

THE MILITARIZATION OF POLITICS IN BRAZIL UNDER THE TEMER GOVERNMENT

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Introduction

In recent decades, the ‘judicialization of politics,’ understood as the involvement of courts and judges in political issues once monopolized by legislative and executive authorities has emerged as an influential force in Brazil. The Brazilian judiciary has assumed a central role in elections by regulating legislative and executive terms, as well as by influencing political decisions and democratic norms. This is not specific to Brazil. The judicial authorities have wielded their powers to protect powerful interests when threatened by changes of power in Canada, South Africa, Israel, and New Zealand in Hirsch’s account (2004).¹ Alarming, the relationship between judicial authorities and the Brazilian military is well established and has long been the subject of investigations. For example, Anthony Pereira’s research (2005) on the connections between the judiciary and military institutions in Argentina, Chile, and Brazil concluded that the close ties between the courts and the military led to ‘legalized’ repression. In Argentina, transitional

¹ For an analysis of the role of constitutional courts in democracy after transitions, see Samuel Is-sacharoff, *Fragile Democracies: Contested Power in the Era of Constitutional Courts* (2015). For the case of ‘judicialization of politics’ in Brazil, see Emilio Peluso Neder Meyer, ‘Judges and Courts in Unstable Constitutionalism Regimes: The Brazilian Judiciary Branch’s Political and Authoritarian Character,’ German L. J., forthcoming.

measures of accountability have held the military and some segments of the judiciary responsible (Bohoslavsky, 2015).

Still, aside from limited steps by the Brazilian former governments to protect Brazilians' right to truth and memory, neither Brazilian military officials, nor judges, have been held responsible for abuses committed during the military dictatorship of 1964-1985.²

A few years ago, my colleagues from the Federal University of Minas Gerais and I discussed the political significance of military officials publicly supporting a 'military intervention' in response to the ongoing Brazilian political crisis (Peluso Neder Meyer, Cattoni de Oliveira y Bustamante, 2017). During Temer government, ignoring the claims of Raul Jungmann, the former civilian leader of the Ministry of Defense, the Army Commander, General Eduardo Villas Bôas, did not punish the statements from General Antonio Hamilton Martins Mourão, who proposed a military solution to incarcerate corrupt politicians. Mourão was elected for the Vice-Presidency in the 2018 elections. These tensions and movements are representative of the broader political conflict taking place in Brazil.

In this article, I aim to show how the recent 'judicialization of politics' in Brazil has been accompanied by an equally worrisome 'militarization of politics.'³ Little has been done since the Brazilian Constitution of 1988 to rebuild the relationship between civilian and military authorities. Led by military officials selected by former President Michel Temer, members of the Armed Forces have organized political protests, intervened in state and federal affairs, occupied relevant positions in public administration, and hindered the conduction of investigations and processes related to their own peers and other public security measures, besides the effect on the civilian command. At the same time, Brazilian courts and judges have refused to hold Brazilian military members accountable for the crimes they have committed. As the cherry on the top, there was the election of Jair Bolsonaro for Presidency, along with 73 military legislative representatives, and the nomination of former Armed Forces members to occupy high-rank po-

2 For a view on the Brazilian National Truth Commission achievements and shortcomings, see Marcelo Torelly, 'Assessing a Late Truth Commission: Challenges and Achievements of the Brazilian National Truth Commission,' 12 *I.J.T.J.* 2, 2018, p. 1-22.

3 Zaverucha (2003:399) calls 'militarization' to the process through which society accepts military values.

sitions in public administration. This has allowed the military to gain an unprecedented level of political participation and power without being held accountable for violations of human rights (Sikkink, 2011).⁴

Military Jurisdiction

Changes in the judicial system in favor of the Brazilian military have also drawn widespread concern. Statute Law n° 13.491, passed on October 13, 2017, changed the jurisdiction of military crimes committed by members of the Armed Forces by reestablishing a legal system from the early 1990s. These modifications mean that the Military Criminal Code now calls for crimes committed by members of the Armed Forces against civilians to be tried by Brazilian military justices, rather than in non-military courts where there are fewer conflicts of interest.

