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## **The different designs of public participation in Brazil: deliberation, power sharing and public ratification**

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The emergence of participatory institutions in Latin America is today an established phenomenon and has generated a vast corpus of literature. Among all the participatory mechanisms that have recently been incorporated, participatory budgeting appears to be the one that has received the greatest attention. Since its introduction in Porto Alegre, participatory budgeting has become world famous and has been exported to other parts of Brazil, Latin America and Europe. Participatory budgeting, however, is not the only available form of institutionalized participation in Latin America. Policy councils in the areas of health and social assistance have thrived in Brazil and today involve tens of thousands of participants. Participatory planning in cities was greatly enhanced after the creation of the Ministry of Cities and today takes place in more than a 1000 cities in Brazil. This article analyzes participation in Brazil in the light of its different designs. Our aim is to de-center the debate on participation from participatory budgeting and argue for the relevance of context in decision-making and participation.

**Keywords:** participatory budgeting; constitution-making; participatory design; policy councils; city master plans

The emergence of participatory institutions in Latin America is today an established phenomenon and has generated a vast corpus of literature (Abers 2000, Dagnino 2002, Avritzer 2002, 2009, Fung and Wright 2003, Wampler and Avritzer 2004, Baiocchi 2005, Wampler 2007, Seele and Peruzzotti 2009). The stabilization of democratic regimes in the region opened a door for exploring new avenues for civic participation to broaden and reinforce the role and voice of citizens in the policymaking process. Participatory mechanisms hope to complement electoral mechanisms with new points of communication between public authorities and civil society. They seek to deepen democracy by moving beyond the minimal understanding of democratic participation that characterized realist or elitist visions of the political process (Przeworski 2010). In this sense, the continent has become a rich field of institutional experimentation where different sorts of participatory designs are being developed and implemented, from participatory budgeting in Brazil and Argentina to citizen councils in Bolivia.

Among all the participatory mechanisms that have recently been incorporated, participatory budgeting appears as the one that has received the greatest attention. Since its introduction in Porto Alegre, participatory budgeting has become famous worldwide and has been exported to other parts of Brazil, of Latin America (Seele and Peruzzotti 2009)

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and Europe (Sintomer *et al.* 2008). Participatory budgeting, however, is not the only available form of institutionalized participation in Latin America. Policy councils in the areas of health and social assistance (Cornwall and Coelho 2006) have thrived in Brazil and today involve tens of thousands of participants. Participatory planning in cities (Saule 2005) was greatly enhanced after the creation of the Ministry of the Cities and today takes place in more than 1000 cities in Brazil (Brazil 2011). Civic monitoring of election results in the way it was done by Alianza Civica in Mexico (Aguayo 1996) is common in many countries, as is participation in environmental issues (Abers and Keck 2006). All these examples show the variety and diversity of mechanisms oriented to promote the participation of previously disengaged sectors of the citizenry.

However, while there is an extensive literature that describes the genealogy and process of implementation of these participatory structures, there have been few attempts to systematically compare and evaluate the workings of these mechanisms in different political and institutional contexts, to analyze their respective impact on public policies as well as their role within democracy. This article will argue that the need to expand participatory policies in Brazil, as well as in other parts of the world, requires a more careful evaluation of the impacts of participatory deliberation on public policies. What is the contribution of the new structures to representative government? Are they helping in the implementation of public policies? Which are the different impacts of the different participatory designs? In which specific ways do these instances of institutionalized participation contribute to enhance democracy? These are some of the questions that this article hopes to address. I will argue that the impact of different participatory designs on public policy is different, and that policymakers who seek to deepen democratic participation should choose from different designs according to the context in which these policies will be carried out. In brief, it is imperative to go beyond a laudatory approach to participation to specify which of those democratic innovations contribute to the improvement of democratic practices by adding an element that helps strengthen the ideal of democratic public policies that may make democracy more legitimate in the eyes of the common citizen.

This article has two parts: in the first part I will delineate three main designs through which participatory policies are carried out in Brazil: the bottom-up, power-sharing and ratification designs. In the second part I will show the different results of the implementation of these designs in four Brazilian cities, Porto Alegre, Belo Horizonte, São Paulo and Salvador.

### **Constitution-making, participation and representation in Latin America**

The literature on participation has frequently ignored the important role of constitution-making in the establishment of participatory formats of democracy (Abers 2000, Dagnino 2002, Avritzer 2002, Fung and Wright 2003). However, the emergence of new conceptions of constitution-making is now being established by the literature (Couto and Arantes 2006, Gargarella 2010). The stabilization of democratic regimes in the region has opened up a door for exploring new avenues for civic participation to broaden and reinforce the role and voice of citizens in both constitution-making and the policymaking process. However, most of the literature so far has concentrated on the participatory process.

