

BRAZIL + 30: THE LEGACY OF 30 YEARS OF DEMOCRACY AND CHALLENGES TO COME

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I. INTRODUCTION

The story of my adult life begins in 1975, ten years before the re-democratization of Brazil. I was 17 and preparing to enter college – as a matter of fact, college and law school. (For the Americans in the audience, law is an undergraduate degree in Brazil...). The so-called "years of lead" or *anos de chumbo* were being left behind, with the "slow, gradual and secure" *abertura* (or "opening-up") of the Geisel Administration. But the press was still under prior censorship, there was strong armed coercion of opponents of the military regime and episodes of torture still occurred here and there. A specific fact, occurred in October 1975, was my rite of passage to the real Brazil: the death of journalist Vladimir Herzog in the Second Army facilities in São Paulo. The official version was that he had been detained for questioning on suspicion of being part of a (non-violent) leftist organization, and committed suicide. However, combining several snippets of news published in the press, I was able to figure that he had died victim of torture and that the story of suicide was a fabrication². From there, clad in first youth Manichaeism, I knew who the enemy was and what side I wanted to be on.

In 1976, upon entering college, I joined the student movement in opposition to the military regime. The following year, in 1977, we supported the deflagration of the campaign for "ample, general and unrestricted" amnesty to political prisoners and Brazilians in exile. And a year later, in 1978, we participated in the early mobilization for the convening of a Constitutional Assembly. Well then: the dictatorship ended in 1985; the

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² A few things were out of place: Herzog was Jewish, but was not buried in the area of the Jewish cemetery that was reserved for those who had committed suicide. Dom Paulo Evaristo Arns, Cardinal Archbishop of São Paulo, celebrated an ecumenical service in the *Praça da Sé*, the Cathedral Square, in his memory. A very large crowd had attended the event. Like pieces of a puzzle that had been scrambled, I tried to understand why a Catholic authority celebrated a public ceremony in honor of a Jew who had committed suicide, attracting thousands of people. From this information, my little personal investigation confirmed the evidence: Herzog had been arbitrarily arrested and died under torture at the hands of the military authorities.

amnesty law arrived in 1979; and the new constitution in 1988. I learned from these experiences that History sometimes moves slowly; and, other times, moves fast. It is difficult to predict when it is going to be one way or the other. But despite this, our role is to push it. This is our mission, as citizens, as intellectuals, and as agents of social progress: to push History.

Just to complete the timeline, I recall two other significant dates leading up to re-democratization. In 1981, the investigation into the Riocentro incident, which should have determined if acts of terrorism had been committed by army officers, was closed, having presented a grossly false conclusion. There happened the *moral death* of the military regime. And in 1984, when more than a million people took to the streets calling for the end of the dictatorship, as part of the movement known as *Diretas Já* (“Direct Elections Now”), its *political death* took place. The election of Tancredo Neves and José Sarney, on January 15, 1985, was the death certificate of the dictatorship, and the beginning of letting go of the trauma it had caused. In the historic phrase that Mikhail Gorbachev would pronounce a few years later: “Killing the elephant is easy. Difficult is removing the corpse.”

Part I

THE LEGACY OF THIRTY YEARS OF DEMOCRACY

I. THREE POSITIVE HIGHLIGHTS

1. Institutional Stability

Since the end of the military regime and, even more so, after the historical milestone of the 1988 Constitution, Brazil is experiencing the longest period of institutional stability in its History. And these were not ordinary times. Throughout this period, the country lived through the persistence of hyperinflation – 1985 to 1994 –, with successive economic plans that did not work – *Cruzado I* and *II* (1986), *Bresser* (1987), *Collor I* (1990) and *Collor II* (1991) – and removal, by impeachment, of the first president elected after the return to democracy. Not to mention serious scandals, such as the *Anões do Orçamento* (the almost comically nicknamed “Budget Dwarfs”), the so-called “Mensalão” or the “Petrolão”, still ongoing. All these crises have been faced and overcome within the

framework of constitutional legality. It is impossible to overstate the importance of this fact, which has meant the conquest of many cycles of social retrogression. Brazil had always been the country of the coup d'état, of the military uprising, of the authoritarian changes to the rules of the game. Since Floriano Peixoto failed to call presidential elections, whilst succeeding Deodoro da Fonseca (the very first President of Brazil), until the Constitutional Amendment No. 1, when the military Ministers barred the vice president from taking office, putschism was a curse of the Republic. In this matter, only those who did not know the shadow shall fail to recognize the light.

