Chapter 4

Transition to Democracy and the Belief in Social Inclusion (1985-1994)

A New Belief Emerges

The 1980s are known as the lost decade in Brazil. Average real GDP per capita growth went from 9.4% in the 1970s to 3.0% in the 1980s, and average annual inflation increased one order of magnitude across decades, from 40% to 430%. This dismal picture is not contained to economic variables. The Gini coefficient increased from 0.565 in 1980 to 0.637 in 1991 (Barros et al., 1994) showing that inequality worsened during this period despite the move from dictatorship to democracy. Even poverty, which had fallen dramatically from 68% of households below the poverty line in 1970 to 39% in 1980, failed to show any sustained improvement over the subsequent decade, which experienced an average poverty rate of 35%, reaching 1990 with 36%. Although there were undeniable improvements in terms of democracy and political participation, even in this dimension there was considerable uncertainty with the first elected president in three decades coming to office only in 1990, just to be impeached less than two years later.

Palpable improvements in all these areas only really began after 1994, when Brazil finally beat hyperinflation; democratic stability with routine elections and alternation of power become commonplace; and an enduring and significant downward trend in income concentration and poverty began. It is thus natural to think of the preceding decade as a wasted period that would only be ‘set straight’ once the right people were in power and the proper policies got implemented in the mid-1990s. In terms of our framework this period of 1985 to 1994 represents a full cycle, initiated with a window of opportunity that changed the configuration of power and beliefs, bringing in new institutions and policies, and ending once the dissatisfaction with the dismal outcomes associated with those policies eventually induced a new window of opportunity for change which will be discussed in the next chapter.

With the advantage of hindsight, however, it is possible to see that some important elements of the transformations that would take place in Brazil after 1994 (described in chapters 5 and 6) originated and started to evolve during this earlier
period. In particular the belief which emerged with the demise of the military cycle first became established in the mid-1980s with the transition to democracy and civilian rule. This was a belief in social inclusion, which replaced the belief in prioritizing state-led economic growth and industrialization at all cost (developmentalism) with the notion that social inclusion and political openness should be a central goal of society, underscoring both institutions and policies (see discussion in the introduction to Part II). We have argued that although similar rhetoric arose simultaneously across countries in Latin America the true nature of the belief varied significantly, leading to very different incentives and constraints on individuals, groups, firms and government, as a result of history, context and serendipity. In Brazil the belief in social inclusion turned out to be highly consequential in shaping institutions and policy towards openness, inclusion and participation. The Brazilian ‘flavor’ of the belief emerged as a consequence of their experience with oppression and lack of freedom during the military regime (1964-1985).

We have discussed before (introduction to Part II) that the immediate consequence of the belief in social inclusion was a disastrous hyperinflationary process that quickly dispelled the hope of regaining the glory years of the Brazilian miracle (1968-1974). The emphasis in inclusion and correcting past injustices without attention to fiscal restraints and budget constraints not only allowed all manner of private interests to pursue their own ends but ultimately failed to improve the lot of the very groups it sought to protect, as the poor and excluded were the most vulnerable to the nefarious consequences of inflation. The distorting effects on the daily lives of individuals, firms and government of yearly inflation above 1000% for almost a decade was so painful and damaging that it is remarkable that the belief which underscored the institutions and policies that led to this state of affairs was not abandoned during this process or even once a new window of opportunity brought on a new and different cycle of beliefs, institutions and policies. In the next chapter we describe how the belief in social inclusion makes it through unscathed to the next period when it surprisingly starts to induce quite different types of outcomes as it is juxtaposed with a new belief that arises from the deep-felt understanding of the dangers of inflation and the need for institutions and policy to first and foremost assure monetary stability. As we shall see this new belief restricts and disciplines the belief in social inclusion, which slows the rate at which progress is made in that realm yet makes that progress more sustainable.
and transformative. First, however, this chapter describes the transformation of the 1985-1994 period.

**The Transition to Democracy**

In the previous chapter we described how the transition to democracy in Brazil, a period known as the New Republic, came about not through direct elections but through a voluntary, albeit protracted, restitution of power to civilian hands. The first civilian government after twenty-one years of authoritarian regime came to power in Brazil under great pressure in favor of political and social inclusion. The result of the agreements brokered through an electoral college ushered to power a heterogeneous coalition formed by the Brazilian Democratic Movement Party (PMDB) and the Party of the Liberal Front (PFL), known as the Democratic Alliance, under the leadership of Tancredo Neves. Neves relied on his personal credibility and negotiating skills to push an ambitious agenda of economic, social and political reform, already highly influenced by the belief in social inclusion.

However, the unexpected death of Tancredo Neves on the eve of his inauguration was a huge disappointment and raised doubts about the capacity of the new civilian government to deliver such an inclusive agenda under the leadership of the vice-president, José Sarney, a political figure with very different credentials. (See Figure 4.1 for a timeline situating the main events discussed in this chapter, including inflation rates and presidential popularity.) The extremely protracted opening of the Brazilian democracy and the circumstances of the negotiated transition without a clear rupture made the notion of a Sarney-led government disappointing and uncomfortable. Sarney’s past involvement with the pro-regime ARENA party during the military period raised doubts about his suitability as an agent of change in a process that intended to break so clearly from the past.

The new President’s lack of political legitimacy made the transition to the first civilian government vulnerable to all sorts of pressure for immediate structural changes not only in the economic and political spheres, but also in social policies. The notion prevailed that the new government had to make good on a social debt towards those that had been the excluded from the ‘economic miracle’ of the previous decade, which had accentuated rather than diminished income inequality. Sarney tried to respond to those
pressures by adopting the motto “Tudo Pelo Social” (Everything for Social Policy) as the top priority of his administration.

The strong corporative profile of demands and political pressures for social inclusion in a circumstance of declining capacity of the state to adequately respond to them made the government even more politically vulnerable. In addition to those demands the government was susceptible to pressure from an unprecedentedly massive new electorate. In the last direct presidential election in 1960 the country had approximately 16 million voters (22 percent of the population). In the 1989 election, with the inclusion of illiterate voters and the lowering of the minimum voting age to 16, the size of the electorate became five times bigger, 82 million (55 percent of the population).

The political manifesto of the Tancredo-Sarney campaign in 1984, known as the ‘Commitment to the Nation,’ reflected the aspiration of an inclusive and comprehensive agenda for change. With regard to social policies, the manifesto listed resolving income inequalities; implementing emergency measures against hunger and unemployment; revising wage policy and eliminating wage control; and guaranteeing freedom and autonomy of labor organization. Concerning the political agenda the manifesto suggested the restoration of free and direct suffrage for the president and all mayors of city capitals; the convening of a Constituent Assembly; the restoration of the independence of the judiciary and legislative branches; the strengthening of the country’s federal structure, with effective financial and political autonomy of states and counties; and the reform of the electoral law, allowing the unfettered formation of new political parties. Finally, with regard to the economic agenda, the government promised to address seven main concerns: the resumption of economic growth; the rescheduling of the foreign debt; the fight against inflation; tax reform; correction of regional inequalities; de-bureaucratization of the policy-making process; and the support of free enterprise with special emphasis on small-to-medium sized national firms.

