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What is a Coup? Analysing the Brazilian Impeachment Process

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The debate over whether the regime change in Brazil constituted a coup hinges on whether the impeachment process used to depose President Dilma Rousseff had democratic legitimacy or was an illicit use of formal procedures to undermine the popular mandate granted to the Workers' Party (*Partido dos Trabalhadores*, PT) by the Brazilian people in the last presidential election. Proponents of the view that the impeachment was legal and that this legality confers democratic legitimacy tend to abstract the impeachment process from its lived context. This abstraction leaves the politics behind the regime change opaque and even irrelevant. The notion of legality and the impeachment that took place, however, is inevitably refracted through the lens of a historical, cultural, economic, and political context. We argue that the social contract that gives legal avenues their democratic legitimacy has been undermined by the impeachment process and that this caused a breach in the democratic order. On this view, the “legality” that prevails at the present moment is a subversion of democracy and justice — it is driven by corruption and elite economic interests, and has given rise to a *golpista* regime.

It is essential first to assess whether the protagonists of the impeachment process were representing constituent power, or whether they had taken themselves and special interests as the *ultimate* point of reference in order to advance an agenda that is contrary to the popular mandate — a mandate expressed in democratic elections just months before the regime change. If the latter were the case, and we think it is, then there has been a rupture in the democratic order brought about by an institutional coup. On account of this rupture, the legality in force is at the service of a new master and not the constituents who had delegated their power to government institutions through democratic procedures.

Many critics of the use of the term “coup” to describe Brazil's regime change argue that this term is being misapplied. In his *Political Dictionary*, Norberto Bobbio defines *coup d'état* as a change of government through unconstitutional means. This change of government has five distinctive characteristics: 1. Is an act perpetrated by one or more institutions within the State; 2. Leads to a change in political leadership; 3. May be accompanied by political and/or social mobilization; 4. Is usually followed by the reinforcement of the State's bureaucracy and law enforcement apparatus; and 5. Leads to the elimination or dissolution of political parties. All five of these

characteristics can be found in Rousseff's impeachment.<sup>[1]</sup> When we place the impeachment in the historical and lived context of Brazilian politics, we find that the legal process that drove the impeachment became the mere spectacle of legality, a "legality" high-jacked by a political-economic bloc to bring about a radical change in the overall economic and social platform — one more amenable to the neoliberal gospel, one that was simply not possible with the platform upon which Rousseff was democratically elected. When judicial manipulations in this way become the instrument of regime change toward a desired economic agenda, democracy is undermined.

## Impeachment or Coup?

To understand Rousseff's impeachment, one must understand Brazil's history of constitutional rupture. The civil and military coup of 1964 is the most exemplary of such ruptures, but there were similar attempts in 1930, 1937, 1954, and 1961.

On all these occasions, sectors from the economic and political elite resorted to unconstitutional or undemocratic means to overthrow democratically elected governments that challenged oligarchic interests. Moreover, the dissatisfaction of those elites with the electoral results often led to superficially legal, democratic rupture: through the corrupt political instrumentalization of constitutional tools, the rule of law was subverted to ensure the maintenance of the privileges and the political power of sectors of Brazilian elites. But does this recurring *golpismo* apply to Rousseff's impeachment?

One of the most striking features of the process against Rousseff was the role played by the Judiciary. The procedure was conducted in accordance with a number of controversial decisions imposed by the Supreme Court — the very institution charged with guaranteeing that the rule of law and due process were observed during the process. Nonetheless, on more than one occasion, the Court refused to analyze obvious breaches of the law. For instance, the Court declined to rule on irregularities in the voting in the Brazilian Lower House, which could have led to the annulment of the process (although the impeachment commission had only accepted two of the three accusations presented against Rousseff, the legal piece examined and voted on by the deputies contained all three allegations, which undermined Rousseff's full right of defense).<sup>[2]</sup>

Another branch of the government that played a crucial role in ousting Rousseff in dereliction of their constitutional duty was Congress. During the year before the beginning of the process, the federal deputy Heráclito Fortes (PSB-PI), one of the most enthusiastic proponents of the impeachment, hosted regular dinners at his house to discuss strategies to impeach Rousseff. Among the usual guests were then-senator José Serra (who is now Temer's minister of Foreign Affairs) and former Justice Nelson Jobim, whose contribution, according to Fortes, "was to deepen the technical and legal understanding of the possibilities of the impeachment — and its political making in different scenarios".<sup>[3]</sup> Leaked audios revealed that a "national pact" was being constructed to impeach Rousseff and put Temer in power to stop investigations of corruption.<sup>[4]</sup>

