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"NEVER BEFORE IN THE HISTORY OF THIS COUNTRY?": THE RISE OF PRESIDENTIAL POWER IN THE LULA DA SILVA AND ROUSSEFF ADMINISTRATIONS (2003-2016)

Mauro Hiane de Moura[*]

Abstract: After the impeachment of President Collor de Mello (1990-1992), Brazil finally managed to devise and implement an economic plan that, firmly based on economic science, eradicated the country's long-standing hyperinflation. In the following Cardoso Administration (1995-2002), new regulatory frameworks were introduced in several different sectors—the implementation and oversight of which were entrusted to Regulatory Agencies relatively insulated from the Presidency. Such a model, however, came under attack under the Lula da Silva (2003-2010) and Rousseff (2011-2016) Administrations, ultimately leading to high levels of inflation, a severe recession, and the escalation of public deficit. This article indicates how, during the Lula da Silva and Rousseff Administrations, the Presidency amassed more power over the federal bureaucracy—allowing political expediency to prevail over technical analyses and independent bodies.

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I. PROLOGUE: HISTORY AND INSTITUTIONAL TRADITION

A. Political Tradition: Coups, Concentration of Powers, and Patrimonialism

Between 1500 and 1822, Brazil was a Portuguese colony. In 1822, it became independent, but its separation from Portugal was less traumatic than it may seem: the independence resulted from a coup organized by the Portuguese Regent, D. Pedro I, son of the Portuguese King D. João VI.[1] A Constitution was drafted by a council appointed by D. Pedro I and was quickly made binding in 1824, transforming Brazil into a monarchy. The monarchical regime lasted until 1889, when another coup, led by the military, ousted D. Pedro II (son of D. Pedro I) from his position and proclaimed the Brazilian

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[1] LILIA M. SCHWARCZ & HELOISA M. STARLING, BRASIL:UMA BIOGRAFIA 200–22 (1st ed. 2015); CARLOS GUILHERME MOTA & ADRIANA LOPEZ, HISTÓRIA DO BRASIL: UMA INTERPRETAÇÃO 275–325 (5th ed. 2016).

Republic.[2] The "Old Republic," as it was eventually known, gathered support from State oligarchies—in its initial years, mostly from the States of São Paulo and Minas Gerais. In 1930, oligarchies from other States, feeling alienated from the center of political power and claiming to be harmed by political fraud, organized a coup (the "1930 Revolution") and installed a Mr. Getúlio Vargas as the new President.[3]

Even though a democratic Constitution was proclaimed in 1934, Mr. Vargas replaced it with an autocratic Constitution in 1937—inaugurating a dictatorship under which he was able to concentrate powers in the Executive Branch.[4] Political pressure, mainly exerted by the military, led to Mr. Vargas's deposition in 1945, and subsequently, to the drafting and proclamation of a new democratic Constitution in 1946.[5] Unsurprisingly, Mr. Vargas ran for office in 1950, securing a new presidential mandate.[6] His return, nevertheless, would be short-lived: after his personal guards were caught in an attempt to kill Mr. Carlos Lacerda, a federal representative who strongly opposed Mr. Vargas' government, Mr. Vargas committed suicide—leaving a note in which he claimed to be "departing life in order to enter History."[7]

Subsequent elections were held in 1955 and 1960.[8] After political turmoil initiated by the resignation of President Jânio Quadros in 1961,[9] a brief experience with parliamentarism between 1961-1962,[10] and the subsequent attribution of presidential powers to Mr. João Goulart,[11] who had been elected as vice-president along with Mr. Jânio Quadros, a military dictatorship was installed in 1964 and lasted until 1985.[12] A new democratic Constitution, with unprecedented popular participation, was enacted in

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[2] SCHWARCZ & STARLING, *supra* note 1, at 291–318 ; MOTA & LOPEZ, *supra* note 1, at 479–523.

[3] SCHWARCZ & STARLING, *supra* note 1, at 351–63; MOTA & LOPEZ, *supra* note 1, at 613–42.

[4] Vargas' dictatorship was called "*Estado Novo*"—as the dictatorship installed in Portugal under Antonio Oliveira Salazar in 1932. The Federal Constitution enacted in 1937, accordingly, was also modeled after the Italian, Portuguese and Spanish political regimes of that period (which were under the rule of Mussolini, Salazar and Franco). For additional information on the Brazilian *Estado Novo*, see generally JOÃO DE LIRA CAVALCANTE NETO, GETÚLIO (1930–1945): DO GOVERNO PROVISÓRIO À DITADURA DO ESTADO NOVO? (2013). For more information on the 1937 Constitution, see generally WALTER COSTA PORTO, CONSTITUIÇÕES BRASILEIRAS (3d ed. 2012).

[5] SCHWARCZ & STARLING, *supra* note 1, at 386–96; MOTA & LOPEZ, *supra* note 1, at 695–730.

[6] SCHWARCZ & STARLING, *supra* note 1, at 401; MOTA & LOPEZ, *supra* note 1, at 730–35.

[7] SCHWARCZ & STARLING, *supra* note 1, at 407–11; MOTA & LOPEZ, *supra* note 1, at 737–38.

[8] SCHWARCZ & STARLING, *supra* note 1, at 412–28; MOTA & LOPEZ, *supra* note 1, at 738–53.

[9] SCHWARCZ & STARLING, *supra* note 1, at 428–33; MOTA & LOPEZ, *supra* note 1, at 754.

[10] SCHWARCZ & STARLING, *supra* note 1, at 433–36; MOTA & LOPEZ, *supra* note 1, at 754–57.

[11] SCHWARCZ & STARLING, *supra* note 1, at 441; MOTA & LOPEZ, *supra* note 1, at 758.

[12] SCHWARCZ & STARLING, *supra* note 1, at 437–67; MOTA & LOPEZ, *supra* note 1, at 777–851.

1988.[13] Since then, presidential elections have been regularly taking place; although two presidents have been impeached, the democratic order has been preserved—and although political disputes have recently become more polarized, voters have been able to freely organize and express their will.

As this short recapitulation indicates, however, Brazilian tradition is not foreign to the concentration of powers in the Executive Branch. In the period spanning from 1822 to 2018 (one hundred and ninety-six years), sixty-seven years involved a Monarchy with a "Moderating" Power, while thirty-four years were spent under the Vargas and Military dictatorships; there were only ninety-five years of regular democratic elections under a Republic—scattered through the "Old Republic," the interregnum between Mr. Vargas' deposition and the military dictatorship of 1964, and, finally, the "New Republic" that followed the proclamation of the 1988 Constitution. The recurrent presence of coups, dictatorships, and "self-coups"—such as those organized by D. Pedro I and Mr. Vargas—suggests that the democratic tradition is not only brief, but also weak.

When analyzing such history, Brazilian authors commonly reference the Weberian concept of "patrimonialism";[14] two examples can give a clear account of how it has been employed as a means to shed light upon the aforementioned events.

Sérgio Buarque de Holanda's *Raízes do Brasil* ("The Roots of Brazil")[15] claimed, in 1936, that Brazilian political structure and behavior was still conditioned by social and cultural practices inherited from Portugal. In Portugal, he argued, since political centralization had taken place before a feudal system existed, merchants found smaller barriers to their activity: instead of relying on new values and practices in order to assert their power, they remained bound by tradition; instead of challenging the existing political structures, they associated with it. As a result, social relations based on family, closeness, and affection would remain relatively untouched.

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[13] SCHWARCZ & STARLING, *supra* note 1, at 488–89; MOTA & LOPEZ, *supra* note 1, at 893–900.

[14] In a similar perspective, with emphasis on the process of state-building during the nineteenth century, see generally FERNANDO URICOECHEA, THE PATRIMONIAL FOUNDATIONS OF THE BRAZILIAN BUREAUCRATIC STATE 170 (1976) (for whom "the adoption of a set of rational patterns by the state bureaucracy" was "not entirely successful in eradicating the legacy of a well-established tradition. Just as the patrimonial structure of government was not immune to the influence of the formal legality of the bureaucracy, neither was this latter altogether successful in preventing the emergence of patrimonial orientarions in its midst.").

[15] SÉRGIO BUARQUE DE HOLANDA, RAÍZES DO BRASIL (2016).

Brazil would provide an environment in which such *habitus* could survive: as a social order based on the urban life and the division of labor took a long time to emerge, "any social arrangement remained modeled after domestic life." The average Brazilian, he famously argued, was a "cordial man": not because of his adherence to a social code, but because of the "excessive affectivity" of its relationships. Likewise, in Brazil, relationships among strangers would not be based on "respect," but on a "desire to establish intimacy."

Patrimonialism derived, in Buarque de Holanda's analysis, from the influence of such culture on the political structure: holders of public officers did not "understand the fundamental distinction between the public and private realms" and treated political and administrative issues as matters of their own private interests—leading to a "constant predominance of private wills" over "objective interests."[16] Political agents, therefore, actually fought for the right to employ the State in order to promote their personal interests (and those of their acquaintances), even though they "imagined to praise democratic and liberal principles."[17] Voters would choose one candidate over another based on the "personal trust" they appeared to deserve, rather than on their abilities and competencies. Through this mechanism, a political system formally structured as a democracy could lead to the appearance of

[16] *Id*. at 253 ("In Brazil, it can be said that only exceptionally did we have an administrative system and a body of public officers purely dedicated to objective interests, and based on such interests. Conversely, it is possible to track, throughout our history, the constant predominance of private wills, which find their proper environment in closed spaces, inaccessible to an impersonal order.").

[17] *Id*. at 324 ("It is frequent for us to imagine that we praise democratic and liberal principles when, actually, we fight for one personalism or against another."). The idea is more fully developed in the following excerpt: "In the ill primacy of private conveniences over collective interests can the prevalence of the emotional element over rationality be identified. Regardless of how intensely we think otherwise, true solidarity can only be truly maintained in narrow circles, and our preference—confessed or not—for people and concrete interests is not supported by theoretical ideals or even in the economic interests that support a political party. . . . We can organize campaigns, assemble factions, set up mutinies, if necessary, in order to rally for a noble idea. Nobody ignores, however, that the apparent triumph of a principle has never meant, in Brazil—as well as in the rest of Latin America—more than the triumph of a personalism over another." *Id*. at 322.

caudillos[18]—in a personalization of power equivalent to the "antithesis of liberal democracy."[19]

Raymundo Faoro's *Os Donos do Poder* ("The Owners of Power")[20] is probably the best-known attempt to explain Brazil through the Weberian conceptual repertoire. Originally published in 1958, it claims that, in Brazil, political power was not exercised in the interest of classes—thus challenging the Marxist model. Rather, it was employed mainly in the personal benefit of the political-administrative apparatus. This apparatus, Faoro remarked, should not be considered as a "class," since the configuration of a "class" depended on the aggregation of economic interests. Rather, the apparatus should be considered as an "order";[21] a social, instead of an economic group, which presupposed a certain "social distance [from the rest of society] and struggled to conquer exclusive material and spiritual advantages."[22]

Similar to Buarque de Holanda, Faoro draws a line from Brazil to Portugal and the early consolidation of political power that happened therein. His research, nevertheless, is much more detailed, explaining how, as the Iberian Peninsula was reconquered from the Moors, the Portuguese King incorporated to his personal estate vast extensions of rural lands. Although the King's estate was autonomous to and different from the public treasury, they were managed as a single entity. As the King became Portugal's biggest landowner, his personal estate, used as if it were the property of the Kingdom, generated revenues for the payment of warriors, royal emissaries, and public officers.

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[18] Daniel Hellinger explains that "the term caudillo literally means 'man on horseback', an allusion to the strongmen, sometimes illiterate, who assumes regional or national leadership as a result of their fighting ability and leadership skills during the violent, anarchic, nineteenth century." DANIEL HELLINGER, COMPARATIVE POLITICS OF LATIN AMERICA: DEMOCRACY AT LAST? 48 (2011). During the subsequent century, when violence waned, the term was associated with political leaders who relied on their charisma and, taking advantage of their connection to "the people," concentrated powers in their hands (overstepping the boundaries dictated by Constitutions and effectively acting as "the leader" of the entire political apparatus). *Id.*

[19] BUARQUE DE HOLLANDA, *supra* note 15, at 316.

[20] RAYMUNDO FAORO, OS DONOS DO PODER: FORMAÇÃO DO PATRONATO POLÍTICO BRASILEIRO (5th ed. 2012).

[21] *Id.* at 824 ("Above the State, above the classes, the political apparatus—a social layer, communal, although not always articulated, and many times amorphous—rules, reigns and governs, on its own behalf, in an impermeable circle of command. This layer changes and renovates itself, but it does not represent the nation, otherwise than, compelled by the law of time, replacing old with new, inapt with apt, in a process that coins and grants a noble status to the newcomers, imprinting its values on them.").

[22] *Id.* at 62.

When nobles attempted to assert their rights against the Monarchy, the latter made an alliance with the commercial bourgeoisie in order to preserve its position. Initially, the Monarchy depended on a group of public officers—jurists—in order to cement its status and set a balance between the groups in conflict. Later, nevertheless, such public apparatus would cease to be a mere instrument of the royal power; as it became necessary for the maintenance of the regime and would not be dispensed with by the King or by the bourgeoisie, the apparatus would begin to employ to public power on its own behalf. True, the Portuguese King could consolidate political powers before other Monarchs did. Nevertheless, he was only able to do it by becoming dependent on the instrument it employed for the consolidation of the regime.

In Brazil, Faoro claims, the basic coordinates of such model were reproduced: the State, in an amalgamation of the positions occupied by the King and the political-administrative apparatus, led the development of economic activity; while, on the other hand, public officers and public agents employed political power according to their personal interests. "Politically oriented capitalism" led to the great navigations and to the colonization of Brazil; it also shaped its institutions and habits. The political community, accordingly, "managed, commanded, oversaw business, as their private businesses, at first, as public businesses later."[23]

Democratic elections could induce an observer to conclude that the State could actually be responsive to the interests of voters and of different social groups. Faoro, however, claims that the political apparatus deceptively seems to alternately favor farmers, middle classes or workers—while actually working for itself.[24] Ostensibly, the apparatus would be represented first and foremost by the President, who "protected particular interests, granted benefits and incentives, distributed offices, of him it was expected the distribution of justice without attention to objective and impersonal rules."[25] In him, "all hopes were concentrated, since the State was the guiding pole of society";[26] political subjects, accordingly, wanted "protection, rather than participation in the collective will."[27] As in a trick of smoke and mirrors, while the apparatus maintained its autonomous position—and, therefore, the

[23] *Id.* at 819.
[24] *Id.* at 826.
[25] *Id.* at 827.
[26] *Id.*
[27] *Id.*

ability to impose its preferences to society—the masses, "swayed by hopes and fed by enthusiasm, praised the god ex machina, which would remedy all ills and mitigate all sufferings."[28]

B. Institutions: An Uneasy Combination Between American and French Models

From 1822 to 1889, Brazil was politically structured as a monarchy and its public law was largely modeled after French institutions. Thus, in addition to judiciary, legislative, and executive powers, the Emperor could intervene and exercise his "moderating" power—and disputes involving the Administration, and private parties would basically be adjudicated by the Conseil d'État. Administrative law commentators of the period would make direct quotations of French Administrative Law doctrine and build their arguments employing the concepts of the French repertoire: pure administration vs. contentious administration, contentious appeals vs. appeals for grace, rights vs. interests.[29]

Pursuant to art. 179, I of the 1824 Brazilian Constitution, "no citizen [could] be forced to do or to refrain from doing something, except by virtue of a written statute."[30] Under such model, written statutes should define the boundaries of the basic civil and political rights established in the Constitution—which, ultimately, were still conceived of as *natural* rights. Within such a realm—i.e., whenever state power would collide with rights—only a written statute could authorize the State to order a citizen to do or to refrain from doing something.[31] Decrees could establish "secondary

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[28] *Id.* at 827–28.

[29] *See also* JOSÉ RUBINO DE OLIVEIRA, EPÍTOME DE DIREITO ADMINISTRATIVO BRASILEIRO (1884); VICENTE PEREIRA DO RÊGO, ELEMENTOS DE DIREITO ADMINISTRATIVO BRASILEIRO (2d ed. 1860); PRUDÊNCIO GIRALDES VEIGA CABRAL, DIREITO ADMINISTRATIVO BRASILEIRO (1859); FRANCISCO MARIA DE SOUZA FURTADO DE MENDONÇA, EXCERPTO DE DIREITO ADMINISTRATIVO PÁTRIO (1865); ANTONIO JOAQUIM RIBAS, DIREITO ADMINISTRATIVO BRASILEIRO (1866); JOSÉ ANTÔNIO PIMENTA BUENO, DIREITO PUBLICO BRAZILEIRO E ANALYZE DA CONSTITUIÇÃO DO IMPERIO (1857).