The all-encompassing nature of this inclusive agenda generated too many expectations and soon revealed the limits of what such a heterogeneous coalition with a politically vulnerable president could deliver. In order to demonstrate goodwill and that his government would act in a democratic fashion, President Sarney decided not to make use of any unilateral political devices, such as decree and urgency powers, until a new constitution was written and approved. Congress duly stepped up to occupy the power vacuum left by the politically fragile president. Given this relative political
weakness Sarney also decided to maintain the cabinet chosen by Tancredo Neves. This
decision sent contradictory signals about which types of policy the government would
pursue. On the one hand, the government had promised to address the country’s difficult
social agenda. This policy direction was supported by the Minister of Planning, João
Sayad, who pressured for a heterodox economic policy. On the other hand, the Minister
of Finance, Francisco Dorenelles, a nephew of Tancredo Neves, was a fiscal
conservative and put forward an orthodox approach through domestic fiscal and
monetary austerity, establishing a 10% cut in public spending, a two month suspension
of all government bank lending, and one-year freeze of all public sector hiring. After
twenty-one years of dictatorship, the announcement of such orthodox and austere
policies was received with much disappointment by Congress. They wanted to
demonstrate to their constituents, especially prior to the November 1986 elections, that
they were responsive to voters’ expectations on social inclusion. According to the Folha
de São Paulo (January 14, 1986), only 20 % of legislators declared support for Sarney's
administration, 56% were politically neutral, and 25% were openly hostile.

As a consequence Sarney announced that the government would still strive to
meet its foreign debt commitments, but not at the expenses of social deprivation at
home. That translated into a great deal of resources to be spent on social policies.
Despite resurgent economic growth in 1985 the country was confronting annual
inflation rates exceeding 200 percent. Daily life was constructed around ways to
minimize the real losses inherent in such circumstances. Without access to interest-
paying bank deposits the poor were especially hurt by inflation. In a struggle to impose
his authority and political leadership, Sarney decided to replace the orthodox Minister
of Finance appointed by Tancredo Neves by Dilson Funaro, an active businessman of
the São Paulo Federation of Industry - FIESP who favored growth over fiscal austerity
and who had been very critical of the IMF's demands for adjustments.

Following the introduction of the Austral Plan in Argentina, the heterodox Plano
Cruzado was enacted by decree in early 1986. The plan quickly achieved its economic
and political objectives, taming inflation and curtailing the falling popularity of the
presidency and its governing coalition. The Cruzado Plan, which was designed to
reduce inflation through a combination of price and wage freezes, boosted Sarney’s
popularity dramatically and reunited the Democratic Alliance. However, the
redistribution of income inherent in the price freeze quickly led to excess demand for
consumer goods overheating the entire economy. The business sector reacted by reducing supply and intensifying political pressure against fixed prices.

After a successful glorious initial period in which Brazil experienced Swiss levels of inflation, everything fell apart. The price freeze had to be short-lived so that prices could again fulfill their role of allocating resources. The upcoming general election of November 1986, which would also elect the legislators who would draft the new Constitution, made it politically expedient to postpone the realignment of prices. The political success of the Cruzado plan paid off by generating a massive victory for the PMDB, which won all but one race for governorships, as well as the majority of the Chamber of Deputies (53 percent) and of the Senate (63 percent). It was the largest electoral victory to date by a political party in Brazil’s proportional representation multiparty system, whose nature normally tends towards fragmentation.

Shortly after the election price adjustments were painfully implemented to address the shortages of goods. The timing of the adjustments was a clearly opportunistic electoral maneuver by the government. The impact of the adjustment package, named Cruzado Plan II, on the President’s authority and popularity was very negative. The optimism generated by the first Cruzado Plan transformed into disillusionment as voters felt cheated with the Cruzado II. Sarney's political capital eroded quickly and he no longer managed to unify the Democratic Alliance coalition.

To make matters worse Brazil could not manage to meet the payments of interest and principal on its debt to private creditors, and declared insolvency shortly thereafter. The country also declared a unilateral partial moratorium on its foreign debt interest payments. In the subsequent years a series of other economic plans or approaches were tried and failed (Bresser Plan in 1987, ‘rice and beans policy’ in 1988, Summer Plan in 1989, Collor Plan in 1990, Collor Plan II in 1991). This sequence of frustrating failures induced a fatigue with government stabilization policy among the population and initiated a quickly declining trend of the hope and optimism towards the country’s new democratic situation.

Meanwhile, Congress approved and the president sanctioned a series of measures aiming at restoring democratic institutions: the restoration of direct presidential elections, eliminating the Electoral College for presidential succession; illiterates received the right to vote; the legalization of all political parties including the Communist party; and direct elections of mayors for all cities. The full restoration of democratic institutions was the most consensual agenda of the Sarney government.
Another aspect that made the Sarney administration politically vulnerable was that the direct and free elections of governors (1982 and 1986) occurred before direct elections for the president. This timing strengthened the power of state governors in the new civilian regime. At this time states collected taxes and governors had control of the state banks. With significant power in the hands of governors, they exerted considerable influence over the career of legislators, in a ‘gubernatorial coattails effect’ (Samuels 2003).

Faced with the demands of civil society and a lack of funding due to the national fiscal crisis, the elected governors financed their programs and policies by issuing bonds and debentures from the state treasuries using Anticipated Budget Revenues (“Antecipação de Recitas Orçamentárias” - AROs) as collateral. In addition state banks acted as de facto issuers of money because of the weakness of the Central Bank. This was done with no concern for the states’ solvency, often using clearly illegal mechanisms, such as triangulation operations with state enterprises or the use of judicial writs (precatórios). This behavior “was encouraged by the certainty that in the end, [they] would be rescued by the federal government. Brazilian cooperative federalism suffered from serious moral hazard” (Gama Neto, 2011).

It was in this confused scenario of political disarray and economic turmoil that the Government initiated the process of drafting a new Constitution. The general disillusionment with the government led political players from the governing coalition as well as from the opposition to allocate their political energy to the new Constituent Assembly. The process through which the Constitution was drafted, the final charter itself, and the changes that were subsequently made, provide important insights on the beliefs that emerged and how they evolved.

**Codifying Beliefs: the Constitution of 1988**

Reporting the promulgation of Brazil’s new Constitution, *The New York Times* posed the fundamental question Brazilians must then wrestle with: “how to put the Constitution into operation in a country with rampant corruption, runaway inflation and vast social inequality?” ¹ With the benefit of hindsight one could argue that ultimately the country succeeded in this endeavor. By the turn of the century inflation has been practically eliminated; inequality as measured by the Gini coefficient has shown a sustained reduction since 1993; and the country has shown progress in the fight against

---

corruption. Not only has the Constitution worked in this inhospitable environment but has effectively contributed to make structural change possible. In previous chapters we have referred to the Constitution as a watershed. In fact, as will be clear in this chapter Brazil’s “Machiavellian moment” lasted at least one decade during which a new Constitution was drafted and amended extensively, particularly in its provisions pertaining to the economic role of the state and the “fiscal constitution”. This occurred following the hyperinflation and fiscal crisis – that resulted ultimately from the implementation of 1988 draft - shattering the existing statist views. The whole process entailed extensive political squabbling and bargaining. The convoluted and erratic pace of the process of change is consistent with actors facing high levels of uncertainty about the outcomes that would result from the changes in institutional rules.

