

# Rui Graça Feijó – Semi-Presidentialism in Portugal: Towards Co-Government?

This is a guest post by Rui Graça Feijó of CES/UCoimbra and IHC/UNLisboa

As 2016 was approaching its end, a popular political commentator-cum-humorist claimed that the major novelty of the year was the apparition on the scene of “Costelo”, suggesting that PM António COSTA had fused with PR Marcelo Rebelo de Sousa (MRS) in one single political entity. With all the exaggeration that all caricature implies, this joke struck a sensitive chord. In this post I wish to explore one side of this joke: what is driving the new PR to make it plausible?

In an earlier post, I suggested that the 2016 presidential elections had heralded a new era in Portuguese semi-presidentialism, reinforcing both the role of Parliament and the Presidency (see my post of 25 July 2016). The reasons for the resurgence of the presidency are manifold. First of all, the new PR is a reputed constitutionalist who wrote many pieces on the subject of presidential power, and he can be quoted expressing a view on presidential competences that goes beyond what others have expressed. Even if he is not known for the firmness of his positions which tend to evolve (and more than thirty years have elapsed since he first commented on the 1982 constitutional revision), there is a coherent background to the claim that presidential powers derived from a direct election without party mediation (as is his case) transcend a literal reading of the constitutional word and require the contemplation of a “material constitution” in Sartori’s sense that encompasses established practices, precedents, and even public expectations that do not run contrary to the formal law. Secondly, MRS was also a popular pundit who entered everybody’s home every Sunday evening expressing reputedly common sense ideas on political events, and was acutely aware that his predecessor, Cavaco Silva, had sank the popularity of the presidency to its record lowest levels – he left office with an overall negative rating of -13 points according to the regular barometer published by the weekly *Expresso*, the only president to have ever recorded negative ratings (some have been credited with +70 or more). The plummeting of popularity impaired his capacity to intervene on the political arena, as his failure to stop the novel convergence of the parliamentary left clearly demonstrated. For this reason, MRS, an expert on media communication, set himself the goal to reverse such course and dispute with former president Mario Soares (and to a lesser extent, Jorge Sampaio) the championship of popularity – and therefore increase his room for manoeuvre. It must be stated that he has been very successful in such endeavour, *Eurosondagem* barometer crediting him with circa +70 positive against -13 negative ratings. He has championed what he labels “a presidency of affections”, stepping down from a pedestal erected by Cavaco to mingle with the people. Few persons in the country do not possess a “selfie” with the president smiling in their midst. And for everybody, the president is “o Marcelo” – addressed by his first name preceded by the definite article that instils even more familiarity. The question to be raised is: what does the PR use his power for?

For one, he uses his power in line with other presidents have done. The strongest traditional competence is *le pouvoir d’empêcher*: to use his veto powers. Marcelo has done it on a few occasions (e.g., on bank

secrecy, changes in the status of metropolitan transport systems, and on surrogate motherhood – one bill he later signed after being amended in parliament in line with some of his suggestions) – none being critical for the survival of the parliamentary convergence sustaining the PM, almost all of them destined to send a signal to his conservative constituency.

If his “reaction powers” have not exceeded what might be expected, the use of “action powers” has proved to be somewhat more controversial. One of Marcelo’s idiosyncratic features is his alleged hyper-activism which brings him to issue comments and public statements on everything that goes under his nose – take for instance a note on the presidency’s official site expressing condolences on the passing of the English pop star George Michael, with no known special relation with Portugal. Other instances are politically more relevant, although not always coherent. For instance, Marcelo criticized the new salaries of the public commercial bank’s administrators (in tune with popular sentiments) but promulgated the law that allows them (arguing with the need to secure a “professional solution”).

