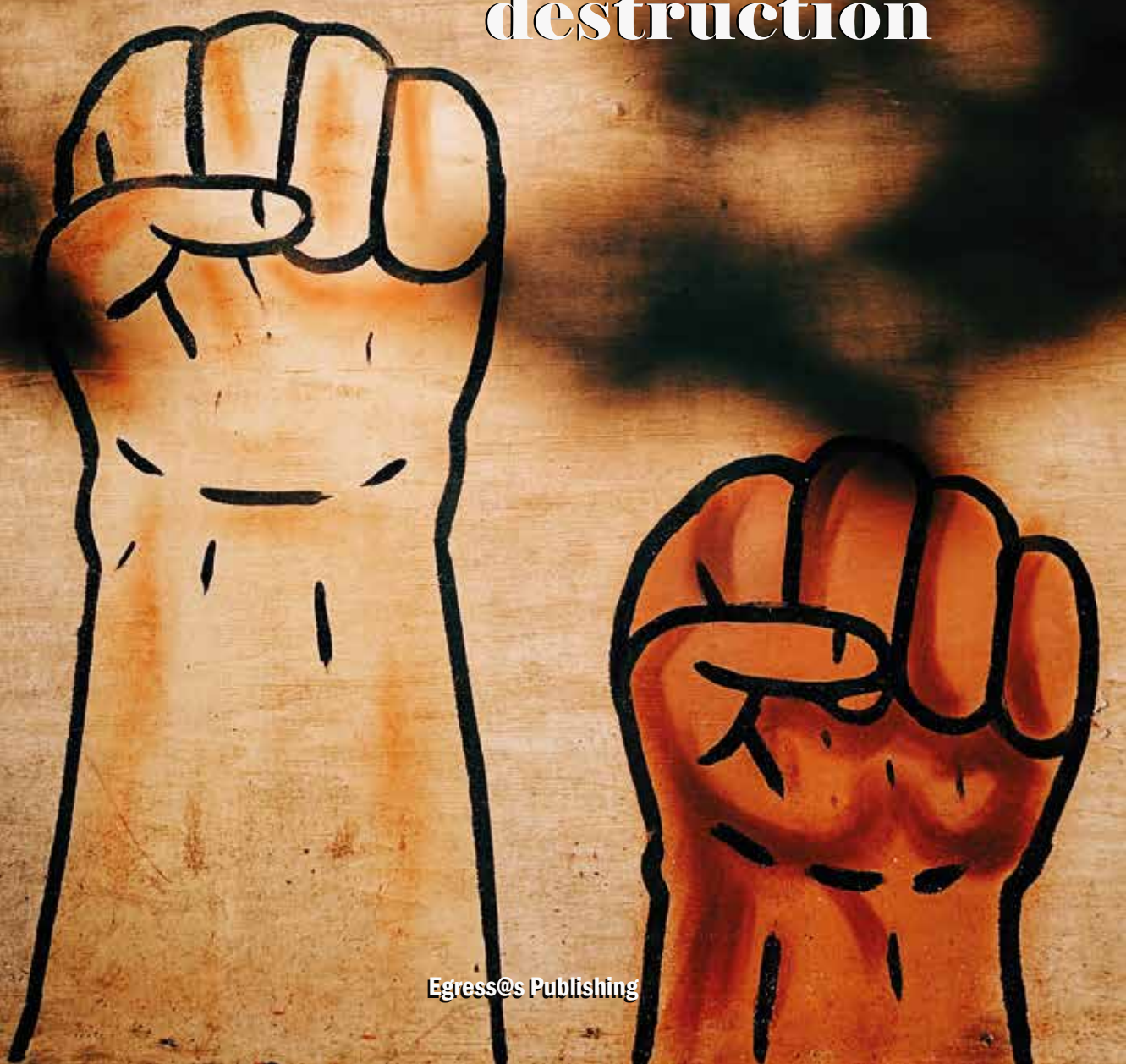
Osmar Pires Martins Junior
Org.

LAWFARE

An elite weapon for democracy destruction



Egress@s Publishing

Osmar Pires Martins Junior
Organizer

LAWFARE
An elite weapon for democracy destruction

Goiânia/GO - Brazil
Egress@s Publishing, 2020

This book is a compilation of lectures and public debate held in the context of a seminar at the Federal University of Goiás State, in Brazil. Authors and co-authors express their rights to opinions and thoughts about different themes.

EGRESS@S
Euro Working Concept Building, 116
Setor Oeste, Goiânia/GO - Brazil
E-mail: egressosdaufg@gmail.com

ISBN
9788540032002 (Portuguese edition)
9788540032002(English edition)

EDITORIAL COORDINATION
Osmar Pires Martins Junior

ENGLISH VERSION
Roberta C. Cruvinel and Fernando F. Ferreira

REVIEW AND PROOFREADING
Fernando F. Ferreira

International Publication Cataloging Data (CIP) GPT / BC / UFG

L417 Lawfare - an elite weapon for democracy destruction. [eletronic resource] / Organizer, Osmar Pires Martins Junior. English version by Roberta Carvalho Cruvinel and Fernando Fagundes Ferreira. – Eletronic data. - Goiânia: Egress@s Publishing, 2020.

418 p.: il.

Needs software for reading
Includes bibliography

ISBN: 9788540032002

1. Lawfare - Fundamental rights. 2. Democracy. 3. Human rights I. Martins Júnior, Osmar Pires. II. Cruvinel, Roberta Carvalho. III. Ferreira, Fernando Fagundes

CDU: 342.7:321.7

Responsible librarian: Enderson Medeiros / CRB1: 2276

Design by Fernando F. Ferreira
Cover photo by Jon Tyson on Unsplash
Back cover photo by Ajibola on Unsplash

CULTURAL SUPPORT

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ACRONYMS

ADUFG Sindicato – Union of Professors of the Federal Universities of Goiás

AGU - Advocacy General of the Union

AJUFE – Association of Federal Judges

ANPR - National Association of Federal Public Prosecutors

CA – Academic Center (entity representing students of a university course)

CC – Civil Code

CDC – Consumer Protection Code (Law 8.078/1990)

CF/1988 – Constitution of the Federative Republic of Brazil, promulgated on 1988

CNJ – National Council of Justice

CNM – National Council of the Judiciary

CNMP – National Council of the Public Prosecutor's Office

CP – Penal Code

CPC – Civil Procedure Code

CPP – Penal Procedure Code

DEM – Democratic Party

DF – Federal District

ECA – Child and Adolescent Statute (Law 8.069/90)

FGV - Getúlio Vargas Foundation

FUNAPE - UFG Research Support Foundation

ICP/ACP - Civil Inquiry and Public Civil Action

IPTSP - Institute of Tropical Pathology and Public Health of UFG

IFES - Federal Institution of Higher Education

LC – Complementary Law

LIA – Administrative Improbity Act (Law 8.429/1992)

LOMAN – Organic Law of the National Judiciary (LC 351/1979)

LOMP – Organic Law of the Public Prosecutor's Office (Law 8,625/1993)

MP/DF – Federal District Public Defenders

MPE – Public Defenders of the the States

MPF – Federal Public Prosecutor's Office

MPM – Military Prosecutor's Office

MPT – Labor Public Prosecutor's Office

MPU – Public Defenders of the Union

OAB - Brazilian Bar Association

PCB – Communist Party of Brazil

PGR – Attorney General's Office

PROIFES Federação – Federation of Teachers' Unions of Higher Education and Basic, Technical and Technological Education Institutions of Brazil

PSDB – Brazilian Social Democracy Party

PT – Workers Party

PUC – Pontifical Catholic University

SINTEGO – Union of Education Workers in the State of Goiás

SINT-IFESgo – Union of IFES Technical-Administrative in the State of Goiás

STF – Supreme Federal Court

STJ – Superior Court of Justice

TAC - Conduct Adjustment Term

TJE – State Court of Justice

TRE – Regional Electoral Court

TRF – Federal Regional Court

TRT - Regional Labor Court

TSE – Superior Electoral Court

TST – Superior Labour Court

UEG – State University of Goiás

UERJ - State University of Rio de Janeiro

UFG – Federal University of Goiás

UFMA – Federal University of Maranhão

UFPR – Federal University of Paraná

UnB – Federal University of Brasilia

UNE – National Union of Students

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Wilson Rocha Fernandes Assis, Attorney of the Republic in Goiás - Federal Public Ministry with expertise in Criminal, Civil and Collective Protection; specialist and master in History at UFG; master in Constitutional Law from the University of Seville / Spain; translator of the work *Global Constitucionalism*, by Bartolomé Clavero, professor of History of Law at the University of Seville; author of eBook Estudos de História de Goiás. 3rd ed. Goiânia: Palavrear, 2018. 172 p.

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TRANSLATORS

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DEDICATION AND ACKNOWLEDGMENTS

Our thanks to the personalities, representatives, and participants of the Lawfare Debate Panel, which took place on September 11 and 12, 2019, at the UFG Campus Events Center in Goiânia-GO, especially to each of the hundreds of people registered in the five panels, composed of professors, academics, civil servants, lawyers and professionals interested in the subjects discussed.

Thanks are due to the governor from the state of Maranhão, Flavio Dino, and his advisory team, on behalf of Ricardo Capelli and Rafael Arrais; the dean Edward Madureira of UFG and vice-chancellor Sandra Mara Chaves; to the general coordinator of the UFG Servers Union (SINT-IFESgo), Fernando César; and to the director of the Faculty of Law at UFG, Bartira Macedo.

Gratitude to Education professionals is acknowledged, in recognition of the struggle they are undertaking against the daily attacks of unprepared ministers, in addition to the budget cuts of the federal and state governments.

Our tribute to the memory of the professor Luiz Carlos Cancellier, former dean of the Federal University of Santa Catarina (UFSC). Our solidarity with the struggle of doctor Elias Rassi Neto, professor at the Institute of Tropical Pathology and Public Health at UFG. They could represent all citizens who are victimized by Lawfare in Brazil.

We also thank those who fight for democracy, which is daily vilified by authoritarian state agents.

Professor Flávio Alves da Silva
President of ADUFG-Union

Professor Nilton Brandão
President of PROIFES-Federation

PREFACE I

It is not just rights and identities that are saturated with the culture of legality. Politics itself, its conflicts, and instruments of affirmation, increasingly tend, everywhere, to migrate to the judiciary. Citizens, governments, and corporations litigating against each other, at the different intersections of the law, in an ever-changing kaleidoscope of coalitions and cleavages.

Democracy was judicialized in Argentina in 2015; in Ecuador, in 2017; and in Brazil, in 2016 and 2018, when the force of the law was deployed to remove its leaders and to decide the national elections; in Bolivia, in 2019, the force of arms imposed a return to the colonial political-judicial system. By these means, political processes are held hostage to the dialectic of law and disorder.

Colonialism and imperialism, too, are subjected to the scales of justice to seek reparation for the damage caused to the victims of history, thus to call to account the violence of the colonized against the colonizer, violence made legal by resort to imperial jurisprudence. On the other hand, kleptocracy makes the use of legal instruments, and the coercion inherent in the law, to commit acts of political erasure, and even annihilation of the weak, the racial despised, the colonized.

This comes to a head, nowadays, in the phenomenon of lawfare, addressed in this book: the action, in a post-colony, or agents of the state who use legalities to violate the person, property, dignity, and right of some or all of its citizens.

Brazil is an infamous case of a Latin American country that, through the strategic use of the law, has backed a reactionary, oppressive regime, in which the exercise of power reduces many people's lives to a necropolitics stripped of legitimacy and ethics.

In this context, new types of physical and legal subjects are created, allowing oligarchs to take advantage of the tendrils of the state to promote their monopolistic economic ends. While I could not participate in the panel last year on which this book is based, I convey to Brazilians, and to all peoples affected by the violence of the law, the hope and belief that, sooner or later, the oppressive, illegal use of legalities will be removed from their lives.

John Comaroff

Professor Harvard University, Cambridge - Massachusetts, USA

PREFACE II

In the years 2015 and 2016, I noticed a certain abnormality with the conception of Lava Jato. Several times, I warned about the abusive arrests decreed in Curitiba, used as preventives to obtain confessions or prize-winning denunciations. The serpent's egg was the legislative proposal, visibly authoritarian, led by the progenitors of Car Wash Operation and contained in the Ten Measures Against Corruption. In particular, they drew my attention to the possibility of using illicit evidence and another that practically ended the habeas corpus institute.

The practices of combating corruption promoted by Car Wash Operation have nothing to do with the Democratic Rule of Law. The accusations of delusion, made with an accused person or a prisoner investigated, are tantamount to torture. The leaks made by public agents of the Task Force violate the law itself, which prohibits disclosure of the content of the accusation before the defendant receives the accusation. Criminally, the allegations were anticipated and reported on television exclusively by the National Journal of the Globo Network.

The big media and Lava Jato put pressure on the Supreme Federal Court (STF) in the second instance of the prison trial and in the judgment of the habeas corpus petition by former President Lula. Media and Lava Jato promoted discrimination between those who applauded the Operation and others (who defended the CF/88).

A festival of abuse in the name of fighting corruption was practiced, like operations Carne Fraca (CONSULTOR JURÍDICO, 2020) - which impacted 30% of the GDP - and Ouvidos Moucos (JORNAL DO COMMÉRCIO, 2019)- which led to the arrest of Professor Luiz Carlos Cancellier de Olivo, dean of the Federal University of Santa Catarina (UFSC), who committed suicide due to this exposure caused by unfair imputation.

The Federal Public Ministry (MPF) is the institution that came out strongest from the constituent process, gained autonomy, and equated itself with the Judiciary. However, without a control agency, the MPF used corruption as a pretext to practice a set of illegalities that, revealed by The Intercept Brasil website and discussed in this book, teaches us that, without control, any institution can become a corrupt organization!

Gilmar Mendes
Supreme Federal Court (STF) Minister

PREFACE III

"This is a breakthrough time,
time of broken men."

The verses of the poet Carlos Drummond de Andrade, referenced to the epigraph, published in 1945, describe, with eloquence, the historical period that we have been living. A scenario in which new forms of war are established within the public space, as we observed in the Lawfare phenomenon. Lawfare means an illegal war, whose warmongering is accomplished by the ruling of state organs with purging behavior against enemies by quelling physical, moral, and ethical targets.

Historically, Lawfare has no delineated borders. Its practice impacts citizens and nations. Indeed, there is a specific focus: targeting political minorities to reinforce the colonial structures of the local and international elites.

Brazil is going through a socio-economic crisis in which the speech of hatred has stifled the plural debate indispensable in any Democracy. We are urged to reaffirm the importance of basic moral values, which, although recognized as fundamental human rights, are flagrantly disrespected. In this scenario of chaos, the dominant social group turns the Law into an instrument to fulfill the objectives of domination.

The Justice legitimacy must be our strategic horizon. Brazilian law, in the lead times (1964 - 1985), reflected a true "law art", which consisted precisely of using legal mechanisms of the military regime itself to face the abusive practices of the State. Sobral Pinto, known as political prisoners`lawyer of the dictatorial political regime defended that our path should always be inspired by the "vocation to struggle for Justice". To safeguard Human Rights!

In times of crisis, irrational and intolerant speeches gain strength. Democracy loses when the plurality of voices and ideas is reduced. Right now, the study of Lawfare is crucial. The expression of its externalities on the social network is in full force. The illustrious Spanish sociologist Manuel Castells says that "the internet changes the paradigms of the relationship between communication and power".

We have faced real digital militias that use fake news to poison politics with hate, fear, and lies. Hate militiamen produce anti-pedagogy of justice, insofar as, through the creation of fictions that distort reality, they aim at the erosion of democratic institutions, the stunting of the democratic practice of justice, the destruction of reputations and links between people. It is a functional, corrosive ignorance, difficult to control.

Lawfare sets up ethical insensitivity in society. In light of this, this work presents articles that contribute to creating qualified discussions to understanding the origin, effects, and modus operandi of Lawfare. The inputs of these reflections will focus on maintaining the free exercise of citizenship, protection of minorities, and the democratic evolution of our homeland.

Finally, I remember the illustrious Brazilian artist Chico Buarque. The authors of the work do not are afraid to hold "the chalice of blood-red wine" that has already claimed the lives of many thinkers critics. The "state of exception" has the potential to transform democracies into totalitarian states. In their productions, they wrote the ideas of lovers of justice and truth as sighs raised in alcoves. In this way, they transmitted to the readers the historical faith that, "yes, tomorrow will be another day!"

Felipe Santa Cruz
President of the Bar Council of Brasil (National OAB)

PRESENTATION

There is something new in the contemporary Brazilian moment that deserves presentation: the establishment of the teacher's minimum wage in the state of Maranhão equivalent to six thousand three hundred and fifty-eight reais, corresponding to one thousand five hundred and twenty-five American dollars, while the national minimum wage is two thousand, eight hundred and eighty-six reais, which is equivalent to six hundred and ninety-two American dollars (according to the currencies exchange of 15 January 2020). It is something that deserves congratulations. Contrary to what the federal government does today, Governor Flávio Dino de Castro e Costa prioritizes Education, Science, and Technology.

It is an honor to present this work that holds Flávio Dino as one of the authors. A person with the credential of an authentic politician, that has a professional and technical background as a federal judge, president of the National Council of Justice, and Association of Federal Judges of Brazil. In Chapter 1, Dino speaks with propriety on the Lawfare phenomenon, which results in hopelessness, recession, and unemployment. We have to strengthen the Democratic Rule of Law to overcome all those conditions.

In this sense, Wilson Rocha, a prosecutor of the Brazilian Republic, in Chapter 2.1, makes one disconcerting alert: in the context of Car Wash Operation, the fight against corruption is anti-humanistic - as it seeks to reach people and not the facts. He argues that the Car Wash Operation highlights a performative discourse that creates the reality it enunciates, which is totally outside any acceptable standard for impartial criminal law. In this sense, the background reality of Car Wash Operation was revealed in Chapter 2.2 by journalist Leandro Demori from The Intercept Brasil.

In the words of the prosecutor and professor of Criminal Law Jacson Zilio (Chapter 3.1), the use of the judicial system to pursue and annihilate the enemy, verified in Brazil, in recent years, materializes and expresses the conservative right-wing thinking of the groups and segments fervently adept at neoliberalism and the state of exception raised to the centrality of power. As the young lawyer Caio Alcântara Pires Martins (Chapter 3.2) explains, the practices of Lawfare has stressed judicial activism and the punitive justice as instruments of setbacks in fundamental rights and guarantees.

In Chapter 4.1, the former public prosecutor and former Minister of Justice Eugênio Aragão, from the height of his experience at the head of the events he narrates and criticizes, shows that the demolition of the Democratic Rule of Law in Brazil is the culmination of a long political process which went through the unconstitutional impeachment of President Dilma Rousseff and the illegal imprisonment of former President Lula.

In Chapter 5, former Senator and prosecutor, Demóstenes Torres, and the councilor Anselmo Pereira, this one in their ninth legislative mandate, attest to the phenomenon addressed in this book as lethal to democracy. They highlight the Lawfare as an instrument of partisan groups who have appropriated organic structures of the Justice System for maintaining themselves in power.

Chapter 6 presents a paradigmatic case study of Lawfare, affecting a respected and dignified professor, Dr. Elias Rassi Neto, from the Institute of Tropical Pathology and Public Health at UFG.

In Chapter 7, the former Senator of the Brazilian Republic and former governor of State of Paraná, Roberto Requião; former federal deputy for São Paulo and former Defense Minister, Aldo Rebelo; the lawyer Clair Flora, altogether with the organizer of the work, Osmar Pires, concludes the debate on the topic in its relevant aspect of national sovereignty, proposing a national movement in defense of democracy and sovereignty to face the dilapidation of Brazilian wealth and the bankruptcy of Brazilian multinational companies, which fates are under siege of foreign interests.

In the closing Chapter, the post-doctorate in the Integrated Graduate Program in Human Rights at UFG, Osmar Pires Martins Junior, presents the general lines of action in defense of the Democratic State of Law, based on case studies, compiling, articulating, and harmonizing the authors' thoughts on Lawfare.

I cannot fail to highlight that Lawfare affects Brazilian universities. Less than two years ago, in 2017, we had the case of the Dean Cancellier, from the Federal University of Santa Catarina (UFSC), who committed suicide due to unjust criminal prosecution by which his reputation was slandered by mass media. A dignified and correct person - those who accompanied him know of the smoothness and trajectory of that great dean who could not bear to see his name tarnished and his honor attacked, especially when he was prevented from entering the university he ran. Over time, it was proven that there was absolutely nothing against him.

The university is the place of discussion to shed light on this situation so serious that hits the country. There is definitely no solution outside of politics and this type of practice (Lawfare) makes professionals feel discouraged from assuming functions such as expenses coordinator. We need and urge to deepen and to accumulate information in order to shorten the bad moment of national life as much as possible.

Hope is the word that motivates everyone. Despite the difficulties of the moment, the Brazilian university and the UFG, in particular, along with other partners in society, managed to undertake the event that gave rise to this book, in addition to countless other initiatives, in which people's faces print joy, signaling the will to triumph over the setback and inaugurate a better democracy.

Professor Edward Madureira Brasil
Dean of the Federal University of Goiás (UFG)

INTRODUCTION

THE FIGHT AGAINST CORRUPTION AND THE DEFENSE OF HUMAN RIGHTS

In the construction of the Democratic Rule of Law, corruption is one of the issues to be faced. It is a problem related to the formation of a participatory, inclusive, transparent, and effective society in reducing impunity and socioeconomic inequality so that all people are equal before the law.

Regardless of political or economic systems and the degree of technical and technological progress, corruption and its effects are felt indistinctly, but in different proportions, in the public and private spheres.

The challenges of combating corruption are greater in dictatorial regimes, impervious to the participation and control of the population, because, in such situations, violations of the democratic state more deeply attack Human Rights, especially in poor and developing countries, which are more dependent or entirely submitted to imperialist powers.

The lack of transparency in public administration, coupled with the lack of republican commitments in private companies, removes significant resources essential to the promotion of well-being and satisfaction of the basic rights of dignified citizenship.

Brazil and its institutions have firm commitments with the effect of public policies to face the evils of corruption, under the UN Convention Against Corruption (UNITED NATIONS, 2004) -

Resolution No. 58, approved by the General Assembly of October 31, 2003, of which Brazil is a signatory.

Meanwhile, the fight against public and private corruption must take place within the framework of the fundamental constitutional principles and guarantees of the Federative Republic of Brazil, set out in art. 1, items I ("national sovereignty"); II ("citizenship"); III ("human dignity"); IV ("social values of work and free enterprise"); V ("political pluralism"); art. 3, items I ("Free, fair and solidary country"); II ("guaranteeing national development"); III ("eradicate poverty and marginalization and reduce socio-regional inequalities"); and in art. 5, items XXXVII ("there will be no court or tribunal of exception"); LIII ("no one will be prosecuted or sentenced except by the competent authority"); LIV ("no one will be deprived of liberty or property without due process"); LV ("litigants, in judicial or administrative proceedings, and defendants, in general, are guaranteed contradictory and ample defense, with the means and resources inherent to it").

Likewise, the anti-corruption policies adopted by the Brazilian State, in addition to constitutional regulation, must be consistent with the provisions of international law, verbi gratia, of art. 8.1 ("Everyone has the right to be heard, with due guarantees and within a reasonable time, by a competent, independent and impartial judge or court, previously established by law") of the American Convention on Human Rights; art. 21.3 ("the application and interpretation of the law, under the terms of this article, shall be compatible with internationally recognized human rights") of the Statute of the International Criminal Court; and art. 14.1 ("all persons are equal

before the courts of justice ... with due guarantees by a competent, independent and impartial court, established by law") of the International Covenant on Civil and Political Rights.

In the face of national and international law, criminal prosecution must develop in strict compliance with due legal process and the broad right of defense.

Therefore, corruption is not combated by corrupting Human Rights. Probity in public administration and private initiative is not to be confused with a moral crusade, nor can it be used for persecution against the politician or the party of any displeasure.

The fight against corruption is carried out through the implementation of public and private policies to promote the dignity of the individual and guarantee fundamental rights.

Professor Helena Esser dos Reis
Coordinator of Integrated Postgraduate Program in Human Rights
(PPGIDH/UFG)

Osmar Pires Martins Junior
Post-doc researcher
(PPGIDH/UFG)

CHAPTER 1

DEMOCRACY DESTRUCTION

LAWFARE AS AN INSTRUMENT OF PERSECUTION

Flávio Dino de Castro e Costa

1.1 The Basic Premisses of the Lawfare's Practices

When dealing with a clearly delimited theme, I recall that this exhibitor has had experience as a public servant for 30 years and three months, 26 of which have been linked to the Federal University of Maranhão, in the exercise of teaching, since 1993. My attention is focused not only on my colleagues in law, but also on professionals from other areas of knowledge.

The topic of Lawfare will be addressed in relation to some basic premises: constitutionalism, fundamental rights, criminal procedure and public administration.

- **First premise**

The first premise that assumes relevance in this debate was formulated by the English political scientist and philosopher Thomas Hobbes, in the 17th century. According to Hobbes, the sovereign is instituted by the political pact. The sovereign is not above the political pact. He is the establisher of that one.

Thus, those who exercise power functions, even in the name of popular sovereignty, do so in a limited way because they are the guardians and protectors of the political pact, which allows them to overcome the state of nature.

The first premise, therefore, is that democratic and legitimate power only exists if it is limited.

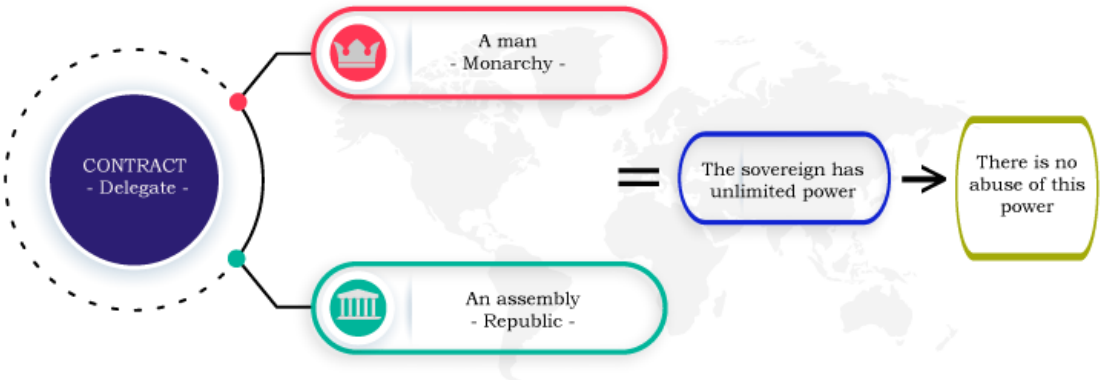

Figure 1. Hobbes and the Contract: to ensure security and peace, Hobbes observes that the individual must renounce his natural condition, giving birth to the Social Contract (HOBBES, 2003)

- **Second premise**

The second premise, since the advent of constitutionalism - a theoretical and practical multi secular movement - establishes that the limit of power is described in normative parameters that we conventionally call the Constitution and the Laws. Therefore, the second premise: to be limited and legitimate, power must be exercised under the Constitution and the Laws.

- **Third premise**

The third premise is that the limits of power seek to protect fundamental rights, among which I highlight two rights that are innate, inherent, and starting points of human existence: Freedom and Innocence. The fundamental rights and guarantees aim to protect the statutes of human existence. Therefore, people are presumably free and presumably innocent, and this has quite obvious legal consequences.

- **Fourth premise**

The fourth premise concerns the role of Criminal Procedure. Now, if Criminal Procedure is exercised in a society of free and presumed innocent people, it should not be governed by a punitive logic. Unlike some who think that Criminal Procedure exists to punish, it exists to protect the fundamental rights to Freedom and Innocence. It is the way to limit the State's right to punish to avoid abuses and excesses. The raw material of the Criminal Procedure is not to imprison but to ensure the freedom of all who live in society.

- **Fifth premise**

The fifth and last premise concerns the leader of the criminal process who, exercising a portion of state sovereignty, must be an agent committed to the rule of law, especially about impartiality, which ensures the judgment of liberty, innocence, or any of the fundamental rights. Only who obeys the limits of the Constitution and the Laws can be a judge, and therefore one must be impartial. In other words, the judge must be equidistant from the parties, he has no a priori or exit commitment to any of the parties, otherwise, he is illegitimate as the guardian of the political pact embodied in the Constitution and the Laws.

The five theoretical premises seem obvious, but at the present juncture, they must be announced as almost revolutionary truths, for they are far from representing a practical consensus in society. And I don't refer only to legal professionals. Very broadly, social sectors are called to other perspectives than this generous patrimony of civilization built by political liberalism a few centuries ago.

1.2 The Lawfare Concept

The second point to be addressed is the very concept of Lawfare. Not by chance, it is a military concept like much of the terminology we use in contemporary political science. The first to coin the term was a general of the United States who, in a text on the threshold of the 21st Century, addressed the fact that, in some circumstances, the right to legality is used as a substitute for military means to achieve objective operational results related to war.

Of course, regarding Lawfare's original concept, there is a long context. On the other hand, to emphasize, it is an expression of military origin, recent from the historical point of view, of substitution of an open war with military means and the use of force by subliminal and surreptitious mechanisms of appropriation of the instrumental of Law to achieve particular objectives.