In what follows we discuss the Brazilian constitution and make three points. First we argue that the Constitution embodied the beliefs about a new social contract, political equality and rule of law that were forged during the fight against military rule. However, this process was “messy” and full of “ugly compromises” as there was no template readily available. The constitution also incorporated old beliefs and the constitution-making process led to an inconsistent and contradictory text. Second, the very constitution-making process and the subsequent extensive amending activity that ensued had important consequences. The process was unprecedentedly inclusive and participatory reinforcing the beliefs that it reflected. Third, the Constitution fundamentally altered the subsequent path of Brazilian political economy. Several provisions had whopping short term consequences and are best conceptualized as an endogenous shock: the reduction of the voting age to 16 and the elimination of the ban on illiterates opened political participation to millions of individuals, which had hitherto been excluded. Similarly the extension of health care to all citizens, regardless of previous contributory history or work link and the equalization of the value of rural and urban allowances and benefits had major immediate impacts in terms of citizenship and fiscal effects. These are the foundations of what we will later call dissipative inclusion.

The process began with the beliefs in participatory democracy, rule of law and social inclusion that emerged during the authoritarian regime. The Constitution embodied these new beliefs but also old ones particularly about the role of the state in the economy. Ultimately, after a few years the constitutional status quo led to rounds of hyperinflation and to new updated beliefs amongst those in power about the importance of macro-stability and fiscal sustainability. In the wake of the constitutional reform
process in Brazil starting during Cardoso’s first administration (1995-1998), the government eliminated much of the Constitution’s statist provisions, but left the core set of individual and collective rights, along with the clauses pertaining to separation of powers and rule of law, unscathed. This means that part of the set of beliefs formed during the transition to democracy in the late 1970s and 1980s took root and evolved over time causing changes in the Constitution. The economic beliefs - those on how the economy works - however, evolved in a different direction. As discussed in Chapter 5, those in power changed their beliefs in light of poor economic outcomes, particularly the hyperinflations in the early 1990s. Indeed the crisis that ensued led to the recognition amid the economic and political elites that the old closed economy was no longer functional and a break with the past was in order.

Interestingly some of the views about rule of law and constitutional rules have old roots, reflecting liberal republican concerns about separation of powers and presidential abuse that emerged in the late 19th and early 20th centuries. These views along with beliefs on social inclusion from the 1970s and 1980s – which, in turn, can be traced back to the notions of popular democracy from the 1920s - ² are the foundations of the new constitutional charter.

Constitutional politics has been at the core of the process of building an inclusive democracy and rule of law because the constitution contained detailed provisions, which have been widely invoked and respected. The salience of constitutional politics underscores a significant change in beliefs: the widespread notion that democratic procedure is the only legitimate way to reach collective decisions. The set of beliefs that the political elites finally adopted at the end of the decade-long “constitutional moment” centered on the notion that social rights had to be reconciled with the fiscal constitution.

The beliefs about democracy that marked the constitution-making process were forged during the years of military rule and reflected not only anti-authoritarianism but also a rejection of representative democracy. Lamounier was certainly expressing his first-hand experience from participating in the committee that drafted the first blueprint when he wrote that:

the regime created by the constitution of 1946 was - and still is today -, viewed as elitist, socially irresponsible and open to populist manipulation. During the authoritarian period, from 1964 to 1985, a new concept of democracy

² Beliefs in social inclusion entered the political discourse during the Vargas period and are linked to diffuse ideas about popular democracy.
flourished, most notably among the grassroots and those groups linked to religious movements. The basic principle is that the new democracy has to be substantive and participatory rather than exclusively ‘representative’, in the conventional usage of the term” (Souza and Lamounier 1989, p. 31).³

The constitutional convention redesigned political institutions but there was no radical break from the institutional legacy of the military regime. Electoral rules, federalism and the presidential system – to name a few important components of the polity - remained unaltered in broad terms. Nonetheless, the new constitution delegated extensive powers to the executive while strengthening significantly the judicial and legislative branch. The key challenge for the constituent assembly members was how to reconcile the need to constrain a powerful executive - a deep rooted concern of political and economic elites, following the experiences of the First or Old Republic (1891-1930) and the Estado Novo (1937-1945) while preventing political instability and guaranteeing that the executive could implement its agenda.

The Constitution-making Process

The Constitution of 1988 is widely viewed as a historical landmark in contemporary Brazil. With 245 articles the Brazilian Constitution is one of the world’s longest and most detailed constitutions. In addition to provisions dealing with separation of powers and individual rights and guarantees the constitution contains numerous public policy issues. Not surprisingly, it has been termed a “code”, a “constitutional monstrosity” and an “ugly compromise”.⁴ Rosenn stated that “Like a cathedral originally constructed as a hotel, the new Constitution is structurally flawed” (1990, p. 779). Rosenn also argued that the Constitution requires enactment of some 285 ordinary statutes and 41 complementary laws in order to make its provisions effective. This was indeed the result of the programmatic and controversial nature of many of the provisions; only by postponing the details to future legislation was the Constituent Assembly able to complete its task (Rosenn 1990, 778). We argue that its very provisional and contingent nature has been instrumental to generating a constitutional culture embodying a set of beliefs that has been crucial to the establishment of constitutional democracy and ushering the country towards an open access society. The Constitution was the product of an extensive bargaining process and therefore contains

³ A dissenting view represented by a group of conservative legislators was defeated in the vote on the legal definition of the Representative Republic of Brazil where the people is represented indirectly via elected representatives or by direct participation.
numerous technical flaws and inconsistencies as well as concessions. As a renowned Brazilian constitutional scholar argued:

“The constitution of 1988 is not the ideal constitution of any single group. Maybe its virtues are precisely its very flaws, imperfections that result from its delayed, controversial, and convoluted constitution-making process, which was the work of intense popular participation, of the contradictions of Brazilian society, and by the same token of much negotiation”.

An “ugly” but functional “compromise”, the constitution became the focal point of myriad interest groups in a context characterized by strong political fragmentation. The element that would introduce rationality in the system during the Cardoso years - a strong presidency - was largely absent from the constitution-making process, except in the discussion of the type of regime and in the discussion of the length of term of the chief executive. Although the largest party - the PMDB - commanded a majority of votes in the constituent assembly (54%), it was internally fragmented. The transition to democracy in Brazil was made possible by the formation of the so-called democratic alliance consisting primarily of dissidents of the Arena - the party that supported the military government - and the opposition party, the PMDB. As soon as the constituent assembly was inaugurated, the social-democratic group within the PMDB split to form the Brazilian Social Democratic Party (PSDB). Weak parties and fluid organizational identities marked the transition, a context that favored the ascendancy of governors - the first democratically elected actors occupying executive positions- and a few notable individuals, such as Mario Covas, Ulysses Guimarães and Fernando Henrique Cardoso.

The constitution-making process bore the imprints of two key earlier episodes in the democratization process: 1) The failure of the campaign for direct elections (Diretas Já) for President; and 2) The military defeated the Dante de Oliveira Amendment, which called for universal suffrage for the election of the president in 1985. Much of the political significance attached to the Constitution as a key instrument of democratization had to do with the defeat of the Diretas Já campaign, the largest mass movement in Brazilian history. The fate of the amendment symbolized the defeat of direct democracy and the continued institutional manipulation by the military. The opposition forces, however, managed to defeat the military government in the indirect elections (electoral college) and then funneled their energies on a movement calling for an immediate convocation of a Constituent Assembly (Martinez-Lara 1996, 36-37). Indeed the

---

5 The constitutional scholar is Afonso da Silva cf. the quote in Silva (2002, 238). Other scholars, including Martinez-Lara (1996) and Reich 1988) share this general interpretation about the constitution.
reformists from the PMDB saw the proposal for a constituent assembly as a banner to keep society mobilized and a window of opportunity for institutional change. The second episode was the death of the indirectly elected Tancredo Neves on the eve of his inauguration as president, and the inauguration of José Sarney, a conservative provincial politician closely associated with the former regime. For Brazilians this epitomized the conservative nature of the transition to democracy in the country and signaled that the old political elites and structures had deep roots. Severing the links with the past became the paramount task and the calling of a constituent assembly was the natural step to break away from the old regime.

