

Summary

The Resilient Constitution – Constitutionalism and the Political Crisis in Brazil

25 October, King's College London

Speakers: Oscar Vilhena Vieira (FGV Sao Paulo School of Law), Tim Power (University of Oxford), Christina Murray (Bingham Centre for the Rule of Law)

The session began with a presentation from Prof. Vilhena Vieira, who sought to explain the institutional processes of implementation of the 1988 Brazilian Constitution. The 1988 Constitution, he argued, is a 'maximisation compromise' insofar as it aims to include different interests and rights. The Constitution also enshrined consensual democracy with a coalitional presidential system, a prominent judiciary, and innovative rules for fulfilling old social policy promises. By withstanding different amendments, the Constitution has demonstrated its rigidity – this process is what the speaker refers to as 'constitutional resilience'. To illustrate this point, Mr. Vilhena Vieira referred to the two impeachment processes (Pres. Collor de Mello in 1992 and Pres. Dilma Rousseff in 2016), the ongoing fiscal crisis, and different political, social and rule of law pressure points. Although the presidential system and the Constitution are being challenged, the speaker's main line of reasoning is that the Constitution will once again be able to absorb this new wave of protests and reforms, as it did in the past. Nevertheless, a question for discussion is whether this transformation will be done at the expense of the social ambitions contained within the Constitution.

Reflecting on the presentation, Professor Power highlighted a number of points:

1. Different Latin American countries went about transitioning from military regimes to Democracy in different ways. The Brazilian Constitution was written at a time of crisis, and resulted in a lot of fragmentation.
2. This resulted in a resilient and malleable Constitution (the 1st amendment was passed shortly after the Constitution was passed, and there have been close to 90 amendments to date). A lot of these changes have been introduced by the Executive.
3. The system of 'coalitional presidentialism' is strongly engrained in Brazilian politics. All Brazilian Presidents tend to be minority presidents, which means coalitions are required in Congress to implement policies.
4. Finally, the speaker reflected on the importance of leadership in Brazilian politics, and the differences and similarities between impeachment processes in Brazil and the US.

Professor Murray reflected on the parallels between South Africa and Brazil, two countries which are often compared, in part because they both have very diverse populations. As in Brazil, the South African head of the executive has recently been enmeshed in corruption scandals. But the dominance of the African National Congress (ANC), the governing party which has over 60% of the seats in the national parliament, together with South Africa's parliamentary system of government mean that the politics play out very differently. The key question, according to Professor Murray, is whether the South African constitution can demonstrate the same resilience as the Brazilian one. The corruption scandals in South Africa have put huge pressure on the courts and a failure to improve the overall standard of living as rapidly as people expect has increased dissatisfaction and support for populist parties. The outlook is not good and the rule of law faces grave challenges.