In a political and institutional system in which the function of the president is distinct from the executive branch entrusted to the PM and his government, and is rather derived from Benjamin Constant’s notion of “pouvoir modérateur”, it is not a novelty that presidents have expressed their desire to “contribute” to political solutions that pertain to the realm of the executive. Mario Soares famous “open presidencies” were expressions of his agenda setting powers with important consequences in his so called “magistracy of influence”. Jorge Sampaio’s more subtle workshops of experts also set the tone for the intervention of the PR. Cavaco Silva boasted of having introduced amendments to a third of all bills brought before him (maybe in the memoirs he is currently writing he will explain this in detail). In all these instances – that constitute precedents for a PR who is thirsty of prominence – the presidential intervention was kept within the framework of separate powers, not invading the executive prerogatives. Will this hold true for Marcelo?

Fernando Pessoa, the modernist poet, coined the term “President-King” to allude to the brief term in office of Sidónio Pais during the First Republic – a charismatic figure that fell assassinated one year after seizing power in a coup and making himself elected by “universal” suffrage. This term was not supposed to evoke the 19th century constitutional monarchs who exercised a “moderating power” in Constant’s vein, but rather to the authoritative figure of an elusive, undisputed leader of yesteryear. This epithet has recently been retrieved in discussions about Marcelo’s self-ascribed role in national politics. In other words, several commentators and constitutionalists like Vital Moreira (an expert on presidential powers) fear he is mobilizing his enormous popularity and stepping on a thin line that defines the separation of powers. One recent example can be briefly discussed.

An important theatre company announced it was closing down after 43 years, suggesting that differences with public policies (dependent on the government) were to blame for the decision. Marcelo decided to attend their last performance, and the Minister for Culture felt compelled to follow him. Before the performance started, on stage, and with TV crews broadcasting the event, Marcelo debated with the minister the solution for this case.

Previous public decisions of presidents that allegedly interfered with the government competences were all carried through contacts with the PM – never directly with a minister, let alone in full public view. That was the case, for instance, with Jorge Sampaio who withdrew political confidence from one military chief and one minister, forcing the PM to propose their replacement, and who opposed the deployment of Portuguese troops in the Iraq war but did not debate the issue with the Minister for Defence but rather with the PM.

Even if Marcelo's view was not upheld by the Minister for Culture and the closing down of the theatre company could not be avoided, this episode signals the willingness of the PR to use all the instruments in his toolbox to advance his own agenda, grounded on his capacity to capture the popular sympathy. He did so on other occasions with more success. Two examples: Marcelo publicly stated he would veto a presumed government attempt (inscribed in the Socialist Party manifesto and the government official programme) to reform the metropolitan areas governing bodies – prompting the PM to abandon his electoral compromise. He also made it known he supported the continuation of important “Public-Private Partnerships” (and therefore of significant private sector interests) in the health sector. The Minister for Health agreed to give PPPs a new chance in conflict with the parliamentary left that supports the integration of all public hospitals in the NHS.

There will be no constitutional court to set the limits to the PR's initiatives. This will rather depend on the political relation of forces – and the force on the president's side sits with his capacity to mobilize public opinion. That will be the critical factor determining if he succeeds in imposing a share of executive competences at a time when the right of centre is facing severe partisan difficulties to sustain a modicum of influence after a turbulent four and a half years in power. The fact that Marcelo was elected on a rather “independent” platform with the ill-disguised antagonism of PSD and CDS leaderships, with whom he entertains cold relations as his agenda is perceived to be distinct from theirs, enhances his stance and the chances that he will leave a new imprint in the political system.

The Portuguese system is not grounded on the centrality of the presidency to advance political agendas, as one could argue to be the case in France. Carlos Jalali has stressed that the premiership is the most coveted job for active politicians, and political parties are organized round this fact. For this reason, the notion of “cohabitation” and the parallelism with France that it entails is somewhat misplaced to grasp the dynamics of the Portuguese situation. The tense relations between the president and the leadership of his political family's parties prevents one from considering his intervention as the surrogate for those who sit in the parliamentary minority, or to be strictly articulated with their strategies. Rather, it requires a new form of approach that considers at once the fact that the president has a personal agenda and that he intends to press for its implementation through what I suggest to call “co-government” on the limits of his constitutional powers, and clearly more aggressive than all other presidents after the revision of the Constitution in 1982.

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