Notably the constitution-making process entailed vesting the ordinary legislature, elected in 1982 (senators) and 1986 (federal deputies), with the powers to draft a new constitution, as opposed to a separate constituent assembly. Although many political actors supported the idea of amending the 1946 constitution - maintaining some articles introduced by the military constitution of 1967 - the proposal for an entirely new charter gained force after massive popular mobilization for an independent drafting body. The proposal of a referendum on a separate body submitted by the then rapporteur of the constituent assembly amendment led to his demise by the government coalition and the approval of the an amendment delegating constitution-making powers to the ordinary congress. With the passage of Amendment 26 to the constitution of 1967 the current legislative body became simultaneously involved in a two level game of bargaining over ordinary legislative matters and over constitutional issues.

Two characteristics of the drafting process are directly related to the elimination of the electoral college and popular presidential elections. First, the massive popular participation that ensued was unparalleled in any constitution-making process (Ginsburg, Elkins and Blunt, 2009: 208). Owing to the overwhelming furor by the Movement for Popular Participation, Congress rejected the draft constitution prepared by a “commission of notables”, known as the Afonso Arinos Commission after its leader. The Movement for Popular Participation created thousands of working groups all over the country in a host of different types of organizations including universities, firms, neighborhood organizations, churches, recreational institutions, and business associations.

---

6 The PMDB formed a strategic alliance - the democratic alliance, with the a dissident faction of the party that supported military, the PFL, which dissolved soon after President Sarney began to support the creation of the big center (centrão), to mount a conservative reaction within the constituent assembly against the first draft of the constitution.
According to Martinez-Lara, a wide range of organized interest groups and professional lobbies “of all imaginable variations mobilized to press the Constituent Congress. Among these, the Movement for Popular Participation which managed to persuade Congress to provide direct access to the constitutional deliberations, through the popular amendments, as well as the incorporation of some direct forms of participation in the constitutional text itself” (Martinez-Lara 1996, 196). The media offered extensive support for the creation of groups and presentation of proposals, by collecting and sending the proposals to the constituent assembly. The *O Globo* media conglomerate ran spots encouraging the population to submit proposals. Citizens sent over 72,000 individual proposals to the constituent assembly secretariat. Grassroots organizations presented a total of 188 popular amendments containing over 12 million signatures (Pilatti 2008).

The drafting process involved interest groups in many ways. Some provided advocacy services whereas others monitored extensively the voting behavior of participants. The absence of a strong hegemonic actor in the process - the president was relatively weak and the party system fragmented - allowed for extensive lobbying activities by interest groups. Volatile coalitions formed and disappeared swiftly. Martinez-Lara describes the workings of the constituent assembly in graphic terms: “these coalitions were not by any means consistent and stable. They had to be shaped, and reshaped, according to the issue at hand, involving re-alignments article by article and sometimes word by word” (Martinez-Lara 1996: 196).

Second, the constitution-making process spanned 19 months, making the Brazilian constituent assembly one of the longest in history. The long time frame of the drafting process provided ample opportunity for interest groups to exert influence in the decision-making of the constituent assembly. The lengthy constitutional assemblies lead to a long charter, but more importantly, raised the stakes of the constitutional game. Text specificity implies that every single organized interest has a stake in the constitution, thus contributing to the endurance of its core set of values and principles.

---

7 Martinez-Lara points out that: “in their attempt to influence the decision-making, these groups showed a high level of organizational sophistication, using all types of available methods: direct influence in the selection of candidates responsive to the their demands, the use of all forms of media communication as well as more direct methods, such as rallies and demonstrations (Martinez-Lara 1996, p. 196-7).


9 60% of the legislators polled at the beginning of the drafting process said that they “preferred a short text” (Martinez-Lara 1996, 72).
and relative effectiveness in many issue areas (Elkins, Ginsburg and Melton 2009, p. 86-87).

The level of popular and interest group participation, the highly decentralized format adopted for the works and the duration of the drafting process all contributed to make the text an inchoate collage of proposals, some of which displayed inconsistencies. Elkins, Ginsburg and Melton (2009: 79) point out that the:

“Brazilian constitutional convention was characterized by an extraordinary public involvement, including the submission of citizens’ proposals. The Brazilian charter is an unwieldy document to be sure, but a highly public one in its origins and provisions. Already, it has endured significantly longer than has the typical Latin American constitution.”

Notwithstanding its numerous technical flaws it constituted a focal point for the actors involved in the transition process. It strengthened the belief that a change in the rules of the game required bargaining and compromise in Parliament. This meant that violent or arbitrary means were no longer acceptable as legitimate instruments of change. The choice of flexible amendment rules made possible active amendment activity aimed at eliminating problematic provisions and adapting the text to new circumstances. Thus massive participation in the constitutional process reflected emerging beliefs in democracy and political equality. The protracted constitution-making process and its highly participatory nature further reinforced these beliefs.

The constitution-drafting in Brazil should be assessed against the backdrop of the alternative scenarios that could have emerged. One such scenario is the breakdown of the negotiation process resulting in gridlock and eventually in the perpetuation of the old regime in different forms, or fully fledged authoritarian solution. The second one is cycling and a protracted process without agreement on a set of mutually agreeable set of institutional proposals. The open ended character of the document led Rosenn (1990) to refer to Brazil’s “transient constitutionalism”. Unlike classical constitutions that provide a stable framework or rules of the game, the Brazilian charter provides a stable focal point. Constitutional politics in Brazil in the 1990s and 2000s took on the form normatively advanced by scholars such as Holmes and Sunstein (1995): a long and detailed charter, which was a product of intense bargaining and participation, with permissible rules of amendment, precluding the entrenchment of provisions in a context of high uncertainty and contingent compromises (and/or the “locking-in” of privileges

---

10 Amendments to the constitution require approval by a qualified majority of three-fifths of the legislators in two rounds of vote in the two houses. See also the chapter on the Cardoso’s years.

11 See Reich (1998)
of enacting elites). By putting the parliament at the center of the bargaining process, democratic politics is legitimized - something that would not have happened should the drafters have chosen stringent amendment rules and a constitution which embodied high minded legal principles rather than compromise (and consequently a larger role for the Supreme Court to the detriment of legislatures).

The decision-making process in the constituent assembly was indeed remarkably decentralized. The discussion of the internal rules was extremely conflict-ridden and the draft received 1636 amendments. Following the rejection of the idea of a constitutional blueprint as a template for the works, twenty-four thematic committees started working from scratch on specific chapters of the constitution. Parliament established an integration committee made up of 49 legislators - chosen in observance of the seat shares of each party - to review and integrate the draft chapters and sections into a complete working draft (*substitutivo*), which was then discussed and voted upon by the full assembly membership. At this stage Parliament voted on the 200 popular amendments submitted. The subcommittee and (thematic) committee work entailed 182 public hearings - and considerable amendment activity. The committees reviewed and amended the work of the subcommittees.