These rules apply for crimes committed during operations run by the President or the Ministry of Defense, and for crimes committed during activities of military nature and peacekeeping operations. Military courts will also hold jurisdiction over crimes committed during operations to guarantee “law and order” (*Garantia da Lei e da Ordem, GLO*), which is a system that allows the military to act on national security matters in extraordinary situations, established by Complementary Law n° 97 of 1999. The jurisdictional shifts were severely criticized by organizations such as the UN High Commissioner of Human Rights Regional Office for South America and by the Inter-American Commission on Human Rights (Conjur, 2017). These groups were alarmed for a good reason. In the state of Rio de Janeiro, two Presidential decrees allowed the deployment of members of the Armed Forces during public security operations from July 28, 2017, until December 31, 2018. These federal troops have carried out violent operations to “guarantee law and order.”



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4 Kathryn Sikkink does the association between the lack of accountability for past violations of human rights and high levels of present violations.

The Military's Political Speeches

A few months after General Mourão publicly called for the military to interfere in politics, the Commander of the Brazilian Army, Villas Bôas, removed him from his position in the Army Secretariat for Economy and Finance. Yet, this dismissal only occurred after Mourão publicly criticized the Temer administration a second time, saying it ignored the needs of the Brazilian public and focused only on corporate interests (de Souza, 2017). Shortly afterward, on February 28, 2018, General Mourão retired and announced that a group of military candidates would run in the 2018 elections. He also praised Colonel Brilhante Ustra, a military officer that was found to have committed torture in a civil lawsuit by the Brazilian Superior Court of Justice (*Superior Tribunal de Justiça*). The right-wing President Jair Bolsonaro also supported Colonel Ustra during Dilma Rousseff's impeachment in 2016 (Falcão, 2016). Finally, General Mourão stated that politicians like President Michel Temer, and others could not legitimately participate in the politics because of accusations of corruption, and should be purged by the judiciary (Victor 2018). As abovementioned, Mourão would be later the Vice-President of Brazil.

The most glaring example of a military official threatening a Brazilian politician occurred when General Villas-Bôas criticized ex-President Lula da Silva's trial before the Brazilian Supreme Court after he filed a writ of *habeas corpus* to avoid imprisonment. Later, Lula was condemned in a very controversial criminal lawsuit that accused him of corruption and money laundering related to the supposed purchase of an apartment in the coast of the state of São Paulo.

In February 2016, by a strict majority, the Brazilian Supreme Court had decided that appeals to third level courts were not enough to avoid imprisonment. Satisfied with the ruling from second level tribunals, the strict majority, however, was confronted in other singular cases, opening the way for overruling the precedent. Villas-Bôas posted on Twitter claims that indicated that the Armed Forces shared Brazilian citizens' concerns against impunity and that they were aware of their 'institutional duties,' indicating that Brazilian Supreme Court should not grant the *habeas corpus* writ to Lula (Odilla, 2018). The former president was arrested and, now, disclosed conversations have shown that prosecutors and the federal judge that tried Lula — and became Bolsonaro's Minister of Justice

— were in a collaborative effort to condemn him even in face of the lack of evidences (Phillips, 2019).

Military Officials in Office

The growing wave of military officials participating in Brazilian politics is reminiscent of the Temer Administration's previous security policies. Unlike ex-President Rousseff's approach to national security, President Temer created an Institutional Security Cabinet (*Gabinete de Segurança Institucional*), responsible for discussing security issues directly with him. Also, its functions were analyzing potential security risks, avoiding crises of institutional instability, and coordinating federal intelligence activities through the Brazilian Intelligence Agency.⁵ The President then nominated General Sérgio Etchegoyen, who has questioned the legitimacy of social movements like the MST (*Movimento dos Trabalhadores Rurais sem Terra*, or Rural Workers without Land Movement) and compared them to terrorist groups, to lead this cabinet.

