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Editorial Note

Dear Reader,

Welcome to Volume 5, Issue 1 of *Encuentro Latinoamericano: Journal of Political Science and International Relations (ELA)*. Our aim is to publish in-depth analyses of Latin American politics from student authors around the world in English, Spanish, and Portuguese.

Many months of work went into this issue, and it would not be possible without our outgoing **Editor-in-Chief Paulo Duarte (Portugal)** and our incoming **Editor-in-Chief Stephanie Mojica (US)**. In addition, we appreciate the efforts of our external peer reviewers, our Editorial Assistants, and of course all the authors who have submitted articles to *ELA*.

Volume 5, Issue 1 is comprised of the following articles:

- “Brazilian Foreign Policy During Critical Transitions: A Comparative Analysis Between Itamar’s and Temer’s Administrations” by **Mário Braga Magalhães Hubner Vieira (Denmark)** analyzes to what extent moments of high political instability affect foreign policy.
- “On Unchecked Leadership Empowerment: Analyzing Extraordinary Credits in Brazil” by **Victor Rodrigues** and **Bruna Veríssimo¹ (Brazil)** explores whether a 2008 Supreme Court decision regarding the authority of presidents to authorize so-called emergency expenses (extraordinary credits) without the usual system of checks and balances actually changed an often-abused system.
- “Political Culture and Democracy in Latin America: Perspectives on Brazil and Colombia” by **Andressa Liegi Vieira Costa (Portugal)** analyzes the relationships between political culture and democracy in Brazil and Colombia — countries that show low levels of citizen participation and apathy about politics.
- “Collective Land Rights: A Challenge to Colonial Continuities in National and International Legal Structures?” by **Judith Möllhoff (Germany)** questions the status of indigenous peoples’ collective land rights in Brazilian constitutional legislation and in international law.

We will publish another issue by December 2018 and welcome submissions from student authors (including recent graduates). Please see the enclosed **Call for Papers** and **Call for Reviewers** for more details.

The new Editor-in-Chief’s future visions for *ELA* include publishing articles in French and Haitian Creole. All opportunities will be advertised online via the International Association for Political Science Students (IAPSS) and other venues (i.e. H-Net and the Facebook groups of the [National Association of Student Anthropologists](#) and the [Student Section of LASA](#)/the Latin American Studies Association).

All of us at *ELA* appreciate your support of the journal, and in this ever-changing global political landscape we hope we can count on your continued participation.

The Editorial Board

¹ **Disclosure:** Bruna Veríssimo is an Editorial Assistant for *ELA* and *POLITIKON: The IAPSS Journal of Political Science*. However, her co-authored article went through the same double-blind peer review process as all other authors who submit to IAPSS journals.

Brazilian Foreign Policy During Critical Transitions: A Comparative Analysis Between Itamar's and Temer's Administrations

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Mário Braga Magalhães Hubner Vieira
Aarhus University Denmark
mariobraga.journalism@gmail.com

Abstract

This paper aims to compare the changes in Brazilian foreign policy during moments of institutional rupture. To meet this objective, the author compares the policies adopted under President Itamar Franco (1992-1994) and President Michel Temer (2016-) regarding their respective predecessors. The goal is to identify to what extent moments of high political instability affected Brazilian foreign policy. To test this hypothesis, this research refers to the concept of "Critical Transition" coined by Alston et al. (2016), to the "two-level game" theory developed by Putnam (1988), and to studies about the influence of the Executive Branch over bureaucratic structures by Alden and Aran (2012). Building upon the methodology created by Hirst and Pinheiro (1995), a case study will cover specific aspects of Brazilian foreign policy in the two moments mentioned. Qualitative and quantitative conclusions suggest that the transitory governments led to significant change.

Keywords

Brazil; Critical Transitions; Democracy; Democratic Transitions; Foreign Policy

Resumo

Este artigo tem como objetivo comparar as mudanças na política externa brasileira em momentos de ruptura institucional. Para atender a esse objetivo, o autor compara as políticas adotadas pelo Presidente Itamar Franco (1992-1994) e pelo Presidente Michel Temer (2016-) em relação a seus respectivos antecessores. Nosso objetivo é identificar em que medida momentos de alta instabilidade política afetaram a política externa brasileira. Para testar essa hipótese, esta pesquisa refere-se ao conceito de "Transição Crítica" cunhado por Alston et al. (2016), para a teoria do "jogo de dois níveis" desenvolvida por Putnam (1988), e para estudos sobre a influência do poder executivo sobre estruturas burocráticas por Alden e Aran (2012). Com base na metodologia criada por Hirst e Pinheiro (1995), um estudo de caso abordará aspectos específicos da política externa brasileira nos dois momentos mencionados. Conclusões qualitativas e quantitativas sugerem que os governos transitórios levaram a mudanças significativas.

Palavras-chave

Brasil; Transição Crítica; Democracia; Transições Democráticas; Política Externa

1. Introduction

A wide range of factors influence countries' foreign affairs. The power alternation suggests different ruling parties may even adopt opposing stances regarding specific topics (Joly and Dandoy 2016), stressing the key role domestic politics play regarding international affairs (Farnham 2004). This can be considered a given during situations of democratic normality, but what happens to a country's stand in the global arena when there is an abrupt change in its democratic course? How do unpredictable political situations affect foreign policy?

Against this backdrop and resorting to recently developed theoretical frameworks that focus specifically on these moments of instability, this paper will investigate how the two moments of critical transition experienced in Brazil over the past three decades affected the country's foreign policy. From a pragmatic point of view, understanding how the 2016 impeachment process may affect Brazil's international orientation is important — especially since the country is among the major economies in Latin America and poses as an emerging global power. In addition, from a theoretical perspective, applying frameworks other than traditional international relations theories to study moments of turbulence may shed light on under-analyzed aspects and result in original or complementary information that can contribute to the field of comparative foreign policy. Therefore, this article aims to provide a preliminary analysis about the effects that moments of high domestic political instability had on Brazilian foreign policy during the post-re-democratization period (after the end of the military dictatorship in the mid-1980s).

First, this paper will provide a literature review. Second, it will go through the theoretical framework used in the analysis. This section includes a contextualization of the political scenario in Brazil in 2016, presenting a review of political events in an effort to understand if they represent a critical transition as understood by Alston et al. (2016). The paper will also debate the extent to which the balance between international and domestic interests and between the Executive Branch and bureaucratic structures play a role in such moments.

This work relies on the recently proposed “critical transitions” concept by Alston et al. (2016), in Putnam's (1988) well-established metaphor of the “two-level game,” and on

studies by Alden and Aran (2013) about the influence of the bureaucratic structure on foreign policy. A comparative case study will be conducted to identify the points of continuity and rupture adopted by President Itamar Franco, who was appointed in 1992 after President Fernando Collor de Mello's resignation, and President Michel Temer (who inherited the position in 2016 after President Dilma Rousseff's impeachment). Finally, in order to establish the closest possible parallel between the two periods, the analysis will follow the same methodological structure adopted by Hirst and Pinheiro (1995). The objective is to allow a quantitative and qualitative analysis regarding the changes these administrations made.

2. Literature Review

Going over the main approaches to foreign policy analysis, Tayfur (1994) argues that the subfield of comparative foreign policy (CFP) is the "most striking school of behaviouralism" and is strongly influenced by the scientificism of such movement. As a consequence, he claims, CFP borrowed methods of research from the natural sciences, such as systematic-empirical data collection, conceptualization, hypothesis testing, and theory building. Its primary goal, the author submits, was identifying resemblances and discrepancies in the foreign policy behavior in order to build a general theory in the field of foreign affairs. In addition, according to Lantis and Beasley,

"[...] CFP connects the study of international relations (the way states relate to each other in international politics) with the study of domestic politics (the functioning of governments and the relationships among individuals, groups, and institutions). (...) Traditional theories, however, tend to focus on the external environment as the primary or single explanation of why states do what they do in global affairs. Those who study foreign policy certainly draw on these theories (...) but they also look at theories of domestic politics focused inside the state for further explanation". (Lantis and Beasley 2017: 3)

Being a topic widely investigated over the past decades, scholars have looked at different factors that could influence foreign affairs. The size of a country (East 1973), the personal characteristics of political leaders (Greenstein 1967; Hermann 1980), and ethnicity (Davis and Moore 1997) are just some of the factors that play a role in a state's foreign policy. Providing a vast review of the field, Lantis and Beasley surmise that,

“[...] scholars have proposed a range of external factors that may impact states’ foreign policies. Realism proposes that states motivated by self-interests will seek military power and create alliances (...). Liberalism suggests that an interdependent international system will result in more cooperative foreign policies (...). Constructivist perspectives point to socially created meanings that develop into international norms which in turn guide actors’ behaviors. Proponents of each of these perspectives agree that foreign policies are a result of states’ rank, status, and links to other actors in the international system”. (Lantis and Beasley 2017: 8).

Regarding internal factors, the authors list government institutions, bureaucratic structures, societal groups, political parties, public opinion, and national identities. The next section will address which aspects of Brazilian foreign policy will be analyzed and why such approaches were selected.

3. Theoretical Framework

As Tayfur (2004: 113, 117) defines: *“[...] foreign policy is the behaviour of states mainly towards other states in the international system through their authorized agents”* and consists of an *“[...] official activity formulated and implemented by the authorized agents of sovereign states as orientations, plans, commitments and actions which are directed towards the external environment of states”*. This is the definition that this paper will work with, especially since part of the analysis is based on the plans for Brazilian foreign policy that were laid out in former Minister of Foreign Affairs José Serra’s inauguration speech.

3.1 Critical Transitions

In order to understand the socio-political-economic processes that culminated in the impeachment of former President Dilma Rousseff, this study resorts to the concept of “critical transitions” (Alston et al. 2016). According to the authors, the term refers to *“[...] historical periods when the powerful organizations in a country shift from one set of beliefs about how institutions (the formal and informal rules of the game) will affect outcomes to a new set of beliefs.”* (Alston et al. 2016: 1). It supposes the occurrence of a frustration shock and changes in the beliefs of a society's dominant network regarding the capacity of those in power to meet its demands. When economic and political results differ from expectations, a “window of opportunity” for change arises, since *“[b]eliefs about the relationship between institutions and outcomes*

held by some organizations in the dominant network become malleable” (Alston et al. 2016: 2). Such change allows the emergence of leaders that may lead to a process of institutional change.

To grasp this concept, it is mandatory to address what the authors mean to convey by using “beliefs” and how these operate in a critical transition.

“[...] In equilibrium, institutions are consistent with beliefs. But, we are most interested in beliefs during windows of opportunity. Most of the time, societies operate on a “core” set of beliefs, but during “constitutional quandaries,” core beliefs become fragile (Schofield 2006). *It is the fragile moments that enable societies to change their trajectories”* (Alston et al. 2016: 1).

They argue that a society’s set of beliefs are formed by history, experience, interaction, and serendipity and that although those in power cannot impose their beliefs, they are able to articulate and convince others of a new belief (Alston et al. 2016: 15).

A parallel with the recent facts developed in Brazil suggests similarities with the stages described by the theory as a critical transition process. First, after the re-election of President Rousseff in 2014, the effects of the economic crisis became more evident in the real economy, with sharp rises in unemployment and inflation (Rosas 2016; Cury and Rodrigues 2016). In addition to that, the fiscal adjustment adopted by the left-wing leader to balance the public accounts was the opposite of her electoral campaign discourse (Melo 2014; Rosa 2015). As a consequence, the president’s approval rating plunged below 10% (Matoso 2015). Large protests calling for Rousseff’s ouster made headlines as the biggest street demonstrations in the country’s history (O Estado de S. Paulo 2016).

Moreover, the political establishment itself was dissatisfied with the way the president governed and also felt pressured by the progress of the anti-corruption Car Wash Operation. In taped conversations, political leaders mentioned a “national pact” to “staunch the blood flow” by ousting Rousseff and naming Vice President Michel Temer as the new president (Valente 2016). The industry sector and the mainstream media also did their part to unseat Rousseff (Albuquerque 2017).

Additional evidence that supports the argument that the ruling power no longer matched the political elites’ expectations are the claims of the “lack of governability” widely

reported by the media. That concept refers to the government's incapacity of having proposals of its interest approved by Congress. Moraes et al. (2017) point to this as a political element in the impeachment process and as crucial as the legal grounds. The authors widely discuss the implications and register several situations in which this argument was reported by Brazilian media. The diffuse feeling of frustration among the Brazilian population as evidenced by large demonstrations was mirrored in the Brazilian political scenario. Political parties left Rousseff's supporting base (Rodrigues 2016) and the members of Congress that historically voted in alignment with her administration's interests supported impeachment (Burgarelli and Bramatti 2016).

This scenario, in line with the critical transition theory, suggests the government's incapacity to match the expectations of the dominant network led to a movement of frustration and a change in the political elite's beliefs. This culminated in their ultimate decision to impeach the president. In the theoretical construction of Alston et al., these facts create a window of opportunity for a critical transition since they can be interpreted as "the shocks that initiate a process of change" (Alston et al. 2016: 4).

It should be emphasized that "windows of opportunity" are "not only decisive moments but a series of factors" that characterize "[...] *historical occasions in which there is a chance to change the trajectory of a country's economic and political results, changing beliefs and institutions*" (Alston et al. 2016: 7). Therefore, for a critical transition to actually happen, it depends on how the new leadership acts.

In such situations, the new administration can take two opposing paths. One is changing the course of the policies adopted by their predecessors in order to meet and fulfill frustrated expectations. The other would be keeping the same overall course, since the person who inherits the presidency is the vice president and was elected under the same political platform as the ousted leader.

The hypothesis proposed here is that the former scenario is more likely to happen. One factor that would support such a path is related to the interim feature in which such governments are initiated and the criticisms from some sectors of society that the new incumbents are illegitimate since they were not directly elected by the popular vote.

In situations of democratic normality, elections assure legitimacy to the ruler, who is expected to be more autonomous and independent in determining policies and making concessions as proposals are negotiated with society and Congress.

On the other hand, administrations born from a breakdown of the usual democratic order may adopt a different approach. The claims of lack of legitimacy and the greater need to build support among members of Congress and society tend to corroborate the perception that transitional governments are more likely to yield to external pressures and, consequently, to adopt guidelines consonant with the majority public opinion or its dominant elites.

As observed previously, since the stand of their predecessors was widely disapproved, it seems plausible to expect that in situations of critical transition the outcome may be a significant change in the country's policies. This is one of the indications that supports the argument that when extraordinary changes in government occur, there is a tendency towards a rupture and reorientation of strategies (and it appears unreasonable to assume it would be any different in foreign affairs).

3.2 The Executive vs. The Bureaucracy

In the context of foreign policy formulation, it is worth considering the dichotomy between the strength of established bureaucracies and the power of individual key actors such as the minister of foreign affairs. Alden and Aran (2013) trace the evolution of decision-making studies in the area and highlight the contribution of the Allison and Halperin's (1972) bureaucratic politics model. According to Allison, bureaucratic organizations provide a prism of their own to frame the approaches to different situations, taking into account their perceptions and fields of action, and also provide the structure in which decisions are made (Alden and Aran 2013: 32).

However, when it comes to foreign policy formulation, the almost decisive importance Allison assigned to bureaucracies was heavily criticized. As Alden and Aran summarize, Stephen Krasner classified the bureaucratic politics model as misleading because it obscures the power of the president and suggests that bureaucrats instead of elected officials are responsible for government decisions. Krasner argues that politicians can make choices and value judgments and control the bureaucracies at their disposal, particularly in the foreign policy realm (Alden and Aran 2013: 34).

Alden and Aran add that Hollis and Smith also disagree with the bureaucratic politics model's proposition that the impact of bureaucracies is strong enough to compel the head of the Executive Branch to bargain with the members of his or her own administration. According to the latter, this would only be true to some extent — since the president is the one who appoints first-level positions, has the power to dismiss officials, and holds the formal authority to have his/her subordinates follow his/her orders (Alden and Aran 2013: 37).

The evolution of this debate sheds additional light on the interaction between human agency and bureaucracies in a governmental decision-making environment. Alden and Aran refer to Jerel Rosati's work, which argues that it is more fruitful to debate to what degree and in what circumstances bureaucracies and political agents control the formulation of foreign policy rather than trying to answer to only those who are affected the most. This is also the proposed approach in this study. According to Rosati, the Executive Branch is expected to be more actively involved in foreign affairs when the issue is more critical to the national interest, “[t]hus, the impact of the executive is expected to be experienced most strongly in a crisis situation — involving surprise, short time and perception of a high level of threat” (Alden and Aran 2013: 38).

Although Rosati mentions only three specific examples of crises in which there would be dominance of the Executive Branch over bureaucratic structures, it is reasonable to assume that a moment of critical transition bears similar characteristics. Therefore, it would also provide the necessary conditions for a more direct agency by the president or the minister of foreign affairs over foreign policy.

This also corroborates the hypothesis proposed by this paper. If, as demonstrated above, in moments of critical transition the new administration tends to break with its predecessor's stands — and in such moments bureaucracies are weakened in comparison with the president or the minister of foreign affairs — it is reasonable to assume that in such situations the Executive Branch has good chances of succeeding in its attempts to reorient a country's foreign policy.

3.3 The Two-Level Game and the Executive Branch's Logic

Another aspect that merits analysis as a possible influence factor to the change of the course of foreign affairs is the logic in which governments operate. Putnam's (1988) two-level game metaphor does a good job of illustrating the need for a president or a minister of foreign affairs to serve domestic interests and also pursue goals at the international level when negotiating with foreign counterparts.

At the national stage, domestic groups pursue their interests by pressing the government to adopt policies favorable to their interests (and politicians who seek for power by forming coalitions among these groups). At the international level, national governments aim to maximize their abilities to satisfy domestic pressures while minimizing the adverse consequences of external developments (Putnam 2010: 151).

Thus, in a moment of critical transition — when the change of government comes from the detachment of beliefs and dissatisfaction with the federal administration — it may be assumed that the new chief of the Executive Branch takes into account the desires of the ruling classes that form the country's internal pressure groups. That would also apply to issues regarding foreign affairs. That might be even more likely in the Brazilian case, since after the removal of the former president, the new incumbent holds the seat on an interim basis and may only be confirmed after the end of the impeachment process — at least six months after the inauguration of the new administration.