Constitution-making played a smaller role in the Latin America during the twentieth century in spite of its importance at the moment of independence (Gargarella 2010). Then, a tradition of new constitutionalism emerged in Brazil and Colombia during the 1980s and 1990s. In this article, I will approach only the Brazilian case.<sup>1</sup> The Brazilian constitutional tradition emerged together with the country's democratization during the 1980s. In the

same way that Brazil's democracy bloomed in a small span of time, the country's tradition of an independent judiciary and judicial review also developed very rapidly. Brazil passed through an intense process of social and political democratization that led to the Constituent assembly of 1987–8 (Kingstone and Power 2008). The Brazilian Constituent Assembly was very democratic, and it accepted popular amendments to articles or chapters of the constitution put forward by civil society associations<sup>2</sup> (Whitaker 1994).

The basic structure of the Brazilian constitution is a chapter on rights, civil and political, that the constitution itself places beyond revision by the executive branch or through judicial review. Second, the constitution established a structure of division of powers that changed the balance of the three main branches of government and created a fourth one, which is the *Ministerio Publico*, a branch in charge of the defense of diffused rights (Arantes 1999). In regard to the balance between the branches of government, the constitution kept the tradition of a strong executive branch of government and also broadened the prerogatives of the Brazilian judiciary through the institutionalization of judicial review. Third, although the basic Brazilian constitutional document is not as long as the Indian one, it is very long, with several chapters on social rights, one on health, one on social assistance, and one on child and teenager policies; and it also has a long chapter on urban policies. All these chapters reduced the prerogatives of the National Congress on the elaboration of social policies and gave broad prerogatives to social participation in these areas.

There is an additional point that should be taken into account in the new Brazilian constitutional format, and that is the great increase in forms of participation. Article 1 of the Brazilian constitution points out that sovereignty rests in the people and can be exercised through its representatives and in direct form. This is the preamble to a highly participatory constitution in which 14 articles deal with participation in some form. All direct forms of participation are anticipated in article 14: plebiscite, referendum and direct law initiative. In addition to that, as I pointed out above, all major public policies involve participatory councils. In addition to that, the National Congress has the prerogative to accept legal initiatives from civil society and there is a Congressional Committee in charge of receiving civil society legal initiatives. And, last but not least, the Supreme Court is allowed to receive inputs from civil society. It has transformed this principle into law and so far six public audiences have been carried out by the Brazilian Supreme Court. All these participatory mechanisms have made Brazil one of the most participatory countries in the world today. They offset a weakened National Congress whose legitimacy is very low.<sup>3</sup> Thus, my point here regarding constitution-making is that for a participatory tradition to become strong it needs to be based in a constitutional tradition that is at least friendly to participation. Brazil's 1988 constitution fulfilled this role.

New participatory institutions represent a significant contribution to democratic practices and democratic theory. They create a new locus between representation and participation, as well as new ways of understanding constitutional politics. However, there is one danger regarding the operation of these new institutions, namely the possibility that they may become reified and their model start to be critically defended or introduced into policies in which they cannot play a significant role. In brief, it is imperative to go beyond a laudatory approach to participation to specify which of these democratic innovations contribute to the improvement of public policies and in which way they accomplish this aim. In order to do so it is necessary to broaden the survey of democratic practices and to move the debate away from participatory budgeting. I will do it in the next section of this article.

### **The three formats of participation in Brazil**

The 1990s were the moment of creation of participatory institutions in Brazil. Most of the participatory institutions that would play a significant role in Brazil either emerged in this period or were legislatively proposed during it, due to the 1988 Constitutional requirement for normal legislation for all social policies chapters.<sup>4</sup> Each of these institutions had a different form, emerged from a different civil society practice, and required different types of action from political parties, in particular, the PT (Workers Party). The new participatory institutions that emerged in Brazil in the 1990s involved three different institutional designs: bottom-up designs, which are open-entry forms of participation that generate policies through a large participatory input; power-sharing designs, which are hybrid institutions with state and civil society participation and which generate policies in which civil society representatives have input; and ratification designs, in which public audiences approve or reject policies proposed by the local government. I will explain these designs in the rest of this section by discussing how they emerged and how they operate in these different contexts.