[30] CONSTITUIÇÃO FEDERAL of 1824, art. 179, I (Braz.).

[31] PIMENTA BUENO, *supra* note 29, at 390–92 (José Antônio Pimenta Bueno, the leading Constitutional Law scholar of the period, explained: "Individual rights, which may also be called natural, primitive, absolute, primordial or personal rights of man, are, as we have already explained, the faculties, the moral prerogatives by nature in man, as an intelligent being; they are essential attributes of its individuality, properties inherent to its personality, components of the human entity. They are not creations of positive laws, by creations of God, attributes of the moral being that formed them, inalienable conditions, undeprivable, for the very reason that, without them, man would be diminished and downgraded, would cease to be what he is. . . . The first duty of positive law is to recognize such rights, to respect them, to guarantee them, for the very reason that society's only legitimate purpose is to defend them, to guarantee their

procedures" for the execution of laws approved by the Legislative Branch; only in such capacity (i.e., in the pursuance of statutes) they could interfere with the private rights.[32] When private rights were not threatened, however, the State could proceed as it deemed appropriate regardless of previous legal authorization.

In 1889, a *coup* replaced the monarchy with a republic, and a Constitution directly based on the American Constitution was enacted in 1891. References to American institutions were far from accidental: a constitutional law scholar of the period explained that Benjamin Constant's *Politique Constitutionnelle* had been "as highly regarded as the Bible" for fifty years, and that removing Emperor D. Pedro II was akin to the "dethronement of a saint" Republican forces, thus, needed to employ references with similar symbolic strength in order to overthrow the monarchy. The *Federalist Papers* and the American Constitution provided them with the means they needed to move forward.[33] The 1891 Constitution, accordingly: (i.) established a presidential regime in which the Executive Branch could not dissolve the legislative houses; (ii.) eliminated the administrative courts that existed under

enjoyment, to consecrate them as shining lights that must be well exposed to the eyes and to the reciprocal respect of all." Restrictions to such rights "should never exceed the strictly necessary." *Id.* at 47 (In a different chapter, Pimenta Bueno argued that "as a rule, the liberty should prevail, for it is what is right. . . . Undoubtedly, the law, and only the clear orders of the law, has the right to curb liberty, rather than someone's will or arbitrariness, which must be powerless since the foundation of government is not that of slavery, but that of the rights of man."). In a similar manner, see also JOAQUIM RODRIGUES DE SOUSA, ANALYSE E COMMENTARIO DA CONSTITUIÇÃO POLITICA DO IMPERIO DO BRAZIL (2d ed. 1867). Please bear in mind that, for Pimenta Bueno, who examined a Civil Law system, the term "law" should be read a synonym of "statute," not as a synonym of "law"; the equivalent word for Law, in Portuguese, would be "Right."

[32] PIMENTA BUENO, *supra* note 29, at 236–37. According to the author, "Regulations are therefore acts of the Executive Branch, general provisions that possess a certain formal character, which become binding because of an imperial decree, and which determine the details, the means, the necessary measures so that statutes can be easily applied in all the State's territory. They are limited methodical instructions, and not arbitrary, which may not be against the text, or the logical deductions of a statute, which should proceed according to its precepts and consequences, which have no other purpose than to employ the accidental and variable means, necessary to remove difficulties and to make legal rules easier to be observed. . . . The statute is general, commune praeceptum, it only establishes principles, it does not foresee, nor does it go down to details, it settles fundamental rules, and the essential forms for the exercise of rights; it is for the Executive Power to execute, explain and accommodate the principle of action to the circumstances, behaving as a connection between the fact and the law, between the relative and the absolute. To execute statutes is not, for the Executive Branch, what it is for the Judicial Branch—to preserve the integrity of a literal provision, to demand obedience to a precept, but to employ the living forces of society developing and animating the thought of the Legislator in whose spirit it finds itself soaked." *Id.*

[33] CARLOS MAXIMILIANO, COMMENTARIOS À CONSTITUIÇÃO BRASILEIRA (1918).

the 1824 Constitution; and (iii.) attributed to the judicial branch powers to review legislative action.[34]

Brazilian administrative law, however, remained attached to the French tradition.[35] As a result, even though constitutional law commentators explained that the executive branch could only act upon a previous statutory authorization,[36] it was not to the American non-delegation doctrine[37] they turned to when they intended to explain the meaning of such limitation; it was to the legal doctrine written during the Brazilian Empire—based on article 179, I, of the 1824 Constitution.[38] Moreover, although the judicial branch was entrusted with the task of reviewing administrative action, it was not allowed to employ arguments based on substantive due process or equal protection, as

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[34] CONSTITUIÇÃO FEDERAL of 1891, art. 60, §1º, b (Braz.).

[35] *See generally* ALCIDES CRUZ, DIREITO ADMINISTRATIVO BRASILEIRO: EXPOSIÇÃO SUMMARIA E ABREVIADA (2d ed. 1914); MANUEL PORFIRIO DE OLIVEIRA SANTOS, DIREITO ADMINISTRATIVO E SCIENCIA DA ADMINISTRAÇÃO (1919); AUGUSTO OLYMPIO VIVEIROS DE CASTRO, TRATADO DE SCIENCIA DA ADMINISTRAÇÃO E DIREITO ADMINISTRATIVO (3d ed. 1914). Brazilian Administrative Law remained so strongly attached to the French tradition that, during the twentieth century, scholars would go on to claim that "administrative law contracts," modeled after French Administrative Law, were part of the Brazilian legal system—even though they had not been foreseen in any statute. Doctrine and jurisprudence would then argue that, because of the "nature" of administrative law contracts, and because the State could not "waive its public law privileges when it contracted with a private party" unilateral powers to modify and rescind such contracts should necessarily be available for it. Legal doctrine did not pay attention to the fact that, during the Empire and the initial years of the Republic, it was to the French doctrine of the nineteenth century it made reference to—which understood that contracts were signed by the State as "*État propriétair*," rather than by the State as *"puissanc*," and, therefore, its public law prerogatives should necessarily be *absent* from public contracts. *See also* MAURO HIANE DE MOURA, A AUTONOMIA CONTRATUAL DA ADMINISTRAÇÃO PÚBLICA 279–315 (1st ed. 2014).

[36] *See* JOÃO BARBALHO, CONSTITUIÇÃO FEDERAL BRASILEIRA: COMENTÁRIOS 302 (1992*)*; *see also* ALEXANDRE FRANÇOIS AUGUSTE VIVIEN, ÉTUDES ADMINISTRATIVES 18–20 (3d ed. 1859) (for an insightful comparison between the French and American systems).

[37] As the American tradition had established, for instance, in *Locke's Appeal Commonwealth ex rel. McClain v. Locke et al*., 72 Pa. 491, 498 (1873) ("The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend.") and in *Union Bridge Co. v. United States*, 204 U.S. 364 (1907) ("Indeed, it is not too much to say that a denial to Congress of the right, under the Constitution, to delegate the power to determine some fact or the State of things upon which the enforcement of its enactment depends would be 'to stop the wheels of government' and bring about confusion, if not paralysis, in the conduct of the public business.").

[38] *See also* BARBALHO, *supra* note 36, at 184–85 (1992); MAXIMILIANO, *supra* note 33, at 490. True, article 72, §1º of the new Constitution reproduced article 179, I, of the 1824 Constitution; nevertheless, while article 102, XII of the 1824 Constitution authorized the Emperor to issue decrees for the "*good* execution of the Laws," article 48, 1º of the 1891 authorized the President to issue decrees only for their "*faithful* execution"—what, coupled with the American influence in the drafting of the Constitution, could have led to the local development of the non-delegation doctrine. *See* CONSTITUIÇÃO FEDERAL of 1891, arts. 48, 72, §1º, (Braz.) (emphasis added); CONSTITUIÇÃO FEDERAL of 1824, arts. 179, I, 102, XII (Braz.) (emphasis added).

the judicial review of administrative action remained based on the French conceptual repertoire.[39]

The 1988 Constitution also guaranteed that "no person [would] be forced to do or to refrain from doing anything except by virtue of a written statute,"[40] but it went one step further and established that the "Public Administration . . . [should] obey to the principles of *legality*, impersonal action, morality, publicity [and] efficiency"[41]—indicating that written statutes approved by the Legislative Branch should be seen not only as a limit preventing the State to violate rights, but also as the foundation of any action taken by the Executive. The President, who was responsible for the "superior management of the federal administration,"[42] could "issue decrees and regulations for the faithful execution"[43] of statutes.

Nevertheless, the President was granted the power of issuing "Provisional Measures"—temporary decrees valid for thirty days—with the same legal hierarchy of statutes which should be reviewed by the National

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[39] Seventy-six years ago, Miguel Seabra Fagundes had already noticed such feature of the Brazilian Public Law system: "The Judicial Branch in Brazil never claimed to be competent to examine the reasonableness and the convenience of acts issued by the Legislative Power or by the Administration, and this is a feature to be considered in the comparison between the [American] 'judicial review' model and our understanding of what the jurisdiction may do. . . . The use of police power as basis for restrictions on individual property or liberty . . . was never denied by the Judiciary to the Brazilian legislator or the administrator. . . . Our Judiciary always limited itself to the assessment of whether it conflicted with explicitly defined individual rights. In the United States, as we have already observed, the judge, when analyzing the reasonableness of administrative acts, exercises 'full jurisdiction' and not a jurisdiction of 'mere legality,' he enters into the merits of administrative action and binds it to his administrative criteria. Here, such intromission, which among Americans results from the due process of law clause, has never happened, nor can it happen." MOURA, *supra* note 35. Even more straightforward were the remarks made by Victor Nunes Leal—who would later be a Justice of the Brazilian Supreme Federal Court—seventy-one years ago: "Our conception of separation of powers, grounded on the imperial tradition of an almost entire lack of protection of the individual before illegal or abusive administrative acts, would not tolerate such substantial interference by the jurisdictional bodies, which constitute an autonomous power, in the activity of the administrative bodies, which belong to another power . . . . Invoking the American example would not do much, for we have never incorporated to our doctrine and to our jurisprudence the consequences that the [American] Supreme Court has extracted from the due process clause. . . . It is, thus, of our tradition to recognize a discretionary sphere of action for the Administration, based on a constrained concept of *excès de pouvoir*, which, on the one hand, excludes the width of the French *detournement de pouvoir* and, on the other, defines the limits of jurisdictional evaluation in narrower bounds than those practiced in the American judicial review model." Victor Nunes Leal, *Poder Discricionário da Administração - Abuso Dêsse Poder - Mandado de Segurança - Direito Líquido e Certo*, 14 REVISTA DO SERVIÇO PÚBLICO 1, 8 (1948).

[40] CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 5º, II (Braz.).

[41] *Id.* art. 37 (emphasis added).

[42] *Id.* art. 84, II.

[43] *Id.* art. 84, IV.

Congress;[44] if approved, they would be transformed in statutes, and if rejected, they would be eliminated from the legal system. In 2001, a constitutional amendment established that such Provisional Measures would be automatically cancelled if they were not converted into statutes within 120 days of their publication dates.[45] Between 1988 and 2001, however, if the National Congress did not evaluate a Provisional Measure within thirty days, Presidents would simply *reissue them*—and would continue to do so every thirty days until Congress reached a decision.

Although the 1988 Constitution made no deliberate attempt to bridge the gap between the traditions that influenced Brazilian constitutional and administrative law, such distance would later be diminished when the principle of proportionality made its way into the Brazilian legal system.[46] Once the three-step test (adequacy, necessity, proportionality in a narrow sense), developed by German constitutional law, was embraced by Brazilian law, the judiciary was able to overcome the limitations that had been imposed to it by the French tradition—and exercise more stringent control over the acts of the administration.[47]

An overhaul of the principle of legality, however, is still pending; to this date, neither the European "essentiality theory," nor the post-New Deal non-delegation doctrine have been incorporated into the legal conceptual repertoire. Legal doctrine, thus, is usually divided between (i.) the principle

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[44] *Id.* art. 62, *amended by* CONSTITUTIONAL AMENDMENT nº 32, art. 1º (2001).

[45] *Id.*

[46] For further details on the "global spread of proportionality," see MOSHE COHEN-ELIYA & IDDO PORAT, PROPORTIONALITY AND CONSTITUTIONAL CULTURE (2013); JACCO BOMHOFF, BALANCING CONSTITUTIONAL RIGHTS: THE ORIGINS AND MEANINGS OF POST-WAR LEGAL DISCOURSE (2013). Until the last decade of the twentieth century, Brazilian jurisprudence applied a test of "reasonableness" (similar, in its outcomes, to the "rational basis review" test developed by the American Supreme Court—but not as clearly articulated, nor as uniformly applied) to assess the constitutionality of state action—extracting it from the "due process clause" of Brazilian Constitutions. In 1993, the Supreme Federal Court was questioned whether the national due process clause could also harbor the "principle of proportionality," which, at that time, had already been developed by the German Constitutional Court and had already exerted influence on other European legal systems. S.T.F., ADIn No. 1719-1, Reporting Justice Sepulveda Pertence, 01.07.1993, 71 [D.J.], 01.10.1993 (Braz.). For a while, Brazilian legal doctrine treated "reasonableness" and "proportionality" as synonyms, which, to a certain extent, it still does—see, for instance, the following excerpt of the opinion rendered by Justice Gilmar Mendes in the Federal Intervention nº 164-1/SP: "The principle of proportionality, also called the principle of substantive due process, or even called the principle of the prohibition of excess . . . ." By the end of last century, nevertheless, the three-pronged test developed in Germany had already been adopted by the Supreme Federal Court. S.T.F., ADIn No. 164-1. Reporting Justice: Marco Aurélio, 03.02.2003, 10, [D.J.], 14.11.2003 (Braz.).

[47] Through the principle of proportionality, courts were able to *overcome* the "constrained concept of *excès de pouvoir*" that had been mentioned by Victor Nunes Leal, *supra* note 39.

of legality advanced under the 1824 Constitution and (ii.) the original version of the non-delegation doctrine.[48] As the latter is usually rejected by courts,[49] broad statutory delegations tend to survive judicial scrutiny. Although concrete administrative action based such delegations may eventually be struck down because of its "unreasonableness" or "lack of proportionality," the President may still be granted wide latitude, by Congress, to "protect particular interests, grant benefits and incentives, distribute offices . . . without attention to objective and impersonal rules."

[48] For example: (i.) "Congress cannot delegate powers, but it can legislate, and leave to the Executive Power certain room to evaluate circumstances, since the resolution obeys to a criterion fixed by the law. . . . Even when there is liberty, non-absolute, of determination of a quota, the Executive Power does not receive a delegation, it only executes its specific function, which is to execute the law. It is not like that, however, if there is no criterion in the applicable statutes and the decision was left entirely open to the Executive Power." FRANCISCO CAVALCANTI PONTES DE MIRANDA, COMENTÁRIOS À CONSTITUIÇÃO DE 1946 357 (3d ed. 1960); HELY LOPES MEIRELLES, DIREITO ADMINISTRATIVO BRASILEIRO 89 (14th ed. 2012) "In the Public Administration there is neither freedom, nor personal will. While in the private administration it is lawful to do anything that is not forbidden by a statute, in the Public Administration it is only lawful to do what is authorized by a statute." MEIRELLES, *supra*.