2. Financial Stability

Everyone in Brazil who is 40 or older has lived part of their adult lives in an economic context of hyperinflation. The memory of inflation is an appalling one. Prices oscillated daily, those who had money invested it in the overnight market, and those who lived on wages saw their value depreciate every hour. The use of indexation – periodic price, credit and debt adjustments under a certain index – became widespread, which dramatically fed back into the inflationary process. To this date, a significant percentage of lawsuits filed before the Brazilian Judiciary is related to disputes about indexation and different economic plans that interfered with its application. Well then: with the *Plano Real*, implemented beginning on July 1, 1994, when Fernando Henrique Cardoso was the Finance Minister, inflation was finally tamed, starting a period of financial stability, with deindexation of the economy and the pursuit of fiscal balance. This is another milestone whose importance is impossible to exaggerate. To give an idea of the size of the problem, the cumulative inflation in the year of 1994 was 763.12% by July 1, which is the date that marks the beginning of the circulation of the new currency, the real. In the previous 12 months, it was 5153.50%. Inflation, as we know, is particularly perverse to the poor, who cannot protect themselves from the currency's loss of purchasing power. As a result, it aggravated the country's inequality gap.

3. Social Inclusion

Poverty and extreme inequality are indelible marks of Brazilian society. Although very unsatisfactory indicators still persist, the progress made since the return to

democracy is highly significant. According to IPEA, from 1985 to 2012, about 24.5 million people broke away from poverty, and 13.5 million more are no longer in extreme poverty conditions. Still according to the IPEA, in 2012 there were about 30 million people in need in Brazil (15.93% of the population), of which about 10 million were living in extreme poverty (5.29% of the population). The *Bolsa Familia* (that is, the Family Grant Program), implemented since the beginning of the Lula Administration in 2003, unified and expanded many existing social programs. A conditional cash transfer program, its conditions for eligibility are: children must be enrolled in school and have at least 85% of attendance; pregnant women should be up-to-date with their prenatal care; children must have current proof of timely vaccination. The program, according to data released in 2014, depicting a decade of operation, serves approximately 13.8 million families, equivalent to 50 million people, about a quarter of the population.

In the last three decades, the Brazilian Human Development Index – HDI, as measured by the United Nations Development Programme (UNDP), was the fastest growing among the countries in Latin America and the Caribbean. In these three decades, Brazilians gained 11.2 years of life expectancy and saw an income rise of 55.9%. In education, the school life expectancy of a child of school-entering age increased 53.5% (5.3 years). According to IBGE/PNAD, 98.4% of primary-school-aged children (6-14 years) are, in fact, in school. Progress is, therefore, remarkable. Nonetheless, some indicators are still very meager: illiteracy still affects 13 million people 15 years of age and up (8.5% of the population) and functional illiteracy (people with less than 4 years of education) reaches 17.8% of the population. Also with regard to inequality, there has been significant progress, but this continues to be a stigma for the country, as revealed by the Gini coefficient, which measures income inequality. Brazil boasts an uncomfortable 79th position on fair distribution of wealth.