Thus, the two-level analogy also supports the premise that in critical transition situations, new governments tend to realign the policies of their predecessors and — as demonstrated above — such changes may be in a different direction in order to match the expectations of the dominant network. The case study in this paper will attempt to identify if such a claim is valid based on the last two experiences of democratic rupture in Brazil in the 1990s and 2010s.

4. Case Study

The objective of this case study is to analyze the guidelines of Brazilian foreign policy in two historic (and to some extent similar) moments of the New Republic — the

governments of Itamar Franco (1993-1994) and Michel Temer (which started in May 2016 and is scheduled to end in December 2018).

Among the commonalities that justify this study is that both of these administrations were born from the results of impeachment processes set against the backdrop of political turbulence and economic crises.

As the goal of this work is to draw a comparative analysis between the two periods, observing the limitations imposed by the peculiarities of each situation, *Brazil's Foreign Policy in Two Times* by Monica Hirst and Letícia Pinheiro (1995) will be used as a parameter to analyze Brazilian foreign policy under Franco's administration. Thus, in order to establish the closest possible parallel, this paper will observe Temer's propositions using the same methodological approach.

Since this research was developed shortly after Temer took office, much of the stances of Temer's administration regarding international affairs will be taken from Minister of Foreign Affairs José Serra's inaugural speech, in which he summarized the cornerstones of his leadership as the head of Itamaraty². The text, according to Serra himself, contains "the outline of the New Brazilian Foreign Policy" as a proposition "for the future and not for the misadventures of the past." Later statements and information published by the media will also be considered to corroborate or challenge what he proposed.

The material seems to be adequate since it addresses a wide range of topics and clearly indicates movements of continuity or rupture. The fact that Serra was in charge of the Itamaraty for only nine months does not diminish the importance of the guidelines he proposed. His successor and the current Brazilian Minister of Foreign Affairs, Aloysio Nunes Ferreira, is a member of the same political party as Serra and one of his close political allies. Moreover, Ferreira stressed that his term would be of "continuity" and highlighted his support towards Serra's propositions (Rocha 2017).

Following the analysis structure proposed by Hirst and Pinheiro, the comparison between these two historical periods and their movements towards continuity or rupture

² Brazil's Ministry of Foreign Affairs is commonly referred to as Itamaraty, after the palace that houses the ministry.

starts with the observation of the measures adopted regarding: 1) domestic conditions; 2) the multilateral level; 3) international security; 4) economic and political regional integration; and Brazil's relations regarding 5) the United States, 6) its "continental peers," and 7) Africa.

4.1 Domestic Conditions

In the early 1990s, as Hirst and Pinheiro point out, the domestic and international context was remarkably unfavorable for Brazil. Regarding the domestic perspective, the authors highlight that the economic erosion was a result of a "[...] *chronic macroeconomic disequilibrium, marked by an excessive inflationary process that added a loaded political agenda, in which the collision between the Executive and the Legislative become a constant*" (Hirst and Pinheiro 1995: 10).

As of Brazil's situation in 2016, it is possible to state that the domestic context was as fragile as the one observed previously. In both cases, the recession lasted for 11 quarters and resulted in a Gross Domestic Product (GDP) decline of 8.5% in the early 1990s and 8.2% in the mid-2010s (Patu 2017). Similarly, macroeconomic imbalances (marked by the federal government's inability to make primary surpluses) accelerated the public debt in relation to the GDP and played a role in souring market mood and driving investors away (Soto and Ayres 2015; Rodrigues 2016).

Regarding the imbalance of constitutional powers, there was a collision under Franco's leadership between the Executive and Legislative branches — as Hirst and Pinheiro (1995: 8) mention. Under Temer, the situation was the same (the clash between the former President of the Chamber of Deputies Eduardo Cunha and Rousseff fueled her impeachment).

Hirst and Pinheiro (1995: 10) claim that Franco put little focus on the external agenda and made an effort to "maintain policies previously initiated" at the international level so the domestic situation would not contaminate Brazil's foreign relations.

Temer saw international commerce as a way to alleviate the domestic recession. From the beginning of Temer's administration, Itamaraty gained relevance regarding foreign trade. The incorporation of the Brazilian Trade and Investment Promotion Agency (Apex-Brasil) symbolized how topics related to international commerce would concern Itamaraty rather

than the Ministry of Development, Industry, Commerce and Services. This rearrangement demonstrated a sharp difference in how Itamaraty was viewed by the previous administration and what Itamaraty's priorities should be.

Moreover, in his inaugural speech, Serra clearly marked a position of discontinuity in relation to the Brazilian foreign policies of the Workers' Party (PT) governments. In his first directive, Serra said, "our foreign policy will be governed by the values of the state and of the nation, not of the government and never of a party," thus sealing the decision by the rupture against what had been implemented in the previous 13 years during Workers' Party-led governments. This position is in line with what the critical transitions theory expects in the sense that once leaders have acted during a window of opportunity, their decisions in power tend to align with society's new beliefs (Alston et al. 2016: 11).

4.2 Multilateral Level

As regards the form of international insertion, the Brazilian foreign policy of the early 1990s tried to reverse the passivity framework and give the country greater visibility vis-à-vis the international community through its activities in multilateral forums, particularly in the United Nations (UN). Thus, according to Hirst and Pinheiro (1995), Brazil sought to "ensure voice and vote in the process of institutional reform of the international order." Under Minister of Foreign Relations Celso Amorim, Itamaraty redefined its priorities regarding the insertion of the country in the multilateral sphere with the objective of reversing the previous passivity of Brazilian diplomacy in international bodies such as the UN and the World Trade Organization; this contrasted with Collor's approach.

This impetus towards multilateralism proposed by Amorim was deepened in the following decade as one of the main bets of the foreign policy during the presidency of Luiz Inácio Lula da Silva, which appointed Amorim to once again lead the Itamaraty.

In 2016, Serra indicated he would pursue policies in the opposite direction, a switch from the focus on multilateralism to efforts on bilateral agreements.

Serra's fifth directive (2016) states,

"Brazil will no longer restrict its freedom and latitude of initiative for an exclusive and paralyzing adhesion to multilateral efforts within the World Trade Organization, as it has done since the last

decade, to the detriment of the interests of the country. (...) [T]hese negotiations, unfortunately, have not been thriving with the necessary speed and relevance, and Brazil, seized exclusively by them, has kept up with the proliferation of bilateral free trade agreements. The multilateralism that did not happen has undermined the bilateralism that has taken place all over the world. Almost everyone invested in this multiplication, except us. We need, and we will overcome this delay and recover lost opportunities.”

Once again it is possible to identify the change in the direction of Brazilian foreign policy in order to serve the interests of the sectors of the dominant network that support the new federal administration. At this point, the industry — which struggles with depressed demand due to the recessive economy and rising unemployment — is interested in expanding its sales to other countries to compensate for the shrinking domestic market.

The commitment to invest in new bilateral agreements can clearly be pointed out as a nod in this regard. As a member of Mercosur, Brazil cannot make trade deals alone. Therefore, the advances in the ongoing dialogue of the South American bloc with the European Union are concrete examples of the bilateral efforts mentioned by Serra in contempt of broader negotiations — such as with the World Trade Organization.

4.3 International Security

Another common aspect between the two moments in question refers to Brazil's approach to international security. On this topic, not only have the proposals of both interim governments shown continuity with those of their predecessors but also their policies have similar content. Brazilian foreign policy, in both periods, remained oriented “in favor of peaceful and negotiated solutions to international conflicts” as Serra emphasized in his inaugural speech. This statement mirrors Brazil's long-standing position to oppose war, support sovereignty, and promote dialogue as a problem-solving strategy.

4.4 Regional Economic and Political Integration

While under the tutelage of Celso Amorim in the 1990s, the importance given by Brazil to the Mercosur considerably grew. Unlike Collor, Franco intended to deepen relations with neighboring countries. Collor believed that Latin American integration was a useful instrument for liberalizing the economy; he also led Brazil in taking a more comprehensive and strategic role with the concentrated efforts to create Mercosur (Hirst and Pinheiro 1995).

On the other hand, Serra appeared to see the block from a divergent perspective — perhaps even an opposing one. Walking away from consolidating Mercosur as was the case in the 1990s, the interim administration in the mid-2010s has largely struggled to end the need for the collective approval of bilateral trade agreements. On his first official trip a day after taking office, Serra visited Argentina with the goal of gathering support to reform and “loosen up” the economic bloc’s regulation (Veja 2016). In addition, Serra warned that Brazilian foreign policy would change in regard to other South American countries labeled as both “Bolivarian” and allies of the previous administration.

4.5 The United States

At the beginning of the re-democratization process, Brazil’s relationship with the United States was not in the best shape. As Hirst and Pinheiro (1995: 16) point out,

“[...] in addition to dealing with the reversal of expectations created as a result of the crisis of the Collor government, Brazil faced a heavy agenda that had undermined its relationship with the United States, both at the interstate and intersocietal levels. At the same time, the new circumstances of the inter-American context, marked by process of growing ideological convergence between the Latin American countries and the US government – especially Mexico, Argentina, and Chile – had indirectly reinforced Brazil’s image as the problem country of the region.”

The authors point to a process of the “exacerbation of the negative agenda between Brasilia and Washington” in that period. Such panorama only began to be reversed “from the first signs of success emitted by the stabilization plan of the economy,” resulting in the later “dedramatization” of relations between the two countries — with Brazil preserving its autonomy against what the United States advocated for the region. Under Itamar, relations between Brasília and Washington underwent a significant improvement in comparison to Collor’s tenure.

In the 2010s, the relations between the Planalto Palace and the White House can be classified as more stable and robust than in the previous decades, despite the diplomatic crisis caused by the leakage of information regarding US espionage about the Brazilian government. This episode resulted in the postponement of then-President Rousseff’s state visit to Washington from 2013 to 2015.

When Serra took over the Itamaraty in 2016 and significantly emphasized foreign trade, the United States was seen as another critical front. He expressed an interest in improving and prioritizing relations with the United States. In his eighth directive, Serra stressed his confidence in “short-term practical solutions for the removal of non-tariff barriers and regulation” that limit trade, highlighting possibilities for partnerships with the United States in energy, environment, science, technology, and education.

4.6 Continental Peers

When comparing Brazilian relations with those of similar countries in 1995, Hirst and Pinheiro chose China, India, and Russia; in 2001, Goldman Sachs Chief economist Jim O’Neill would call this choice BRIC. This explains why Hirst and Pinheiro’s analysis was completed individually — whereas, currently, the process is better analyzed collectively.

Hirst and Pinheiro (1995) describe “a significant increase” in the strategic partnership between Brasília and Beijing in “infrastructure, energy and raw materials sectors, heavy industry and consulting and engineering services.” This led to positive economic outcomes during the commodities boom of the 2000s; also, in 2009, China overtook the United States as Brazil’s largest trade partner (Portal Planalto 2015). In 2010, integration deepened vis-à-vis Chinese investments in major infrastructure projects in Brazil and other Latin American countries (Ninio 2015).

Regarding India, the authors state the tune of world politics and trade in 1995 allowed for the coordination of various items of the international agenda in multilateral forums — which in the meantime “did not generate more bilateral interaction between the two nations.” In the same sense, they point out, “the relationship between Brazil and Russia has been marked, in the 1990s, more for its potential than for concrete initiatives.” Among the obstacles were the domestic political context in Russia coupled with the difficulties of the transition from Communism to a market economy. Despite the challenges, the efforts flagged the intention of developing closer ties and building closer partnerships — such as had been done previously.

Nowadays, relations with India, Russia, and China are part of a broader strategy of South-South interaction. Serra used this approach in his 2016 inaugural speech.

“[...] Priority will be given to relations with new partners in Asia, in particular, China, this great economic phenomenon of the 21st century, and India. (...) We will also take advantage of the opportunities offered by interregional forums with other developing countries, such as the BRICS, to accelerate trade exchanges, investment and sharing of experiences.”

Given the long-term nature of the partnerships among BRIC and the state, it is unlikely that there will be significant changes in the way Brazil interacts with China, India, and Russia. Serra's importance to foreign trade also points to the maintenance of proximity to these countries — especially those in Asia, given their relevance in the global economic scenario; this limits the possibilities for reversal or direction change by the new Brazilian government.

4.7 Resuming an African Policy

During the 1980s, Brazilian relations with African countries had faced a downturn, with the cooperation agenda retreating due to economic and political instability in Africa and the minor international activism of Brazil. To reverse this trend, Franco's administration called for the creation of the South Atlantic Cooperation Zone and the Portuguese Speaking Community was relaunched. Hirst and Pinheiro (1995) also highlight the approximation with South Africa and Angola in projects related to agribusiness, technology, and fighting drug trafficking.

Note, however, that the context inherited by Franco differs entirely from the one that Temer received. Only in Lula's eight-year presidency,

“[...] between 2003 and 2010, Brazil significantly expanded its participation in Africa. The country opened (or reopened) embassies in eighteen countries of the continent (from 18 to 36 embassies) (...). The advance, however, was not only diplomatic. The volume of trade between Brazil and Africa grew considerably, from US \$5 billion in 2002 to US \$26 billion in 2008 (...). The Brazilian president made 13 trips to Africa, visiting 28 countries (some of them more than once) and Foreign Minister Celso Amorim visited the continent 66 times, participating in official events in 25 different countries” (Oliveira 2015).

It was against this backdrop that Serra said in his ninth directive that the relationship with Africa cannot be restricted “to past fraternal ties and cultural correspondences.” Serra also proposed “concrete partnerships in the present and for the future.”

The official statement was followed by information in local media that the Itamaraty had commissioned a study to evaluate the efficiency cost of diplomatic missions in Brazil, Africa, and the Caribbean, indicating the intention to reduce costs by eliminating Brazilian diplomatic presence in such regions (Mello and Nublat 2016); this would contrast Lula’s policies.

5. Conclusion

This analysis revealed similarities and differences regarding how Franco and Temer carried out Brazilian foreign policy in contrast with what previous administrations had implemented. It can be concluded that Franco represented continuity in three out of the seven categories analyzed: domestic conditions, international security, and the relation with continental pairs. On the other hand, his policies contrasted Collor’s at the multilateral level and also in regard to regional integration and relations with the United States and Africa.

When analyzing the guidelines proposed by Serra under the same framework, the conclusion is that Temer’s administration represents a break with Rousseff’s in five out of the seven points analyzed. Regarding international security and BRIC, a major change was not expected.

Therefore, quantitatively it is evident that there is an inclination for Brazilian foreign policy to change after moments of critical transition. The qualitative analysis of the items that demonstrated continuity in the interim governments reinforces the same perception. Continuity is mainly observed in state issues such as international security and relations with continental peers which include long-term interactions and significant volumes of investment — the types of relationships that could not be changed as easily as those with countries less critical to Brazil’s foreign trade.

Therefore, the evidence suggests that Brazil’s experience with transitory governments after the re-democratization period marked significant changes in the direction of Brazilian foreign policy. The analysis also reinforces the hypotheses, which were corroborated by the

theories discussed. It suggests that in times of critical transitions, the major tendency in the formulation of foreign affairs is to reorient policies to align with the beliefs of agents in the dominant network. In the same sense, although Itamaraty is one of the most traditional bureaucracies in the country, it has been demonstrated quantitatively how moments of crisis exacerbate the interference of the Executive Branch in the conduct of Brazilian foreign policy.

Since the Temer administration has not ended, it may be reasonable for future researchers to revisit the case to compare the results of his entire tenure and analyze concrete data regarding investments or trade deals with other countries as measurements of continuity or change. Furthermore, it might also be useful to research whether similar patterns exist in comparable events. The 2012 impeachment of then-Paraguayan President Fernando Lugo may provide an opportunity for a case study about critical transitions in changes in foreign policy in the region.

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On Unchecked Leadership Empowerment: Analyzing Extraordinary Credits in Brazil

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Victor Rodrigues

Fundação Getulio Vargas

victorhugo.c.rodrigues@gmail.com

Bruna Veríssimo

University of Rio de Janeiro

bruna.vlsantos@gmail.com

Abstract

This paper investigates how institutional actions regarding the use of emergency expenses leadership empowerment in current democratic regimes. It analyzes extraordinary credits, an instrument that allows emergency expenses in Brazil from 2001 to 2016. The country spent more than \$200 billion through extraordinary credits in the period. The article presents data from 169 laws enacted by the president authorizing those credits and the restrictions made by the Supreme Court related to those laws. In 2008, for the first time in Brazilian history, the Supreme Court revoked one of those laws. Our models support that this decision: (i) caused a decrease in the number of laws authorizing extraordinary credits, (ii) led an increase in the monetary value authorized per law, and (iii) in the end, affected the total monetary sum authorized per semester.

Keywords: Emergency Expenses; Extraordinary Credits; Institutional Design; Leadership Empowerment; Provisional Measures

Resumo

Este artigo investiga como as ações institucionais sobre o uso do empoderamento de lideranças de despesas de emergência nos atuais regimes democráticos. Analisa créditos extraordinários, um instrumento que permite gastos emergenciais no Brasil de 2001 a 2016. O país gastou mais de 200 bilhões de dólares através de créditos extraordinários no período. O artigo apresenta dados de 169 leis promulgadas pelo presidente, autorizando esses créditos e as restrições feitas pelo Supremo Tribunal relacionadas a essas leis. Em 2008, pela primeira vez na história brasileira, a Suprema Corte revogou uma dessas leis. Nossos modelos suportam: (i) causaram uma diminuição no número de leis autorizando créditos extraordinários, (ii) levaram a um aumento no valor monetário autorizado por lei, e (iii) no final, afetaram a soma monetária total autorizada por semestre.

Palavras-chave: Despesas Emergenciais; Crédito Extraordinário; Desenho Institucional; Empoderamento de Liderança; Medida Provisória

1. Introduction

This paper focuses on the extraordinary credit, a type of emergency expense. These expenses are excluded from the ordinary budgetary process and limited to unforeseen events. The adequacy of their use is intimately related to institutional and political settings since they implied an increase in the discretionary power to determine both the extent of the expense and how it is allocated.

In 2008, for the first time in the Brazilian history, the Supreme Court revoked one of the laws which authorized such expenses. The objectives of the study are to demonstrate that: (i) this decision has caused a decline in the number of laws authorizing extraordinary credits, (ii) it also caused an increase in the monetary value authorized per law, and (iii) in the end, the decision has not affected the total sum authorized per semester.

