formation between government and civil society.

Observing some features and impacts of the national policy conferences in Brazil, I argue first that there is no necessary competition between participation and representation. Democratic innovations enlarge citizens' direct participation, but that does not imply that traditional political institutions have become less apt to represent them. Second, there might be cooperation between participation and representation. Participatory practices do not undermine political representation and representative institutions; they may in fact strengthen them. Third, the alleged crisis of representative government is but a transformation that involves greater participation and deliberation. There may be no empirical correlation between the strengthening of participatory and deliberative practices of democracy and a supposed weakness of representative institutions. Fourth, the more participatory and deliberative practices are institutionalized, the more stable representative government might become. Institutionalized participation increases both legitimacy and accountability of representative institutions and actors, as well as the enforcement of policies and legislation. Fifth, the institutionalization of participatory innovations within representative institutions changes the relation between the state and civil society, and thus impacts the liberal principles of democracy. Once civil society is enabled to act within the state and take part in national-level policy-making and law-making processes, institutional redesign might follow a pragmatic model of democracy.

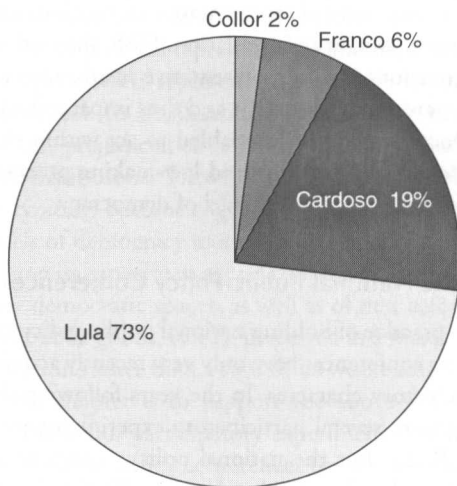
### **The National Public Policy Conferences**

Although Brazil's practice of holding national public policy conferences dates back to 1941, these conferences have only very recently acquired a clear deliberative and participatory character. In the years following the enactment of the 1988 constitution, several participatory experiments were designed and implemented in Brazil, but the national policy conferences gained expression and visibility only after 2003, when the Workers' Party (PT, *Partido dos Trabalhadores*) reached the federal government, and Lula took office

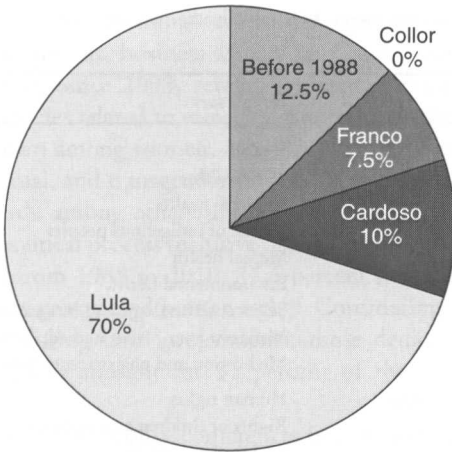
as president. Only since 2003 have national policy conferences become recurrent, wide-ranging, inclusive, and broad.

Mostly in response to demands from civil society, national public policy conferences have been replicated and sustained by ministries, secretariats, national councils, and, in few cases, legislation that has established that conferences be held as part of the decision-making process of certain policy areas. As Graph 3.1 indicates, they have become closely associated with the PT government, with 73 percent of the national conferences held between 1988 and 2010 taking place during Lula's presidency (2003–2010). An average of 9.2 national conferences was held each year during his eight years of government (amounting to 74).<sup>1</sup> Before the PT took hold of the federal government the national policy conferences were scarcely held. In Fernando Henrique Cardoso's eight years of mandate, his government was in charge of 19 national policy conferences. Such an average of 2.3 conferences per year indicates the low disposition of the Brazilian Social Democracy Party (Partido da Social Democracia Brasileira—PSDB) to endorse participatory mechanisms of governance, in particular the national public policy conferences. The fact that the latter only became effective and turned out to be an important democratic mechanism starting with Lula's government indicates the participatory approach to governance endorsed by the Workers' Party (Pogrebinski, 2012a).

The national policy conferences have become wider-ranging in that they encompass an increasingly greater number of policy issues under public



**Graph 3.1** Distribution by governments (1988–2010)



**Graph 3.2** Introduction of policy issues by government (Before 1988–2010)

deliberation, no longer being restricted to health-related issues, as was the case in the 1940s. National policy conferences first arose out of Brazil's health reform movement, which has traditionally been a very strong and organized form within civil society since long before re-democratization in 1985. Only after the enactment of the new constitution in 1988 did other policy areas begin to be deliberated in national conferences, although these were still very limited until Lula took office in 2003. Human rights and social assistance issues have become increasingly institutionalized since the latter half of the 1990s. Graph 3.2 shows how the PT government was responsible for introducing 70 percent of policy issues deliberated in the national conferences from 1988 to 2010.