II. TWO NEGATIVE HIGHLIGHTS

1. Excessive Constitutionalization and Instability of the Constitutional Text

The re-democratization of the country was institutionalized by the 1988 Constitution. It is not the case here of examining its many positive aspects, among which is the successful transition to a democratic regime. What is beyond doubt is that the

Constitution, rather than merely analytical, is a prolix/ Constitution, which deals with too many issues in an excessive level of detail. The Brazilian Constitution takes care of a wide range of subjects that, in most of the world's democracies, are left to politics and ordinary legislation. From this it follows that any meaningful change of the factual reality or political situation requires a change in the Constitution. This leads to two problems. The first one is that common politics in Brazil ends up being carried out through constitutional amendments. This means the need for three-fifths majorities, which is the quorum required to reform the Constitution, instead of simple majorities, sufficient for passing ordinary legislation. The second negative consequence is the instability of the constitutional text: the 1988 Constitution has already suffered, in 26 years, 86 amendments. Certainly, a world record of which, however, we should not be proud of. But there is one consolation: most of the amendments refer to matters that should not have been in the Constitution in the first place. The array of norms materially constitutional – on separation of powers, organization of the Federation and fundamental rights – has been subject to little change over the period and has remained thus relatively stable.

2. Shortcomings of the Political System

The Brazilian political system, in which members of the House of Representatives are elected in a proportional open party-list system, has become a factory of problems and bad news. Three of its greatest weaknesses are (i) the low representativeness, (ii) the centrality of money (and not political participation), and (iii) the fact that it induces corruption. The low representativeness stems from the fact that less than 10% (ten percent) of the candidates are elected with votes directed to them. Most are elected due to vote transfers, as each political party is entitled to a number of seats proportional to the amount of votes it received. The result is that voters do not know exactly who they elected. Worse; weeks after the election, they do not even remember whom they voted for. Campaigns costs are skyrocketing. Each candidate competes with everyone else – including and especially with those of his own party – across the entire geographic area of the state, since there is no division into districts. To be elected, candidates need to spend many times more than they will receive as compensation in a four-year term.

Unsurprisingly, campaign contributions have become the biggest source of corruption and embezzlement in the country, as documented by the successive

scandals, among which stand out the "Mensalão" and the "Petrolão", now ongoing. And, dare I say, the many others that might still emerge. The country desperately needs a political reform, even though it cannot produce minimum consensus on what to do. There are too many interests at stake. A good start would be to elect the goals that political reform should seek to accomplish, which I believe should include: (i) to increase representativeness; (ii) to lower the cost of elections; and (iii) to drastically reduce the number of political parties and give each of them a minimum of programmatic authenticity.

Part II

CHALLENGES TO COME

I. THE COMPLEXITY OF THE CURRENT MOMENT

Next I present a brief and objective description of the moment, complex and delicate, currently experienced by the country. This is a mere statement of fact, without any value judgment, tackling three distinct dimensions: an economic one, a political one, and one relating to society's perception.

I.1. ECONOMIC DIMENSION

1. Low growth rate: the country grew only 0.1% in 2014, the worst result among BRICS (which includes, in addition to Brazil, Russia, India, China, and South Africa). In the last three years, GDP had already had a more timid expansion than in previous years (2.7%, 1%, and 2.5%). The outlook for 2015 is not promising.
2. High inflation: in 2014, 6.41%, exceeding a target of 4.5%. In February, the cumulative rate of 12 months was 7.7%, the sixth highest in the world³.
3. Poor external balance: the item current account in the Balance of Payments had a \$91 billion deficit in 2014.
4. High levels of public expenditure and difficulties in enacting fiscal reform.
5. Decrease in private investment.
6. Signs of a rise in unemployment (according to the ILO, the rate increased from 6.5% in 2013 to 6.8% in 2014 and is expected to reach 7.3% in 2015).

³ Source: <http://www1.folha.uol.com.br/mercado/2015/03/1599501-taxa-de-inflacao-do-brasil-e-a-sexta-maior-do-mundo.shtml>.