The integration committee produced two *substitutivos*, named respectively *Cabral 1* and *Cabral 2*, following general dissatisfaction with the former. *Cabral 1*, aptly nicknamed the “*Frankenstein* project”, contained 501 articles and numerous detailed provisions. In the second *substitutivo*, Congressmen proposed 20,790 amendments, as well as accepting 83 popular amendments, which restored some of the *dirigiste* and protective provisions of the initial drafts. The resulting text reflected the nationalist and statist preferences of the presiding commission which controlled all of the rapporteur’s assignments. This draft text - known as project A - prompted a reaction on the part of conservative forces within the assembly, leading to a mobilization to change the amendment rules to be used in the final vote on the draft. The immediate justification was the explosive number of *destaques* - over 8000 of them. The *destaques* were specific amendments to a title or chapter to be voted out separately. A cross party coalition of conservative legislators - nicknamed the *centrão* (big center) - mobilized

---

12 For the following details we rely on Martinez-Lara (1996).
13 Some fourteen thousand amendments were presented in the two rounds. In turn, the subcommittee and committees received 6360 amendments.
legislators to pass a proposal stipulating that the *destaques* (which also would now be applicable to whole chapters as opposed to specific provisions) rested on a simple majority of votes. This granted important procedural privileges and would allow the *Centrão* to overcome collective action problems of sustaining a majority (280 legislators) in key vote episodes. The approval of a *destaque* meant that the corresponding provision in “Project A” would be excluded and an alternative provision considered.

The change in the procedural rules allowed the *Centrão* to approve numerous proposals and to defeat others that were advocated by trade unions and civic associations, though it’s main concerns included the choice of system of government and land reform. The final document represented the outcome of intense bargaining and accommodation as well as the short-term balance of power between the democratic alliance and the conservative political forces at specific vote opportunities. As a consequence, the final document was a hodge-podge of liberal, statist, developmentalist and social -democratic views, though with an overall left wing slant. A number of *idées forces* prevailed including: a strong rejection of authoritarianism and endorsement of democratic principles, including both direct and representative democracy models; a remarkable affirmation of individual and collective rights; a vigorous defense of the rule of law and separation of powers; and last but not least, a strong bias towards decentralization, both political, administrative and fiscal. At the national level, there was a bias towards strong Presidential powers compared to the legislature.

The most important change in institutional rule was the elimination of the provision barring illiterates from voting. This was accomplished shortly before the constitution itself was promulgated as Amendment 25 (of May 15 1985) to the 1967 constitution. The constituent assembly massively extended the franchise by granting right to vote to the illiterate population and by reducing the voting age from 18 to 16. Interestingly these were extended as a result of the new elites’ beliefs about inclusion rather than by mass mobilization.

Emblematic of the centrality of individual and collective rights and guarantees in the constitution was the inclusion of a chapter devoted to these issues in the first part of the constitutional text, instead of putting it at the end as in all previous constitutions.

---

15 The core group of legislators that formed the centrão came from the PTB, PFL, PDS, PDC, PL, and a right wing group of over a hundred legislators from the PMDB. The latter was in open conflict with the center left group led by Cardoso and Mario Covas.
The overarching concern about the disrespect for law prompted the drafters to hardwire detailed rules in the constitution, rather than ordinary legislation, so as to ensure that they would be respected. According to Rosenn: “many of the new Constitution's provisions represent significant liberal or progressive advancements, particularly with regard to protection of individual rights and expansion of the rights of the working class. Article 5 protects a large number of individual and collective rights. This enormous article appears to protect virtually every form of known human right” (Rosenn (1990: 789). Procedural innovations were equally important. In fact, the most impressive achievements of the new Constitution are its procedural innovations in the protection of constitutional and legal rights. Constitution-drafters concluded that existing Brazilian procedural law had been woefully inadequate to protect constitutional rights.

The legislative branch also significantly strengthened its institutional prerogatives in budgetary matters and in its oversight capacity. The judiciary branch, in turn, acquired new powers and the Constitution dramatically streamlined and empowered both the public prosecutors office and the court of accounts. Judicial review was significantly extended. Before 1988, the Supreme Court’s decisions in representation actions had *erga omnes* effects, but only the Attorney General had standing to bring such an action. The new Constitution extended standing rights to bring the action to the President of the Republic; the Executive Committees of the Senate, Chamber of Deputies, or state legislatures; a state governor; the Federal Council of the Brazilian Bar Association; any political party represented in Congress; and any syndical confederation or national class entity.¹⁶

By virtual unanimity the constituent assembly approved universalistic provisions calling for meritocratic hiring in the public sector as well as uniform entitlements and social security benefits for both urban and rural populations. The most contentious issues in the constituent assembly debates involved: land reform; industrial and labor legislation; the role of the military (including amnesty for political crimes); market protection for national firms and state monopolies; and the key institutional issue regarding the system of government. This prompted President Sarney to secure key executive support for the formation of the *Centrão*. By mobilizing pork and public sector jobs, Sarney was able to attract legislators, particularly provincial representatives,

---

¹⁶ The Constitution renamed the existing representation the *Ação Direta de Constitucionalidade* (direct action of unconstitutionality).
in the rejection of parliamentarism and the semi-presidentialist formula approved in the various drafts from the commission of notables draft (the Afonso Arinos Commission) to the so-called Project A. In addition, the new draft gave the President a five year term. While doing this, Sarney also had the support of the military who advocated presidentialism as a regime type. Using the threat of a military coup as a bargaining chip, Sarney secured the support of other key groups in society who feared institutional instability.

The military wielded some veto power over security issues - rejecting the creation of a defense ministry headed by a civilian - as well as other critical issues such as the right to strike in essential services, and the expropriation of land in productive areas. Arguably land reform was the single most contentious issue and the one that galvanized the work of the Centrão. This was an area where it was particularly successful, being able to block the proposals for land expropriation of productive farms as well as more radical redistributive proposals, such as compensation of landowners with government bonds.

Although the Centrão presented some pro-market amendments it was primarily interested in opposing the demands of trade unions and leftist parties, in particular the most openly radical and socialist proposals for agrarian reform. In a number of occasions, however, the Centrão adopted a conservative programmatic stance. On the vote on article 1 of the constitution, the Centrão opposed the constitutional definition of the Brazilian polity as a legal democratic state based on the principle that “all power emanates from the people, who exercise it by means of elected representatives or directly, as provided by this Constitution”. It proposed a motion defending a minimalist definition, by eliminating the expression “or directly” signaling a programmatic stance on representative democracy. Its defense of presidentialism (and a 5 year term for presidents) was not programmatic as it was a part of a private exchange between Sarney and its members involving patronage (posts in the bureaucracy and radio concessions).

The most interesting aspect of the constitution-making process was that there was some consensus among progressive and conservative forces, as they were known, around a core set of issues. They reflect the consensus on ISI and nationalism. Many of the Centrão members aligned with leftist parties around some nationalist provisions. In his discussion of the vote on the preferential treatment of Brazilian firms and state monopolies of mineral resources and oil, Pilatti (1988, p. 263) argued that leftist
interests “confirmed their veto power and displayed some proactive behavior only when they joined forces with established conservative interests”.

