

SUMMARY¹

DISTINGUISHED LECTURE

“Democracy and Rule of Law in Latin America”

Mr. Fernando Henrique Cardoso, former President of the Federative Republic of Brazil

Overview

The theme behind this keynote address is the subtle difference between ‘Rule of Law’ and the ‘Rule by Law’. President Cardoso offers a historical account of the development of the Rule of Law in Latin America, with a particular focus on Brazil. In his sociohistorical account, he discusses the organization of society and politics during Colonial times under Portuguese influence (which was characterized by arbitrariness and patrimonialism), as well as in more modern times (starting from the transition to Democracy in 1988 and governments in recent years). In this address, Mr. Cardoso argues that Brazil has always been governed under the ‘Rule by Law’. However, in spite of the ongoing impeachment proceedings against Dilma Rousseff and rampant organised crime and corruption, the former President reveals why he is optimistic about the future of democracy in Brazil.

Details

One of President Cardoso’s first contentions is that Latin America has been governed by laws but has failed to have nation-states based upon the belief ‘in’ the Law. Standards of conduct were imposed on Brazilian society even since imperial times, expressed Cardoso. Rules were brought in from the West and were solely based upon authoritarianism. In this line of thought, there were a plethora of rules, and subjects were obliged to follow them. They did this forcibly, not out of love for the rule or because people believed it was legitimate.

However, with the emergence and predominance of a new middle class came greater demands for a state, which would ensure more rights for its citizens. During the military dictatorships in Brazil and in other Latin American countries in the second half of the 20th century, the Rule of Law was imposed ‘*manu military*’.

¹ This Summary was prepared for the Bingham Centre by Patricia Regules and does not reflect the views of the Centre.

However, according to Cardoso, we are witnessing an institutional maturity seeded in the 1988 Brazilian Constitution², which he actively participated in drafting in the wake of the country's transition to democracy. For Cardoso, the 1988 Constitution has sparked and continues to foster a wave of political and social changes since its adoption. It also marks a new chapter for the Rule of Law in Brazil. Among other factors that headed these changes, Cardoso said there was a public perception that every rule included in the new Constitution was now valid, as opposed to rules in force during the dictatorship, which were perceived as highly discretionary and arbitrary. More importantly, the 1988 Constitution also provided for the creation of an independent and autonomous body, the *Ministério Público* (MP) (Public Ministry), a public institution charged with overseeing the application of the Rule of Law on behalf of society and against the State. The *Ministério Público* is often referred to as the 'fourth power' alongside the Executive, Legislative and Judicial branches. In the aftermath of the 1988 Constitution, concluded Cardoso, Brazil is progressively beginning to experience a cultural change, whereby a transition can be seen from a culture of favouritism, discretion and bribery towards a culture based on the Rule of Law. At the same time, public sector organisations in charge of the effective application of rules in accordance with the Law are also growing in strength.

In the second part of this speech, Cardoso discusses corruption in Brazil, referring to corruption as 'an old theme' and 'nothing new', except for one crucial difference. Corruption, Cardoso points out, is no longer the preserve or wrongdoing of individuals. Rather, it has undergone significant change by becoming institutionalised within organisations – both in civil society and within the State – and with the support of those in power (which may or may not be tacit). Thus, the major change resides in the type of corruption, as well as a growing push to secure monopoly over rents and resources that maintain political parties and elites in power. 'If we stop to think about it, the rapid pace of capital accumulation and economic growth in Brazil, what is going on now should not come as a surprise', reflected Cardoso in respect of the corruption scandals and accusations against different Brazilian politicians.

Turning to the ongoing political situation in Brazil, and the impeachment vote of President Rousseff, Cardoso was incisive: 'Impeachment is a violent procedure; it opposes the will of the people previously expressed by their vote, with a political-legal decision that does not originate from a tribunal, but from Congress. This is why we are going through very delicate times'. His observations as a sociologist lead him to state that he does not believe there are implicit risks to democracy as a consequence of the impeachment process. 'In the past, people knew the names of the heads of the military and feared a coup by the armed forces. Today I can respectfully claim that we do not know the names of any military commanders, yet we all know the names of every Supreme Court Justice of our country'. Cardoso celebrates this as a sociological fact of major importance. There has been an extremely significant cultural change in popular culture 'from military compounds to the tribunals'. 'There is a need to observe certain formalities and rites; obviously this

² The 1988 Brazilian Constitution (currently in force) is the supreme Law of Brazil. It marked the return to full democracy following over two decades of military dictatorship in Brazil.

brings about the issue of legitimacy of the Law, its acceptance, and its consent on behalf of society as a whole’.

The former President spoke with optimism, stating that although both civil society and the state itself have organised themselves criminally, in order to commit acts of corruption, it is also true that state organs in charge of prosecuting corruption have become highly organized, efficient and professional. ‘Even though we are struggling with several issues that seem insurmountable, we are in the beginning of a transformation that is more positive than negative’.

Cardoso concluded on a positive note, with the following message: ‘the great transformation to be made goes well beyond legal and even social structures; it’s a cultural change, a change of mind-set. Despite our past traditions, despite the fact that it is not only our institutions that need to be adequately organised, despite the need to have adequate judicial mechanisms in place, the notion of equality before the Law and respect for the Law, as something which was not imposed, needs to be rooted in society. If we have a growing comprehension that this is the path to take, we will be building a truly democratic state based on the Rule of Law. We understand the importance of laws so they may govern us. This is not an abstract regime, but a regime of people who have absorbed the Law and the validity of the judicial system’.

Questions and Answers

The audience presented Mr. Cardoso with critical questions, primarily relating to a perceived deficit in citizen participation in Brazil, and the future of the current Brazilian system of government (presidential coalition) in light of allegations of corruption and the impeachment proceedings.

Cardoso emphasised the importance of citizen participation, noting that in large and densely populated countries such as India or Brazil, it becomes much more difficult to include sectors of society which are highly segmented under the realm of the Rule of Law. The Internet has enabled citizens to exert more pressure upon institutions. Nonetheless, Cardoso stressed that political parties in Brazil have failed to evolve, lacking flexibility and mostly, underestimating the potential impact of social media and the Internet. ‘With a population of 200 million citizens, we have achieved quite a lot, but there is much more to be achieved’, he stressed. ‘With modern forms of communication, these 200 million people will become more active. If our institutions do not use their imagination and open alternative channels of communication, we will have problems’.

Finally, when addressing the future of the current Brazilian government system in place (presidential coalition) Cardoso answered with skepticism, warning that the system is broken and is no longer a presidential coalition but a ‘presidential co-opting’ one. ‘Democracy has also been corrupted. Not only am I against the current government system but also, I do not know how it will survive’, he expressed.