The war is governed between allies and enemies by logic. The war itself aims at demarking, delimiting, and destroying the chosen enemy. So, it is clear that the appropriation of legal instruments for operational use, in substitution for the traditional means of war, also obeys this logic of identifying existing enemies in society. The contemporary aspects of Lawfare recycle age-old practices. It is a concept that, unfortunately, is applied with great precision, in face of facts that occurred in the recent practice of Brazilian courts and other Latin america countries.

- **Selective scandal factory**

The practices of Lawfare have two main ways at the same time. The first way to exercise Lawfare is to fabricate corruption scandals, from the civilization of the spectacle, so that it is possible to create a network of antipathy to a determined political opponent.

The second form of Lawfare is the selectivity of denunciation. The selectiveness makes that strictly equal practices are labeled differently according to the author of these same practices. Corporate campaign financing is a good example. When there was corporate financing of campaigns that, in good time, ceased to exist, there was naturally a race, from time to time, from political agents to companies in search of financing.

We have cases in Brazil where, in the same election, political agents went to the same companies, obtained equivalent resources, and today some of these political agents respond to criminal lawsuits due to the receipt of this money and others, despite strictly identical circumstances, do not respond to any criminal proceeding.

It is as if there were in this hypothetical corporation drawers in which a given company manager opened the drawer, took the dirty money, and gave it to a determined politician. At another moment, this same manager opened another drawer from the file, took out the equivalent amount, gave it to another politician but now this cash was no longer dirty, was clean and smelly, and so it didn't lead to criminal prosecution.

We saw this same absurd logic concerning paid lectures, brought to the knowledge of the great Brazilian public in the context of Car Wash Operation. Some public agents are indicted, accused, and convicted for the practice of kickbacks giving lectures, while other public agents giving paid lectures, in similar conditions, to the same private companies, are not incriminated. Selectivity, therefore, is an anti-isonomic way of exercising Lawfare.

1.3 Material Basis

What made Lawfare in Brazil find such fertile territory to be sown and widely practiced? Corruption is a real, objective, and serious problem in Brazil. Unfortunately, for a long time, there have been illegal practices in which public resources are used for ends that are not discriminated against in law. Lawfare has found space for its implementation, disseminated in Brazil, is the attrition of politics, associated with the crisis of representation. Lawfare has found room for its expansion in our country because of a representative crisis, the political one. Its expression sounds in the statement "so-and-sos do not represent me," despite their election.

• Corruption

Lawfare has found material basis to fructify so widely in Brazil because of the complex problem of corruption but is essential to point out that this corruption is not only of politics or politicians. The ideological appropriation of corruption as a theme shows the politicians as bad wolves and the companies as little red hats submitted to tyranny or persecution of those. One of the by-products of this vision is that the state or public service is the place of inefficiency and corruption, and the market is the place of efficiency and virtue.

We must recognize where and when this happened. For example, in the United States, during the great crisis of 2008, when Barack Obama - that is, the State - saved the American economy, frauds had been produced, sanctified, and canonized by some as a space of purity.

Thus, corruption must be controlled, modulated, and understood in its proper terms. Nor is there a negationist posture in the sense of saying that "just as the earth is flat, corruption does not exist", nor is there a posture of interpreting it, appreciating it, and shading it in other ways that end up hiding others types of corruption.

• Representative crisis

Another way in which lawfare finds space for its widespread implementation in Brazil is the erosion of the policy associated with the representative crisis. As a federal judge, for twelve years, seven of which were in Brasilia, ceded by the Federal University of Maranhão - UFMA to the University of Brasilia – UnB-DF. The law courses, for a long time, were great trainers of political executives. There was a class of 30 to 40 students, and I asked them who wanted to be a lawyer? Two graduates raised their hands. Who wanted to be a delegate? Only two. Promoter? Then it was more people. Judge? Then it was a "crowd".

The question is: who would want to be a politician? Nobody! A graduate student, looking surprised, said: "Professor, I'm a family girl". This happened in 2002 and 2003, and it was said in jest, obviously, but we know that ironies also serve to reveal the truth about one's conception of the world.

There is a living memory of the suffering of this author's mother, now 81 years old, when, after 12 years in the Federal Magistracy, I said to her: "Mama, I had an idea. She asked, "What is it, my son? He answered: "I'm going to be a candidate for federal deputy. She looked in amazement and said to him: "You have a habit of playing with serious things." He said: "Mom, I'm not kidding."

And now and then she says, "My son, you're the one who was on the sidewalk in the shade, saw an imbroglio on the other side and crossed the street into the mess, you should have stayed on your sidewalk. Of course, she thinks more or less like 90% of her colleagues' mothers who work in the law field. And this stems from the fact that, regrettably, politics has lost social prestige, lost focus on the existential dreams of large segments of society.

This politics erosion has produced an abyssal crisis of representation, through which there is almost a detachment between representatives and those represented as if it were a stay in practice separate from society as a whole, and that from time to time it meets again, and sometimes with big ill will, in election periods.

• Hopelessness, recession, and unemployment

The third reason for the practice of Lawfare in Brazil is associated with the hopelessness brought, above all, by the economic crisis, recession, and unemployment, which made many people associate one thing with another.

For example, the fiscal crisis in the state of Rio de Janeiro, which has multiple determinations. If you do a survey in the middle of Candelária Square or on Rio Branco Avenue, in any public address in Rio de Janeiro, and ask: "What is the main cause of the fiscal crisis in Rio de Janeiro? Any citizen will answer: "Corruption, which has ruined our state"!

Corruption may have even helped in the carioca crisis, but so many other factors contributed to the fiscal crisis existing not only in Rio de Janeiro but in other states of the Brazilian Federation. So the economic crisis makes ade a lot of skepticism and hopelessness about politics.

Now, add these spices and put them in a pot, and you will find a powerful desire for superheroes to emerge. When they wear a cape, all the better! If they don't have a Superman cape, a toga will fit the character. There are Brazilian Federal Magistrates, well known, who because they are wearing a cape, are supposed to be these superheroes who would redeem society from all its evils.

• Criminal Law of the Enemy

The criminal law of the enemy is the "greatest success of all times of the last week" parodying the album "The best band of all times of the last week", released in 2005 by the rock band Titãs. Why is the enemy's Criminal Law the "greatest success"? In the United States, who are the enemies? The immigrants. Note the asymmetry of hegemonic political discourse in the United States and what is happening in Brazil. This asymmetrical war is almost an imitation effect, with the difference of a few days between one thing and another.

The criminal law of the enemy entered Brazil very strongly, because of this fertile soil mentioned earlier, without passing through "epistemological customs" and, perhaps, for this reason, instituted in the country to its umpteenth power of anti-democratic lethality. There, immigrants, deprived of the right, separated from their children, children prisoners, in a kind of voucher for the protection of the purity of American society. In other countries, the criminal law of the enemy is related to the fight against the narcos, It has already happened with the Jews.

In Brazil, what resulted in the sowing of Lawfare? It resulted in the Criminal Law of the enemy applied to the selective combat against the corrupt, identified within political segments. All the evils on the land would be solved by confronting these political segments. For this, regrettably, politics has lost social prestige, lost focus on the existential dreams of society.

This politics erosion has produced an abyssal crisis of representation, through which there is almost a detachment between representatives and those represented as if it were a stay in practice separate from society as a whole, and that from time to time it meets again, and sometimes with big ill will, in election periods.

1.4 Lawfare in Brazil

How did Lawfare come about? What is its tangibility? What are the tools that we can recognize in Lawfare practices in Brazil?

There are five fundamental instruments or practices that demonstrate Lawfare in Brazil.

- **Partial Judge**

The first instrument of Lawfare is the partial judge who engages in cases. According to the norm, a judge does not fight because he has no opponent. A judge must remain equidistant from the parties.

Let's imagine a soccer referee who advises one team and fights the other in a lively match. The referee says: "I am partial because I am fighting one team and advising the other," Probably, the soccer referee should be expelled from the championship.

In Brazil, there is a kind of naturalization of the judge partiality. It concerns the idea of the judge engaged in causes. A judge only must comply with the Constitution and the Laws. Through the issuance of motivated and reasoned decisions, a judge acts according to abstract normative parameters launched by those who have the legitimacy to do so.

The Criminal Procedure Code (CPP in Portuguese) approved in Brazil in 1941 clearly states that the judge who advises one of the parties is a suspect. The CPP also declares, with all the letters, almost 100 years ago, that the sentence handed down by a suspect judge is null and void (Art. 564, item I of the CPP).

• Abusive use of legal institutes

The second instrument of Lawfare practice in Brazil refers to the abusive use of legitimate institutes. Everyone knows the difference between use and abuse; it is an intuitive, practical difference in everyday life.

Some legal institutes such as coercive conduct, preventive imprisonment, plea bargaining, and leniency agreements may be the object of use or abuse. What happened in Brazil was the deformation, by abuse, of legal institutes for Lawfare goals.

• Coercion of accused persons

The institute of "coercive conduct" regulated in arts. 218 and 260 of the CPP establish that a person, whether a witness or accused, can be coercively conducted if, subpoenaed, they refuse to testify. Hundreds of coercive conducts have taken place in Brazil without a prior subpoena. People woke up with the Federal Police in their homes at six o'clock in the morning, dragging them to testify, without even knowing about the accusation.

"But am I being charged?" Franz Kafka reminds us in The Process (KAFKA, 2009). Someone asks the torturer about a citizen under torture, "What is the accusation over him? The torturer answers: "I don't know. He hasn't said anything yet."

Coercive driving worked like this until the Supreme Federal Court (STF in Portuguese) stated that the law is valid! As happened with the late Dean Cancellier of the UFSC, hundreds of people were conducted by force, and evidence illegally obtained was used in processes that are still running, despite the decision of the STF that these coercive conducts violated the Code of Criminal Procedure.

• Preventive Detention

Preventive custody is an instrument abusively used for Lawfare purposes, despite its regulation in articles 311 to 316 of the CPP. During the period in which the perpetrator was a criminal judge, it is complicated to decree preventive custody. In the past - 15 years ago - it was hard to ask for and even more difficult to sustain, preventive imprisonment. And when the judge authorized it, there was desperation because jurisprudence determined the period of 81 days for the judge to finish the process between this time, on the other hand, pre-trial detention became illegal.

Like the pre-Socratic story that one never bathes twice in the waters of the same river, when bathing again in the river of Criminal Law Procedures, one discovers that the river was another. Everything changed. There was no more time for preventive imprisonment, because of another abuse, this time, the plea bargaining.

• Plea bargaining and the leniency agreement

The plea bargaining applied to individuals and the corresponding leniency agreement applied to legal entities are positive institutes in Brazilian law, often distorted today (see Chapter 6.3 below). The plea bargaining report (articles 3, I, 4 and 6 of Law 12.850/2013) has two assumptions:

i) The first assumption is that the prosecutor alone does not produce sufficient evidence to condemn anyone. For a reason, the defendant has a personal interest of his own. He has not only the right but also the duty to protect himself. In other words, the evidence that emerges from the plea bargaining, alone, cannot condemn anyone. However, there have been many convictions in Brazil-based exclusively on the cooperation of the accused.

ii) The second assumption is that plea bargaining must be voluntary because of the abusive use of pre-trial detention to force the offender to denounce. For example, it happens to the point of decreeing the daughter's pre-trial detention to force her father hand to plea bargaining.

In Brazil, the abuse of positive institutes brings to light the reasons why the inventor of the guillotine died guillotined. All those doctrinally modern legal institutes have been sanctioned by former Presidents Lula and Dilma. Unfortunately, in practice, such instruments have been misapplied or abused, distorting the actual legal institutes.

• Selective Leaks

The third instrument of Lawfare practice is the selective leaks of procedural acts and tests, linked to the logic of the civilization of the spectacle, scheduled by media, according to the time of the television news and political agenda - two or three days before an election, for example - to ensure the political impact, leakage of some data and not others.

The lethality of this instrument of Lawfare took place in the episode in which former President Lula was prevented from assuming the position of Chief of Staff of former President Dilma government.

• Dehumanization of the accused

The fourth way in which Lawfare makes explicit the misuse of positive legal institutes, already mentioned - coercive conduction, preventive detention, and plea bargaining - is through the dehumanization of the accused. Lawfare reduces the human being to a mere thing to be destroyed, treated with contempt and, therefore,

called by the nickname, which does not have its pains respected, because after all, he is not a person, he is a thing or, at most, the enemy to be annihilated, with total contempt for fundamental rights.

In hundreds of hearings listening to thousands of people, there is no memory of ever having to shout, humiliate someone to exercise the authority of a judge in a courtroom, because those who have the authority don't have to humiliate anyone to ensure it. Today, as some judges and judges behave courteously to some and brutally and inhumanely to others, they eloquently reveal their antipathies that cognitively contaminate their ability to judge fairly.

Aristotle taught some millennia ago that no one is a good judge in his case, and the closer he gets to the object to be judged, the worse judge he is. If the judge has such a deep feeling of antipathy, personal or ideological, the law commands him to decline from that trial, declaring suspicion as an intimate forum for not meeting the subjective conditions to judge the cause.

• Spectacular Criminal Process

The fifth practical way in which Lawfare is exercised is through the spectacular handling of criminal proceedings, which reveals itself in various ways. Examples:

i) Judge who condemns is a pop star, or a judge who acquits cannot walk on the street;

ii) Judge who condemns is against impunity, or a judge who acquits is suspected of being a partner of corruption;

iii) Consecutively, the higher the penalty, the better a judge is and the more deserving of society's applause, but if he applies the

penalty according to the law, he is a weak judge, without courage or is involved in something wrong.

The above oppositions are not only in the judicial world, there is a social background that drives and feeds these visions. The judge or member of the Public Ministry who seeks popularity and dreams of running for election, who begins to govern himself according to this logic of seeking extra-procedural, non-legal objectives, will therefore incur the loss of impartiality.

1.5 Conclusions

The conclusions to be drawn from the above are the following.

• Fight against corruption

The first conclusion is that the fight against corruption must continue. As mentioned, in 30 years of working as a public servant, the author has not been convicted of any crime against the public administration, until today, thank God.

Therefore, it can be said that respect for the Constitution and the Laws and, at the same time, the defense of democratic normality, does not mean protecting or being lenient with practices of embezzlement of public money.

• Annulment of convictions

The second conclusion is that all convictions resulting from Lawfare must be overturned. It is the law that rules, not a political or ideological option. They must be overturned so that there may be new judgments, yes, according to the law.

It is very important to understand this modulation. It is not a matter of defending A or B's innocence aprioristically. It is about defending, broadly and firmly, the right to a fair trial, recognizing, in this way, that where there is Lawfare, there is no justice intrinsic to legitimate decisions.

• **Ethics of legality**

The third conclusion is that it is up to the democrats to protect the ethics of legality. The goals do not justify the means, and how difficult it has been to sustain this. For these reasons, there are self-appointed operators of law who call the procedural safeguards of filigree, mere details. These details are in the essence of the sovereign's power limitation.

Thus the ethics of legality and fundamental rights are an essential factor for a civilized society that seeks to cultivate pacifist values, since, as is written in the Book of Isaiah in the Bible seven centuries before Christ: "Peace is the fruit of justice" (Is 32:17). A society that has no justice, is not a society at peace!

• **De-partitioning and de-ideologizing**

The fourth conclusion is that the debate on Lawfare must be dismantled and de-ideologized as much as possible. It refers to ideology in the strict sense of the word, not to the ideological debate about world conceptions, but partisan ideology. We must find a way to demonstrate that the defense of the Constitution and the legality of procedural criminal law are not in favor of one or the other person. It is a cause of society.

To disarm this trap is the knot. If the issues justify the goals; if everything is valid; if it is necessary to put an end to the whimsies, then

why is there no market for the sale of human organs? All you have to do is look in the classifieds, and you will find someone selling a kidney so eagerly awaited to transplant into someone in desperate need.

The writer, a hypothetical person so ardently in favor of Car Wash Operation and its methods, in a somewhat confusing way, will answer: "No, you can't because the law forbids it." Bingo! Exactly, there is an ethical limit; this is proof that the ends do not justify the means. It is the effects of the Lex Mater filigree that ensure the fundamental rights, limiting the power of the sovereign.

And one cannot agree with police lethality, which punishes, without process, especially the poorest and blackest in the peripheries of the cities. Do the ends justify the means? Hanna Arendt narrates the testimony of Adolf Eichmann at the trial in Jerusalem for war crimes during the Nazi period. According to the author, in the book quoted, Eichmann was a logistician, that his job was to plan flows of trains and not to question whether people would go inside the trains to die in concentration camps, that his goal was to get the trains to arrive on time with their cargo unharmed.

Even those who are delighted with the easy speech of hatred have difficulty accepting Eichmann's testimony. The trivialization of evil is at the root of the discourse of all things. He concludes by saying that it is neither simple nor easy to conquer the democratic challenge, because the present-day goes by as in the verses of the song Roda Viva, by Chico Buarque, ipsis litteris:

[...] We go against the current
Until I can't resist
On the boat's return, you feel
How much it stopped complying [...]

What's around the boat? It is worth to remember Homer's Odyssey, which three thousand years ago described the saga of Ulysses. The navigator had to pass through an island and resist the siren song. What did he do? He put wax in the sailors' ears so that they wouldn't hear the siren's song and he tied himself to the mast of the boat.

Both this part of society and the University Community and other progressive segments - need to be a little Ulysses and relieve us of the responsibility of driving the boat during navigation in turbid and unsafe waters. We can only tie ourselves firmly to the mast and pass through the danger of the siren song, which is all that we have already described elsewhere - the trivialization of evil, the valley-all, the perverse discourse of hatred, the imposition of fear, persecution.

And what is our mast? From the formal point of view, it is the Constitution, a solid mast that we must keep. Many died so that we would have a democratic Constitution in Brazil.

The other mast is the heart because only rationality does not sustain us in stormy times. I am a Roman Catholic Apostolic Christian - call this metaphysical category at the will of each reader - but it has to exist because it is the mainmast, the guarantee that the boat will arrive in good time. We have to affirm absolute certainty of this safe destiny, because "in the march of history, better late than never, will open the paths through which the caravans of freedom and hope will pass," as a great statesman called Salvador Allende said, who exactly today, on September, 11, was a victim of one Military Coup in Chile. Long live Democracy! Long live, Brazil!

1.6 Interactive Debate

Since 2013, Brazilian society has suffered many setbacks in terms of Social and Political Rights. The current power system has consolidated, in the political field, a misfortune at the model society organization - a world-conception and democratic civilization, of the development of Social Justice, of Human Rights.

The political forces profiled from the progressive ideology have fought several battles since the last presidential election in 2014. Unfortunately, we have lost the disputes. We even had some success with hashtags[1] on the Internet (#ForaTemer, #EleNão, and others), but it seems that it is not enough. If it is true what old Marx said in the Communist Party Manifesto , that everything that is solid breaks down in the air, imagine what not even concrete is, like the hashtags. The democratic forces need to alter material relations, in addition to disputing hashtags. It is necessary to combine some paths, talents, and feelings to change the correlation of forces in progressive beliefs.

- **How to break a stigma?**

In this sense, answering the question from the lawyer Nara Bueno e Lopes[2], regarding the stigma of "the communist eater of little kids", she obstinately dedicates herself to the government of Maranhão, to feeding the people. The data from the socioeconomic reality show that

1 Hashtags are formed by the keyword of the subject preceded by the symbol hashtag (#) that become hyperlinks within the world wide web, indexable by Internet search engines.

2 Nara Vilas Boas M. Bueno e Lopes, lawyer, a specialist in Electoral Law and Process - FD/UFG and Master in Human Rights - PPGIDH/UFG, verbis: "[...] I recently read a book by Acir Lenharo* that says about the sacralization of politics. I wanted to know a little more about you about what you think of this junction of politics and religion, of this tendency that we have, and also of this new-old myth of 'communist eater of children' that is haunting our politics and society. [...]"

the people of Maranhão started to eat a lot of rice, beans, mandioca flour. It is an exhausting work at the head of the government.

Concerning national politics, we remain trying to recompose the possible unity of the political and ideological field with a democratic profile, because this is a precondition for responding to the anxieties of all Brazilians. If would be frozen the correlation of forces existing in the fateful Sunday session that approved the opening of the impeachment by the House of Representatives on April 17, 2006, we are going to lose all the political battles we fight. They formed a majority against the democratic field, and this is a crucial issue today for a mathematical reason.

• How to break the insulation?

In São Paulo, a political campaign pulled by a young sociologist, affiliated to the PSDB, with other affiliates of 15 or 16 parties - PT, PSB, PCdoB, PDT, is mentioned. Until then, the militants of the left-wing political camp were happy, but now others are not exactly from that camp, and some think that it is adverse. It is wrong because there will only be a democratic advance, prof. Marconi Moura de Lima[3] questions, if, in practice, we manage to break a power system constituted against the progressive ideology. That is the premise that requires the utmost dedication of the democrats.

3 Marconi Moura de Lima, professor at UEG de Campos Belos, graduated in Letters from UnB, post-graduated in Public Law from Faculdade de Direito Prof. Damásio de Jesus, verbis: "[...] Governor, your speeches are interesting to generate hope, we live a moment of civilization misfortune out of the common chancel by Lawfare. My question to you is: how can we put an end to all this? Will the abuse of authority law sanctioned with various vetoes be hope? Finally, I ask why the good ones, who are in CNJ, MP, and other institutions, do not do the right thing: is it out of fear, cowardice? If fear, fear of whom, of the army, of the great media? Or is it connivance of a cultural form of caste maintenance? [...]"

On the Internet, there is the debate of the purity championship, of attacks and conflicts within the progressive currents themselves. It does not lead to the resumption of society hegemony. The question is what is the place of the center, understood as the locus of the average thought of society, of men and women who need collective transportation for daily locomotion and who do not follow politics, except eventually by the National Journal. These are the people the progressive camp has lost to the extremist conservative one, to the Criminal Law logic of the enemy, which is in line with the Lawfare practices.

• Patience and revolutionary method: is it possible?

Mariana Falone[4] is very correct: we have to win people's hearts. For this, patience must be combined with the revolutionary political method.

Lucas Cardoso[5] questions the destruction of bourgeois politics. At this point in national life, there is no glimpse of maturity for an insurrectionary path. Reality demands that we dialogue and join forces to consolidate democracy. The broad political front

4 Mariana Falone, student of Civil Engineering, *verbis*: "[...] I had the opportunity to listen to you recently at the party convention [PCdoB]. My mother is a teacher. I am surprised by the investments in Education made by your management in the government of Maranhão. My question is: how can we connect our hearts to the hearts of the people, of the underprivileged, of each student who will have his free pass and his scholarship cut? How do you do what you do in Maranhão? For us, who are from outside, what you do is a revolution! How can we do it here? [...]"

5 Lucas Cardoso de Oliveira, Law student, director of CAXIM and DCE/UFG, verbis: "[...] You say that the law is like Ulysses, the Greek, who puts wax in the ears of others and with himself he ties himself to the mast of the ship so that only he can hear the song of the sirens. So, if the right is like Ulysses, the structure of the right is one of domination, of being better than others, of having the privilege of hearing which voice they want to hear. Today we have a petty judiciary, the son of a dominant and cruel class. Would be the time for us to think about deoxygenating or even destroying this bourgeois justice? [...]"

in Maranhão State's government, formed by an alliance with 16 parties - from the PCdoB and PT to the DEM - has defeated a secular oligarchy. It is developing and has worked for several reasons, which do not need to be said, but which are more or less self-demonstrable. We do not deny the legitimacy of those who defend the revolutionary perspective, but its worth emphasizing its unfeasibility.

- **What is the solution? Resistance and struggle!**

The way out of the crisis that we discussed, in response to Professor Bia de Lima[6], is to continue and improve the practice historically carried out by the Democratic field - organization, dialogue with the population, the union base, and organizations of resistance and struggle. The State and the Judiciary are heterogeneous, and we cannot create a blockade in the institutions against their position, because if this happens we will be mobilizing material force against the belief system and progressive ideology. Many times the left falls for this mistake. A different attitude is required, although it is natural that pessimism and skepticism are part of all this.

6 Professor Bia de Lima, president of the Union of Workers in Education in the State of Goiás (SINTEGO), verbis: "[...] While you were talking, governor, I was thinking about the experience I had last Monday, September 9, 2019. I had a hearing with the governor of Goiás. All the powers were represented by the presidents of the Legislative Assembly (ALEGO), the Court of Auditors (TCE), the vice-president of the Court of Justice (TJ-GO) with another judge, the attorney general of Justice (MPE), several secretaries, and deputies. All of them were there to convince Bia that the government can reduce the resources allocated to education. And then I kept thinking - 'pull yourself together, I'll appeal to whom', because the MP-GO and the TCE were there, who should watch over the application of the Constitution, saying to the governor - 'you can disregard the Constitution, there's no problem in reducing the percentage of Education'. Everyone unanimously agreed. I concluded, in mine thinking that, in that case, I was the enemy! In such situations how can we protect ourselves, since the objective, the focus is precisely the person who is on the other side of the margin? How can we believe in republican institutions if they are carried away by this current that follows the same path of arming with thumb and forefinger to destroy the enemy? [...]"

What is the solution? Look, you can believe that we are better today than eight months ago, mainly because we accomplished a stage. So we created the objective conditions to get out of the dramatic isolation we were in, in a logic of extermination and crushing. There is an institutional and differentiated game going on in Brazil that can lead to better results, for example, in the Supreme Federal Court (STF) itself. For some time, the STF refused to examine any Car Wash Operation decision, it was almost a dogma of faith, something canonical, to confirm Car Wash Operation's sentences.

Therefore, the path is the debate, the battle of ideas, and the institutional game. Like the author, many are the parents who have young children up to 29 years old and debate politics together. Eventually, the son says: - So what?

It is a complex intergenerational debate, but parents have already experienced difficult moments in Brazilian life. Then the son contests: - As difficult as this one ever. The father says: - It's hard because it's your moment, but ask who's older what they think. This tragic and terrible moment that Brazil is going through is a hiatus, a break in this civilization construction that we have accomplished in the last decades, crowned by the Citizen Constitution of 1988.

• Is the dialogue between the different important?

In this way, we argue according to the questioning of the biologist Adriano Knupp[7] , according to which the dialogue between the difference is fundamental, especially in the national, democratic,

7 Adriano Knupp, biologist, post-graduated in Biology at UFRRJ, *verbis*: "[...] In this hybrid war, that lawfare is one of the tools, how to empathize again and talk to those of opposite thoughts and how society should face the STF, which is engaged to the interests of the historically dominant elite? [...]"

and popular field. He disbelieves any proposal in this field that does not respect labor and Lulism (voters of Lula da Silva - former President of Brazil). Such fields are not antithetical and antinomical. They are just different, but they correspond to the historical periods in which the National State advanced in the direction of providing and respecting rights.

Does that mean they are perfect hopes? For those who have faith, as has been said elsewhere, the only perfection exists in the kingdom of heaven. We must build the conditions to fight for a better world, here on earth, because, sometimes, leaders fight too much and unnecessarily, and stop sowing hope. The fight is fought in society, if you try to do it, back to being a judge of a Special Court, by seeking conciliation between the parties.

For example, the fight for LULA LIVRE is not a petista (partisan of the political workers' party PT). It is a democratic cause. The more petista it is, the more wrong it is because it promotes isolation. Everyone should understand that it is not the person of Lula, it can be anyone, as in the case of the condominium fight between the son of a civil condominium member and the son of a police condominium member, imagine who will get the better of him. Remember The Name Of The Rose

The lawyer Igor Escher[8] said he saw, at the Federal Forum of Brasília, the photo of this exhibitor, laughing, along with other judges. An inherent formation derives it, but also from the influence

8 Igor Escher Pires Martins, lawyer, verbis: "[...] On a trip to Brasília, I went to the Federal Justice Forum, and in the photo hanging on the wall of the office, you are the only judge who was smiling, the others all serious, I found it interesting. In Alvaro Pires' work (PIRES, 2004) there is a critique of something that happens a lot in Brazil regarding judges hearing the 'clamor of voices coming from the streets. The author criticized it in Canada in the 1990s, where they toughened the laws to meet the 'voice of the streets'. I would like to know what you think about it? [...]"

of reading The Name of the Rose, by Umberto Eco. At the end of the book, the author write about the role of laughter in the deconstruction of power. Sometimes laughter plays a role in politics.

Some unpleasant meetings that state governors have to go to, including the author of these lines, are accompanied in daily life. In them, usually, the unpleasant somber people have anger. Others are calm, laughing. Remember "The name of the Rose".

• Is it possible to connect the ruler's and people's hearts?

The point raised by Mathias Zuza[9] is important. The rules of the game have changed with the game in progress - an example, tax rides practiced by all rulers, indistinctly until 2016, became a crime of responsibility to remove President Dilma and were again practiced by the President Michel Temer that replaced the deposed President. We have to defend our legal and constitutional assets, which form the basic rule of a democratic society.