General Etchegoyen's family background is practically a case study in the history of the militarization of Brazilian politics. His grandfather, Alcides Gonçalves, served as Getúlio Vargas's chief police chief during part of the dictatorship of 1937-1945, fighting anti-government activists.⁶ He was the replacement for Filinto Müller, known as a Nazi sympathizer, who visited Germany in 1937 to meet with Heinrich Himmler after the beginning of the dictatorship.⁷ General Etchegoyen's father, Leo Etchegoyen, took advantage of the repressive Brazilian dictatorship that lasted from 1964 until 1985 by being advisor of Dictator Emílio Médici. His uncle, Cyro Etchegoyen, was also head of the Army's Center of Information (*Centro de Informações do Exército*). After the fall of the dictatorship, the Brazilian National Truth Commission investigated both these men for in-

5 See, also, Agência Brasileira de Inteligência, 'ABIN volta a ser subordinada ao GSI,' <http://www.abin.gov.br/abin-volta-a-ser-subordinada-ao-gsi/>, last visited 6 March 2018.

6 See FGV CPDOC, entry Alcides Gonçalves Etchegoyen, <http://www.fgv.br/cpdoc/acervo/dicionarios/verbete-biografico/alcides-goncalves-etchegoyen>, last visited 17 July 2018.

7 See FGV CPDOC, 'A Era Vargas: Dos Anos 20 a 1945,' entry Filinto Müller, https://cpdoc.fgv.br/producao/dossies/AEraVargas1/biografias/filinto_muller, last visited 17 July 2018.

volvement in human rights violations. Cyro Etchegoyen was eventually accused of commanding an infamous torture site, known as the Petrópolis House of Death (*Casa da Morte de Petrópolis*).⁸

Several other high level positions in the Temer Administration were also filled by members of the Armed Forces, including the National Public Security Secretariat, the Presidency of the National Indigenous Foundation (*FUNAI — Fundação Nacional do Índio*) and Civil Office of the Cabinet of the President of the Republic⁹, among others (Valente, 2018).

The Brazilian military has a long history of interference in domestic politics. From the foundation of the republic in 1889, the military has played a central role. It involved itself in struggles against the presidential election results of 1930, which led Getúlio Vargas to create a provisional government. After the presidential elections of 1934, which Vargas won, he staged a coup d'état with the support of the military. His government then imposed the Constitution of 1937 to solidify control. However, in October 1945, disgruntled members of the Armed Forces again seized power, but this time in opposition to Vargas. In 1964, another coup d'état put the military in charge of the presidency, which led to the dictatorship of 1964-1985. Only popular discontent during the Constituent Assembly of 1987-1988 brought down the planned transitional government envisioned by the Armed Forces, although minor institutional reforms were made.

The Ministry of Defense

The nomination of the new Minister of Defense was also a step towards the militarization of politics. In order to create a new Ministry of Public Security, the President split up the Ministry of Justice. The former civilian Minister of

8 See COMISSÃO NACIONAL DA VERDADE, *Relatório Final*, <http://cnv.memoriasreveladas.gov.br/textos-do-colegiado/586-epub.html>, last visited 6 March 2018. On pages 1.963 and 1.964, a confessed torturer, Paulo Malhães, in testimony before the National Truth Commission, indicates Cyro Etchegoyen as the one responsible for the House of Death of Petrópolis. On pages 2.094 and 2.111, the names of Sérgio Etchegoyen's relatives appear as public agents responsible for structures and administration and procedures conducting to gross violations of human rights.

9 Like the Ministry of Internal Affairs.

Defense, Raul Jungmann, took office as the new Minister of Public Security, allowing President Temer to select the General of the Army Reserves, Joaquim Luna e Silva, to take charge of the Ministry of Defense (Matais, 2018). At first, this does not appear to be problematic; however, the Ministry of Defense was created to remain under civilian control according to Constitutional Amendment nº 23 of September 3, 1999. President Temer's nomination contradicted this fundamental premise.