From 2003 forward, the conferences have covered a vast array of new areas of public policy, the discussion of which has been divided into around 40 issues (see Table 3.1). From education and culture to fishing and rural development, the national conferences have been deliberating on a wide range of policy issues, especially those related to minority groups' interests and rights. 28 of the 40 policy issue areas addressed were introduced during Lula administrations. Luiz Dulci, Lula's minister of the General-Secretary in 2010, defended the policy conferences, asserting that since the PT took office, "social participation has been adopted as a democratic method of public administration."<sup>2</sup>

National policy conferences have also become more inclusive as a result of the increase in their range and breadth, since they gradually assemble more diverse and heterogeneous social groups, especially representatives of

**Table 3.1** Policy areas and issues deliberated in the national conferences between 1988 and 2010

<i>Policy Area</i>	<i>Policy Issues</i>
Health	Health Oral health Workers' health Health of indigenous peoples Mental health Environmental health Science, technology, and innovation in health Management of labor and education in health Medication and pharmaceutical care
Minorities and human rights	Human rights Rights of children and adolescents Rights of the elderly Rights of people with disabilities Gays, lesbians, bisexuals, transvestites, and transsexuals Indigenous people Public policies for women Youth Promotion of racial equality Brazilian communities abroad
State, economy, and development	Food and nutritional safety Science, technology, and innovation Solidary economy Local productive arrangements Aquaculture and fishing Sustainable and solidary rural development Cities Public security Communication Environment Environment and children and adolescents Civil defense and humanitarian assistance Human resources of federal public administration
Education, culture, social assistance, and sports	Social assistance Basic education Professional and technological education Indigenous education Culture Sports

civil society originating from nongovernmental organizations (NGOs), social movements, labor unions, business associations, and other entities, professional or otherwise. Since 2003, several conferences concentrating on the deliberation of policies related to minority groups have taken place, and participation has grown among women, Afro-Brazilians, indigenous people, the lesbian, gay, bisexual, and transgender (LGBT) community, people with disabilities, and youth, among others. In this way, national policy conferences can be seen as a political process inclusive of minority groups. Of the national conferences held from 1988 to 2010, 35.6 percent focused on policy issues related to minority groups and human rights. Considering only the national conferences held during Lula governments, those dedicated specifically to minority group issues account for 31 percent of the total—a substantial number.

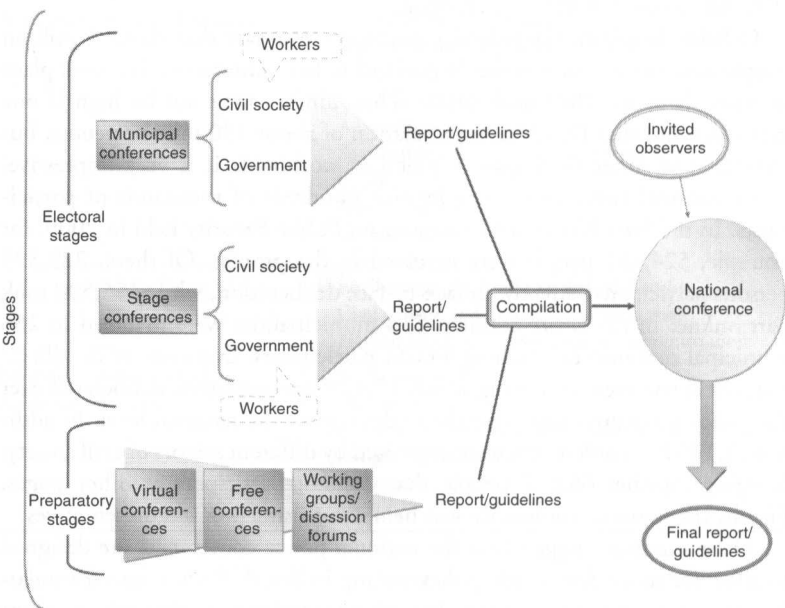
Finally, national public policy conferences became *broader* due to the fact that they have involved a progressively larger number of people, participating either directly as delegates in the national stage of deliberation; indirectly in the preceding state, municipal, or regional levels or in the so-called free conferences; or electronically in the so-called virtual conferences. On average, the national conference itself brings together about 3,000 delegates, but the number of participants increases significantly if one takes into consideration all those involved in the entire process.

Official data from the federal government estimate that about 5 million people have participated in the 74 national policy conferences that took place in Brazil between 2003 and 2010.<sup>3</sup> This number may not be high if one keeps in mind that Brazil has a population of about 190 million people, but compared to other participatory practices worldwide it is very impressive. Some national conferences may involve hundreds of thousands of participants. In the First National Conference on Public Security held in 2009, for example, 524,461 people were involved in the process. Of these, 225,395 persons participated directly, in face-to-face deliberation, while 256,598 took part online. In the entire country, 514 municipalities were involved in 266 municipal conferences, reaching 44,651 participants. Every one of Brazil's 27 states held conferences, during which 17,439 representatives deliberated over the policy guidelines that were then taken up to the national level. In addition, 1,140 free conferences were organized by different sectors of civil society, bringing together 66,847 people that did not participate at other stages. Finally, the national conference was held comprising 3,060 representatives.

These numbers suggest that the national policy conferences are designed to allow for more democratic policymaking in Brazil. Rather than formulating policies from the top—down through a formal process that might at best involve the aid of technical expertise, the government encourages civil society

to join the task of designing new policies, and while doing so, to revise old ones. It is Brazil’s federal government that convenes a national conference, with the president’s decree to initiate the process following either a governmental perception that a certain area is in need of new policies or an external demand from civil society. In general, both actors in the national conferences process—government and civil society—join from the start as partners in the task of organizing these new venues for democracy.