And, finally, the question posed by the lawyer Bruno Pena[10] brings

9 Mathias Zuza, student of forest engineering/UFG, president of the Academic Center - CA, verbis: "[...] I am a layman, I am not going to get into legal terms, but I think that in the tangle of things that are happening in Brazil, one person talked about religion here. It's very good to use analogies to understand and explain this process. I like soccer a lot, I'm passionate about soccer. Using the analogy with this sport, I would say that the citizens have been playing within known rules of the game, but since 2016 the rules have changed with the game in progress. We have an election that if I win or if I lose, it is not auditable. We have a leak that, if it interferes with impeachment it's fair, but if it's a journalist who leaks a news item in the exercise of his profession, that's not fair. My question is: how can we get back to having a rule that is valid for everyone who participates in the game? [...]"

10 Bruno Pena, lawyer, post-graduated in Law from PUC-GO, verbis: "[...] Professor Flavio Dino, what would be the tools for us to prevent lawfare? Because, according to the Federal Constitution and the lesson of the late lawyer Sobral Pinto, all power emanates from the people. However, the Judiciary is the only unelected power. The

us back to the considerations that come from the thought of the President of China Xi Jinping. Asked how to govern a continental country inhabited by 1.4 billion people, the Chinese President gave a surprising answer: - You only government China by connecting the heart of the ruler with the heart of the people.

Perhaps, for some people, the answer is something empty, hollow, naive, and corny. I am sorry who finds this because this is the essence. If you lose it, it is no use shouting. You will nor change anything; you will give up in the middle of the way because it is easier and more comfortable to give up. And only those who put their hearts in front do not give up. This metaphysical category, situated in the perspective of serving others radically and the cause of justice, of burning your life in this holy fire of hope, represents what I call a heart connected to the people!

Criminal Law Procedures alone have not been enough to remove lawfare. The act committed with illegality should be null and void, but it is the Judiciary itself that judges the validity of the act. The illegal act committed by a magistrate or a prosecutor does not result in the condemnation of the illegal practice. The question is, how can the magistrate or prosecutor who does not comply with the law continue to exercise his public function? If it is precisely him, the violator, the authority to demand the fulfillment of the law! I would like to know what these elements would be like in the Delcidio do Amaral case, the first senator of the Republic to lose his mandate in office. He fell because he made a phone call suggesting that a Car Wash investigator might look for a minister from the STF. Today we have seen the Minister of Justice, in full exercise of his office, proven by several audios, confusing with members of the MPF to plot in certain lawsuits, to interfere in PF investigations. A senator elected by the people is arrested and dismissed without sufficient material evidence, meanwhile, a minister appointed by the President of the Republic continues in office, with all the legal evidence against him and without the Judiciary taking any action, even if provoked. I leave these reflections to the debate. [...]"

CHAPTER 2

EXCEPTION COURTS

THE FIGHT AGAINST CORRUPTION

Wilson Rocha Fernandes Assis

2.1 The Contemporary Brazilian Criminal Procedure

As a public prosecutor, this text addresses a thorny issue of the Federal Public Prosecutor's Office. Considering the development of the Car Wash Operation and its consequences in the political field, we must reflect on the responsibilities of the institution in the democratic ebb and flow experienced in the country.

This exhibition focuses directly on the Car Wash, since here is the journalist responsible for the Vaza Jato's series of reports, which will be able to speak with more freedom and property on the subject. Our broader approach to the proposed theme are the roles of disinformation and the media collusion in setting up exception courts.

As a background to this problem, so that we can eventually talk about Car Wash and Vaza Jato, ethical limits in the expression adopted, due to being a member of the MPF (acronym in Portuguese), but there is also the commitment to discuss transparently the problems that may arise from our institutional misunderstandings.

• A new expression for an old phenomenon

The expression of Lawfare is new, but the phenomenon is not. There are interesting approaches to the political use of legal procedures and processes in various fields of human knowledge. Recently I read the novel The Lost Honor of Katharina Blum by Heinrich Böll, a German author who received the Nobel Prize for Literature in 1972. The book tells a fictitious story, but it is related to the historical context and the author's biography.

Heinrich Böll had intense political activism in Europe in the 1970s, coming out in defense of a left-wing political group that even carried out terrorist actions in Germany. Böll's case referred to a specific imputation to the group, without any concrete demonstration of his involvement in the act under discussion.

The question became a huge journalistic controversy in 1972, and the author even responded to legal proceedings. On this date, inspired by this episode, he wrote his book, which I have in hand now. The novel has as its protagonist a competent and intelligent young woman, who came from a poor family. Divorced, Katharina Blum got involved - at a carnival party - with a man wanted by the police. The escape of the wanted man involved the protagonist in a sensationalist plot, orchestrated from the collusion between police and journalists, which ends up destroying her reputation and her life. In the end, Katharina Blum kills the journalist responsible for the defamation she had suffered.

The book starts like this:

> Four days later, after dramatic developments, she rings the bell at the police superintendent's house, the young woman testifies to the terrified Moeding

> (who is the police superintendent) that she had shot and killed journalist Werner Tötges at about twelve-fifteen in her house, asking him to arrange the remotion of the journalist
>
> This is the kick-off of the novel, whose plot culminates in the extreme act of killing the journalist who defamed it. In a postface written ten years after the book release, the author himself writes the following:
>
> The newspaper is so saturated with lies that even an undistorted fact would look like an untruth. In short, it throws in the mud even the truth if it is reproduced by him. If they wrote: Roses bloom again, I would be in doubt, even if it were around a bed of roses opening. The saying - You don't believe who lies once, even if you are telling the truth, would have to change, in this case, to - I do not believe who lies a thousand times, even if you're telling the truth once.

And Heinrich Böll concludes the afterword by saying:

> What matters is the narrative. It has not only a title, Katharina Blum's lost honor, it also has a subtitle, how violence arises, and where it can lead. The violence generated by headlines is bad knowing, and we know even less where the headlines can lead. It would be criminology's job to investigate what some newspapers can do with all their bestial innocence.

- **Challenge and reflections**

Katharina Blum's lost honor is a book that challenges us to reflect on the constant "operations" unleashed by police corporations and the justice system in contemporary Brazil, investigating the injustices generated when public agents build an illegitimate alliance with journalism, in which the two institutions corrupt themselves destroying the lives and reputation of people selectively appointed as enemies.

There are episodes of Lawfare outside literature and going down in history. One of them, very well known, is the Dreyfus case, which took place in France at the end of the 19th century.

Alfred Dreyfus was an officer in the French Army, accused of leaking classified information to Germany. The military was of Jewish descent, which contributed to a broad smear campaign against him, which ended up arrested and expelled from the Army. Later, he proved his innocence. Great names of Literature and Law, all over the world, demonstrated at the time in favor of Dreyfus.

One of the most prominent defenders was Émile Zola, a French novelist who published several texts in defense of Dreyfus. Also, Ruy Barbosa manifested himself in the pages of the Jornal do Comércio, on February 3, 1895, pointing out that an innocent man had his honor and life destroyed due to the spurious alliance of journalism with bad operators of the Law, generating individual and social catastrophes.

Hannah Arendt, in her famous Origins of Totalitarianism, about the Dreyfus case, wrote:

> While the Dreyfus case has its political aspect belonging to the twentieth century, the Dreyfus case and the various trials of the Jewish captain are quite typical of the nineteenth century, when legal proceedings followed with such interest, because each instance tried to test the achievement of the century, which was the complete impartiality of justice. It is peculiar to that period that a judicial error would arouse so many political passions and inspire such an endless succession of trials and revisions, not to mention duels and corporal struggles. The equality doctrine was so firmly upheld that a single error by justice was able to provoke Moscow's outrage in New York. [...] (ARENDT, 2012, p. 139)

- **Impartiality out of fashion**

At present, there is no commotion resulting from a breach of the impartiality of justice, in the proportions of the Dreyfus case. It seems to be out of fashion to discuss the need for an impartial Justice. Because of the very advance of critical theories,

it is increasingly difficult to believe in any level of impartiality of institutions or powers.

It is necessary to reflect on whether these critical theories, at some level, do not erode the institutions and fundamental beliefs that we need to maintain to continue living in a collective. Rescuing these reflections to the current socio-political context is an urgent task.

• From the 19th to the 20th century

Katharina Blum's lost honor is a 1972 book. The Dreyfus case is from the late 19th century. Thus, Lawfare is nothing new. It is something that is in the structure of the legal system.

The novelty in Brazil is that Lawfare now addresses a specific political group, which for more than a decade ruled the country. But let's not forget: the lower classes, blacks, poor, women, crazy, they have known and lived a daily "Lawfare" for centuries. Centuries!

From this structural critique of the right, it is necessary to recognize that legal warfare has always existed and that the Law, to some extent, and the very institutions of the judicial system, is instrumentalized to achieve political ends, legitimate or not.

At any crucial moment in Brazil's history, it would be possible for me to say necessary to investigate how the courts have consented to the use of law as a political weapon to destroy adversaries.

If we do this exercise, in the deposition of João Goulart, we will find several clues in this direction. If we go to the end of the Monarchy, we will find that the law has been used in favor of a few, manipulated, to achieve the political ends consummated with the advent of the Republic. Structurally this is part of the law.

The novelty is that Lawfare now reaches the largest political party in the country, contributing to solving its hegemony employing an authentic legal war. It is also nothing new that agents of the judiciary build spurious relationships with journalists to achieve political ends. In a context of democratic normality, we need to follow these relations very closely to denounce the emergence of the courts and processes of exception.

The exception court is not necessarily an organ created after the fact to judge it. These are the typical exception courts, as was Nuremberg, created to try Nazi criminals at the end of World War II; or the Court established in Iraq to try Saddam Hussein.

Depending on the context that is built around a given legal case, and on how the relations that the judicial agents build with the media are handled, exceptional judgments may arise, since these alliances are capable of vitiating wills or contaminating the vision of those responsible for issuing a judgment that should be impartial.

Car Wash highlights a delicate, problematic relationship between actors in the judicial system and part of the media, creating conditions that have disfavored or hindered an impartial trial. Any measure that contradicted a dominant current of opinion generated violent reactions, even in the streets of the country. The parts that make up the justice system, which must maintain an independent relationship with each other, have built spurious extra-process relations, as revealed in the reports of The Intercept Brasil.

That is, if there are no conditions for institutions to function adequately by impartiality, issuing judgments based on the evidence presented in the records, then an exception court is established. It is always necessary to ensure that the relationships mentioned here, especially with the dominant vehicles in the sphere of mass

communication, do not hinder the conditions for the regular functioning of democracy.

- **Performative Speech**

What happens in judicial practice is an attempt to transform the law into performative discourse, in the sense that Pierre Bourdieu gives the term in his book The Symbolic Power (BOURDIEU, 1989). The performative speech is that which creates the conditions for its verification. That is, I issue a statement and create the conditions for it to be realized or judged as truth. It is a discourse that calls into existence what it enunciates, which enables the reality that it intends to express with rhetoric.

Identity speeches, ethnic or regionalist, are performative speeches. There is a popular eagerness to transform what is being said into reality: “We are indigenous peoples, or we are Goianos. A young man who decides to become a punk and says to his father, = Dad, I’m a punk. Then he goes on to wear clothes that match the identity he assumes, goes to read books, study authors, and he becomes a punk. Also, the campaigns in defense of diffuse rights have a performative character, because affirming the need to respect the environment, the Human Rights, or ensure health and education, it is intended that these rights become a reality in people’s lives.

The strategies of the Federal Public Ministry to “fight corruption” are performative, because they intend to make the opinions, speeches, and world views enunciated by the public agents involved in Car Wash Operation a reality.

• The criminal procedure does not work like this

The use of performative strategies is legitimate in collective interest, or human rights policies. On the other hand, if it is legitimating for social groups to issue statements that aim to create the enunciated reality, this is illegitimate when talking about criminal law.

A criminal charge cannot be a performative statement. As the owner of the criminal action or as an investigator, I can not pretend to create the reality of the conduct that is the object of my accusation. When a member of the Public Prosecutor's Office or a police officer sets various news, headlines, or information in the press that corroborate his investigative hypotheses, creating a favorable context for the origin of his actions, he is forming the reality that he intends to enunciate in the denunciation.

Sometimes, and always in the thesis, public agents can use evidence that is the fruit of research and spread it in the press, building in the social imaginary the foresight of what will be their denunciation. The denunciation formulated by the agent corroborates the predicted reality, hindering the possibilities of an effective defense, heading in an almost unavoidable manner towards condemnation.

The criminal accusation is not a statement intended for internal corroboration judgment. Denunciation, in this sense, need not be intrinsically coherent. What is required of the denunciation is its adherence to reality, and unfailing support in the evidence. A criminal denunciation is necessarily the reality supported by evidence, in something external to discourse.

So it is no use there being thousands of indications that point to a recurring reality, thousands of opinions, countless people convinced about someone's guilt. It requires documentary evidence, and witnesses to corroborate the facts pointed out. The corroboration has to be external to the speech, never internal. If there is proof, a spurious alliance with the media is not necessary to create one's own reality - or the impression of reality - of the conduct that is the object of imputation.

There will be an exception trial whenever the accuser acts to massively spread the existence of a crime by formulating, after an intense media campaign, his criminal trial. When the agent continues his campaign, adopting procedures that constrain the targets of the process that the same agent has initiated, articulating and mobilizing social movements, instigating people to manifest themselves, always to corroborate the accusatory thesis, there will no longer be any doubts: we are facing an exception court.

• Pre-procedural asymmetry and procedural symmetry

It is not a case of prohibiting the agent of the judicial system from talking to the press: the problem is how this dialogue takes place, taking into account that, in the investigative phase, there is an asymmetrical domain of information between the prosecution and the defense?

If the principle of parity of arms is in force in the judicial process, this does not exist in the investigative, pre-procedural phase. There is an asymmetrical and unequal domain of information. The investigation is not conducted based on contradictory and broad defense criteria. It is the police or the Public Prosecutor's Office who,

following the rules of law, amass evidence that confirms or not the investigative hypothesis.

The asymmetric domain of research creates ideal conditions for spurious relations between media and State investigators. The journalist plays his role, works as expected, when he receives and discloses in privileged way information of public interest assured the secrecy of the source.

The secrecy of the information to which the State agent is obliged is not confused with the confidentiality of the source that safeguards the journalist's work. The professional who discloses confidential information, leaked by a State agent, has in the privacy of the source a constitutional guarantee expressed with absolute clarity. But the state agent who discloses confidential information seriously violates his legal duties.

Although this is not confidential information, it is worth discussing the principle of good procedural faith, which binds the public agent in the form of an ethical limit, whose action precedes the establishment of the procedural relationship. In other words, the inequality of weapons in the pre-procedural phase requires that the agents in charge of the criminal prosecution have a judgment that is consistent with the process.

The issue is how much asymmetry is allowed in the investigative phase that does not compromise the next step? The procedural guarantees must be observed, in terms of parity of arms, contradictory, and broad defense. In other words, what measure of preprocedural asymmetry does not compromise the smoothness of the proceedings before the Judiciary?

Some attorneys of the Brazilian Republic drew up a bill called Ten Measures Against Corruption - a supposedly popular initiative - by which they intended to expand the possibilities of cleaning up pre-procedural irregularities by legitimating. For example, illicit evidence obtained in good faith and restrictions on habeas corpus.

It is obligatory to make an ethical reflection on the relationship between the contenders in the pre-procedural and procedural phases, so as not to compromise the very valuable criteria of freedom, democracy, and equality that guide our life in society.

• Reflections on communication

Another aspect of the fundamental guarantees that ensure fair justice is a relationship between the media and the institutional communication consultancies. The Public Prosecutor's Office and the Judiciary have very active communication counsels, with competent professionals. The institutional communication offices are one of the best-paid branches of journalism.

It is necessary to reflect on the practices of the ethical point of view in this relationship between the official communication offices and the press. The articles published by Vaza Jato show a very relevant performance of the communication offices of the Public Ministry, orienting the treatment and the approach that must be given, including the sensitive procedural issues in the scope of Car Wash.

For journalism, maybe the "scoop" is not a leak, but a communication technique to draw attention to certain aspects of the exclusive news. For the institution, it is necessary to reflect on the legitimacy or ethical limits of the scoop.

In criminal cases persists the necessary reflection on ethical criteria of how to give the relationship of the communication offices with the press. Is it possible to point out crime, in the case of privileged access to information or evidence in secrecy?

• Communication strategies in the MPF

Members of the Federal Public Prosecutor's Office (MPF in Portuguese) are bringing to the criminal area communication strategies that have emerged and are legitimate in the protection of diffuse or collective assets. For example, when it comes to the defense of Education, Health, or the Environment, a Public Prosecutor's Office campaign is legitimate.

It is about promoting Human Rights, raising society's awareness about an irrefutable issue, of broad interest, of collective or diffuse nature. Thus, fostering public debates may be a legitimate guideline to the Public Prosecutor's Office.

However, the use of these same communication strategies in the criminal area generates insurmountable problems. I referred in lines to the Ten Measures Against Corruption, when the Public Prosecutor's Office launched a broad campaign, in mass media, on a bill that made the "fight against corruption" more rigorous.

This marketing campaign has generated criticism from various social sectors, especially the Academy and the Brazilian lawyers association (OAB in Portuguese). Came to the public discussion whether the Public Prosecutor's Office, being part of the criminal process, would have the legitimacy to defend before another power the creation of rules more favorable to its performance.

It is not legitimate for the Public Prosecutor's Office to carry out publicity campaigns, using public resources, trying to strengthen its investigative powers, unbalancing the relationship between the state and the individual in the criminal field. The subject is: when the body in charge of the public prosecution makes a denunciation against the person, is it always legitimate for the Parquet representative to grant press conferences, with wide press coverage? In this case, the State agent tries to prove the thesis that will be evaluated by a judge, outside the case files, according to the procedures and deadlines provided by law. Invariably, in such cases, under the pretext of informing society, what occurs is an effort by the accuser to create popular pressure in favor of a favorable decision for the condemnatory thesis.

The issues addressed above deserve theoretical reflection in various fields of knowledge, from Journalism to Law, passing through the other Social Sciences. This debate cannot remain limited to the legal arena.

• The Public Prosecution Service drinks from its poison

Let's look at the situation the Federal Public Ministry has gotten itself in. We have already discussed that the prosecution and the defense have an asymmetrical relationship in the investigative phase, marked by an asymmetrical domain of information.

The journalistic work of The Intercept Brasil, represented by its executive editor Leandro Demori (V. Chapter 2.2 below), reveals a chess game. You don't start a chess match anticipating what the competitor will do in the next moves. In chess, the pieces are moved one at a time following the game rules and players strategies, regarding to the moves of the opponent.

Any member of the Public Prosecutor's Office, with no performance at Car Wash, can observe at a distance the bids of each player, in a dispute in which, for the first time, the mastery of the information does not favor the Public Prosecutor's Office. This time, The Intercept Brasil is the one that guides the press and determines the rhythm of the "leak" of information. This game gradually strips the guts of the work of the police, the Public Ministry, and Justice, in its crusade against corruption. It seems that the Public Prosecutor's Office is drinking its poison.

• The democratization of criminal procedure

It is necessary to reflect on the concrete realities that influence the criminal process under the Democratic Rule of Law. In the context of corruption investigations that are carried out in Brazil, the emerging of exception courts formed by media and criminal prosecution agents must be questioned. The population gets all this as a kind of democratization of the criminal process. Colleagues at the Public Prosecutor's Office sell the following fish: "The criminal law, which used to reach only blacks and poor people, now find the high echelons of the Republic, wealthy personalities

From a constitutionalist point of view of the guarantee of public and individual freedoms, criminal procedures are not an instrument of State punishment, but, on the contrary, they limit it. This tension between limit and punishment highlights in the practice of the penal system. We must keep in mind that the use of the law as a weapon against society's enemies is constitutive of Lawfare, which is why the incidence of criminal law always implies the embarrassment of the individual liberties of selectively chosen subjects.

According to a radical critical perspective, every crime is a political crime. Thus, one must ask, to what extent can the incidence of criminal law advance, without threatening democracy itself?

Criticism of the Public Prosecutor's Office, which would have turned the work of the public manager into a high-risk activity, has become commonplace. Not infrequently, Parquet's questioning invades the sphere of discretion, assured to the managers, resulting in dozens of criminal and civil actions on account of supposedly illicit. The disbursement of attorney's fees and the risks to the individual assets extend for years after the end of the mandates, discouraging active participation in the political life of society.

Focusing on the need to face the corruption installed in the Administration, it becomes lawful to charge over the limits of the actions of the state agents in charge of protecting the public patrimony. It is a necessary questioning, unequivocally an inconvenience for many members of the Public Ministry.

• The less criminal law, the more democracy

Without forgetting that criminal law performs a function of defense of legal assets, there is more democracy when there is less incidence of criminal law. This statement stems from the observation of historical periods and social order models.

If we broaden the incidence of criminal law, there is a risk of restricting individual freedoms and weakening democracy. Other forms of conflict resolution should be preferred, especially recognizing that there is no "final solution" to the issue of crime.

From the observation of structural racism in Brazilian society, to

defend that there are fewer blacks and poor in jail does not mean to sustain that there should be more "powerful people" there. After some years of Car Wash Operation's work, one must ask: to what extent has the imprisonment of the "riches" improved our political system, the governance of public resources, or administrative management as a whole?

If the subject is a structured criminal organization with great financial power, does the imprisonment of an element not provide for its rapid replacement? In other words, does the deprivation of liberty of specific agents solve the problem of corruption?

• Is corruption a solvable problem?

Being a Catholic, I share the conception that the human being has a corrupted nature. In biblical language, from the moment Adam and Eve ate the forbidden fruit described in Genesis, man and woman degraded themselves. I take the biblical narrative as an anthropological reality about the essence of people: we are all fallible, therefore, corruptible, even in the sense of practicing conduct described as crimes.

Once, when questioned about the possibility of ending corruption in Brazil, someone pointed out that to achieve this every people should jump inside a fire. A joke, which intended to emphasize the impossibility of ending corruption, before what I understood (and understand) to be the nature of people. It is one of the reasons why anti-corruption discourse is anti-humanist. One can understand that when the MPF`agents announces operations or programs to end corruption, they are promising something that they will not be able to deliver to society.

Anti-corruption campaigns, like the one recently launched by the Federal Public Ministry, in articulation with major media outlets, intensify the anti-humanist bias of some social discourses. There is a risk of reducing the public debate to moralistic rhetorics, emptying it of the most consistent reflection on common destiny, ultimately legitimizing undemocratic forms of government.

• The Democratic Foundation of Criminal Dogmatics

The members of the Public Prosecutor's Office need to have a responsibility when dialoguing with the press and media outlets. The criminal process, in addition to the formal guarantees, requires material warranties to carry out the due legal process. I am referring to the social conditions in which the criminal process develops, especially the existence of a press that fulfills the role of informing, resisting the manipulation and error induced by the authority that certain actors of the justice system enjoy.

Together with the press, the university community, and social movements, and Parquet members need to critically analyze the role of criminal procedure in society, reflecting on the incidence of state punitive power in the debate of complex problems such as the inconsistencies and weaknesses of our political and electoral system.

As a material guarantee of the criminal process, the relationship between the Public Prosecutor's Office and the press must be strictly republican. In their actions, the member of the Public Prosecutor's Office cannot act as if his accusations were performative statements, i.e., capable of being substantiated by headlines in major media.

We must not create the reality (or its impression) of our denunciations through a massive presence in the media. The freedom of the judge and the Courts is fundamental in the assessment of the evidence that corroborates or does not support the accusatory thesis, Conviction is not an asset that we should aim for, but a contingency, always painful, imposed by the law and evidence added to the records.

The action of all agents in charge of a criminal prosecution must reflect the strict limits of criminal dogma, which makes up the nucleus of individual guarantees, always demanding conclusive and irrefutable evidence for the conviction of the accused person. To build social conditions that encourage condemnation, based on evidence, or that result in the limiting of a free judgment on the evidence is a violation of the democratic system.

2.1.1 Interactive Debate

On the question raised by the Goiás representative Virmondes Cruvinel Filho[11], the latest revelations from Vaza Jato make us question how the plea bargainings work in Brazil, and what guarantees society has around this investigative tool. The denunciation, a priori, can be useful for difficult criminal cases, but it will never be valid when obtained from investigators on their knees by the action of investigators.

In the federal sphere, where a technically prepared police force acts, with well-trained and remunerated staff, episodes occur, such as those revealed by Vaza Jato. There is concern about what may be happening in other spheres of activity where institutions operate more precariously, as the Military Police in Goiás and other States, where there are reports of abuses by police forces.

The Federation, together with the Federal Police (PF in Portuguese) and MPF, may incur a series of abuses in the application of legal investigative instruments. What could happen with plea bargaining in the institutional spaces where the vulnerability of the citizen is visible? The rights of the investigated or accused may be vulnerable in the absence of institutional safeguards. Another problem, plea bargaining creates competition between the Police and the MP, as seen in the Antonio Palocci case. As it is public and widely debated,

11 Virmondes Cruvinel Filho, state representative, verbis: "[...] I wanted to leave a question to the attorney general Wilson Rocha regarding the award-winning complaint. I know that you have a functional responsibility that avoids entering directly into the subject of Car Wash, but I would like to hear your opinion on the direction and selectivity with regard to information leak, coupled with the possibility of complicity of corporate media, what the figure of the award-winning denunciation has or can be improved in relation to this? [...]"

Palocci did not prevail on closing the case with the MPF, but it did so with the Federal Police, which was even approved by the Judiciary. This dispute and competition between two autonomous institutions - not always concordant - opens the door to problems in the future.

In terms of MPF, it is urgent to regulate the institute of plea bargaining: how does it happen? Does the prosecutor act alone? Is it convenient to have more than one attorney to provide more control? Should the denial agreement go through the Coordination and Review Chambers (CCRs)?

Of course, you can not bring the defendant to his knees and then negotiate a plea from him. It can be no search and seizure at the home of a daughter to pressure her father to make a deal. It is up to the CCRs to think of guiding statements. The MPF Superior Council itself might create a resolution explaining the criteria, the forms, the stages in which the plea bargaining materializes.

• Deleterious creativity

It is concerned when public agents begin to give free flow to creativity, which in the field of criminal proceedings is not welcome, one should walk on a dogmatic ground with very well established rules, which allow the supervision of the public power and society.

The proposal to create a private foundation with Petrobras resources, which sank in the Supreme Court, was one of Car Wash's most original bids. It was so much creativity, supposedly legitimized by international experiences and parameters, that almost everyone agreed that it was a big problem. The PGR itself filed a lawsuit in the Supreme Court. Half a dozen colleagues insisted on the creative

proposal, and, in the end, the Task Force itself asked for the suspension of the foundation (PORTAL UOL, Mar. 7, 2019).

State agents responsible for the protection of society need more dogmatics in criminal law, and it should apply to plea bargaining.

• How does the MPF get out of the crossroads it is?

Professor Nilton Brandão[12] - president of the National Union of University Professors, asks whether the MPF can get out of this crossroads. In the current situation, the correlation of internal forces is not favorable to the most progressive, democratic, and popular sectors of the institution. Conservative groups are the majority within the MPF.

The selection of prosecutors provides the entry of people from the ruling class who can stand for a difficult contest. As this exhibitor, there are rare exceptions in the MPF, originating from a lower-middle-class family, children of a civil police registrar, now retired, and the father bitterly unemployment for much of the children's youth.

The life story of the Parquet member provides greater or lesser sensitivity to social issues. In this sense, the majority profile among MPF members is not favorable to progressive positions. The solution to this problem lies outside the institution and needs to be questioned by society. Only this can turn the game within the MPF.

12 Prof. Nilton Brandão - president of the FEDERATION PROIFES, verbis: "[...] There are two considerations and two questions. Attorney Wilson Rocha began by saying in his talk that he has to have an ethical limit. I would like to question: if the function of the MP is to defend society and democracy, then it should be the space where the citizen should resort, but suddenly one sees the MP associated with the lawfare process. How far will the MP get out of this? What hope do we have, because if Parquet does not assume the role of the institution of the Republic, then what is the future of citizenship? [...]"

We have colleagues with high-level political views, excellent cadres, but the progressive sectors of the MPF are a minority. So they need to build bridges outside the institution, articulating the defense of the Democratic Rule of Law with governmental and non-governmental social representations.

As stated by attorney Deltan Dallagnol - coordinator of Car Wash - the MPF can and should talk to civil society. Of course, this conversation must be Republican. We need to reinforce the activities that are in our institutional DNA, the struggle alongside the Indians, the Quilombolas, the struggle for agrarian reform, the flag of federal universities.

This dialogue with society must be strengthened so that it covers the responsibility of the members of the institution who have taken a different path than the increasing realization of social rights, the struggle for social justice and law.

Vaza Jato has defaced the current reality of the Federal Prosecutor's Office. The king is naked. Lectures with confidentiality clauses, social and political articulations in unrepublican terms are issues to be addressed. Society needs to question the institution. Only this will be able to change the internal correlation of forces.

Parquet members need to understand the need to maintain coherence with a political and ideological program enshrined in the Federal Constitution, deepening democracy and the realization of rights.

• My ideology is in the Constitution and yours, where is it?

Progressive state agents, the minority in the MPF, who criticize the institution's actions, are challenged by the conservative majority, who say: "Oh, but you have an ideology."