[49] See the following excerpt of a decision recently rendered by TRF-4, No. 5024326-28.2016.4.04.0000/PR, Reporting Justice: Marga Inge Barth Tessler, 10.08.2018 (Braz.): "It is for us to evaluate, in this incident, whether the principle of legality was observed by the National Traffic Board when it issued Resolution nº 543/2015. In different words: analyze whether the resolution conforms to the statute it purports to regulate. In addition to the traditional doctrine about the boundaries of the Administration's power to issue regulations, a watered-down version of such doctrine can be currently identified, or a watered-down version of its strictness, when it deals with the adherence of regulations to statutes regarding specific issues, either because human relationships are becoming progressively complex, regarding the relationships of the Administration towards private parties, either because of scientific and technological progress." Plaintiffs had challenged two parts of Resolution 543/2015, under which an applicant to a driver's license would have to undergo at least five hours of training in electronic simulators: arguing that such duty had not been foreseen in the applicable statute (the National Traffic Code), plaintiffs requested the Judiciary to declare these parts of Resolution 543/2015 null and void. The Federal Court of Appeals understood that the National Traffic Board had been granted powers to regulate such matter by articles 12, X, and 141 of the National Traffic Code: (i.) under article 12, X, "The National Traffic Board shall have authority to: . . . X - regulate procedures about the instruction of prospective drivers, learning, licensing, issuance of documents of drivers, registration and licensing of vehicles"; (ii.) under article 141, "the administrative process leading to the issuance of a driver's license, rules regarding the instruction of prospective drivers who intend to employ electric or automotive vehicles, and rules regarding the authorization for the driving of motorcycles, will be issued by the National Traffic Board." *Id*. Although neither of such articles did establish a "meaningful standard" for the Board to pursue, the Court did not bother to *look for one* in order to examine whether articles 12, X, and 141 contained overbroad delegations; rather, it established that, although the National Traffic Board was not granted powers to regulate "the examination leading to the issuance of a driver's license," it was expressly authorized to regulate "the instruction of prospective drivers." *Id.* Thus, the Court concluded, Resolution 543/2015 was a valid execution of the National Traffic Code. The Court then went on to examine if the restrictions imposed by Resolution 543/2015 were "adequate and proportional" to the purposes the National Traffic Code purported to further—and rendered an affirmative answer. *Id.*

II. RECENT HISTORY: 1995-2016

A. The Fernando Henrique Cardoso Administration (1995-2002)

Since the last years of the military dictatorship, Brazil was affected by exceptionally high inflation levels: between December 1979 and July 1994, the accumulated inflation was 13,342,346,717,617.70% (13 trillion percent).[50] Several economic plans were attempted between 1980 and 1990, usually involving price freezes and currency devaluations, but failed to generate lasting results. President Collor de Mello, who was elected in 1989, employed three different plans during the three years of his Administration. The first of them, presented at the beginning of 1990, also froze, for eighteen months, all private investments that exceeded a certain value—thus reducing the availability of currency for such period. Inflation levels, however, rose again: in 1989 by 1,782.90% in 1990 by 1,476.56%; in 1991 by 480.2%; in 1992 by 1,158%; in 1993 by 2,780.6%.[51]

President Collor resigned before the conclusion of an impeachment process that had been opened against him because of entanglement in a corruption scheme.[52] Vice-President Itamar Franco took office and, supported by a wide coalition of parties, attempted to face Brazil's main problems. For the Treasury Ministry, Mr. Franco eventually chose—as the fourth Treasury Minister to serve in seven months—Mr. Fernando Henrique Cardoso, a senator who, at that time, was already serving as the Foreign Relations Minister.[53] Mr. Cardoso, unable to decline Mr. Franco's nomination, proceeded to assemble an economic team composed of several experts[54] and, quite remarkably, not only insulated them from political pressure, but also implemented an encompassing economic plan firmly based on their recommendations.[55]

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[50] MÍRIAM LEITÃO, SAGA BRASILEIRA: A LONGA LUTA DE UM POVO POR SUA MOEDA 299 (9th ed. 2014).

[51] *Almanaque Folha*, FOLHA DE S. PAULO, http://almanaque.folha.uol.com.br/dinheiro90.htm (last visited Feb. 28, 2019).

[52] SCHWARCZ & STARLING, *supra* note 1, at 495; MOTA & LOPEZ, *supra* note 1, at 908. Despite such resignation, the Senate would go on to impeach Mr. Collor and, thus, prevent him from running to public offices for eight years. SCHWARCZ & STARLING, *supra* note 1, at 495.

[53] MARIA CLARA R.M. DO PRADO, A REAL HISTÓRIA DO REAL (2005).

[54] In particular: Persio Arida, André Lara Resende, Gustavo Franco, Pedro Malan, Edmar Bacha and Winston Fritsch.

[55] For detailed accounts of how such economic team worked, and of the technical premises of what would be called the "Real Plan," see generally GUILHERME FIÚZA, 300 DIAS NO BUNKER: UM PLANO NA

The so-called "Real Plan" would also involve a currency devaluation and the introduction of a new currency, but its technical premises were different from those that had been previously employed: Cardoso's economic team found that the main cause of inflation was not a series of "inertial" price readjustments, but excessive public expenditures and lack of appropriate controls within the public bureaucracy.[56] State-owned banks, in particular, had a relationship with the Central Bank under which credit lines and subsidies could be granted regardless of the actual availability of resources in their reserves; as a result, such resources would later have to be issued and supplied by the Central Bank and by the National Treasury. Due to the lack of appropriate controls, in brief, the State would continuously issue more currency—which, on its turn, would continuously exert pressure over inflation. Before the introduction of a new currency, therefore, the Real Plan imposed cuts and limits to state expenditures, reducing their pressure over inflation indexes.

The legal cornerstone of the Real Plan was composed of three statutes: (a.) Federal Law nº 8.880/1994, which had resulted from the approval of Provisional Measure nº 434/1994;[57] (b.) Federal Law nº 9.069/1995, the result of Provisional Measure nº 542/1994;[58] and (c.) Federal Law nº 10.192/2001, enacted by Congress when it finally approved—seventy-three months after it had been originally issued—Provisional Measure nº 1.053/1995.[59] True, Congress was eventually called upon to act, and the Real Plan had been created by technical experts. Nevertheless, the role of the executive branch was *not* that of simply presenting a blueprint for Congress to approve: the Real Plan depended mostly on executive powers (either of an administrative

CABEÇA E UM PAÍS NA MÃO (9th ed. 2017); MARIA CLARA R.M. DO PRADO, A REAL HISTÓRIA DO REAL (2005); GUSTAVO FRANCO, A MOEDA E A LEI: UMA HISTÓRIA MONETÁRIA BRASILEIRA (2017).

[56] FRANCO, *supra* note 55, at 545–56. Mr. Franco was a member of such team and, after Mr. Cardoso's election, served as president of the Brazilian Central Bank. In his evaluation, "the hyperinflation emerged as a creature of the impasses and anxieties of the Brazilian democracy, which, in its initial years, was led by two accidental vice-presidents, with deficits of leadership, legitimacy, and diagnosis, and by an elected president who allowed himself to be swayed by a spirit of adventure in the attack of inflation, failed blatantly in the execution of his plan, and suffered an impeachment process, due to corruption, which led him to resign. Such unfortunate sequence occurred in an absolutely crucial moment for the institutional reconstruction of the governance processes surrounding the currency and the fiscal policy, *when the authoritarian regime had left wide discretionary spaces in immature or weak institutions . . . Instead of correcting the distortions in order to align them with the best practices of other democracies, the New Republic seemingly organized itself to take further advantage of them*." *Id.* (emphasis added).

[57] FEDERAL LAW NO. 8.8880 (Braz.) (1994); PROVISIONAL MEASURE NO. 434 (Braz.) (1994).

[58] FEDERAL LAW NO. 9.069 (Braz.) (1995); PROVISIONAL MEASURE NO. 542 (1994).

[59] FEDERAL LAW NO. 10.192 (Braz.) (2001); PROVISIONAL MEASURE NO. 1.053 (1995).

nature, such as the power to issue regulations, or even of a "quasi-legislative" nature, such as the power to issue Provisional Measures), to be implemented.

The plan had unprecedented success; in the second semester of 1994, the accumulated inflation was eighteen percent. Mr. Cardoso, who at that point was serving almost as Mr. Franco's prime minister, was a natural candidate for the presidential seat—which he managed to obtain in 1994. Reelected in 1998 for a second mandate, Mr. Cardoso's two administrations would produce an economically stable Brazil. After facing some international crises during his first term, Cardoso's economic team crafted an economic policy based on three "pillars", as they would be called: (i.) a floating currency exchange rate, (ii.) "inflation targets" annually established by the Central Bank (which would, later, serve as basis for subsequent adjustments of the basic interest rate during that same fiscal year), and (iii.) "fiscal targets"—through which the Government had to establish, in the annual budget, a surplus to be obtained by the end of each fiscal year.[60] The adoption of "fiscal targets" was enabled by the approval of Federal Supplementary Law nº 101/2000—the "Fiscal Responsibility Law"—which imposed several restrictions on the ability of Federal, State, and Municipal Administrations to grant tax incentives and to spend public resources. [61]

In the regulation of public services, the executive branch would pay similar deference to the decisions of technical experts. Acknowledging that state-owned enterprises would not be able to make the investments necessary for the modernization and expansion of the services they were charged with, the Cardoso Administration promoted a widespread privatization program. Based on specially commissioned studies[62] and foreign practices, new regulatory frameworks were created for several sectors—most notably, energy and communications—with the introduction of competition in

[60] On the forementioned issues, see generally FIÚZA, *supra* note 55; CLARA R.M. DO PRADO, *supra* note 55; FRANCO, *supra* note 55.

[61] The Brazilian Fiscal Responsibility Law, de 4 May 2000, Ministry of Planning, Budget and Mgmt. of Brazil, de 04.05.2000, available in English translation by the Federal Prosecutor's Office, at http://www.mpf.mp.br/atuacao-tematica/sci/normas-e-legislacao/legislacao/legislacao-em-ingles/law-2000-brazil-fiscal-responsibility (Braz.).

[62] In 1996, the Cardoso Administration hired Coopers & Lybrand to design a new regulatory model for the Brazilian electricity sector. Coopers & Lybrand would then produce the "RE-SEB Report" (Restructuring Project of the Brazilian Electricity Sector)—the recommendations of which would be the basis of a regulatory framework introduced during the Cardoso Administration through a series of federal statutes (most notably, Federal Law No. 9.074 (Braz.) (1995) Federal Law No. 9.427 (Braz.) (1996), which created the National Energy Agency, and Federal Law No. 9.648 (Braz.) (1998)).

regulated industries and RPI-X tariff regulation.[63] Further, statutes entrusted the development of such frameworks to Regulatory Agencies. Traditionally, public services were regulated by ministries and secretariats directly subordinated to the presidency; attempting to send positive signals to prospective investors, the Cardoso Administration persuaded Congress to shift such attributions to independent regulatory agencies—with directors who could not be arbitrarily removed before the end of their fixed mandates.

Both in economic and regulatory policy, thus, a trend towards *deconcentration* of power and *deference* to technical experts could be identified during the Cardoso Administration. The existence of such general trend, however, does not mean that the government never behaved opportunistically—i.e., so as to maximize its short-term political gains, even if such result only be attained through technically flawed decisions that could harm the country in the long run[64]—in certain moments. In the realm of economic policy, for instance, the Cardoso Administration adopted a *fixed currency exchange rate*—preventing the devaluation of the national currency—during its first term: only when its international reserves were almost entirely depleted, and only *after* Mr. Cardoso had secured his reelection, the Cardoso Administration decided to let the currency exchange rate float. Voters, who had already granted him a second term, quite understandably felt betrayed by the price increases that followed.

In regulatory policy, the existence of independent agencies did not prevent the Cardoso Administration from attempting to influence their decisions—especially on the setting of tariffs and prices of regulated services. Following an energy supply crisis during his second mandate, Mr. Cardoso commissioned a group of experts to identify its causes. Their report indicated that, in addition to insufficient rain levels, the behavior of the Energy Agency was also to blame: its lack of consistency in the application of tariff review clauses "generated, in investors, the perception that contracts would not be duly fulfilled"—thereby discouraging further investment in the sector and reducing the availability of energy.[65] In the 2002 election, the currency

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[63] For an overview of these practices, see generally JOHN VICKERS & GEORGE DARROW, PRIVATIZATION: AN ECONOMIC ANALYSIS (1988); ALFRED E. KAHN, THE ECONOMICS OF REGULATION: PRINCIPLES AND INSTITUTIONS (1988); STEPHEN BREYER, REGULATION AND ITS REFORM (1982); W. KIP VISCUSI ET AL., ECONOMICS OF REGULATION AND ANTITRUST (3d ed. 2000).

[64] I am employing the term "opportunism" in the sense attributed to it by Oliver Williamson: "self-interest seeking with guile." OLIVER WILLIAMSON, THE MECHANISMS OF GOVERNANCE 6 (1996).

[65] JERSON KELMAN, RELATÓRIO DA COMISSÃO DE ANÁLISE DO SISTEMA HIDROTÉRMICO DE ENERGIA ELÉTRICA (2001), http://www.kelman.com.br/relatorio_kelman.pdf.

devaluation and the energy crisis provided the opposition with plenty of ammunition against Mr. Cardoso, who then failed to elect one of his ministers as his successor.

B. The Lula da Silva Administration (2003-2010)

During his first term, Mr. Lula da Silva deliberately collided with the Republic's checks and balances.[66] On April 22, 2003, for instance, he claimed that the judiciary had a "black box," that organized crime had a "political arm in the judiciary," and that "whoever had money would not go to prison."[67] Shortly thereafter, on May 12, and even though he had already been officially notified by the Supreme Federal Court to further explain his previous remarks, Mr. Lula da Silva demanded the Judiciary to "be agile, so that it [did] not take a long time for criminal complaints [involving corruption] to be judged, because the people [could not] continue to be robbed."[68] Such reasoning eventually led to the approval of a Constitutional amendment creating the National Board of Justice ("*Conselho Nacional de Justiça*"), a board composed of fifteen members—nine judges, two prosecutors, two attorneys and two citizens of "notable legal knowledge"—entrusted with the administrative oversight of the entire Judiciary. The Supreme Federal Court[69] and the National Board of Justice[70] eventually made it clear, though, that the

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[66] Or, in the choice of words made by Steven Levitsky and Daniel Ziblatt, against "*democracy's guardrails*." STEVEN LEVITSKY & DANIEL ZIBLATT, HOW DEMOCRACIES DIE 97 (1st ed. 2018).

[67] *STF dá a Lula 48h Para Explicar Críticas ao Judiciário*, O ESTADÃO DE S. PAULO (May 5, 2003), https://politica.estadao.com.br/noticias/geral,stf-da-a-lula-48h-para-explicar-criticas-ao-judiciario,20030514p37661.

[68] Fabio Zanini, *Justiça: Lula Cobra 'Agilidade' do Judiciário Contra Corrupção,* FOLHA DE SÃO PAULO (May 13, 2003), https://www1.folha.uol.com.br/fsp/brasil/fc1305200302.htm.

[69] "Thus, without violating the constitutional limits that result from the independence of the Judiciary, the derived constitutional power acted correctly when it granted the National Board of Justice the prominent role of overseeing the administrative and financial activities of such Power." Direct Action of Unconstitutionality nº 3367, Supreme Federal Court, Plenary Chamber. Cezar Peluso, Reporting Justice. Decided on 04.13.2005; "National Board of Justice. Powers that only allow the control of administrative and financial acts of the bodies of the Judicial Power subject to its jurisdiction." RTJ nº 25.879, 08.23.2006, WRIT OF MANDAMUS (Braz.).

[70] For example: "The powers of the National Board of Justice, which is not an appeals board, are limited to the administrative activities of the Judicial Power, reason why the Board is not allowed to intervene in the merits or in the contents of a pure judicial decision." Administrative Appeal in Request for Measures nº 0003175-41.2014.2.00.0000. Deborah Ciocci, Reporting. Decided on 08.05.2014; "The intervention of the National Board of Justice in the contents of a judicial decision, so as to correct any defect it may have either for violating the law, or for being null and void, is forbidden*."* Administrative Appeal in Request for Measures nº 0006455-54.2013.2.00.0000. Gilberto Martins, Reporting. Decided on 02.11.2014.

Board had only *administrative* attributions, and that, as such, it could not interfere in or review acts that had resulted from the exercise of jurisdiction.

More intense, however, were the attacks on the regulatory agencies that had been created during the Cardoso Administration. From the outset, the Lula da Silva Administration made it clear that it intended to reclaim the regulatory power that had been attributed to such entities. On January 2, 2003, for instance, the new Administration announced that it "could" modify the inflation index established in the concession agreements that had been signed with telephone companies.[71] Two legal problems were clear: (i.) under the Federal Constitution, contracts are considered "perfect legal acts" which originate "vested rights" that cannot be unilaterally disregarded by the State; and (ii.) at that moment, the telecommunications sector was to be regulated by the National Telecommunications Agency (ANATEL), not by the Ministry of Telecommunications. Not only had ANATEL been granted such powers by Federal Law nº 9.472/1997[72] (and, thus, neither the President, nor the Telecommunications Ministry could remove such powers through administrative decrees or orders), but Constitutional Amendment nº 08/1995 had also required that a "regulatory body" be created to oversee the sector;[73] in the legislative process that led to such amendment, a regulatory body was defined as "an administrative body independent from the Government, so that it [could] oversee the latter's acts," the main features of which should be "its authority, its impartiality and its independence."[74] Therefore, there would be good grounds to argue that not even a *statute* could substitute ANATEL with the Telecommunications Ministry.