Notwithstanding its nonbinding character, from 2003 forward, the participatory conference process can be said to have undergone a deliberative, normative, and representative turn (Pogrebinschi, 2010a). It is deliberative in the sense that national conferences have been oriented toward consensus formation based on public deliberation processes aimed at opinion and will formation, involving representatives from civil society and the government in equal number. Most conferences are composed of 60 percent of participants from civil society and 40 percent from the government. Some also include a proportion of representatives from the workers concerned with the policy area or issue under deliberation. The deliberative process comprises several levels. As can be seen in Figure 3.1, the deliberation starts in the local (municipal) or regional (aggregation of municipalities) levels, continues in all the 27 states,



**Figure 3.1** The process of deliberation



and is concluded at the national conference that is usually held in Brasilia, the country's capital. Some national conferences also review the discussions that had taken place during "free conferences" that were organized by civil society groups or "virtual conferences" that aggregate contributions submitted over the Internet. The results of the free and virtual conferences are included in materials distributed to participants in the national conference, which are deliberated along with the results from the local and state conferences.

Although the national stage of the conferences usually last three or four days, the entire process usually takes over a year. Every national conference begins to be prepared from the moment the executive decree that summons it to convene is enacted, and the commission that will coordinate it is installed. This commission is composed of members of the government and of civil society, and the same occurs at most of the conferences themselves at all levels (some include a third caucus, made up of representatives of the workers and professional associations involved on the policy area under discussion). Once the rules for the conference are approved, a schedule is drafted, and the methodology that will be used to aggregate deliberations is issued.

No single methodology is applied to all conferences, and some of them involve very complex systems of preference prioritization (instead of simple preference aggregation), which are applied both at the various stages of a single conference (from working groups' deliberations to the final plenary) and at the stages that precede the national one. No guidelines approved at the local, regional, or state levels are excluded from the deliberation that takes place in the national conference, and even conflicting guidelines approved at the different levels may be resubmitted to deliberation at the national stage. Even when deliberation ends in a vote, as is the case in the final plenary that concludes the national conferences, majority is not always the rule: an equal proportion of votes among state and civil society delegates may have to be achieved in certain cases in order to form a consensus and have a policy guideline included in the final report.

It is precisely because final results fulfill the inclusive procedures described above that national policy conferences have a high degree of public legitimacy, and can be said to have undertaken a normative turn. Since 2003, the deliberations of almost all national conferences have culminated in the drafting of a final document, which has been submitted to debate, voting, and approval based on the distinct strategies and methods of preference aggregation at different levels and moments. As a result, the policy conferences have been gaining credibility and have generated expectations that are not only cognitive but also normative for those involved in the process, as well as by those who, despite nonparticipation and the nonbinding aspect of national conferences, are indirectly affected by their eventual consequences.

The strictly representative dimension inherent to the national conferences, as instances of participation and deliberation, is reinforced by (1) the participatory composition and organization of national conferences; (2) the deliberative dimension of its working groups, panels, and final assembly sessions; and (3) the normative character of the final reports, which condense the resolutions, guidelines, and motions debated and approved by majorities in compliance with a set of rules that seeks to ensure the legitimacy of the outcome, regardless of its content. Perhaps due to the implied delegation of the executive that summons them, the national conferences are an addition to the ensemble of practices that constitute a so-called “new ecology of representation,” embodying a mode of “informal representation” (Castiglione and Warren, 2006).

The process through which national conferences are organized and evolve leads to an interesting distinction between “participants” and “representatives,” which is helpful to understand in relation to the new and informal ecology of representation. The municipal and regional conferences are entirely open to participation, and there has been over the past few years extensive advertisement calling on people to come and engage. At the local stage, one of the main purposes is to elect the delegates that will take part into the following levels. Because anyone can show up to a municipal conference, anyone can therefore be elected to go to the subsequent stage, and it is the participants themselves that are responsible for the election. The government may nominate representatives, but it has no influence over who is chosen among civil society participants. Usually civil society groups indicate one or more of their members to represent them at local conferences, and they must be elected at the local level in order to advance to the next levels. Among the delegates, there are representatives that are appointed, both by government and civil society organizations. The latter case is more common when the conference also includes representation by workers concerned with the policy area under discussion. At the state and national levels, elected and appointed representatives get together along with the other “participants” (observers, invited guests, members of the organizing committee, ministry or state secretary, among others). All of them take part in the deliberation, and may express opinions, make points and claims, and present arguments, but not all of them can prioritize guidelines in the working groups, nor vote in the final plenary; those tasks are reserved for the “representatives” no matter whether they were elected in the local level or appointed at a previous stage. “Participants” and “representatives” have an equal share of *isegoria*, the right to have a voice, and thus deliberate. Representatives, however, are those participants that may not only deliberate but also vote.

Notwithstanding this undeniably representative dimension of such a participatory experiment, what matters most to the claims made in this

chapter are the eventual impacts on the conventional institutions of political representation, contributing to more responsive and democratic lawmaking and policymaking, as well as to more inclusive representation, as we will discuss in the next sections.