This is one of the first attempts to build a time-series quantitative analysis of extraordinary credits. This follows a pattern pointed out by many authors, regarding empirical research in legal settings (Epstein and King 2002; Epstein and Martin 2014; Lawless et al. 2010). After many debates on the legal possibilities, regarding the checks from the Judiciary and Legislative branches on expenditures of extraordinary credits, to the best of our knowledge, no one has tried to test a hypothesis on the matter using empirical data from both areas. This paper examines transactions from 2001 to 2016. The results show December as the month with the highest cumulative number of authorized extraordinary credits. This could be one of the best times for presidents to authorize extraordinary credits without being checked by the Congress and Supreme Court, since both institutions are in recess. Research shows that many cases have gone through review on their constitutionality. However, the Supreme Court has never appreciated their merit. All of these findings demonstrate the importance of the decision-making process in the executive cabinet. Hence, the president usually has the final word.

The next sections give some insights into expenditures that are excluded from the approved budget and better explain how extraordinary credit works. Then, the paper formally defines the hypothesis, methodology, and results. The research concludes with some brief notes on how other countries have tackled this matter.

2. Non-budgetary Expenditures

As some traditional literature pointed out, the process of budgeting or allocating public resources is often one of conflict and resolution (Schick 2008; Rubin 2016; Peters 1984). Even though the debate over an issue might persist, at the end of a cycle, governments should come to a decision. This happens to prevent the cabinet from shutting down and to maintain a minimum degree of certainty regarding a government's agenda. In other words, pre-establishing the revenue and the expenses, no matter how inflamed the political context might be, is essential for keeping the rationality of a regime and for ensuring that public funds are spent only for authorized purposes (Schick 2007).

Despite commentaries on the nature of the budget (if incremental or zero-based), the importance of obedience during its execution, or the politics involved, an issue that deserves attention is related to expenditures that surpass the scope of the approved budget. For this paper, I divided them into two categories: off-budget and emergency.

Off-budget expenses refer to various classes of transactions that are often (but not always) excluded from the budget and are difficult to control through ordinary budgetary processes (Schick 2007). They are normal and expected expenses despite being hard to acknowledge. Their existence and expansion are a consequence of the increasingly close relationship between the public and the private sectors. This phenomenon reduces the capacity of determining the public nature of the transactions in such a way that it is better to exclude them in the budgetary process.

Emergency expenses, the focus of this paper, authorize the government to spend beyond the approved budget in a given number of circumstances (Lienert and Jung 2004). Unlike off-budget expenses, they should be exceptional and related to unforeseen events. Their aim is to give a broader allocation margin to the administrator, so an unpredicted problem can be solved quickly — even if it causes excess spending. Many countries admit this type of budget flexibility, such as the Organisation for Economic Co-operation and Development (Lienert and Jung 2004) and Latin America (Braun et al. 2006).

Since these expenses are more distant from the formal budgetary procedure, whether their use will be acceptable or inadequate depends on both institutional and political settings.

The literature calls an attention to the possibility of abuses that can compromise the whole financial system (Schick 2007; Lienert and Jung 2004).

3. Extraordinary Credits

Extraordinary credit is a type of emergency expense not included in the ordinary budget process. It is one of the oldest means of fiscal adjustment in Brazil; it started in 1850 during a monarchic period (Sanchez 2001). Extraordinary credit was conceived as an exceptional instrument to effectively respond to important, urgent, and unforeseeable contingencies. Its use and procedure for enactment have constitutional status, highlighting its relevance for the legal setting. The Brazilian Constitution establishes that this credit can only be authorized through provisional measure (*medida provisória*), a class of executive decree. Therefore, the president can authorize its use and immediately execute it even before congressional approval.

Furthermore, as previously mentioned, the expense has to meet three requirements: importance, urgency, and unforeseeability (Brazilian Constitution, 1988, article 167§3). If any of these exigencies are not observed, the credit is considered unconstitutional. It does not require the indication of the source of funds that will subsidize the authorizations, nor a maximum value that can be spent.

The decrees are effective for a limited time of 60 days, pending congressional approval (Brazilian Constitution, 1988, article 62). This was a way of keeping the presidency accountable to the legislature. However, the procedure does not prevent the government from spending the amount immediately. If Congress fails to vote within this term, it can be extended for another 60 days. The extraordinary credit loses its effect only after a negative vote from Congress or the end of the term.

Since extraordinary credits are related to the annual budget, presidents can only authorize credits for the current year. An exception to this norm will arise if the enactment occurs over the last four months of the fiscal year. In that case, (i) the credits are incorporated into the budget of the subsequent fiscal year (Brazilian Constitution, 1988, article 167 §3) and therefore (ii) they can be spent until the end of the prorogued term. Constitutional Amendment number 32/2001 altered the procedure of the issuance of provisional measures and established agenda halting. That means the Chamber of Deputies is prevented from

voting on every other bill if it does not vote on the decrees within 45 days. This was an attempt to force deliberation, since before 2001 Congress had procedural instruments to bypass the analysis of such measures.

Despite its resilience in the legal system and efforts to increase external control from the legislature, many authors have reported an arbitrary use of extraordinary credits, especially since the proclamation of the current Constitution in 1988. Some even considered abolishing the institute to secure the budgetary system (Sanches 2001). Others suggested the credits might be necessary to control urgent expenses, but provisional measures should not be the instrument through which they are authorized because it excessively undermines legislative power (Gomes 2008). As will be detailed below, the vast majority of the literature employs qualitative methods to prove these arguments.

The criticism towards this emergency ordinance begins with the constitutional text itself. For example, Sanches (2008) argues the use of the legislative technique is dysfunctional, inconsequential, unstable, and questionable. Furthermore, according to Gomes (2008), the reiterated employment of provisional measures towards the financial system would make the Legislative Branch hostage to executive maneuvers — a behavior that, in her opinion, goes against other constitutional prerogatives and the separation of powers.

Another part of the literature focused on the credits and their eventual damages to fiscal policy. Marshall analyzed expenses from 2003 to 2007 and divided them into groups. He found that an expressive part of the credits was intended to cover investment expenses (Marshall 2008: 52). Interestingly, this is an area that receives great attention from members of Congress as it can be reverted to benefits for the electorate. For this reason, the author put forward two hypotheses for future analysis: (i) the frequent opening of credits could [unconstitutionally] constitute the federal government agenda for investments and (ii) these expenses could serve as a bargaining chip in important votes in Congress (Marshall 2008: 57).

It is also relevant to mention that most of the credits were utilized to increase expenses already programmed in the annual budget law (Marshall 2008). These findings enforce the argument that the requirement of unforeseeability is not met. Also, extraordinary credit has become a way of setting new mandates and ignoring the previous choices that followed the ordinary budgetary process (Marshall 2008).

Neto et al. (2010) analyzed each provisional measure the authorized extraordinary credit from 2002 to 2008. They found that approximately 40% of the issues had no explicit mention of urgency, despite the constitutional requirements. As for the remaining 60%, nearly 80% of these authorized at least one foreseeable expense — thus hindering the possibility of controlling its constitutionality (Neto et al., 2010).

Gomes (2008) examined the authorized amounts from 2004 to 2007 and identified that only 27.4% of them met the constitutional requirements. She suggested that both the model of enactment and the institution's behavior must change to re-adjust these expenses to the legal system (Gomes 2008).

Rocha (2009) utilized structured interviews with specialists to evaluate the issuance of extraordinary credits between 1995 and 2008. He found 70.59% of those interviewed considered that the authorizations did not meet the requirements. Also, effectiveness, celerity, and the delay of the Legislative Branch in assessing budgetary policies were the main reasons why specialists believed that these emergency expenses were frequently applied (Rocha 2009).

Rocha et al. (2013) reached a similar conclusion. Following their methodological pathway, nearly all of the extraordinary credits issued from 1995 to 2010 did not meet the requirements. They evaluated the credits from an operational perspective and identified efficiency, celerity, an absence of conflicts, and delays in the congressional deliberations as justification for the repeated use of extraordinary credits (Rocha et al. 2013).

Rocha et al. (2013) also suggested that the abusive issuance of extraordinary credits exposes deficiencies in the government's planning and are a consequence of a budget system with minimal flexibility. That situation leads bureaucrats to search for easier ways to administrate expenses and fulfill their objectives. From this point of view, the credits would be extremely convenient since they would increase the president's independence from the legislature.

However, the authors also highlighted that these credits might create a parallel budget. In fact, 67.7% of those interviewed believe this phenomenon has already happened

(Rocha et al. 2013). Emergency expenses circumvent political conflict and move straight to resolution, thus altering traditional budgetary logic.

Lastly, Fonseca (2016) analyzed the extraordinary credits authorized from 2008 to 2015. His research was one of the first attempts to examine decisional patterns and inadequacies concerning these emergency expenses. He observed that both the volume of the amount authorized and the frequency with which they occur seems to deviate the measure from its original purposes. Fonseca pointed out that an excessive amount of credits are issued in December. He also examined authorizations through electoral periods and found that they increase. Fonseca then focused on a more qualitative approach and evaluated the constitutionality of some of the recent extraordinary credits enacted by the federal government, demonstrating that they failed to meet the exigencies.

More recently, authors began to include the Judiciary Branch in their work because the Supreme Court altered its jurisprudence and started to admit judicial review of fiscal statutes (Gomes 2008; Dos Santos 2014). In one of the most prominent decisions, Justice Gilmar Mendes decided to suspend provisional measure n. 405/2007, which authorized R\$5.455.677.660,00 in extraordinary credits. He concluded that the possibility of judicial review was essential because both the president and the legislature failed to obey constitutional orders.

Further studies about this shift in jurisprudence questioned the suitability of the Supreme Court to rule on the constitutionality of such expenses. Since extraordinary credits are attached to a fiscal year, the debt loses its efficacy and the whole process is dismissed if the Supreme Court takes more than a year to make a ruling.

This characteristic clears the way for justices to decide more individually than collectively. The reporting minister has much power to either agree to or refrain from making a decision. If he or she does not make a ruling on an extraordinary credit case within a certain time, it will be dismissed (Fonseca 2016).

In summary, the enactment of extraordinary credits through provisional measures is criticized by the literature from Brazil as a dysfunctional instrument. This dysfunctionality affects not only the executive and the budgetary system but also the legislature; it hinders

effective accountability. As of spring 2018, the Judiciary had called the prerogative to decide about this issue but apparently lacked the institutional capacity to do so. The separation of powers, rather than a study of governance within the president's cabinet, is frequently evoked when dealing with this subject.

Interviews, detailed examination of the content of each measure, and analyses per year were the main methods to expose the range of problems related to the authorization of extraordinary credits. All of those methods do not provide the big picture. The following sections will present an OLS regression analysis on multiple variables from the executive, judiciary, and legislative branches. An analysis of this scope has never been tried before in Brazil. It will shed light on the problem for future researchers in the area as well as for policymakers around the globe who would like to understand how institutional forces can influence government overspending.

4. Methodology

4.1. On Modeling the Problem

To model the phenomena, we built an OLS regression analysis on the variables collected, following a similar approach that was already implemented for analysis on provisional measures (Pereira et al. 2008). Table 1 shows all the variables for each law authorizing extraordinary credits. Legislative support has been associated with governance stability in the Brazilian Constitutional regime (Figueiredo and Limongi 2000). There is also some evidence that presidential popularity could help presidents influence legislative procedures (Raile et al. 2011). Since the process to authorize extraordinary credits goes through the legislative branch, it is reasonable to measure how popular the president was at the time. There are many studies on how election years could affect tax policies, the organization of parties during election races, governance, and other phenomena (Sakurai and Menezes Filho 2011; Samuels 2000a; Samuels 2000b). For this reason, our research included a variable to assess if this could change the behavior on the authorization of extraordinary credits.

As in many low-income countries, the approval of the annual budget depends on the legislative branch (Gollwitzer et al. 2010). This dependence could affect how Brazilian presidents choose their overspending practices. The delay in the approval could also affect

the phenomena. This is why we also included in our model variables that quantified both the amount of the budget as well as the period of delay (in days) for its approval.

Following the model from Pereira (Pereira et al. 2008), this paper also includes a variable that quantifies the average currency change over the months. This is due to concerns Brazilian presidents have had regarding macroeconomic management to control inflation and other problems in the country.

After plotting the count of laws authorizing extraordinary credits per month (see Figure 1) and the sum of authorized credits per month (see Figure 2), December stands out against the other months. Therefore, there might be a particularity regarding the month of December that incentivizes presidents to authorize extraordinary credits. Because of conspicuous numbers in the month of December, we included a variable our model to assess if the month is indeed significant when considering the values.

Figure 1: Monthly number of laws authorizing extraordinary credits from 2001 to 2016. (Source: Bruna Veríssimo.)

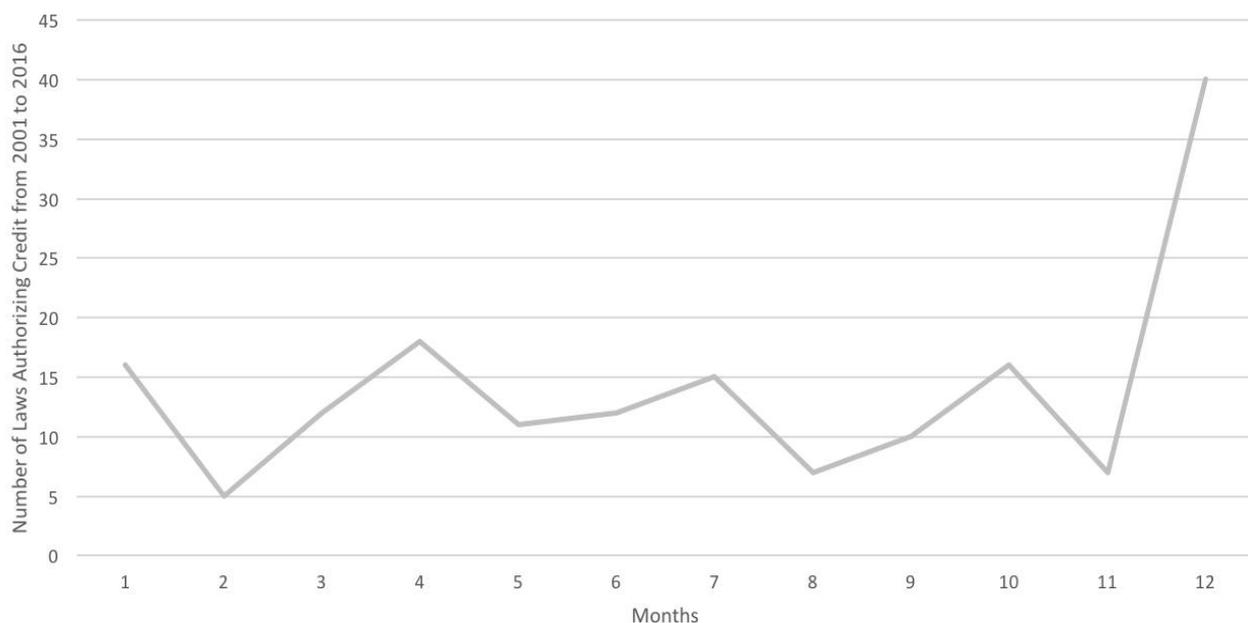


Figure 2: Monthly sum of authorized extraordinary credits from 2001 to 2016. (Source: Bruna Veríssimo.)

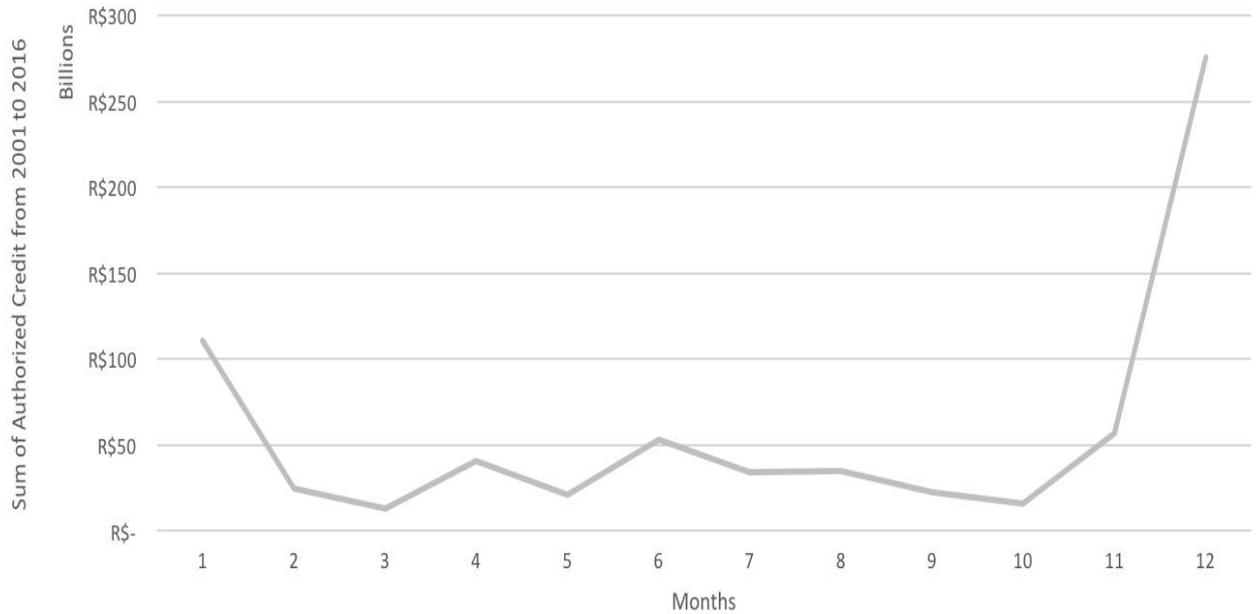


Table 1: Variables set for each law authorizing extraordinary credits. (Source: Bruna Veríssimo.)

Variable	Explanation
After Liminar	1 if enacted after Supreme Court Decision, 0 otherwise
Budget of Year	Budget approved for the current year by Congress
Budget Delay	Number of delay in days for approval of current budget
Currency Change	Change in average currency from current to past month
December	1 if enacted in December, 0 otherwise
Election Year	1 if in election year, 0 otherwise
Legislative Support	Average Current Month Support in Brazilian Lower House
Limit Days in Congress	Maximum possible number of days in Congress
Presidential Popularity	Average Current Month Popularity from DataFolha Survey
Value of Credit	Amount authorized by the President

Figure 3: Average value of authorized extraordinary credits per law per year from 2001 to 2016. (Source: Bruna Veríssimo.)