Bottom-up designs are the most radically democratic participatory institutions that emerged in democratic Brazil. They are called bottom-up due to the fact that they are absolutely open-ended at the grass-roots level. All citizens can participate in these institutions at the grass-roots level. Participatory budgeting is the best example of a bottom-up design. Every citizen who lives in a neighborhood may join its regional assemblies, making it an open entry form of participation. The second characteristic of bottom-up design is the low involvement of the government in the decision-making process. In bottom-up designs, most of the time the government limits itself to being a facilitator of the deliberative process. Here again, participatory budgeting is the best example of a bottom-up design, due to the fact that the city administration does not have a vote (it only has voice) in the participatory process. The third characteristic of bottom-up designs is the formation of an all-civil-society body at the upper level. This body tends to dispute power with the local administration and represents the overall interests of the whole participatory process. Participatory budgeting is the best example of this design since it has a council that is formed by an all-civil-society constituency. The main characteristic of bottom-up designs is their radical democratic format. The reason why they are more democratic than other designs is because they are more experimental and more flexible in the sense that participants can disagree on the many rules and change them.<sup>5</sup> Experimentation is one of the key characteristics of bottom-up institutions. They are not designed in advance, but are rather the product of a complex interaction between citizens and the local state (Avritzer 2002). However, these characteristics make bottom-up designs effective only in situations of deep agreement between civil and political society actors.

Participatory budgeting as a bottom-up design emerged in Porto Alegre and could only have emerged there (Baiocchi 2005). Participatory budgeting was created as a local compromise between the proposals of Uniao das Associacoes de Moradores de Porto Alegre (UAMPA), a very radical umbrella organization of neighborhood associations, and a very homogeneous political party in the city, the PT. UAMPA had been seeking participation in the budget since the mid-1980s and only a party with grassroots constituencies could have met this demand (Avritzer 2006). Participatory budgeting emerged as a proposal for deliberation on the distribution of public goods at the urban level at the beginning of the democratization process in Porto Alegre (Abers 2000, Avritzer 2002, Baiocchi 2005). At the beginning of this process, UAMPA proposed the participation of the population in regional assemblies in which members of neighborhood associations would decide on

budget issues (Avritzer 2002). In addition, it was members of UAMPA and local neighborhood associations who demanded the redesign of the administrative districts of Porto Alegre in order to adapt them to the participatory dynamics of social movements. The other innovations in institutional design should be attributed to the PT. The PT proposed the following institutional elements of participatory budgeting: (1) a council that would work with the local administration on the final budget; (2) technical criteria for deliberating on the distribution of resources for each region. But above all, the PT's role in Porto Alegre was to insist that only through the participatory process could social actors and their respective communities get access to public goods. Thus, the bottom-up format of participatory budgeting is not only a matter of design but is rather the result of a long process of organization among local social actors in the city of Porto Alegre.

Participatory institutions are not the result of one proposal made by one actor; rather, they are the result of multiple actors' initiatives. In the Porto Alegre context of a very active civil and political society, creating a structure that integrated open-access assemblies with a representative council was a good solution for actors from both civil society associations and the PT. In addition to that, it should be pointed out that bottom-up designs require lots of political will. The design of participatory budgeting with open entry assemblies did not work well immediately and it took the administration of Porto Alegre a lot of guts to authorize budget assignments in regions where the decisions were taken with very few participants during the two initial years, 1990 and 1991. Eventually, participation in the other regions overtook participation in regions with previous tradition of civil society organization. Thus, bottom-up design involves a lot of organization and political will both by civil society leaders and political party leaderships in order to become effective, and it poses many risks that cannot be underestimated. However, what most authors who deal with the expansion of participatory budgeting miss is that the institution remains dependent upon the conditions present in its initial context.

The second design that emerged in Brazil during the 1990s is called a power-sharing design. Power-sharing designs are less participatory than bottom-up designs. Although they do allow for very limited forms of participation at the grassroots level, from the very beginning they also include forms of representation by civil society actors. Civil society associations elect or indicate members of their constituencies to participate in these participatory institutions. Each council has a certain number of members and civil society representatives need to have parity with state administrators. Thus, in a council of 14 members, civil society associations elect or nominate seven members. The second characteristic of power-sharing designs is that civil society actors share decision-making with state actors within a common decision-making framework. For instance, every city in Brazil needs to have a social assistance plan and this plan needs to be approved by social assistance councils. Within these councils, civil society and state representatives share decision-making power, with each side having half of the members of the council. The third element of power-sharing designs is that they are legally institutionalized, that is to say, they are mandatory and the implementation of decisions is required by law. There are policies that can only be carried out through joint decisions between state and power-sharing institutions.

Health councils are the best-known case of a power-sharing design in Brazil. There is, in Brazil, a limited open-entry form of participation in health, which involves what are called Health Conferences. However, most of the daily decisions in the area of health are taken within health councils. The main characteristic of civil society participation in health councils is that it takes place through the election of civil society representatives and it involves more deliberation and negotiation than participation.