### Impacts on Lawmaking

The impact of national policy conferences in the legislature is a growing reality. Conference final reports' policy guidelines prompt legal action by the Congress, and their effects on lawmaking can be measured by the number of bills proposed and statutes enacted, as well as by the content they address. From 1988 to 2009, 19.8 percent of all regular bills proposed by the Congress were substantively consistent with the national conferences' policy guidelines, and the same is true for 48.5 percent of the constitutional bills.<sup>4</sup>

As for approved legislation, 7.2 percent of all statutes and 15.8 percent of all constitutional amendments enacted by the Congress from 1988 to 2009 can be said to deal with the specific issues deliberated in national policy conferences. This impact may seem low, but it is very significant given the high absolute number of pieces of legislation produced by the Congress and the extended period of the time analyzed (21 years). One should also keep in mind that 73 percent of all national conferences held between 1988 and 2010 have taken place since 2003. This suggests that although the Congress has demonstrated a high degree of productivity over the years, this may be further expanded by the national conferences—not only quantitatively but qualitatively as well.

Beyond setting the congressional agenda and influencing policy preferences and choices, national conferences also seem to improve and increase the deliberative component of lawmaking since they have a larger effect on bills proposed rather than on statutes approved, which points to a qualitative (increasing on variety) rather than quantitative (timing of consent achievement) impact on the legislature. Moreover, the significant number of constitutional amendments whose content coincide with the guidelines of national conferences points to their unanticipated legitimacy and potential to alter institutional design.

In the entire sample of legislative activity whose content is substantively convergent with national conference guidelines over a 20-year time frame (1988–2008), 85.2 percent of the bills presented to congress (including 91.6 percent of the constitutional bills), 69.2 percent of the enacted statutes, and 66.6 percent of the amendments to the constitution were approved in the first six years of Lula's presidency (2003–2008). Although it is reasonable to expect that the impact on the legislature will grow commensurate with the increase in the quantity and frequency of national conferences during Lula's

mandates, and even though bills and constitutional bills become inactive if not voted upon or reintroduced in a new legislative season, it is evident that both the increase in participation and the impacts on representation occurred after Lula took office. In short, policy-making and decision-making have been significantly altered in Brazil since the Workers' Party came into power.

The impact of the national conferences on the legislature constitutes an effective political process that runs parallel to the electoral logic followed by political parties. The normative policy guidelines that arise from national conferences are apparently well supported by political parties (as they propose bills that are congruent with the content of conference guidelines)—and by parties that are and are not in the government coalition, and belonging to different positions in the right-left continuum. The parties that compose the PT coalition seem to be no significantly more supportive of bills convergent with national conferences' guidelines than other opposition parties such as the Brazilian Social Democracy Party (PSDB) (Pogrebinschi, 2012b). This suggests that these participatory endeavors point to a way of overcoming the traditional ideological channeling of interests, and the party structure that typically constrains them.

So far no data have shown how political parties may make themselves present at national conferences through their supporters, and thus try and influence the policy guidelines that are deliberated and approved, which might indicate an undesirable partisan dimension to the process. Not all Brazilian political parties are, however, enthusiasts or display support of the national conferences. Despite the fact that PSDB representatives are among those in the Congress that support bills that are congruent with national conferences policy guidelines (Pogrebinschi, 2012b), PSDB is definitely not a supporter of such participatory experiments in principle or practice. During the 2010 presidential elections, its candidate took a public position against the national conferences, while the year before, when this same politician was then the governor of Sao Paulo, he tried to prevent the organization of the sub-national (or state-level) stage of the National Conference on Communications in the country's largest federated state.

In any event, one can suppose that political parties have incentives to propose and support policies that have been fully deliberated in the public space. National conferences generate policy guidelines that have been thoroughly deliberated in all Brazilian states, and by those groups directly concerned with the issue at stake. Thousands of people are involved at all levels of the deliberative process, and even if they have not been successful in electing in the previous balloting a congressperson who would usually be willing to represent their interests and demands, other representatives usually not aligned with such interests and demands may have an incentive to support them so

as to gain votes in the next election. In this way, national policy conferences seem to function as a sort of retrospective vote, allowing for what Mansbridge (2003) calls “gyroscopic representation” or “surrogate representation.”

Congress has thus shown itself responsive to the inputs that come from the public sphere. Even if the numbers displayed above only demonstrate a congruence among national conferences’ policy guidelines and the legislation produced, and thus cannot rigorously prove that congressmen have been influenced by social participation (as opposed to lobbying from interest groups), it is clear that the legislature has aligned itself with civil society’s demands, and that both have been increasingly sharing a policy agenda.

This latter point should suffice to put to rest one of the main criticisms (especially by one of the country’s main newspapers and the oppositional PSDB) that has been made in Brazil regarding the national conferences, which is that the PT government uses them for the cooptation of civil society. I posit that the active role that civil society organizations have been playing in national conferences should not be understood as a form of cooptation that undermines social movements or empowers only few of them. Conversely, what is at stake is a form of cooperation among social and political actors that goes beyond electoral bounds and party compromises, allowing for an unprecedented closeness of the state and civil society. The latter has been effective in proposing new areas of policy to be deliberated by national conferences. Even though most conferences are summoned to convene by the executive branch, some result from civil society’s demands (which are almost always promptly responded by the government), and some result from joint deliberations of the government and civil society’s representatives on the national policy councils. This cooperation is ultimately what defines which policy areas and issues will be given priority and become the object of national plans and programs to be implemented in Brazil. Once the executive accepts and supports civil society’s proposals, it is not only acting responsively to social demands, but it also allows the policy agenda itself to be defined in the social sphere. The national conferences on public policy should therefore not be understood merely as a device to give legitimacy to Brazilian governments to implement their preferred policies. Rather, through national conferences civil society has been enlarging policy areas and bringing up new issues for policymaking, as will be shown in the next section.