Federal Interference

To present a way out of the public security dilemmas of the State of Rio de Janeiro, Temer resorted to an intervention described in the Brazilian Constitution of 1988 as 'federal interference' (Constitution of the Federative Republic of Brazil, 1988: art. 34; Decree no. 9.288/2018). Although he was criticized for invoking unprecedented measures for his benefit, Temer decided to use Article 34 of the Brazilian Constitution to bypass the State of Rio de Janeiro's autonomy. Basing his intervention on language in Article 34 which outlines exceptions to state autonomy in cases of 'grave compromises of the public order,' (*grave comprometimento da ordem pública*) Temer implemented his security policies, justifying his actions by claiming Rio was unable to control drug trafficking and violence.

Shortly after the nomination of Army General Walter Braga Souza Neto as Federal Intervenor, General Villas Bôas, Commander of the Brazilian Army, stated in a council meeting that the military should be guaranteed that a Truth Commission would ever be created (Lôbo, 2018). The Army went as far as proposing 'collective warrants' for its intervention, which would encompass streets or neighborhoods and allow military forces to search and apprehend suspects with impunity. However, the government backed down after a heated debate, and significant criticism by lawyers, public attorneys, civil society, and organizations like Human Rights Watch (Araújo et al, 2018; Rosa, 2018).¹⁰

¹⁰ Right after the federal interference decree, three black young activists, AD Junior, Spartakus Francisco, and Eduardo Carvalho recorded a video in which they guide the communities on how to act before the repression that would increase with the interference. Simple tips like go to walk with identification documents, keep the cell phone charged, tell a friend where you are going to, may

It is relevant to note that former United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, criticized the involvement of military forces in Brazilian law enforcement and public security issues. He urged the Brazilian government to respect the human rights of its citizens by avoiding racial discrimination and criminalizing the poor (Abdala, 2018).

Federal interventions did not occur after the Constitution of 1988, possibly to avoid authoritarian interferences in states, as they happened under Vargas (1937-1945) and the military dictatorship (1964-1985). The text of article 34 of the Constitution of 1988 provides the remedies for interference in an 'exceptional language': 'The Union shall not intervene in the States or the Federal District, except to: . . .' There is a clear connotation, from normative stipulations to political practice, that this is not a day-by-day act: it is exceptional and against the basis of a principle that cannot even be taken off of the Constitution of 1988, that is, federalism. As article 60, 4th paragraph, says, this is a non-amendable clause or, more clearly, no constitutional amendment can be considered if it aims to set aside Brazilian federalism (Constitution of the Federative Republic of Brazil, 1988: art. 60, 4th paragraph, no. 1).

Brazil faces a political crisis since, at least, Dilma Rousseff's reelection in October 2014. When Temer took office in April 2016, there was a political and also economic crisis. His government had publicly advocated an overcoming of the economic crisis. However, he was unable to deny the existence of the ongoing political crisis, especially with such low popularity levels (Mazui, 2018). As Levitsky and Ziblatt showed, crises create the path for authoritarian abuses that can ameliorate governments' popularity: this happened with George W. Bush Patriot Act in 2001, a response to terrorist attacks that elevated his popularity to unprecedented levels at the same time that restricted fundamental rights. The same would go for Fujimori's 1992 coup, followed by approval rating of 81 per cent. Indeed, elected autocrats often *need* crises — external threats offer them a chance to break free, both swiftly and, very often, "legally".

seem futile, but they can really make a difference in daily life. See Ana Beatriz Rosa, 'Jovens negros do Rio que gravaram manual de sobrevivência temem intervenção federal,' *HuffPost*, http://www.huffpostbrasil.com/2018/02/20/jovens-negros-do-rio-que-gravaram-manual-de-sobrevivencia-temem-intervencao-federal_a_23366801/, last visited 6 March 2018.

Impunity for Crimes Committed Under the Dictatorship

Another issue related to the broader problem of military involvement in politics is that military officials will be responsible for investigating human rights violations involving their peers. If the Brazilian civil justice system is unwilling to enforce human rights law and hold the military accountable for its crimes, how can anyone reasonably expect military courts to do so? With recent human rights violations mounting and significant conflicts of interest, military courts have demonstrated their inability to function properly and conduct transparent investigations. Brazilian judges and courts have consistently refused federal prosecutors' attempts to hold public agents accused of crimes against humanity accountable for their actions during the Brazilian dictatorship of 1964-1985 (Peluso Neder Meyer, 2017: 41-71).