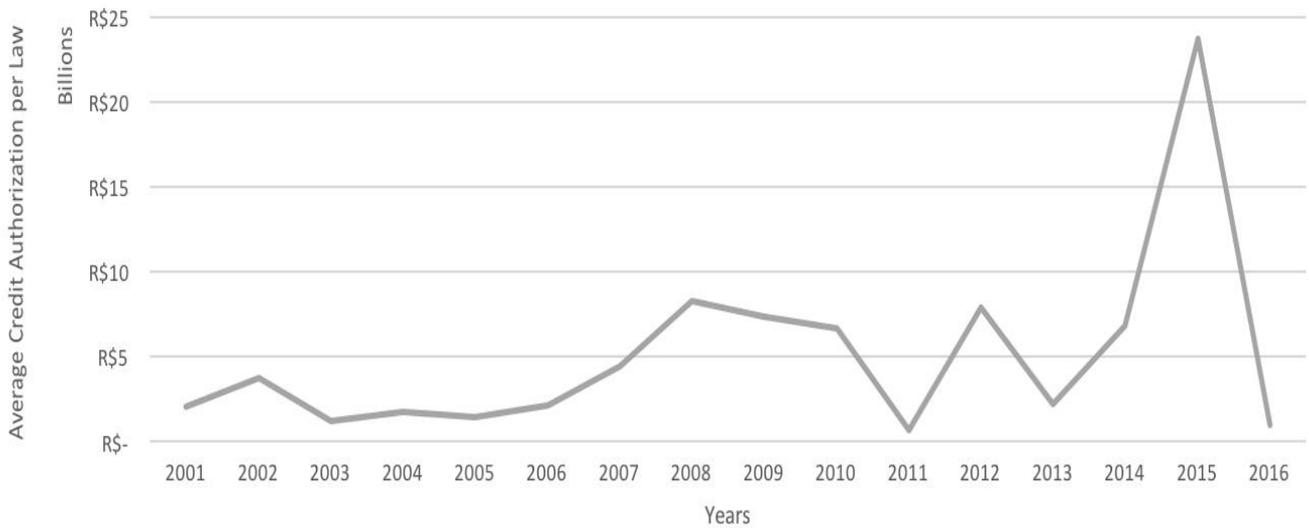


Figure 3 shows an overall upward trend after 2008, with declines in 2011 and 2013. To assess if the Supreme Court decision significantly affected this result, we conducted an OLS regression analysis using six models. The first model considers all nine of the first variables in Table 1 as independent variables. Value of credit is the dependent variable. In Model 2, we removed the independent variable “December” to see how our model handled the data. Model 3 considered all variables but the budget in order to assess how the information of the year’s budget impacted our calculations. Models 4, 5, and 6 are analogous to the previous ones, respectively, but in these we considered the log of the variables “Budget of Year” and “Value of Credit”.

Figure 4: Yearly number of laws authorizing extraordinary credit from 2001 to 2016.

(Source: Bruna Verissimo.)

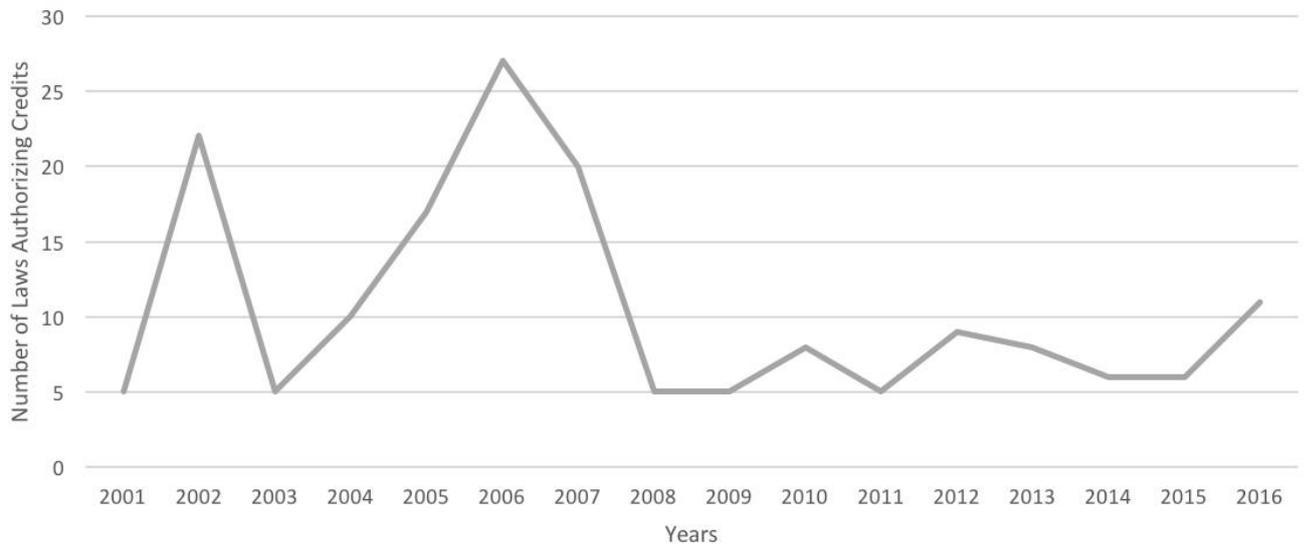
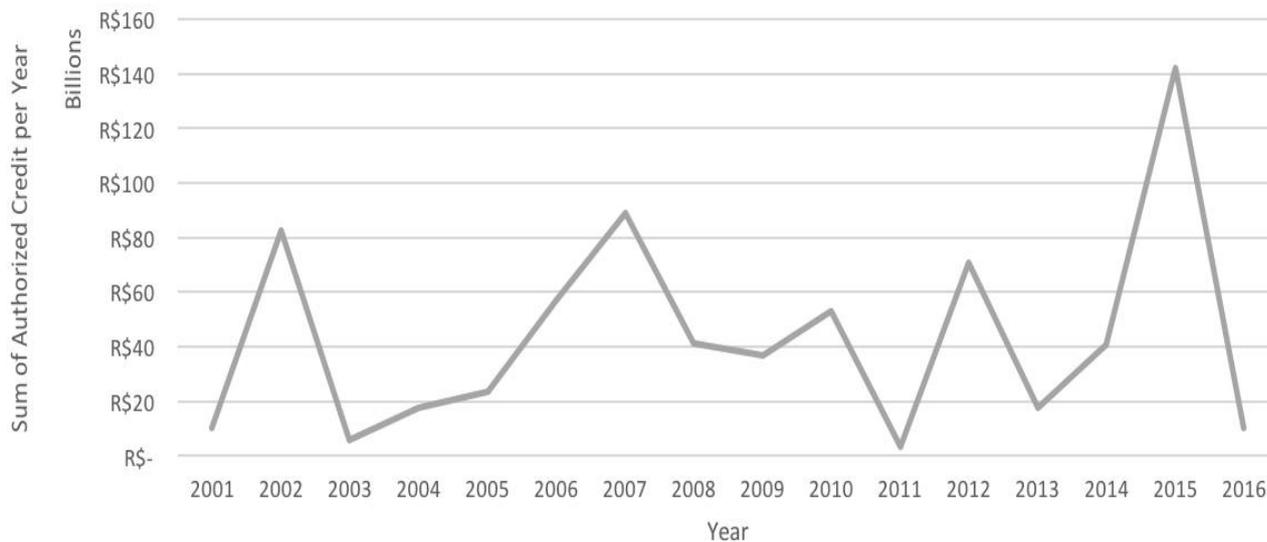


Figure 4 provides a great dip in the number of laws authorizing extraordinary credit after 2008. To assess if the decision of the Supreme Court impacted this result, we again conducted an OLS regression analysis. However, this paper analyzes the data by semesters instead of going through each law. Our dependent variable is the number of laws enacted in each semester. This time, we did not consider the independent variable “December”. As independent variables for the models of this problem, this paper also does not consider the averages of most of the information — except for the values “Election Year”, “After Liminar”, and “Budget of Year”. As in Models 4, 5, and 6, in Models 7 and 8, we considered the log value of “Budget of Year”. The difference between the last two models is in Model 7 (which considered all previously mentioned variables) and in Model 8 (which excluded the “Budget of Year” variable).

Figure 5: Total value of authorized extraordinary credits per year from 2001 to 2016.

(Source: Bruna Verissimo.)



The total sum of extraordinary credits from 2001 to 2016 was more than R \$700 billion (nearly US \$220 billion); we adjusted these values accordingly due to inflation. By looking at Figure 5, it is very hard to identify a significant reduction in the sum of authorized extraordinary credits after 2008. To assess whether the decision of the Supreme Court affected this result, we again conducted an OLS regression analysis. Model 9 is analogous to Models 7 and 8. However, instead of considering the number of laws authorizing extraordinary credits per semester as a dependent variable, this time we considered the sum of the authorized monetary values.

4.2. Gathering the Data

To analyze the provisional measures related to extraordinary credits, we retrieved from the official Executive Branch website information about all provisional measures. Due to inflation in Brazil, the research updated the values according to the index IGP-M/FGV.

The Executive Branch enacted 745 provisional measures from September 19, 2001 to September 18, 2016. We gathered the number of each provisional measure along with its enactment date, current situation, and summary. The starting date is September 19, 2001 since this was when the government enacted the first provisional measure (and authorized extraordinary credit) after Constitutional Amendment 32, which changed major rules regarding how the president can authorize provisional measures. The ending date is

September 18, 2016 since this was the last day we could complete a full year's research for the purposes of publication. Also, this ensured every day of the year would appear the same number of times in our analysis.

We used a Python script to highlight the measures that had the text “*abre crédito extraordinário*” in their summaries. The script also considered combinations with and without capital letters and special characters. The filtered data represents all provisional measures related to extraordinary credits. Next, we created another script that extracted the amount of extraordinary credits authorized from each provisional measure.

Only three of these did not have the explicit value in the summaries, which led us to read the full texts in order to enter the correct amounts in the database. After cleaning the data, we created a table with all the data and calculated how many of the provisional measures that authorized extraordinary credits had been created each month. The table also calculated the probability of extraordinary credits being authorized in each month as well as the average amount of credits authorized.

Our Presidential Popularity index comes from one of the main pollsters in Brazil: DataFolha. We had difficulty accessing official numbers from other sources. due to the limit of information for all months; thus, we interpolated the data to fill the gaps. The polls from Datafolha contain five measures: two positives, one neutral, and two negatives. We calculated our index by subtracting the negative values from the positive and ignoring the neutral ones, in a similar way as Pereira (Pereira et al. 2008).

4.2.1. National Congress

To calculate the maximum number of days, we considered the average amount of time it took for a provisional measure to lose its effect in Congress each month of each year. We fetched data from the official Chamber of Deputies website and then extracted the final date from each provisional measure.

We used the enactment date from each provisional measure from the Executive Branch data. Next, we fetched the date when each measure would lose its effect if Congress did not veto or approve it. Hence, it could calculate how many days at most each provisional measure could remain effective before it is archived or converted into law. Since we had the

information for each date of the year, we could calculate the average of maximum days for each month. Hence the variable “Limit Days in Congress”.

We calculated “Legislative Support” by averaging per month the percentage of deputies in the Lower House who followed the government’s recommendations.

4.2.2. Supreme Court

All Direct Actions of Unconstitutionality (ADIs)³ can be used for reviewing the constitutionality of federal statutes. All ADIs challenge provisional measures authorizing extraordinary credits. Data was taken directly from the official Supreme Court website. Using the search terms “*medida e provisória*” (provisional and measure) and “*crédito e extraordinário*” (extraordinary and credit), we found 33 ADIs.

We based our filtering on two other steps. First, we selected ADIs between September 19, 2001 and September 18, 2016. Second, we determined that the ADIs should be against provisional measures enacted by presidents. The last step was important since some federal states can also enact provisional measures. As a result, only 21 out of the 33 first ADIs met the requirements.

After that, we created a table with the number of the ADI, the author, the number of the contested MP (*medida e provisória*), the minister rapporteur, the date of filing, the date of the last decision, if there was a temporary decision, the type of final decision (monocratic or collegiate), and the ultimate result.

5. Analysis

Table 2: Dependent Variable: Value of Credit. (Source: Bruna Veríssimo.)

Variable	Model 1	Model 2	Model 3
After Liminar	3.68+09** (1.83e+09)	3.696e+09** (1.85e+09)	3.485e+09* (1.77e+09)
Budget of Year	- 0.0009 (0.002)	-0.0017 (0.002)	-
Budget Delay	2.024e+07 (2.07e+07)	2.323e+07 (2.08e+07)	1.589e+07 (1.79e+07)
Currency Change	-8.129e+09 (2.2e+10)	-4.995e+09 (2.21e+10)	-6.839e+09 (2.17e+10)
December	4.178e+09* (2.27e+09)	-	4.389e+09** (2.21e+09)

³ A type of lawsuit in Brazil.

Election Year	-1.29e+09 (1.72e+09)	-1.224e+09 (1.74e+09)	-1.099e+09 (1.66e+09)
Legislative Support	-5.634e+09 (5.35e+09)	-4.825e+09 (5.37e+09)	-5.566e+09 (5.33e+09)
Limit Days in Congress	1.576e+07 (5.45e+07)	6.154e+07 (4.88e+07)	1.699e+07 (5.42e+07)
Presidential Popularity	9.335e+08 (2.61e+09)	5.808e+08 (2.62e+09)	9.227e+08 (2.61e+09)
Constant	5.341e+09 (1e+10)	1.594e+09 (9.86e+09)	2.737e+09 (7.86e+09)
N	169	169	169
R ²	0.07	0.051	0.069

***p < 0.01, **p < 0.05, *p < 0.1.

Table 3: Dependent Variable: Value of Credit (Log Value). (Source: Bruna Veríssimo.)

Variable	Model 4	Model 5	Model 6
After Liminar	0.3279** (0.135)	0.3306** (0.135)	0.3485*** (0.129)
Budget of Year (Log Value)	0.4662 (0.851)	0.1949 (0.830)	-
Budget Delay	0.0006 (0.001)	0.0008 (0.001)	0.0010 (0.001)
Currency Change	1.6360 (1.604)	1.7957 (1.604)	1.5037 (1.582)
December	0.02280 (0.166)	-	0.02068 (0.161)
Election Year	-0.0846 (0.127)	-0.0830 (0.127)	-0.1050 (0.121)
Legislative Support	-0.0423 (0.390)	0.0025 (0.390)	-0.0468 (0.389)
Limit Days in Congress	0.0005 (0.004)	0.0030 (0.004)	0.0004 (0.004)
Presidential Popularity	0.3064 (0.191)	0.2908 (0.191)	0.3134 (0.190)
Constant	2.9301 (10.627)	5.9760 (10.420)	8.7448*** (0.573)
N	169	169	169
R ²	0.089	0.078	0.087

***p < 0.01, **p < 0.05, *p < 0.1.

From the results in Tables 2 and 3, we see that Model 4 had the best R2 result. In other words, one could say that Model 4 best fit our data. If considering Model 4 as the best representation of the problem, then the variable “After Liminar” is the only statistically significant variable. If we did not consider the log models (i.e. Models 4, 5, and 6), then we could say it seems that December is also a statistically significant variable (see Model 3).

Model 1 still shows good results for the variable, but it is not the best scenario. Hence, one could say that there are good reasons to think that the Supreme Court had a positive impact on the monetary values authorized by the president; in other words, Brazilian

presidents tended to spend more through extraordinary credits after the Supreme Court tried to revoke a past presidential enactment.

5.1. On the number of laws authorizing extraordinary credits

Table 4: Dependent Variable: Number of Laws Authorizing Extraordinary Credits Per Semester. (Source: Bruna Veríssimo.)

Variable	Model 7	Model 8
After Liminar	-4.3959*** (1.453)	-4.3203*** (1.403)
Budget of Year (Log Value)	3.1947 (10.665)	-
Average Budget Delay	0.0176 (0.018)	0.0189 (0.017)
Average Currency Change	7.5380 (24.228)	6.0247 (23.222)
Election Year	1.7880 (1.323)	1.7269 (1.281)
Average Legislative Support	1.2087 (8.118)	0.6823 (7.767)
Average Limit Days in Congress	0.0366 (0.051)	0.0341 (0.049)
Average Presidential Popularity	-1.6457 (1.961)	-1.7147 (1.909)
Constant	-39.0699 (135.245)	1.3409 (9.446)
N	31	31
R ²	0.433	0.441

***p<0.01, **p<0.05, *p<0.1.

From the results in Table 4, Model 7 had the best R2 result. In other words, Model 7 best fit our data. In both cases, the variable “After Liminar” showed statistically significant results. We thus can conclude that the Supreme Court decision negatively affected the number of laws authorizing extraordinary credits. All of the other variables do not seem to have strong connections with the case.

5.2. On the sum of extraordinary credits

Table 5: Dependent Variable: Sum of Credits Per Semester (Log Value). (Source: Bruna Veríssimo.)

Variable	Model 9
After Liminar	-0.3697 (0.218)
Budget of Year (Log Value)	0.9914 (1.602)
Average Budget Delay	0.0001 (0.003)
Average Currency Change	4.3805 (3.640)
Election Year	0.1468 (0.199)
Average Legislative Support	-2.2905 (1.219)
Average Limit Days in Congress	0.0092 (0.008)

Average Presidential Popularity	-0.0816 (0.295)
Constant	-1.9779 (20.317)
N	31
R2	0.394

**p<0.05, *p<0.1.

As expected, Table 5 does not show statistically significant results from all the variables that we analyzed. In other words, we have good reasons to think that the decision from the Supreme Court has not affected the total sum of authorized credits per semester.

6. Conclusion

We first defined some concepts that are common in Brazilian public institutions. We showed that for the first time the Supreme Court made a restriction on the use of extraordinary credits, a type of emergency expense in the country. Later, we proposed a hypothesis that: (i) this decision has caused a decrease in the number of laws authorizing extraordinary credits, (ii) it also caused an increase in the value authorized per law, and (iii) in the end, the decision has not affected the total sum authorized per semester. To test that, we analyzed how Brazilian presidents have the sole power to enact laws that could increase government expenses. This paper detailed the methods we used to gather and analyze data. We arranged all the analyses for the three hypotheses. Finally, this paper discussed how our findings supported the hypotheses.