In this sense, the critical minority is framed as the antipodean of the conservative majority, equaling all positions to the extent that ideologically grounded. In such cases, one should question the following: - Do ideological programs that underlie progressive actions find a seat in the Federal Constitution? Surely the fight against torture and the investigation of crimes committed by the Military Dictatorship in Brazil are issues that have political and ideological content, and the Federal Constitution supports it! On the other hand, it does not have constitutional support for certain right-wing extremist positions, disseminated by other members of the institution.

To exemplify, recently, a prosecutor of the Republic, in Goiás, recommended to the dean, leaders, and professors of UFG that manifestation of a political-party nature within the university do not should happen. This recommendation reflects clear political and ideological content, and it is not supported by the Federal Constitution.

Thus, the performance of the Public Prosecutor's Office and all the organs of the justice system needs to be questioned by the most varied sectors of society. It is the way to keep their institutions on the path of democracy.

Progressive co-workers - committed to CF/88 - must be encouraged to debate on Twitter, on public networks. It's no use staying only in the internal groups of WhatsApp and Telegram. We have to speak out.

• MPF's internal affairs don't do anything?

A question about the performance of internal affairs, At this moment, the response reaches the disciplinary complaint in the National Council of Public Prosecutors because of demonstrations

on Twitter, among them, retweets of journalists such as Leandro Demori and Glenn Greenwald, both from The Intercept Brazil; as well as "liked" in a post that referred to "cage these fucking prosecutors", referring to colleagues acting in Car Wash Operation.

First, it is important to vehemently repudiate any demonstration in defense of the arrest of colleagues who regularly perform their duties, expressed in the pejorative term "cage". Provided clarifications to internal affairs, the disciplinary complaint is expected to be filed. Internal Affairs fulfills the function of monitoring the profiles of members of the Public Prosecutor's Office, always observing the limits that guarantee freedom of expression.

• **Authority Abuse Law**

Professor Marconi Moura[13] of UEG talks about the recent Authority Abuse Law. This law has been criticized by many colleagues. There were absurd points, such as the possibility of responsibility of judges who have their decisions reversed in courts. President Bolsonaro has already vetoed the most serious topics. So I consider an advance the enacted law.

13 Marconi Moura de Lima, professor at UEG de Campos Belos, graduated in Letters from UnB, post-graduate in Public Law from the Faculty of Law Prof. Damásio de Jesus, verbis: "[...] I ask Attorney Wilson Rocha, already greeting you, who represents the hope for us who are far from Lawfare, the abuse of power and authority. About the new institute of abuse of authority, is there hope in the Abuse of Authority Act after this law is passed, even after the vetoes of various provisions of the law? Why is there no containment of abuses of people like Sergio Moro, if there are people like you in the MPF and should also have in the Supreme Court? We respect the independence, but because there is no effective fight against this kind of sequential abuse; it is fear of the Army; of some power structure? Something that makes good people like you in the MPF, the Federal Court, the Supreme Court, the CNMP, or the CNJ not to fight state agents who are corrupting the Democratic Rule of Law? And finally, on the question of the anti-corruption discourse being anti-humanist: could you explain it a little better? Is the discourse itself, in essence, anti-humanist or are its unfoldings from the fallacious perspective of those who make the holy crusade of anti-corruption? [...]"

The Authority Abuse Law is necessary for the face of practices such as vexatious exposure of people arrested to the press, which demonstrates that there are serious abuses that needed to be addressed for the creation of criminal types. The Authority Abuse Law is welcome and improved with the vetoes that the Presidency of the Republic has made; without taking a deep vein, the advances made are positive.

• To what extent should society trust institutions?

One experiences a moment of hypertrophy of the institutions of Justice. It is not good for Democracy. It is to reflow, retreat, return to the normal bed drawn in the Constitution, exercise self-restraint. You have to trust the institutions, but there are limits. You can't have blind trust in institutions.

The lawyer Bárbara Wendel[14] refers to the martyrs, which is worrying because the martyrs die. We don't need martyrs. We need a strong civil society that controls institutions and puts them at the service of the realization of rights.

For example, university quotas are something extraordinary because they envision a National Network of Popular Lawyers, which tends to be strengthened. Today, we have a quilombola and indigenous LGBT lawyers, so that society itself is increasingly able to defend itself, depending less on institutions.

14 Bárbara Wendel, lawyer, post-graduated in Law at PUC-GO and graduating in Letters at UFG, *verbis*: "[...] I still believe in Journalism. So, I question the journalist Leandro Demori: you listed very well that the commercial media molded the public opinion for the great public to take Car Wash as the solution to all problems. For everything you have seen and studied, is it possible to glimpse that people start to change the perspective based on Vaza Jato, as well as had this shaping on Car Wash? [...]".

The institutions sometimes walk well, others they walk badly. It is proper of democracy, there is no perfect institution, but it is up to society to put them on the path of the common good.

• The fight against corruption is essentially anti-humanist

Returning to the issue of "combating corruption", the formula enunciated by the MPF is anti-humanist in its essence. You cannot dialogue with society in terms of ending corruption, because that is not going to happen. The discourse is wrong, bearing in mind that human nature is not punished, but only conducts practiced by people who are not intrinsically good or bad, sometimes wrong, in others, they get it right. The institutions have to work, but there is no final solution to the subject of corruption.

• "I do it because I can": is it lawful to legalize an illegal act?

The lawyer Igor Escher[15] spoke of the issue of the judge who raises his secrecy, which creates the legality of the act he practices. How to face these things? It's a difficult thing, Elio Gaspari wrote a text about these leaks and described the judges' reasoning: "I do it because I can" (GASPARI, 2019). For a judge, in this sense, there would never be a leak, but only the regular exercise of the power to raise secrecy and disclose information, even if it resulted in a violation of individual rights.

15 Igor Escher Pires Martins, lawyer, verbis: "[...] Attorney Wilson Rocha, at the beginning of his speech you exposed about the ethnicity of passing information to journalists by public officials as a form of corruption, if not a legal failure, but an ethical failure. Journalist Leandro Demori spoke about the leak of Palocci's award-winning denunciation and even Lula's conversations with Dilma. In these cases, the judge lifted the secrecy, so he coated himself with legality because the judge himself has this power, he validated his act, which was previously illegal and became lawful, by an act of his own, based on foolish reasoning. What do you think of this, if, apart from ethics, it would not be illegality in itself, which could even be criminal prosecution or something? [...]"

The statement of Professor Bartira Macedo de Miranda (see Chapter 2.3 below) is taken up, according to which it is not an exercise of the right; but an exercise of power. How do you fix that? Society is responsible for firmly charging the responsibility of state agents, including through the action of the correctional bodies. If it is not possible to talk about the judge's crime, perhaps it is about functional illegalities, non-compliance with ethical codes, issues in charge of internal affairs.

If the context shows that the judge's action has unduly impacted a political process in which he should not meddle in, there is a functional or unlawful administrative lack that needs to be determined by the Internal Affairs. Within the limits of the law and the Federal Constitution, state agents must answer for any deviations they have practiced.

Journalist Frederico Noleto[16] spoke about the need for all evidence to come public at the end of investigations, including those that benefit the defense. It seems that Brazilian law does not have this effect. In telephone intercepts, for example, in which there are hours and hours of recording, judges do not hear everything, because it would be humanly impossible for the magistrate.

They focus only on the excerpts selected by the investigators. Thus, it is possible that much does not go public, which could interest the

16 Frederico Noleto, journalist, collaborator of Free Journalists and Ninja Media, verbis: "[...] I have many legal and lawyer friends. Even on the eminence of the 2016 Coup d'état I created a WhatsApp group called Jurists for Democracy, not being a jurist or a law student. This group gives me great pride because it has emanated in great debates and wonderful documents. Some of these friends report widespread discredit in the group. The manipulation and the game of marked cards also exist locally in smaller courts. Much has been said that the lawyer is a friend of the judge, but in the matter of Communication and Law, in Julian Assange's book*, he says that the information wants to be free. It's interesting, poetic, and inspiring. I ask attorney Wilson Rocha if there is any chance to regulate in Brazil the possibility that the evidence, whether or not for prosecution, will be published? [...]"

defense. We need rules, perhaps legislative change, to establish the duty of the investigating bodies to bring to the fore the evidence that is of interest to the defense.

• The cake's cherry

Professor João Batista de Deus[17] points out what would be the cherry on the cake of our debate. Democracy is what is really at risk. One of the biggest threats today is the issue of the laicity State. It is an urgent matter. Religious fundamentalisms support the setbacks we have experienced in Brazil in the field of freedom of expression, individual choices, the destruction of the environment.

When people assume religious or theological justifications for issues relevant to life in society is worrisome. Generally, these justifications not based on rationality become explosive in a society marked by a diversity of beliefs, such as Brazilian. Let us remember how much blood was shed in Europe in the religious wars of the Middle and Modern ages.

Due to a long period of study in Spain, I experienced an intense debate about the laicity of the State. In Brazil, there is little discussion on the subject. It highlights the need to investigate more thoroughly issues that have an impact on the quality of Brazilian democracy.

17 João Batista de Deus, professor doctor of IESA/UFG, verbis: "[...] One question that has to be asked is the question of democracy, has a maxim that whoever produces the laws can neither judge nor execute. That's a Republican issue. And you have to guarantee individual rights because what is at stake is democracy. We have freedom of the press in Brazil, only, the way it was done, my concern of all this is that it be used and deepened to end democracy. The public prosecutor's office is shaken, the press is shaken, the rule of law is being dismantled completely. I agree that we can't, at this point, review the Press Freedom Act because if we review it now it's going to be worse. So I wanted the bureau to comment a little bit on the relationship of all these issues with the weakening of democracy. [...]"

THE SCANDALOUS CAR WASH OPERATION
Leandro Demori

2.2 Findings of The Leak Series Vaza Jato

For the second time in Goiânia, to talk about Vaza Jato, to different audiences, the observation that, in the first, at the invitation of the Union of Journalists, it was good to see the participation of the staff, younger people of the college. The lecture would take place inside the college, but 24 hours earlier, it was rescheduled and transferred from there because there was no guarantee of my safety. Luckily, the organizers found another, larger place, allowing the participation of more people. It makes me back to the city, and by invitation, my return will always be right, both in that third time, as many others as necessary.

• Vaza Jato bared Car Wash

We are going to discuss Vaza Jato and Car Wash. There are some pretty evident and compelling indications, since the first reports, published on June 9, 2019. They demonstrate the performative discourse addressed by the Attorney of the Republic, Wilson da Rocha, (see chapter 2.1), also formulated in the work of Pierre Bourdieu (BOURDIEU, 1989) , studied at the Faculty of Journalism.

Vaza Jato series of reportage published in The Intercept Brazil show, precisely, how the Car Wash set up a performative discourse over the years. The evidence is strong. Some examples that readers will remember are cited, based on these stories that are very recent in their memory.

• Antonio Palocci

Former Minister Antônio Palocci offered plea bargaining to the Federal Public Prosecutor's Office (MPF), which was not accepted because it was vulnerable. There was not enough evidence, and it did not improve what prosecutors already knew through other whistleblowers.

A few days before the presidential election, former judge Sergio Moro raises the secrecy of this denunciation. despites saying in the dialogues of Vaza Jato, textually, that he also found it weak, but it was important to release the Palocci's denunciation to break the "petista omertà" .

Concerning the mafia, *omertà* is a word invented to define the silence code between mobsters, which keeps the mafia united and does not allow external agents to enter the mafia organization, as I explain in my book (DEMORI, 2016). The goal of breaking the "petista omertà" - a phrase of Sergio Moro - is to crack PT (Workers Party) that had the possibility of winning the presidential elections with Lula candidate. On the other hand, it strengthens the other party, campaign for Jair Bolsonaro.

There is no reason for the fear to say: the speech is evident in creating an instrument of Lawfare. Moro used a power that does not belong to him but is ours, which is temporarily in the hands of the judge and prosecutors. We gave judges the right to use this power to promote justice, not legal warfare, narrative creation, performative discourse, and Lawfare.

• Selective leaks

The selective leaks that Car Wash Operation promoted are another case that The Intercept Brazil published, in which prosecutors admit that they make "selective leaks precisely to bring people to their knees" - as the prosecutors' statements.

It is Lawfare. The investigator/accuser ends up causing the investigated/accused to believe that his situation is much worse than it is. They create a parallel reality in which the target person becomes a whistleblower, corrupting the whistleblower system itself. After all, plea bargaining needs to be voluntary.

The whistleblower agreements signed at Car Wash mean anything but self-wills because putting the person literally on his knees is a way to get, under torture, everything one has to tell, and what doesn't have.

• Of the 22 tapes, the Supreme Court received just one

The report published by the Intercept along with the newspaper Folha da São Paulo (Sept. 8, 2019) showed that in addition to the famous "Audio of the Bessias" ostensibly leaked from a conversation between Lula and Dilma Roussef, and streamed by TV Globo as a scoop, other 21 conversations were illegally recorded, one of them with former President Michel Temer and ex-president Lula.

Temer confirmed the conversation with Lula in those days - but he did not know that it was bugged, he was informed by the report - within the exact content by the Federal Police espionage.

Probably, Car Wash omitted twenty-one (21) records to the Supreme Court and public opinion. A content that would deflate

the version that Lula's appointment as minister aimed to stop investigations into him, transferring his case from Curitiba to the Supreme Court. Of the 22 records, only one was publicized, just the leak that made possible the narrative that former President Lula would accept the invitation to occupy the position of minister of Dilma to protect himself judicially. A framework to denounce that "Lula wanted to escape from Moro".

It is the construction of legal warfare, a narrative construction, based on a performative discourse. It is Lawfare!

The other 21 audios to which the Intercept team had access and the notes of Federal Police on these audios show that Lula's main objective was to contribute to governance, allow the Dilma government to go to the end, and avoid deepening the political crisis. The conversation leaked with Michel Temer and other leaders from PMDB, at that time the largest party in the National Congress, reveals an attempt to build a political agreement.

If Car Wash Operation omitted these 21 audios of the Supreme Court we have configured serious conduct on the part of then-Judge Sergio Moro, prosecutors Deltan Dallagnol and others from Car Wash Operation. We can even have ministers from the Supreme Court saying they were deceived by prosecutors and Sérgio Moro. Minister Gilmar Mendes declared in the program Roda Viva, from TV Cultura, aired on July 10, 2019. that he would seriously reflect on the injunction that prevented Lula's nomination by Dilma. Mendes stated things would be different if he had the information we have today, thanks to the work of the Intercept and partners in the series of Vaza Jato.

• Transverse revenge

The Intercept and partners (PORTAL UOL, Sept. 11, 2019 published a report showing that to try to find a person in Portugal and promote their extradition to Brazil, prosecutors, and police officers of the Task Force of Car Wash Operation, authorized by judge Sérgio Moro, decided to pressure a daughter of the investigated.

In the first mandate, Sérgio Moro initially denied search and seizure of mobile phones, goods, and computers in the house of the daughter of the investigated. The judge argued that he had not enough information, and the daughter was not even investigated by the Car Wash.

In the second-order, without any new element, Sérgio Moro accepted that prosecutors and officers of the Task Force do the operation against the daughter, basically to make the father appear. As Moro talked about breaking the petista omertà by opening the secrecy of the denunciation of Palocci, on the eve of the elections, we now have another legitimate mafia method, also practiced in Italy, which is called “transverse revenge”.

It is a term known between mobsters and police officers, which means hitting someone through family members, who become targets of crimes - kills a son, kidnaps the mother, disappears with a nephew, kidnaps someone from the family - until the other person, the target, surrenders.

It was evident that Car Wash Operation operated mafia systems in the search and seizure that occurred in Rio de Janeiro, on May 24, 2018, at the home of the daughter of an investigated. This conclusion is corroborated by the dialogues and movements of the process itself.

The Task Force's police detachment went to his daughter's house. According to her daughter's account, she stayed under coercion in "handing over the father's whereabouts so that her son and grandson of the investigated - a seven-year-old child who was present in the house - would not suffer." It is a mafia method. It is Lawfare!

• Car Wash: an international center of coups?

The prosecutors of the Operation Car Wash, incited by the former judge Sérgio Moro, make a scheme to leak classified information to Venezuelan opposition to overthrow the government of that country. It doesn't matter if it is Maduro or Trump; whether it's Canada, Japan, or Venezuela. The issue is that prosecutors and a judge of the first instance of a Brazilian State District engaged in duress to leak information to a Venezuelan dissent to try to overthrow a democratic foreign government.

The blog of a Venezuelan dissident - the former attorney general of that country, Luisa Ortega Díaz (AGÊNCIA BRASIL, Apr. 4, 2018) - published a video showing a statement of the director of Odebrecht with a denunciation of allegedly corrupt conduct in the Maduro government. The Car Wash selectively and partially leaked this notice.

They partially published the video because the other party speaks of the corruption of people who are now politicians opposed to Maduro's Venezuela. This piece of the record is not leaked, only the extent that mattered to Car Wash to cause chaos and social upheaval in the neighboring country.

In Vaza Jato's dialogues about the Venezuelan episode, one of the prosecutors had a crisis of conscience: "People, but wait there, this can cause chaos and deaths in Venezuela." Deltan Dallagnol replies: - Well, that's a decision their people are going to make.

Thus, Dallagnol, the coordinator of Car Wash chooses to leak to create chaos, and the Venezuelan people should decide about it later? What an absurd cynicism! I am stupefied that such state agents are not being investigated and are still in their positions.

• Escola Base: an emblematic case

There are several clear indications that Car Wash Operation has a role as an instrument of Lawfare. It is frequently obvious. No one else denies it other than the people who participated in the Task Force and its beneficiaries. The methods of the Operation made clear the violence via headlines - very well pointed out here. There is blind trust in Brazil's institutions, and often for journalistic ones. It has happened in the case of Car Wash, and many times before.

There is an emblematic case well known in journalism, the Escola Base case in São Paulo. The school was the subject of a complaint: there would be a scheme of sexual abuse of children inside the school.

As said by prosecutor Wilson Rocha (see Chapter 2.1), the police chief has overlooked investigative asymmetry and imposed an unequal dominance of the accuser over the accused. This domain created the ideal conditions for the media and the investigators to take advantage of the narrative.

In the case of Escola Base, the defense even knew what was the accusation. The police officer began talking to the press every day. He was anticipating information from the investigation. The owners of the school - the couple Maurício and Paula - began to suffer a public lynching. People inscribed graffiti at the wall of the couple's house with the sayings: "Here lives Maurício child rapist"; "Bastards, we want justice"; "300 years in jail", "Paula sapatão"; "Jail for all."

One newspaper headline of the time printed the phrase: “Kombi was a motel in the sex school.” Amid the police investigation into the complaint, the press did what it does very well, created a label: “Sex School.” Still, in the early stages of the investigation, the charged couple was destroyed!

The school closed and, in the end, it turned out that the accused couple were innocent. The fact alleged in the complaint did not exist. Some parents heard from their children at home something they thought was sexual abuse and took it to the police.

Children of early age can fantasize about everything. In summary, the case of the Escola Base was a collective delirium between parents and policemen that destroyed a family. They have got the elementary help of the press that relies too much on investigative institutions.

• Car Wash and the commercial media

Car Wash Operation has become a type of “self-made institution” that neither an institution is. They almost act as judges above the Public Prosecutor’s Office. It is another nonsense that the press helped to achieve.

Skepticism on the part of journalists relates to a little-known aspect outside the journalistic environment. Car Wash Operation came at a time when the press suffered a financial crisis. The money that financed the printed newspapers and magazines at that time began to migrate to the internet.

The big brands that advertise their varieties of margarine, cars, and hair conditioners began to invest mainly in Google and Facebook, which are more efficient, spend less money, and provide a greater

financial return. In terms of the organization of capitalism, the internet proved to be more efficient than distributing advertisements in magazines and newspapers.

During this period, there are several “passaralhos” - journalistic jargon for the mass resignations of journalists from major newsrooms (SPAGNUOLO, 2018). Before they had 300 professionals, now they begin to fire dozens of journalists, and occupy smaller floors of the building. Newspapers start to close and go bankrupt, print newspapers survive only on the internet. Magazines start to have serious financial problems. Editora Abril, a global media colossus, not only Brazilian, goes completely bankrupt.

Figure 2. Layoffs of journalists in Brazilian newsrooms from 2012 to 2018 (Source: Spagnuolo, 2018)

In this context, what does Car Wash Operation offer to the press? The old press enterprises do high-cost journalism - investigative journalism, mainly, is a costly activity. Journalism is not a low-cost activity.

Car Wash offers five years of sensitive news with high open audience power. It was a gift for part of the press that relies on the audience, sensitive disclosures, and no money. Car Wash's attorneys were able to operate very well in this denunciation environment. They quickly understood how to establish a productive relationship with commercial media. Amid the chats leaked by Vaza Jato, there is an extreme concern with any criticism or against anyone who raises minimal doubt about "combating corruption" by Car Wash.

The attorneys from Car Wash often move to get space and publish an article in a particular newspaper, talk to an editor, a reporter, rebut any news, demonstrating immense care about their images and control of the press itself. And they do it very well.

• Militant "Lavajatism"

There is no middle ground for militant "lavajatism" because the Car Wash Operation would be the unique responsible for fighting corruption in Brazil. A single opinion contrary to decisions of prosecutors and judges throughout the sequence of the Car Wash Operation means a risk of being classified as someone who favors corruption.

For the supporters of lavajatism only Car Wash Operation is against corruption. Everyone else seems to be in favor of evildoers. If you're not part of "lavajatism", then you are corrupt. You are protecting dishonest people, or you want to take unscrupulous people out of jail. They are the only ones defending justice. No one else can do that!

Car Wash has a unique program based on the power of the fight against corruption tag-line. This idea is excellent for the Brazilian community because if you live in a country where corruption is widespread, everyone grasps that it is one of the big problems in Brazil. This reality drives the motto of “Fight against Corruption”. It raises Car Wash almost as a superior entity above all else, like a religious entity, something that goes more to the side of the field of faith and belief than to the rationality.

The “Fight against Corruption” owns as much mobilization power as the campaigns that call themselves “pro-life”. Despite the general principles of mandatory acceptance, in defense of life, it is possible to commit the greatest atrocities, such as the defense that a State cannot allow abortion in rape cases because “such child has to be born.”

In this sense, under the mantle of life defense, pressure groups have engendered to stop social advances, such as the attempt to revoke the criminal device that allows “abortion in the case of pregnancy resulting from rape” provided for in art. 128, II, of the Brazilian Penal Code, an object of constitutional action ADPF no. 54 and maintained by the Supreme Court in the following terms:

> Art. 128 - Abortion performed by a doctor is not punished:
>
> II - whether pregnancy results from rape and abortion is preceded by the consent of the pregnant woman or, when unable, of her legal representative.

The case cited is an example of campaigns that allow people to hide behind labels and fallacies because no one is anti-life, even that person who believes that the State power should acknowledge abortion in case of rape.

•The anticrime package

The same case occurs with the anticrime package. Every law, especially criminal law, has by definition a function of combating criminality. Therefore, like the "pro-life" campaign, "fight corruption" uses the power of the expression "anticrime" to escape the public issue, and to avoid suffering any criticism.

Whoever stands against the anticrime package will be in favor of crime. It is logical. It is a simple and effective communication strategy for the population. An undeniable idea sold and bought by people. People need simple communication, and those who use that kind of message understand that they need it.

Impartiality - which in the expression of attorney Wilson Rocha "is a little out of fashion" - does not come to the case because people no longer believe justice in the face of the state of things experienced in Brazil today. This exhibitor has traveled a lot, including in the Favela da Maré where I talked with people about Car Wash. There is a widespread feeling: people want revenge. They no longer have just an aspiration for justice. The social belief is for revenge, and, therefore, Car Wash has this fortress as a revenge system.

• Corruption is not fighting by engaging in corruption

For every journalist, what is the difference between the justice system and the revenge system? Returning to the term omertà, and the mafia systems, they live a revenge system. They can even eventually promote justice, but in the middle of the road have committed many injustices and disrespect laws. A justice system cannot do this. Justice does not work by committing illegalities, for we must not fighting corruption through corruption.

In Brazil, corruption is a widely used term for embezzlement of public money. The corruption is much more than bribery. It is intentionally altering the original character of something, by tampering and forging. The original characteristics of a criminal process enable that some procedures should be practiced and others not. When some rules are fulfilled, and others are not, the agent of law will be corrupting the legal and the accusatory systems. It turns to be the fight against corruption with corruption. The state agency in charge of controlling acts of corruption is doing the same they should fight.

• Yes, Dallagnol seems corrupt

When discussing this subject matter we can notice people with fear even because of a lawsuit. "Oh, you are appointing Deltan Dallagnol as corrupt." Yes, I'm calling him a corrupt because exists increasing evidence in Vaza Jato that the coordinator of the Car Wash Operation subverted the due accusatory system and the due process.

I am not stating here that the mentioned prosecutor is corrupt because he stole public money. Corruption isn't just cheating public resources. The imputation of corrupt is also up to those who harm the justice system in the most different illicit ways.

In this regard, I remember the issue of the press and the violence generated by headlines as an instrument of judicial corruption. One of the first three reports of the Intercept Brasil, from the series of materials of Vaza Jato dealt with Lula's triplex building process, in which judge Sérgio Moro offered the prosecutor Deltan Dallagnol a witness, by Telegram, outside the legal court procedures (THE INTERCEPT BRASIL, Jun. 9, 2019) .

One can say that if a judge becomes aware of a witness who attended his office to provide some information about one supposed fact at

trial, the magistrate would have a duty to inform the prosecutor. So the interested party would be able to ask the court of jurisdiction for information about that episode: - Who, how, what day?

Yes, the judge also would have this obligation to notify the process in front of the public eyes. And that's not what happened. It was not the procedure announced by those involved in response to The Intercept story. They lied to the public, creating a parallel reality. Judge Sergio Moro clandestinely passed the tip of a witness against former President Lula to the prosecutor Deltan Dallagnol. As the representative of the MPF could not call this testifier, because he knows he was receiving a deceitful tip, he argues that would try to intimate the supposed witness based on apocryphal news, using the press with the violence generated by headlines.

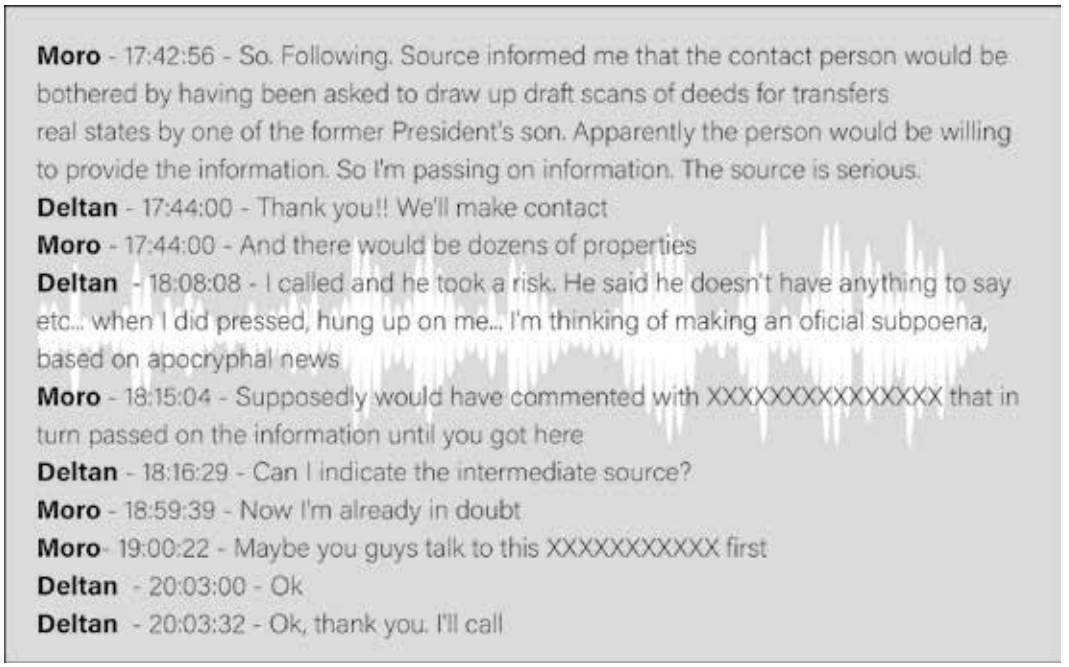

Figure 3. Private chat on the App Telegram of the dialogue held on December 7, 2015, between prosecutor Deltan Dallagnol and Judge Sergio Moro. Source: THE INTERCEPT BRASIL (Jun. 9, 2019)

What seems obvious in this dialogue, Attorney Dallagnol would cause someone to give news about the witness passed clandestinely by Judge Moro. And then, with this news in hand, the MP would have the power to go to the judge and say: “Look, it has become a public fact that this person is running for crime, so I need to subpoena that person to listen to it.”

The Intercept published a story containing the scandalous content of the dialogue held in private chat, on the date of 07/12/2015, between the judge holding the criminal court (judge) and the prosecutor of the Republic (accuser), where the Car Wash processes are being processed, in Curitiba.

The use of violence generated by headlines to make his speech performative, create the very reality of the process to the personal judgment of the holder of the criminal prosecution, are evidence of the practice of corruption of the accusatory system.