### **Impacts on Policymaking: Enlarging the Representation of Minority Groups through Participation**

National policy conferences have been decisive in increasing the participatory and deliberative design and implementation of national-level public policies

in general, as well as areas where there were no national policies being implemented by the executive in particular. This is particularly true for policies related to the interests of minority groups that have long demanded recognition of their rights and sought political representation.

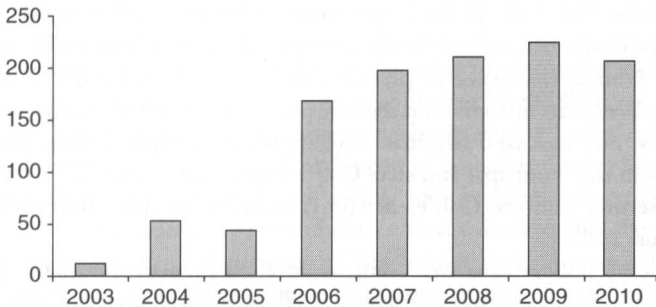
Some of the newest and most innovative policy areas and issues brought forward by civil society at national conferences are concerned with the interests and rights of social and cultural minorities. Since 2003, Brazil has held national conferences on policies for women, seniors, indigenous peoples, racial equality, people with disabilities, and the LGBT community. Minority groups take advantage of the conferences to shape their concerns and frame their identities, turning participation into representation while being successful in (a) having their demands translated into public policies implemented by the executive despite not otherwise having the resources for lobbying or advocacy, and (b) having these demands enacted as law absent previous engagement with political parties.

It is fair to say that national public policy conferences have established themselves as spaces in which social and cultural minorities are able to progressively transform themselves into political majorities. Of all the national conferences held from 1988 to 2009, 20 specifically involved deliberations concerning minority groups—17 of which took place between 2003 and 2009. There have been an additional 11 conferences on human rights, which always include discussions on policies related to women, people with disabilities, senior citizens, indigenous peoples, children and adolescents, ethnic and racial minorities, and the LGBT community. In fact, many of the demands initially presented by minority groups in national conferences on human rights are taken up by the specific national conferences for each of those minorities, while, inversely, several demands presented by minority groups in specific national conferences for minorities are presented once again in national human rights conferences. Furthermore, since many of the policies demanded by minority groups, in spite of their often very specific character, demand actions that span across different fields of action and issues, these groups are also present—through civil society representatives—in national conferences in which various other issues such as healthcare, education, and social assistance are discussed. Added together, the conferences focused specifically on minorities, and 35.6 percent of all national conferences held between 1988 and 2009 concentrated on human rights in general.

As I have argued elsewhere (Pogrebinschi, 2010a and 2010c), minority groups not only are able to rely on a significant number of national conferences in which public policies targeting them are the specific object of deliberation but also have succeeded in advancing a considerable number of normative guidelines in their final resolutions. In addition to the fact that

18 percent of the policy guidelines that originated from national conferences between 1988 and 2009 dealt exclusively with demands by minority groups, one can also reasonably assume that a significant portion of the 26.7 percent of the guidelines that originated in national human rights conferences take into account the demands of minority groups that actively participate and are represented by civil society organizations that are traditionally active in debating these issues. In other words, since the guidelines that come out of the national conferences evidently inform parliamentary activity, a high percentage of the proposals passed on to the Congress deal with demands made by minority groups. The concrete impact in terms of actual legal inclusion of proposals from minority groups is an issue yet to be addressed, as is also the case of the redistributive effects of the policies designed accordingly to the demands brought up by those groups in national policy conferences.

It is by focusing on national conferences' impact on the executive branch that one can observe how policymaking has been contributing to the inclusion and political representation of minority groups. Considering only the presidential decrees issued since 2003, one notes a very significant increase starting in 2006. With the exception of "rights of children and adolescents," the first national conference to specifically address a minority group's interests was held in 2004 (on policies related to women), followed by another in 2005 (on racial equality), three in 2006 (on policies related to seniors, people with disabilities, and indigenous peoples), and an average of three each year until 2009. Graph 3.3 displays how executive decrees have increased following the increased frequency of national conferences focused on minority group's issues. In 2003, when national conferences only addressing human rights of children and adolescents took place, 12 presidential decrees relating to those issues were issued. In 2009, after each minority group had its



**Graph 3.3** Presidential decrees on minority and human rights issues (2003–2010)

own issue-specific national conference, the number of presidential decrees that matches conferences' guidelines increased to 224.

However, the major impact of the national conferences on policymaking is qualitative. Several policies were made in Lula's government with the clear and explicit intent of fulfilling the civil society's demands contained in national conferences' guidelines. One of the most well-known examples is the so-called National Program for Human Rights 3 (known as PNDH3). This lengthy national plan, which contains among other things policies for all manner of minority groups, became binding after the publication of a presidential decree at the end of 2009. The policy's 25 guidelines, 81 strategic objectives, and hundreds of action steps reflect the demands of around 55 national conferences held during the Lula presidency, especially those related to minority groups' and human rights issues.