The example exposed in this article affects many public policies in Brazil, from the Olympics to the Zika virus. It is important to understand the forces behind the many actions that happen every day in the country. As mentioned, both quantitative and qualitative analysis was helpful in better understanding the context of authorizing extraordinary credits.

Indeed, some researchers found via interviews that by authorizing extraordinary credit, the government could facilitate contracts with private companies without using standard procedures (*licitação*) (Rocha et al. 2013). This could be an incentive for corruption.

Other countries handle this problem in different ways. For example, the United Kingdom authorizes the use of up to 2% of the previous year's expenditures as emergency expenses without going through the Parliament (Lienert and Jung 2004). A similar procedure

could help limit the power of presidents in Brazil; it would also increase the bureaucratic autonomy of the president's cabinet, since the power in his or her hand would also be capped (Fukuyama 2013; Bersch et al. 2017).

For future work on extraordinary credits, it would be interesting to see more data analysis regarding events in Congress and the Supreme Court. Observing how both institutions deal with this problem could help us better understand the situation.

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Political Culture and Democracy in Latin America: Perspectives on Brazil and Colombia

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Andressa Liegi Vieira Costa
Universidade de Lisboa
andressaliegi@hotmail.com

Abstract

There are a few common characteristics when we speak about Latin America. One of them is that the region still faces challenges to improve and strengthen its democracy, such as corruption, distrust in traditional institutions of politics, and political polarization. Since democracy is not just made of formal aspects, this paper analyzes the relationships between political culture and democracy in Brazil and Colombia — countries that show low levels of citizen participation and apathy about politics. We conducted an empirical analysis using the 2015 Latinobarometer database to understand how citizens perceive and act in their democratic systems, comparing both countries. The countries present similarities in their political cultures despite their different historical backgrounds, specifically periods of violence in Colombia and times of the interruption of democracy in Brazil.

Keywords: Brazil; Colombia; Democracy; Latin America; Political Culture

Resumo

Existem algumas características comuns quando falamos sobre a América Latina. Uma delas é que a região ainda enfrenta desafios para melhorar e fortalecer sua democracia, como a corrupção, a desconfiança nas instituições tradicionais de política e a polarização política. Como a democracia não é apenas formada por aspectos formais, o objetivo deste artigo é analisar as relações entre cultura política e democracia no Brasil e na Colômbia — países que mostram baixos níveis de participação cidadã e apatia pela política. Realizamos uma análise empírica usando o banco de dados Latinobarômetro 2015 para entender como os cidadãos percebem e agem em seus sistemas democráticos, comparando os dois países. Os países apresentam semelhanças em suas culturas políticas, apesar de suas diferentes origens históricas, especificamente períodos de violência na Colômbia e tempos de interrupção da democracia no Brasil.

Palavras-chave: Brasil; Colômbia; Democracia; América Latina; Cultura Política

1. Introduction

Latin America faces several social and economic problems that restrain the full development and strength of democracy in the region, since the State is not able to solve conflicts through institutional and democratic channels — channels aggravated by problems such as social inequality and corruption. In this context, there is an emergence of patterns of low trust among individuals who do not participate or get involved in collective actions because of the general perception that political institutions do not work and lack social legitimacy (Baquero 2013; Bianchi, León, and Perini 2017). Considering the importance of individuals to politics, Almond and Verba (1963) work with the concept of political culture related to the orientations, postures, and attitudes of citizens regarding the political system — providing a basis for political behavior according to each historical context and political system (Pye 1965).

There is a gap between society and politics. Many citizens feel most political institutions (especially political parties) are illegitimate and do not promote the interests of the people; hence many people feel misrepresented (Bianchi, León, and Perini 2017). In the Latin American frame, we find Brazil and Colombia — countries with similar characteristics regarding political culture, though each has different historical contexts. Brazil shows high levels of institutional distrust and political skepticism as well as a hybrid political culture that values the more formal aspects of democracy (Baquero 2004; Baquero 2008). Colombia shows reduced political participation and elevated institutional distrust with partisan hostility (Ruiz 2012; Ruiz 2013; Ulloa 2015). Brazil's political culture was influenced by a predominance of the private sphere rather than a public one; this results in strong social and political exclusion despite several non-democratic periods (Holanda 1995; Faoro 2001; Carvalho 2002). Colombia's political culture is marked by the central role of the Catholic Church and a dichotomy of thought represented by bipartisanship, rivalry, and political intolerance (La Roche 1993; Bushnell 2004; Larosa and Mejía 2011).

Therefore, this paper aims to understand the patterns of political culture in Brazil and Colombia and to verify the relationship of the individuals and democracy. We will compare both countries, always positioning them in the Latin American frame. Thus, we will analyze the 2015 Latinobarometer database to empirically research how the elements of political culture and democracy appear in each society. This paper is divided into four

sections. First, we present the theoretical perspectives that guide this study. Next, we give the historical background for Brazil, Colombia, and Latin America. Third, we provide an empirical analysis of relevant data. In conclusion, we offer some final considerations and results. This study shows the importance of using history to analyze political culture and how it impacts the relationship (or potential relationship) between citizens and democracy.

2. Political Culture and Democracy

The concept of political culture emerged from the belief that people should be active in politics; political culture also refers to political orientations and postures as well as the attitudes associated with each person's role in the political system (Almond and Verba 1963). Pye (1965) argues that each society presents its own patterns of actions, perceptions, and political behavior since individuals learn and accumulate knowledge and feelings towards politics according to the historical contexts of their communities. Every political system has a different political culture, considering that “[...] *a political culture is the product of both the collective history of a political system and the life histories of the individuals who currently make up the system; and thus it is rooted equally in public events and private experiences*” (Pye 1965: 8).

Therefore, political culture encompasses three different types of orientations: cognitive (related to knowledge and beliefs); affective (feelings); and evaluative (opinions and values) (Almond and Verba 1963). Political systems operate through inputs (political objects or society's demands) and outputs (administrative objects or the conversion of those demands in policies) (Almond and Verba 1963). At the individual level, political culture provides the core to political behavior; when speaking collectively, it builds a structure of values and rationality to ensure institutional and organizational performances are coherent (Pye 1965). Political culture can be categorized as parochial, subject, or participative; according to this categorization, citizens therefore tend to be more indifferent, passive, or participative towards the political system (Almond and Verba 1963). Nevertheless, Almond and Verba (1963) cited civic culture as an ideal model of political culture based on loyalty to the political system and citizen participation, mixing traditional and modern elements. Hence, a civic society requires people with civic virtues to take an interest in public issues and politics, to become involved in civic associations, and to build relations of reciprocal tolerance based on cooperation and solidarity among individuals (Baquero 2004).

Contemporary studies (Inglehart 1977; Abramson and Inglehart 1994; Inglehart and Welzel 2009; Dalton and Welzel 2014) on political culture seek to understand how values have been changing in modern democracies. Researchers observed that as a result of modernization processes, citizens have been replacing the public loyalty presented on Almond and Verba's civic culture with new values of more assertiveness and self-expression. These new values are related to greater economic security as well as better education and represent a shift from material to post-material values — which are likely to produce more critical citizens seeking political change, affecting their orientations towards politics and increasing demands for democracy. However, the support for democratic values is not an automatic consequence of better education levels since it also reflects specific historical conditions (Abramson and Inglehart 1994).

Civil society is a fundamental and legitimate component to protect society from the State's authoritarian tendencies by promoting collaborative and cooperative relations and helping political institutions since “for its good performance, democratic regimes depend on citizens' support” (Baquero 2013: 53). When democratic procedures are stable but not followed by social achievements, citizens tend to question the regime because of how past negative political experiences have impacted them (Baquero 2013).

3. Latin America in Perspective: The Case of Brazil and Colombia

To understand the Brazilian and Colombian cases, we will briefly depart from the Latin American context. Historically speaking, Latin America was strongly influenced by colonialism which promoted the eradication of people already present on their lands and also promoted the slave trade. Both the Portuguese and the Spanish introduced the Catholic religion, the concept of a mercantilist economy, and an absolutist State structure. The end of colonialism was characterized by the emergence of local oligarchies that controlled the main aspects of economy and politics in most countries in the region (Munck 2003).

In most of Latin America, politics used to be influenced by relationships of clientelism, which subordinated electoral politics to social obligations and in effect defined political behaviors. In authoritarian periods, the elections in most countries were characterized by corruption and fraud — hence individual voting did not have a real impact on poll results. People's political participation, when motivated by patronage bonds, tend to

develop differently from those they participate in due to a sense of civic responsibility (Seligson and Booth 1976).

Latin America still copes with structural problems that cause uncertainties about the paths of democracy in the region. Socioeconomic conditions restrain conflict resolution through the democratic and institutional paths. Also, political polarization and the weakness of the partisan system have been increasing. The State has been facing difficulties in ensuring a good quality of life and the rule of law for its citizens, partially due to the impact of corruption (Baquero 2013).

“[...] in societies where the citizenship is absent, civil society is not integrated to society as a whole, and social inequalities increase together with social exclusion, democracy bails or can even lose its meaning. This kind of democracy turns to be characterized by permanent instability” (Baquero 2013: 41).

Social policies in Latin America have always been highly selective, representing a strategy of vertical integration to increase benefits to the part of the population whose rights are already ensured rather than expanding it horizontally — hence promoting clientelism and paternalism. Even in periods of prosperity, welfare policies in the region did not reduce social inequality (Burchardt 2010). It can be observed that social hierarchies cause people to accept a subordinate place regarding the State (Baquero 2013). Latin American democracies have been facing signals of fatigue since political institutions’ low levels of social legitimacy and the feeling of crisis permeates the application and concentration of political power (Bianchi, León, and Perini 2017).

Latin American countries have increasing climates of discontent because of the lack of social progress and government support by citizens as part of a “historic legacy of administrative inefficiency and corruption practices” (Baquero 2013: 38) and a lack of “strong democratic roots” (Baquero 2013: 40). There is a general perception that political institutions do not work, impacting citizens’ satisfaction with democracy. Given their inheritance of a parochial political culture, people tend to tolerate certain political practices and abuses (Baquero 2013); this ensures the survival of authoritarian politics, which influence people’s perceptions about the role of political leadership as well as the relationships among citizens, governments, and political parties (Moisés 2008: 23).

3.1. The Brazilian Case

Following the general Latin American pattern, Brazil presents high levels of distrust towards the government and its representatives in addition to a negotiated solution of social problems. Democratic regimes coexist with oligarchical forces that strengthen social inequality and exclusion by favoring minorities in power, hence “political elites from the main parties are seen as corrupts, uninterested and dishonest, not working for the good of the country” (Baquero 2004: 175).

Brazil was colonized by Portugal as a purely commercial enterprise between the colonial government and some private parties (Carvalho 2002) in hopes of gaining easy profits, positions, and honor titles, resulting in social injustice (Holanda 1995). This colonization used land distribution for private exploration (a heritage from the feudal system) and gave public delegation of power to particular individuals while the power given to the public was restricted to vigilance and control (Faoro 2001; Duarte 1939). As a consequence, in the countryside landlords were the maximum authority, absorbing part of the State’s roles; this organization later extended to the cities. The patriarchal structure of the family served as a role model to politics, which would become paternalistic (Holanda 1995; Carvalho 2002).

Brazilian independence was pacific (unlike Spanish America), representing a negotiation process among Portugal, the national elite, and England (Carvalho 2002). Hence, it was not followed by the rise of a civic tradition since there was neither a political society nor citizens; most people were excluded from political and social rights and a sense of national belonging and pride was non-existent. Even when people could vote, most of them depended on landlords; consequently, there was pressure to vote a certain way, resulting in no real freedom in choosing a candidate (Carvalho 2002). Also, the Portuguese did not invest in cities’ infrastructure and education like the Spanish did. The Republic also did not change the political scenario and just followed the pattern of a State external from the individual who was an object of the State’s actions rather than someone capable of influence (Carvalho 1987).

During the First Brazilian Republic (1889-1930), some social claim to popular demands started to appear even if these were precarious and reticent (Iglésias 2006). Even though the working class was just starting to organize itself, that represented greater social

and political diversity. However, like in the colonial period, associations (mainly those of a religious nature) handled social rights (Carvalho 2002). The First Republic was marked by the prevalence of agriculture lords' interests (mainly those of coffee producers), keeping regional balance uneven and national integration weak. The political parties promoted partisan contests over national union, so democracy was in appearance only — because representation was restrained by elements such as the falsification of votes (Fausto 1985).

In 1930, a revolution steered Getúlio Vargas to the presidency, leading to extensive social and political changes in Brazil followed by alternating dictatorships and democratic regimes from 1937 to 1945 (Carvalho 2002). Vargas used social control with a strong State and his charismatic leader image, consolidating a mass policy based on propaganda and nationalism. There was a shift of social issues to the State through “introducing a new political culture, which transformed citizenship in a piece of the power game” (Capelato 2003: 140). The first democratic experience was characterized by populism, implicating an ambiguous relationship with citizens in a dependency position towards the leaders; social rights were viewed as a gift in exchange of gratitude and loyalty, building a passive citizenship (Carvalho 2002).

The 1964 military coup d'état ended populism and suppressed political and civil rights (Fausto 1996). Nevertheless, the military governments repeated the strategy of expanding social rights despite eliminating the political and civil ones, hence “the Brazilian authoritarianism post-1930 had always looked to compensate the lack of political liberty with social paternalism” (Carvalho 2002: 190). Simultaneously, economic prosperity was flattering the urban middle class — compensating for the loss of political rights. The collapse of the military regime caused citizens' participation in politics to reach new heights (Fausto 1985).

After indirect elections in 1985, the 1988 Constitution centered on assuring citizens' rights (mainly social ones), expanding the right to vote, and institutionalizing mechanisms for direct popular participation on decision-making processes (particularly those concerning public policies). These measures were a chance to explore the potential to shift the political culture in the country, introducing new democratic values, better transparency, and social control to the State regarding public policies (Rocha 2008).

The first president elected by the people resigned after an impeachment process that had been initiated because of a lack of governability, unpopular measures to combat inflation, and corruption scandals (Carvalho 2002). The next president, Fernando Henrique Cardoso (1995-2002), focused on social policies as a responsibility of the State with a liberal slant that became more developmentalist (Sallum Jr. 1999; Draibe 2003). The Luiz Inácio Lula da Silva government (2003-2010) restored the role of the State with a project of national development, resulting in better income distribution with social policy as the central axis (Pochmann 2011). However, the changes were not enough to handle the increased access to consumption, generating a reorganization of the workforce that became more heterogeneous and segmented and made collective actions more difficult. So, even after the promotion of social inclusion, the social structure was still conditioned by the economic and political order (Krein 2014). President Dilma Rousseff (2011-2016) was impeached in 2016 due the economic crisis in addition to breaking campaign promises to her electoral base; this caused increased public disapproval, aggravated by a strong media and middle class campaign against her party (the Workers' Party/PT) (Anderson 2016).

Currently, Brazil faces a crisis of representation as the formal structures of democracy have not solved the problems of inequality and social exclusion (Luchmann 2007). The country presents a hybrid political culture, in which despite the discourse of solving problems through formal procedures, political institutions traditionally lack legitimacy and credibility because citizens do not believe their demands are being met. Democracy is not just made of formal elements; other important components such as a political culture that encourages citizens to act on institutional development rather than passively react to situations (Baquero 2008).

Even with some economic advances, inequality and exclusion generate negative attitudes from Brazilians. There are high levels of political skepticism resulting from dissatisfaction with democracy and distrust in institutions (Baquero 2008); once the political system is not attending to the citizens' expectations, they do not perceive their rights of representation and participation as effective channels to fight problems such as corruption (Moisés 2008). Corruption, one of the main problems in the Brazilian political system, lessens people's ability to trust both themselves and their government — key elements for a high-quality democracy. Corruption also leads citizens to deviate from the public sphere to focus on their own interests, diminishing collective actions (Power and Taylor 2011).

3.2. The Colombian Case

Electoral behavior in Colombia shows some characteristics of political culture as well as some of the elements that influence it. The legitimization of the political system was based on notions like democracy, electoral processes, and citizen participation. However, the process of constructing and consolidating a nation was originally marked by creating the central political parties: liberals and conservatives (Ruiz 2013). Although elections are still the main scenario of democracy, there is low voter turnout; this leads to gaps between elections, hence citizen participation in different channels is sporadic. Thus, initiatives of informal participation are criminalized because such participation poses a danger to the system's stability — according to the major political parties and the media (Ruiz 2012). For decades, conservatives used political imaginaries associated with religious values and liberals were victims of stigmatization and moral condemnation (La Roche 1993).

Another trend worth noting is the personalization and deinstitutionalization of the system once citizens do not trust the political system. Therefore, there is a “low level of interest in political issues, a small rate of belonging in political organizations and movements, a high partisan hostility with little identification with ideologies or political frame” (Ruiz 2012: 421). Moreover, politics is usually associated with corruption and injustice — which also explain institutional distrust. The appreciation of democracy is strongly attached to historical variables that cannot be ignored. Therefore, the existing limitation of democracy to formal aspects is not negative once it represents a preservation of the stability of democracy. However, this lack of meaning makes it possible for candidates, parties, and opinion influencers to use the concept according their interests and convictions (Ruiz 2012).

Historically speaking, colonial Colombia was based on the Spanish establishing themselves as the dominant class. Another central characteristic was using the Catholic religion as a colonization mechanism once the Church “performed a role of mediation between the State, the Hispanic Society and the indigenous communities” (Ruiz 1976: 40), counting on a solid institutional base once its position could compete evenly with that of the State (Bushnell 2004).

Independence (formally granted in 1810 after several revolutions) was preceded by monarchy crises in Europe, Bourgeois Revolutions, local economic and demographic

growth, internal rivalries, and the lack of mass representation in the institutional structure. However, independence was not a unified movement due to strong senses of regionalism — this led to civil and regional wars between groups with distinct ideas for the new nation (Larosa and Mejía 2011; Bushnell 2004).