Based on the Brazilian Supreme Court ruling on the ADPF nº 153, which dealt with Statute Law nº 6.683 of 1979 in an abstract constitutional review meant to exclude the interpretation of auto-amnesty for agents of the dictatorship, federal judges have been reluctantly rejecting criminal lawsuits, arguing that a supposed 'political agreement' prior to the Constitution of 1988 should be respected.

None of the 40 criminal lawsuits filed since 2012 against the military and other public agents accused of crimes against humanity committed during the dictatorship has resulted in successful convictions.¹¹ Structural flaws in Brazil's justice system, which were criticized by the Inter-American Court of Human Rights during the *Gomes Lund* case, remain unaddressed. The case referred to events which occurred between 1972 and 1973 in a central region of Brazil called Araguaia. Members of the Communist Party of Brazil, (*PCdoB*) settled in that region



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11 The documents concerning the criminal lawsuits, including prosecutors' petitions and judges' rulings, are available at the Federal University of Minas Gerais Study Center on Transitional Justice: <http://cjt.ufmg.br>, last visited 7 March 2018. See, also, BRASIL, MINISTÉRIO PÚBLICO FEDERAL, 2ª CÂMARA DE COORDENAÇÃO E REVISÃO, CRIMES DA DITADURA MILITAR (2017) (available at: http://www.mpf.mp.br/atuacao-tematica/ccr2/publicacoes/roteiro-atuacoes/005_17_crimes_da_ditadura_militar_digital_paginas_unicas.pdf, last visited 7 March 2018).

and started to build a rural guerrilla campaign with around 70 fighters. The military regime received information about this guerrilla group and sent troops to Araguaia on three occasions. Though the military's initial agenda may have been to arrest militants and try to collect information, by the third operation, soldiers left no one alive.

The ruling of the IACtHR stated that Brazil must investigate and prosecute all forced disappearances that took place in Araguaia. Thus, in the context of the Inter-American System of Human Rights, amnesty laws can no longer be used as an excuse to not investigating and punishing past violations of human rights.

The Brazilian judiciary has recently faced an additional problem dealing with human rights. The IACtHR ruled, in a second case, against the interpretation that avoided accountability for the previous government's crimes against humanity in the *Vladimir Herzog* case (IACtHR 2018). Herzog was a journalist, member of the Brazilian Communist Party. He was illegally detained, tortured, and then assassinated during Operation Radar, a series of operations that eliminated members of the Brazilian Communist Party. These targeted killings were run by the Army Center of Information (*CIE – Centro de Informação do Exército*) and the DOI-CODI (the Department of Information Operations-Center for Internal Defense Operations, the agency that coordinated between military and civilian state forces).

The IACtHR collected Brazilian federal prosecutors' arguments to demonstrate the systemic and general nature of political repression. The government's national security doctrine began the repression directly after the 1964 coup d'état. In March 1970, the Internal Security System was created following a Presidential Directive on Internal Security. The DOI-CODI created the opportunity for joint operations involving all types of security forces. Furthermore, the judicial system was organized to protect those responsible for violence by excluding 'acts of revolution' (institutional and complementary acts which are parallel, contrary and superior to constitutional norms) from judicial review. For example, the Institutional Act No. 5 of 1968, which suspended the *habeas corpus* for political crimes, couldn't be questioned in court, even though it was

anti-constitutional.¹² The elimination of all political opposition and the creation of secret torture centers also helped to shape the nature of violent repression.

What's at Stake?

Although the Constitution of 1988 subordinated the Armed Forces to the control of the civilian President of Republic, there were several difficulties to make this text effective (Constitution of the Federative Republic of Brazil, 1998: art. 142). Accountability, open dialogue, expanded access to truth, and the crucial recognition by the Armed Forces that their members committed human rights violations, contributed to three important effects. First, the continuity of a doctrinal approach guided by Cold War premises in the education of younger officers. There was no clear break, especially in the Army, with the kind of approach that led to the creation of the main schools that shaped the way Armed Forces see their political roles (Martinis, 2006). Second, the absence of real subordination to civilian authorities, despite their political bias or political plans; and third, a strong belief that public security operations should be conducted by the Armed Forces, though they were not trained in law enforcement, which created problems for Brazilian democracy.