In the wake of such statement, on February 24, an association of energy distributors claimed to be "afraid that the National Energy Agency would cave in to political pressure": as the Agency had already stated that it would be "based on the guidelines issued by the Federal Government," distributors

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[71] *Governo poderá trocar índice nos reajustes de energi*a, O ESTADO DE S. PAULO (Jan. 2, 2003), https://economia.estadao.com.br/noticias/geral,governo-podera-trocar-indice-nos-reajustes-de-energia,20030102p10930.

[72] FEDERAL LAW NO. 9.472, arts. 8, 19 (Braz.) (1997).

[73] CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 21, XI (Braz.), *amended by* CONSTITUTIONAL AMENDMENT No. 08, art. 1 (1995).

[74] *See* Mauro Hiane de Moura, *O Poder Normativo e a Autonomia das Agências Reguladoras*, 246 REVISTA DE DIREITO ADMINISTRATIVO 226 (2007).

correctly remarked that tariff reviews should be "clearly technical" and based on existing concession agreements.[75]

As it claimed that agencies were "not democratic," that they were "usurping the role of the executive," and that their actions had to be "subject to presidential guidelines and review," the Lula da Silva Administration took advantage of a presidential prerogative related to the execution of the federal budget in order to exert additional pressure over their decisions. As per the 1988 Federal Constitution, the federal budget is based on (i.) a bill drafted by the President which is (ii.) yearly approved by Congress and converted into a statute. Such statute, nevertheless, merely *authorizes* the Executive Branch to incur in the expenditures therein foreseen; during each fiscal year, the President may issue decrees delaying the execution or imposing additional caps on certain expenditures—in a procedure called "*contingenciamento*" (in a rough translation, it could be said that the President makes the actual execution of such authorizations *contingent on* a subsequent decree).

Although the Fiscal Responsibility Law establishes that expenditures "that constitute constitutional and legal duties" may not be limited, resources destined to agencies are not encompassed by such clause. Accordingly, the Lula da Silva Administration imposed cuts on their budgets. On March 30, 2003, cuts of R$1.3 billion had already been executed in the budgets of three federal agencies over which the new Administration was trying to assert its power: (i.) the National Oil Agency had a budget of R$1.4 billion, but was only authorized to spend R$258.5 million, suffering a cut of 82% of its resources; (ii.) the National Energy Agency, a cut of 53.8%; and (iii.) the National Telecommunications Agency, of 18.5%.[76]

As the head of the Energy Agency tried to find an amicable middle ground asserting that "the main challenge of Agencies was to act with

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[75] Agencia Estado, *Distribuidores Temem Pressão Política Sobre a Tarifa de Energia*, O ESTADO DE S. PAULO (Feb. 24, 2003), https://economia.estadao.com.br/noticias/geral,distribuidores-temem-pressao-politica-sobre-a-tarifa-de-energia,20030224p13565.

[76] *See* Agencia Estado, *Ataque de Governo a Agências Prejudica Usuário*, O ESTADO DE S. PAULO (Mar. 30, 2003), https://economia.estadao.com.br/noticias/geral,ataque-de-governo-a-agencias-prejudica-usuario,20030330p15197. The Oil Agency was strategically relevant because of the oil and gas reserves it presided over. Energy and Telecommunications Agencies had to periodically review consumer tariffs charged for certain energy and telecommunications services. Allowing such Agencies to operate without any constraints could eventually lead to materially relevant tariff increases—which, regardless of whether they were correct as a matter of *law*, could lead to the escalation of inflation indexes and, therefore, politically hurt the Administration. *Id.*

equilibrium," guaranteeing "consumer rights and the quality of service" and also taking into account "the stability of rules, the preservation of contracts and the adequate compensation of the service,"[77] Ms. Dilma Rousseff—then acting as the Energy Minister—promptly counter-attacked and claimed that agencies should merely "regulate and exercise oversight" and refrain from "establishing energy policies," a task for which they had no legitimacy. If they had occupied such space in the past, Ms. Rousseff added, such situation happened because of "a weak Ministry, which was not facing up to its responsibilities."[78] At the end of May, the Energy Agency announced that, because of the "contingenciamento" determined by the Presidency, it would be able maintain its regular activities only until August of that year.[79]

A more open confrontation involved the Presidency and the Telecommunications Agency. Regardless of the announcements that had been made by the Presidency at the beginning of the year, the Agency ordered, in June, the application of the tariff readjustment indexes established in the concession agreements signed during the Cardoso Administration. Mr. José Genoíno, the president of the Workers' Party, promptly denied that the Agency had caused any kind of embarrassment to the Presidency.[80] On the same day, however, Mr. Miro Teixeira, the Communications Minister, claimed that the Agency had "surrendered" to the concessionaires—and stated that "President Lula was against such tariff increase, which he had not authorized to be announced as an agreement."[81]

Although Mr. Luiz Guilherme Schymura, the President of the Telecommunications Agency, made it clear that there was no intent to disrespect the President, who opposed the tariff increase, but simply to

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[77] Wagner Gomes, *Para Agência de Energia, Desafio das Reguladoras é o Equilíbrio*, O ESTADO DE S. PAULO (Apr. 4, 2003), https://economia.estadao.com.br/noticias/geral,para-agencia-de-energia-desafio-das-reguladoras-e-o-equilibrio,20030404p15478.

[78] *See* Agencia Estado, *Ministra Destaca Papel dos Ministérios Frente às Reguladoras*, O ESTADO DE S. PAULO (Apr. 14, 2003), https://economia.estadao.com.br/noticias/geral,ministra-destaca-papel-dos-ministerios-frente-as-reguladoras,20030414p15821.

[79] *See* Agencia Estado, *Aneel Pode Suspender Fiscalização em Agosto*, O ESTADO DE S. PAULO (May 27, 2003), https://economia.estadao.com.br/noticias/geral,aneel-pode-suspender-fiscalizacao-em-agosto,20030527p18288.

[80] Agencia Estado, *Genoíno Nega Constrangimento Com Reajuste de Telefones*, O ESTADO DE S. PAULO (Jun. 27, 2003), https://politica.estadao.com.br/noticias/geral,genoino-nega-constrangimento-com-reajuste-de-telefones,20030627p38617.

[81] *See* Agencia Estado, *Miro Afirma Que Reajuste foi Rendição da Anatel*, O ESTADO DE S. PAULO (Jun. 27, 2003), https://economia.estadao.com.br/noticias/geral,miro-afirma-que-reajuste-foi-rendicao-da-anatel,20030627p19516.

execute what was determined in the contract signed with the companies,[82] retaliations from the Government would quickly ensue. One day after such tariff reviews were announced, the Workers' Party pushed for the approval of a Constitutional Amendment allowing Directors of Agencies to be summoned by the Chamber of Deputies.[83] On January, claiming that, (i.) Federal Law nº 9.472/1997 prevented the President from unilaterally removing Mr. Schymura from the Agency before the end of his fixed mandate, but (ii.) it did not prevent the President from removing Mr. Schymura from the presidency of the Agency, President Lula da Silva replaced him with Pedro Jaime Ziller—who was aligned with the unions that supported the Workers' Party. Opposition parties claimed they would question such move at the Judiciary,[84] but, as Mr. Schymura decided to resign from his position as soon as his replacement was announced, this plan was soon abandoned.[85]

At that moment, it was already clear that President Lula da Silva "had opted for a less technical profile in his agency appointments"[86]—having chosen, for instance, Mr. Francisco de Oliveira Filho, a graduate in history and philosophy, for a position at the Land Transportation Agency. Even though Mr. Oliveira Filho had no prior experience in the sector he was to regulate, he had been appointed by Senator Hélio Costa, a member of main political party in the governmental coalition. As a Director at the Federal Land Transportation Agency and another at the Federal Oil Agency resigned from their mandates at beginning of 2004, the Government soon secured a majority in the Boards of such agencies.

As some of the powers agencies had received through the statutes responsible for their creation would later be shifted, through new statutes, to ministries and secretariats directly connected to the Presidency, no further clashes were to occur between agencies and the presidency until the end of

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[82] *See* Agencia Estado, *Presidente da Anatel Diz Que Não Afrontou Lula*, O ESTADO DE S. PAULO (Jun. 26, 2003), https://economia.estadao.com.br/noticias/geral,presidente-da-anatel-diz-que-nao-afrontou-lula,20030626p19471.

[83] *See* Agencia Estado, *Greenhalgh Quer Aprovar Convocação de Agências Reguladoras*, O ESTADO DE S. PAULO (Jun. 27, 2003), https://politica.estadao.com.br/noticias/geral,greenhalgh-quer-aprovar-convocacao-de-agencias-reguladoras,20030627p38621.

[84] *See* Agencia Estado, *PSDB Irá à Justiça Contra Substituição na Anatel*, O ESTADO DE S. PAULO (Jan. 7, 2004), https://politica.estadao.com.br/noticias/geral,psdb-ira-a-justica-contra-substituicao-na-anatel,20040107p33699.

[85] *See* Agencia Estado, *PSDB Recua e Não Vai Mais à Justiça Contra Mudança na Anatel*, O ESTADO DE S. PAULO (Jan. 8, 2004), https://politica.estadao.com.br/noticias/geral,psdb-recua-e-nao-vai-mais-a-justica-contra-mudanca-na-anatel,20040108p33718.

[86] *See* Humberto Medina, *Governo Irá Obter Maioria em Agências em Fevereiro*, FOLHA DE SÃO PAULO (Jan. 11, 2004), https://www1.folha.uol.com.br/fsp/dinheiro/fi1101200409.htm.

Mr. Lula da Silva's mandates. As previously announced by Ms. Dilma Rousseff, policy directions were finally to come from the presidency or from ministries/secretariats; agencies were to regulate, based on such directions, and to exercise oversight over their respective sectors.

Initially, the Lula Administration followed the economic principles that had been established during the Cardoso Administration—the most drastic innovation, if any, was the expansion of social welfare programs. The adoption of inflation targets and fiscal targets, however, was not undisputed inside the Administration, as some of its members would favor the pursuance of a more interventionist economic policy. Attacks were made by Vice-President José Alencar to the technical independence of the Brazilian Central Bank—initially, complaining that national interest rates were too high and that they should be reduced so that domestic production could be increased[87]; some days later, claiming that "the competence of the Central Bank had to be reviewed" and that the definition of the interest rate "had to be properly negotiated," as President Lula da Silva's directive was to "reestablish, in Brazil, conditions under which development could occur, employment could be generated, people could have jobs, income could be distributed." According to Vice-President Alencar, it was "blatantly obvious" that Brazil could not be tolerant with high interest rates, because "[such behavior] would kill us all."[88] Mr. Alencar's criticisms, however, would be dismissed by President Lula da Silva himself or by other key members of the Workers' Party[89]; through this constant back-and-forth, the Administration was able to gather support from different segments of society.[90]

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[87] *See* Agencia Estado, *Brasil Está 'Encabrestado' pelo Mercado, Diz Vice de Lula*, O ESTADO DE S. PAULO (May 16, 2003), https://economia.estadao.com.br/noticias/geral,brasil-esta-encabrestado-pelo-mercado-diz-vice-de-lula,20030516p17544.

[88] *See* Agencia Estado, *José Alencar Questiona Competência do BC Sobre Juros*, O ESTADO DE S. PAULO (May 21, 2003), https://economia.estadao.com.br/noticias/geral,jose-alencar-questiona-competencia-do-bc-sobre-juros,20030521p17901.

[89] On June 3rd, 2003, Mr. José Genoíno, President of the Workers' Party, guaranteed that the government would not "adopt populist measures regarding the currency exchange rate or the interest rate." The Lula da Silva Administration had confidence that interest rates would decrease, but they would do so "because the country was adopting the *necesssary* measures" for such result to happen. Agencia Estado, *PT Não Fará Populismo, Garante José Genoíno*, O ESTADO DE S. PAULO (Jun. 3, 2003), https://politica.estadao.com.br/noticias/geral,pt-nao-fara-populismo-garante-jose-genoino,20030603p38061.

[90] In June 2003, President Lula da Silva remarked that "problems would be solved with tranquility and no precipitation," and that, while everybody in the Administration understood that a reduction in the interest rate was necessary, such measure could not be done "through bravados." Economic journalists Claudia Safatle, João Borges and Ribamar Oliveira interpret these exchanges between President Lula da Silva and

In 2005, a Federal Representative revealed that the Workers' Party had been exchanging money for political support in Congress—a political scandal that came to be known as "Mensalão."[91] In its wake, several prominent politicians who occupied key positions in the Lula Administration were forced to leave the Government—most notably, Mr. José Dirceu, who served as the Administration's Chief of Cabinet—and political support of middle classes began to erode. At the end of 2005, although the Administration's economic team claimed that a comprehensive fiscal reform was necessary for further reduction in the interest rate, Ms. Dilma Rousseff, then already serving as Chief of Cabinet, publicly discarded such proposal—qualifying it as "rudimentary" and remarking that "public expenditures were 'life.'"[92] Afterwards, the Administration pushed for the expansion of public and private credit and tax incentives, supporting a model of consumption-based economic growth. Taking advantage of a favorable international moment and of the positive impact of its policies on consumers' welfare, Mr. Lula da Silva ended his second term with the unprecedented approval of 83% of the population. Ms. Dilma Rousseff, his former Minister, was then elected as the first female president of Brazil.

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his Vice-President to be a "pre-arranged game" through which Mr. José Alencar could gather support from his industrial peers—and Mr. Lula da Silva could appear as a moderate voice and try to obtain support from sectors that distrusted him. CLAUDIA SAFATLE, JOÃO BORGES & RIBAMAR OLIVEIRA, ANATOMIA DE UM DESASTRE 42 (2016).

[91] The term would be roughly translatable as "big monthly allowances." "*Mensal*" means "monthly"; "*-ão*" is an augmentative suffix.

[92] SAFATLE ET AL., *supra* note 90. The clash between Mr. Antonio Palocci, Mr. Paulo Bernardo and Ms. Dilma Rousseff is described in Claudia Safatle et al.'s book. In a deposition given before the Brazilian Federal Police on April 13, 2018, Mr. Antonio Palocci confirmed that, during the first Lula Administration, "there was a division between two groups proposing different approaches," and that such division was also present in all subsequent Administrations of the Workers' Party. *Id.* One group, composed of Mr. Palocci, Mr. Miro Teixeira, Mr. Luiz Gushiken and Mr. José Genoíno, among others, intended to pursue a "policy-oriented route"; the other, led by Mr. José Dirceu and Mr. Marco Aurélio Garcia, and sometimes also with Ms. Dilma Rousseff, advocated a "pragmatic route." *Id.* The policy-oriented route involved constitutional reforms such as welfare reform, tax reform, and the judicial system reform, which were "demanded at that moment and interested big political parties"; accordingly, they should be pursued along with the two other main parties of the Brazilian political landscape—PMDB and PSDB (to which Mr. Fernando Henrique Cardoso belonged). *Id.* The pragmatic route aimed at political alliances with smaller parties in order to guarantee a legislative majority and claimed that there should be antagonism between the Workers' Party and the PSDB. *Id.* Mr. Lula da Silva acted as a mediator between the two groups, but "the pragmatic route [progressively] became the winner." *Id.* In the policy-oriented route, the Administration would also have to distribute public offices among its allies in order to consolidate a majority; in the lack of ideological affinity, however, "it was obvious that the formation of a government [i.e., the consolidation of a legislative majority] would be obtained through the distribution of public offices and money." *Id.*

C. The Rousseff Administration (2011-2016)

While the Lula da Silva Administration concentrated more powers in the hands of the presidency and its ministries, it still paid some deference to technical expertise—and was willing to maintain the bases of the macroeconomic policy crafted during the Cardoso Administration. The Rousseff Administration, however, would go one step further: it would combine a determination to concentrate powers in the Presidency with a deliberate decision to *depart* from the macroeconomic model that had been previously adopted. Thus, the Rousseff Administration soon replaced the three "pillars" of the Cardoso Administration with what became known as the "New Macroeconomic Matrix": a combination of (i.) forced reductions in the interest rate, (ii.) direct intervention in the currency exchange rate and in regulated prices, and (iii.) increases in public expenditures, public loans, and tax subsidies. With the blessing of Ms. Rousseff, the new matrix intended to spur investment and employment rates in Brazil; a deliberate reduction in interest rates would stimulate consumption, which on its turn would increase production and employment. When the first signs of inflation appeared, the Administration tried to control it through interventions in the currency exchange rate, the forced reduction of regulated prices, public loans, and tax cuts. For the new economic team, it would be acceptable for inflation to rise, as long as such increase was accompanied by economic growth and increased employment rates.[93]

While the Rousseff Administration acknowledged that private investment was important for economic growth, it also seemed willing to force market agents to conform to a less profitable set of rules: in 2012, when the Administration unveiled an encompassing Logistics Investment Program,

