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Constitution-making

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Dear Peter,

Most Brazilians seem to be eyeing their new constitution with interest but not passion. Doubt and expectation, relief and skepticism, the emotions rarely reach a solidity that can be called an opinion. The president of the constitutional congress, Ulysses Guimarães, wanted to make a civil holiday of October 5, 1988, the day the new constitution was signed and made effective. He also proposed the self-congratulation of delegates, government leaders and staff workers who contributed to the constitution with the presentation of medals of gold, silver and bronze. Both ideas were dropped when it became clear that the public did not share the same mood of festivity as the delegates, who celebrated the final votes with confetti, paper airplanes and a general free for all on the floor of the assembly. There was relief as people watched the ceremonies on television (after all, 19 months is a long time to spend "in transition"), but no dancing in the streets (a phenomenon that in Brazil seems reserved for the victory of the nation's soccer team in the World Cup.) Extremists of the left and the right united in calling the constitution "one more illusion", and certainly, Brazilians have had many experiences of disillusionment in the past ten years, with the unsuccessful popular campaign for direct elections in 1984, the death of newly elected president Tancredo Neves in 1985, the spectacular failure of the Plano Cruzado to stabilize inflation in 1986. "Agora é só esperar", as I was told by one high school student - now we can only wait and see.

Is Brazil's new constitution really one more illusion? Does it have the strength to solidify the "New Republic" and put an end to the difficult period of transition? Will it "stick"? Will it succeed in inverting some of the country's social injustices? Will it permit a stabilization of the economy? Or will it turn the country "ungovernable", as President José Sarney declared at one point in the process. Just from looking at the questions involved in application of the constitution, one gets an idea of the contradictory interests that have marked every step of the new document. That it is contradictory, everyone agrees. "A patchwork quilt", it is labeled by sociologist Florestan Fernandes, a constitutional delegate of the PT* and a respected intellectual of the left. "A constitution characterized in the first place by incongruence," writes the editorialist of a national magazine, Senhor, linked internationally to The Economist. "A hybrid text," asserts the arch-conservative magazine Visão. The constitution prohibits torture but maintains the tutelage of the military, guarantees the right to strike but makes land reform

* For an explanation of all of the symbols in this report, see the key at the end.

virtually impossible. More a product of negotiation between more or less powerful pressure groups than a product of a coherent social vision, the constitution reflects the complex relations of political and economic forces at work behind the confetti and paper airplanes of the assembly.

In this newsletter I'd like to examine not so much the final product, but the process by which it came about. Brazil has had seven prior constitutions, only three of which (those of 1891, 1934 and 1946) were written by elected legislatures. Of the others, three (1924, 1937, and 1969) were written by the executive power, while that of 1967 was written by a group of jurists named by the military junta and merely ratified by congress. In terms of democratic processes the writing of Brazil's eighth constitution has had some qualities not seen in any of the previous seven. Not only were the delegates to the constitutional congress directly elected by the population, but for the first time so-called "civil society" was invited to give its opinion about what should be included. Before any votes were taken, thousands of meetings took place between constitutional sub-committees and representatives of civil organizations, such as professional organizations, labor unions, business councils, intellectuals and leaders of social movements. As satirically commented by a columnist of the liberal newspaper, Folha de São Paulo, in those initial stages there was a mood of "anything goes - craziness, follies, exaggerations and dreams". But as Florestan Fernandes writes also in the Folha, "Those from below carried their clamors to the Constituinte, and good or bad, had to be heard... They extended the ambit of themes that were imposed on the Constituinte from the bottom up. Those from below still did not make decisions. But they said what they wanted to see in the constitutional text."

The reconstruction of civil society

What I find particularly interesting in this process is the challenge it offered for the re-mobilization of civil society after twenty years of suffocation by military rule. During the dictatorship, the civil organizations that had flourished in the 1950's and early 1960's found themselves progressively silenced, either by direct repression (such as the violent suppression of labor unions and the student movement) or by indirect pressure, such as the cutting of public funds, censure of the press and limitation of public gatherings. Since the "opening to democracy" in the late 1970's (catchword for the period preceding the "transition to democracy" of the 1980's) many organizations that existed before the coup of 1964 have stepped out of the closet. Others are emerging for the first time or are in a process of re-organization.