To better understand judge Moro’s illegality on the issue of the Brazilian Penal System, I use the teachings of Eduardo Ribeiro Moreira, a free professor in Constitutional Law - USP; Ph.D. in Constitutional Law - PUC-SP; Adjunct Professor of Constitutional Law - UFRJ. And Margarida Lacombe Camargo, Ph.D. and Master in Law, Professor of Law Theory - UFRJ.

The concept of the Criminal Procedural System is based on the primordial division between accusation and inquisition that, after centuries of practices, in all societies, constituted the Accusatory and Inquisitive Systems with four primary differences, highlighted in the magisterium of the cited retro indoctrinators, *verbis*:

[...] The first primary difference is the division of powers and the separation of functions of investigating, prosecuting, and judging. It is undoubtedly the most highlighted difference between the Accusatory and Inquisitive Systems. When the judge concentrates those functions on his hands, one will necessarily stand before the Inquisitive System. In these cases, there is no free conviction expressed by a sentence, because the judge who carried out investigations and formulated the accusation, has already formed his intimate conviction when acting in this way. He is very conducive to convict the defendant.

In the Accusatory System, the separation of functions arises not only by the Public Prosecutor [to formulate the accusation] but also by the Judicial Police that takes care of investigations and compliments of due diligence and the defense that guards the interests of the defendant.

The second primary difference is that in the Inquisitive System there is no contradictory or broad defense because in most cases in which it was applied the defense was not admitted. The Accusatory System, on the contrary, deems means to defendant provide his full technical defense, including the nullity of acts proven in violation of the basic principles. These guarantees are positive in all democratic constitutions.

The third remarkable characteristic [...] is that of subjectivity in the Inquisitive System. The defendant is the object of the process. The evaluations fall on his previous conduct and even on his state of mind, allowing arbitrariness and uncertainty. The criminal law of the perpetrator is always committed to aggravating a situation admittedly harmful to the defendant since it admits prejudice interpretations and, worst, persecution stalking the disaffected, and on the other hand, the protection of friends. The Criminal Law based on facts, used by the Accusatory System, evaluates only the action committed, indistinctly - whatever the author is - and with criteria met by law [...].

It is not enough to request pieces of evidence by the Public Prosecutor's Office. They must comply with demanding legal criteria, such as

> those set down to restrict telephone interception or confession. In this way, the evidence is examed. We will not have legal certainty since there are other fundamental rights to be preserved, such as personal intimacy and professional secrecy. Achieving these rights under the pretext of convicting a suspect at all costs, without other evidence, harms the whole of society.
>
> The fourth and final primary difference concerns the presumption that one has of the defendant, causing the burden of proof to be reversed. Thus, the principle of presumption of innocence governs the Accusatory System in which the defendant is held to be innocent. Not the first-degree conviction of jurisdiction results in the loss of that presumption.
>
> The defendant must be convicted, without legal possibility to reverse this situation - subject to criminal review - at which point he ceases to be a defendant and innocent and becomes convicted and guilty. The Inquisitive System acts on the principle of guilt, since the defendant, the subject of the trial and trial, is found guilty and must prove his innocence to exempt himself from a sentence.
>
> All arrests, therefore, in the Accusatory System, must be definitive or, before that, only if necessary to ensure the final result, concerning the regular progress and its final execution. If the defendant is, from the outset, found guilty, it is justified, in the sissy, to keep him imprisoned from criminal instruction. Otherwise, no. In other words, the Accusatory System is only effective if accompanied by the principle of presumption of innocence. [...] (MOREIRA & CAMARGO, 2016, pp 4-6)

Under the authors' teachings in the above transcript, the Criminal Procedural System adopted by the magistrates and prosecutors of the Republic who work in the task forces of Car Wash Operation, in Curitiba, São Paulo, and Rio de Janeiro does not fit the Accusatory System, approaching the Inquisitive System, constituting a frontal violation of the Federal Constitution and the Brazilian Code of Criminal Procedure.

• A tradition of the Brazilian press

There is another important issue that arose with Car Wash Operation, which the press was not accustomed to. The Brazilian press of police coverage, until the 1970s, was very strong, so that the police pages of newspapers were more read than the political pages.

The tradition in the Brazilian press is to cover the facts from the constituted powers version. It already traces the narrative from this choice. I'm the kind of journalist who doesn't believe in impartiality in the press because it doesn't exist. There's no exemption. If the tradition is to cover a fact from the version of the official organs, soon, the journalist will always listen to the policeman, judge, prosecutor, judge. It is the constructed narrative from the view of the state agent.

The "other side" of the police news fact is the bandit, the tramp, the delinquent - terms widely used in Brazilian newspapers until the 1970s and 80s. In this regard, I do a digression. In the face of the clash The Intercept versus Car Wash, the author gave testimony to the Federal Chamber, having spontaneously attended the legislative session as a whistleblower of the Vaza Jato series. At the beginning of the session, it was a matter of nominating and calling to account all members of the PSL - party of President Bolsonaro - who keep barking "criminals", and asking for the arrests of journalists and the closure of the site The Intercept Brasil.

In turn, the attorney Deltan Dallagnol did not attend the same session. He would be in the condition of denounced before the federal deputies and public opinion. The accused should have attended because he is a civil servant and should be there, explaining the facts to the Brazilian society. Despite the illegal behavior of the absentee, he did not receive any treatment that

the traditional media dispenses to the "other side" - bandit, vagabond, delinquent.

Unlike Sérgio Moro, the ego of this author does not have his own CPF. It is a cool sentence that belongs to the archives of Vaza Jato. It refers us to the idea, already exposed, that the journalist can not have prejudice with his sources, and should listen to the drug dealer, militiaman, even an attorney of Car Wash Operation. There is no prejudice concerning the news sources of journalists.

- **"Militia Party"**

The prejudice towards sources leads to unusual things. For example, last year, the Military Police of Rio de Janeiro parked two buses in the extreme west of the city a poor neighborhood in city outskirts that is an hour from the South Zone, where a funk dance was taking place. The police ordered all the women to leave the scene and arrested 159 men, put them all on buses. They arrested everybody for a series of 159 custody hearings. The reader can imagine how were the procedures, without individualizing the crime of any of them, accused of being militiamen.

Automatically - journalism has the tradition of adopting coverage from the powers constituted - then circulates the version of the police, as the "sex school" of the Base School, that case becomes "militia party."

With the fact reported immediately, about 20 days after the start of The Intercept's work, 135 people went free without even being prosecuted. Soon after, the last 14 defendants were found not guilty by the courts. That is, 149 innocent people were arrested, and their names emblazoned on the headlines for all their family members and neighbors to see that they were participating in a "militia party."

It is the total irresponsibility of the use of words and the way of doing journalism, which contradicts all the principles of good journalism. And I'm not here to teach journalism to anyone, but telling you how The Intercept does, believes, and sees journalism.

• Denunciation menu

Car Wash Operationcreated some curious things, one of them - perhaps the strangest - is the one called "denunciation menu." That is something new to the press, unprecedented, never seen before. The denunciation menu is a vague idea about what someone can present in a future denunciation, despite it can even be untrue for lacking evidence. Its foundations are the promises of a whistleblower candidate to get rid of Car Wash. Big media did use to publicize the content of the menus, and the denounced people got their names thrown into the mud.

The denunciation menus became a business, a machine to destroy reputations. Throw in the mud the names of disaffected to build the own narratives of the accusers. The sentences are from the prosecutors themselves, who wanted to "put the person on his knees", "expose someone's name on the denunciation menu", "hammer that name in the press, every day", so that such person becomes corrupt, and condemned by the court of exception that is the press, in these cases.

• Patient zero

All Car Wash's target is a whistle, advise denouncers to say what the accusers want. Get the reputation destruction machine to throw mud at the enemy. I exemplify it with the cover of Veja magazine, of October 23, 2014, with the photos of Lula

and Dilma, which stamped the headline entitled “They knew everything”, 72 hours before the second round of presidential elections.

Car Wash leaks the phrase of a whistleblower named Alberto Youssef, who is the zero patient of Moro and Dallagnol. Without Youssef, nothing would exist. He is also the patient zero of a much bigger corruption scandal before Car Wash - the Banestado case. In this opportunity, suspected billions of dollars went to fiscal paradises meanwhile the most profitable public enterprises were sold in the name of State modernization.

Ahead of investigations of Banestado case participated Judge Moro and several prosecutors, including Dallagnol. Youssef becomes a whistleblower in the case of Banestado, receives benefits, gets loose, and like a grown criminal returned to wrongdoing, being arrested again, and release after renewing collaboration to the task-force of Car Wash.

What does Sergio Moro do with his “patient zero”? He gives him a new plea bargain option. The well-known criminal received a new benefit on which the basis is not being able to corrupt again. The stubborn delinquent, 72 hours before the elections of the second round of a presidential election, provides the bombastic phrase: “They knew everything.”

Former President Dilma is there, to this day, with “everything she knows.” What was that “everything”? The arrest of the powerful (the enemy) as a communication weapon, used by journalism in the service of Car Wash’s performative discourse.

- **What's the right thing?**

Long ago, in dialogue with a good friend - who ended up appearing in Vaza Jato's dialogues - and had already seen his name before The Intercept published the first stories, following his ethics nothing was spoken to him.

When the news came out, we didn't talk to him either. In a very critical tone about what happened, he said interesting things: "You are doing your job; this acquis could fall into the hands of people of dubious character who could use it for shady purposes; you have been very fair." And he added, "Don't you think this The Intercept job is a small thing around what Car Wash Operation did? Look at the powerful now they're in jail."

And puts in jail is simple in Brazil, if you replicate the model of mass incarceration, adopted downstairs, upstairs. That's doing the wrong thing. And I'm not saying no one has to go to jail. When the limit comes, the penal system needs to get that person out of society. I believe that one should try to make the offender understand that his conduct is not legal, that he should be re-educated, and then return to society.

Humanity cannot live in a world with people indefinitely healthy and others indefinitely apart. Any democratic country on the planet treats the loose and the prisoners well. We should not massacre the prison population because we are people who are participants in the same society, equal before the law. So replicating a horrible punitive system that functions as a people grinding machine, both upstairs and downstairs, is absurd. If so, people don't want Justice but crave revenge.

• One cannot make Justice by destroying economy

There is a very great work of communication that I believe that The Intercept has to perform, as long as it has energy for it, that is, to explain to people what is happening in the relationship between Car Wash and the economy in Brazil. In one publicized dialogue, a fallacy addresses an economic issue: “Corruption in Brazil is estimated to consume 1.5% of GDP”, because only a few sectors - bankrupted by the anti-national methods of “Combating Corruption” - accounted for 19.2% of gross domestic product - GDP in 2014, before Car Wash Operation. Let”s see how it took place.

• Civil construction

Civil construction accounts for 6.2% of GDP. In the name of a system of combating corruption imbued with blind and militant faith, the “lavajatismo” triggered a search against corrupt legal entities of civil construction. It is naive the idea that Car Wash saved 4.7% of GDP from corruption in the construction sector (the difference between 6.2% and 1.5%).

What was stolen - and supposedly recovered - and what was destroyed by Car Wash Operation in the construction of the country is not, by far, a sustainable economic exchange, nor is this valid as an argument. Brazil has lost global strategic competitiveness with the decree of the bankruptcy of Brazilian multinational companies in the construction sector.

• Oil & Gas Sector

The oil and gas sector, before the start of the intense phase of Car Wash, accounted for 13% of GDP in 2014. The share of this segment in total Brazilian GDP should close in 2019 with an approximate drop of 9.5% (PORTAL UOL, Ago. 5, 2018).

As revealed by Vaza Jato, Car Wash adopted illegal methods to combat corruption, which destroyed the national petrochemical park, such as Santa Maria-RS and Campos Basin-RJ. In comparative terms with other countries, the fight against corruption in Germany did not promote the bankruptcy of Siemens. They correct misdeeds, and the company continued to exist, demonstrating responsibility for the country's economy, preserving the company's social function.

At Car Wash, concern for the country was a secondary issue. For prosecutors and the judge Moro, the important thing is the project of personal power, which is increasingly evident, whether making half a million reais per year in lectures or preventing the election of a candidate who led the polls for helping the ally, and become minister of justice and then fulfill a vacancy in the Supreme Court, or even look at 2022 as a practical candidate for the presidency of the Republic (FOLHA DE SÃO PAULO, Jul. 14, 2019)

All those information are no longer a secret. They are not assumptions or a conspiracy theory. The chained facts went in light of what has been revealed by the stories publicized by The Intercept Brasil and partners. The truth did come to light.

Deltan Dallagnol - 21:41:18 - Dear, if we're going to play ourselves, it won't work. What if I move on to Star XXXXXXXXX to organize this and agree that we'll split the profits? If we have the company in the name of XXXXXXXXX and XXXXXXXXXX, we play for her to organize everything and divide by 3 the result, being 1/3 to XXXXXXXXX of Star. Do you agree?
Dallagnol - 21:42:03 - If you agree to step to her the idea and we start doing (lecture) at Unicuritiba and maybe 1 in SP inserting a teacher like XXXXXXX, and meanwhile the girls open the company.
Roberson Pozzobon - 21:42:13 - I liked the idea, Delta!

Figure 4. Private chat on Telegram of the dialogue held on February 14, 2019, between prosecutors Deltan Dallagnol and Roberson Pozzobon. Source: THE INTERCEPT BRASIL (Jul. 14, 2019)

2.2.1 Interactive debate

The question posed by Representative Virmondes Cruvinel Filho[18] leads us to make a comparison between the reports in Car Wash and the case of Tommaso Buscetta of the Italian Mafia because there is no information on the exact number of whistleblowers in the processes of the Brazilian operation.

• The Tommaso Buscetta whistleblower

In a book written about Tommaso Buscetta - a renowned mafioso who was a great informer of the Cosa Nostra, the information shows that he was an international, lived in Brazil, Mexico, USA, Argentina. He had lots of information about the mafia since the post-war Italian.

Tommaso goes to war, still, as a teenager, fights in Naples with allies. When he returns, the Mafiosi call him and in the 1950s, starts his performance in the mafia, where he passed through all the transition of the Cosa Nostra as the simplest mafia, more rural, that smuggled cigarettes from the countries of the Iron Curtain, to become the largest carrier of heroin in the world.

When his group was eliminated by other mafiosos, he flyes away. The Mafiosi try to find him. They cannot find but commit cross revenge. Mafia kills their two children, brother-in-law, nephew, and promote genocide in their family.

18 Virmondes Cruvinel Filho, state representative, *verbis*: "[...] I would like to hear from the journalist Leandro Demori his opinion on the problem of usurpation of public functions and the idea of freedom of expression as the agenda. What can we do to move forward, to get around this problem on the legal side; is it possible to do something? [...]".

• Investigating Judge Giovanni Falcone

Pressed, Tommaso decides to become a whistleblower. His first statement occurs, in Brazil, to Giovanni Falcone, an Italian judge instructor, who later does not judge the process he instructs, unlike Sergio Moro, who is not a judge instructor - a figure not allowed by Brazilian law - but, who instructs the investigation and judges the Car Wash cases.

Judge Falcone, through the Tommaso snitch, started to understand how the mafia worked because it was a very closed thing. The Italian state had extreme difficulty in admitting that the mafia existed and did not fight it as it should. Tommaso reported how it worked, separated by family, each one had its boss ("capo"). There was a commission of mafiosos gathering several "capos" called "commissione". It was set up based on the experience of the five American mafia families when they organized the Sicilian mafia to start transporting heroin to the US.

• Maxi Process

By accessing Tommaso's statements in the operation's archives, in a small town called Corleone, the fact is revealed that - because of the film - there is a whole collection about the mafia and documents from the process with the statement that generated the allegation. The testimonies were taken in fist, pages, and pages, in which Falcone writes everything, then instructs the process that became famous in Italy, called "Maxi Processo".

They also have to build in the Palermo Court a room called a bunker - huge, amphitheater-shaped - where the trials take place, on the walls of the room the cells, where the Mafiosi are called in

groups to give testimony, to defend themselves. In the end, the Maxi Processo de Palermo has resulted in 360 convicted people, several of them to life imprisonment, in a legal instrument that did not exist in Italy, built to fight the mafia, the "41-bis", which creates the possibility of "imprisonment for life" as they call it.

- **Has anyone ever done that count?**

In reporting this, in response to lawyer Bárbara Wendel[19], we can state that the Brazilian commercial media has shaped a conscience in the popular imagination of hunting down the corrupts in Brazil. In Italy, the revelation of a single whistleblower promoted 360 convictions. In Brazil, only Odebrecht has 78 whistleblowers; in RJ, the news is that there are 72 more whistleblowers. That is, only here we reach 150 whistleblowers. Has anyone made this account?

Maybe Car Wash Operation has 300 whistleblowers, possibly more than we think. And I need to rediscuss this tool, and the way it was used. In the abstract, whistle-blowing is beneficial to society. It is used in the USA as well. Buscetta has also denounced people in the USA. In practice, we saw that there was an abuse of this instrument, to the point of corrupting itself.

There is concern about the situation described by prosecutor Wilson Rocha regarding the abuse of justice in the state spheres. In the small districts of the country some judges and prosecutors can destroy people's lives through absolutely unfounded lawsuits, and in the end, if the abuse is denounced, it may come to nothing. The abuse of the instrument of public civil action needs re-examination.

19 Bárbara Wendel, lawyer, post-graduated in Law at PUC-GO and graduating in Letters at UFG, verbis: "[...] I still believe in Journalism. So, I question the journalist Leandro Demori: you listed very well that the commercial media molded the public opinion for the great public to take Car Wash as the solution to all problems. For everything you have seen and studied, is it possible to glimpse that people start to change the perspective based on Vaza Jato, as well as had this shaping on Car Wash? [...]".

• The press freedom and protection of the source

Considering the issue of media relations and democracy to address the questions of Frederico Noleto[20], we can say that our Constitution is one of the best in the world for the press.

The CF/1988 expressly guarantees freedom of the press and protection of the source. The STF has repeatedly guaranteed these rights, one of the pillars of democratic countries.

We agree with the assessment of Professor João Batista de Deus that, in terms of legislation, there is a well-founded fear that the National Congress, with its current conservative right-wing composition, will begin to review the principles enshrined in the Brazilian Constitution and promote historical setbacks.

In response to the questions of Rafael Langaro Passarinho[21] and Professor Nilton Brandão[22]: - We have to strengthen the

20 Frederico Noleto, journalist, collaborator of Free Journalists and Ninja Media, verbis: "[...] In the field of communication, I ask Leandro Demori: we have the Law of the Right of Answer that is not put into practice; is there any legal regulation for the journalist to listen to both sides? [...]".

21 Rafael Langaro Passarinho, a computer science academic at UFG, verbis: "[...] What is the role of the journalist and journalism at the present time? As the population does not have access to information, is it possible to face this misinformation with declaratory journalism [that which is produced by a journalistic article based exclusively on the declarations of the source of information]? [...]".

22 Professor Nilton Brandão, president of PROIFES Federação, verbis: "[...] Can we understand that journalists and the big press today act in bad faith? I will give two examples: integrality and parity in public service have not existed since 2004; the TV program Roda Vida, when there was Miriam Leitão, Sardenberg and other renowned journalists of the same suit, one of the great arguments they used would be the unacceptable defense of the privileges of public servants. They said: if in the private enterprise there is no parity, why does the public servant have it? Well, it hasn't since 2004. It's impossible that these people don't know that; is it bad faith? Another example; the question of social security. It is clear that who will be harmed is the poor, the woman, the black, the small municipality that will lose revenue. In face of

independent press in Brazil. There is an expressive drop in the credibility of the traditional press with public opinion, opening space to strengthen The Intercept, the Public Agency, feminist collectives, the Ninja Media, Free Journalists, among other independent vehicles, each with its ideological profile and particularities.

The independent press needs financial and human resources. In the old days, people thought independent journalism was a characteristic of "poor press" with weak journalism. Journalism needs money. Journalism without financial resources has no impact because nobody reads, and it generates nothing.

The Intercept is making an impact because it has funding that guarantees a team of eighteen professionals. It is a structured business with a newsroom, telephones, internet, travels, well done social networks, editors, and journalists.

Independent journalism requires collective funding. Not only The Intercept, but everyone I mentioned needs an audience and money because they have no access to public funding. Private property brands don't put money on independent journalism, because they prefer to invest in traditional journalism, which serves the powerful, using a bureaucratic language created to lie to people.

So, for Brazilian people to get out of the hole, it is necessary to help independent newsrooms to become professional. It is the only way in terms of alternative press power.

this, there are influential journalists in society who have a history of militancy on the left, and they defend in the most washed face the welfare reform, saying that this is necessary because it will benefit the poorest and harm the rich, which is a violent contradiction. What is going on in the minds of these people? [...]"

CRIMINAL LAW AND FREEDOM OF EXPRESSION
Bartira Macedo de Miranda
Virmondes Cruvinel Filho

2.3 Fundamental Rights and Guarantees of the Process

The initiative of the entities representing the teaching professionals in articulation with the Academy of Law of the UFG to promote the panel discussion on the strategic use of the law and to publish this book will leave us some lessons. The main one is that it is not new to use the criminal system to pursue enemies. Since the punitive power existed 800 years ago, this has been done. In the Middle Ages, witches were elected within a discursive structure that justified the persecution of certain groups of people.

Each historical period has a different enemy. In the Middle Ages, witches represented evil, and death was not enough, but cruel punishments also. Since the beginning of the 20th century, we have witnessed the persecution of communists. Today we see the same structure of discursive persecution about the narcos, which even turns drug users into highly dangerous criminals.

It is a way for the penal system to persecute poor, black, and disinformed people. The war on drugs itself is also a war against the poor. To understand the criminal justice system within this warlike vision of legal warfare, war on crime, war on drugs, war on corruption, is a discourse that still works perfectly. The structure of this speech has been the same since the Middle Ages, except for the new enemies chosen.

For this reason, we see - with concern - the prevalence of the actions of state agents, with the support of people from broad social segments, against politics, based, unfortunately, on the thought that gives strength to punitive power. Such a vision is not the privilege of the elites. Far-ranging society segments of the people spread this point of view. Several sectors of the left have embarked on this discourse.

With the advent of the criminal act no. 470 in the STF - the "mensalão" - progressive social sectors should have paid more attention to the danger surrounding the Democratic State of Law. The political moment demanded a radical stand in defense of the fundamental rights and guarantees of the process, but, contradictorily, we saw the endorsement of several anti-democratic laws within the punitive vision.

As a result, today we are at serious risk of setbacks in democracy, which has never been in such evident danger. I repeat, the use of the criminal political system has always existed, but not in such a shameless, cynical, and cretinous ways. There are so many pieces of evidence and illegalities practiced for political, geopolitical, or commercial persecution, requiring from all of us reflections regarding Criminal Law and Lawfare, for a profound diagnostic and prognostic.

• Limits of power

Prosecutor Wilson Rocha, in the article in Chapter 2.1 above, motivates us to reflect on the ideological aspect of Lawfare with the criminal area, which has an enormous weight in the interference of power relations and the extension of our freedom.

If everything is ideological, then “the only concrete thing there is are the corpses,” says Argentine doctrinaire Eugenio Raúl Zaffaroni (ZAFFARONI; PIERANGEL, 2015). Why the corpses? They don’t think they talk, but in fact, they talk a lot. They tell us a lot, even that someone died. The first message of the corpse is that we cannot deny that a person has died. That is a fact.

In criminal proceedings, every activity will always revolve around a fact. According to prosecutor Wilson Rocha in the previous article, the construction of that fact, its reconstitution, or even the creation of the fact, does not deal with the fact itself, but with the manipulation of the facts.

The possibility of manipulation is very notable. The question of the limits of power arises from this. It is a question that crosses centuries, a reason for the very creation of Criminal Law and Criminal Procedure, disciplines that impose limits on the power to punish. Until the Middle Ages, the absolute power of the sovereign over life, death, and all social activity prevailed.

It was in the sense of imposing limits on punitive power that we arrived in the 21st century with this difficulty of understanding who needs Criminal Law and Criminal Procedures. Despite threats of retroceding, Criminal law and Criminal procedures serve the interests of citizens, who need the safeguards of freedom and fundamental guarantees.

In the criminal area, there has always been a wide divergence of understandings involving ideological issues. The approach of prosecutor Wilson Rocha reminds us of Michel Foucault’s Archaeology of Knowledge and Microphysics of Power (FOUCAULT, 2009; 1979). The main Foucaultian concepts - of discourse,

enunciation, knowledge, and discursive training - appropriated by Discourse Analysis allow us to see that each power system needs a corresponding power, which creates a system of knowledge that is convenient to it, and that will give it a reinforcement to act.

Despite the criticism exercised in the area of Criminology for decades in Brazil, which has allowed the creation of conditions conducive to the emergence of critical criminal law, we are now experiencing uncritical criminal law, which contains a new element expressed in the ostensibly political use of the law. It follows that the criminalist and the parquet will have to deal with, make self-criticism and reflection because it is not a question of ideological divergence.

Judge Sérgio Moro was a professor of Law at UFPR, went through a public contest - whose jury had recognized law specialists - however, he is a highly authoritarian thinker of the penal system. And this conception makes Criminal Procedural Law non-existent because procedural law exists to establish the rules of the game, obligatory for the exercise of the courts.

As Judge Moro decides - arbitrarily - whether or not to follow the criminal rules, he stands in an exercise of power, therefore in political action, where the dogmatic criminal procedure is over.

Tercio Sampaio Ferraz Junior teaches that the law is dogmatic since the Juridical Doctrine is based on the principle of the undeniability of starting points, that is, the decisions have to be juridical, based on the norm, doctrine, and jurisprudence (FERRAZ JUNIOR, 2003).

Observe that the transition from legal to political constitutes a borderline penal area that until then was situated in the field of ideological differences. Our country, of slave origin, has a judicial system whose performance goes beyond the limit of mere ideology. We knew more about our justice by the facts and hidden interests revealed in the articles published by Intercept Brasil.

2.3.1 Interactive Debate

According to the posed question by the lawyer Eliomar Pires[23] , we can consider that national life is under the radicalism and extremism of neo-fascist matrices that overcome the differences in principles of values and ideologies. Politics needs dialogue, which is the main tool for working in democracy. Those who exercise an elective mandate must further improve and preserve the worth dialogue.

The notorious practice of Lawfare intensified by the Car Wash Operation led to the "renewal" of half of the seats in the National Congress by advocates of radical positions against "gender ideology," "human rights," "social inclusion," "the left," "the politically correct," "the environment," and even against "institutions of international cooperation," stigmatized as "communists," following the example of the United Nations (UN) and World Health Organization (WHO).

23 Eliomar Pires Martins, lawyer, verbis: "[...] Congressman Cruvinel is from a family that his parents actively participated in the democratic struggle of the country and you certainly follow this democratic field. Yesterday, in the brilliant opening speech of the governor of Maranhão, Flávio Dino, he put very well the importance of agglutinating, in the institutional field, the democratic forces. As this is not seen in Goiás, his presence fills me with hope. What must be done to strengthen the democratic field? [...] In the last election to majoritarian posts, Marconi Perillo was replaced by Jorge Kajuru for a senator seat in Goias from 2019 to 2027. It was not good for the Democratic field this exchange made in Goiás thanks to a manipulation of the Judiciary System. [...]".

Contradictorily, some of these parliamentarians act against the national institutions themselves by sponsoring street movements through the "closing of Congress and the STF", with the direct participation of the President of the Republic, Jair Bolsonaro.

The Supreme Federal Court (STF) , as guardian of the Constitution, has opened an inquiry to investigate and punish those responsible for antidemocratic acts and demonstrations (O GLOBO, Apr. 21, 2020), prohibited by the 1988 Citizen Constitution, verbis: "[...] Art. 85, item III. The acts of the President of the Republic that violate the Federal Constitution and, especially, the exercise of political, individual, and social rights [...] are crimes of responsibility.

In this sense, some questions and impressions are valid regarding the manipulation of instruments legally instituted by state agents practicing Lawfare, thus exerting harmful effects on the democratic balance of Brazilian society.

- **"Delação premiada"**

The contribution of the Attorney General Wilson Rocha (see Chapter 2.1) motivates us to reflect on the agenda of the "delação premiada"which corresponds to an awarded delation or the plea bargain. In this sense, to question the selectivity of the use of this institute within the scope of Car Wash, within the three strategic dimensions related to the concept of Lawfare (see Subchapter 8.2).

• Selective Leak

I believe it is still essential that all the operators of justice, especially the guardians of the law, reflect on the direction and selectivity about information leakage.

• Commercial media complicity

It is necessary to consider that allied to the selectivity of the reporting agreements and the selectivity of leaks, there is the possibility of corporate media complicity, as demonstrated by journalist Leandro Demori in Chapter 2.2.

• Lawfare Instruments

In this context, it is necessary to seriously suspect the effectiveness of the "Delação Premiada" as an institute to improve the judicial system. It is clear that the Delação Premiada is not related to the justice system, but Lawfare, due to the abusive use of this legal tool, as explained by former federal judge Flavio Dino de Castro e Costa in Subchapter 1.4.

• Freedom of expression

In the text already mentioned by the journalist Demori, we have the problem of the usurpation of public functions, by the media, through the commercial media, which appropriates the idea of freedom of expression, so dear to the rule of law and acts as a guideline for the judicial bodies, to meet private and not public interests.