Several other important presidential decrees were issued, many of them bringing to life national policy plans for the first time in areas that have never before been specifically addressed by federal policymaking. This is the case, for example, of policies related to women. Although women have in one way or another been considered in different policies over the years, they have never had specific policies that addressed them as a group, let alone a public program that intended to provide a national framework for issues of concern to women to be implemented in each and every state of the country. Most importantly, women had never taken part in the drafting of such a program. This changed with the March 2005 presidential decree that enacted the First National Plan for Policies for Women, which explicitly states in its introduction that it was the result of the First National Conference on Policies for Women, which, the National Plan states, "established itself as a watershed in the affirmation of the rights of women, and mobilized throughout Brazil approximately 120 thousand women, who directly participated in debates and presented proposals for the elaboration of a National Plan of Policies for Women." As participation began to be institutionalized in Brazil and the women's movements received a new impetus, a Second National Plan on Policies for Women was issued by presidential decree in March 2008. This latter plan declares in its introduction that the plan is the "result of the mobilization of almost 200 thousand Brazilian women, who participated throughout the country in the municipal and state Conferences, and elected 2,700 delegates to the Second National Conference on Policies for Women which took place in August 2007."

National policy plans were similarly drafted for Afro-Brazilians, people with disabilities, and senior citizens. This illustrates the potential that policy guidelines formulated at national conferences on minorities and human rights have for being converted into public policies formulated and implemented by



executive branch at the federal level. Even though the main scope of national conferences consists of providing content for the formulation of national policies, national plans and programs that incorporate the demands voiced by minority groups are complemented by several other decrees regulating them, and their scope has been both broadened and specified by a wide array of normative acts of the federal public administration that privilege sectorial policies and specific actions that aim to turn the deliberations of the national conferences into reality.

A precise measure of how much national conferences are able to shape the public policy agenda in Brazil certainly requires a more rigorous analysis. However, there is no doubt that, based on the data presented above, these nation-wide participatory practices strongly impact on the actions of the executive branch, which, on its part, has become increasingly responsive to the demands of minority groups, and, equally importantly, has been redesigning itself institutionally, particularly with regard to the way it formulates, implements, and oversees public policies.

National public policy conferences are thus participatory and deliberative experiences, which not only give minority groups a voice but also make them heard in Congress. Even when these groups are not able to elect their candidates, national conferences may provide them with an opportunity to have their interests represented in the legislative branch. The legitimizing force of a bill strongly supported by a national conference can function as a form of retrospective representation, which applies to situations in which members of Congress are presented with incentives that may eventually compel them to transcend party agendas or the priorities of traditional constituencies, and to come to the defense of demands presented in national conferences and thereby gain new supporters or reestablish severed ties with former ones. National conferences are thus capable of achieving political representation for minorities that would otherwise not be able to construct party majorities.

Participatory democratic practices such as national policy conferences therefore make it possible to represent the interests of minority groups in the Congress even when they are not being defended in traditional party platforms. The guidelines for public policies contained in the final resolutions produced at national conferences initiate legislative activity in the legislature, offering members of Congress a broad menu of demands directly formatted according to the preferences of civil society in a nonelectoral setting—one that is more independent of party influences, thus circumventing the need to appeal to the media or other forms of interference in the formation of citizen opinion and will. Policy guidelines originating in national conferences are imbued with a strong assumption of popular legitimacy that allows them to overcome the traditional logic of interest distribution. This may prompt

a major party to represent a previously unrepresented interest, one hitherto unrepresented by any party or supported by a minor party. The manner in which national policy conferences have been serving the interests of minority groups demonstrates how participatory forms of democracy are able to express themselves as representation.

### **Participation as Representation**

National conferences on public policy are more than simply practices pertaining to “informal representation” (Castiglione and Warren, 2006) that reproduce somehow the logic of representation: They are participatory experiments that strengthen formal political representation and potentially reinforce the functions and activities of traditional political institutions, such as the legislature and the political parties. In this sense, national policy conferences allow a new participatory element that constitutes the concept and practice of political representation, as evidenced by the genesis of the former and the history of the latter.

Participation has long been a part of the grammar of representation, whether through universal suffrage, proportionality in electoral systems, mass political parties, and even in the activity of lobby and interest groups. Deliberation, too, has long been part of the repertoire of political representation, whether in the procedures adopted for the formation of public opinion that characterize political campaigns and party mobilization preceding elections, in the identification and stabilization of preferences set in motion by voting systems during elections, or, finally, in parliamentary deliberation—both in the more restricted realm of commissions or in the broader congressional floor deliberation. Hence, participation and deliberation can be understood as constitutive elements of political representation; rather than be seen as an attempt to add new semantic content to replace old concepts of political representation, they are a distinct means of putting political representation into practice.

If the widely propagated crisis of political representation is nothing but another one of its historical metamorphoses, the practices of participation and deliberation that have evolved expressively in civil society in the last two decades are actually expressions of a shift in the nature of representative democracy. To the extent that representation’s legitimacy increases as it deepens, its institutions are consolidated by redesign.

National conferences on public policy consist of a participatory practice marked by peculiarities that further contribute to their comprehension as an instance that strengthens political representation within the formal institutions of the state. First, they are summoned, organized, and held by the executive. Second, they are jointly organized by the state and civil society, as

the latter is already active in different national policy councils or in the various working groups established by ministries and secretariats.<sup>5</sup> Third, they are summoned by the executive with the manifest intent of providing guidelines for the formulation of public policy, with a particular focus on the elaboration or revision of national policy plans concerning several fields, sectors, and groups of civil society. Fourth, they consist of participatory experiences that are national in scope and range, which ensures the universal validity of the definition of the policies deliberated and the reconfiguration of the proportionality of any party interests present.