After independence, a strong dichotomy of thought resulted in the main ideological and political division in Colombia (liberals vs. conservatives) that exists in modern times (Jaramillo Uribe 1982). Despite a period of stability, Colombia's lack of political unity, social and economic inequality, and no articulation among the regions made it impossible to truly build a nation. From 1886 to 1930 (after conflicts and some liberals' attempts to diminish the power of the Catholic Church), Colombia was established a conservative hegemony (Bushnell 2004). This period — “The Regeneration” — granted the Church a central role in education and the regulation of collective life (La Roche 1993). Until the end of the 19th century, the standard of Colombian political life was the rivalry between liberals and conservatives, leading to several civil wars (Bushnell 2004). The Catholic Church (even nowadays) appears as one of the main actors on national life, given its centrality in the socialization processes of most Colombians. Its role was built on the hierarchical and authoritarian relations of the homogenization of values — condemning diversity (ideological, ethnic, cultural, etc.) (La Roche 1993).

The next period was the Liberal Republic (1930-1946), which advanced modernization and democratization. Populism was rising in Latin America, but it did not find space in Colombia due to the lack of political or discursive nationalism. The only populist candidate was killed before the election — even though he was the favorite. A conservative was elected, but the liberals did not recognize him as a legitimate governor. This led to “The Violence” period (1946-1957) marked by partisan rivalry, mainly in rural areas, which also led to the disarticulation of social movements. Then, the National Front — a partisan coalition between liberals and conservatives — appeared as a solution. Its creation caused those excluded to organize away from the traditional parties' structure, resulting in insurgent groups such as the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELC) (Larosa and Mejía 2011).

In the 1980s, there was the first attempt to dialogue for peace with the insurgent groups; this stopped in 1985 when the April 19th Movement (M-19) took the Justice Palace.

The M-19 was an urban guerrilla movement that emerged after fraudulent elections in 1970. Also in 1985, the Patriotic Union (a party of convergent left-wing forces) was created. However, when the party became popular in elections, its members were systematically murdered — mainly by State agents and paramilitary forces; this was labeled genocide and lasted more than 20 years. The decade was also marked by the *narcos*, mainly Pablo Escobar, when Colombia became the epicenter of drug exports in South America (Larosa and Mejía 2011).

Therefore, Colombia has a political culture traditionally marked by intolerance and violence, in a way that conflicts between State and guerrillas have polarized public opinion regarding democratic or authoritarian positions. Even if characterized by different political cultures due to regional distinctions, Colombia has a political tradition of bipartisanship, which was strengthened through electoral manipulation and clientelistic relations (La Roche 1993).

The complex conflict structure in Colombia was causing the United States to worry. Hence, in the 21st century the United States approved a help program (Plan Colombia) to help military forces to fight the insurgent and paramilitary groups. However, it was unsuccessful due to human rights violations, murders, and military scandals — resulting in serious economic and social consequences to Colombia. In 2010, Juan Manuel Santos became the president of Colombia; he and his staff worked hard to take effective actions to solve the conflicts and achieve national reconciliation. In 2016, a peace accord was signed with FARC, leading to gradual advances in the problem (Larosa and Mejía 2011).

The period called “The Violence” (due to the political persecutions, murders, and aggressions that claimed thousands of people’s lives) was marked by a political intolerance that enhanced partisan divisions in the country. The bipartisan systems, because of its elitist visions of power, only enabled other sectors of society to access power and participation through illegal means (Ruiz 2013). The denial of political and social spaces had a lot of consequences — namely, increased inequality, cultural and religious exclusion, political persecution, poverty, colonialist mentalities, territorial isolation, industrial deficit, a poor public infrastructure and, the most critical, the war (Barrera 2016: 46). Even though the current Constitution (enacted in 1991) has expanded the citizenship, including groups that were once marginalized, it is still limited and often superseded by people with strong electoral

support due to economic or military power, individuals, or institutions (formal or informal) that attend to the population's immediate needs. This way is a "[...] *traditional political culture highlighting the charismatic influence, religious intervention, the low or null participation of society in the public debate and in issues of State*" (Ulloa 2015: 6).

4. Data Analysis: Political Culture and Democracy in Brazil and Colombia

This section of the paper aims to empirically analyze aspects of political culture and democracy in Brazil and Colombia through data from the 2015 Latinobarometer database; the data was compared with Latin America's patterns. The database showed 20,250 people between 16 and 98 years old in Latin America were surveyed. In Brazil, 1,250 people between 16 and 92 years old were polled. In Colombia, 1,200 people between 18 and 94 years old were studied. To start our empirical analysis, we first looked at the main characteristics of the sample for each unit of study: religion, education, and income.

Table 1: Religion (%)

	Latin America	Brazil	Colombia
Catholic	63.8	58.8	76.7
Evangelical	19.9	22.7	15.8
Seventh-Day Adventist	0.8	0.9	0.5
Jehovah's Witness	0.7	1	0.5
Afro-American Religions	0.3	0.9	0
Atheist	0.7	0.5	0.1
None	11.4	9.6	5.6
Others	2.5	5.6	0.7
Total	100	100	100

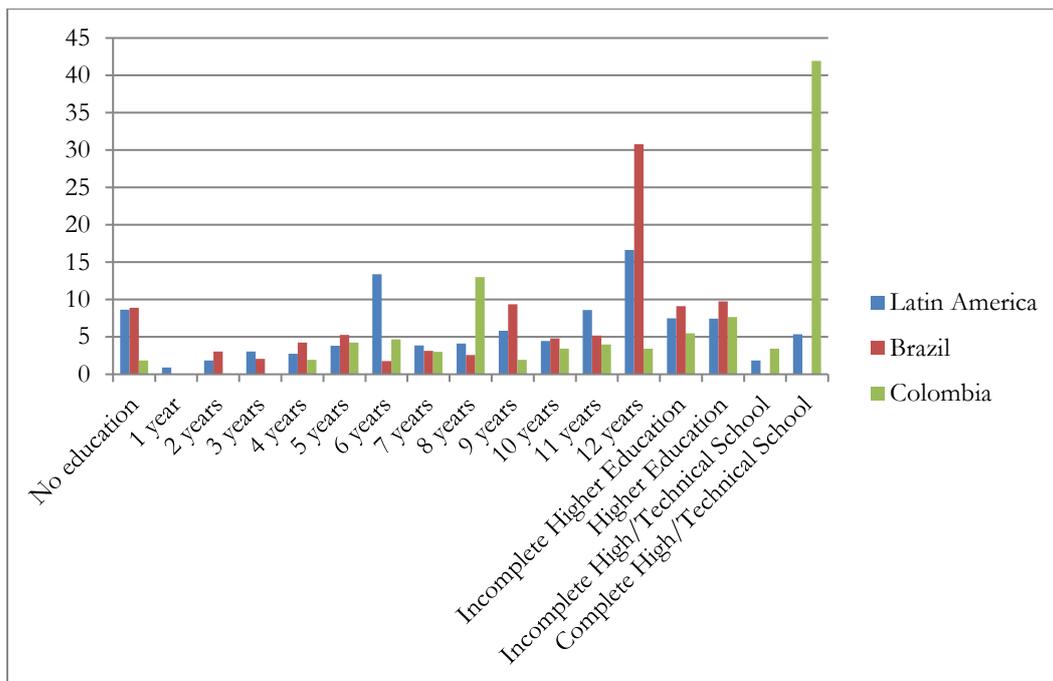
Source: Latinobarometer (2015).

n Latin America = 20,107 / n Brazil = 1,227 / n Colombia = 1,191

As the data shows, Brazil and Colombia, as in the case of Latin America as a whole, are mostly Catholic — following the religious tradition introduced in colonization by both the Spanish and the Portuguese that used the ideals of the Church as a basis to build societies. However, while in Brazil and Latin America there is a rise of the Evangelical religion (by about 20% in each location) and a greater distribution of people who do not believe in any

religion, the Catholic religion remains strong in Colombia — more than 75% follow it. As we previously stated, the Catholic Church has represented a mediating force among the diverse elements of society since the colonial period — even competing with the role of the State. The Church has always had a central role in the country, especially in conservative governments, acting in fundamental aspects of social life such as education (Bushnell 2004) as well as being an essential actor in national life and present in the socialization processes of most Colombians (La Roche 1993).

Figure 1: Education (%)



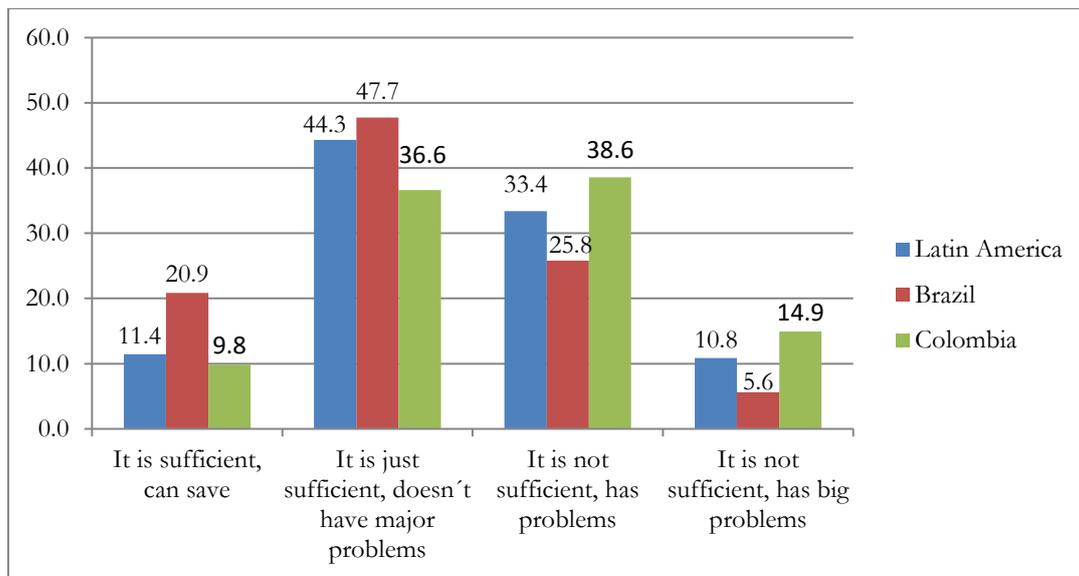
Source: Latinobarometer (2015).

n Latin America = 20,250 / n Brazil = 1,250 / n Colombia = 1,200

Regarding education, we first note that several countries in Latin America, including Colombia, have technical education in their secondary/high school programs. Therefore, this answer applies to these two units of study and not to Brazil. Therefore, according to Figure 1, while Colombia presents a higher level of education in secondary (or technical) studies at 40% of those surveyed, 1.8% do not have any formal education. Brazil has 8.9% without any formal education and 30.8% with 12 years of study. However, in Brazil almost 10% of those surveyed completed higher education and about 9% attended higher education but did not complete it; in Colombia, these figures are 7.7% and 5.5% (respectively). In this sample, Brazil and Colombia are above the Latin American average in secondary education.

In regard to higher education, Brazil is slightly above the average while Colombia's figure is similar to Latin America's.

Figure 2: Income (%)



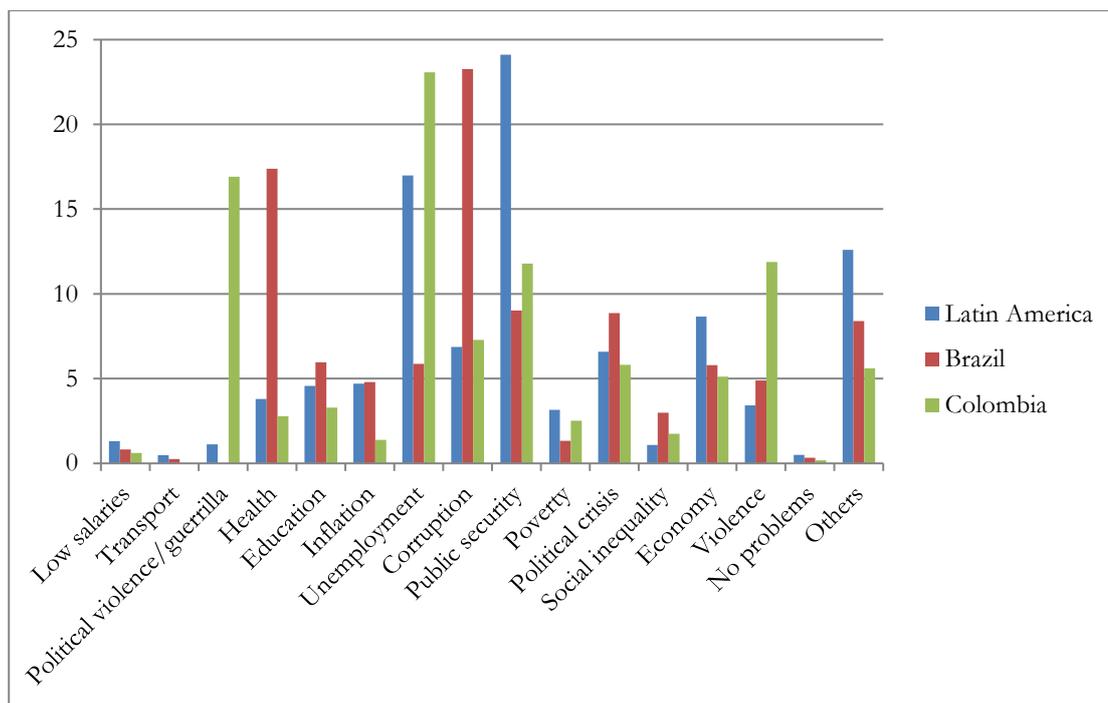
Source: Latinobarometer (2015).

n Latin America = 20,250 / n Brasil = 1,250 / n Colombia = 1,200

In relation to the subject of income, we note that Brazil faces better conditions (see Figure 2). More than 20% are in a comfortable situation and can save money and almost 50% can cover their needs, compared to Colombia with 10% and 35% (respectively). Also, more than half of the Colombians interviewed said their income is not enough. Thus, Brazil is in a better situation in comparison to Latin America in general, while Colombia has lower averages than the region.

After seeing the main characteristics of the sample, we analyzed some aspects of its political culture. We started with the thoughts of those interviewed regarding the main problem of their respective countries — which relates to the evaluative sphere of political culture that refers to opinions and evaluations (Almond and Verba 1963).

Figure 3: – What’s the main problem in your country? (%)



Source: Latinobarometer (2015).

n Latin America = 20,250 / n Brazil = 1,250 / n Colombia = 1,200

The main problem cited in Brazil was corruption — representing more than 20% of the answers. However, corruption was not often mentioned in Colombia (7.3%) or in Latin America (6.9%). Corruption is a concerning factor in Brazil because it has the ability to diminish interpersonal and institutional trust, deviate citizens from the public sphere, and reduce collective actions (Power and Taylor 2011). The second most-mentioned problem in Brazil was health at 17.4% in comparison with just 2.8% in Colombia and 3.8% in Latin America. Additional major problems reported in Brazil were public security (9%), the political crisis (8.9%), education (6%), and the economy (5.8%). Since the political system contains inputs and outputs (Almond and Verba 1963), it can be concluded that Brazilians are dissatisfied with the outputs of politics and the services provided by the State — pointing to a political system that does not meet citizens’ expectations (Moisés 2008).

For Colombia, unemployment is the central problem at 23.1%, in contrast to Brazil (5.9%) but close to what was reported in Latin America (17%). In Latin America, 24.1% said public security is the main problem. Violence is a serious problem in Colombia at 17%; this

can be explained by conflicts with armed groups (especially the FARC) and the country's history of strong political persecution (Larosa and Mejía 2011).

Next, we will analyze citizens' political understanding; this is related to the cognitive sphere of political culture — the knowledge of the political system (Almond and Verba 1963).

Table 2: Understanding of politics: “Which statement is closer to the way you think?”

	Latin America	Brazil	Colombia
Politics is so complicated that it isn't understood	51%	60.9%	60.5%
Politics isn't complicated and can be understood	49%	39.1%	39.5%
Total	100%	100%	100%

Source: Latinobarometer (2015).

n Latin America = 19,357 / n Brazil = 1,195 / n Colombia = 1,181

More than 60% of the Brazilians and Colombians polled said politics was too complicated to understand — higher than the Latin American rate of 51%. Thus, we can reasonably conclude that the majority of people in Brazil and Colombia do not understand politics. Since political culture provides the basis for political behavior (Pye 1965), this data is worrisome. Also, a lack of knowledge and understanding of politics can interfere in the building of a civic society that demands interest and engagement from its citizens in politics and public issues (Baquero 2004).

Finally, we analyzed democracy⁴ (see Figure 4). The Latinobarometer (2015) studied the difference between the support of democracy and the satisfaction with it. Survey subjects were presented the following options:

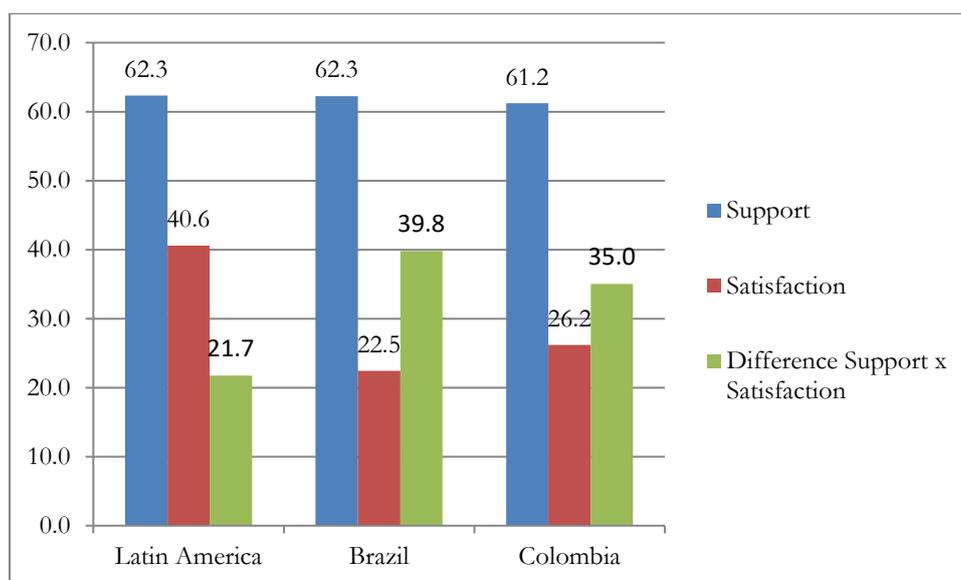
- a) Democracy is preferable to any other kind of government.

⁴ For the purposes of this paper, Response A was equivalent to supporting democracy.