The question is how to avoid this problem, in the legal aspect, democratizing the media, without state or corporate interventionism or private monopolist capital.

• **Washing Toga**

In the Senate, the CPI of "Wash Toga" is being raised, where it intends to debate and also investigate attitudes towards the Judiciary. It is valid to question if a CPI, in these terms and current context, will promote advance or retrocession of the Brazilian Judiciary. Could this be a path?

I believe that every member of Parquet should expose his point of view about the CPI in question because we do have this great opportunity to evaluate, criticize, and advance the justice system in Brazil.

• **Recall**

The discussion about the figure of the recall is necessary. In the Executive and Legislative branches, it is nothing new - we inherited from the Democracy of Classical Greece - the citizen elects the holder of the collective mandate. But concerning the Judiciary, is there any possibility of progress in this regard? This question is raised for reflection by all the agents of the judicial bodies - magistrates of the Judiciary, prosecutors, and attorneys of justice, attorneys of the Republic, delegates, and investigators of the Judiciary Police.

Dialogue based on a democratic national agenda is the great challenge to be overcome, today and tomorrow, to strengthen and improve the rule of law, overcome party political differences, bring together people of different views, advance the institution of protection, tolerance, and inclusion, aiming at the common welfare.

CHAPTER 3

LAWFARE INDEXED TO NEOLIBERAL CONTEXT

CRIMINAL LAW UNDER SUSPICION

Jacson Zilio

3.1 The Corruption of Democracy's Essence

The issue of manipulating the use of law for political purposes is not new in criminal law. Criminal Law is the branch of law that has been the most victim of this authoritarian strategy. Of course, in other areas, there are strategies for the attainment of personal interests. For example, Fernando Morais tells a polemic episode of the life of the criminalist Nelson Hungria[24], who well represents the bossism embedded in Brazilian society. (MORAIS, 1994; Folha de S. Paulo, Sept. 11, 1994)

Therefore, this technique of acting is not new, nor is it the possibility of theorizing this form of combat of the enemy within Criminal Law, to give it formal legitimacy. It is indeed quite worrying, but not at all new. There have always been jurists (especially criminalists) willing to justify what, even in common sense, is unjustifiable.

• Totalitarianism, Authoritarianism and Fascism

By linking Criminal Law to the specific political context, the

24 The narrative refers to the custody process of Chatô's daughter, in which, according to Fernando Morais, Nelson Hungria, as judge, would have benefited Chatô. The book tells that Chatô would have picked up Hungary on his plane, via Belo Horizonte, to take him back to Rio and, on the same day, revoke the order of the substitute judge who had attributed custody of the child to his mother.

expression totalitarianism is widely used for a given form of society and, within it, to understand how Criminal Law acts within such a system. This category of totalitarianism is not adequate for identifying criminal law movements. In the post-war period, totalitarianism places in the same block of thought movements such as the fascists and the communists, who have always represented, in theory, and practice, distinct worldviews.

The idea of totalitarianism served as a political strategy to extend, analyze and especially judge the political acts of the former Soviet Union, concretely in the Stalin government, on the same level as those practiced by European fascism, that is, in Italy and Germany.

In any case, it must be clear that, before concretely analyzing the movements of punishment, of any government, not all repressive groups, no matter how hard they are to preserve privileges or castes, are essentially fascist. In other words, one cannot reduce the analysis of this issue to the concepts of dictatorship, authoritarianism, or totalitarianism.

- **Fascism as a Category of Right-wing Political Thought**

The best category for understanding the punitive movements of the right is still fascism. Fascist right-wing thinking has three very sensitive axes connected to the law functioning, especially Criminal Law today. In this sense, the axes follow these characteristics can be carried and used by anyone who wants to analyze the arbitrary use of Criminal Law: i) radical pragmatism; ii) identity between theory and practice; iii) existence of a sacred principle or supreme value for the engagement and motivation of people.

Simple reasoning developed by Konder explains the radical pragmatism defended by fascist thought, both in Italy and in Germany, *verbis*: "[...] it is more important for the prisoner to have reliable guards and solid cell doors than to persuade prisoners of the excellence of the current penal system . [...]" (KONDER, 1977, p. 6)

Thus, in the conservative movement that constitutes the right, it is important to resolve practical issues quickly than to seek help in the academy and discussions necessary for the formulation of state models.

Those who act according to this aspect of conservative thinking are terrified of academic or intellectual thought, precisely because it has no immediate pragmatic sense. Academic discussions do not offer a short-term solution, because the result of any serious investigation always depends on long debates.

In the criminal field, this is quite evident today in the way solutions are preached to real problems. For example, one often resorts to the reactionary thought of the so-called zero-tolerance law and order movement, which proposes a simple positivist differentiation between (abnormals) delinquents and (ordinaries) citizens.

The solution to delinquent problems involves a simple increase in repression concerning those selected as delinquents, even when they are small facts. The core of this policy of zero tolerance is the argument of war. The only conservative solution in the application of the penalty is the violation of the pain, in short, of war. It is a pragmatic way evident because the use of prison here is to segregate people from a marginalized social class that stems from a system of capital.

- **Pragmatism**

Pragmatism in Criminal Law relies on these primitive ideas, which identity with common sense. One can observe this similarity by the attitude of someone who does not make an intellectual effort to understand the complex phenomena of crime and criminality.

In a context of a retributive justice derived from religious influences, it is natural that part of the population, which does not hold any special knowledge, adheres to the political-criminal thought of mere repression by the massive use of the prison sentence.

This pragmatism, as in authoritarian systems, uses the same method of propaganda discovered by fascism in conservative right-wing manifestations between the 1920s and 1930s, and now returns in an intensified form, as a phenomenon of convincing the popular classes to adhere to policies contrary to the very essence of their social class interests.

- **Propaganda**

The propaganda through radio and public communications now have a significant and devastating dimension. The discourses before were simplistic, laden with emotion, incitement to unrest, and sought, in essence, to exchange formalism for the simple man speech.

Nowadays, through comments on social networks, the publicity became the simplest way possible with the advantage of disguising conservative content. By fixing the attention of the masses to a new, modern, dynamic, and pleasant style, it has the advantage of disguises reactionary content.

At the time of National Socialism, Joseph Goebbels, Hitler's advertising minister, used the phrase: "This form of advertising is so modern that the world could not understand it", Pragmatism uses the method of fascist propaganda, which, despite its crude character, is very efficient and publicly assumed. Just remember the statement of the former Justice Minister Sergio Moro[25] that the "anti-crime package does not need to be debated with panelists because they only find problems in things". In other words, it's better to let the knowledge away and reform one's confused head! (SANTA CRUZ; BREDA, 2019; IBCCrim, 2010)[26]

Even in the Estado Novo period, with its despotic legislation, I never saw someone escape from the public debate on the production of criminal laws like this. Nelson Hungria, the recognized criminal lawyer specialist of that time, traveled through Brazil debating the 1940 draft Penal Code, which had an infinitely better technical content than the actual proposed. It is clear, then, that this modern penal reform sells easy, pragmatic solutions, without any debate, through declarations on social networks.

It is a tradition of legal science proposals that explanatory statements accomplish the debate. "Packages" do not successively describe bills because they have systemic claims. It does not happen today in criminal reform when the person interested in the fundamentals will have to find them on social networks or eventual and sufferable interviews. This radical pragmatism is a sign of the fascist character.

25 Collective interview on 4/2/2019, the current Minister of Justice Sérgio Moro maintains that the legislative changes proposed in the so-called "Anti-Crime Law Project" presented by him to the public seek "practical effects", not "to please teachers of Criminal Law".

26 However, some entities have already manifested themselves pointing out numerous unconstitutionalities and illegalities in the anti-crime package.

• Identity between theory and practice

The right-wing groups, both before and now, will steal from Marxism the concept of unity between action and theory. A century and a half years ago, Friedrich Engels sustained the need for a dialectic methodology of analysis of the whole and not just of the parts (ENGELS, 1974, pp 126-202).

That is why one must have a practice united to theory. The theory is the criticism of the practice, and not identical. Its union does not make the power of criticism to transform reality disappear. In this way, Marx was not a determinist, since he had in the individual a fundamental subjectivity to make the revolution. In this sense, without this subjectivity, it was impossible to transform history. Until then, Philosophy had only observed, described, contemplated history; it had not effectively engaged in changing history.

Hitler said in 1922 that "the National and the Social are two concepts that are in one", expressing the idea that it is necessary to resort to the sacred principle to unify people around the myth of the Homeland. Contemporarily, the discussions around environmental crimes in the Amazon express the need to resort to the sacred principle capable of unifying people around the concepts of the National to vivify the myth of Homeland sovereignty. The Social, there, suffers in front of the National.

Curiously, the need to resort to the nationalist concept only works selectively, disappearing, here, in so many other points, as the sectors linked to international capital. In the scope of the capital, the National is in abandonment (given the application of the sacred principle).

• Law and order

The characteristics that we can see in today's reality: radical pragmatism, the method of propaganda, the identity between theory and practice, the National over the Social are the instruments of the new criminal policy of law and order, of the extermination of the popular classes.

Right-wing pragmatism and conservative propaganda became so evident in the frightening case of the kidnapping in Rio de Janeiro months ago, when another political truculent, Governor Wilson Witzel, commemorated the death of the subject - the author of the fact - as a trophy for evidently political and electoral purposes.

This attitude represents the end of the Criminal Law of freedom. Nowhere in the civilized world is self-defense or any other cause of justification allowed to commemorate a person's death. Exculpation is not an incentive to use the citizen as a state soldier. If this happens, it harms the Public Security.

The lack of respect for the principles of classic criminal law holds all the characteristics of right-wing authoritarian thinking. Namely: enlightened rationality on punishment and crime, respect for the

• The erosion of democratic Criminal Law

The misuse of the criminal system, through coercion, intimidation, and liquidation of individuals, became uncontroversial in the tragic death of Luiz Carlos Cancellier de Olivo, dean of the Federal University of Santa Catarina - UFSC, who committed suicide after a vexing media exposure. This lamentable tragedy revealed the perversity of the penal system, which represents the erosion of democratic criminal law.

The authoritarian structure of Brazilian society, characterized by bossism and patrimonialism, is revealed in the movements of today's Penal Law since they almost always express the three outstanding characteristics of fascism: the question of radical pragmatism, the identity between theory and practice, and the sacred components of sovereignty/ Homeland over the social dimension.

Add to this religious and racist contents that stick to the political thought of the Brazilian government. It his contaminates the model of Criminal Law, either in the elimination of the popular classes or in the relentless persecution of the left's political leaders. This is certainly nothing new, since an indelible mark of Penal Law consists of the unequal selection of relevant behaviors, almost always marked by the stereotypes stamped by those who exhibit socialization deficits.

Perhaps the novelty now consists of the declared turn of criminal law towards what is another type of criminality, although this also presents a certain political content in the form of selection. It does not mean that acts of corruption in Brazil do not exist or that they are false. It goes far beyond that.

• Process of corruption naturalized

Brazil has experienced and is experiencing a process of naturalized corruption. The way to fight this plague is different, and more selectively and politically. Worse, it is breaking all the rules of the rule of law. And this is a point that should be made clear. The reflection of authoritarianism shows itself as a conservative manifestation of the right. The entire right-wing movement wants to maintain class privileges.

Here, however, there is an interesting question: it is possible to speak of the conservative wave as maintaining privileges or extending these continuities. It is in this sense, then, that the current government also maintains itself in the conservative camp, because in another sense it would be curious, not in traditional conservatism, moral or otherwise. And perhaps in morality, but it is conservatism even rare because it destroys true conservatism. He doesn't want class struggle; he wants the lowest possible level of conflict to keep things as they are.

This government, of course, has nothing conservative about it. The conservative politician, for example, a Republican in the United States, would clash with this government because, at the same time, he shows himself to be distinct from it, willing to break things already established.

The sense of conservative refers to privileges even, class privilege, without any change. It is authoritarianism coming from this movement. There is a movement of preservation of privileges, and attempting to prevent any form of transformation. It is reflected in Criminal Law and also in Sanctioning Administrative Law.

• Criminal Law to combat the underprivileged class

You can use the criminal law to fight the class enemy or the political enemy. As a rule, one usually perceives the use of the Penal Law as an instrument to combat the underprivileged class, which does not mean that it cannot be used (in general, dictatorships do) against political dissidents, called subversives, who are all those contrary to the hegemonic idea of government on duty.

In authoritarian regimes, this can also be initiated by administrative processes. It is enough to remember that, in the rise of the military dictatorship in Brazil, countless military personnel was expelled from their careers because they were not aligned with the violent and coup profile that had settled in 1964. This manipulation begins with the clutches of Administrative Law, public officials, through prohibitions of free thought and sanctions ranging from warnings and suspensions to exclusion of cadres.

These are ways to silence eventual resistance to authoritarian policies. And it is natural for these authoritarian processes. Look, then, at the recent administrative sanctions by which prosecutors and judges resisting the criminal policy of terror are threatened. Finally, it is not just a question of criminal law, but of administrative law.

• Violation of the principle of the accusatory system

Now, in Criminal Procedural Law, everything happens through spectacular premises. Megaprocesses have become spaces for and/or persecution and worship of the new judges and prosecutors stars. The criminal process in Brazil has actually become a great farce when discussing economic crime, characterized by the conciliatory solution. In other words: agreements that free the corrupting private class from prison.

If this impressive law and criminal procedure were not enough, the accusatory principle is also under attack. There is complete confusion of figures between the prosecutor and judge. Nobody else knows who is who, given the porosity and confusion in the tasks they perform. In other words, there is a threefold alliance between state agents in the judicial system - the police, the public prosecutor's office, the judiciary

- that takes place in places far from the public spaces of the hearings, in the absence of the opposing party.

In these closed offices, bringing together prosecutor, judge, and investigator, some strategies for pursuit and persecution are defined. This is unacceptable within a democracy. It is an explanation of inquisitive processes, in which the conduction of the process and the analysis of the evidence stems from the figure of the judge, who investigates, arrests, and condemns.

This is an old figure, but one that has now been renewed in these promiscuous roles among the state agents of the Public Prosecutor's Office, the Judiciary, and the Judiciary Police. The role of the judge is completely distorted, as the judge must be the criminal agent responsible for restraining the state's punitive thrust and not an armed soldier of punitive power.

• Fascist methods

There are still other problems. For example, that of the canonization of police statements, that is, the idea that statements given by members of the Security Forces is unquestionable - it is not clear where this was taken from since no device reproduces this statement. This myth cannot be sustained, especially since many of the criminal agencies are responsible for much of the running and social violence.

On the other hand, there is also the use of exaggerated fascist methods, such as phone tapping, searches and seizures, and the bench warrants. Such measures often reveal a humiliating and aggressive technique to individual rights of privacy.

In fact, any media exposure of the accused, even the broadcasting of news, about a delinquent fact not yet investigated in a procedural manner should be prohibited. Prohibit the media abuse of TV and newspaper police programs, which cause individual damage (to the accused) and social damage (in the formation of the people's conscience about the real problems of the country).

The sad case of police acts that led to the suicide of the UFSC rector serves as an example. But he was not the only victim. It is enough to watch any TV program to realize that some journalists become specialists in Criminology, Criminal Law, and Criminal Procedure, to lynch and socially expose vulnerable people, which harms work, family, friends, and social coexistence.

• Banalizing Criminal Law

Finally, there is another problem: the idea that an agreement can solve everything. The agreement on criminal matters has created something tragic, which is the existence of two criminal rights, that is, the Criminal Law of the one who collaborates, which helps criminal justice, on the one hand, and the Criminal Law of the one who abstains from it, which refuses to participate in the collaboration.

And there are two criminal rights: the Criminal Law based on the Criminal Code, including the definition of the penalty quantum and the applicable regime; and the Criminal Law of the agreement, dislinked to the Criminal Code. Here there is no point in saying that homicide has a minimum sentence of 12 years and will therefore have a closed regime. The agreement defines how long will be accomplished. There is no point in the legal provisions if the agreement establishes that, although the convicted person has years of conviction, noncompliance is possible.

There are real cases in Car Wash Operation of corruptors who, despite the high penalties received, fulfill them in the domiciliary regime, enjoying the high personal patrimony. Of course, this generates great inequality in the receipt and actual execution of the sentence. Criminal Law, therefore, has turned into chaos, which can be called collapse. There is a process of erosion of the burden of principles protecting individual freedom.

• Death of Brazilian Criminal Law

The fundamental guarantees are over. Criminal Law used to be a technique for containing punitive power, but it died in Brazil. And this is attested to by two errors of Criminal Justice. The first is the erroneous application and importation of the theory of dominion of fact by the Supreme Federal Court (STF) - in the case of Mensalão - AP 470, particularly used to condemn José Dirceu (former minister in Lula da Silva government), a decision that put the Criminal Law of guarantee in the garbage can.

This decision is wrong because the theory of the domain of fact in Criminal Law comes to define who is the author of a certain crime. Of course, when someone commits a crime, alone, the author is that person, and it is not a problem to define it. The problem exists when there is more than one person involved in the fact. Therefore, it is not about or has anything to do with evidence. For example, even if there is more than one person related to the fact of murder, the author is the one who shoots and executes; the one who lends the gun or determines the fact cannot be considered the author.

• Dominion of the Fact Theory

Therefore, to solve these problems, Claus Roxin developed the following theory: the author is the one who dominates the action, the one who executes. The author is also the one who dominates the will of someone, for example, puts the gun in the hand of the child who comes to shoot. Here the author is the one who dominates the will, by coercion, for example. If someone forces someone else to shoot, under threat, he is also the author, although he has not done the shooting. It means that someone dominates the will of the other person.

There is authorship by duress and also by error. For example, whoever is on the front line acts by someone from behind, as a nurse who administers a drug as if prescribed by a doctor and causes the patient's death. In this case, the nurse is the author. Or yet, although it is not the doctor who applies it, but who is behind dominating the will, it is the doctor who is in error. A third situation occurs when there is a three-person, besides the doctor and the nurse. In this case, there is a distribution of functions.

Claus Roxin distinguished three types of authorship in these kinds of crimes: immediate author (executor); intermediate author (who controls the agent of the front); and the author of the function distribution (when all functions are essential to the fact). Roxin did not write anything about crimes that were not of domain because, in those crimes, the author is the one who holds that quality, for example, if it is a crime of corruption, its author is a public official. It's easy. Therefore, there is no need to resort to the theory of dominion of fact.

• Why did the STF resort to Claus Roxin's theory?

Then why did the STF resort to this theory? STF accessed the domain of the fact theory with a single purpose: to give a colorful "modern" that could justify the reach of certain people by the condition of power they exercised. But the theory of dominion of the fact had no relation with the case. It was applied only to facilitate the punishment of someone.

To use the domain of the fact theory must be clear that a person did something illicit. Therefore, it is not the position of power in the public structure, the party, or the company that defines responsibility. The responsibility results from the evidence of the concrete act by the person. Then it is necessary to see if this person is an immediate, mediated, or collective author. For this reason, José Dirceu's conviction in the Mensalão Case was a blatant mistake. So much so that the STF acquitted Dirceu of the conspiracy crime and, later, following Minister Barroso's vote, based on the opinion of the prosecuting agency - MPF, granted the pardon of all penalties imposed on the former head of the Civil House - of Lula - in the process of the Mensalão (PORTAL G1, Feb. 28, 2014; Oct. 18, 2016).

• Former president Lula's Case

The other error that decreed the death of Brazilian Criminal Law, in the current situation, is the case of former President Lula because the sentence handed down by the Judge Sérgio Moro of the 13th Federal Criminal Court of Curitiba and also the judgment of TRF-4 are wrong. It does not matter if the other court confirmed the former judgment because it endorsed the wrong decision. There are two errors, and one does not erase the other.

And what is wrong? It is incorrect to order a sentence without having to analyze the evidence, which is ridiculous in this case. The increase of a sentence imposed by a court, by the social condition of the defendant, is wrong! People's guilt is not guilt for what it is! The fact that the accused holds a certain political office does not make him guilty of anything. No more, no less.

• The question of guilt

In the same way, of course, it doesn't make anyone more culpable if is rich, for example. There is no culpability for the condition of life or space that a person occupies in a determined social context. The social context can only be employed to diminish guilt, never to increase it! It is what explains, theoretically, having less culpability when living in a situation of extreme social marginalization.

For example, the person who lives in humanly adverse conditions, in a street situation, has a lower guilt condition because there is a lower possibility of internalizing the norms or more difficulty. It does not mean that the person who enjoys a higher level of understanding because of the social condition he or she exercises has more guilt. Therefore, the TRF-4 made a mistake, and the STJ should have corrected it, being corrected about the fine application only.

• Analysis of the evidence

There is still the problem of the analysis of the evidence. In Brazil, higher courts do not analyze the evidence. A piece of illicit evidence, when admitted by a partial judge, contaminates the process from the beginning.

Thus, illegal evidence accepted by a partial judge is of no use to the superior tribunal's ratification. Such evidence would serve, for example, in Germany, where the court redoes all the evidence, and such addiction would not contaminate the lawsuit since the court can ascertain new proof.

Given this, there is no logic in saying that the STJ confirmed the conviction handed down by the partial judge because the STJ cannot analyze the evidence. Thus, the higher tribunal decision says nothing about culpability. The conclusion is that Brazilian criminal law, in these two cases, represented more what the Spanish fascist Primo de Rivera called dialectics of fists and weapons.

• Nothing better (or worse) than one day after another

Amid the global health crisis of the Covid-19 pandemic, Brazil is under attack regarding a succession of political crises in the armies of the fascist federal government of Jair Bolsonaro. On April 24, 2020, Moro granted a press conference in which, upon announcing his resignation from office, he issued a rosary of accusations against his superior, the fascist government. The "informal denunciation" of the former teacher, former judge, and former Minister brought a curious, if not criminal fact. He said (sic):

> [...] There's only one condition I've placed, which I reveal now. I told [President Bolsonaro] that since I was abandoning my 22-year career as a magistrate and contributing 22 to the pension and asked that if something happened to me, my family would not be left without a pension. It was the only condition I put to assume the position of Minister. [...]

What does this "pension" consist of? There was a direct request of illicit advantage for him and someone else (family) before assuming the function. Regardless of the contents of art. 317 of the Penal Code, which for Moro could be considered as a supposed act of

indeterminate office, what advantage is it? Due or undue? Pension, in the technical sense, it is not.

In my thesis, we are facing illegality typified in the Penal Code, *verbis*:

> Art. 317. To request or receive, for oneself or others, directly or indirectly, even if outside the function or before assuming it, but because of it, undue advantage, or to accept a promise of such advantage; penalty - imprisonment, from 1 (one) to 8 (eight) years, and fine.

It remained understandable that the Attorney General Augusto Aras petitioned the Supreme Federal Court - STF to open an inquiry in the face of the new Justice Minister Sergio Moro to investigate the following crimes: i - ideological falsehood (art. 299 of the Penal Code); ii - coercion in the course of the process (art. 299 of the Penal Code); iii - coercion in the course of the process (art. 299 of the Penal Code); iv - coercion in the course of the process (art. 299 of the Penal Code). (art. 344 of the Constitution); iii - administrative advocacy (art. 321 of the Constitution); iv - malfeasance (art. 319 of the Constitution); v - obstruction of Justice (art. 1, § 2 of Law 12,850/2013); vi - privileged passive corruption (art. 313, § 2 of the Constitution); vii - slanderous denunciation (art. 339 of the Constitution); viii - crimes against honor (articles 138 to 140 of the Constitution).

The STF will also decide to investigate which of the two are lying: the President of the Republic or the Minister of Justice. In any case, it is inadmissible that a political agent in the exercise of the highest offices of the Republic, such as the President of the Republic, the Minister of Justice, or the Federal Judge with the task of judging accusations of corruption under Car Wash is unaware that art. 39, § 4 of the Constitution determines that *verbis*:

> [...] the Ministers of State shall be remunerated exclusively employing a subsidy fixed in a single installment, with no addition of any gratuity, additional allowance, prize, representation allowance, or another kind of remuneration [...].

Finally, something stinks in Brazil, and the odor comes from the decomposition of the Law!

3.1.1 Interactive Debate

On the question of the judicialization of private life, we must consider the question raised by the debater Elias Menta[27]. The judicialization of life is a symptom of the authoritarian state model that works with an idea of bureaucratization. This model gives the appearance of legality to things of its interest.

Brazil lives under the extreme of totaling private life. The State enters into issues of moral content on which it has no legitimacy to intervene since they are not issues for the state sphere resolution.

In an audience, a woman of almost 90 years old complained that she was in the market with her shopping cart, another woman made a mistake and took her cart. They exchanged curses and ended up at the police station. Then the disagreement turned into a lawsuit. The discussion about a shopping cart at the supermarket turned into a legal problem.

27 Elias Menta Macedo, lawyer, verbis: "[...] During a banal discussion, a colleague criticized the other colleague, who said: "I will denounce you in the ombudsman's office, I will open a case against you". This behavior reveals the process of judicialization of private life that ends up supporting this judicialization of politics. The rules have to be followed and not imagined. If they are not for everyone, it is not a democracy. Justice has to guarantee individual rights based on the rules. I would like prosecutor Jacson Zilio to talk about this moment in our life, in our society, and not only in Brazil, because it is a global issue. [...]"

Anyone has problems in their daily life. Problems happen. However, to turn such problems into legal claims is regrettable. Although I agree with the analysis, we can say that the STF encourages this judicialization of private life, but this discussion calls for a separate chapter.

• Fascism is the State infiltrating private life

Fascism is nothing more than the State entering private life through excessive infiltration and methods of listening to its life. The State wants to know what you read, who you relate to sexually, and have no legitimacy to enter anyone's lives.

From the moment that politicians are concerned with what you read, it seems to be the path to this type of State that, in Brazil, trails incorporating Religion and Militarism, the worst and most dangerous components of totalitarianism. Removing this threat from political life is essential for democracy.

• Clean Hands Operation

In response to the question of Lucas Mendes[28] about Operazione Mani Pulite (Clean Hands Operation) in Italy, I would like to highlight the article by Renzo Orlandi, an ordinary professor of Criminal Procedural Law at the University of Bologna. Translated into Portuguese in 2016, the summary presents the extract below:

> [...] There have been many cases of corruption in Italy and still are today. However, the series of cases brought together under the label of Clean

28 Lucas de Sousa Mendes, academic of the 2nd period of the History course at PUC-GO, verbis: "[...] I would like to know from prosecutor Jacson Zilio his opinion about Operation Clean Hands, in Italy, which has been cited by then judge Moro as inspiration for Lava Jato in Brazil. Is it possible to make a comparison between these two operations? [...]".

> Hands has a unique characteristic. What distinguishes them from those celebrated in other times for similar facts is the devastating impact that such judicial experience had on the fate of the Italian ruling class. What conclusion can be drawn from the experience described here? What lessons can be drawn? Opinions are still divided in Italy. Some see in Clean Hands a salutary work of ethical regeneration, made possible by a judiciary finally independent of political power.
>
> Perhaps an anomalous work of transformation of the political framework, made by the judiciary in the face of the inability of the political class to reform itself. However, others think that Operation Clean Hands disoriented the relationship between the powers of the State, and magistracy and politics, attributing to prosecutors and judges powers that are uncontrollable and without counterweight, especially when their initiatives are sustained by irrational movements of public opinion. [...] (ORLANDI, 2016, p. 378)

Reading the article allows us to understand the impact that Operazione Mani Pulite (Operation Clean Hands) had on Italian politics and thus establish a parallel with Car Wash Operation in Brazil, regarding the deleterious effect for the democratic State.

See this effect in Italian life:

> [...] It suddenly became clear that to undermine a government, a local administration, a party leader, criminal prosecution was a much quicker and more effective means than a long and tiring battle with the weapons of politics. It was discovered, in other words, that the judicial process was much more direct and lethal than confrontation and electoral diatribe. Hence the anomalous and distorted use of the criminal process as a political weapon, which has increasingly characterized the political arena in Italy ever since. [...] (ORLANDI, 2016, p. 401)

• Balance of Clean Hands Operation

The Italian operation represented the entrance of the worst in the political life of that country. Orlandi affirms in the above-mentioned work, *verbis*:

> "[...] Today, at a distance of more than twenty years, we can say that this "new political class" was decidedly worse than that which the Milanese investigation helped to oust. [...]" (p. 391)

The work of the Italian criminal specialist is also interesting to know what purpose led the judicial characters who, coincidentally, were prosecutors or magistrates and ended up entering politics without conquering an expressive position in the direction of the destinies of the country.

In conclusion, Professor Renzo Orlandi quotes in his text that Piercamillo Davigo, one of the magistrates of the Italian investigative pool, who was elected president of the National Association of Magistrates, described the depressing balance of failure of Clean Hands Operation. In an interview published in April 2016, asked if the Italian situation today is the same as in the 1990s regarding corruption, Davigo said:

> [...] It is worse than then. It's like that joke invented under fascism. The governor of the province arrives in a small town and finds it infested with flies and mosquitoes; he complains to the mayor: 'We don't fight flies here?' 'We did it,' says the mayor. Only the flies won. Well, in Italy, the flies won. The corrupt ones! [...] (p. 403)

In Brazil, thus, we fought the battle against corruption, and the flies won!