What was the likely major political impetus behind such actions? Avoid prosecution. Bring about regime change. Impose a neoliberal economic model without a democratic mandate. Rousseff's ouster ended 13 years of Workers' Party government, and placed the PMDB (*Partido do Movimento Democrático Brasileiro*; Brazilian Democratic Movement Party) in power for the third time since the redemocratization of the country—two of those times, in fact, by non-electoral means.<sup>[5]</sup> While he was still on a provisional mandate, Temer nominated a new cabinet, eliminated ministries that were traditionally aligned with social and popular demands, and started implementing an economic agenda that have been constantly refuted by the Brazilian people at the ballot box. Now that Temer holds the *de facto* presidency of the country, he is rolling back gains in labor and social security rights, de-nationalizing the exploitation of natural resources and advancing "adjustments" to the economy to accommodate international capital. These changes were (and still are) being met with protests in almost every Brazilian state.

Another important change that was implemented by Temer was the remilitarization of the Brazilian Intelligence Agency (*Agência Brasileira de Inteligência*, ABIN). The agency, which was finally subordinated to a civil command in Rousseff's second term, is now under the supervision of General Sergio Etchegoyen, new chief-minister of the recreated Institutional Security Cabinet (*Gabinete de Segurança Institucional*, GSI). Nominated by Temer, Etchegoyen was the first high-ranking official to openly criticize the investigations that were being led by the National Truth Commission (*Comissão Nacional da Verdade*, CNV), which was scrutinizing the crimes committed by state agents in the civil and military dictatorship years.<sup>[6]</sup> According to *Folha de S. Paulo*, under Etchegoyen's direction, the ABIN "will be used to fulfill the mission that was received by the General" when he was nominated by Temer: to "monitor left-wing movements".<sup>[7]</sup> Etchegoyen's allies in the military ranks said that under his command,

the Brazilian intelligence agency “will conduct an intensive survey of leftist movements, to prevent the government from being taken by surprise by demonstrations such as those of June of 2013.”<sup>[8]</sup> And if Etchegoyen keeps up with his family tradition, the outcome of this impeachment process could be much more tragic than just a forceful change of government. According to Lucas Figueiredo, a journalist from *The Intercept*, “Leo Etchegoyen, the father of GSI’s chief minister, assumed the command of the Rio Grande do Sul State Police shortly after the 1964 coup, during which he invited Dan Mitrione, instructor of torture techniques of the United States government, to give a ‘class’ for members of the State Civil Guard. General Cyro Guedes Etchegoyen, Sergio Etchegoyen’s uncle, has been singled-out as responsible for the House of Death, a clandestine center for torture and elimination of political prisoners in Petrópolis (a city in Rio de Janeiro State) during the worst period of the dictatorship.”<sup>[9]</sup>

As Brazil faces an unconventional coup, the suppression of dissent and dissolution of political parties may also take an unconventional approach. In the past, the criminalization of leftist parties led to imprisonment and disappearances. Today, though, the Temer government seeks to uphold the image of a democracy in the formal sense, and so cannot outlaw political parties. However, it can instead use all the power of the three branches of government together with that of the mainstream media to persecute the PT’s leadership and bar them from the possibility of holding political office. Efforts are already in place to discredit the party, its legacy, and its political program, as well as to promote defections. As far back as last August, for example, Justice Gilmar Mendes, who presides over the Brazilian Electoral Court (*Tribunal Superior Eleitoral*, TSE), demanded that the court initiate the process to remove PT’s registry as a political party.<sup>[10]</sup> Ultimately then, the fight against corruption is being used as a facade behind which the PMDB works to neutralize or eliminate the PT.