President Temer made a decision, and it had a lot to do with his populist agenda. His administration concluded that one of its key objectives, social security reform, would not get the support it needed to pass the legislature. Because it was an election year with important races at federal and regional levels, the Temer Administration used hardline public security policies as a means to secure conservative votes. Due to the popularity of the Armed Forces among Brazilian conservatives, the Temer Administration counted on its security policies to help him reach other political goals. However, by allowing the military to expand its powers, the Brazilian government risked enabling unwanted and unconstitutional political participation by the military.

¹² It is no coincidence that the nowadays supporters of the dictatorship of 1964-1985 would consider one “new” Institutional Act No. 5 of 1968: in face of the ongoing political crisis, federal representative and President Jair Bolsonaro's son, Eduardo Bolsonaro, admitted this could be a way out if left-wings movements adopt a radical tone (Bergamo, 2019).



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A clear example of such defiance to the Brazilian Constitution of 1988 and the legislation that regulates it, comes from public declarations and a proposal in the Federal Senate. Retired General Augusto Heleno and Army's Commandant Villas Bôas proposed in interviews that suspects carrying a gun in Rio de Janeiro's streets could be legally shot by military forces (Valente, 2018). However, Senator José Medeiros presented a proposal modifying the Brazilian Criminal Code to allow violence in self-defense when public security agents kill or wound someone illegally carrying a restricted firearm (Federal Senate, Senate Legislative Bid nº 352/2017). The justification of the legislative proposal explicitly used 'legitimate defense of the society' terms. The bid is supposed to be discussed in Federal Senate's Commission of Constitution and Justice, an organ that shall verify the constitutionality of the bids. A survey in Senate's website showed, on March 20, 2018. The support of 32,194 internet users favoring the change. Only 1,058 people opposed the bid.¹³

Politically, the unintended effects of militarized politics reached an insurmountable level when on March 14, 2018, Marielle Franco, 38, a black, leftist, lesbian female Rio de Janeiro city councilor (the only one amidst the 51 municipal representatives) was shot dead, along with her driver, Anderson Gomes, 35. As a severe critic of the way young people were being killed in Rio de Janeiro's marginalized communities (or 'favelas'), Franco denounced the violence committed by security forces, most of them part of the so-called regional military police.

The assassination led to a series of protests around Brazil and the globe—including London, Paris, Munich, and Stockholm—, transforming her death in a symbol against racial oppression (Faiola y López, 2018). Little is known until now; however, the investigation suggests it was a professional killing that could only have been committed by corrupt police officers. Unsurprisingly, it is also later revealed that Marielle Franco had been chosen to help lead a commission investigating possible abuses committed during the federal military intervention

¹³ See <https://www25.senado.leg.br/web/atividade/materias/-/materia/130958>, last visited 20 March 2018.

declared by Michel Temer (Greenwald, 2018; see, “Vereadora Marielle Franco fiscalizava intervenção federal no RJ,” 2018).

Conclusions

In a world where there are constant abuses of judicial instruments to protect authoritarian power (Attila, 2017), it seems problematic that the military are gaining space in the Brazilian political arena. However, if the historical relationship between civilian and military powers is understood, it could be seen as part of the explanation in the absence of a serious institutional reform that could have limited the Armed Forces since the end of the dictatorship. It is interesting that the judiciary would present the same problems in recent Brazilian political crises and would not submit itself to serious reforms (Peluso Neder Meyer, 2018).

The political transitions that do not properly confront the issues of authoritarian institutions must face the reappearance of dictatorial governments, sooner or later. The problem is even worse in Brazil, considering the militarizing process of politics, which had as ultimate act the election of the radical Jair Bolsonaro. Along with him, 72 militaries reached political positions. Recent movements in public security issues show that the line which started during the dictatorship, uncontrolled after 1988 y deepened by Temer, continues with violations to human rights.

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