Most national policy conferences are not yet sustained by laws, and thus depend, along with the implementation of their results, on the political will of federal governments. As discussed earlier in this chapter, the occurrence of the national policy conferences seems to depend heavily on the Workers' Party. Despite the party's overt intentions to institutionalize them as a part of a larger national participatory system and as a consequence of its method of governance (Pogrebinschi, 2012a), the national conferences are so far not enforced by law, and therefore are not binding. Even though after at least 12 years of PT government the recurrence of the national policy conferences may help to create a participatory culture in the country and to compel civil society organizations to rely on them, an eventual victory of another party in an upcoming election may simple rule the national policy conferences out of the political landscape.

Nonetheless, one may say that a certain degree of institutionalization has been so far achieved. As part of the process of formulation and oversight of executive public policy, and, therefore, as part of its structure, the national conferences generate consequences that have impact on the agenda of the legislative, which can choose to use them as an informational source, as mechanisms of legitimization, or as deliberative input for its representative activity. They are thus certainly an example of a "participatory institution" (Avritzer, 2009), alongside other participatory practices and deliberative experiences that have been undergoing institutionalization in Brazil despite the absence of legal backup, from participatory budgets at the local level to policy councils at the national level.

Yet, more than this, I argue that national conferences should be taken as representative institutions—not because they simply internally engender the representative logic (by means of election of delegates and majority voting, among other features) and sustain some "informal" mode of representation. Rather, they consist of a more complex structure of political representation within the state and its institutions that include the participation and deliberation of civil society in a more direct and less mediated fashion, as compared to traditional mechanisms of accountability (through elections), and the preferences they express (that of political parties).

Despite the suspicion raised by the assumption of the eventual formation of consensus in civil society, the extent of its autonomy when acting within the state, the disputes for hegemony in different political projects, and social movements that characterize it, among other factors, the fact is that national conferences on public policy consist of very effective forms of political mediation and are therefore apt to redefine the liberal democracy model by redefining the relationship between civil society and the state. Brazil puts into practice what scholars of democracy and democratic policy-making processes attempt to do through participatory innovation: bring state and society into closer proximity.

Such approximation is verified not only when the state draws civil society within itself, employing national conferences as a participatory component of governmental policy-making processes in all spheres of the federal executive branch and public administration, but also when it is receptive and responsive to their demands by converting them into legislative proposals and acts by government ministries or agencies. Thus the national conferences are a deliberative component of political representation as it is exercised in the Congress. The interplay of participation/deliberation and representation, and the dynamics between civil society and the state that this sets in motion reveal national policy conferences as new forms of political mediation that can potentially deepen democracy in Brazil. Far from replacing political representation or menacing established representative institutions, the national policy conferences appear to strengthen both and allow for a more democratic and responsive government—one that I call as a pragmatic democracy (Pogrebinschi, 2010b).

## Notes

1. This pattern has been closely sustained during the first year of mandate of his successor Dilma Rousseff's (also from the Workers' Party), when eight national policy conferences took place in 2011.
2. This statement was made on August 20, 2010, by Minister Luiz Dulci in an official address to the press. The full statement is available at: [http://www.secretariageral.gov.br/noticias/ultimas\\_noticias/2010/08/20-08-2010-nota-a-imprensa-resposta-do-ministro-luiz-dulci-as-declaracoes-de-jose-serra](http://www.secretariageral.gov.br/noticias/ultimas_noticias/2010/08/20-08-2010-nota-a-imprensa-resposta-do-ministro-luiz-dulci-as-declaracoes-de-jose-serra). Accessed: July 23, 2012.
3. The information is available in the general-secretary of the presidency's website: [http://www.secretariageral.gov.br/noticias/ultimas\\_noticias/2012/01/10-01-2012-conferencias-mobilizaram-2-milhoes-de-pessoas-em-2011](http://www.secretariageral.gov.br/noticias/ultimas_noticias/2012/01/10-01-2012-conferencias-mobilizaram-2-milhoes-de-pessoas-em-2011). Accessed July 23, 2012.
4. A constitutional bill is a proposal presented by members of Congress to amend some aspect of the constitution.

5. The national policy *councils* have also been highly institutionalized during Lula's government and are often confused with the national policy *conferences*; however, the two participatory experiences work in different ways. While the conferences are summoned to convene and are held in a determinate period of time through several stages until it scales up to the national level, the national policy councils are permanent institutions that work within the structure of the federal executive branch, usually housed at ministries, special secretariats, or the presidency itself. As occurs with most of the conferences, the councils are composed of half by representatives from government and half from civil society. While participation in the conferences is entirely open and free at the local level while the delegates that will attend the subsequent stages are elected or appointed, participation in the councils depends on a public process of selection of national-level representative entities from civil society that will have a seat on it for a two-year mandate (on average). While certain conferences have engaged over 500,000 people from the local to the national level, the councils have a permanent body of up to 60 members. As for the aims and purposes, the conferences are summoned with the goal of deliberating and providing guidelines for policymaking in certain predefined areas and issues, while the national councils ordinarily meet every two months (or whenever a need arises) and deliberate on issues brought up by their members or government or civil society. As for the nature of the deliberations, although the national conferences' final reports are normative as described above and are seriously taken into consideration by policymakers, they are not binding; however, the councils have competence to issue normative acts called resolutions, which may contain administrative acts and policies. The councils take an active part in the organization of several conferences, and they also implement and monitor some deliberations to ensure the approved policy guidelines are followed. Brazil currently has around 33 operating national policy councils—18 of them created between 2003 and 2010, and 15 significantly reformulated in the same period so as to contemplate civil society's demands and further its inclusion and participation.