A power-sharing design may not be as participatory as a bottom-up design because it is institutionalized and because the state has more prerogatives in the determination of the format for participation. However, power-sharing institutions are less dependent upon the will of political society for their implementation. There are many cases of suspension of federal government funds for health in the case of lack of compliance with health councils' decisions. The most important instance of this happened in the city of São Paulo, throughout a very conservative administration by a right-wing politician, Paulo Maluf (Junqueira 2002). This lack of dependency on the political is due to the way their design incorporated mandatory sanctions against governments that fail to implement their decisions. Thus, in spite of being less participatory, power-sharing designs are a form of participation that produces important effects on the formulation of public policies.

As with bottom-up participatory institutions, the emergence of power-sharing participatory institutions is a case of interactive design. The origin of the power-sharing format can be traced to the popular movement for the improvement of health conditions that emerged in São Paulo during the late 1970s. The format of health councils emerged in the eastern district of São Paulo at the beginning of the democratization process (Avritzer 2009). However, the council format that emerged after the mobilizations in the eastern district of São Paulo did not incorporate, at that point, the acknowledgement of a joint deliberative format between civil society and the state. The councils initially had an all-civil-society format. It would take two additional moments, the Eighth National Health Conference in 1986 and the Constituent Assembly (1987–8), for the health movement to reach the power-sharing format. The popular health movement and the sanitary movement joined forces during the Eighth National Health Conference, where the agenda for the Constitutional Assembly was established. The popular health movement demanded a state-run health system but was defeated by *sanitaristas* and politicians linked to the health movement who advocated a mixed system that became the most popular proposal for the Constituent Assembly. In this mixed system, the idea of local councils with community participation was preserved. Thus, in a way similar to the case of participatory budgeting, in the case of power-sharing, the format emerged progressively through the actions of different social actors with different concerns. The popular health movement linked councils to participation and the *sanitaristas* introduced the state into the participatory equation. Thus, among the main institutional devices introduced in the area of health, civil society played a key role in two: (1) the idea of deliberation by civil society actors; (2) the idea of incorporating regional representatives into health councils. Political society's role in the implementation of participatory institutions in the area of health was to propose a mixed format between civil society and state actors. There is one major difference between the cases of participatory budgeting and the health councils that emerged from the different paths of construction of their participatory formats: participatory budgeting remains completely dependent upon the will of political society to release its budgeting prerogatives. Health councils are less dependent upon the will of political society (parties and parliament). Instead, they are more dependent upon the organizational skill of civil society, that is to say how well organized civil society is and how able to pressure the state it is. This is a major difference between bottom-up and power-sharing designs.

The third type of participatory design introduced in democratic Brazil is what I call the ratification design. A ratification design's first characteristic is that participation does not replace the state's prerogative in a specific policymaking process. Ratification is a participatory act that follows a proposal for public policy made by the state. The best example of a ratification design in Brazil is the approval process for city master plans. These plans are proposed by the administration and approved or rejected in public assemblies.

These public assemblies are open-ended assemblies at the regional level that resemble the regional assemblies that are part of participatory budgeting. However, there is one main difference in their functioning: in a ratification assembly, participants can either approve or reject state proposals. They are not able to deliberate on the content of those proposals, as in participatory budgeting and the health councils. The second characteristic of a ratification design is its mandatory nature. The state or local administration has to prove that it has held at least two public meetings. Otherwise, the proposal for a city master plan becomes null. There are several cases of city master plans being cancelled, the most important among them being the one that took place in Salvador between 2002 and 2003 (see more below). A ratification design is obviously the least empowering among the three designs analyzed, because it does not involve giving civil society actors deliberative powers in the elaboration of urban policy. However, because it is the only one in which non-compliance with a requirement to facilitate participation can block state action, it is also the participatory institution that is least dependent upon the will of political society.

The emergence of the ratification design is similar to the other two cases. The *Movimento Nacional pela Reforma Urbana* (MNRU), an umbrella association for urban reform created in 1982 during Brazilian democratization, proposed a popular amendment during the Constituent Assembly. The amendment was very well received on the floor of the Constituent Assembly. However, at the last minute, conservative sectors tied its implementation to infra-constitutional legislation (see note 4) on the so-called ‘Master Plans’. Thus, the constitutional text provided legal instruments for democratizing the city but did not create legal sanctions for non-compliance. The constitution required what in the Brazilian legal tradition is called ‘regulation’. Here again, an un-anticipated relation between city master plans and participation at the urban level would emerge in Brazil.