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[93] MÔNICA BAUMGARTEN DE BOLLE, COMO MATAR A BORBOLETA-AZUL: UMA CRÔNICA DA ERA DILMA 29 (2016). Mônica Baumgarten de Bolle asserts that, under the Rousseff Administration, such inflation growth—deemed to be a byproduct of economic growth—was called "inflation of goodness" ("*inflação do bem*"), because it would further a positive purpose. *Id.* De Bolle explains that "inflation of goodness is the moribund idea that continuous price rises are not a problem in themselves, do not result from erroneous policies, are not the result from imbalances in the economy. Those who stand for this thesis defend that, sometimes, inflation must be tolerated so that the government will have room to promote investment-stimulating measures, thus helping to recover economic growth. Its defenders ignore that any stimulus in an inflationary environment, as a tax cut, the introduction of an exemption, tends, at first, to provoke more inflation. The terrible Brazilian economic history of the 80s and the 90s—the hyperinflations and the failed stabilization plans to reverse them—reveals the fallacies contained in such reasoning." *Id.* For more on the economic policy of the Rousseff Administration, see also SAFATLE ET AL., *supra* note 90.

it initially offered an unattractive rate of return of 5.5%.[94] When it understood that private banks were adopting exceedingly high interest rates in private loans, the Administration ordered public-owned banks to enter such markets with lower rates—forcing the competition to meet their market conditions. The market share of public-owned banks would eventually rise from 33%, in 2008, to 56.7%, in 2016.[95]

For a while, Ms. Rousseff's policies were approved of by the majority of the population: in the first quarter of 2013, the new administration was considered "excellent or good" by 65% of Brazilians, and 27% regarded it as "regular."[96] At the end of the first semester, though, what began as a protest against a rise in bus tariffs quickly escalated to a widespread mass protest against corruption and the poor quality of public services.[97] While Brazil granted subsidized public loans for the construction of modern, state-of-the-art soccer arenas throughout the nation (as a preparatory measure for the 2014 FIFA World Cup), public health and education services remained poorly funded as ever—and protesters would take the streets wittingly requesting, among others, "Fifa Quality Hospitals." There were also references to a constitutional amendment sponsored by the Rousseff Administration for the

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[94] Later, in 2013, the Administration failed to attract any interested parties to a public tender in which a concession to a federal highway would be granted. *See* Da Redação, *Após Fracasso, Dilma Vai Reavaliar Concessões de Rodovias*. VEJA (Sept. 17, 2013), https://veja.abril.com.br/economia/apos-fracasso-dilma-vai-reavaliar-concessoes-de-rodovias/. Ms. Rousseff explained that the Administration intended to award concessions with "adequate internal rates of return and adequate tariffs," set on a case-by-case basis. *Id.*

[95] *See* SAFATLE ET AL., *supra* note 90, at 95.

[96] Polls indicating the intensity of popular support to the Rousseff Administration can be found at Instituto Datafolha's website DATAFOLHA, http://datafolha.folha.uol.com.br. A poll released on March 31, 2013. *Políticas Sociais e Economia Alavancam Aprovação a Dilma*, DATAFOLHA (Mar. 31, 2013), http://datafolha.folha.uol.com.br/opiniaopublica/2013/03/1259083-politicas-sociais-e-economia-alavancam-aprovacao-a-dilma.shtml.

[97] The 2013 protests received the attention of international media. *See generally* Paulo Prada & Maria Carolina Marcello, *One Million March Across Brazil in Biggest Protests Yet*, REUTERS (June 20, 2013), https://www.reuters.com/article/us-brazil-protests/one-million-march-across-brazil-in-biggest-protests-yet-idUSBRE95J15020130621); H.J., *The Streets Erupt*, ECONOMIST (June 18, 2013), https://www.economist.com/americas-view/2013/06/18/the-streets-erupt); Jonathan Watts, *Brasil Erupts in Protest: More Than a Million on The Streets*, GUARDIAN (June 21, 2013), https://www.theguardian.com/world/2013/jun/21/brazil-police-crowds-rio-protest); Simon Romero & William Neuman, *Sweeping Protests in Brazil Pull in an Array of Grievances*, N.Y. TIMES (June 20, 2013), https://www.nytimes.com/2013/06/21/world/americas/brazil-protests.html; Paula Moura & Juan Forero, *Brazil, Once Revered, Now Rocked By Protest*, WASH. POST (June 22, 2013), https://www.washingtonpost.com/world/brazil-once-revered-now-rocked-by-protest/2013/06/22/1b6c7640-db57-11e2-b418-9dfa095e125d_story.html. For more comprehensive analyses, see Brian Winter, *Revisiting Brazil's 2013 Protests: What Did They Really Mean*?, AM. Q. (Mar. 2, 2013), https://www.americasquarterly.org/content/revisiting-brazils-2013-protests-what-did-they-really-mean); *see also* THE FIRST THINK TANK & CONSULTANCY, NEW GEN. CONSULTING, MAKING SENSE OF BRAZILIAN PROTESTS (2013), https://www.sciencespo.fr/opalc/sites/sciencespo.fr.opalc/files/Brazilian%20Protests.pdf.

purposes of removing from public prosecutors the autonomy that allowed them to initiate criminal investigations—making them dependent on state and federal police forces, which are controlled by federal and state executive powers. After such protests, political parties that initially supported such amendment decided to abandon it. On June 25, 2013, the amendment was rejected by the Chamber of Deputies in a vote of 430 to 9.[98] At the end of June, only 30% of Brazilians would consider the Rousseff Administration "excellent or good"—while the share of those who rejected it rose to 25%. [99]

Public opposition would increase when, during the first semester of 2014, federal prosecutors and the federal police uncovered a massive corruption scheme involving Petrobras, the state-owned oil company. In the *"*Mensalão" scandal the government exchanged money for support in the parliament, prosecutors discovered that the Workers' Party employed the president's power to "exercise the superior management of the public administration" in order to strike new bargains with the parties in the ruling coalition: the president would distribute certain divisions of Petrobras among the different parties of the ruling coalition, and appoint persons supported by them to the managing positions of such divisions; later, such managers would sign overpriced contracts with their suppliers—and demand that shares of such overprice be directed either to the financial managers of such parties or to certain politicians that belonged to their ranks.[100] The scandal would

[98] Nathalia Passarinho & Fabiano Costa, *Câmara Derruba PEC Que Tentava Limitar o Poder de Investigação do MP*, GLOBO (June 23, 2013), http://g1.globo.com/politica/noticia/2013/06/camara-derruba-pec-que-tentava-limitar-o-poder-de-investigacao-do-mp.html.

[99] As per an opinion poll released by *Datafolha* on June 29, 2013, the Rousseff Administration's approval fell twenty-seven points in three weeks: at the beginning of June, 57% of Brazilians evaluated the Administration as "excellent or good"; at the end of June, such opinion was held only by 30% of the population. Opinão Pùblica, *Aprovação a Governo Dilma Rousãseff Cai 27 Pontos em Três Semanas*, DATAFOLHA (June 29, 2013), http://datafolha.folha.uol.com.br/opiniaopublica/2013/06/1303659-aprovacao-a-governo-dilma-rousseff-cai-27-pontos-em-tres-semanas.shtml. Moreover, if only 9% of the population rejected the Rousseff Administration at the beginning of June, such share rose to 25% at the end of the month. *Id.*

[100] This practice has been thoroughly demonstrated in the depositions, criminal complaints and judicial decisions connected to the "Car Wash" operation. As a sample, please see the deposition given by Mr. Antonio Palocci before the Brazilian Federal Police on April 13, 2018 (stating that "he had made it clear to Mr. Lula da Silva that the latter knew perfectly well why the Progressive Party had appointed a director [to Petrobras], since the Progressive Party did not do so in order to further a public policy along with Petrobras, since it never had one"; and that "the only policy of the Progressive Party was to collect money"; and that "it made no sense to believe that the Progressive Party was contributing with public policies for oil exploration."). Mr. Lula da Silva was found guilty of corruption and money-laundering, in connection to such facts, on 07.12.2017 (Criminal Complaint nº 5046512-94.2016.4.04.7000/PR, 13th Trial Court of Curitiba. Sergio Moro, Judge.); this decision was affirmed by the Federal Court of the Appeals of the 4th

eventually become known as "Petrolão"[101]—and was of substantially bigger dimensions than the "Mensalão."

While opposition rose, the Rousseff Administration insisted on the "New Macroeconomic Matrix," but it eventually faced an (almost) impossible situation: the combination of tax incentives and increased economic expenditures made it practically impossible for the Administration to maintain its original plans. Even if fiscal surpluses were not regarded by the new economic team as mandatory as before, the Administration was still bound by the annual budget approved by Congress[102]—which was supposed to accurately reflect the actual condition of the Government's accounts.[103] In order to maintain its subsidy programs, the Administration decided to mask their impact on the federal budget—through what became known as "creative accounting" and "fiscal pedaling."[104] In brief, the Administration decided to use the resources of state-owned banks in order to maintain its official subsidy programs—instead of providing such banks with resources from the National Treasury in order to do so. Such practice clearly violated the Fiscal Responsibility Law, which prohibited the Federal and State Governments from asking for credit from banks it controlled.[105] It also prevented the federal budget from accurately reflecting the actual condition of the State's accounts, as the Treasury's financial obligations with state-owned banks were not properly accounted for. The Administration, thus, could hide the existence of a public deficit and claim, in the run-off to the 2014 Presidential Election, that the Brazilian economy was on solid ground.

Administrative Region on Jan. 24, 2018 (Criminal Appeal nº 5046512-94.2016.4.04.7000/PR, 8th Chamber. João Pedro Gebran Neto, Reporting Justice.).

[101] "*Petróleo*" means "oil" in Portuguese. "*-ão*" is an augmentative suffix, employed in the coining of the word "*Petrolão*" because of its resemblance with the "*Mensalão"* scandal.

[102] Article 167 of the 1988 Constitution forbids the Administration, for instance, from "initiating any programs or projects not included in the yearly budgetary statute," "incurring in expenses, or contracting direct duties, in excess of budgetary or additional credits," and "opening additional or special credits without previous statutory authorization and without an indication of the corresponding resources." CONSTITUIÇÃO FEDERAL [C.F] [CONSTITUTION] art. 167 (Braz.).

[103] Lei No. 4.320 de 1964. The budgetary statute must "discriminate revenues and expenses so as to make evident the economic financial policy of the Administration, as well as its program, provided that the principles of unity, universality and annuality are obeyed." Under the principle of "universality," the yearly budget must encompass *all* revenues and expenses of the Federal Government. The accuracy of such information is essential (i.) for the execution of the "Fiscal Responsibility Law" (Supplementary Law nº 101/2001) and (ii.) to allow the National Congress and the Federal Audit Court to monitor the execution of the budget.

[104] *See generally* JOÃO VILLAVERDE., PERIGOSAS PEDALADAS: OS BASTIDORES DA CRISE QUE ABALOU O BRASIL E LEVOU AO FIM DO GOVERNO DILMA ROUSSEFF (2016); *see also* SAFATLE ET AL., *supra* note 90.

[105] Supplementary Law nº 101/2001, art. 36. "Credit operations between a state-owned financial institution and the public entity that controls it, as the beneficiary of such operations, are forbidden."

This short narrative illustrates how political opportunism had led the Federal Administration to the abuse of state-owned banks—and inadvertently plunged the country into a scenario of hyperinflation. Only after many failed economic plans was a proper diagnosis made, and, accordingly, a new framework was put in place in order to impose fiscal responsibility and prevent the repetition of similar events. Nevertheless, as political culture still accorded the Presidency the central position in the political system, and as the role of independent and technical agencies had been weakened, the head of the executive branch could choose to strike different balances between "political opportunism" and "technical expertise"—or, in other words, between (i.) policies that, in the short-run, pleased voters and increased political capital, even though they could harm the country in the long-run; and (ii.) corrective measures that, although necessary, would not generate similar enthusiasm on voters. That the Rousseff Administration may have chosen a *bad* economic model at the beginning of its first term is undesirable, but bad political choices are a part of a democratic model; that it was able to deliberately *insist* on such policies in order to secure reelection, even when it was clear that they would have to be reversed, and that the Administration was able to blatantly *disregard* fiscal responsibility and budgetary statutes to do so, however, is unacceptable.

In any event, the strategy worked: Ms. Rousseff secured her reelection with 51.65% of the valid votes—she obtained 54,483,045 votes, while her opponent, former Minas Gerais Governor and Federal Senator Aécio Neves, obtained 50,993,533 votes (48.35%). Since Mr. Lula da Silva's election in 2002, this was the smallest difference between the candidates that advanced to the second round of presidential elections. After obtaining her reelection, rising unemployment, increasing inflation levels, and the reduced availability of public reserves forced Ms. Rousseff to finally adjust her economic policy—increasing taxes and interest rates while also cutting back on state expenditures and welfare programs. The adjustments pushed Brazil to the most severe recession it had ever faced, with a reduction of 8% in the GDP in two years—after the 1929 crash, in comparison, the reduction was approximately 5%.[106]

[106] *Brasil Vive Recessão Mais Severa da História, Diz Presidente do Banco Central* [*Brazil is Through the Worst Recession of Its History, Says President of the Central Bank*], BRASIL ECONÔMICO (Oct. 7, 2016), https://economia.ig.com.br/2016-10-07/ilan-goldfajn.html; Mikaella Campos & Luísa Torre, *Economia Brasileira Vive Pior Recessão da História* [*Brazilian Economy is Going Through the Worst Recession of its*

The effects of the economic downturn were combined with advances in investigations promoted by federal prosecutors revealing the extent to which state-owned companies had been involved in corruption schemes. Not only Petrobras, but also BNDES, and the federal development bank adopted questionable practices; it seems to have granted billionaire loans, with subsidized interest rates, because of the influence of politicians—including Mr. Lula da Silva.[107] Companies that ultimately benefited from such loans would then pay "commissions" to the politicians and political parties who had secured them. Each new stage of the "Car Wash Operation" would bring staggering new revelations. Once again, millions took to the streets, protesting against Ms. Rousseff and demanding her impeachment.

As the Party of the Brazilian Democratic Movement ("PMDB"), to which Vice-President Michel Temer belonged, decided to support an impeachment request based on Ms. Rousseff's unorthodox budget practices, such request was able to advance through the Chamber of Representatives and the Federal Senate—and, after lengthy debates, on August 31, 2016, the Senate terminated Ms. Rousseff's mandate. If Mr. Lula da Silva had presented himself as a "true representative of the masses" in 2002, a status which would then allow him to clash against what was presented as corrupt political establishment, Ms. Rousseff and the Workers' Party would now claim to have been the victims of a "coup" and that there was "no basis" for her to be impeached.[108]

History], GAZETA ONLINE (Mar. 7, 2017), https://www.gazetaonline.com.br/noticias/economia/2017/03/economia-brasileira-vive-pior-recessao-da-historia-1014031578.html; SAFATLE ET AL., *supra* note 90, at 312.

[107] For instance, the decision rendered by Judge Sergio Moro on June 26, 2017. *See generally* J.F.-13, Crim. Nº 5054932-88.2016.4.04.7000 (Braz.) http://www.mpf.mp.br/para-o-cidadao/caso-lava-jato/atuacao-na-1a-instancia/denuncias-do-mpf/documentos/palocciSENT1.pdf. Investigations are still under way. On April 30, 2018, the Chief Federal Prosecutor filed a criminal complaint against Mr. Lula da Silva and Mr. Antonio Palocci, among others, arguing that unlawful advantages would have been paid in exchange for an increased credit line in the BNDES. *See generally* http://www.mpf.mp.br/pgr/documentos/INQ4342DenunciaLulaGleisitarjadobx.pdf).

[108] *See generally* Da Agência PT de Notícias, *Dilma Vai ao Senado Para se Defender e Lutar Contra o Golpe*, PT (Aug. 8, 2016), https://www.pt.org.br/dilma-vai-ao-senado-para-se-defender-e-lutar-contra-o-golpe; *see also* Rui Falcão, *O Que Está em Jogo Não é Apenas o Golpe*, PT (Aug. 29, 2016), https://www.pt.org.br/rui-falcao-o-que-esta-em-jogo-nao-e-apenas-o-golpe; Da Agência PT de Notícias, *Assista e Leia a Integra do Discurso de Dilma: 'Temo a Morte da Democracia'*, PT (Aug. 29, 2016), https://www.pt.org.br/em-discurso-no-senado-dilma-diz-temer-a-morte-da-democracia; Da Agência PT de Notícias, *Se Dilma for Condenada, História Deverá Pedir Desculpas*, PT (Aug. 30, 2016), https://www.pt.org.br/cardozo-se-dilma-for-condenada-historia-devera-pedir-desculpas/.