The key ISI tenets acquired constitutional status with the enactment of the constitution of 1934 and were also reaffirmed in the constitution of 1946. The 1934 constitution called for the nationalization of mineral assets, oil, gas, telecommunications, as well as the insurance and savings and loans sectors. In addition, the former constitutions approved an array of provisions calling for preferential treatment for Brazilian firms. These notions were part of a core set of beliefs until the 1980s but the 1988 Constitutions crystallized them. The first draft of the Constitution included measures to nationalize foreign-owned firms; to limit and to require public disclosure of all sums transferred abroad as royalties, profits, interest, and payments for use of technology; and to prohibit transfer to foreigners of all lands containing mineral resources. In the wake of the Centrão revolt some of the more nationalist provisions contained in the draft prepared by the Systematization Committee were softened. Nonetheless, the Constitution as enacted contained a large set of protectionist and dirigiste measures. These included the banning of foreign-owned companies from exploring for or extracting minerals; the reaffirmation of mineral deposits and hydroelectric sites as the property of the federal government. Foreign firms engaged in mining, mineral exploration, or production of hydroelectric power in Brazil had four years either to give up effective control or industrialize their mineral output in Brazil. A constitutional provision barred foreign oil companies (then engaging in oil exploration through risk contracts with Petrobras) from future operations.

The Constitution also codified the central tenets of ISI in myriad ordinary laws and materialized in an array of organizations both within the state and outside it. The corporatist system of interest intermediation that was put in place in the 1930s was part and parcel of ISI. It consisted of a system of employers’ and workers’ unions – which

---

17 The definition of a Brazilian firm appeared for the first time in 1969 in the constitutional amendment n. 1 to the constitution of 1967. The Constitution of 1988 contained the following definition of a Brazilian firm with national capital "a firm whose effective control is permanently under the title, either directly or indirectly, of individuals resident and domiciled in Brazil or entities of domestic public law." The Constitution requires the government to give preferential treatment to such firms in the acquisition of goods and services.

18 Mineral exploration and mining is restricted to Brazilian individuals or Brazilians firms with national capital who obtain authorization or a concession from the Federal Government.

19 A provision also prohibited foreign capital to operate in the area of health care.

20 Of the 72 risk contracts in force when this provision was enacted, only 1 had resulted in a viable oil discovery.
enjoyed a monopoly of representation within territorial jurisdictions. The constitution mandated a compulsory annual contribution equivalent to one day of work to unions and labor courts which mediated disputes and enjoyed normative power. The system has survived and is still in place. Business was fragmented into the sectors associated with ISI and those which were internationalized. The ISI firms managed to secure market protection by approving a special legal definition of “Brazilian firms” - that was entitled to protective tariffs and other privileges - and the maintenance of existing monopolies as well as the extension of monopolies to new areas such as telecoms and mining. But business was defeated in its attempt to resist the expansion of social security benefits and protective labor legislation.

The Constitution altered in fundamental ways how Brazil addresses social rights and redistributive issues. The scope of the changes is impressive and amounts to rewriting the social contract in Brazil. For Rosenn (1990: 791):

> Article 6 declares that education, health, labor, leisure, security, social security, protection of maternity and infancy, and assistance of the unprotected are social rights. Article 7 contains 34 subsections that read like a miniature, progressive labor code.”

Article 7 included: a 120 days maternity leave as well as a (unspecified) right to paternity; an 8-hour work day - 6 hours in uninterrupted shifts – plus a 44 hour work week; a flat minimum wage equaling a minimum salary for all pecuniary pension benefits; the right to strike is constitutionally guaranteed but the ordinary legislation would specify measures to be taken in the case of essential services. In addition, Article 7 also stipulated that the creation, internal organization and functioning of unions is freed from public control (but only one union per territorial unit). Last but not least, a new provision mandated the equalization of rural and urban social security benefits. The equalization of benefits had an enormous negative fiscal impact.

The losers from the constitution-making process managed to secure that the Constitution would be subjected to a revision in 1993. A transitory article in the 1988 Constitution mandated that the Constitution would be subject to a full revision after five years of its promulgation. Business elites and liberal groups viewed the revision as a window of opportunity for the dismantling of the statist elements in the constitution. However, the revision was a fiasco due to the eruption of a major budget scandal involving key legislators and to the lukewarm support - or in many cases even veiled resistance - it received from a key player, Itamar Franco, then president (Melo, 2000).
As a fiscal constitution the Brazilian charter proved burdensome. First, the Constitution expanded massively social rights and entitlements. The equalization of rural and urban social security benefits entailed a large fiscal burden because all existing and future rural pensioners would be entitled to a full minimum pension (equal to a minimum salary). Second, the Constitution granted public sector employees the status of civil servants, thus entitling them to a full replacement rate (100%) for their current salaries, as opposed to private sector pensions whose limit was set to a ceiling independent of current wage. Third, the creation of the SUS (Unified Health System), entitling all citizens to a comprehensive array of health benefits independent of past contributions, created a massive fiscal problem. Importantly, the Constitution mandated fiscal decentralization, which meant that the states and municipalities gained a larger share of the revenue pie, to the detriment of central government. Equally important was the embodiment of the prevailing belief in state ownership, developmentalism and a rejection of privatization. Decentralization later prevented the adoption of effective fiscal policies and measures to stabilize the currency. Hyperinflations and fiscal crises during the Sarney (1985-1989) and Collor (1990-1992) administrations generated fallout from the constitutionally mandated changes and from beliefs in developmentalism.

The developmentalist beliefs in the role of state ownership and intervention was as firmly entrenched in the Constitution as those associated with political equality and social protection. As we have argued, constitutional politics resulted from the beliefs in Brazilian society in the late 1980s and 1990s. The constitution-making process was unprecedentedly participatory, decentralized and protracted. When the fiscal and monetary crises unfolded in the early 1990s, they shattered these beliefs, providing a window of opportunity for the exercise of leadership. The new resulting updated set of beliefs was centered on the notion that social rights had to be reconciled with fiscal responsibility economic efficiency. We call this set of beliefs ‘fiscally sound social inclusion.”

The Constitution’s Delegation of Powers to the President

Foreigners who study Brazil today usually do so from the standpoint of her economic situation. Brazilians themselves do so. And both Brazilians and foreigners are baffled. Their studies lead them to no definite conclusions and they fall back on grandiloquent, albeit sincere phrase about the Great Future of Brazil. But when things are continuously not well with a country of Brazil’s formidable resources, there must be some causal factor that is constant to account for that phenomenon. High import duties, export taxes…. excessive
borrowing valorization schemes, lack of continuity in the policy of public administration, social disturbances and revolutions - all these and other influences may be invoked to account for dislocation of trade and financial difficulties. But they are not prime causes and in themselves they explain nothing.

The origins of Brazil’s troubles are to be sought in the defect of the political regime. “ (Hambloch 1936, 1).

The Charter’s drafters shared Hambloch’s concern with the defects of the political regime. Among them they worried about the role of the executive branch in the political system. The political elites were primarily concerned about reining in the executive branch following two decades of military rule, but also cared about governability. This explains one of their most important decisions, which prima facie look paradoxical: the strengthening of the executive branch. Indeed the Constitution of 1988 delegated extensive powers to presidents, while at the same time strengthening considerably the judiciary and the legislative branch. This collective decision was the upshot of a set of beliefs that emerged in the 1940s and 50s as a result primarily from the critical evaluation of the previous democratic experience during the period 1946-1964.