In the above sense, we agree with the academic Luciana Oliveira (RODRIGUES DE OLIVEIRA, L.; TAVARES NETO, J. Q. , 2019)who, based on her research developed at UFG, makes a strong denunciation about the transgressive character of Car Wash about the consecrated principles compiled from the Penal Code and the Democratic State of Law instituted by the Citizen Constitution of 1988.

Concerning the question posed by Raphael Guimarães[29] about what to do, there are two possible approaches. On the political stage, the maximum of one step forward and two steps backward apply. We will have to rebuild the Democratic State of Law. On the legal level, the scenario is pessimistic in the analysis but optimistic in action.

If Brazilian justice has any appreciation for dignity, it must necessarily invalidate the process that led to the condemnation of former President Lula. It is a prerequisite for having some respect for justice in this country.

In a second moment, the Brazilian Criminal Justice must prevent the vulgarization and the impressive mediatic of the criminal process, stopping it from being used as a means of extortion. In a third moment, it is necessary to define the roles of the MP and judge. It is not reasonable a promiscuous relationship between the MP and the Judiciary. Without this correction, it is not probable to have any hope.

29 Raphael Guimarães, professor and graduating in History at UFG, verbis: "I ask the former public prosecutor Eugênio Aragão and the prosecutor Jacson Zilio, in the face of this scenario of equipping institutions, non-compliance with international norms, what is the outcome of these injustices, for the Lula case, especially, since the international agencies are not managing to intervene. [...]".

Finally, it is necessary to rescue the penal dogma, which serves to give predictability to the punitive decision. In the current system, where decisions are the fruit of arbitrariness and personal will, there is a menace to human freedom.

In these circumstances, on the material level, it is necessary to rescue the Enlightenment tradition of rationality in the use of punitive power. Everything that does not respect consecrated universal rights is punitory power or authoritarian criminal law practice, as happens when the Penal Code no longer serves to limit punishment.

The constitutive elements of the State of exception are the sovereign (the one who decides that the rule is not valid), the overcoming of normativity (incoherence in overcoming antinomies), and the enemy. They are also preeminent in punitive, judicial activism and Lawfare practiced by agents of the judicial system in the sphere of Car Wash (see Chapter 3.2).

JUDICIAL ACTIVISM AND VENGEFULNESS

Caio Alcântara Pires Martins

"How do you demonize politics by wanting to be part of it? How to reject the political spectrum and want to occupy its locus?"

3.2 A Demonizing Political Spectrum from Judiciary

In the face of the questioning of Bello Filho (2019), in epigraph, the gigantism of the Brazilian Judiciary can be related to the work Submission, by Michel Houellebecq. In the dystopian narrative of the French writer, the group Muslim Fraternity wins an intense political dispute against the extreme right. With the arrival of this collective to power, the population sees a reduction in the unemployment rate, only possible with state theologization, which has removed women from the labor market.

The petro-monarchies invested heavily in universities, supporting higher salaries and good pension plans for the employees, but the university autonomy was severely reduced. At least, men were rewarded by being able to marry younger women, despite the suppression of individual freedoms (ABBOUD, 2016).

As in the scenario described, the Judiciary, with the prominence of activism, began to make believe that there is no "sphere of our freedom that cannot be replaced by pernicious judicial voluntarism" (Id., Ibid., p. 2).

The growing discredit of the population regarding the Executive and the Legislative created a belief in justice endowed with childishness (MAUS, 1989). On the other hand, discredit allied to the State of Exception results in the persecution of the political class and

the pernicious Lawfare. It is important to verify, like Houellebecq's work, if it is worthwhile, in the name of the noblest ends such as the fight against corruption and impunity, to despise the normative force of the Constitution and the laws.

Here, Jürgen Habermas' teachings regarding the tension between teleological and normative action are of great value. In the first, "the author fulfills a purpose or causes the beginning of the desired state, as he chooses in a given situation auspicious means to then employ them appropriately" (HABERMAS, 2012, p. 163), while the second focuses on "satisfying an expectation of widespread behavior (Id., Ibid., p. 164).

As Demosthenes Torres reminds us, abandonment from a normative point of view results in the confrontation between means and ends, sacrificing the Law itself. Although this is the main foundation of a democratic society, it promotes conflict resolution far from legal texts edited precisely to guarantee expectations of behavior - often exercised by the media with the allowance of the Judiciary (TORRES, 2019a).

The Principle of the Separation of Powers posted in article 2 of the Brazilian Constitution of the Republic precepts that powers are "independent and harmonious among themselves, the Legislative, the Executive and the Judiciary". Given its importance, article 60, § 4, III assures the impossibility of deliberation via constitutional amendment, being, therefore, a fundamental clause.

In the American system of "checks and balances", Marcelo Novelino recalls that the objective was to divide the powers in a balanced manner so that none would exceed the limits of the

Constitution without being restrained by the others (NOVELINO, 2013, p. 1085). But this is not about the responsibility of the Judiciary in the application of fundamental rights. It is necessary to discern the judicialization of politics and judicial activism.

• Judicialization of politics and judicial activism

It is well known the need for the Judiciary to act in punctual matters when the other powers are deficient. This is where the judicialization of the policy takes place, which is contingent on ensuring rights. However, it should be remembered that, due to the separation of powers, one cannot invade the other's discretion.

In this scenario, people talk about judicial activism related to how decisions are made by the justice that seems to exceed the limits attributed to the Constitution (STRECK et al., 2018a, p. 149).

This contingent action, for sure, does not allow for the invasion of the political system by the justice organization. And the panorama becomes even more delicate when, in addition to making moral or economic judgments in decisions (reopening the debate typical of the Legislative Branch), there is, on the part of judges, prosecuting/ investigating agencies and the press, a clear punitive bias with the transgressors. In this sense:

> [...] Punitivism as a spectacle exposes against its defenders who confuse authority and authoritarianism, morality and law, media criminology and freedom of press/expression, indignation, and imbecility, due legal process and politicization of the Judiciary, rewarded denunciation and right to silence, inference and conviction, 2nd instance and transit in the trial, a presumption of innocence and presumption of guilt, appellate system and delaying pathology, competence, and suspicion, enemy and citizen [...] (PANCHERI, 2018, P.2).

Although judicial activism, State of exception, and Lawfare are intrinsically linked, it is imperative to differentiate them. Having already analyzed the former, it is recalled that the latter was conceived by Carl Schmitt (ARAÚJO, 2013), the foremost theorist of Nazism and to whom the phrase is attributed: "It is the sovereign who decides on the exception".

In the German jurist's theory, there are Non-Right Zones within the rule of law , and it is up to the sovereign (judge) to define when a legal rule is not valid (ZANIN MARTINS *et al.*, 2019a, p. 150), in a similar way to the following scheme:

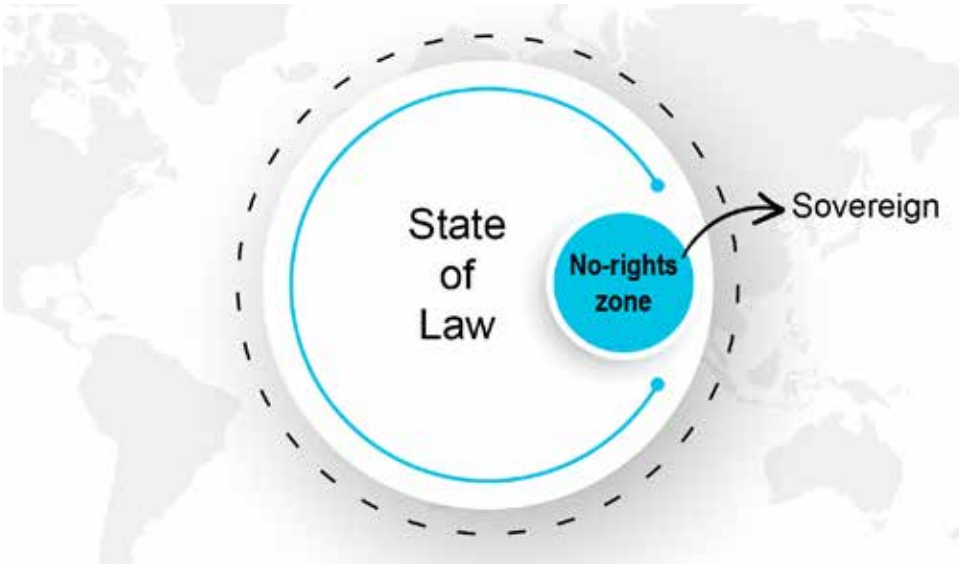

Figure 5: Carl Schmitt's Political Theology

Ney Bello Filho adverts, however:

> [...] The binomial friend versus foe built by Carl Schmitt cannot be used by institutions and powers of the State without causing a break in the very idea of State, democratically considered. The Public Prosecutor's Office, as part of it, may have opponents in lawsuits, but it cannot have enemies. The judiciary, as impartial as it is, cannot be a combatant of anything, but rather a decision-maker of a dispute. [...] (BELLO FILHO, 2019, p.1)

- **Lawfare show**

In turn, Lawfare is understood as the use of a seemingly legitimate means to annihilate the enemy. It is not limited to political ends and can be used for commercial purposes, as in the Siemens cases between 2006 and 2008, and Huawei in 2018, both promoted by the U.S. Department of Justice against the companies cited. In this regard:

> [...] After refusing to observe the trade embargo decreed by the United States to Iran, Simens became the target of investigative procedures in several countries around the world, which resulted in the payment of billions in fines and indemnities. Regardless of the admitted occurrence of undue practices, the motivation for launching the investigations was linked to the intention of the United States to increase external pressure against Iran - to meet the geopolitical interests of that country. [...]
>
> Along the same lines, the arrest of Chinese businesswoman Meng Wanzhou, the main shareholder of the giant Huawei, occurred in Canada at the request of the United States, amid an intense trade dispute between the Americans and China, in which Huawei occupies a prominent place, forming a chapter in a legal war for commercial and geopolitical purposes. [...] (ZANIN MARTINS *et al*., 2019b)

In the Lawfare bias, the most striking elements are:

> [...] the selective use of legal means, through the arbitrary selection of targets for persecution; the use of legal maneuvers with the appearance of legality; the judicialization of issues that should be resolved in political forums (judicialization of politics); the destruction of the public image and the embarrassment of the adversary through frivolous accusations without materiality; interpellation of public agents who become journalistic sources and seek to influence public opinion to achieve certain moral or political ends; infusion of the widespread feeling of popular disillusion; and inappropriate abuse of legal terminology to influence laypeople, presumably inexperienced in the technical language of the law [...]. (FERREIRA, 2018, p.4)

This state of legal warfare shares with that of exception the figure of the enemy sought down to further subvert the law. Contrary to

the Habermasian idea, this passes from a pacifying instrument that generates expectations of conduct to an unpredictable and destructive mechanism.

• Lawfare and the Lula case

On October 10, 2016, at a press conference as lawyers of former President of the Republic Luiz Inácio Lula da Silva, Cristiano Zanin and Valeska Martins used the term Lawfare to express that:

> [...] Lula was being politically persecuted by some members of the justice system for abusing the law and legal procedures in association with an intense media campaign aimed at undermining the reputation of the former President, and protecting the constitutional guarantee of the presumption of innocence [...]. (ZANIN MARTINS *et al.*, 2018)

Such a sense spread, especially to Europe and Latin America. Jean-Luc Mélenchon, former presidential candidate and leader of the La France Insoumise (Insubmissive France, LFI) party, denounced Lula's political arrest as a Lawfare practice, also occurring in France, adding: "[...] it is the same method, perhaps not the same conclusions, [but] the same accusations without evidence and violations of the rights of defense [...] ". (RFI, 2019)

In Portugal, André Lamas Leite , professor of law at the University of Porto, described the lawsuit against the former president Lula as a clear manifestation of Lawfare in Brazilian justice. (LEITE, 2018)

The Manifesto of International Jurists, addressed to the ministers of the Brazilian Supreme Court, signed by former national presidents of the Bar Association, former ministers of Justice and former members of the Supreme Courts of France, Spain, Italy, Portugal, Belgium, Mexico, the United States, and Colombia, is also worthy of note. In this document, professors of Law Bruce and John Ackerman

and Susan Rose-Ackerman - Yale University; Luigi Ferrajoli - Roma Tres University, considered world references in the fight against corruption; Spaniard Baltasar Garzón, who ordered the arrest of former Chilean dictator Augusto Pinochet, among others equally consecrated, state that in the Lula case, verbis:

> [...] justice has been instrumentalized, and the rule of law has been clearly disrespected. [...] There is no rule of law without due process [...] when a judge is not impartial but acts as chief prosecutor. For the Brazilian judiciary to restore its credibility, the Supreme Court must free Lula and overturn these convictions [...]. (FOLHA DE S. PAULO, Aug. 11, 2019)

This finding is not a partisan fact. The question of the former president moves away from the idea of not "judging the process by its cover". From the decisions handed down by Sérgio Moro, reiterated - literally (v. CONSULTOR JURÍDICO, Aug. 11, 2019) - by his successor Gabriela Hardt in the 13th Federal Court of Curitiba, to the convictions in the Federal Regional Court of the Fourth Region, we can state that, at the discretion of the judge of the case (the sovereign), the same rules do not apply to all citizens. The concrete case, which is very special, not to say very personal, boils down to the defendant (the enemy).

Besides what has been demonstrated above in Car Wash Operation, strangely enough, it has not caused much impact on the Brazilian legal community, contrary to the strong reaction of repudiation manifested by the international legal community. Some emblematic episodes are summarized as follows.

• Sérgio Moro's suspicion

Long before the leaks from The Intercept Brasil, which proves collusion between the prosecuting and judging bodies in the case of the former president, Lula's defense had already proposed suspicion

of the current Justice Minister. On one of the opportunities he was able to judge the issue, the TRF-4 manifested itself in this way:

> [...] the criminal proceedings and investigations resulting from the so-called Car Wash Operation, under the direction of the represented magistrate [Sérgio Moro, then the holder of the 13th Federal Criminal Court of Curitiba], constitute an unprecedented (unique, exceptional) case in Brazilian law. Under such conditions, there will be unprecedented situations in them, which will escape the generic rule, destined to common cases [...]. The permanent threat to the continuity of the investigations of Car Wash, including through suggestions for changes in legislation, constitutes, without a doubt, an unprecedented situation that deserves exceptional treatment [...] (TRF-4. Special Court. PA no. 0003021-32.2016.4.04.8000/ RS. Denial decision of the opening of disciplinary proceedings against federal judge Sérgio Moro for violation of articles 5, XIII and XIV of the Federal Constitution and 10 of Law no. 9.296/96) (VALIM, 2018, p. 43-4)

It is evident the outstanding character of exception, as described above, recognized by the Court itself, in charge of judging the achievements of Car Wash at the regional level, consecrating the teleological action described by Habermas. The exceptionality of this treatment even suggests "changes in the legislation" proving that the court performed against the legal order.

- **Should accusers not be exempted?**

In the Triplex Case judgment, an excerpt states as following:

> [...] It is unreasonable to demand exemption from the Prosecutors of the Republic, who promote the criminal action. The construction of an accusatory thesis - whether justified or not - even though it may cause discomfort to the accused, does not contaminate the ministerial action (TRF-4. Eighth Class. Criminal Appeal No. 5046512-94.2016.4.04.7000/PR, Des. João Pedro Gebran Neto, trial. 24 Jan. 2018) [...]. (STRECK, 2019, p.2)

The TRF-4 ends up saying that, despite being represented by a state agency, the prosecution can use auspicious/strategic means in the procedures to achieve the conviction of the accused without distorting the ministerial attributions. However, there is no compatibility in this reasoning with the mister given to Parquet by the Political Charter:

> Art. 127. The Public Prosecutor's Office is a permanent institution, essential to the jurisdictional function of the State, and is responsible for defending the legal order, the democratic regime, and the social and individual interests that are unavailable. § 1º. The institutional principles of the Public Prosecutor's Office are unity, indivisibility, and functional independence.

• Order of final claims

Recently, the Supreme Federal Court (STF) rendered an important decision in which

> [...] granted a writ of habeas corpus to overturn the decision of the first-degree court, ordering the return of the case to the final argument stage, which must follow the constitutional order, e.g., first the indictment, then the plaintiff and finally the defendant [...] (Full Court, HC 166373, rel. for the judgment of Justice Alexandre de Moraes, judged on Oct. 2, 2019).

A few days after the mentioned judgment, the TRF-4 was able to manifest on the matter, in the case of Atibaia Grange (supposed illegal property of Lula received as bribery). However, it did not apply the Supreme Court's understanding, by stating that, although the former president presented final allegations after the whistleblower (who is, for the accused who did not make a winning allegation, an accuser), there was no prejudice to the defense. (BRAZIL, 2019e)

This position is extremely fragile: (a) as stated by Alexandre de Moraes, in the above judgment, "the accused has the right to speak last about all imputations that may lead to his condemnation"; (b) even if it is ignored that the "instrumentality of the forms" is incompatible with the due process of law recommended by the Major Law, the fact that there has been condemnation by the primeval judgment, added to the increase in the penalty applied to Lula, in the Court, already means clear damage to the accused. To clarify the reasoning: "Even if he goes to jail, the citizen must prove that the wrong procedure has caused him some harm (!?)". (TORRES, 2019b)

• **Conclusion**

Judicial activism, punitivism and Lawfare, together, represent a nefarious panorama, as Prof. Lênio Streck says:

> [...] By crossing data (and fingers), we transform Law into Lawfare: authorities use it - consciously or unconsciously - for moral and political purposes (nor do I discuss the good or bad intention of moral objectives). It is the perfect storm. For example, anonymous denunciations are cause for home invasion orders; bench warrants are executed in defiance of the law; precautionary arrests are trivialized; preventive arrests with no time limit to end. Defending guarantees is now bad seen. Even by the legal community, which has become a fan. Worse: they are turning the problem of public security into a political issue, amazingly, a matter of national security. So here's the broth: on the one hand, insecurity, the discourse of impunity, wanting to reach the great mass; on the other, the demonization of politics. Ready: solution - "we can end democracy; we need 'law and order' (or something in that tone). Hard times... Dangerous speeches multiply, day by day. [...] (STRECK, 2017, p.1)

Unfortunately, this panorama tends to get worse if the legal community does not understand that, in a state that calls itself democratic, the rules of the game (Constitution and Laws) are valid for everyone. Even for the enemies.

THE RISK TO REPRESENTATIVE DEMOCRACY
Elias Menta Macedo

3.3 Constitutional Rights Ignored

Initially, my recognition over the brave and combative action of the prosecutor Jacson Zilio (author of **CHAPTER 3**.1 above), and my repudiation of the acts against him, on August 12, 2019, by the agents of the Judicial System of Paraná, followers of the partisan line led by former judge Sérgio Moro.

About the situation of the University and of Brazil, the attacks by the Minister of Education, and the President of the Republic (see Chapter 5.3 below) are failures but their victories. In the situation in which we find ourselves, it would be detestable to be on the side of those who won, as in the lessons of one of the patrons of Brazilian education, the anthropologist, politician, and professor Darcy Ribeiro , when making considerations about the literacy of children, the Indians, and the Brazilian people. (RIBEIRO, 1995)

A sentence, repeated to exhaustion, by Professor Lênio Streck , condenses the thoughts of many of us when he says that "applying the Constitution today is a revolutionary act "(STRECK, 2018b; EL PAÍS, Oct. 17, 2019). This is repeated so that we never forget the struggle and the price paid so that we, especially our generation, could arrive in this world with the possibility of living in a state, at least said, that is democratic.

This text is divided, on the conceptual level, into two moments, in the first, normative defeasibility and, in the second, the authoritarian personality in times of neoliberalism.

The first concept deals with what was characterized as normative defeasibility, in the work of Professor Rafael Valim , as being, in the Theory of Law, the "possibility of no application of a legal norm in the concrete case" (VALIM, 2017, p. 19) by the interpretation of its interpreters.

And to think about such normative defeasibility, it is important to remember the Constitution, which brought and regulated three hypotheses of a state of exception. The two most serious are circumscribed in title 5 of the Charter that deals with the "defense of the state and democratic institutions" and disciplines the state of siege and defense.

> The State of defense is the one that must be declared under art. 136 of the Political Charter, *verbis*:
> Art. 136 of the Political Charter, verbis. [...] to preserve or promptly restore public order or social peace in restricted and determined places, threatened by serious and imminent institutional instability, or affected by calamities of great proportions in nature [...].
> The State of siege can be declared in one of the situations in art. 137 of the Mother Letter, *verbis*:
> Art. 137...
>
> I - Serious repercussions of national repercussions or the occurrence of facts that prove the ineffectiveness of a measure taken during the State of defense;
> II - Declaration of a State of war or response to foreign armed aggression. [...]

The third hypothesis, less serious, and with a certain amount of time and manner to be used, is the intervention of one entity in another, be it of the Union in the States, or States in the municipality, which was verified in the former Temer Government when one intervention took place in Rio de Janeiro. Having understood the hypotheses foreseen in the Constitution, which are treated in a very exceptional way because they foresee very serious situations

such as wars and great natural catastrophes, we now understand, as well as Prof. Valim:

> [...] the exception by denying the law, the main product of popular sovereignty, takes democracy by storm [...] and when this occurs [...] the pretension of an impersonal government of laws gives way to the personal government of men [...], it is no accident that [...] the economy, which always posits a complete departure from politics, has a special appreciation for the exception [...] (VALIM, 2017, pp.27-28).

In this context, what is called neoliberalism is established, which only seems to be the formatting of a new liberal thought:

> [...] it transforms liberal democracy into empty rhetoric with no correspondence with social reality, legitimizing the sovereign market that represents the interests of an indivisible and localizable elite [...] (VALIM, 2017, p.33).

About the problems caused by the lack of symbiotic relations between the market and the government, it is important to recall one of the memorable talks in Petra Costa's documentary, *Democracia em vertigem*, when there is the revelation of the dialogue that she narrates between the businessman and the politician who reoccupied the Government Palace after Michel Temer's inauguration: [...] "You are here?' asks the politician. 'We are always here, you change,' answers the businessman "[...].

And this is the context that clarifies the fragility of our democracy. Having said that, it is understood that there is a possibility of a normative defeat in the application of the law and, unfortunately, this happens every time one forgets what is embodied in the Constitution to apply moral judgments ("voice of the street", "society" or even "my conscience") in decisions, especially judicial ones.

Next, we move on to the second theoretical formulation, which is the authoritarian personality in times of neoliberalism, which is a

theoretical formulation due to Professor Rubens Casara who works the hypothesis that, verbis:

> [...] It is only possible that a minority of very large corporations dominate a majority excluded from the profits of the market and large corporations if there is a subjectivity accustomed to the use of force, the relativization of rights and that despises knowledge [...] (CASARA, 2018, p. 119-127) .

Professor Casara brings the fourteen concepts revealed by the research of Theodor W. Adorno and other researchers, used to verify antidemocratic tendencies, in 1950, in individuals of American society. They are them:

> i. Conventionalism: rigid adherence to the values of the middle class, even if not in conformity with the fundamental rights and guarantees of the Constitution of the Republic;
>
> ii. Authoritarian submission: a submissive and uncritical attitude before the idealized authorities of the group itself;
>
> iii. Authoritarian aggression: a tendency to be intolerant, be alert, condemn, repudiate and punish people who violate 'conventional' values;
>
> iv. Anti-intraception: opposition to the subjective, imaginative, and sensitive mentality;
>
> v. Simplification of reality and stereotyped thinking: a tendency to resort to primitive, hyper simplistic explanations of human events, which interdicts the research, ideas, and observations necessary for a necessary approach and understanding of phenomena;
>
> vi. Power and 'harshness': concern to reinforce the domination-submission dimension added to self-identification with power figures (The "power is me");
>
> vii. Destructiveness and cynicism: generalized hostility added to disregard for values linked to the idea of human dignity;
>
> viii. Projectivity: willingness to believe that in the world there are threats and wild and dangerous things occur;
>
> ix. Concern about sexuality: exaggerated attention to sexual "success" and the sexuality of others;

x. Creation of an imaginary enemy: working with stereotypes and prejudices distant from experience and reality, one ends up fantasizing about enemies and risks without support in concrete data;

xi. The inspector as judge and the promiscuity between accuser and judge: confusion between inspector/accuser and judge is a characteristic historically linked to the phenomenon of inquisition and authoritarian procedural epistemology;

xii. Ignorance and confusion: empty thoughts, use of buzzwords, common sense and prejudices widespread in the middle class and stereotypes;

xiii. Labeling thinking: stereotyped labels that divide the world and people;

xiv. Pseudodemocracy: for ideological reasons, it often distorts democratic values and categories to achieve anti-democratic results.

3.3.1 Interactive Debate

Regarding the feeling that the country gets used to bad experiences, Brazilians will have to learn from defeats, within a historical process still without enough time to analyze what is happening. The lawyer Aline Seabra[30] brought the problem of the State of exception and the breaking of the rules. This theme refers to "barrosism," a word associated with the contribution of Minister Luiz Roberto Barroso of the STF, to post-positivist and postmodernist interpretations of the Brazilian constitutional norm. (BARROSO, 2017)

There is a feeling of disappointment about the ideology of today's minister because the lawyer Luiz Roberto Barroso was a reference in the graduation of many professionals. His name is

30 Aline Seabra, lawyer, university professor, a doctor in law by CEUB, verbis: "[...] I would like to hear from the exhibitors their opinions on the aspect of the exception as a view of breaking the norm [...]".

engraved on the class's graduation invitation, which said he was a model lawyer to adopt in the career of young causidics.

Meanwhile, as minister of the STF, Barroso took other paths, although he produced good decisions in some complex matters. The environment of progressive arbitrariness, perceived as a simple breaking of the norm, prepares the ground for the permanent state of exception, through the complete breaking of the rule of law.

In this regard, the debater Rafaela Félix[31] highlighted the three constitutive elements of the State of exception: the sovereign (the one who decides that the rule is not valid), the overcoming of the normativity (incoherence in overcoming antinomies), and the enemy.

Author Caio Alcântara Pires Martins explains that such elements of the State of exception are also preeminent in punitivism, judicial activism and Lawfare practiced by agents of the judicial system within the scope of Car Wash Operation (see Chapter 3.2).

31 Rafaela Félix dos Santos, academic at Faculdade de Direito - UFG, coordinator of the Centro Acadêmico XI de Maio - CAXIM, verbis: "[...] And who is the enemy? Education has been a great enemy of the extreme rightwing government of Bolsonaro, which tries to make it impossible for poor or low-income people to stay at the university, the marginalized who depend on the offer of openings in federal universities, the end of scholarships and research, the cuts in the federal budget and the freezing of funds, the prospect of social inclusion has been lost. [...]"

CHAPTER 4

LAWFARE AS COERCION

THE AGONY OF DEMOCRACY

Eugênio Aragão

4.1 A Brief Retrospective of Lawfare in Brazil

I must register the importance of the public university as a space for this comprehensive debate on Lawfare: my congratulations to the Federal University of Goiás and the representatives of the University Community.

The American Robert Jackson, the accuser of the Nuremberg Court, began his libel, right at the beginning of the trial, with the following words:

> [...] We must never forget that tomorrow we will be measured by history, with the same measure with which we measured the accused. To pass on to those accused a poisoned chalice means to put that chalice on our lips. We must do our duty with such interior superiority and spiritual incorruptibility that this process must be for the later world fulfillment of human feeling for justice [...]. (JACKSON, 1945)

What exactly are these sentences concerns? The difficulty of doing justice is a complex charge because it is about judging other people. When the Public Prosecutor's Office (MP) has a case in front of it, one does not evaluate the person, the accused, but his acts, in the sense of trying to subsume his conduct to a legal hypothesis, only.

It is not for the judge to say if someone is an evildoer or a good citizen who is illegally issued. It is not up to the judge to say whether

somebody is good or maleficent because this moral judgment is not the job of a bureaucrat, not least because it is hard for this bureaucrat to know. After all, it is against the circumstances whether he would have acted differently in the place of the other.

You have to see the person under his circumstances: "I would have been different. If he is religious, he will say: "I was not put to this inquiry, He who judges me is from above, He knows. Here there is no competence to judge anyone".

• Doing Justice in the concrete case

There is a civilizing consensus of the process that is "to do justice in the concrete case". It has been completely forgotten by the attorneys of the "Republic of Curitiba". They thought they were going to put a poisoned chalice for Lula, and this chalice would not return to them. It is an attitude of lack of empathy, inability not to limit his conduct because he wouldn't want another to treat them that way.

The Car Wash's prosecutors treat the other in a way that they wouldn't like to be treated, in total disregard for the rest. There is no concern to do justice. There is no thoughtfulness of any kind.

But how can such behavior of highly educated people be justified? Because these prosecutors from Car Wash have a high level of education, they are a privileged caste in the bureaucracy. They made difficult public exams. It's okay that contests don't measure anyone's character, but only knowledge, instantaneous, in a week, it doesn't look at anything about the person, except what he is capable of throwing up in answer to the questions asked.

The state agents of the justice system are people who are part of a certain elite, who read a lot, study, and go to the best schools, precisely because they have passed these contests. Above all, after re-democratization and the strengthening of state careers, they are "contestants" who usually have parents who can pay the expenses for their children to dedicate themselves exclusively to idleness in studying. As the Hellenists said, school is idleness in the Greek alphabet. So, you will need the leisure to study, free time to think, which comes from ancient Greece.