The media attention and the swiftness of Brazilian courts are far greater when it comes to Workers’ Party cases than in cases in which prominent members of the opposing parties are involved, and in which evidence of wrongdoing is far more abundant. Tellingly, as the impeachment process began to materialize, there was an upsurge in judicial investigations against the PT, particularly against former President Luiz Inácio Lula da Silva, who not only is the most widely known leader of the party, but also the obvious presidential candidate for any future contest and the leader who still has the highest approval rating in Brazilian politics. Meanwhile, corruption cases against protagonists of the coup, including former deputy, Eduardo Cunha, and Temer, were processed much more slowly and methodically, despite more substantial evidence as to their wrongdoing. The motion to remove PMDB Cunha from office, in fact, began earlier than PT Rousseff’s impeachment process that led to her ouster on August 31.<sup>[11]</sup> Cunha, who helped lead the charge against the President was finally thrown under the bus by some of his closest allies when he was impeached on September 12, a move that helped to support the *golpista* narrative that the impeachment of President Dilma Rousseff was the first move to purge the Brazilian Congress of corruption. This trend is not new; it had already been tried out during the “Mensalão” proceedings where key leaders from the PT, such as José Dirceu, faced questionable trials, and where new evidence released as recently as last week shows that the Federal Police made erroneous interpretations of evidence against the accused.<sup>[12]</sup> The most tangible consequence of this political persecution can be measured in the local elections that were held in October 2, the first elections held across the nation after Rousseff’s impeachment, in which the Workers’ Party suffered a significant decrease in the number of local offices and of its electorate (it is worth noting that it is the first time since the party was created that something like this has happened).<sup>[13]</sup>

Furthermore, this coup’s attempt to eliminate political parties also extends to non-electoral but highly political organizations, such as the Landless Rural Workers Movement (*Movimento dos Trabalhadores Rurais sem Terra*, MST). Although the primary issue raised by this organization is agrarian reform, the MST is a solid political organization of the popular left and has led the fight denouncing the impeachment process as a coup against Brazilian democracy intended to relinquish Brazilian sovereignty to foreign interests.<sup>[14]</sup> The MST, along with other organizations, has played a crucial role in the Popular Brazil Front (Frente Brasil Popular) against the impeachment.<sup>[15]</sup> For the first time in over thirty years of political activity, MST activists are currently in jail in Goiás under legislation normally applied to criminal organizations. Moreover, in the past months there have been violent attacks on MST camps, with the presumed complicity of local authorities.<sup>[16]</sup> The convergence of media, judiciary, and government attacks on the Workers’ Party, the MST, as well as other left-wing organizations, illustrate unconventional tactics under an unconventional coup, but with the purpose of achieving the conventional result of preventing these political organizations to continue existing in their current form, with their current political relevance and membership.

Although these facts demonstrate how Rousseff’s impeachment has all the characteristics of a coup d’état, as proposed by Bobbio, there is still one last argument against the use of the term coup to describe Brazil’s regime change that should be addressed: the argument that Rousseff’s impeachment has followed all legal formalities. According to Pablo Holmes, a professor from the University of Brasilia, “if a judicial procedure is fully observed, but

its conduct, motivations, as well as the judges' persuasion and conviction, do not bear compatible justification with its formal and material conditions, being only the result of a political decision in the interests of a particular group, this will be nothing more than a procedure in appearance." The impeachment of President Dilma Rousseff was "nothing more than a procedure in appearance" because it did not provide for a right to full defense and to an impartial jury, did not prove that an impeachable crime was committed, and was "the result of a political decision in the interests of a particular group."

Rousseff's impeachment process was widely criticized, both internally and internationally, for the lack of observance of due process. On more than one occasion, Rousseff's right to fully exercise her right to a full defense was denied.<sup>[17]</sup> Unable to prove that Rousseff had committed any impeachable crime, Janaína Paschoal, the lawyer who was hired by the Brazilian Social Democracy Party (*Partido da Social Democracia Brasileira*, PSDB) to draft the legal petition that led to the impeachment process, argued in her final statement that Brazilian senators should analyze the matter beyond her initial complaint and look at systemic political choices and decisions. As stated by Holmes, "in a democracy it is not possible that judges or lawmakers decide as they will, without any limitation of form or content; a decision based on particular interests or according to the political-ideological orientation of the defendant is socially unacceptable."<sup>[18]</sup> The allegations against Rousseff were so flimsy that 16 of the 61 senators who voted for her definitive removal decided to maintain Rousseff's political rights.<sup>[19]</sup> Two days after the final vote, the Brazilian Senate passed a law flexibilizing the opening of additional credits, the operation known as "fiscal pedalling" that was the core of the impeachment process against the PT government. Although this decision does not affect Rousseff's case, it does reinforce the fact that the issuing of additional credits is a widespread practice, thus this decision could shield other politicians — such as Temer — from being prosecuted for any similar use of this practice.<sup>[20]</sup> And on September 26, Justice Ricardo Lewandowski, who presided over the procedures in the Senate, said that Rousseff's impeachment was another "stumble in [Brazilian] democracy".<sup>[21]</sup>