During the democratic interregnum prior to the military regime, presidents lacked coordinating capacity as well the ability to implement an agenda, and this was a widely recognized source of instability. Both the Constitutions of 1934 and 1946 aimed at reining in presidential power and as a result created a weak presidency. In fact, in 1988 the set of beliefs informing constitutional choices about the role of the executive branch in the political system was to some extent a mirror image of that underlying the choices in 1934 and 1946 to the extent that they also aimed at introducing checks on the executive and constraining its action.

Reflecting the evolving criticism about the nature of Brazilian Presidential powers since its inception, progressive elites in the 1920s pressed for a number of political reforms including the introduction of proportional representation, the creation of an independent judicial branch in charge of organizing elections along with the adoption of the secret ballot and, finally, the strengthening of the autonomy of the states. For reformers proportional representation would allow political minorities and opposition parties representation in the legislature breaking away from the existing political monopolies in the states (which were typically one party systems). An independent electoral institution would eradicate fraud which was rampant. Finally, a strong federal system would impede power centralization which benefited presidents.
For this, reformers proposed a number of constitutional remedies including strict
conditions for federal intervention in the states and tax decentralization. The
constitution of 1946 contained a provision barring state-level political parties and
approved the principle of the national character of parties which aimed at strengthening
the legislature against the executive branch. In the wake of the Estado Novo dictatorship
(1937-1945), political elites sought to eliminate all remnants of the old regime:
authoritarianism, centralization, emasculation of the legislative and judicial branches.

The solution to the old regime’s hyper-presidentialism - encapsulated in the
motto of reducing the “poder pessoal” (president’s personal power) - was multiparty
coalitional presidentialism. The idea was to undermine the executive power by forcing
presidents to engage in extensive bargaining with coalition partners while opening space
for the opposition. The impact of these changes was visible for the political elites in the
1940s and 1950s. Afonso Arinos, who headed the commission of notables that Sarney
commissioned to prepare a draft constitution, noted, in 1949, that “national parties,
proportional representation, cabinet ministers, and active participation of ministers in
Congress, all of this, converted our presidential system into something very different
from the presidential system that collapsed in 1930” (Arinos 1949 p. 93).\footnote{According to Arinos (1949:89-90) : “we have adopted a system that is perhaps unique in the world a presidentialism with proportional representation that created strong parties… politically our chief executive is closer to those of European parliamentarism than to the president of the United States.” Arinos also claimed that this change had weakened significantly the powers of the president: “How can we call a tyrant, the one who could wield power as long as he can maintain a coalition as in European parliamentarism?” The key to weakening the discretionary powers of presidents was through the “only genuine political revolution that ever occurred in Brazil, which was the electoral revolution consisting of the constitution of national parties, the secret ballot, proportional representation and electoral justice.” Arinos concluded that “with the revolution in the electoral institutions the relations between the president and the governors and between the president and Congress had to be established in entirely new foundations from the ones that prevailed in the First Republic.”}
The political elites in 1988 had similar preoccupations with reining in the executive branch
following two decades of military rule.

Nonetheless there was an additional issue: how to reconcile the imperative of
checking the executive with the need for strengthening the executive branch and
preventing institutional instability. In the 1950s there was ample recognition that this
should be done and the Minister of Justice created a Special Commission for
Constitutional Reform on the tenth anniversary of the constitution of 1946. According
to Lima, member of the commission and a key participant of the 1946 constituent
assembly - “to rein in the executive so that it did not overwhelm public life by virtue of
its discretion was the foremost concern of the constitutions of 1934 and 1946. The latter
contained provisions prohibiting the delegation of powers to the executive, establishing that the law cannot exclude the Judicial branch from considering any violation of individual rights, regulating the preparation and oversight of budgets, requiring fair and prior compensation in case of eminent domain, stipulating detailed conditions for the use of state of siege (Lima, 1974, 158). However both Lima and Arinos rightly acknowledged the inability of the executive branch to deal with the daunting tasks associated with promoting economic development which ultimately required a strong and agile president. The key word was delegation of powers to the executive, which was not allowed in the constitution.

The Constitutional Reform commission prepared a number of amendments to the Constitution that were not put to the vote but which expressed the beliefs that persisted until the 1980s (Brazil 1956). Three such amendments pertained to legislative procedure: the first stipulated a procedure that ultimately granted the executive a strategic advantage in dealing with the legislature: executive bills would automatically be approved if the legislature did not vote them. The second, bills that implied new expenditures would be considered void if they did not specify the revenue sources that would make them viable. Third, congress would be able to delegate to the executive the power to draft bills which Congress in a joint session was to vote under a closed rule within 30 days. The main objective of this amendment was to “reconcile the administration´s programs and urgencies with the responsibilities of the legislative branch”. These proposals reemerged in the agenda of constitutional debates in 1987-1998.

There was great continuity, therefore, between the elites´ historical concern with enhancing the coordinating capacity of the executive branch during the constitutional choices in 1988. The Constitution of 1988 vested the presidents with a number of agenda powers including the power to issue medidas provisórias (decrees with immediate legal effects), exclusive initiative of laws in budgetary matters limiting the ability of legislators interfering in the budgetary process, and procedural advantages

---

22 The commission also proposed delegation from the plenary to legislative committees in the two chambers. According to Lima (p. 169), the rapporteur of these bills in the commission, to guarantee efficiency in the functioning of the legislature

23 For Arinos it was necessary to “adapt the presidential system…The delegation of powers is the most important of these adaptations. Notwithstanding the fact that the constitution formally prohibits it … it is the fallout of the overwhelming pressure of economic fact upon the public law” (Arinos, 1949, 95).
such as the power to label a bill “urgent” (thereby granting it priority consideration in the legislative agenda). The powerful presidency that emerged from the constitutional choices in 1988 is therefore markedly different from that of the Old Republic in place until 1930. In the post 1988 constitutional order the President is constrained by a web of checks while previously the executive operated in an unconstrained way. Having to engage in extensive bargaining with coalition partners, in the period after 1988, Presidents have had to engage in coalition building, a task for which its control of the agenda was key. On the other hand, “pork for policy” games (see Chapter 5) became an integral part of the exercise of presidential power in this constrained political space.

To conclude our discussion of the role of the 1988 Constitution in the transition process to an open access society it is useful to summarize the four main points that we have stressed. The first is that the Constitution embraced the set of beliefs in Brazilian democracy. This set of beliefs evolved out of the fight against military rule but part of the new beliefs reflected deeper rooted notions about democracy and rule of law forged much earlier during the so called first republic (1889-1930). Interestingly, the Constitution itself has been extensively amended since its enactment reflecting changing beliefs about the economic role of the state but also about the constitutional structure. The decade long constitutional moment ended with an elites’ consensus on inclusion with fiscal sustainability and powerful presidents operating in a constrained institutional environment.

Second, the constitution redesigned in fundamental ways the country’s social contract. Reflecting the change in beliefs, the constitution stipulates the new foundations for how public policy is to incorporate issues of inclusion and redistribution. Third, the constitution vested the presidency with great powers while also strengthening the Judiciary and the Legislative branch. Fortifying the presidency reflected a deep rooted concern of the elites; these enhanced executive powers, in turn, were to operate in a constrained institutional space.

Fourth, the process was markedly erratic underscoring the uncertainties surrounding a transition period. The consensus around the rights Constitution – the provisions pertaining to social rights, individual liberties and rule of law - persisted throughout the transition. Nonetheless, the economic and fiscal Constitution was to be extensively amended. The Constitution has become a focal point of Brazilian democracy. By playing this role it has helped legitimize procedure over substance, which is an essential part of democratic life. The Constitution can be conceptualized
both as the crystallization of beliefs but also as a focal point. A core set of beliefs, however, has not changed and they relate to rights, checks and balances and a powerful presidency.

