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Brazil Needs a New Constitution

If a Constituent Assembly meets in 2023, and adopts a parliamentary form of government, its new Constitution will substantially reduce the risk of extremist power-grabs.

By Bruce Ackerman

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NOTE TO READERS: Since Google is particularly weak in translating Portuguese into English, I have provided my own version of this article. For the original Portuguese text, simply go to: https://www.correiobraziliense.com.br/app/noticia/opiniao/2020/07/13/internas_opiniao,871622/o-brasil-precisa-de-nova-constituicao.shtml

Brazil needs a new Constitution. Increasing numbers of Brazilians are losing faith in the system established in 1988. The political corruption revealed by Lava Jato, culminating in Bolsonaro's dictatorial and incompetent response to the Coronavirus crisis, have led ordinary citizens to fear that Brazilian democracy has no future.

The best way to respond to escalating anxiety is to convene a new Constituent Assembly in 2023. Once elected, the delegates should reconsider key decisions by the Assembly of 1988-- since they have, over the decades, generated the current crisis of public confidence.

So let us turn back the clock to 1988. The Constitution emerged an unprincipled compromise after Tancredo Neves' tragic death precipitated a bitter conflict between Jose Sarney and the center-left leaders of the Assembly.

These leaders had collaborated with Neves in creating the Democratic Movement Party to demand a decisive break from the military regime. They also formed a broader coalition with leftist movements led by Leonel Brizola's Democratic Labor Party and Lula's Worker's Party. Given their broad support, they were in a position to defend the Constituent Assembly's political independence against Sarney and the military.

The center-left coalition organized a nation-wide series of popular consultations, whose recommendations significantly shaped the Constitution. Fernando Henrique Cardoso also gave the leftist political parties a central role in the drafting process, which led them to include many strong commitments to social justice in "Project A," the first serious proposal to the Assembly. But the draft's central target was the system of presidential government that the military had used to maintain its grip on power. Project A proposed its immediate replacement by a parliamentary system.

This predictably generated intense opposition from Sarney and his military backers. But Project A was also unacceptable to the centrists of the Democratic Movement Party for a different

reason. While they backed a parliamentary system, they believed its strong leftist provisions were too extreme for their centrist views.

Given the split between left and center, it became plausible for the reformers to reach a “Compromise” with Sarney on the presidency. On the one hand, the two sides agreed to preserve the status quo for the next five years. On the other hand, the Compromise Constitution provided for a special plebiscite in 1993 to enable citizens to decide whether the parliamentary system should become the permanent framework for Brazilian democracy.

When the reformers accepted this compromise in 1988, they remained committed parliamentarians, and expected to win the 1993 plebiscite since the Democratic Movement Party was losing its electoral support.

But when 1993 arrived, another accident of history proved decisive. After winning the first free election in 1990, Fernando Collor was engulfed by corruption scandals that led to his impeachment and replacement by Itamar Franco, a man of indisputable personal integrity. When Franco took office in 1992, the general public was celebrating the “success” of the Compromise Constitution in enabling Franco to restore the integrity of Brazil’s transition to democracy.

As a consequence, voters overwhelmingly endorsed presidentialism in the 1993 referendum – despite the continuing commitment to a parliamentary system by leading centrists. The wisdom of the 1993 plebiscite was also confirmed by the presidential victories of Cardoso and Lula – two genuine statesmen who had played central roles in Brazil’s repudiation of military rule. The Compromise Constitution seemed vindicated once again when Dilma Rousseff was elected the first female President of the Republic.

And yet, it is now clear that Dilma’s victory served as the prologue to the last five years of popular disillusionment.

The polarization of contemporary Brazilian politics only serves to reinforce the critique of presidentialism advanced in 1988. A simple mathematical example will illustrate the key point. The Brazilian electorate is currently split into five factions of roughly equal size: the Radical Left, the Center-Left, the Centrists, the Center-Right and the Radical Right. Under a parliamentary system, the leader of the Center’s political party will typically join with the Center-Left and the Center-Right to form a governing coalition. In contrast, as the election of 2018 shows, it is all too easy for a candidate from the Radical Right to win the presidency even though he has the strong support of only 20 to 25 percent of the electorate. If the Constituent Assembly of 2023 adopts parliamentarianism, its new Constitution will greatly reduce the risk of extremist power-grabs in the future.

But before this can happen, members of the government elected in 2022 cannot be allowed to serve as Assembly delegates. Otherwise they will predictably oppose serious consideration of parliamentarianism and devote their energies to strengthening the power of the recently elected president – leading to further extremist victories in the future.

BRUCE ACKERMAN

Bruce Ackerman is Sterling Professor of Law and Political Science at Yale, and the author, most recently, of 'Revolutionary Constitutions: Charismatic Leadership and the Rule of Law' (Harvard University Press, 2019).