But this "reorganization" is chaotic and disorganized. Early this year I took a class at PUC (Catholic University) with Moacir Gadotti, professor of philosophy of education and one of Brazil's respected "progressive" intellectuals in the field of education. He is currently doing a study of the influence of educational organizations on the elaboration of the constitutional text on education. He lamented the lack of united lobbying force among the hundreds of entities agitating around the issue of education. "If you want to know how bad things are in Brazil, we don't even have a list of all the entities of education. No one even knows how many there are, let alone the origins and history of each one, their political positions and areas of action. Only in Brazil do you have this level of disorganization."

While it is unlikely that such confusion exists "only in Brazil", it is true that civil organizations in many newly democratized countries, like social movements of any type, often suffer from the "popcorn effect". New organizations are always

emerging in bursts of concern and initiative, as others lose their drive and disappear. The lack of institutional stamina has as much to do with the scarcity of resources and infrastructure as it has to do with the lack of organizational experience. For example, one reason for the divisions between these groups is the jealous search for funds. No group wants to reveal exactly what its projects are or where it gets its money, for fear that someone else will beat it to the funds. Without a steady source of income, the organizations tend to fold up after the initial grant runs out.

Often such groups are reluctant to make alliances not because of political differences, but because they don't want to lose their autonomy or organizational "identity". There ends up being an tremendous repetition of projects and proposals, together with a sectarian tendency to emphasize differences rather than points in common. This weakens the lobbying force of such entities, not only in the case of the constitutional assembly, but also in the more routine pressuring of schools and education departments, for example. Add this to the scrambling for funds and you create the atmosphere of the malandro, a Brazilian tradition that means roughly the schemer who achieves results because he is "sem vergonha" (without shame). Gadotti attributes malandragem in Brazil to the lack of institutional structures that demand responsibility. In the United States, for example, the structures of government, not to mention the legal system, the press, and the social movements, all serve to demand compliance with laws and with the "rights" of citizens. In Brazil the person who succeeds is more often the one who disregards the law, who goes individually by shady side channels. Gadotti criticized this tradition. "We have to end the attitude of the malandro among educational entities. With malandragem you accomplish nothing. We can only accomplish things through force, through organization, and through unified struggle."

Education in the constitution

As can be seen from Gadotti's comments, one of the challenges of the constitutional process was the necessity of unification among diverse civil entities. At least one sector of educational organizations succeeded in organizing itself so as to present a unified proposal to the subcommittee on education. The group called itself the "National Forum on Education in the Constituente", known simply as the FORUM, uniting twelve of the most progressive educational organizations in the country concerned with the defense and renovation of the public school.* In the negotiation of the subcommittee text, as well as later during the voting process, the FORUM served as the key articulator of the interests of the public school, as opposed to the strong lobbies of Catholic and private school educators.

To give an idea of how the process worked, the Subcommittee on Education, Culture and Sports held nearly 40 meetings with over 70 organizations, receiving 333 proposals in the area of education alone. Some of these organizations were specifically related to education, such as the FORUM, the AEC (Association of Catholic Educators) and FENEEN (National Federation of Teaching Establishments - the private school lobby). Others represented diverse groups interested in education, such as the CEAB (Center for Afro-Brazilian Studies), the UNI (Union of Indigenous Nations), SBPC (Brazilian Society for Progress in the Sciences), the CNBB (National

* Among the entities participating in the FORUM were ANDE (National Association of Education), CEDES (Center for Studies of Education and Society), ANPED (National Association for Graduate Research in Education), UNE (National Union of Students), CPB (Confederation of Professors of Brazil), and other organizations representing school principals, supervisors, staff and service workers, municipal directors, university faculty, and others.

Conference of Brazilian Bishops) and the OCB (Organization of Brazilian Cooperatives), among others defending proposals for inclusion in the constitutional text. After listening to these proposals the subcommittee debated and voted on a preliminary text, which was then edited by a thematic commission, which sent it in turn to the Commission of Systematization. This final commission unified all of the subcommittee projects to present a base constitutional text for debate, amendment, and voting in the constitutional assembly.

Among the items debated in the subcommittee were the age of obligatory schooling, the right to preschool and day care, religious education, bilingual education for indigenous peoples, education of gifted and handicapped, organization of the teaching profession and the autonomy of the university. But the two most controversial areas were those of the financing and the organization of education. These issues are central to the debate about the public school that goes back to the beginning of the century, in which the elitist tradition of private and religious education clashes with the ideal of free, public education for all. Those constitutions not elaborated by dictatorships have progressively given more space to the public school, although most recently the military government pursued a policy of privatization of education. The debate in the current constitutional assembly centered around the use of public funds of private education, which is traditional in Brazil but which has long been opposed by the progressive sectors in education. Exclusivity of public funds for public schools was the central banner of the FORUM in its lobbying efforts in the subcommittee and later in the assembly. FENEEN, of course, lobbied to maintain funding for private schools, while the Catholic



Students and teachers participate in a demonstration in defense of the public school.

organizations (AEC, CNBB) acted as intermediators, positioning themselves against the elitization of education, while at the same time protecting the role of the church as the principal "alternative" educator in the country.