It took a few years of experimentation for the recognition that changes had to be made. Indeed, the urgent need to update the fiscal and economic constitution did not take long to emerge. After one year of its enactment, during the seminar celebrating the 25th anniversary of IPEA - the powerful government think tank which was in charge of strategic planning during much of the military regime - its director of macroeconomic planning argued that the key priority for economic policy was:

reaffirming and demonstrating to the political class that the alternative to limiting the public deficit and to short term recession was hyperinflationary chaos and economic stagnation in the next decade(Reis 1989).

Reis’ observations signaled the recognition amid economic and development circles within the government that the old order was no longer functional and that the primary task was political: a pedagogy for inculcating the political lesson that the post-constitutional times required a break with the past.

**Back to Uncertainty and Chaos**

Despite the massive transformation towards social inclusion and openness that took place during the Sarney government and through the new Constitution, voters did not pay tribute to the names associated with those changes, and in the 1989 election chose instead a relatively unknown political outsider, Fernando Collor. Not only did the Sarney government end in a melancholic manner, with a tremendously high rate of disapproval, but also the two presidential candidates representing the Democratic Alliance had pathetic electoral performances in the first round of the presidential race: Ulysses Guimaraes (PMDB), obtained 4.4 percent of votes, and Aureliano Chaves (PFL), obtained less than 1 percent of votes. The rejection of the political class that brought unprecedented social inclusion is probably best understood by considering that the election coincided with the maximum all time levels in the data series of inflation (72% per month in January 1990) and inequality (Gini coefficient 0.636 in 1989).24

The inauguration of Fernando Collor generated great expectation and hope that the first legitimately elected president after 29 years could offer a definitive solution to the problem of hyperinflation, to endemic corruption and pursue a liberal agenda of

---

economic development by reforming the state, privatizing public assets, and opening up the economy to foreign capital through trade liberalization. This expectation is reflected in the massive popular support Collor received at the beginning of his administration, over 70% approval. Inflation was at its all-time high and Collor announced he was aware that he had “only one rifle with one bullet” to kill inflation. Faithful to the image of renewal he appointed a relatively unknown and inexperienced Finance Minister, Zélia Cardoso de Mello. The single bullet came in the form of a new heterodox economic plan called the New Brazil Plan, which became better known as the Collor Plan. This Plan combined inflation control through drastic reduction of market liquidity with opening up and liberalization of the economy. An important component of the Plan was the intention to reduce government expenditure by decreasing the internal debt service burden. These targets would be accomplished by ‘freezing’ the government’s liabilities, especially those rolled over every day in the overnight market (Welch, Birth and Smith, 2004).

The Collor Plan was received with some suspicion, not only because of the failed experience of the previous plans, but especially because it implemented a surprise eighteen-month freeze on a large portion of savings and financial assets of people’s and firms’ bank accounts. From one day to the next other Brazilians found that much of their deposited wealth (whatever exceeded the equivalent of US$1,300) was impounded by the government, only to be restituted eighteen months later. The extremity of this measure, which in other circumstances might have led to outright rebellion, was seen in the beginning as justified by the extremity of the economic situation and was mitigated by the popularity of a new President in his honeymoon period. Nevertheless popular support receded sharply within a few months. The abrupt decrease in liquidity led to a dramatic fall in economic activity. The burden created on the population’s daily life by the freezing of bank accounts proved too harsh. In December 1990 a Collor Plan II was announced, this time being received with indifference. Not only was the implementation of these Plans very messy and confused, but also the theory behind them was not solid. Several critics at the time pointed out problems and inconsistencies that made the Plans inherently flawed (Longo, 1991; Simonsen, 1991; Bresser Pereira and Nakano, 1991; and, Carvalho, 2003). These evaluations proved to be correct: by the time the government released the frozen assets eighteen months later, Brazil had already returned to a hyperinflationary state with a quickly growing internal debt.
Given the massive levels of popularity with which the President started his term in office and the willingness of the public at that point to cooperate and even endure hardship for the sake of achieving meaningful change, these events can be interpreted as a squandered window of opportunity. Nevertheless the Collor administration implemented some important initiatives in other areas that would have enduring impacts. One of these was the Industrial and Foreign Trade Policy program (PICE) which promoted economic openness and trade liberalization (Villela, 1997). This program included gradual reduction of tariffs (with maintained protection of certain industries), an export financing scheme, reduction in custom duties, implementation of anti-dumping mechanisms and the use of government-generated demand for high-tech sectors. The goal was to stimulate the entry of foreign companies while increasing innovation. The second important program in the Collor era was the National Privatization Program (PND). While previous administrations also had privatization programs, by 1990 no large-scale sale had yet been undertaken. In the PND sixty-eight different companies were slated for sale. Altogether the government privatized 18 companies worth US$4 billion between 1990 and 1992, mostly in the steel, fertilizer and petrochemical sectors. The PND also decreed the end of several government monopolies leading to increases in social welfare through greater competition. Both of these programs were predecessors to a series of policies that would continue to open up the economy to the present day.

The demise of the Collor government came before the end of his term. In May 1992 he was accused by his brother of involvement in a corruption and influence peddling scheme allegedly run by his former campaign treasurer. His choice when elected had been to establish a direct connection to voters rather than trying to build a majority coalition in Congress, relying on popular support rather than the use of traditional political institutions such as political parties and coalition management (Kernell 1997). Collor chose cabinets extremely disproportionally. In his first cabinet, 60 percent of the posts went to nonpartisan ministers called independents. He did not share power with parties that could support him in times of need. Facing massive popular protests and without the support of a coalition in Congress he lost an impeachment vote in the Chamber of Deputies and resigned in December 29, 1992, before the vote in the Senate. The vote was held nevertheless on the following day, banning him from holding public office for eight years (in 2007 he was elected back to the Senate). This ban was challenged but upheld in the Supreme Court. Although the
first democratically elected President in three decades did not manage to reach the end of his term, the process through which these events took place is more a testament to well-functioning democratic institutions than to the lack thereof.

The presidency was assumed by the vice-president Itamar Franco, a quirky and relatively marginal political figure. With the exception of the Worker’s Party (PT) all political parties that had supported the impeachment took part in Franco’s governing coalition, reestablishing a balanced coalition-based presidentialism that governed through parties and Congress. This helped to rebuild bridges between the executive and the legislature that had been severed under Collor. With little previous economic experience Franco acted erratically signaling a nationalistic approach that threatened to halt or revert much the opening up that was slowly underway. At the time of his inauguration inflation was at 4 percent per day and Franco changed the Finance Minister three times in four months before moving his Chancellor and Foreign Minister, Fernando Henrique Cardoso, to the top economic post in May 1993. The next chapter will explore the ensuing events in which a new window of opportunity opened up and was successfully realized changing the course of Brazilian history.
References


Hambloch, Ernest (1936) Her Majesty the President of Brazil.


Reis, Eustáquio (1989) “Uma agenda para a pesquisa e o planejamento econômico na próxima década”, *Pesquisa e Planejamento Econômico*, 2, (December), 5-16.


Figure 4.1 - Timeline of Main Events - Jan/82 to Dec/95