In a similar manner, as the Car Wash Operation progressed and got closer to Mr. Lula da Silva, he would claim to be the victim of a "coup orchestrated by the elites," who wanted to prevent him from running to a third mandate. When officially charged of involvement with a corruption and money laundering scheme, Mr. Lula da Silva said the accusations were "groundless" and "politically motivated."[109] After he was found guilty, the same criticisms were made by Mr. Lula da Silva to the Federal Judge who rendered the decision—who would have imposed a conviction "regardless of actual proof."[110] When such decision was maintained by a Federal Court of Appeals, the Justices who evaluated Mr. Lula da Silva's appeal were also said to be "part of a conspiracy of the elite," denying him the right to a "fair trial."[111] Eventually, such accusations would also be extended to the Superior Court of Justice and to the Supreme Federal Court, where Mr. Lula da Silva's appeals and requests were also rejected.[112]

On April 7, 2018, Mr. Lula da Silva surrendered to the police in order to serve time—after holding an open "ecumenical ceremony" at the Steel Workers' Union in São Bernardo do Campo, where he began his political career, in the memory of his deceased wife. Before a crowd of a few thousand supporters and allied politicians, Mr. Lula da Silva gave a long speech,[113] accusing the federal police, federal prosecutors, and the judiciary of having "lied," boasting that none of them could sleep with a "calm conscience of

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[109] Agency EFE, *Lula Diz Que Acusações Apresentadas Pelo MPR Têm 'Motivação Política'*, ÉPOCA NEGÓCIOS (Sept. 14, 2016), https://epocanegocios.globo.com/Brasil/noticia/2016/09/lula-diz-que-acusacoes-apresentadas-pelo-mpf-tem-motivacao-politica.html.

[110] Camila Boehm, *Sem Provas, Condenação é Perseguição Política, Diz Defesa de Lula*, AGÊNCIA BRASIL (July 12, 2017), http://agenciabrasil.ebc.com.br/politica/noticia/2017-07/sem-provas-condenacao-e-perseguicao-politica-diz-defesa-de-lula.

[111] Da Agência PT de Notícias, *Lula Foi Condenado Sem Crime, em ação Cheia de Nulidades*, JOVEM PAN ONLINE (July 24, 2018), http://www.pt.org.br/zanin-lula-foi-condenado-sem-crime-em-acao-cheia-de-nulidades/; Jovem Pan, *Luiz Marinho Acredita em Conspiração da Justiça para Tirar Lula das Eleições*, JOVEM PAN ONLINE (July 24, 2018.), https://jovempan.uol.com.br/programas/jornal-da-manha/luiz-marinho-acredita-em-conspiracao-da-justica-para-tirar-lula-das-eleicoes.html.

[112] Ana Luiza Albuquerque, *Lula Diz Que Judiciário Não Merece Mais Respeito, Afirma Líder do MST*, FOLHA DE S. PAULO (July 5, 2018), https://www1.folha.uol.com.br/poder/2018/07/lula-diz-que-judiciario-nao-merece-mais-respeito-afirma-lider-do-mst.shtml; Luiz Inácio & Lula da Silva, *Lula: Eu Quero Democracia, Não Impunidade*, N.Y. TIMES (Aug. 14, 2018), https://www.nytimes.com/2018/08/14/opinion/lula-eu-quero-democracia-nao-impunidade.html; *see also* Thomas Fischermann, *Lula ao Jornal Alemão Die Zeit: 'Quero Que Eles Um Dia Peçam Desculpas'* [*Lula to the German newspaper Die Zeit; 'I want them to apologize one day'*], LULA.COM (Jan. 20, 2018), https://lula.com.br/lula-ao-jornal-alemao-die-zeit-quero-que-eles-um-dia-pecam-desculpas/.

[113] *Leia a íntegra do discurso do ex-presidente Lula antes de se entregar*, VALOR ECONÔMICO (Mar. 7, 2018), https://www.valor.com.br/politica/5437251/leia-integra-do-discurso-do-ex-presidente-lula-antes-de-se-entregar.

honesty and innocence" comparable to Mr. Lula da Silva's.[114] Although he was not "above Justice," Mr. Lula da Silva insisted that there "was no proof" against him, which is the reason why he "challenged" the Federal Judge and Justices involved in the case for a "public debate" at any university.[115] His crimes, he claimed, were of "placing poor people in universities, poor people eating meat, poor people buying cars, poor people traveling by plane, poor people with small agricultural farms, as entrepreneurs, with their own houses."[116] If those were his crimes, Mr. Lula da Silva would "continue to be a criminal," but he would not "forgive" the police, the prosecution and the courts for "having passed to society the idea that he was a thief."[117] Mr. Lula da Silva has been held at the federal police in Curitiba ever since. Additional criminal charges against him have been made; another decision was rendered on February 6, 2018, finding Mr. Lula da Silva guilty for additional acts of corruption and money laundering.[118] The remaining charges are currently pending trial.

III. EPILOGUE: THE AFTERMATH OF THE ROUSSEFF ADMINISTRATIONS

A. The Election of Mr. Jair Bolsonaro (2018)

On October 28, 2018, Mr. Jair Bolsonaro, a right-wing politician, was elected President of Brazil. A former member of the military, Mr. Bolsonaro had served as a federal representative, elected by the State of Rio de Janeiro, since 1991. Initially identified with voters connected to the military, his willingness to confront the Workers' Party and to openly challenge the political narratives presented by the political left—something that the PSDB, the party that had been facing the PT in the second round of presidential elections since 1994, never did—led him to progressively obtain more support from the electorate. Thus, in 2002, he secured 88,945 votes in his home

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[114] *Id.*
[115] *Id.*
[116] *Id.*
[117] *Id.*
[118] Thais Skodowski, *Juíza condena Lula a 12 anos e 11 meses de prisão em caso do* sítio, R7.COM, (Feb. 6, 2019), https://noticias.r7.com/brasil/juiza-condena-lula-a-12-anos-e-11-meses-de-prisao-em-caso-do-sitio-06022019; André Shalders, *Lula condenado: Entenda as penas e os demais processos contra o petista*, BBC NEWS BRASIL (Feb. 7, 2019), https://www.bbc.com/portuguese/brasil-47153099.

state;[119] in 2010, 120,646;[120] in 2014, having already established himself as a strong opponent to Ms. Rousseff and the political left, Mr. Bolsonaro received 464,572 votes—the best-voted candidate to the Federal Chamber of Representatives in the State of Rio de Janeiro.[121]

During the presidential campaign, Mr. Bolsonaro used the political *persona* he had cultivated: taking advantage of his connection with the military, he portrayed himself as an outsider who would stand for law and order—and support the implementation of strong anti-corruption policies. His appeal to more conservative voters was reinforced through (i.) constant references to God[122] and (ii.) unabashed opposition to social policies that had been practiced by the political left—especially educational policies that, assuming that genders are socially constructed, encouraged children to "choose their gender."[123] Against that, Mr. Bolsonaro claimed to be the only candidate who could "challenge the establishment" and set Brazil free of a corrupt political class—mainly symbolized by the Workers' Party.[124]

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[119] *Eleições 2002: Congresso Nacional—Câmara dos Deputados*, FOLHA ONLINE, https://www1.folha.uol.com.br/folha/especial/2002/eleicoes/congresso_nacional-camara_dos_deputados.shtml.

[120] *Eleições 2010: Mapa Político—Câmara dos Deputados*, TERRA, http://eleicoes.terra.com.br/mapa-politico/2010/camara-dos-deputados/.

[121] *Bolsonaro (PP) é o deputado federal com maior número de votos no RJ*, UNIVERSO ONLINE (Oct. 6, 2014), https://eleicoes.uol.com.br/2014/noticias/2014/10/05/bolsonaro-rj-e-eleito-deputado-federal-no-rj-com-o-maior-numero-de-votos.htm.

[122] Early in the campaign, Mr. Bolsonaro stated that he had adopted, as his *motto*, John 8:32: "and you will know the truth, and the truth will set you free." *See also* Cátia Bruno, *Deus, Constituição e flirts. Os discursos de Bolsonaro nas entrelinhas*, OBSERVADOR (Oct. 29, 2018), https://observador.pt/especiais/deus-constituicao-e-flirts-os-discursos-de-bolsonaro-nas-entrelinhas; Anna Virginia Balloussier, *Bolsonaro, a Catholic, Expanded his Base Among Evangelicals*, FOLHA DE S. PAULO (Oct. 30, 2018), https://www1.folha.uol.com.br/internacional/en/brazil/2018/10/bolsonaro-a-catholic-expanded-his-base-among-evangelicals.shtml.

[123] Marcio Dolzan, *Bolsonaro sobre ideologia de gênero: 'nasce homem ou mulher*, TERRA (Dec. 17, 2018), https://www.terra.com.br/noticias/brasil/politica/bolsonaro-inaugura-no-rj-colegio-para-filhos-de-pms-e-critica-ideologia-de-genero,eab0e2453a644bd0703ef7695768962593y66dr1.html; Aiuri Rebello, *Gênero e Partido: Veja o que pensam os presidenciáveis sobre as polêmicas da 'ideologia de gênero' e 'escola sem partido'*, UOL ELEIÇÕES (Oct. 4, 2018) https://www.uol/eleicoes/especiais/eleicoes-2018-propostas-para-educacao-candidatos-a-presidente-sobre-ideologia-de-genero-e-escola-sem-partido.htm#genero-e-partido.

[124] *See* Ricardo Brito, *Catalisador do antipetismo, Bolsonaro lidera disputa apesar de enxurrada de críticas*, GLOBO EXTRA (Oct. 5, 2018), https://extra.globo.com/noticias/brasil/perfil-catalisador-do-antipetismo-bolsonaro-lidera-disputa-apesar-de-enxurrada-de-criticas-23132100.html; *Who is Jair Bolsonaro? Five facts about Brazil's far-right president-elect*, FINANCIAL TIMES (Oct. 29, 2018), https://www.ft.com/content/f99172bc-cae5-11e8-b276-b9069bde0956; Kenneth Rapoza, *How Bolsonaro Becomes Brazil's Next President*, FORBES (Oct. 8, 2018), https://www.forbes.com/sites/kenrapoza/2018/10/08/how-bolsonaro-becomes-brazils-next-president/#7a3c390e57e5.

Against the backdrop of the corruption scandals unveiled during the last years, one of the key themes of Mr. Bolsonaro's campaign was that public policies should be oriented by the needs of the country rather than by the needs of politicians; he claimed that he could not be held hostage by members of Congress—who, under previous administrations, traditionally demanded the President to allow additional public expenditures, or to make certain appointments to administrative positions, in exchange for parliamentary support for presidential bills. Political negotiations should involve programs and policies rather than resources and public positions; federal agencies and Ministries of State should be able to operate technically—and headed by experts in their fields. In the context of the historical narrative presented in the previous chapter of this article, Mr. Bolsonaro's pitch suggested that, were he elected, a different balance would be struck between "political opportunism" and "technical expertise."

Since Mr. Lula da Silva had already been found guilty by a Federal Court of Appeals, he was not able to dispute the presidency. Aware of his popularity and in order to take advantage of it, nevertheless, the Workers' Party devised a shrewd plan: since his arrest, Mr. Lula da Silva was *treated* as the party's candidate—and was officially *registered* as such before the Federal Electoral Court. Although the Court would eventually go on to reject Mr. Lula da Silva's application, his name would have to appear on all polls executed until such decision was issued.[125] Mr. Fernando Haddad was originally registered as Mr. Lula da Silva's vice-president; when Mr. Lula da Silva was prevented from running, Mr. Haddad—as it had been originally planned—took his position as the head of the ticket. With the slogan "Haddad is Lula," [126] Mr. Haddad tried to transfer to himself the votes that, in the assessment of the Workers' Party, Mr. Lula da Silva would have obtained were he allowed to run.

To a certain extent, the Workers' Party strategy succeeded: in June, while polls gave Mr. Bolsonaro a 17% share of the electorate, Mr. Haddad

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[125] Renan Ramalho & Mariana Oliveira, *TSE decide por 6 votos a 1 rejeitar a candidatura de Lula a presidente*, GLOBO.COM (Aug. 31, 2018), https://g1.globo.com/politica/eleicoes/2018/noticia/2018/08/31/maioria-dos-ministros-do-tse-vota-pela-rejeicao-da-candidatura-de-lula.ghtml.

[126] Felipe Amorim, *TSE autoriza logotipo "Haddad é Lula na propaganda do PT*, UNIVERSO ONLINE (Sep. 26, 2018), https://noticias.uol.com.br/politica/eleicoes/2018/noticias/2018/09/26/tse-autoriza-logotipo-haddad-e-lula-na-propaganda-do-pt.htm.

received only 1% or 2%.[127] As Mr. Lula da Silva was officially barred from running and Mr. Haddad was officially made candidate, however, his rating improved significantly—allowing him to obtain 29.28% of the valid votes and, thus, secure the second place in the first round of the presidential elections. Mr. Bolsonaro, with a staggering 46.03% (49,277,010 votes), was the best-voted candidate—falling short of approximately 4 million votes in order to secure the presidential office in the first round of the election.[128]

Taking into account the impact of the "Mensalão," the "Car Wash Operation," Ms. Rousseff's impeachment, and Mr. Lula da Silva's imprisonment, receiving 30% of the country's valid votes did not seem so catastrophic a scenario; Mr. Lula da Silva, after all, had obtained similar figures in his first-round run-offs in 1994 and 1998. The Workers' Party also managed to secure fifty-six seats in the Federal Chamber of Representatives; although it lost thirteen seats, it would still be the biggest party in such Chamber. Some signs indicated, though, that relevant modifications had occurred in the electorate: Mr. Bolsonaro's party, which had only one representative in the Chamber, gained fifty-one seats; less than half of the federal representatives running for reelection, moreover, obtained a new mandate.[129] In the Federal Senate, Mr. Bolsonaro's party had no seats; in the new legislature, it will have four.[130] Just as relevant was the failure of prominent politicians who had joined the Lula–Rousseff coalition to obtain federal mandates—especially Ms. Rousseff herself, who ran for the Federal Senate for the State of Minas Gerais and received only 15% of the popular vote—ending in a disappointing fourth place.

In the second round of the presidential elections, Mr. Bolsonaro continued to use the same political narrative he had presented so far. Mr.

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[127] *Sem Lula, Bolsonaro só é superado por brancos e nulos*, DATAFOLHA (June 7, 2018), http://datafolha.folha.uol.com.br/eleicoes/2018/06/1971537-sem-lula-bolsonaro-so-e-superado-por-brancos-e-nulos.shtml; *Sem Lula, Bolsonaro lidera com 17%, diz CNI/Ibope*, IBOPE, (June 24, 2018), https://politica.estadao.com.br/noticias/eleicoes,pesquisa-ibope-mostra-bolsonaro-marina-silva-empatados-tecnicamente,70002373999.

[128] Official numbers are available at the Brazilian Superior Electoral Court's website, JUSTIÇA ELEITORAL, http://divulga.tse.jus.br/oficial/index.html.

[129] Gabriela Caesar, *Saiba como eram e como ficaram as bancadas na Câmara dos Deputados, partido a partido*, GLOBO.COM (Aug. 10, 2018), https://g1.globo.com/politica/eleicoes/2018/eleicao-em-numeros/noticia/2018/10/08/pt-perde-deputados-mas-ainda-tem-maior-bancada-da-camara-psl-de-bolsonaro-ganha-52-representantes.ghtml.

[130] Gabriela Caesar, *Saiba como eram e como ficaram as bancadas no Senado, partido a partido*, GLOBO.COM (Aug. 10, 2018), https://g1.globo.com/politica/eleicoes/2018/eleicao-em-numeros/noticia/2018/10/08/mdb-rede-e-pp-elegem-o-maior-numero-de-senadores.ghtml.

Haddad and the Workers' Party explored Mr. Bolsonaro's affiliation with the military—and his defense of the military dictatorship that ruled Brazil between 1964 and 1986—in order to assert that Bolsonaro was a fascist and a threat to democracy.[131] Thus, the argument ran, all voters who wished to support democracy and preserve the political liberties the people had struggled to obtain, should vote for Mr. Haddad. Similarly, Mr. Bolsonaro's positions regarding social customs allowed him to be portrayed by Mr. Haddad's campaign as a homophobic and as a male chauvinist. As supporters of Mr. Haddad quickly advanced the hashtag #Elenão (#Nothim) and organized public protests, voters who favored Mr. Bolsonaro replied with #Elesim (#Yeshim) and organized big rallies.