It is worth noting here the contradictory position of the church in this matter, as in most matters in current day Latin America. On the one hand the church defends the expansion of educational opportunities and the democratization of education. In accord with the progressive line of liberation theology, it promotes schools based on community participation, especially those oriented toward the poorer population. It argues that public funding for private schools is necessary to support innovative educational projects, since it is not only public schools that are "democratic" and "communitarian" - in fact, usually they are just the opposite. But on the other hand, most Catholic schools traditionally serve not the poor but the elite. Schools for the rich and middle class would benefit equally from public funds as the "communitarian", not to mention the multitude of commercial, lightly-disguised profit-making ventures that offer private education for those who have money. No one is happy with the current public education in Brazil, which is basically bureaucratic, of low quality, and still offering far fewer openings than kids to fill them. But if public funds go to private schools, the tendency will be to increase the elitization of education and lessen pressure for the expansion and improvement of public education.

In the end it was the Catholic organizations that negotiated the compromise text for the new constitution, which permits public funds only for those private schools that are "communitarian, confessional, or philanthropic" and that prove non-profit status. This text satisfies completely the interests of the church, and for the most part those of the private schools as well. The FORUM took it as a defeat, since nearly any school can declare itself to be "communitarian" or "philanthropic", and private schools have long been skilled in devices to pass as non-profit (such as the school owner who appoints himself principal and pays himself an exorbitant salary.) In any case, the more conservative forces won out, and under the new constitution private schools will continue to receive public funding.

The other important debate centered around the organization of education. Structurally there was nothing new here - schools continue to be divided into state and municipal systems, supplemented by the Union. But the interesting factor in the subcommittee discussions was the number of proposals for the democratization of education, coming from educational entities of all types. Calls were heard for "schools of the people" or "schools of popular promotion" as complementary to the municipal systems; for financial and administrative decentralization; for the direct election of school principals, supervisors, and coordinators; for the participation of representatives of teachers, students, directors, staff, and community in the school administration; and for the participation of civil society in the elaboration of national educational policy. Defending this avalanche of proposals were the FORUM, the Catholic organizations, and diverse entities representing teachers, students, administrators, community school leaders, secretaries of education, university rectors, groups of black and indigenous consciousness, among many others. The only contrary voice was that of FENEEN, which, uninterested in the democratization of education, proposed that the previous constitutional text be maintained.

None of the specific proposals cited above ended up entering into the final constitutional text. The avalanche was trimmed down to one simple principle, that of the "gestão democrática" (democratic gestation) of education, to be determined by law. The delegates on the subcommittee chose the exit used time after time in this

constitution process, in which accords were formed on controversial and potentially disruptive matters by leaving their definition for complementary and ordinary law. What this does is throw the debate into the future. On the question of democratic participation in the educational process, civil society was more daring than the constitutional delegates, and certainly more daring than the current educational bureaucracy. No immediate changes are guaranteed by the principal of "gestão democrática". But its inclusion for the first time in any of Brazil's constitutions gives civil society a constitutional basis for the struggle to include its proposals in the new "Lei de Diretrizes e Bases", the basic project of educational legislation that shapes educational policy, and which is due for renovation in the coming year.

Brazilian Conference on Education

The possibilities of this new legislation were the central subjects for discussion at the 5th Brazilian Conference on Education (CBE), held at the University of Brasília from August 2 to 5. I attended this conference together with Prof. Gadotti and several graduate students from PUC who are researching the struggle for the organization of education in Brazil. Since I had researched the question of education in the constitutional process for Gadotti's class, I participated in the panel discussion on the topic, and had the chance to see close up some of the principal educational tendencies in Brazil.

The CBE has since 1980* been the principal national forum for research and debate on educational issues. It is coordinated by ANDE, ANPED, and CEDES, three of the national educational organizations that participated in the FORUM. Participating in the conference were teachers, administrators, researchers and civil organizations from around the country. While the CBE is traditionally "progressive" in orientation, I came away with a sense of frustration and tension between those educators with strong ties to the educational system, immersed in endless debates about methodological and curriculum reform that seldom succeed in leaving the paper, and those researchers and educators with more profound criticism of the system and more genuinely innovative practices. There remains much timidity within the field of education, and the most daring proposals come from organizations with at least one foot outside of the system.

