

Latin America's Constitutions: Achievements and Perspectives

During the 1980s and 1990s-the "democratic wave" or "process of redemocratization," as some authors have called this period-many countries in Latin America embarked on a mission of constitutional change.

"For different reasons, Peru, Ecuador and Venezuela all took a radical approach to fundamentally changing their constitutions," writes Simón Pachano, a professor at the Latin American School of Social Sciences (FLACSO) in Ecuador. "Argentina (1994), Bolivia (1994), Brazil (1994), Guatemala (1985), Mexico, Paraguay (1992) and Uruguay (1996), among others, chose consensus-based reforms in their legislatures or among political actors in general via constituent assemblies (Colombia 1991)."

But what have these changes contributed and what are their future prospects nearly a decade (in most cases) after they were implemented?

Most experts give the reforms high ratings in terms of strengthening basic freedoms and the democratic system.

According to Claudia Barbosa, a professor of constitutional law at the Pontificia Universidade Católica de Paraná, the most important aspect of the Brazilian constitution is its clean break with 30 years of dictatorship in Article 1-The Democratic Rule of Law. Brazil's political system is an unusual mix of a parliamentary and presidential system, precisely because of this transition.

Chile's constitution is the result of a complicated process, in which the dictatorship itself crafted the new charter of the democratic transition. Nevertheless, constitutional scholar Rodrigo González praises the Chilean constitution for helping to consolidate the most important basic rights of citizens, giving rise to a flourishing judicial system.

Similarly, Colombia's constitution marked significant progress toward "demonstrating a new way of administering justice-a faster, more flexible system that does away with useless formalities and goes straight to the heart of the matter, protecting the basic rights of individuals," comments Carlos Gaviria, former president of Colombia's Constitutional Court.

According to some critics, however-among them Peter Schroeder, a German political consultant-Latin America's constitutions put all power in the hands of the state. Schroeder cites as an example the case of Brazil, whose constitution "has created a series of inconsistencies with no prospect of resolution as a way of striking an emotional cord among the population." He concludes, "these unfulfilled promises are very damaging for both constitutions and democracies, because it reduces the constitution merely to the written letter of the law. If it does not exist

in practice, it cannot generate trust or credibility."

Other observers point out that Latin America's constitutions favor the executive over the legislative branch. "Presidentialism has survived constitutionally and in practice in the continent's new democracies, bringing with it vestiges of caudillismo, authoritarianism, patrimonialism and clientelism," comments Javier Sanín, dean of the School of Political Science at Colombia's Pontificia Universidad Javeriana.

An example of this situation, says Aurelio Concheso, director of the Centro de Divulgación del Conocimiento Económico (CEDICE), is Venezuela. Its constitution is "the result of a dissatisfaction that Chávez interpreted as a majority mandate to subvert the constitutional order and draft a new basic charter, allowing him to control-via party sympathizers-state structures like the Supreme Court, the Attorney General's office, the Comptroller General and the Ombudsman."

While few people question whether the new constitutions are valuable and important elements for strengthening the region's institutions, in many cases they have made insufficient progress toward this goal. The underlying reason may be that they were not the result of gradual, evolving debate but rather changes introduced all at once. As Rodrigo Uprimny, an auxiliary magistrate on Colombia's Constitutional Court, points out, "constitutions do not generate the totality of actions, and the changes merely outline a model that is up to society to construct."

The key point to watch will be whether the institutional aspects of the region's constitutions are consolidated and their shortcomings addressed. As Peter Schroeder notes, "this can only work if new social actors and civil society are strong and active. Without effective civil society participation no one will ever be able to be held responsible for anything."