## References

- Avritzer, Leonardo. (2009). *Participatory Institutions in Democratic Brazil*. Baltimore: Johns Hopkins University Press.
- Barber, Benjamin. (1984). *Strong Democracy. Participatory Politics for a New Age*. Berkeley: University of California Press.
- Bohman, James. (1996). *Public Deliberation. Pluralism, Complexity, and Democracy*. Cambridge: MIT Press.
- Castiglione, Dario e Warren, Mark. (2006). "Rethinking Democratic Representation: Eight Theoretical Issues." Manuscript prepared for delivery at the Centre for the Study of Democratic Institutions, University of British Columbia.
- Cohen, Joshua. (1989) [1997]. "Deliberation and Democratic Legitimacy." In: Bohman, James and Rehg, William (eds). *Deliberative Democracy. Essays on Reason and Politics*. Cambridge: MIT Press.

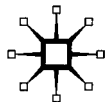
- Dryzek, John S. (2000). *Deliberative Democracy and Beyond*. Oxford: Oxford University Press.
- Fishkin, James. (1991). *Democracy and Deliberation: New Directions for Democratic Reform*. New Haven: Yale University Press.
- Fung, Archon and Wright, Erik Olin. (2003). *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance*. London: Verso.
- Geissel, Brigitte. (2009). "How to Improve the Quality of Democracy? Experiences with Participative Innovations at the Local Level in Germany," *German Politics and Society*, Issue 93, Vol. 27, No. 4 Winter, pp. 51–71.
- Gutmann, Amy. (1996). *Democracy and Disagreement*. Cambridge: Harvard University Press.
- Habermas, Jürgen. (1998). *Between Facts and Norms. Contributions for a Discourse Theory of Law and Democracy*. Cambridge: MIT Press.
- Manin, Bernard. (1996). *Principes du Gouvernement Représentatif*. Paris: Calmann-Levy.
- Mansbridge, Jane. (1983). *Beyond Adversary Democracy*. Chicago: University of Chicago Press.
- . (2003). "Rethinking Representation," *American Political Science Review*, Vol. 97, No. 4, pp. 515–528.
- Pateman, Carole. (1970). *Participation and Democratic Theory*. Cambridge: Cambridge University Press.
- Pogrebinski, Thamy. (2010a). Relatório Final da Pesquisa "Entre Participação e Representação: as conferências nacionais e o experimentalismo democrático brasileiro." Série Pensando o Direito, Ministério da Justiça, Brasília.
- . (2010b). "Democracia Pragmática". In: *Dados*, Revista de Ciências Sociais, Volume 53, número 3.
- . (2010c). "Participação como Representação. Conferências Nacionais e Políticas Públicas para Grupos Minoritários no Brasil". Paper apresentado no 34º Encontro da Associação Nacional de Pós-Graduação e Pesquisa em Ciências Sociais (ANPOCS).
- . (2012a). "Participação como Método Democrático de Gestão. As conferências nacionais de políticas públicas durante o Governo Lula". Paper prepared to be presented at the workshop *The PT from Lula to Dilma: Explaining Change in the Brazilian Worker's Party*. Brazilian Studies Programme, University of Oxford, January 27.
- . (2012b). "Strengthening Representation through Participation." Paper prepared to be presented at the ECPR Joint Sessions of Workshops, University of Antwerp, Belgium, April.
- Sintomer, Yves. (2007). *Le pouvoir au peuple. Jurys citoyens, tirage au sort et démocratie participative*. Paris: La Découverte.
- Urbainati, Nadia. (2006). *Representative Democracy: Principles and Genealogy*. Chicago: Chicago University Press.

# New Institutions for Participatory Democracy in Latin America

Voice and Consequence

Edited by Maxwell A. Cameron, Eric Hershberg,  
and Kenneth E. Sharpe

palgrave  
macmillan



NEW INSTITUTIONS FOR PARTICIPATORY DEMOCRACY IN LATIN AMERICA  
Copyright © Maxwell A. Cameron, Eric Hershberg,  
and Kenneth E. Sharpe, 2012.

All rights reserved.

First published in 2012 by  
PALGRAVE MACMILLAN®  
in the United States—a division of St. Martin's Press LLC,  
175 Fifth Avenue, New York, NY 10010.

Where this book is distributed in the UK, Europe and the rest of the World,  
this is by Palgrave Macmillan, a division of Macmillan Publishers Limited,  
registered in England, company number 785998, of Houndmills,  
Basingstoke, Hampshire RG21 6XS.

Palgrave Macmillan is the global academic imprint of the above  
companies and has companies and representatives throughout the world.

Palgrave® and Macmillan® are registered trademarks in the United  
States, the United Kingdom, Europe and other countries.

ISBN: 978-1-137-27057-3

Translations of Chapters 2, 3, 7, and 9 copyright © Judy Rein, 2012.

Library of Congress Cataloging-in-Publication Data is available from the  
Library of Congress.

A catalogue record of the book is available from the British Library.

Design by Integra Software Services

First edition: November 2012

10 9 8 7 6 5 4 3 2 1