A 14-year battle followed the approval of the constitution through which the MNRU became the FNRU (National Forum for Urban Reform) before the regulation of the constitutional chapter on urban reform took place. First, the FNRU tried to find a sponsor for its legislation (a very common legal strategy in the Brazilian Congress) and later it took up the Pompeu de Sousa Law Project, trying to amend it in Congress. Pompeu de Sousa was a liberal senator with great influence in the Senate whose proposals, with a few amendments, could be turned into a good legal project. Among the main institutional devices of the Statute of the City, the FNRU proposed the following: (1) mandatory popular consultation on urban reform; (2) legal blocking of executive action in urban reform, that is to say, in spite of the executive branch prerogative to implement urban law, the legal system suspends its enforcement. After a very long process in the Brazilian Congress they were both incorporated in the legal proposal that was approved in 2001.

The most important element of ratification designs is the possibility of blocking the actions of the executive branch of government. Among the three participatory design types discussed, ratification designs are the least participatory. They keep the prerogatives of the state in making public policy proposals independent of the will of civil society. However, ratification designs are the most effective in situations in which both civil society organizations and progressive political society, i.e. left parties, are not strong. Thus, the consequences produced by different designs are as important as the origin of the institutional innovation. I will show in the next section of this article that these consequences are linked to three characteristics of participatory institutions: the way they propitiate experimentation; the way they allow the crafting of flexible rules; and the way they create binding constraints on state action. Table 1 illustrates the variation in the design of participatory institutions.



Table 1. Variation in participatory designs.

	Type of design	Origin	Main positive characteristic	Main limitation
Participatory budgeting	Bottom-up	Civil society and political society interaction in Porto Alegre	Deep distributive effect	Remains dependent on the characteristics of the initial context
Health councils	Power-sharing	Civil society demands on the state in São Paulo	Relevant distributive effect	Has fewer deliberative elements
City master plans	Ratification	Civil society and political society negotiations in Congress	Can block powerholders in situations that are unfavorable for civil society	Has very few deliberative element.

### The operation of the three participatory designs in Brazil

There have been two waves of studies on participation in public policies in Brazil. The first wave was made up of single case studies concentrated in one or two cities. The most important studies in this first phase were Rebecca Abers' book on Porto Alegre, Baiocchi's book on Porto Alegre, Cortez's work on health councils in Porto Alegre and Sader's work on health councils in São Paulo (Sader 1988, Abers 2000, Cortez 2003, Baiocchi 2005). Most of the studies of the first phase were of successful cases and they were used to highlight positive characteristics of participation regardless of context. The second wave of studies is now presenting larger comparisons of more than one case in several cities. These are the studies that may help us understand why variation in design is so important for the success of participation.

In my recent work (Avritzer 2009), I compared 11 cases of participation in four cities which have extreme cases of participation. I compared different cases of participatory budgeting, health councils and city master plans in cities offering different political contexts, namely, Porto Alegre, Belo Horizonte, São Paulo and Salvador, in order to show the relevance of design. Allow me to briefly describe the context in each one of these cities.

Porto Alegre is the classical participatory case with a strong civil society and a strong and united PT (at least until 1998) implementing different formats of participation since 1990 (Abers 2000). Civil society strength in Porto Alegre goes back at least to the 1950s when neighborhood associations in the city created a federation of associations. At that point neighborhood associations were much weaker and more clientelistic in larger Brazilian cities such as São Paulo (Brandt 1980). The PT in Porto Alegre also has particular characteristics in exhibiting a certain consensus among its leadership on the importance of participation. Thus, Porto Alegre has to be singled out for strong civil and political society support for participation. Belo Horizonte's experience has differed from Porto Alegre's in at least two ways: Belo Horizonte also has a strong civil society organization and a strong PT presence, but neither is as strong as in Porto Alegre. Belo Horizonte has a weaker civil society organization than in Porto Alegre, and lacks an umbrella organization which could play the role that UAMPA has played. Belo Horizonte also has a PT that is not as participatory as the one in Porto Alegre. During the first PT administration in Belo Horizonte, the mayoral group agreed to introduce participatory budgeting, but it did not introduce a council in the same way as in Porto Alegre. The result was a more moderate experience of participation. However, participatory budgeting in Belo Horizonte has still been successful in the sense that it has existed for more than 15 years, nearly 1000 public works have been implemented, and close to 100 reals per person were distributed in the poor regions of the city. However, Belo Horizonte's participatory budgeting differs from Porto Alegre's in its centrality within public administration as well as in the value of the investments it allocates. Belo Horizonte's participatory budgeting does not centralize all the city's social policies and operates in tandem with other participatory policies.