## The *Raison d'Être* of the Coup

Rousseff's impeachment is not only a huge blow to Brazilian democracy, but it also highlights how government institutions in Brazil can exceed their constitutional role and manipulate political circumstances. As summarized by Inacio Vieira, another journalist from *The Intercept*, the coup against Rousseff "was conducted on behalf of the interests of business owners and to the detriment of workers. It was for an agenda of impunity, profit, and power that would never be ratified democratically by the Brazilian voting population at the ballot box, and was thus imposed on them under the guise of upholding the law."<sup>[22]</sup>

The political project implemented by the Workers' Party in the last 13 years was perceived not only as threat to the Brazilian political establishment (Lula's election was the first time in over 50 years that a party from the opposition to the ruling party came into power), but also to the privileges of the economic ruling class. Rousseff's impeachment was a carefully planned political scheme to bring down a democratically elected president through illegal and unconstitutional means, and impose an economic and social agenda rejected by the Brazilian people. In shockingly candid remarks to "business and foreign policy leaders" in New York (September 22), [Temer said](#):

"And many months ago, while I was still vice president, we released a document named 'A Bridge to the Future' because we knew it would be impossible for the government to continue on that course. We suggested that the government should adopt the theses presented in that document called 'A Bridge to the Future.' But, as that did not work out, the plan wasn't adopted and a process was established which culminated with me being installed as president of the republic."<sup>[23]</sup>

Since "A Bridge to the Future" is PMDB's economic plan, it appears that Temer is here revealing an ulterior motive behind the "process [that] was established which culminated with me [Temer] being installed as president of the republic".<sup>[24]</sup> As Holmes reminds us, "the distribution of benefits, the occupation of key positions and, above all, the promise to stop the investigations of politicians accused of corruption were the instruments found by the conspirators' groups, all holders of senior positions in the Legislative and the Judiciary, to overthrow the president. [...] This was an ouster of a president concocted by a vice president and a senator who was caught explicitly proposing the ouster of the president as the best solution to limit the investigations against him and his allies."<sup>[25]</sup> A government that came into power in such circumstances does not have either moral or democratic legitimacy.

Notes.