7. Widespread loss of confidence.

I.2. POLITICAL DIMENSION

1. The President won the elections by a bare majority (51.64% against 48.36%) (just over 3 percentage points difference).
2. The House of Representatives has elected an opponent to the President of the Republic as its Leader (he served in the defeated presidential candidate's campaign and has adopted a stance of clear opposition).
3. The Leaders of the Senate and of the House of Representatives were included in the criminal investigation requested by the Head of the Federal Prosecutors' Office, and they accuse the government of having meddled in order to make that happen.
4. Accusations of corruption rendered in testimony offered as part of plea bargaining agreements pointed towards political parties in the ruling coalition, including and especially the Workers' Party.
5. Several popular protests, some spontaneous and other orchestrated, many of them with slogans calling for impeachment.

I.3. SOCIETY'S PERCEPTION AND PUBLIC OPINION DIMENSION

1. The corruption scandal at Petrobras has had a devastating effect on the social sentiment, as much for its magnitude as for the symbolic value of the company for the country.
2. All major building companies, responsible for the most important construction works in the country, seemed to be involved. This gives to corruption an endemic and widespread dimension. Suddenly, everything came under suspicion, from airports to hydroelectric plants, through roads and stadiums.
3. There is fear that there are more scandals to come, in other companies and state or quasi-state pension funds.
4. The middle class, the press, and most opinion leaders voted for the defeated candidate and nourish no affection for the President.
5. Some urgent measures in the economic sphere and related to fiscal reform are not only unpopular, but also contrary to some extent to the discourse of the winning presidential campaign.

II. SOME OTHER OBSERVATIONS

1. There is social saturation towards the political model of the country and its low identification with popular participation.
2. There is saturation with respect to endemic corruption in the country.
3. There is saturation in regards to the quality of public services.
4. Social discontent is broad and diffuse. It does not center on specific leaders. On the contrary, no current political leadership effectively symbolizes this feeling of change. In many protests, there is unmistakable hostility towards politicians in general.
5. The country faces ethical difficulties not only within the government but also in society in general. People point the finger sharply, but live under the aegis of a double standard, if not sheer hypocrisy.

Example 1. The country has basic civilizational issues in connection with the respect for others, with not seeking undue advantage, and acting in good faith. These include difficulties in complying with queues, atrocities in traffic (use of the traffic shoulder, parking on the sidewalk, drunk driving, hit-and-runs), the usual practice of not giving tax receipts in restaurants, the over-charging by service providers if a tax receipt is requested, the vandalizing of public places and monuments, etc.

Example 2. An emblematic real case. I have a couple of acquaintances who told me, incidentally, the following story. Both expressed outrage at the housekeeper, who asked them not to sign her Labor Certificate. (For the non-Brazilians in the audience: this is a document that every worker is required to have, and a signature on it by the employer establishes a formal link of employment. It is, in short, the difference between formal and informal jobs.) She had requested it so she could continue to receive the Bolsa Família benefits. Slightly afterwards in the conversation, they relayed that their daughter had co-habited with a partner for many years, but had not officially married in order not to lose a substantial pension she received due to her grandfather, which only benefits unwed granddaughters. As I said, there is a double standard. But this is not a deliberate act of bad faith: people do not realize it. They were raised in this culture and consider it a fact of reality, and not a personal choice.

III. WHAT THE FUTURE HOLDS

1. Important improvements and new demands

Let us not become alarmed with the complexity of the current moment. Crises and momentary defeats are part of human history and its ripening process. In times of

distress, it is always good to remember how far we have come. Let's look into the example of fundamental rights. Freedom of speech, belatedly though with great impetus, enjoys the status of preferred freedom. Affirmative actions of varying degrees have helped to address discrimination and social exclusion of Afro-descendants. There is a visible social ascent of women in Brazilian life, including the stern fight against domestic violence (Maria da Penha Law). The right of gays to full equality has been increasingly recognized, including with respect to civil unions and marriage. The Brazilian crisis today is of a different nature: it is that of a society that has improved its standard of living, that has become more aware of its rights, and that has come to be more demanding towards political practices and the public services it receives. Our current challenges are those that deepen democracy and change economic and social standards of living, including with an increase in income levels. We are much better than we were, even if not as good as we want to be.