Although the connection between Mr. Bolsonaro and the military lent additional strength to the narrative presented by the Workers' Party, its adoption was not an entirely new strategy: in 2010, similar claims had been made against Mr. José Serra, who ran against Ms. Dilma Rousseff[132] and, in 2014, against Mr. Aécio Neves, who tried to prevent Ms. Rousseff from being reelected.[133]

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[131] Ricardo Galhardo & Daniel Wettermann, *Haddad pede reação institucional e diz que ligará para FHC* (Oct. 22, 2018), https://politica.estadao.com.br/noticias/eleicoes,haddad-pede-reacao-institucional-a-bolsonaro-e-diz-que-ligara-para-fhc,70002558225; *Haddad diz que Bolsonaro ameaça democracia antes das eleições e pode fazer pior se eleito*, REUTERS (Oct. 22, 2018), https://economia.uol.com.br/noticias/reuters/2018/10/22/haddad-diz-que-bolsonaro-ameaca-democracia-antes-das-eleicoes-e-pode-fazer-pior-se-eleito.htm; Ana Carla Bermúdez, *Em ato com Haddad e Manuela, mulheres falam em "ameaça" Bolsonaro*, BRASIL ONLINE (Sept. 9, 2018), https://noticias.bol.uol.com.br/ultimas-noticias/eleicoes/2018/09/25/em-ato-com-haddad-e-manuela-mulheres-falam-em-ameaca-bolsonaro.htm.

[132] *Serra representa ameaça à democracia e aos direitos sociais*, VIO MUNDO (Oct. 15, 2010), https://www.viomundo.com.br/politica/marilena-chaui-serra-representa-ameaca-a-democracia-e-aos-direitos-sociais.html; Marco Aurélio Weissheimer, *Serra assume agenda do fascismo social que ameaça Europa*, CARTA MAIOR (Oct. 20, 2010), https://www.cartamaior.com.br/?%2FEditoria%2FPolitica%2FSerra-assume-agenda-do-fascismo-social-que-ameaca-Europa%2F4%2F16188&fbclid=IwAR2qoiQhugM6FQl6eMojk88hgHQ4JDRCXfg3U3GDGWxYioQkkLAiIncOV6s.

[133] Camila Denes, *Para intelectuais e políticos, eventual eleição de Aécio ameaça democracia*, (Oct. 11, 2014), http://www.pt.org.br/para-intelectuais-e-politicos-eventual-eleicao-de-aecio-ameaca-democracia-e-direitos-trabalhistas/; Camilo Árabe, *Enquanto Dilma Lutava pela Democracia, Aécio Trabalhou pela Ditadura* (Oct. 18, 2014), https://www.ocafezinho.com/2014/10/18/enquanto-dilma-lutava-pela-democracia-aecio-trabalhou-pra-ditadura/; Paulo Nogueira, *A lição de democracia de Maduro para Aécio e FHC*, DIARIODO CENTRODO MUNDO (Dec. 7, 2015), https://www.diariodocentrodomundo.com.br/a-licao-de-democracia-de-maduro-para-aecio-e-fhc-por-paulo-nogueira/ (at the end of 2015, a website affiliated to the Political Left criticized Mr. Aécio Neves and former president Fernando Henrique Cardoso for supporting the impeachment—claiming that Mr. Maduro, in Venezuela, was teaching a "lesson in democracy" as he had "accepted his electoral defeat" in parliamentary elections); Fátima Bezerra, *Senadora acusa: Aécio Neves é 'coveiro da democracia'*, JORNAL LUZÍLÂNDÍA (Oct. 10, 2015),

Moreover, voters who analyzed the official government plans presented by Mr. Haddad and Mr. Bolsonaro could find that it was actually Mr. Haddad's plan that challenged the current constitutional regime. Mr Haddad's plan, for instance, claimed that "the constitutional agreement of 1988 had been broken by the coup d'État of 2016, [which had been] supported by Congress, the Judiciary, business and the media," and that Mr. Lula da Silva had been targeted by a political decision, having committed no crime and regardless of proof. Accordingly, the plan argued that it would be necessary to "refund the Republic." Among the suggested remedies were (i.) the drafting of a new Constitution in order to institute a new balance between the Federal Branches of Government; (ii.) the adoption of "measures in order to stimulate the social control and participation in all of the Federal Government's branches (Executive, Legislative, Judiciary) and in the Federal Prosecutor's Office"; and (iii.) a reform of the legal regime applicable to Audit Courts so as to modify their appointment criteria, institute fixed terms for its members and other "mechanisms of social control and participation."[134]

Mr. Bolsonaro's plan, conversely, asserted that (i.) "Brazil [would] be changed by means of the defense of federal statutes and obedience to the Constitution. Thus, again, we emphasize that we will proceed as specified by the Law," and that (ii.) "statutes and Our Constitution [would] be [their] instruments . . . . Justice may run its course regardless of political interference, which should enable punishments to be imposed more quickly to guilty parties."[135]

The contrast was clear: for Mr. Haddad, the existing order was "unfair" and had to be reformed; for Mr. Bolsonaro the existing order was not sufficiently respected—and had to be restored. Nevertheless, both candidates claimed to defend democracy voters supporting Mr. Bolsonaro could claim to oppose the Workers' Party and its attempt to implement a dictatorship based on the Venezuelan model in Brazil; on the other hand, Mr. Haddad's electorate would argue that Mr. Bolsonaro's election, due to his disregard for human rights (particularly those connected to LGBT groups) would be disastrous for

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http://www.jornaldeluzilandia.com.br/txt.php?id=39232 (Senator Fátima Bezerra, a member of the Workers' Party, accused Mr. Neves of being the "gravedigger of democracy" because of an adverse decision rendered by the Federal Audit Court which would eventually lead to Ms. Rousseff's impeachment.).

[134] *Plano de Governo* (Sept. 11, 2018), http://www.tse.jus.br/arquivos/fernando-haddad-proposta-de-governo-1o-turno (All government plans filed in the 2018 elections are available at the Brazilian Superior Electoral Court`s website, http://www.tse.jus.br/eleicoes/eleicoes-2018/propostas-de-candidatos.

[135] BOLSONARO 2018, O CAMINHO DA PROSPERIDADE ["THE PATH TO PROSPERITY"] (2018) http://www.tse.jus.br/arquivos/jair-bolsonaro-proposta-de-governo-1o-turno.

the democracy. How intensely were voters driven by such narratives is still open for debate—as it will be examined in the next section of this article. Regardless of such discussions, Mr. Bolsonaro increased his lead and, with the support of 55.13% of the electorate (57,797,847 votes), was elected President. Mr. Haddad ultimately obtained a share of 44.87% (47,040,906 votes)—preventing Mr. Bolsonaro from reaching a percentage higher than 60% of the electorate and, thus, from symbolically claiming that he was as representative as Mr. Lula da Silva (who had secured a 20% margin in his two elections) had been.[136]

B. The Rise and Fall of "Lulismo"?

The extent to which Brazilian voters supported Mr. Bolsonaro is demonstrated in Table 1, at the end of this article. Key points to be observed are:

a.) Mr. Bolsonaro won by wide margins in the States of the South, Southeast and Center-West Regions of Brazil—with an average support rate, per State, of 66%. Mr. Lula da Silva's also obtained victories in such States in the first election, but his average support per State was smaller: 60.75%;

b.) Mr. Aécio Neves, in his 2014 run-up against Mr. Dilma Rousseff, failed to obtain a majority in the Rio de Janeiro and Minas Gerais States. In the remaining States, his support was also smaller than Mr. Bolsonaro's—in each State, Mr. Bolsonaro's share per State is, on average, 10% higher than Mr. Neves' was;

c.) Mr. Bolsonaro defeated Mr. Haddad in all the States of the North Region: no candidate, since Mr. Lula da Silva in 2002, had secured a victory in the entire region. Mr. Serra, in 2010, had obtained victories in the States of Acre, Roraima and Rondônia—which were also the only victories of Mr. Aécio Neves in 2014. The remaining four Northern States, however, had remained loyal to the Workers' Party since 2002. Mr. Bolsonaro reversed such trend (in the State of Amazonas, for instance, he captured 25% of the voters

[136] Although Mr. Lula da Silva was elected with a 61.27% share in 2002, the number of votes given to him was of 52,793,264; in 2006, his share was of 60.83%, but he obtained 58,295,042 votes—higher, therefore, than the 57,797,847 votes cast for Mr. Bolsonaro in the second round of the 2018 election. Symbolically, thus, Mr. Lula da Silva is still the president with the highest voting numbers. Mr. Bolsonaro can only claim to have obtained more votes than any other candidate in the first round of a presidential election, as his 49,277,010 votes trump Mr. Lula da Silva's 46,662,365 votes (48.61%) in 2006 and Ms. Rousseff's 47,651,434 votes (46.91%) in 2010, official data available at http://divulga.tse.jus.br/oficial/index.html.

that had supported Ms. Rousseff in 2014; in other States, he captured at least 10% of such electorate)—and also won by significantly wider margins in the States that had supported Mr. Aécio Neves in 2014 (63.68% to 77.22% in Acre; 54.86% to 72.18% in Rondônia; 58.92% to 71.55% in Roraima);

d.) the Workers' Party's stronghold continues to be the Northeast Region, the poorest region of the country and the inhabitants of which tend to benefit the most from the welfare programs developed under the Lula da Silva Administration. Mr. Haddad defeated Mr. Bolsonaro in all the nine States it comprises—obtaining, on average, a staggering support rate of 68.49% per State; in 2014, Ms. Rousseff's average support per State had been of 70.82%. Overall, there was only a slight decrease from the 74.21% average per State registered in Mr. Lula da Silva's reelection in 2006.

Not as clear, however, is *why* Mr. Bolsonaro was elected. Taking into account the events unveiled by the "Car Wash Operation" and the themes of Mr. Bolsonaro's campaign, it is reasonable to assume that at least *a part* of the electorate accepted his political pitch—and considered him to be an "outsider" who could challenge a corrupt political establishment. These voters probably expect Mr. Bolsonaro not to pursue populist measures such as those presented in the previous chapter of this article—and will probably be disappointed should he resort to the usual channels and ways of Brazilian politics.

Mr. Bolsonaro took office on January 1, 2019. Surprisingly, of the twenty-two Ministers of State appointed by him, only eight are affiliated with a political party:[137] six come from the ranks of the Armed Forces[138] and seven were chosen for technical (and/or ideological) reasons.[139] More notably, Mr. Bolsonaro has successfully persuaded Federal Judge Sérgio Moro—who presided over many cases of the "Car Wash Operation" and who found Mr. Lula da Silva guilty of some of the criminal charges presented against him—

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[137] *Ministros de Bolsonaro: quem são os nomes que compõem o gabinete do novo president*, BBC BRASIL (Dec. 17, 2018), https://www.bbc.com/portuguese/brasil-46573142 (Teresa Cristina, Onyx Lorenzoni and Luiz Henrique Mandetta are affiliated to the "Democratas." Osmar Terra, to the "Movimento Democrático Brasileiro" [new denomination of the "PMDB"]. Ricardo de Aquino Salles comes from the "Partido Novo," while Marcos Pontes, Gustavo Bebianno and Marcelo Álvaro Antônio belong to the "Partido Social Liberal" [to which Mr. Bolsonaro also belongs].).

[138] *Veja quem são os ministros de Jair Bolsonaro*, AGÊNCIA BRASIL (Jan. 1, 2019), http://agenciabrasil.ebc.com.br/politica/noticia/2018-12/veja-quem-sao-os-ministros-de-jair-bolsonaro. (Gen. Fernando Azevedo e Silva, Gen. Augusto Heleno, Tarcísio Freitas, Adm. Bento Costa Lima Leite de Albuquerque Júnior, Gen. Carlos Alberto dos Santos Cruz and Wagner Rosário).

[139] André Luiz de Almeida Mendonça, Roberto Campos Neto, Gustavo Henrique Rigodanzo Canuto, Paulo Guedes, Ricardo Vélez Rodriguez, Sérgio Moro, Damares Alves, and Ernesto Araújo.

to abandon the magistrature and to take office as Minister of Justice. Mr. Moro will supervise the Federal Police and, especially, develop new anti-corruption and anti-organized crime governmental policies.

In the speech he delivered as he was sworn in, Mr. Bolsonaro emphasized that his team had been assembled "in a technical manner, without the traditional political bias that caused the State to be inefficient and corrupt"—and that, in the economy, he would generate "trust that the Government would not spend more than it collected," guarantee that "rules, contracts and properties would be respected" and promote "structural reforms that would be essential for the financial health and sustainability of public accounts." Finally, Mr. Bolsonaro pledged to "build a society without discrimination or division" and to "rescue the legitimacy and credibility of the National Congress."[140]

It is also reasonable to assume that another part of the electorate may have been driven to Mr. Bolsonaro because of his ideology. In the same speech, accordingly, he promised to "cherish the family, respect religions and our Judeo-Christian tradition, fight gender ideology and preserve our values"—and also to follow "the sovereign will of those Brazilians who wanted good schools, capable of preparing their children for the labor market rather than to political militancy." [141]

Yet, it seems precipitated to conclude that the majority of voters who supported him chose Mr. Bolsonaro specifically because of such reasons. Assuming that (i.) his Administration never employs illegitimate means and actively supports the introduction of new anti-corruption policies, that (ii.) he pursues precisely the ideological themes mentioned during his campaign, but that (iii.) his *economic policy* does not work as well as planned, throwing the country once again into a recession, what will his level of support be in 2022? Or, in different words: to what extent was Mr. Bolsonaro's victory a result not of his proposals, but of the Rousseff Administration's poor *economic performance*?

Table 2, which relates economic indexes and presidential mandates from 1990 to 2018, can be helpful in such analysis. It appears to be incorrect to conclude that *all* voters who now led Mr. Bolsonaro to victory are staunch

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[140] *Leia a íntegra dos dois primeiros discursos do presidente Jair Bolsonaro*, VEJA (Jan. 1, 2019), https://veja.abril.com.br/politica/leia-a-integra-dos-dois-primeiros-discursos-do-presidente-jair-bolsonaro/.

[141] *Id.*

opponents of corruption: after all, the Workers' Party's entanglement in the "Mensalão" scheme was revealed during Mr. Lula da Silva's *first* term. Afterwards, even though his advantage slightly declined (61.27% to 60.83%), he was reelected in 2006. "Aversion to corruption" does not explain such outcome, but "rewarding of good economic performance" does. During Mr. Lula da Silva's first administration, GDP constantly grew, and unemployment and inflation constantly decreased. At the end of his second administration, unemployment was at an all-time low (6%), the currency exchange rate was the lowest since 1999 (R$1.69/US$ 1.00) and GDP had grown by astonishing 7.54%. It is not surprising, in this context, that Mr. Lula da Silva was able to lead Ms. Rousseff to victory in 2010.

Table 2: Economic Indexes and Presidential Mandates, 1990-2018

	90	91	92	93	94	95	96	97	98
	Collor (impeached)			Franco (VP)		FHC I			
GDP (%)[142]	**(3.10)**	1.51	**(0.46)**	4.66	5.33	4.41	2.20	3.39	0.33
GDP per capita[143]	**(4.82)**	**(0.24)**	**(2.13)**	2.95	3.63	2.74	0.58	1.77	**(1.21)**
Unemp.[144]	4.3	4.8	5.8	5.3	5.1	4.6	5.4	5.7	7.6
R$/US$[145]	---	---	---	0.10	0.85	0.97	1.04	1.11	1.21
Inflation[146]	1,620.9	472.70	1,119.1	2,477.1	916.46	22.41	9.56	5.22	1.65

	99	00	01	02	03	04	05	06
	FHC II				Lula I			
GDP (%)	0.46	4.11	1.38	3.05	1.14	5.76	3.19	3.95
GDP per capita	**(1.03)**	2.61	**(0.02)**	1.68	**(0.15)**	4.47	1.99	2.80
Unemployment	7.6	7.1	6.2	7.1/12.6	12.3	11.4	9.8	9.9
RS/US$	1.84	1.96	2.36	3.63	2.93	2.72	2.29	2.15
Inflation	8.94	5.97	7.67	12.53	9.30	7.60	5.69	3.14

[142] *GDP Growth (annual %)*, THE WORLD BANK (2019), https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=BR.

[143] *GDP Per Capita Growth (annual %)*, THE WORLD BANK (2019), https://data.worldbank.org/indicator/NY.GDP.PCAP.KD.ZG?locations=BR.