- b) Under some circumstances, an authoritarian government can be preferable to a democratic one.
- c) For people like me, it doesn't matter whether we have a democratic or non-democratic regime.

Regarding satisfaction, the Latinobarometer survey asked: "In general, would you say you are very satisfied, quite satisfied, not very satisfied or not at all satisfied with the working of the democracy in your country?" We measured satisfaction by calculating the sum of the responses to the first two options.

Figure 4: Thoughts About Democracy (%)



Source: Latinobarometer (2015).

We saw a major trend of support for democracy (see Figure 4). However, it is important to note that 18.9% of those surveyed in Brazil preferred authoritarian governments under some circumstances; this figure was lower in Colombia at 11.9%. We concluded this is because democracy is related to the stability of the system and was used to legitimize Colombia's political system (Ruiz 2012; Ruiz 2013); on the other hand, Brazil had several suspensions of democracy by authoritarian regimes that used social paternalism or economic progress as ways to compensate for the people's lack of rights (Carvalho 2002). Also, Moisés (2008) noted that authoritarian preferences and ambivalent political attitudes fuel the survival of authoritarian political concepts.

Regarding satisfaction, the rates show that few people are satisfied by the outputs of the system in which they live, especially given the background of non-democratic periods for Brazil, non-democratic policies in Colombia, and the survival of authoritarian features in these countries (Moisés 2008). Looking more deeply into the 2015 Latinobarometer data, the situation is even worse — in Brazil only 2% are very satisfied and 20.5% are quite satisfied; the figures for Colombia are 4.6% and 21.6%, respectively. Both countries are below Latin America's average of 10.7% being very satisfied and 30% being quite satisfied. The low satisfaction rates among Brazilians can be attributed to the lack of legitimacy and credibility of the country's political institutions since the formal structures of democracy cannot solve social problems (Baquero 2008; Luchmann 2007). In Colombia, citizens also do not trust their country's political institutions (Ruiz 2012); this mistrust is similar to such sentiments in Brazil and Latin America where socioeconomic conditions restrain the ability for conflict resolution through institutional democracy (Baquero 2008).

5. Final Considerations

We used the concept of political culture to study political orientations, postures, and attitudes regarding the political system (Almond and Verba 1963), which are different depending on the society and its historical context (Pye 1965), in order to better understand the patterns of political culture in Brazil and Colombia. We aimed to verify people's relationships with democracy in these countries, comparing them with the general frame in Latin America. To achieve this, we first studied the main historical aspects of each country as well as the central characteristics of each political culture. Next, we conducted an empirical analysis of the 2015 Latinobarometer to observe some concrete features of political culture and about the democracy issue.

Our first conclusion is that some historical aspects remain strong in Brazil and Colombia in regard to how people interact and perceive the political system and democracy in general. Latin America faces challenges in strengthening its democracy, including socioeconomic conditions, social inequality and exclusion, and a State that is not capable of solving such problems through democratic and institutional channels — this results in discontent from citizens and a perception that political institutions do not work (Baquero 2013) and lack legitimacy (Bianchi, León, and Perini 2007). This situation is aggravated by the remaining authoritarian attitudes and conceptions regarding politics (Moisés 2008). Brazil

follows this pattern, as its citizens also distrust political institutions. The country is facing a representation crisis, since the formal structures of democracy do not comply with people's expectations (Baquero 2004; Luchmann 2007) — which are mainly influenced by the predominance of private forces over the public sphere since colonization and the interruptions of democracy throughout its history. Colombia was mainly marked by the remaining central role of Catholic Church in most aspects of national life and the bipartisan polarization between liberals and conservatives; this led to a political culture marked by institutional distrust, intolerance, and violence — a culture where people historically faced repression and did not have space to interact with politics outside of the dominant structure (La Roche 1993; Ruiz 2012).

Through our data analysis, we reached a few additional conclusions. In Brazil and Colombia, citizens still struggle with major issues that represent outputs from the political system. It directly affects their daily lives since they do not have elements such as economic and physical security — this makes it even more difficult for people to develop positive perceptions about the system. The situation is aggravated by the fact that most people in both countries cannot understand politics. We demonstrated how such elements impacted the 2015 Latinobarometer's data about democracy. First, even if there is a major trend for support, there is still space for authoritarian conceptions. We also observed a strong difference in satisfaction, which confirmed that people are discontent with their country's political system. These observations both dominate in a scenario where democracy still faces several challenges, especially once citizens retreat even further from the public space.

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Collective Land Rights: A Challenge to Colonial Continuities in National and International Legal Structures?

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Judith Möllhoff

Goethe University Frankfurt

jmoll01@ucm.es

Abstract

The paper questions the status of indigenous peoples' collective land rights in Brazilian constitutional legislation and in international law. First, it connects the desperate situation of the Guarani to the phenomenon of "land grabbing." The main part discusses national and international legal regulations. It gives an overview of the development of international law and national sovereignty in the colonial context. Then, it critically discusses the process of Brazilian nation-building and the current Brazilian constitution. Next, it examines the international and regional treaties regulating indigenous peoples' collective land rights and connects the reasons for state resistance to the theoretical debates. Finally, it addresses the question if demands for collective land rights can challenge the way national legal structures traditionally regulate land distribution and the power to decide over its development.

Keywords: Brazil; collective rights; indigenous peoples' rights; indigenous people's rights; Guarani; legal history; sovereignty

1. Introduction

“[...] a young person told me he didn't want to live anymore because there was no reason to carry on living – there is no hunting, no fishing, and the water is polluted.”
– Amilton Lope (Watson et al. 2002: 64)

This paper discusses the relationship among lands, peoples living on and off them, and the way nation-states regulate these relationships (mainly via the institution of private property). It analyzes the collective land rights of indigenous peoples, particularly in Brazilian constitutional legislation and in international law, with regard to the situation of the Guarani people in the Brazilian federal state of Mato Grosso do Sul. This paper connects international law, constitutional law, and human rights. The right to collectively own land is interpreted to imply some form of self-determination linking these levels. This paper addresses whether demands for collective land rights can challenge the way national legal structures traditionally regulate land distribution and the power to decide over its development.

But first, precautions are in order: this paper is written — temporally — from a post-colonial perspective and is thus theoretically indebted to post-colonial theory. In particular, the notion of the “Coloniality of Power” developed by Quijano (2010: 168-172) is basic to this argument as it posits the continuity of colonial domination by European/Western culture in spite of formal decolonization. As he observes, the majority of the exploited are exactly those people categorized as inferior along “racial”, “ethnic”, or “national” lines that are assumed to be “objective” and “scientific”. The “West”, in turn, was constructed as a subject by its inferiorization of the “other” — who in turn was objectified. Knowledge and property were conceived as standing in relation to the individual as something else (Quijano 2010: 172-174; Sousa Santos et al. 2007: xxxv-xxxvi). Consequently, Western scholars often made “other” peoples the objects of their investigations — with catastrophic results. This is why the identification of indigenous peoples is difficult. In this paper, the “object” of investigation is the struggle for the recognition of collective land rights for which Civil Society Organizations (CSOs) provide advocacy. Another “object” of investigation in this paper is the relevant legal and historical background.

Before looking closer at the legal history, the current situation of the Guarani people’s landlessness in Mato Grosso do Sul is described. Then, the histories of international law and the Brazilian system — which established the nation-state as the authority regulating the legal status of land — are traced. Next, current legal regulations are examined followed by a discussion of the theoretical uncertainties regarding said regulations. Finally, it will be argued that the resistance of legal systems to effectively accommodate collective, indigenous land rights is related to concerns about state sovereignty.

2 An illustrative example of land conflict: The Guarani in Mato Grosso de Sul, Brazil

Records about the Guarani go back to the first Spanish colonizers. Since the beginning of this contact, the Guarani were used as slaves. But despite others’ continuous efforts to compel the Guarani to assimilate, they have maintained a distinct identity. They were once deemed extinct, but are now recognized as one of the most populous groups of indigenous peoples in Brazil. In Mato Grosso de Sul, where approximately 30,000 Guarani live, the conflict for land is especially serious (Souza Filho 2007: 81; Abascal 2017; Watson et al.: 61; Oliviera 2000: 201). Since the beginning of the 19th century, the displacement of the Guarani in Mato Grosso de Sul was justified with the advancement of the agricultural boundary. The reserves that were founded in Mato Grosso de Sul between 1915 and 1928

only covered a marginal amount of the territories the Guarani had previously inhabited. Thus, most of their lands have been seized in the last 100 years. This violated the socio-political organization of the Guarani people and their relationships with their sacred, ancestral lands (Abascal et al. 2016; Cultural Survival 2016).

Since the 1990s, land claims have more often taken the form of active seizures of lands. The “*retomadas*” (take backs) — usually carried out by smaller groups squatting on claimed lands — often are confronted by the armed forces of the landowners and paramilitaries. The 2008 movie *Birdwatchers* calls attention to the situation in the camps of the retomadas. The camps are often close to streets, increasing visibility and pressuring the political system. However, this frequently results in accidents. Also, flooding raises the danger of infections and contagious diseases. More importantly, the current resistance is met with systematic repression, criminalization of the Guarani and the organizations that support them, and increased violence (Abascal et al. 2016).

Brazil has consistently been the deadliest country for environmental activists (Watts 2018; Global Witness 2017: 32-34). This is complemented by racist structures affecting everyday personal interactions (SIDRA 2010). A member of the Communist Party was recorded insulting the Awá indigenous people during a public hearing as “a bunch of queers” and “gays”; this person also said because “they do not even know how to work” it would be best if they died of hunger (Rangel and Liebgott 2015: 20). This Eurocentric understanding of productivity discredits other forms of productivity; therefore, one should not neglect the interactions between debates about the (collective) right to (define) development and the approach to collective land rights discussed in this paper (Souza Filho 2007: 89).

In Mato Grosso de Sul is affected gravely by large-scale land investments or “land grabbing” as activists call it. There is no universal definition of the phenomenon, but it is generally used to describe the non-transparent/illegal selling or leasing of land to multinational companies. Thus, it denotes changes in land use and in property relations (EuroVía 2016; Borrás 2011: 35, Abascal et al. 2016). Soy and sugar cane production in Brazil has been rapidly increasing since the 1970s. The development of “modern” agricultural techniques — like monocultures and pesticides — not only destroys biodiversity, but also threatens the areas where the Guarani can live according to their culture. This relates to the question of food sovereignty (Dunford 2014: 15). According to the Food First Communication and Action Framework (FIAN), since 2005 at least 50 children have died of hunger and approximately 600 are currently suffering from malnutrition. In 2003, the Brazilian government started a campaign to fight hunger and extreme poverty by giving food

baskets to the socially disadvantaged (Abascal et al. 2016; Abascal 2017). Unfortunately, those measures neither consider the eating habits of the Guarani nor that they were capable of growing their own food before displacement (Abascal et al. 2016; Abascal 2017). Here, one should ask whether subsistence farming is undermined and stigmatized for its incompatibility with capitalist forms of production.

The lack of land leads to social and cultural erosion, unemployment, exploitative working conditions, alcoholism, and a lack of perspective as well as individual and collective suicide. Studies have shown that the suicide rate of indigenous peoples in Brazil is six times higher than the national average (Cultural Survival 2016: 6; Earth First 2017). The suicide rate among the Guarani is 34 times higher than the national average (Cultural Survival 2016: 6; Earth First 2017). Many critics consider the conduct against the Guarani as genocidal (Abascal et al. 2016; CIMI 2014: 5; Watson et al. 2002: 9-19; Lewis 1969). Such assessments indicate a recognition of their status as people. Still, this recognition is contested. Despite their dramatic situation, the Guarani are continuously searching for a land free of evil as predicted by their cosmology. As a result, they have reached remote places not yet affected by private property (often described as “untouchable by civilization”) (Souza Filho 2007: 83).

The concept of “marginal lands” needs to be elaborated upon briefly because its underlying premise that there would be a (substantial) amount of “waste” lands is increasingly contested. For example, a patch of grassland is often characterized as wasteland even though it may play a role in traditional farming techniques or as a buffer zone; that is, it can have a particular cultural or ecological function. This categorization mirrors a state-centric perspective that does not necessarily correspond to reality and has often led to evictions of rural peoples around the world. Borras (2011: 43-45) describes those “state-simplifications” as central operations through which conversion and commodification of lands is facilitated. Notably, this is nothing new. The conversion of wasteland into agriculturally profitable land — “in order to sustain a wasteful lifestyle of overconsumption abroad” — began with the colonial endeavor. The global trend to commodify land affects indigenous peoples in particular, who, in general, have continuously faced systematic rights violations by states, public institutions, members of dominant societies, and private corporations. Collective discrimination is a clear pattern. Even though the movement for land rights is comprised of various peoples, the groups are in remarkable accord about their fundamental demands. Land rights are a central issue because land is a basic element of indigenous peoples’ identities and cultures and is being threatened by neoliberal development strategies. The special role of land and territory for indigenous peoples is now recognized by several United Nations (UN)

authorities (Xanthaki 2007: 237; Stavenhagen 2005: 17-22; Heintze 2016: 96; Claeys 2015: 132; Abascal et al. 2016).

However, groups of indigenous people are not the only ones with a special relationship to the ground. Another actor with a similarly special relationship to land/territory is the state. The relations between peoples and lands are mediated and codified by sovereign states with their specific institutional and legal structures — which are heavily influenced by Eurocentric, epistemic, and normative assumptions (Stewart-Harawira 2005: 71 and 118; Anghie 2004: 235). In the development of nation-states, the European model — and its logic of the state as the “rational” agent — was considered the most advanced form of social and political organization. Other types of organization were strategically discredited, undermined, and overwritten. Here, a plurality of different normative orders is competing for influence on the state(s). The state, in turn, became the most important agent for territorial administration, and its legal codification (via contracts, laws, citizenship, etc.)⁵.

3 Legal structures: then and now — local and global

The histories of statehood, international legal theory, international law, and colonialism are fundamentally interconnected (Pichl 2012: 132; Meza-Lopehandía 2013: 1; Stewart-Harawira 2005: 56; Anaya 1999). In turn, those intertwined histories influenced how constitutions were drafted and how sovereignty was interpreted. In post-colonial and decolonial scholarship, the beginnings of modernity were in the Latin American discourse in the 16th century (Mignolo 2001: 433). Corresponding to the influence of the revolutions in France (1789) and the US (1776) on the formation of constitutions, nation-states, and civil rights, the Peace Treaty of Westphalia (1648) was pivotal. It expressed the European perspective on statehood founded on territorial sovereignty; that is, a certain territory was to be governed solely by its sovereignty without interference by others. Powerful actors have ensured the maintenance of this traditional view (Castellino and Allen 2003: 112; Darian-Smith 2013: 250; Anghie 2004: 310).

In the Americas, the formation of nation-states happened around the same time as in Europe and was modeled accordingly. Despite the independence movements, the colonial powers stayed in decisive positions. The main factor is the role of Europeanized local elites in implementing Western norms (Souza Filho 2007: 76). Therefore, nation-building cannot be separated from the project of modernity/coloniality (Mignolo 2001: 434). The first

⁵ For more about legal pluralism, see Günther (2014) and Sousa Santos (2002: 85-98).

Brazilian Constitution (1824) was given by Emperor Pedro I shortly after formal independence (1822). Until 1889, Brazil was a monarchical empire. The influence of Europe was direct and manifested itself via the paradigms of liberalism, democracy, republicanism, constitutionalism, and the like (Rezende Martins 2010: 3-6). For example, the Valladolid Controversy (16th century) had noteworthy influence on the dichotomous differentiation between “civilized” (Christian) as developed and “barbaric” (non-Christian) as underdeveloped. Ironically, in Europe the idea of religious tolerance developed at roughly the same time and was codified in the Peace Treaty of Westphalia (Mar Castro Varela and Dhawan 2015: 54-56; Rawls 2002: 28; Leuprecht 2001: 112; Stewart-Harawira 2005:65).

During the 19th century, monotheism was considered the highest form of religion. Polytheism, in contrast, was depicted as backwards and irrational. Consequently, religious imagination played a considerable role in the development of nationalism and secularism (Mar Castro Varela and Dhawan 2015: 59-67). Around that time, concepts of Enlightenment such as rationalism and sovereign state authority fundamentally shaped theories of law and justified the exploitation of the “uncivilized” (Darian-Smith 2013: 254). Respective legislations were marked by either plain legal individualism or the transformation of all persons into individual right-holders, as is the case for corporations and the state itself. The nation-state and its individualist laws denied various groups collective rights. It merely recognized individual rights, mainly private property rights. This was to the benefit of their possessors, who were integrated into the system. In contrast, all those who were excluded from private property rights — like fugitive slaves or “Indians” — did not integrate in the same manner and were treated as hindrances to progress (Souza Filho 2007: 75-77).

Another problematic premise of liberal states related to individualism is the assumption of ethnocultural neutrality with regard to the cultural memberships of individual citizens. In the analogy to secularism, culture — like religion — is supposed to be a private affair rather than the subject of state interference (Kymlicka 2001: 23). Still, many liberal states show a clear preference for Christian holidays, which undermines both the neutral state thesis and the analogy to secularism. Christianity played a crucial role in the dispossession of indigenous lands because it does not regard the earth as holy. Therefore, land became a commodity. This led to legislation that contradicts the Guarani people’s cosmology. Christian missionaries had an economic relationship with land, thus they did not care about the trauma dispossession caused.

Land has a variety of functions for indigenous peoples such as producing food and nourishing identity, spirituality, and community. In contrast, Christianity attempts to be a

universal religion; hence it tries to exceed geographical limitations and purportedly save the world — part of the justification for Western colonialism. One could understand Christianity as a project of de- and re-territorialization of human beings according to their moral statuses (Mar Castro Varela and Dhawan 2015: 70-71).