- [1] [http://www.filoczar.com.br/Dicionarios/Dicionario\\_De\\_Politica.pdf](http://www.filoczar.com.br/Dicionarios/Dicionario_De_Politica.pdf), pages 545-7
- [2] “A Definição De Golpe, Por Pablo Holmes.” GGN. Accessed September 28, 2016. <https://jornalgggn.com.br/noticia/a-definicao-de-golpe-por-pablo-holmes>.
- [3] “G-8 Do Impeachment Teve Reuniões Durante Um Ano – Política – Estadão.” Estadão. Accessed September 28, 2016. <http://politica.estadao.com.br/noticias/geral,g-8-do-impeachment-teve-reunioes-durante-um-ano,10000026435>.
- [4] Coha. “Leaked Audios Reveal Plot to Oust Dilma Rousseff.” COHA. 2016. Accessed September 30, 2016. <http://www.coha.org/leaked-audios-reveal-plot-to-oust-dilma-rousseff/>.
- [5] Brito, Adriano. “Com Impeachment, PMDB Assume Presidência Pela 2ª Vez Sem Eleições.” BBC Brasil. Accessed September 30, 2016. <http://www.bbc.com/portuguese/brasil-37237932>.
- [6] Figueiredo, Lucas. “(Re)militarizada, Abin Busca Se Fortalecer Disseminando O Medo Do Terrorismo Nas Olimpíadas.” The Intercept. 2016. Accessed September 29, 2016. <https://theintercept.com/2016/08/16/remilitarizada-abin-busca-se-fortalecer-disseminando-o-medo-do-terrorismo-nas-olimpiadas/>.
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- [8] *ibid.*
- [9] Figueiredo, Lucas. “(Re)militarizada, Abin Busca Se Fortalecer Disseminando O Medo Do Terrorismo Nas Olimpíadas.” The Intercept. 2016. Accessed September 29, 2016. <https://theintercept.com/2016/08/16/remilitarizada-abin-busca-se-fortalecer-disseminando-o-medo-do-terrorismo-nas-olimpiadas/>.
- [10] “Gilmar Mendes Abre Processo Que Pode Cassar Registro Do PT.” Política. 2016. Accessed September 30, 2016. <http://g1.globo.com/politica/noticia/2016/08/gilmar-mendes-abre-processo-que-pode-cassar-registro-do-pt.html>.
- [11] Coha. “Former Right-Wing Brazilian Strongman Eduardo Cunha Seeks Revenge.” COHA. 2016. Accessed September 30, 2016. <http://www.coha.org/former-right-wing-brazilian-strongman-eduardo-cunha-seeks-revenge/>.
- [12] CURITIBA, ESTELITA HASS CARAZZAIDE. “Polícia Federal Errou Ao Identificar Sigla ‘JD’, Em Planilha, Como Dirceu.” – 27/09/2016. Accessed September 30, 2016. <http://www1.folha.uol.com.br/poder/2016/09/1817420-policia-federal-errou-ao-identificar-sigla-jd-em-planilha-como-dirceu.shtml>.
- [13] Castro, Grasielle. “Após Lava Jato E Impeachment, PT Sofre Derrota Expressiva Nas Capitais E Desidratação Nacional.” HuffPost Brasil. 2016. Accessed October 03, 2016. [http://www.brasilpost.com.br/2016/10/03/esvaziamento-pt\\_n\\_12303392.html](http://www.brasilpost.com.br/2016/10/03/esvaziamento-pt_n_12303392.html).
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- [16] Coha. “Criminalization of Social Movements in Brazil.” COHA. 2016. Accessed September 30, 2016. <http://www.coha.org/criminalization-of-social-movements-in-brazil/> and “Terra De Direitos.” Brasil De Fato. Accessed September 30, 2016. <http://terradedireitos.org.br/2016/04/07/brasil-de-fato-emboscada-a-acampamento->

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[17] Justificando. “Julgamento De Impeachment No Senado é Nulo Por Negar Direito De Defesa à Dilma -.” Justificando. 2016. Accessed September 29, 2016. <http://justificando.com/2016/06/06/julgamento-de-impeachment-no-senado-e-nulo-por-negar-direito-de-defesa-a-dilma/>.

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[20] Paulo, IG São. “Após Impeachment, Senado Libera Pedaladas Fiscais.” Economia. 2016. Accessed September 29, 2016. <http://economia.ig.com.br/2016-09-02/lei-orcamento.html> and “Laura Carvalho.” Camisa De Força No Governo Dos Outros é Refresco. 2016. Accessed September 29, 2016.

<http://www1.folha.uol.com.br/colunas/laura-carvalho/2016/09/1811198-camisa-de-forca-no-governo-dos-outros-e-refresco.shtml>.

[21] PAULO, DE SÃO. “Impeachment Foi ‘tropeço Da Democracia’, Diz Lewandowski.” – 29/09/2016. Accessed September 29, 2016.

<http://www1.folha.uol.com.br/poder/2016/09/1817948-impeachment-foi-tropeco-da-democracia-diz-lewandowski.shtml>.

[22] As cited in Vieira, Inacio. “Brazil’s President Michel Temer Says Rousseff Was Impeached for Refusing His Economic Agenda.” The Intercept. 2016. Accessed September 27, 2016.

<https://theintercept.com/2016/09/23/brazils-president-michel-temer-says-rousseff-was-impeached-for-refusing-his-economic-agenda/>. The Intercept provides a video of the original remarks.

[23] *ibid*

[24] *ibid*

[25] “A Definição De Golpe, Por Pablo Holmes.” GGN. Accessed September 29, 2016. <https://jornalggn.com.br/noticia/a-definicao-de-golpe-por-pablo-holmes>.