[144] *Taxa de Desemprego Aberto* [*Open Unemployment Rate*], INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA [BRAZILIAN GEOGRAPHICAL AND STATISTICAL INSTITUTE (IBGE)], https://ww2.ibge.gov.br (A new methodology was introduced by IBGE in 2002—and, as a result, there is a lack of continuity between 2001 and 2002. Under the methodology adopted between 1983 and 2002, 2002's unemployment rate was of 7.1%; under the new parameters, of 12.6%).

[145] *Taxa de câmbio nominal*, BANCO CENTRAL DO BRASIL [BRAZILIAN CENTRAL BANK] http://ipeadata.gov.br/ExibeSerie.aspx?serid=38389 (In the table, currency exchange rates correspond to those practiced at the end of each year. A new currency was introduced as part of the "*Plano Real*").

[146] *Índice Nacional de Preços ao Consumidor Amplo* [*Wide National Consumer Price Index*], IBGE https://ww2.ibge.gov.br.

	07	08	09	10	11	12	13	14
	Lula II				Dilma I			
GDP (%)	6.06	5.09	**(0.12)**	7.54	3.98	1.93	3.01	0.50
GDP per capita	4.94	4.02	**(1.10)**	6.50	2.99	0.98	2.07	**(0.38)**
Unemployment	7.8	8.1	6.7	6.0	5.5	5.4	4.8	6.9
RS/US$	1.79	2.39	1.75	1.69	1.84	2.08	2.35	2.64
Inflation	4.46	5.90	4.31	5.91	6.50	5.84	5.91	6.41

	15	16	17	18
	Dilma II (impeached)		Temer (VP)	
GDP (%)	**(3.55)**	**(3.46)**	0.97	1.1
GDP per capita	**(4.36)**	**(4.25)**	0.18	0.3
Unemployment	6.9	10.8	12.8	11.6
R$/US$	3.87	3.35	3.29	3.87
Inflation	10.67	6.29	2.95	3.75

Successful economic performance also led Mr. Fernando Henrique Cardoso to his election in 1994 and to his reelection in 1998; the poor performance of his second administration (with escalating inflation levels, high unemployment and significantly higher currency exchange rates), likewise, paved the way for Mr. Lula da Silva's election in 2002.[147] Furthermore, it may not be a mere coincidence that the two presidential mandates interrupted by impeachments (Collor de Mello, 1990-1992; Dilma Rousseff, 2014-2016) registered *negative GDP per capita* variations in three consecutive years.[148]

True, voters took the streets and strongly rallied against Ms. Rousseff in 2016. It is not clear, however, to which extent they were driven by anti-corruption or economic concerns: had Brazil not been under a severe recession, would Ms. Rousseff have been impeached? Had Brazil not been under a severe recession, would the PMDB have parted ways with the Workers' Party? This conjecture is presented not to challenge the intuition that many supporters of the impeachment, as many supporters of Mr. Bolsonaro, were actually led to their decisions because of the corruption schemes unveiled during the last years. It *does* suggest, however, that a share of the votes received by Mr. Bolsonaro in 2018 may *not* be the result of what

[147] Please see, in Table 2, *supra*, the inflation and unemployment levels registered during Mr. Cardoso's second term, as well as the variation in the currency exchange rate. At the beginning of Mr. Cardoso's first term, unemployment levels were at 4.6%; at the end of his second term, they were of 7.1%. Similarly, inflation rose from 1.65% in 1998 (when Mr. Cardoso was reelected) to 12.53% in 2002.

[148] Please see, in Table 2, *supra*, GDP per capita variations during the Collor de Mello and Rousseff Administrations. During the Collor de Mello, negative GDP per capita variations were registered in 1990, 1991 and 1992; during the second Rousseff Administration, likewise, in 2014, 2015 and 2016.

he claims to stand for. His recent election may be, first and foremost, a rejection of the Workers' Party due to its perceived inability to properly manage the economy.

Additional information about this topic can be obtained through "Table 3," which presents demographic data of voters according to the candidate they voted for in the second round of the most recent presidential elections. Until 2014, the Workers' Party had been able to fend off the challenge of the PSDB in the three lower income strata; at best, Mr. Aécio Neves was able to *tie* with Ms. Dilma Rousseff in the stratum ranging from 2 to 5 minimum wages. Mr. Bolsonaro's support was much broader: it displaced the Workers' Party from the lead in such stratum (55% to 33%) and tied with it in the 1-2 minimum wages stratum. Mr. Haddad obtained a solid majority among voters receiving up to one minimum wage; his support was 6% smaller than Ms. Rousseff's in 2014 (62%), but still higher than the share registered by Ms. Rousseff in the 2010 elections (52%).

Table 3: Coalitions in Presidential Elections, 2002-2018

	2002[149]		**2006**[150]		**2010**[151]			**2014**[152]		**2018**[153]	
	Lula (PT)	Serra (PSDB)	**Lula (PT)**	Alckmin (PSDB)	**Dilma (PT)**	Serra (PSDB)		**Dilma (PT)**	Aécio (PSDB)	Haddad (PT)	**Bols. (PSL)**
Income[154]											
0-1 m.w.	59%	31%	66%	22%	52%	32%		62%	26%	56%	32%
1-2 m.w.			60%	28%	53%	35%		52%	35%	43%	43%
2-5 m.w.			55%	34%	48%	39%		44%	44%	33%	55%
5+ m.w.	63%	30%	48%	45%	43%	46%		36%	55%	29%	63%
10+ m.w.	60%	33%	34%	57%	---			---		---	
Age[155]											
16-24	61%	31%	54%	36%	50%	39%		40%	47%	45%	43%
25-34	58%	32%	56%	32%	50%	39%		48%	41%	39%	50%
35-44	62%	27%	57%	32%	49%	37%		42%	34%	40%	48%
45-54	59%	30%	57%	32%	50%	37%		46%	44%	38%	48%
55+	54%	34%	54%	32%	50%	37%		49%	39%	41%	47%
Education[156]											
4th grade	57%	32%	64%	24%	53%	32%		57%	33%	54%	46%
4th-8th g.			59%	30%	51%	36%		50%	36%	45%	43%
High sch.	63%	28%	51%	38%	49%	39%		44%	43%	37%	50%
College	61%	30%	41%	45%	43%	44%		38%	51%	35%	53%

Were such voters driven to Mr. Bolsonaro because of anti-corruption concerns or because of the severe economic crisis that recently affected Brazil—with unemployment levels of 12.8% in 2017? Mr. Bolsonaro also won in all age strata but for the youngest one; can the movements registered in such strata be related to rising unemployment and the significant reductions in GDP *per capita* registered during the second Rousseff Administration?

[149] DATAFOLHA, (Oct. 23, 2002), http://media.folha.uol.com.br/datafolha/2013/05/02/intvoto_pres_23102002.pdf (Poll).

[150] *Pesquisa de Opinião Pública Sobre Assuntos Políticos/ Administrativos*, IBOPE (Oct. 25, 2006), www.eleicoes.ibopeinteligencia.com.br/pt-br/conhecimento/historicopesquisaeleitoral/Documents/opp433_brasil_out06.pdf (Poll).

[151] *Pesquisa de Opinião Pública Sobre Assuntos Políticos/ Administrativos*, IBOPE (Oct. 30, 2010), http://www.eleicoes.ibopeinteligencia.com.br/pt-br/conhecimento/historicopesquisaeleitoral/Documents/30_10_Tabelas.pdf (Poll).

[152] *Pesquisa de Opinião Pública Sobre Assuntos Políticos/ Administrativos*, IBOPE (Oct. 25, 2014), http://www.eleicoes.ibopeinteligencia.com.br/Documents/Nacional%20-%20Relatórios/JOB_0462-14_BRASIL%20-%20Relatório%20de%20tabelas.pdf (Poll).

[153] *Pesquisa Ibope de 27 de outubro para presidente por sexo, idade, escolaridade, renda, região, religião e raça/cor*, GLOBO.COM (Oct. 27, 2018), https://g1.globo.com/politica/eleicoes/2018/eleicao-em-numeros/noticia/2018/10/27/pesquisa-ibope-de-27-de-outubro-para-presidente-por-sexo-idade-escolaridade-renda-regiao-religiao-e-cor.ghtml.

[154] In "minimum wages."

[155] Until 2010, IBOPE used the following categories: 16–24, 25–29, 30–39, 40–49, 50+.

[156] Highest completed degree.

Even though Mr. Haddad still came out ahead of Mr. Bolsonaro in the lower education strata, his margin was substantially lower than the advantage of Ms. Rousseff over Mr. Neves in 2014—in the stratum comprising voters with degrees from the fourth until the eighth grade of primary education, there is practically a tie.[157]

Thus, even though it is reasonable to assume that *some* voters consciously intended to stand for a candidate willing to challenge the Brazilian patrimonialist tradition, it is unclear if such voters, alone, will be able to lead Mr. Bolsonaro to a reelection. In the absence of efficient economic policy, a part of the electorate may swing back to a different alternative; the Workers' Party may, at this point, have lost the mythical aura it had in 2002—which allowed it to present itself as the "depositary of all the hopes of the Nation" and take advantage of the mechanics described by Mr. Faoro. The path may still be open, though, for a newcomer to sway the electorate with short-term promises of immediate economic growth—or even for Mr. Bolsonaro, should his economic plan backfire, to take advantage of the prerogatives of the Executive Branch in order to pursue short-term populistic measures and secure his reelection.

[157] Please see, in Table 3, *supra*, the line "fourth-eighth grade"—indicating that Mr. Bolsonaro received 43% of the votes comprised in such category, while Mr. Haddad received 45%.

Table 1: Votes per State in Presidential Elections, 1989-2018

		1989		1994		1998[158]		2002		2006		2010		2014		2018	
Region	**State**	Lula (PT)	**Collor (PRN)**	Lula (PT)	**FHC (PSDB)**	Lula (PT)	**FHC (PSDB)**	**Lula (PT)**	Serra (PSDB)	**Lula (PT)**	Alckmin (PSDB)	**Dilma (PT)**	Serra (PSDB)	**Dilma (PT)**	Aécio (PSDB)	Haddad (PT)	**Bolsonaro (PSL)**
N	**AC**	30.82 %	69.18 %	23.76 %	54.01 %	30.91 %	46.80%	59.94 %	40.06 %	52.36 %	47.64%	30.33 %	69.67 %	36.32 %	63.68 %	22.78%	77.22%
	AM	33.21 %	66.79 %	23.26 %	60.50 %	25.58 %	54.67%	69.88 %	30.12 %	86.80 %	13.20%	80.57 %	19.43 %	65.00 %	35.00 %	49.73%	50.27%
	AP	35.75 %	64.25 %	26.79 %	59.11 %	38.67 %	42.32%	75.51 %	24.49 %	70.40 %	29.60%	62.66 %	37.34 %	61.44 %	38.56 %	49.80%	50.20%
	PA	27.51 %	72.49 %	30.56 %	54.53 %	29.53 %	56.81%	52.65 %	47.35 %	60.12 %	39.88%	53.20 %	46.80 %	57.41 %	42.59 %	45.19%	54.81%
	RO	36.75 %	63.25 %	21.94 %	63.36 %	21.31 %	66.40%	55.58 %	44.45 %	55.33 %	44.67%	47.37 %	52.63 %	45.14 %	54.86 %	27.82%	72.18%
	RR	23.65 %	76.35 %	13.66 %	71.64 %	17.77 %	61.92%	65.55 %	34.45 %	38.51 %	61.49%	33.44 %	66.56 %	41.08 %	58.92 %	28.45%	71.55%
	TO	21.61 %	78.39 %	15.94 %	68.03 %	16.73 %	66.67%	54.03 %	45.97 %	70.27 %	29.73%	58.88 %	41.12 %	59.47 %	40.53 %	48.98%	51.02%
NE	**AL**	29.39 %	76.07 %	12.32 %	76.18 %	22.42 %	54.79%	43.61 %	56.39 %	61.45 %	38.55%	53.63 %	46.37 %	62.11 %	37.89 %	59.92%	40.08%
	BA	48.43 %	51.57 %	35.20 %	52.40 %	35.34 %	50.91%	65.69 %	34.31 %	78.80 %	21.92%	70.85 %	29.15 %	70.15 %	29.85 %	72.69%	27.31%
	CE	43.09 %	56.91 %	26.99 %	61.19 %	32.84 %	30.30%	71.78 %	28.22 %	82.38 %	17.62%	77.35 %	22.65 %	76.73 %	23.27 %	71.11%	28.89%
	MA	37.56 %	62.44 %	23.15 %	62.25 %	29.39 %	48.62%	58.48 %	41.52 %	84.63 %	15.37%	79.09 %	20.91 %	78.76 %	21.24 %	73.26%	26.74%
	PB	45.07 %	54.93 %	25.75 %	63.05 %	33.65 %	45.25%	57.02 %	42.98 %	75.01 %	24.99%	61.55 %	38.45 %	64.25 %	35.75 %	64.98%	35.02%
	PE	50.90 %	49.10 %	36.99 %	53.81 %	31.18 %	57.22%	57.07 %	42.93 %	78.48 %	21.52%	75.65 %	24.35 %	70.19 %	29.81 %	66.50%	33.50%
	PI	41.08 %	58.92 %	32.01 %	51.51 %	26.94 %	48.09%	60.73 %	39.27 %	77.32 %	22.68%	69.98 %	30.02 %	78.29 %	21.71 %	77.05%	22.95%
	RN	47.41 %	52.59 %	24.08 %	64.29 %	25.83 %	50.71%	58.64 %	41.36 %	69.73 %	30.27%	59.54 %	40.46 %	69.94 %	30.06 %	63.41%	36.59%
	SE	34.11 %	65.89 %	36.94 %	47.37 %	35.31 %	47.37%	57.50 %	42.50 %	60.16 %	39.84%	53.56 %	46.44 %	66.99 %	33.01 %	67.54%	32.46%

[158] Fernando Henrique Cardoso was elected in the 1st round of the 1994 and 1998 presidential elections.

CW	**DF**	62.68 %	37.32 %	44.76 %	38.69 %	29.73 %	40.44%	62.26 %	37.74 %	56.96 %	43.04%	52.81 %	47.19 %	38.10 %	61.90 %	30.01%	69.99%
	GO	31.56 %	68.44 %	18.60 %	67.48 %	19.62 %	65.95%	57.08 %	42.92 %	54.78 %	45.22%	49.25 %	50.75 %	42.89 %	57.11 %	34.48%	65.52%
	MS	27.15 %	72.85 %	22.25 %	63.59 %	24.73 %	61.25%	55.14 %	44.86 %	44.98 %	55.02%	44.87 %	55.13 %	43.65 %	56.35 %	34.78%	65.22%
	MT	33.61 %	66.39 %	19.10 %	64.29 %	16.46 %	73.09%	54.46 %	45.54 %	49.69 %	50.31%	48.89 %	51.11 %	45.32 %	54.68 %	33.58%	66.42%
SE	**ES**	40.70 %	59.30 %	27.86 %	60.04 %	20.95 %	64.74%	59.36 %	40.64 %	65.54 %	34.46%	49.17 %	50.83 %	46.13 %	53.87 %	36.94%	63.06%
	MG	44.48 %	55.52 %	21.90 %	64.82 %	28.05 %	55.67%	66.45 %	33.55 %	65.19 %	34.81%	58.45 %	41.55 %	52.40 %	47.60 %	41.81%	58.19%
	RJ	72.92 %	27.08 %	25.69 %	47.18 %	42.32 %	42.27%	78.97 %	21.03 %	69.69 %	30.31%	60.48 %	39.52 %	54.92 %	45.08 %	32.05%	67.95%
	SP	42.10 %	57.90 %	27.01 %	55.74 %	28.83 %	59.88%	55.39 %	44.61 %	47.74 %	52.26%	45.95 %	54.05 %	35.68 %	64.32 %	32.03%	67.97%
S	**PR**	32.71 %	67.29 %	22.75 %	60.33 %	27.78 %	59.24%	59.22 %	40.78 %	49.25 %	50.75%	44.56 %	55.44 %	39.00 %	61.00 %	31.57%	68.43%
	RS	68.72 %	31.28 %	29.57 %	33.48 %	49.04 %	40.59%	55.84 %	44.16 %	44.65 %	55.35%	49.06 %	50.94 %	46.46 %	53.54 %	36.76%	63.24%
	SC	49.68 %	50.32 %	26.55 %	33.20 %	36.60 %	49.42%	64.14 %	35.86 %	45.47 %	54.53%	43.49 %	56.61 %	35.40 %	64.60 %	24.08%	75.92%
Totals		46.97 %	**53.03 %**	27.07 %	**54.24 %**	31.71 %	**53.06%**	**61.27 %**	38.73 %	**60.83 %**	39.17%	**56.05 %**	43.95 %	**51.64 %**	48.36 %	44.87%	**55.13%**