The most instructive case regarding the expansion of participatory budgeting and its limits was São Paulo. São Paulo's civil society was as organized as Porto Alegre's or Belo Horizonte's at the beginning of the participatory processes in Brazil, in the early 1990s. In Porto Alegre and Belo Horizonte, civil society generalized itself beyond its original strongholds through the participatory processes. This is precisely what São Paulo has failed to do. Organized civil society became contained in one of the city's regions, the eastern district, hindering the expansion of the process.<sup>6</sup> In the case of political society, São Paulo's PT was less participatory than Porto Alegre's and Belo Horizonte's. The PT has three main origins, the Catholic Church, the new left and new unionism. Particularly in São Paulo the

new left was the majoritarian political group, and was chaired by Jose Dirceu. This group has had an old left anti-participatory orientation and has made participatory policies more contentious within PT administrations in the city. The consequence of weaker civil society and a divided PT was that São Paulo's administration put less priority on participatory budgeting, with most of its investments plans reaching less than 100 reais per capita in the poor regions, if we include programs already decided at the level of government, such as the Family Health Programs (PSF). In addition to that only 40% of the investment plans were implemented in São Paulo whereas Belo Horizonte and Porto Alegre made effective more than 90% of the investment plans in their first 12 years of participatory budgeting.

Porto Alegre, Belo Horizonte and São Paulo's cases allow us to demonstrate the variation in the effectiveness of participatory institutions in reallocating power and resources. I call this element the effectiveness of bottom-up designs. Bottom-up designs emerge under very specific conditions. Participatory budgeting first emerged in Porto Alegre and most likely could only have emerged in a city with both a strong civil society and a political dispute centered on left parties. However, our analysis of the expansion of participatory budgeting showed that it could also work well in Belo Horizonte under less favorable conditions. In this sense, distinguishing between conditions of emergence and conditions of expansion can help us understand what differentiates Porto Alegre from Belo Horizonte. My point in relation to bottom-up participatory designs is that they are the most democratic and the most distributive participatory institutions when they work well. However, it is also the most demanding participatory institution and the one that poses the largest number of requirements, such as a strong civil society and a united political society. In addition, bottom-up designs are the participatory institution most easily disrupted by a hostile political society.

The second important element of participatory budgeting as a bottom-up participatory design is its lack of effectiveness expressed by low budgetary commitments where political society is less ready to carry it out. São Paulo, with its lack of strong deliberative practices as well as sanction mechanisms for non-implementation, shows that effectiveness becomes the main concern in weak cases. This case calls attention to an issue that has often been ignored by advocates of expanding participatory budgeting, namely, that under unfavorable conditions it generates less democratic and less distributive results than other participatory institutions such as health councils. In order to prove this point better, we analyzed three additional cases of health councils focusing on a second element of participatory designs, namely, the sanction element.

Health councils were the second participatory design analyzed in this article. Health councils are not bottom-up participatory institutions, at least not in the same sense as participatory budgeting. Health councils' institutional difference has to do with the concern of public health professionals for state action throughout Brazilian democratization, leading to what I call a power-sharing participatory design. Health councils in three cities – São Paulo, Belo Horizonte and Porto Alegre – diverge from participatory budgeting insofar as the willingness of political society to carry out the participatory policy is relativized by the cities' obligation to implement the councils.

São Paulo makes for an instructive comparison because of the problems participatory budgeting faced in the city. Health councils are a very important institution in the city due to the historical origins of the health popular movement in its eastern district. However, unlike with participatory budgeting, where the inability of civil society to spread to the city as a whole (see note 6) became the main hindrance to deliberative and distributive effectiveness, São Paulo's health council produced both deliberative and distributive effects.

The most important democratizing effect of São Paulo's health council is the effort of the council to define participation and to avoid cooptation. Both the Maluf and Pitta right-wing administrations (1993–6 and 1997–2000) sought to manipulate civil society representation in the council by including private providers of health services in civil society quotas, openly manipulating the election of civil society representatives, or even not calling the council for deliberation as the law required. The council reacted by further specifying civil society representatives. The council constitution was rewritten in 2001 to stipulate that in order to have one of its members elected, a civil society association must have existed for at least a year and show regular activities in the area during the period. This demonstrates a civil society organization's capacity to defend its role in participatory policies.

The most important distributive effect of the councils is increased access of the poor to medical appointments and the amount of money spent on these appointments. Table 2 shows these data for Porto Alegre, Belo Horizonte and São Paulo. If we look into the number of appointments, Porto Alegre runs first, but São Paulo runs close to Belo Horizonte. When we look at the amount of money spent per medical appointment we note the following data: the city of São Paulo comes first, ahead of Porto Alegre. Thus, we can see that in spite of conservative administrations, São Paulo's health policies have distributive effects.<sup>7</sup>

Thus, the performance of the two participatory institutions in São Paulo differs: in the case of participatory budgeting, a classic bottom-up design, its dependency on political society undermined its implementation; whereas in the case of health councils, even under unfavorable administrations, we observe positive democratizing and distributive effects. I attribute this difference to two design elements: first, the fact that levels of mobilization do not have to be as high in councils; and second, the sanctioning of state actors for non-compliance with the rules of participation. Thus, we can note two elements that differentiate between the two types of design: civil society organization connected with mandatory sanction in case of non-compliance is the element that differentiates power-sharing from bottom-up designs.