2. Three components in an agenda for social progress

To overcome this deficit, the country's agenda should include, besides Political Reform, several other essential elements. I selected three to share here:

1. In the realm of EDUCATION, having achieved universal *primary education*, we need to invest in effective quality; the universalization of *high school education*, in turn, must be lifted to the highest priority; and, with respect to *higher education*, we need to create leading institutions in an entirely different model of what is there (but without confronting or undoing what already exists): public in its scope, private in its financing, with scholarships to recruit the best students, teachers hired in international searches, and classes taught in Portuguese, English, and Spanish. It is not possible to go here into the details of this project, on which I was working when I was appointed to the Supreme Court, but I consider it essential for the country.

2. In the realm of the ECONOMY, we must overcome the prejudice against free enterprise and entrepreneurship. This prejudice stems from the state capitalism that since the beginning of the process of import substitution and industrialization has been practiced in Brazil. The Brazilian imagination still associates domestic capitalism with (i) concessions with favoritism, (ii) public construction works with questionable bids, (iii) financial market shenanigans, and (iv) large landed estates, the historical heirs to the colonial *sesmarias* or land grabs. It is a perception that comes from the time when all wealth was

unfair, if not dishonest. We need clear regulatory frameworks, respect for contracts, incentives to competition and risk capital. Ah, yes: and entrepreneurs who are not addicted to public funding.

3. And finally, in the realm of SOCIAL BEHAVIOR, we need the blossoming of civil society, independent from the state, creative, and in partnership with social entrepreneurs to conduct a truly civic agenda. We need good causes, good ideas, and philanthropy. People and institutions that function as agents of good and of social progress. Small- or large-scale initiatives, including the adoption of a public square, the funding of a neighborhood library, financial aid to a needy school, the dissemination of internet access, assistance to a health center, the provision of legal aid, the financial and logistical support to shelters for children, community greening projects, distance learning through the World Wide Web, drug rehabilitation, reintegration of prisoners, etc⁴. In many of these areas there are already relevant and virtuous initiatives, but they are far from sufficient. Raising the bar, you can include the subvention of a grant to a museum, an orchestra, promising youngsters. If we want more society and less state, society has to make life happen. The current crisis could be smaller if the state was not the protagonist of everything.

3. Brazil: a success to celebrate

It is important to take into account that Brazil only truly began in 1808, with the arrival of the royal family. Until then, the ports were closed to trade, manufacturing products in the colony was forbidden, and so was the opening of roads. No institution of secondary or higher education existed, and about 98% of the population was illiterate. More seriously, one third of the population was made of slaves, which constituted a moral wound and a social time bomb. Also, we were heirs to a tradition that, despite many virtues, was that of the last country in Europe to abolish the Inquisition, the slave trade, and the absolute monarchy. We had to build a country almost from scratch starting in the early nineteenth century. Well: in just over 200 years, Brazil has become one of the ten largest economies in the world. Recently, about 30 million people got out of poverty. We have one of the largest

⁴ For other examples, see Daniel Barcelos Vargas, *Creative Society in the Making*, manuscript, December 2013, p. 2; and Rony Meisler, *Quando culpar o Estado sairá de moda?*, *O Globo*, October 11th, 2014, p. 15.

mass democracies on Earth, with institutional stability and alternation of power. Our system of electronic voting machines is unique, reliable, and admired everywhere. In short, Brazil was one of the biggest hits of the twentieth century. I look back and I see a good part of my youthful dreams were fulfilled. Now, throughout the twenty-first century, we will tackle the Brazilian social abyss, with education, entrepreneurship, and high quality public services. And then, belatedly but not too late, we will finally step into the future, offering an example of civilization to the world, with social justice, civil liberties, racial diversity, cultural pluralism, and joie de vivre.