3.1 The Brazilian nation-building project

The Brazilian case is illustrative because despite its relatively small indigenous population, their “presence has been of great importance in the formation of the Brazilian state and in the construction of national identity” (Oliviera 1999: 192). At the end of the 19th century, the question of the demarcation of national borders became urgent. This, in turn, caused discussion of national policy regarding indigenous peoples who often live in border lands. After the war with Paraguay (1864-1870), the Brazilian government gave land titles to settlers. This policy gained momentum under President Getúlio Vargas (1930-1945) (Maybury-Lewis 2002: 330; Abascal et al. 2016). Here, the central question of the relation between the indigenous peoples or nations and the Brazilian nation-state project is visible.⁶

The issue was addressed by Marechal Rondon (who was part “Indian”, Christian, and positivist), who sincerely believed that all human societies were able to “climb the ladder of progress.” Hence the native population was to be protected until they assimilated into national society. Rondon was in charge of expeditions into the hinterlands of Brazil and persuaded the government to set up the Service for the Protection of Indians (SPI) in 1910. Its main tasks were to further the state’s knowledge about the indigenous peoples within its territory, to protect them from exploitation and massacre, to secure indigenous lands, and to support the education of indigenous peoples to enable them to assimilate into the dominant Brazilian society. Chronically underfunded, however, the SPI had difficulties fulfilling its objectives (Maybury-Lewis 2002: 331-332).

Even before the 1964 military coup (Rezende Martins 2010: 19-20), Brazil’s capital was moved to Brasília (1960) in the middle of the country. The policies of the military regime encouraged opening the interior, rejecting leftist proposals for land redistribution and instead supporting development by giving cheap loans to agribusinesses and ranchers. The negligence towards the indigenous peoples led to accusations of genocide. Consequently, the SPI was replaced by the National Indian Foundation (FUNAI) in 1967. An investigation was

⁶ For more about the racial dimensions of census taking in Brazil and its relationship to nation-building, see Oliviera (1999).

conducted to rectify the harms the indigenous peoples suffered from SPI's shortcomings, but its results were unsatisfying. Further, the successor organization was afflicted with similar contradictions. While the goal was the protection of the indigenous peoples, the government firmly believed in progress, development, and "the Mestiço nation". Thus, their actions have always held ambivalences (Maybury-Lewis 2002: 332-333; Oliviera 1999: 194). The concept of *mestiçaje* has various meanings, but usually entails the idea that Europeanization is progress — hence it contradicts the idea(l) of plurinationality aiming for a different type of intercultural relations (Sousa Santos 2012: 174).

Since 1973, any individual of pre-Columbian descent who identifies as belonging to an ethnic group with cultural characteristics that differ from those of members of national society is considered indigenous under Brazilian law #6001/73. Even though pre-Columbian descent is supposedly not based on race, it **is** linked to ethnicity. Law #6001/73 not only relies on self-identification, but also relies on identification by others. The reference to culture can benevolently be interpreted as to entail cultural dynamism in contrast to the older image of cultures as fixed (Paixão et al. 2013: 136-137; Garcia 2016: 89). The most problematic aspect of this law, however, is the exclusion of indigenous peoples from the national community.

In 1988, the current Brazilian constitution (Constituição Federal do Brasil, CF'88) was adopted. Its second chapter proclaims collective and individual rights but does not specify their relationship. Despite the recognition of indigenous rights, however, CF'88's stance on the "indigenous question" remains ambivalent. The central section is named "The Indios" (Articles 231 and 232). The state refuses the self-denomination of "nations", while indigenous peoples refuse the state's proposal of "indigenous communities". The compromise was the denomination "*povos indígenas*"; that is, indigenous peoples (Maybury-Lewis 2002: 343; CF'88). Article 231, Chapter Eight (CF'88) recognizes the social organization, customs, languages, beliefs, traditions, and original rights to the lands indigenous peoples traditionally occupy. Problematically, the task of the protection as well as the demarcation of those "traditionally occupied lands" relies on whether the Union is competent.

CF'88 does not recognize collective/tribal land ownership and does not officially declare Brazil a multicultural state (Oliviera Godinho 2008: 260; Watson et al. 2002: 79; Survival International 2017). Therefore, despite rhetorical commitment to indigenous peoples' rights, their recognition is at question — the ultimate authority remains with the state and state interests can justify exceptions. However, the development of the Brazilian

system did not happen in a vacuum; it was always influenced by international norm formation processes. Also, one can frequently observe “legal transplants”; that is, the adoption of legal formulations originating in “foreign” contexts. It was usually the models of the so-called developed countries that were followed (Pichl 2012: 138; Rezende Martins 2010: 6 and 17). In contrast, in the case of indigenous rights, the main impetus now comes from non-Western contexts (Steinhilper 2015: 551; Darian-Smith 2013: 256).

3.2 International legal structures

As a member of the United Nations (UN), Brazil is bound by a range of international human rights agreements, including the twin Covenants of 1966 (the International Covenant on Economic, Social and Cultural Rights and the International Covenant of Political and Civil Rights). As a member of the Organization of American States (OAS), it is further bound to the American Convention on Human Rights. In 2002, Convention No. 169 of the International Labour Organization (ILO Convention No. 169) was adopted by Brazil (Abascal et al. 2016). The questions of assimilation and the status of being a people were the central problems of the old convention (No. 107, 1957) and dominated the discussions during the succeeding convention of 1989. This resulted in fundamental changes — starting with the name of the convention, which is now the “Indigenous and Tribal Peoples Convention” (Heintze 2016: 79; Steinhilper 2015: 540). The paternalistic approach of the old convention was replaced by a more mutually recognizing one (Heintze 2016: 80-81).

Before looking more closely at regulations in international law, let us present some relevant UN history. The UN started after World War II — but despite its benevolent intent to secure peace through sovereign equality, territorial integrity, universal rights, and self-determination for all peoples, the requirements for recognition as a member are highly political. The power structure of that era influenced the shape of the institution and has been preserved to an extent (e.g. the permanent membership structure of the Security Council). So, while rhetorically aiming for a “new international order”, the UN system’s primary functions are to maintain the status quo in regard to the nations recognized as member states (Stewart-Harawira 2005: 94-95). As successor of the League of Nations, the UN needed a replacement for the mandate system that was used to regulate relationships with “dependent territories”. Decolonization was discussed, but the prevailing attitude remained one of paternalism and trusteeship of the “adult nations” where self-determination was bound to “timely development”. The “mature” nations were the constituents of the order of nation-

states. Also, exclusive doctrines of recognition and wardship were reasserted — effectively denying indigenous peoples the possibility of entering the “community of nation states” and sometimes even affecting citizenship. Furthermore, due to the difficult experiences with collective rights in the League of Nations system, any explicit reference to collective rights was avoided (Stewart-Harawira 2005: 96; Kymlicka 1995: 57). However, if self-determination is interpreted as a collective right (Xanthaki 2014: 70; Jones 1999: 99), then collective rights were in fact conferred to the previously recognized sovereign states. Thus, the formation and recognition of collective and group rights in international law did not take the same form and scope for different groups (Klein 2016: 47-48).

Starting in 1982, a special Working Group on Indigenous Populations outlined the Draft Declaration on the Rights of Indigenous Populations (Heintze 2016: 85). Then, 1993 was declared the “International Year of the World's Indigenous Peoples” by the UN General Assembly and soon transformed into an entire decade (1994-2003) (Heintze 2016: 86). It is worth noting that in 1992, the 500th anniversary of the “discovery” of the Americas was accompanied by various protests such as the insurrection of the Zapatistas. The festivities in honor of the quincentennial and the simultaneous protests of various indigenous peoples and organizations (which were met with repressive measures) can be seen as symbolic for the confrontation of various cosmologies. It also appeared as an “[...] embarrassing testimony to the way in which the nation still treats its native people” (Maybury-Lewis 2002: 341).

In 2007, the UN finally adopted the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) — but this did not create a binding international treaty (UN Press Release GA/10612; Oliviera Godinho 2008: 247; Heintze 2016: 96). The recognition of the collective dimension of rights is a central feature of UNDRIP as well as ILO Convention No. 169 (Xanthaki 2007: 105-107 and 245-251; Oliviera Godinho 2008: 251; Heintze 2016: 81). The rights of indigenous peoples in international law thus are in between the mostly accepted minority rights and the rights of peoples under colonial rule. Again, there is a tension between the minority right to cultural identity and the right of all peoples to self-determination. The UN tried to settle this tension in UNDRIP by acknowledging the characterization as peoples (as advised by ILO Convention No. 169) and granting limited rights to self-determination (Heintze 2016: 96; UNDRIP Article 46; Oliviera Godinho 2008: 256-257).

In 2016, the Organization of American States (OAS) adopted the American Declaration on the Rights of Indigenous Peoples (OAS Press Release E-75/16). However, it

lags behind UNDRIP because it does not acknowledge the plurinational/pluricultural character of the American states. Like UNDRIP, it only allows for internal self-determination. Also, by focusing on states' responsibilities, it reiterates an assimilationist impetus (despite its explicit rejection). The states' final authority is safeguarded in regard to the legal codification of property rights and decision-making power over military activity in indigenous territories (Yáñez Fuenzalida 2016). This seems to legitimize the Brazilian demarcation system, but it lags behind the Inter-American human rights protection regime that recognizes the right to ancestral, indigenous property based on occupation — hence rejecting the primacy of state authority. In general, the right to property has been of special significance. However, while the African human rights system emphasizes the collective rights of peoples to control and develop resources and wealth, the Inter-American system focuses more on the cultural aspects (Saul 2016: 133). Furthermore, the right to be protected against intrusion and displacement contravenes UNDRIP Article 29.2 — which mandates free, prior, and informed consent for the respective actions (Yáñez Fuenzalida 2016).

The Inter-American Court of Human Rights (IACHR) has dealt with a number of relevant cases. A landmark case concerning indigenous peoples' land rights was *Awas Tingi v. Nicaragua* (2001). In that case, the court ruled in favor of collective property rights — even if those rights are not recognized by domestic law. The court repeatedly articulated states' responsibilities to respect and codify the traditional land ownership of indigenous peoples and to fulfill restitution requirements (Saul 2016: 134-164; Xanthaki 2007: 246). In 2015, a merit report denounced the violation of the Xucuru people's collective right to property caused by delays in the demarcation process of their ancestral territories that had started in 1989 (CIDH 2015: 2-3). In April 2016, the case was submitted to the IACHR (CIDH 2016). Parallels to the case of the Guarani people are the life-threatening situation caused by landlessness and the increasing violence. Like in Mato Grosso do Sul, agribusinesses place pressure on the lands and the government in the federal state of Pernambuco. Unlike for the Guarani, the land claimed by the Xucuru is already demarcated. This was the first time the IAHRC directly addressed violations of indigenous rights in Brazil (Cowie 2017).

At different levels, there were significant developments acknowledging the necessity of collective rights. The African Banjul Charter and minority protection schemes of the European Union promote not just individual rights; internationally, the explicit recognition of collective (land) rights in UNDRIP marks a break from past approaches (Newman 2011: 9). Optimists argue that the recognition of indigenous rights has changed “[...] the very

ground rules of the Westphalian order that had privileged state actors over non-state actors, and privileged state sovereignty over principles of justice and democratic inclusion” (Kymlicka 2011, as quoted in Xanthaki 2014: 69). However, this recognition of indigenous rights still depends on implementation by the sovereign state.

4 Theoretical uncertainties

There are basically two levels on which indigenous collective land rights cause disagreement: international law and human rights. The former entails the doctrine of state sovereignty, while the latter encompasses questions of cultural rights, minority rights, and third-generation collective human rights (to peace, security, and the environment). As indicated by the long history of negotiations on indigenous peoples’ rights, there are many uncertainties concerning concepts of collective rights. Established nation-states are concerned about who identifies or is identified as “indigenous,” if this identification should lead to the status of a people, and also territorial integrity because of absolutist interpretations of the right to self-determination entail the right to secede (Anaya 1999; Heintze 2016: 90). However, the alleged conflict between individual and collective rights seems to be a relic of the ideological conflict of the Cold War (Anaya 1999; Newman 2011: 8). Nevertheless, this controversy still informs concerns about state sovereignty, territorial integrity, and the right to self-determination. Today, collective rights are recognized in international law and the theoretical incompatibility of individual and collective rights is untenable (McDonald 1998; Newman 2011: 9).

The problem relates to the absence of a full theory of collective rights. On one hand, some authors attempt defining collective rights through the exercising criterion; that is, only those rights exercised by a collective entity would be collective rights — others assume that collective rights are defined by the participatory or social goods they protect. On the other hand, some authors reject the very possibility of collective rights (e.g. collective rights must be reducible to individual ones or not understanding why special protections are needed) — a striking position, considering the history of religious prosecutions (Newman 2011: 5-9). However, as Newman (2011: 7) observes: “Certain reasons irrelevant to the truth of the claims may have discouraged theorists from offering these defenses and exploring fully the possibility of collective rights.” Those reasons, it is argued here, are the privileges (of self-determination) held by groups represented through acknowledged nation-states.

The questions about self-determination depend on who is identified/identifies as indigenous peoples. There is no internationally agreed upon definition, and indigenous peoples are mostly opposed to such a definition because of the diversity of the different peoples self-identifying as indigenous (Heintze 2016: 90). Still, the UN, its Permanent Forum on Indigenous Issues (UNPFII), the 57th Conference of the International Law Association (2012), and the African Human Rights Commission (2010) base the understanding of the term “indigenous” on the following criteria: self-identification and acceptance by the community; historical continuity with pre-colonial/pre-settler societies; strong links to territories; distinct social, economic, or political systems; distinct language, culture, and beliefs; non-dominant groups of society; and reproduction of ancestral systems (UN Fact Sheet 2009; Klein 2016: 30-31). Again, the criterion of historical continuity is problematic because colonization caused many ruptures in indigenous peoples’ histories. Furthermore, the special relationship indigenous peoples have with their lands was impaired through colonial dispossession — which makes the application of those criteria rather challenging. A further complication is caused by the common categorization of indigenous peoples as minorities. This led the UN Subcommission on the Promotion and Protection of Human Rights to attempt a differentiation between the two in 2000. The distinguishing criteria are supposed to be “prior settlement”, “maintenance of a separate culture”, and a close link “to their particular ways of using land and natural resources”. However, those criteria may apply to other local groups. More importantly, it is uncertain whether the distinction results from a Eurocentric position. The questions of minority rights arose in the European context, while the questions of indigenous rights were developed in the American and the Pacific contexts (Heintze 2016: 91). It is worth considering that minority rights function as protection from dominant groups. However, unlike in Brazil, indigenous peoples are not everywhere in a numerical minority; their discrimination is not the problem of minority versus majority, but rather results from racist and evolutionist clichés.

At the heart of the problem is the controversy about the term “peoples” and its implications for the right to self-determination which are enshrined in the first articles of the ICCPR and the ICESCR (Steinhilper 2015: 542). While all peoples are said to be bearers of the right to self-determination, “indigenous” peoples are only entitled to internal self-determination — that is self-determination within the realm of the existing state. This is the paradoxical effect of the category “indigenous.” Already with ILO Convention 169, international law has made a (rhetorical) shift towards an “indigenous right to continued existence”. Here, Meza-Lopehandía (2013: 9) sees the core of the paradox of recognition.

The qualification of being indigenous limits the scope of rights of (them as) peoples. It degrades peoples from being sovereign to the status of being a subject. Consequently, indigenous groups argue that a conception of “peoples” limited to statehood is part of a colonialist paradigm (Steinhilper 2015: 542). A double standard is at work here that assumes the collective rights of established states, but denies it to “underdeveloped” communities — with dramatic consequences on the allocation of land and resources.

Finally, there are concerns about an increase of violent ethnic conflicts (Anaya 1999). Unfortunately, there already are ethnic dimensions to conflicts about land. The requirement of traditional occupation in existing legal frameworks is the most problematic. Dispossessed of their lands, the Guarani are in a situation comparable to that of refugees or nomads — which is hardly compatible with Western concepts of civilization and/or territorial sovereignty. Since the beginnings of the modern nation-state, territoriality was seen as a fundamental component of sovereignty. With the introduction of human rights, the international law of the UN now tries to intervene in the relationship between the sovereign and its citizens — a relationship that did not seem to concern international law before (Anghie 2004: 133).

5 Towards a decolonized (international) law?

With the notion of the Coloniality of Power in mind, concepts of “development”/progress were identified as the key factor for the desperate situation of the Guarani in Mato Grosso do Sul, Brazil (Becker 2010: 65-68). Then, the violation of their basic human rights (to life and food) caused by their landlessness was related to indigenous peoples’ structural discrimination. The gravity of the Guarani people’s current legal situation is intimately connected to what can be called the doctrine of the three C’s: civilization, Christianization, and commerce (Gilbert 2003: 199). This doctrine — enshrined in the “old international law of conquest” — created fundamental inequalities on the basis of which the “new international law of contract” was constructed (Anghie 2004: 241).

The discrimination against the Guarani is rooted in the common history of national and international legal structures as well as the colonial endeavor. The influence of those intertwined histories is also reflected in Brazilian constitutional history. Even though CF’88 must be viewed in a timely context, recent developments in international human rights law cast doubt on the adequacy of its regulation of indigenous land rights. Today, Brazil continues to have laws that inhibit the Guarani from owning their lands. Thus, the state failed

to comprehensively implement their collective land rights — this was recently denounced by the IACHR. However, as the discussion of the international and regional instruments has shown, a fundamental ambivalence remains inherent to the idea of indigenous peoples' rights. On one hand, their recognition enables forms of protection by the state. On the other hand, their restriction to a special status reiterates problematic, racialized categorizations. One must wonder whether “protection” is a slippery slope, since it becomes paternalistic so quickly. Rather than protection, recognition of equal legal subjectivity and status should be attempted. Newman's (2011: 131-152) discussion of the Mutuality Principle addresses some important aspects of how this could be attempted.

Thus, the Brazilian version of indigenous collective land rights does not constitute a fundamental break with colonial continuities in legal structures; however, more comprehensive approaches could do so. This is partly given by international law's newest impetus to regulate the relation between sovereign and its subjects (e.g. when it includes aspects of territorial autonomy in indigenous peoples' rights). Nevertheless, they reproduce the privilege of established nation-states over respective territories and legislation. In contrast, states like Bolivia attempt innovative, experimental projects of plurinational state-building and aim for a more comprehensive implementation of collective land rights. This challenges the way national legal structures traditionally regulated land distribution and the power to decide over its development (Souza Filho 2007: 90; Sousa Santos 2012: 172).

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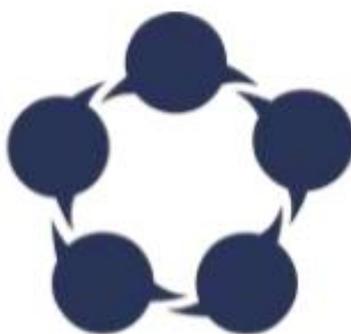
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