And last but not least, there are ratification designs. The new element of design that I have singled out is sanction through the judicial system associated with the blocking of executive branch actions. Though city master plans are the less empowering and less deliberative among the participatory institutions, the sanction element makes the participatory institution enforceable in environments hostile to participation.

Porto Alegre and Belo Horizonte are similar cases and will be analyzed together. I have already shown the success of participatory budgeting and health councils in both cities, a success I attributed to the strong organization of civil society and a strong participatory consensus within political society. These are features I called participatory publics in my earlier work (Avritzer 2002). The same analysis holds true for city master plans. Belo

Table 2. Health performance in selected Brazilian capitals (data for 2000–1).

	Health appointments per capita	Hospital beds provided by the city	Amount of money spent per appointment (in Brazilian reais)	Infant mortality due to gastroenteritis per 1000
Porto Alegre	4.13	247	6.17	0.67
Belo Horizonte	2.29	333	1.52	1.35
São Paulo	2.27	2.686	7.01	2.61

Source: Datasus (2002).

Horizonte's city master plan is the oldest of the four and was approved in the first year of its PT administration. Porto Alegre is very similar to Belo Horizonte. The city proposed its master plan as a result of the First Congress of the City. It was elaborated and sent to the city council in 1996. The plan was only approved by the city council after going back to civil society for a broad debate. One feature of the Porto Alegre case that should be singled out is the fact that in Porto Alegre the courts decided to legalize the occupation of public land by the poor, a kind of legal activism that would not occur elsewhere. The issue that still needs elaboration is which participatory institutions fit in a situation of strong civil society and a political society hostile to participation? The attempt to answer this question led me to examine the cases of São Paulo and Salvador in the attempt to differentiate power-sharing institutions from ratification participatory institutions in their effectiveness.

São Paulo is also key to understanding the complexities of different institutional designs in the case of city master plans. Its city master plan was proposed by Marta Suplicy, the city mayor elected in 2000, a few months after her inauguration and involved negotiations among civil society actors, urban planners, real estate interests, and city council. The first proposed plan, which involved important issues such as progressive taxation on property, was submitted to public audiences and approved. However, the real estate interests challenged the plan in the courts, claiming that their participation had been unduly limited because the city did not accept real estate companies in the category of civil society associations. The courts accepted the claim and a new round of public meetings followed in which the plan was kept intact. In the end, the key negotiation took place within the city council and involved adapting the plan to specific real estate interests in terms of zoning. Yet, in the long term São Paulo's master plan organized the city's expansion, curbed long-term land flipping, and gave the city instruments to pursue the settlement of the poor. The deliberation of São Paulo's city master plan shows the differences between the three forms of participatory design discussed. Participatory budgeting did not work well in the city due to the lack of a strong civil society across the city, particularly in electoral zones problematic for the Workers Party. Second, São Paulo lacked a strong participatory consensus within the Workers Party and had an anti-participatory consensus in the opposition parties. Yet, São Paulo's health councils and city master plans seem to be good examples of the successful introduction of participation in public policy.

São Paulo health councils were successful after struggles with conservative administrations. They organized an important expansion of health posts to the outskirts of the city which increased the access of poor sectors to health services. Its city master plan seems also to be a positive case: conservative sectors were included in the negotiations, but in the end the city still had a progressive master plan. The difference between power-sharing designs and bottom-up designs seems to be the greater capacity of ratification to produce citywide deliberation among plural interests.

A few remarks about the case of Salvador are also important, due to the long-term hegemony of conservative sectors in city politics. Its city master plan was elaborated between 1999 and 2002. In 1999, the city hired a private consultancy to provide it with a preliminary diagnosis of urban development needs. Not much information is available on what took place at this stage. Yet the important point is that no civil society associations or urban planning movements participated, allowing the administration to make its own diagnosis based on real estate interests. In 2003, the city set up two public audiences to collect suggestions for its master plan. One audience took place and the other did not due to lack of publicity. Although the law requires more than one public audience during the elaboration of the plan, Salvador Mayor Antônio Imbassay sent the proposed

master plan to City Hall, ignoring the fact that it failed to meet Statute of the City requirements. Salvador's Federation of Neighborhood Associations and the city section of the Brazilian Bar Association (OAB) asked the city public prosecutor (*ministerio publico*) to file a civil suit against the law (Caribe 2005). It won on 12 November 2003, annulling the process.