The principal goal of the more critical organizations is to draw together two ideals that have traditionally kept their distance - that of the free public school that offers equality of educational opportunity for all; and that of the de-centralized, democratic, and innovative school with profound community participation and a critical social stance. Gadotti calls this the "escola única popular", which would be "a public, state-run school, but with social control and a tendency for scholastic auto-gestation."

Gadotti's proposal is, to my mind, essential, although it remains basically empty. Historically, models of this sort of school do not exist. In a certain sense this is the same practical question faced by Gorbachev and others these days: how does one administrate a central government (or a school system), within a vision of social equality, that preserves as its driving force community and individual initiatives. Within the field of Brazilian education the obstacles are many. A first obstacle is the stagnation of the educational system itself, paralyzed by bureaucracy and political compromises, constantly discussing reform while constantly remaining the same. Second, the disorganization of civil society, which would have to generate the intellectuals and practitioners of this "escola única popular", but is presently

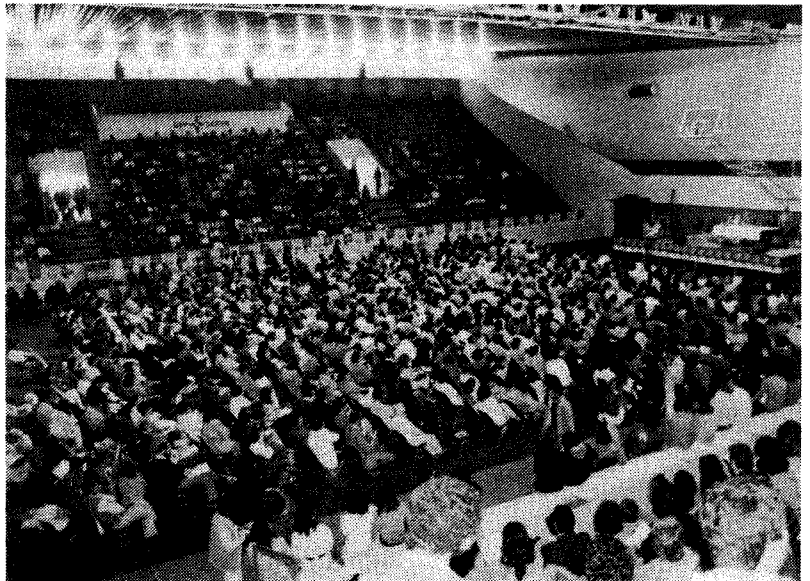
* The CBE was actually initiated in 1927, continuing vigorous until the military coup of 1964, when it was substituted by a politically sterilized, state controlled conference. In 1980 the CBE was re-established under civil control.

Scenes from the 5th Brazilian Conference
on Education, Brasília, August 2-5, 1988

Sociologist Florestan Fernandes
speaks about the struggle for the
public school . . .



. . . to an audience of educators
from around the country, gathered
in the gymnasium of the University
of Brasília



Prof. Moacir Gadotti leads a panel
on the organization of educational
entities in Brazil. I'm there at
the far right.



clumsy, inarticulate and defensive, like an adolescent. Third, the unpreparedness of the communities, which know that they want "more schools" and "better schools", but don't have the educational understanding to know how to demand and contribute to the construction of a school that, in the language of Brazilian educational theorist Paulo Freire, would be "transformed and transforming."

Of course, if one insists too persistently that "no one is ready", then certainly no one ever will be. For those civil entities that have begun the process of organization and articulation in response to the Constitution, the next challenge will be to confront the "Lei de Diretrizes e Bases". In the elaboration of this set of laws there is a chance to make central administrative reforms that facilitate community participation, democratic school structures and de-centralized initiatives. Not that this will lead to revolutions. In Brazil there is a tradition of laws that "stick" and laws that "don't stick", and the same can be said of constitutions. But if civil society in education gets its act together, and assuming that Brazil resists another coup (both of which are pretty big "ifs"), such legal openings could supply an institutional basis to widen and solidify the shaky steps being taken by the public school toward the genuine democratization of the education it represents.

Um abraço,



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PT - Partido dos Trabalhadores (Worker's Party)
FORUM - National Forum on Education in the Constitution
AEC - Association of Catholic Educators
CNBB - National Council of Brazilian Bishops
FENEBEN - National Federation of Teaching Establishments (the private school lobby)
CEBE - Brazilian Conference on Education
ANDE - National Association of Education
ANPED - National Association of Graduate Research in Education
CEDES - Center of Studies in Education and Society