Salvador is a good contrasting case that allows us to see participatory designs in comparative perspective. None of the other participatory designs that we have discussed so far has been effective there. Participatory budgeting was not introduced in the city until 2004, when conservative forces were defeated at the polls. Salvador designed its health councils in order to avoid civil society participation in health policy. Salvador's case of ratification design shows that in a context in which both civil society and progressive political society are weak, the city statute mattered and it has been possible to use it to block the actions of conservative sectors. This is an additional dimension of ratification designs that is lacking in bottom-up and power-sharing designs. Participatory institutions can also be designed in order to block undesirable actions. Public ratification design has the advantage of requiring the engagement of multiple social actors in the elaboration of urban policy. When real participation is absent, the plan can be nullified, as indeed happened. It is possible to propose a new element of a typology on the likelihood of success in the operation of participatory institutions. Ratification institutions work well in contexts in which both bottom-up institutions and power-sharing institutions are not successful. The key element in São Paulo and Salvador is that these cases show that participation can be combined with institutions with sanction capacity.

### **Democracy in Latin America: the hybrid between participation and representation**

Since the early 1990s a group of important democratic experiments has been taking place in Latin America. I have singled out in this article, experiences of participation in Brazil; but I could have pointed out Buenos Aires, Rosário, or cities in Bolivia and Ecuador (Seele and Peruzzotti 2009). The origin of these new forms of participation may be found in the constitution-making processes and in participatory legislations that have emerged in the aftermath of authoritarianism. This is the case in Brazil and Chile, as well as those of Bolivia and Peru after the overthrow of Fujimori. These new experiments are opening new locations for the relationship between the state and social actors. However, in order for these experiments to become successful they need to be effective in their capacity to involve more people and distribute public good to the poor. In this article, I have made the point that there are several formats of participation and that their implementation should obey the logic of what can be more successful in terms of particular public policy implementations.

Latin American experiments on participation should also lead to a new relationship within democratic theory. European and North American democratic theorists most of the time have missed the scope and significance of the changes in democratic practice that have taken place in Latin America.<sup>8</sup> These changes started at the constitutional level as new constitutions introduced new institutional formats; and they ended up with a new hybrid between participation and representation. These changes were either ignored even by those who discuss democratic innovation, or adapted to debates within the European context. It is time to adapt democratic theory to the broad changes that have taken place both in Latin American and in other countries of the South. If there is no Latin American model of democracy, and I think there is no such a thing, there is no European or North American model either. However, we have not yet seen the emergence of a model of democracy that places together the different experiences in constitution-making and participation of the North and the South. It is now time to think about this new political project.



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## Notes

1. It is worth noting that the Colombian constitution of 1991 introduced many important innovations in constitutionalism. It introduced many devices that guarantee collective rights and it institutionalized different types of public audiences (*consultas*) regarding public policies. However, most of these devices are of difficult use in the context of civil war that prevailed in the country in the last decade. See Ramirez (2004).
2. The popular amendment proposal required 35,000 signatures in order to be considered by the systematization committee. Close to 10 popular amendments achieved the required number of subscriptions and were brought to the constitutional committee. In spite of the fact that none of them were fully approved part of their texts were incorporated into important articles such as the chapter on health, social assistance and urban politics.
3. Surveys on trust and/or presence of corruption point local law-making branches and the National Congress as the least trusted institutions in Brazil. Survey respondents see less corruption in the executive and judicial branches of government. See Filgueiras (2011).
4. Brazilian legal tradition, differently from the Anglo-Saxon tradition, requires additional laws to enforce constitutional chapters on public policies. This is done at the infra-constitutional level, i.e. through ordinary laws and decrees. These laws are known as constitutional regulations.
5. Participatory budgeting has been a good example of this kind of flexibility. The city of Porto Alegre designed participatory budgeting rules just for the first edition and after that rules were in charge of participatory budgeting council. They were changed almost every year based on inputs from participants.
6. There are many explanations for the inability to São Paulo's civil society to expand beyond the places where it emerged originally during the Brazilian democratization process (1977–82). One of the explanations is the break-up of the archdiocese of São Paulo by the pope in 1989. The periphery areas of São Paulo where social organization was most intense were taken out of the influence of the archdiocese. See Doimo (2004). Civil society organization in the city was deeply influenced by the break-up.
7. Coelho Pereira has also showed that the evolution in the number of appointments in São Paulo varies according to the medium income in the city different regions.
8. A good example of the divorce between democratic theorists and Latin American new democratic experiences is a new collection of essays on the limits of representation by Alonso and Keane. They continue to approach Latin American democracies as 'unstable new democracies'. See Alonso *et al.* (2011).

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