These people have plenty of idleness, besides the greater responsibility, because nobody can say among them: "Oh, I didn't know! They know, they have perfect conditions to acquire that which the Criminal Law calls "awareness of illegality". They know that what they are doing is wrong.

• Fighting corruption

The prosecutors of Car Wash are part of the Brazilian elite. They reinforced the old and dishonest discourse of the fight against corruption in this country to sweep the popular leaderships off the stage. Always! Getúlio Vargas, Jânio Quadros, Juscelino Kubitchek, and now Luís Inácio Lula da Silva: all were appointed as corrupts.

Nothing has been proved. Accusers, the press, anyone shows a penny in foreign accounts. Lula has lived in the same apartment for more than 40 years, leaving the Presidency of the Republic with one hand in front and the other behind, boasting zero asset increase. The only thing that allowed Lula to survive was the lectures he gave, which also helped support a large family. Today, Lula's family is in need.

• So what is corruption?

A designated political agent accused of corrupt, whose famioly has no capital support and no income to support itself. What is this corruption? When Lula was president of the Republic, his wife, to make some savings, decided to buy a share of an apartment from a construction cooperative. She could choose which apartment - within that share, she paid for. But the company bankrupt, and the construction was passed on to a major construction company, the OAS, to finish it.

The OAS, knowing that one of the possible tenants was the former president of the Republic, decided to do marketing spreading that he takes the best apartment in that building, a triplex penthouse.

Well, Lula and Marisa visited the triplex apartment, but they didn't like it because of the quality of the construction. It was a small condo. Lula usually spends weekends with a large entourage of people. He likes barbecues. An apartment wouldn't fit and a very sought-after person like him.

Lula and wife weren't going to use the apartment, and pay the difference to the expected share meant a large outlay. They weren't interested, so they asked OAS for the money back. The construction company said it was not possible to do it. They paid to the cooperative - broke -, and they wouldn't return the payment. So Lula went to court against the OAS and the cooperative in its bankrupt mass to get his money back.

• Léo Pinheiro case

And where is the apartment that once belonged to former President Lula if he never lived there, didn't want to negotiate, didn't even sign a contract or a term of commitment with OAS?

Léo Pinheiro (OAS's director) spent two years in prison and didn't want to say what the Car Wash prosecutors wanted. He said: "No, that apartment had nothing. It was their investment. We are striving at justice because they want the money back". Okay, that's what he said in his first statement.

Two years later - under psychological and physical torture - and a 26-year sentence handed down by Judge Moro, Léo Pinheiro decided to change his initial statement, and tell what the Car Wash prosecutors wanted. This time, Léo Pinheiro stated: "The OAS contractor renovated the apartment for him, that was something we gave him in exchange for our big contract within Petrobras".

A statement completely without foot or head even because another OAS executive said, with all the letters: "No, no money from that apartment left the structured operations department".

It has nothing to do, but all this is inside the process records. The only thing that incriminates Lula is the second testimony, given after two years in prison, by Léo Pinheiro. To contrast this assertion, there are more than 80 others, several people who spoke without being taken into consideration. It is the poisoned chalice.

• Political lawfare

Car Wash Operation wanted to take Lula out of the game, and they ran for it. At the beginning of 2018, in the recess of the STJ and STF. Car Wash judged - quickly - the appeal to declare the appellant ineligible, as soon as possible.

And the TSE, despite its jurisprudence, did not allow Lula to participate in the electoral campaign. Besides registration, TSE decided to prohibit it in the first degree of jurisdiction. Not even during the appeals that were still possible. Car Wash took Lula out of the campaign the day before he began free advertising on TV and Radio, all scheduled in a planned manner.

• Human Rights Committee

It is not justice, nor is it the Judiciary's job to veto a candidate from participating in an election as quickly as a flash. With one detail: the Human Rights Committee of the International Covenant on Civil and Political Rights had given a provisional measure, determining that Brazilian justice let Lula campaign for the presidency.

There was an international proposition that guaranteed him electoral registration. Some Brazilian ministers of Justice immediately told the press that the measure was not obligatory, but it was because Brazil ratified the additional, optional protocol of the International Covenant on Civil and Political Rights. Brazil committed to the Committee's trials in individual petitions. There was no way Brazil could say that the provisional measure was not binding. International norms are compulsory.

Disobedience and noncompliance with these international norms generate what is called the State's international responsibility, which means the obligation to repair the damage done, to guarantee that it will not repeat that damage. The recognition of the error remains the most important component, but Brazil, until today, is at fault with the international arena. And Lula, a political prisoner, unfairly!

• Political and unfair imprisonment

The former president Lula became a prisoner, although the whole world, today, knows that everything was a great hit. The Intercept Brazil revealed, with the leaked messages made public:

> i) that there was a precise plot not to let Lula be Chief Minister of the Civil House;
>
> ii) that there was a plot to accuse him, even without the evidence to support a denunciation;
>
> iii) that he was quickly convicted, all established with the second instance;
>
> iv) that the appeal would be judged speedily.

This is a form that can be called a political coup, a phenomenon conceptualized by the doctrine, more recently, of Lawfare, that is, the union Law and Warfare, which means hostile action with Law. The use of Law as a warlike act, making war through the use of the legal norm, is the most grotesque form of prevarication, misrepresenting the sense of the law and justice.

Lawfare replaces the old military coups. The soldier is no longer put on the streets. The norm is reversed to make conduct supposedly practiced - without the least legal relevance - become illicit, in such a way that it allows to pick the opponent/enemy apart. This is Lawfare!

• Impeachment

Dilma and Lula were Lawfare's targets. Dilma via impeachment, based on a "no fact" such tax rides, the practice of budget execution. Since time immemorial, post-1988, always used, nothing more than a work of compensation of resources, but within the same financial year.

Therefore, no debts or credits were transferred to later fiscal years. The principle of the annuity was correctly followed, making use of this advance of resources to finance the program Minha Casa Minha Vida, Reforma Agrária, and PROUNI. And for these programs were advanced funds from the Caixa Econômica Federal (CEF) already providing for a future collection to offset the credit operation. It was not a crime. There is no negative pronouncement of the TCU against this practice.

In the widespread practice of previous governments, even after that of Michel Temer, there are lots of accounts with the same system. Suddenly - and this was the finding - the mentioned system became a crime of responsibility for misappropriation of public resources, which means poor budget management.

And that was enough to appellate Rousseff from power in May 2016, being convicted in August 2016. They were so cynical that they didn't hide that the goal was to get Rousseff out of the presidency. Indeed, they didn't remove her political rights, because they knew the injustice they were committing - "what we really want is to get her out!".

• Coup d'État

President Dilma suffered a coup d'état, pure and simple. In the old days, the military forces deployed their troops to do this job. Today, the Federal Senate promoted the institutional breakdown. The senators based on a ruling by the Court of Audit of the Union (TCU), prepared as soon as possible by ministers who, incidentally, are under suspicion of corruption. One of them was removed, because the son has been doing administrative advocacy in court, selling the Senator father's votes. These are the judges of Dilma's accounts, but they weren't going to overthrow the president to let Lula win the next election.

The institutional breakdown had to be done completely, otherwise, it would make no sense. In fact, Lula himself even said: "They won't let me be a candidate. It wouldn't make sense for them to take Rousseff so I could come back."

In fact, those who canceled Lula are the same ones who let the 2016 Coup happen. They crossed their arms: the Judiciary, the Public Ministry. Rodrigo Janot, then-attorney general of the Republic, knew it. Today we understand that he knew - the head of his office, Eduardo Perrella, knew!

• Appointment of Lula

The state agents of the Curitiba Task Force, under the partisan command of the judge Sergio Moro, committed illegality when they made public the dialogue between Lula and Dilma regarding their term of office. In addition to this interception, 21 other conversations by Lula, in which he expressed concern about being Dilma's minister to help Brazil emerge from the crisis.

The former president's concern about being Dilma's minister was that they might think he was trying to escape justice. And without finding it legal, Lula was reluctant to accept the position for fear of what people might think. The person who was afraid of this circumstance would not use a government indication to hide from justice. Car Wash Task Force knew it because they had heard other conversations.

• Procedural fraud and prevarication

Eduardo Perrella - PGR's Chief of Staff - was informed about the content of Lula's 21 conversations, Rodrigo Janot - the holder of the Attorney General's Office (PGR) - knew, and did what? They accused both Dilma and Lula of procedural fraud and malfeasance because of this term of office conversation. Lula and Dilma respond, until today, to a criminal act proposed by Janot against them in the Supreme Federal Court (STF), stating that they committed a crime in that conversation.

It is absurd when the accuser knows that such a conversation doesn't say anything. The interception doesn't evidence any kind of crime but is simply communication with the president of the Republic. Thus, the tape containing the recording had to have been sent, in a sealed box, to the Supreme Federal Court (STF).

There was no evidence that the prosecutors of the Curitiba Task Force were able to dispose of. They did not send it to the Supreme Court. The intercepted conversation was made criminally public on Globo News. In a few hours, after being aired on TV, leaked conversations by The Intercept reveal Car Wash prosecutors celebrating. Celebrating the crime they were committing. Bravo!

What Justice is that? This is the poisoned chalice that will remain in the memory of future generations. The Car Wash prosecutors may know that they will mean to the next generations: wrongdoers and traitors of official duty. This is what is written in history. They will be seen as prevaricating state agents, unable to fulfill their function in a dignified manner.

4.1.1 Interactive Debate

The perplexity of how to get out of the crisis and respond to attacks on democracy permeates all questions as the by the professor Marconi Moura[32]. There is perplexity among all because the guardian of the Constitution has not been able to effectively protect Brazilian society from systematic violation of the 1988 Citizen Constitution.

It is important to remember the Mensalão process, from 2005 onwards. The STF has adopted a posture of measuring its acceptance by the clamor of the streets. It seems that Joaquim Barbosa's phrase became lapidary in one of those debates he had with Gilmar Mendes when he nervously stated: "Minister Gilmar, you are destroying this country; you are breaking the law. Have you looked on the streets? You are completely out of reality. Look at the streets, listen to the streets, Minister Gilmar".

That was Minister Barbosa's phrase of indignation - in the STF - with Minister Gilmar when he reported on the "Mensalão do PT" - AP Criminal Action No. 470. And what he did was look out the

32 Marconi Moura de Lima, professor at UEG de Campos Belos, graduated in Letters at UnB, post-graduated in Public Law - Faculdade de Direito Prof. Damásio de Jesus, verbis: "[...] I would ask Prof. Eugenio Aragão who can help us? Because you see, there is an independence of the judiciary and you have to respect that, but some state agents end up with a whole Republic, with a whole civilization structure. When you have a rupture like that, then Moro is exempt! CNJ won't do anything against him? And Dallagnol, no one is going to do anything at the CNMP? What's the fear? [...]"

window and know how the streets were going. He increased and decreased the tone as he received applause, beat colleagues, even called Minister Lewandowski “cheater” - in the middle of the STF session. He broke Minister Tofolli’s word. Barbosa crossed the line during that period under applauded. He got on airplanes, and everyone was asking for autographs.

• The original sin of the STF

The original sin of the STF was to succumb to external pressures. From then on, it seems that Barbosa’s colleagues were intimidated, and became afraid of yellings from the streets. A court cannot be afraid of the streets. The court exists to protect minorities from majority abuses as well. The court must not fail to use counter-majority power. It must not be a puppet of the majority, of the streets, of those who scream louder.

Justice does not work that way, so it is not elected among us, it is not after the popular vote. It has technical legitimacy and does not seek political legitimization through suffrage. The majority of judges have no political legitimacy per se. What we have is bureaucratic and technical legitimacy, in the Weberian sense.

What is expected of the judge is that he uses his technical excellence in the foundations of his decisions. One not expected him to be a pop, sympathetic judge because that is not the function of a judge. And at a moment when they wish it, it seems that something worrying is happening in Justice.

The Nation has, today, a serious problem of access to Justice, mainly to respond to the countless abuses practiced in the Brazilian

public space, be it in schools, in the countryside, in indigenous public policy, against social movements, of housing. All of them suffer from state violence and from private actors who count on the connivance of the state. That is why it is difficult to say how to resolve the issue. There is no answer to a procedural, dogmatic nature “do this, do that”.

Not even the consecrated institute of prescription is safe. Everything depends on the decision of the judge who will say: “I have no proof, I have conviction.’ This is the great problem to face today: the convictions, traversed in criminal prosecutions without concrete evidence, based on discursive narratives, as explained by the prosecutor Wilson Rocha in Chapter 2.1.

• **Nevertheless, keep the optimism!**

The dogmatic answer to these perplexities does not exist. However, one can never stop being optimistic. In the presidential elections of 2018, when the candidates Lula and Haddad were practicing law, curious events occurred. For example, while numerous fake news was being produced against the nation by Bolsonaro”s partisans, the TSE ignored it and looked like a landscape.

Then the aggressions against the TSE began via fake news, claiming that the court frauded the electronic voting to help the PT. That was enough for them to create a commission, to meet, to seek support from the Federal Police and the Armed Forces. I mean: when they reach them, they take action; when it’s with others, they neglect.

The actuality now reveals a clash between the MPF and the Superior Courts. The ministers have come to realize that they are targets of the MPF as well. It is common to see disqualified opinions that the members of the Parquet make about STF's excellencies - higher ministers. Then the speech changes.

• Turning in the Judiciary's humor about the MPF

If there is a turning point in the mood of the Judiciary, concerning the MPF, it is only because the Judiciary - part of it - has become the target of Parquet. The prosecutors of Car Wash - as megalomaniacs -, packed into their popularities, built by the commercial media, understood that they could withstand the Supreme Court ministers.

The haughtiness of such state agents preached a trap to them. The president of the Supreme Court, Dias Toffoli, opened an inquiry - at the STF - without asking the Attorney General's Office (PGR) about it. And he appointed Minister Alexandre de Moraes, without any random distribution, to be the rapporteur of the inquiry despite protests of the Curitiba Task Force and PGR.

According to Minister Marco Aurélio, years ago: "The 1988 Federal Constitution is the STF, we are the CF. So, what is constitutional - or not - we say it". Is it unconstitutional for the president of the STF to open an inquiry - without hearing the MPF - about the fact that he is a victim? Theoretically, he wouldn't have any exemption, moreover, to designate the reporter without going through random distribution! And that stays like this. And one more thing: Tofolli proved to be right. Several times the ministers have questioned the attorneys general of the Republic. Rodrigo Janot and Rachel

Dodge were questioned about abuses that were being committed by prosecutors against the ministers of the Supreme Court, and both also looked like a landscape.

The STF, in fact, used an elastic interpretation of the Internal Regulations, which says: "Crimes committed at the STF headquarters will be investigated by a minister appointed by the president of the STF". The president of the Court interpreted that the attacks on the ministers of the House are crimes committed at the headquarters, on the work of these ministers.

• The Fake News Plant is in the Computers of the MPF

Although controversial, Minister Tofolli is right, there was no other solution to investigate this. In a way, it was the first step to start investigating the fake news plant, which goes directly to the computers of the MPF. Many of these news pieces against STF ministers were derived from MPF to attack ministers who understood the famous "10 Measures of the Package Against Corruption" as a delirium. Therefore, if the MP didn't stop even in front of the STF, how would it stop in front of the worker? They "pass over".

• Parquet is the nursery for agents eager to "pass over it"

Professor Elias Rassi Neto, of the Institute of Tropical Pathology and Public Health - IPTSP/UFG, reports arbitrary actions suffered due to the abusive performance of some members of Parquet, transcribed here, *in litteris:*

> "I want to thank you for being mentioned as a politically persecuted in these times of Lawfare because it allows me to make a brief presentation. I am a doctor. I was a councilman for two terms. I chaired the City Council and the elaboration of the Municipal Organic Law. I was a Health Secretary from 1997 to 2000, Planning Director of the Ministry of Health for 2 years. I returned to the Goiânia Health Department in 2011 and 2012, by the

invitation of Professor Paulo Garcia - vice-Mayor for two years, Mayor for another 2 and reelected for another 4 years.

In this period of 22 years, I never had any problem with justice, as well as no denunciation. Thank God. However, in these 2 years of Paulo Garcia's administration, the Regional Council of Medicine of Goiás - CREMEGO, opened 25 inquiries within the Council. They were all filed by absolute dismissal.

In the same period of 2 years, I received 2,834 official letters from the MP/GO, which generated 70 civil inquiries. I made a dossier. I have proofs and certificates of all that I am saying. I have been judged 11 times in several courts, in charges by the Parquet. I have not lost any. I won all 11 lawsuits.

The Court of Auditors fined me 60 times, totaling 69,000 reais, and sentenced me to return 80 million reais for alleged loss to the treasury, without any evidence of this and any demonstration of any public damage or illicit enrichment. I also answer to nine processes of administrative improbity and one criminal case. None of these processes has any basis.

This is just a preview. I'm going to talk now about the coercion of the magisterium. A federal prosecutor sued UFG for the announcement of a course on the "Coup d'etat of 2016". This same prosecutor received a "denunciation" against the teachers of IPTSP (Institute of Tropical Pathology and Public Health) which, in 3 paragraphs, says the following:

[...] The MPF should investigate what is happening in the Collective Health Department. Several teachers, who are exclusively dedicated, carry out other activities. Besides, there is the issue of the standard of living incompatible with income, since most of the teachers earn about 5 to 10 thousand reais, even so, they ride in luxury cars and travel abroad. I see two possibilities: they receive advantages from suppliers in the institutions in the bids and contracts, or they receive money from the Pan American Health Organization. [...].

This denunciation produced two civil inquiries that lasted three years. The first generated the breach of income tax secrecy, patrimonial investigation, investigation in ports and airports, which was a thorough investigation of all the professors in the department, dozens of petitions circulating here at UFG. All this without any judicial authorization. In the end, this investigation was suspended because there was absolutely nothing. In the end, this inquiry was shelved because there was absolutely nothing at all.

However, the shelved inquiry produced another inquiry, which was made to investigate a suspicion substantiated by the same public prosecutor already mentioned:

[...] receive salaries in two activities at the same time, that of Secretary of Health of Goiânia (2011/2012), while he was working as a UFG professor with exclusive dedication [...].

This inquiry went off because there was no irregularity or illegality, and there was no simultaneous receipt of salaries. It was just an undue assumption or suspicion.

Remains a question. We are witnessing, in the last decade, a series of accusations of prosecutors reaching public service agents with a lot of slander, defamation, and insult. The charges went tried, while the accused are acquitted. However, it never comes to anything against the accuser.

There is doubt concerning MP and the judiciary access to a career. What would be the appropriate form of selection? Would it be possible to take precautionary measures against the excesses of these by control agencies? Since they are necessary, there should be another way of selection, a contest, or something else that would allow having control of this type of performance.

Our problems and difficulties of a democratic consolidation would perhaps be the result of a series of excesses that we have committed in the field of legislation. In other words, we have built legislation that was not enough. The premise of combating corruption supports our administrators, but this achieves the restriction of freedom, dignity, and the right of the people. (RASSI NETO, 2019)[33]

• Judicialization of life

Today, the solution is to question justice. Show the Judiciary its contradictions, and the lawyer must document the demand for rights for posterity. If justice does not recognize the right claimed, it is one more shovel of land to bury a democratic right, and the gravediggers

33 Intervention by doctor Elias Rassi Neto, professor at IPTSP UFG, in the Lawfare Debate Panel, 10 and 11 Sept. 2019, Campus Samambaia - UFG, Goiânia-GO.

will get into trouble.

No harm lasts forever. The destroyers of rights will pay a high price for what they do. No state survives with an organ of its own wearing the minimum consensus away to ensure stability.

Every state exists based on agreement, sometimes imposed by force, dictatorship, in others, built by the dialogue, democracy. Sometimes indolence creates a false consense and laziness in doing politics. Omission also produces consensus. It is the consensus of today's times. It seems usual throughout the world.

A consensus is necessary at a time when an ingrained state organ closes itself as a bubble, within that state, to not communicate with the rest of the administration. This organ, deaf and dumb, concerning everything that happens around it, tends to be destructive. This force of corrosion of the consensus, today, is the MP - a rotating machine gun. And no mayor in Brazil can govern without the MP giving a guess: "If I don't stay like this, I'm going to enter with an action of improbity", about the question of the Professor João Batista de Deus[34].

34 João Batista de Deus, doctor professor at IESA/UFG, verbis: "[...] First, I want to raise three questions: i) Governor Flavio Dino asked a very important and interesting question, according to which the defense of Lula's freedom is not a defense for Lula, it is a defense for all of us. I'd like to comment on this; ii) the performance of the Public Prosecutor's Office -MP, at times, is very complicated, not only in a general way but specifically here at the university. We've gone through some problems with the MP's performance at the Research Support Foundation - FUNAPE, through a prosecutor who is a terror. Assigned by the foundation, I was a member of a jury at the Federal University of Uberlândia. We had 56 candidates, 5 of which passed the didactic exam, but the prosecutor of MPGO did not accept. So, we have to do the didactic exams of 56 candidates, 3 people stayed 3 days attending 56 classes, the same class, because the state agent of Parquet did not accept and threatened to enter against the university. These things testify against the MP; and, iii) as a result of these abuses, here at UFG, we made a resolution following the MP's advice not to have a problem. In the face of university autonomy, it is something a little crazy. In closing, I think that these issues advance to other things and that they reach Lawfare, destructuring people's lives. I was

• A Paradox of democracy

Threats from Parquet members thrive nationwide because mayors are afraid of "Ficha Suja". The most surprising and paradoxical thing is that popular governments have created these mechanisms that have strengthened arbitrariness within the Democratic Rule of Law.

The "Ficha Limpa Law" - which I argue - does not denote the possibility of attributing any consequence to a judicial decision that has not passed in a trial. The res judicata is a fundamental guarantee, and there should be no law to relativize it, so I refute the mentioned law.

To be chosen: the bandit who is a candidate for a bandit prevented from applying. To affirm that the person has no right to exercise political rights as a result of falsehoods is one of the greatest injustices that the political system commits to citizenship.

The misunderstanding about the above position comes from the mistaken idea of "wanting to protect vagabonds," which is not a true belief! Or even: "Justice is too slow". So, make it faster! Now it is the citizenship that will pay the price for the slowness of justice, giving up the fundamental guarantees? Speed and slowness are issues of procedural economy, and a fundamental guarantee must not be sacrificed in the face of this problem. It makes no sense because there is no proportion between those formulations.

• The monster created and nurtured by fear

What unfortunately happens is that the governments of the PT - or popular democracy - have supported the Ficha Limpa (Clean Record) Law and the like, more out of fear than conviction, doing it out of

director for 8 years, I followed many processes of this kind here. I would like to have these issues commented on. Thank you very much. [...]"

fear, always on the defensive, in trying to relieve the Public Ministry and the Judiciary. And, within these institutions, they made laws, plea bargains, telephone tapping - created by the Executive Branch, to be used with prestige in the Legislative and to approve laws, all enacted by Lula and Dilma, that today affect democratic leaders.

By acting out of fear, one creates the monster of the MP, which lives from the fear of progressive political and economic actors. Through this concern they maintain the prestige provided by democracy, feeding the gains and powers. It is intricate when one has a notion of the political effects of decisions.

This juncture makes a vicious circle: the more you earn, the more you abuse them. It is necessary to discuss the politics of remuneration in the Brazilian public service. It doesn't make sense a titular professor - with two public academic selections, researches, titles, published books - to receive a net of R$ 15 thousand (fifteen thousand reais), while a prosecutor in a probationary stage of MPF perceives R$ 24 thousand, net, and affirm that he is in the "penury". (PORTAL G1, Dez. 2, 2019)

Miserable are the 50 million Brazilians with no monthly fixed income, who depend on the government aid from the family scholarship, in the amount of half the minimum wage that is one thousand reais. This brutal inequality must end. This model is what is wrong!

• Each teacher needs a blunt instrument to fight

To overcome the inequality, pointed out by the lawyer and director of SINT-IFESgo, Michely Coutinho[35], the professor needs

35 Michely Coutinho Oliveira de Andrade, lawyer, a technical servant at UFG, director of the Technical-administrative Union of IFES in Goiás - SINT-IFESgo, verbis: "[...] My worries about the teaching brought 3 points. First, I emphasize that

a blunt instrument that can put the administration against the wall, in a civilized way without being based on fear, like the state agents of Parquet - who use powers to blackmail the administration.

What can a teacher do? Strike, but he has to replace the classes, which is a shot in the water because there is nothing else this professional can do but strike. So he earns little if he could punish, arrest, persecute, make the administrator ineligible like the "law enforcement agents" the teachers would be earning a fortune. That's the difference.

It is no wonder that the best-paid careers in this country are those that have the power of coercion against the administration, such as the Federal Police, the Public Prosecutor's Office, tax auditors of the Federal Revenue, auditors of the TCU, public lawyers. And it is not because they are important in terms of what society needs, but because they can shout more.

we are living almost a mixed martial arts or 'juridical MMA' in which everything can be. Sometimes, as a lawyer, they even doubt your competence, because people ask and you begin to say that yes, that no, that you can, you have several chances. The second point reminds me that I am afraid of the guard on the corner. That he even raped a student here at the university cruelly, cowardly, legitimized by the speech of the President of the Republic, that is what we are living. I am afraid of the private school principals of Goiânia. Yesterday there was even another accusation from a friend of harassment suffered inside one of the schools. I even got in touch with Railton, who is the president of SINPRO. The third point is that the university still has instruments like university autonomy, besides the struggle and resistance, etc. And in private? This specific case of harassment was about gender ideology, the director of the school, who is conservative, said that his school is like that, even he wanted to control the private social networks of the teachers. That is, we are living in the case of a complete state of exception. So I ask, with optimism and hope, within this perspective, what to do? Especially in the field of private teaching, where the teacher became a villain! What is this nation that transforms the teacher as its enemy, in the field of Lawfare? [...]".

• "Who does not cry does not suck breast"

If the state of exception prevails, the concepts of "Order and Progress" must be removed from the flag and changed to "One who does not cry does not suck". The fact is that, in Brazilian public institutions, those who scream louder receive more money. It is what has to finish: the vicious cycle of anarchic remuneration policy.

It is urgent to establish the proportion of what an ambassador, general, president of the Central Bank, dean of the university earns. This "crazy thing" should not continue in Brazil, where one earns R$ 15 thousand reais, another earns R$ 30 thousand reais, which makes the system fragmentary, precarious, and the categories begin to fight among themselves for attributions, to sensitize and pressure the Executive.

This is the struggle that exists between institutions that control public accounts, such as the MP (Public Ministry), PF (Federal Police), RF (Federal Revenue), AGU (Advocacy General of the Union), CGU (Comptroller General of the Union) and TCU (Court of Accounts of the Union), all wishing status, represented by political agents who depend on projection and "social recognition" to earn more.

The categories of public servants alienated from the system "are in the salt. The privileged state agents guarantee, each one his or her own, what is left over is shared with the rest. There is something wrong, which leads this class to abuse, most of them work little time in the MP with objectives of economic, personal, prestige security. And, in their garage, beautiful cars, clothes and beautiful ties, fancy suits, or at the expense of the treasury.

• Triple List

On the question of the choice of PGR, raised by Professor Flávio Alves[36], I oppose the triple list. I always said, and it's not from today, I don't want the MPF like a bubble. The MPF must understand that it paved the way for Bolsonaro to the Presidency of the Republic - for his actions against other candidates.

So, it needs to bear the consequences, which is to say, the PGR will be chosen by the Bolsonaro. It is important that such state agents feel part of the political system, not a bubble. If it has made life easier for Bolsonaro, now they have to live with him in the institution!

36 Flávio Alves da Silva, UFG doctor professor, president of ADUFG Sindicato, verbis: "[...] I read an article by Prof. Eugenio, about which I will ask, given the growing social upheaval and the imminent dictatorial state, what to do? And I would also like to ask about the triple list. What can be done to take power away from these people and rescue the minimum democracy that has ever existed in Brazil? [...]".

THE USE OF ILLEGITIMATE STATE POWER
Igor Escher Pires Martins

4.2 How Lawfare Elect its Targets

Initially, the term Lawfare, conceptualized elsewhere, is an ancient practice in the history of law and humanity. Liberal John Locke, in an essay on the limits of authentic civil government, asserts that the State cannot make Lawfare, as transcribed below, *verbis*:

> Even where there is a legal recourse and established judges, if by a manifest perversion of justice or clear distortion of laws its solution is denied to protect or guarantee the violence or damage of some men or party, it is difficult to imagine another situation besides a state of war. For where violence and harm come into play, it is still caused by the hands of those who should administer justice, despite the name, despite appearances or forms of law, for the law is intended to protect and repair the innocent, through a fair application to all that is under its tutelage. When this is not done in good faith, it is the same as waging war against the victims, who have no one to help on earth, all that remains is to appeal to heaven [...]. (LOCKE, 1994, p. 93)

What is new in Lawfare? Lawfare is precisely the new clothing given to the use of illegitimate state power, in an articulated way between the social, political, and legal environments, to use this articulation, to elect the specific target, to end this enemy. For example, the coup of 2016, exposed by professor and lawyer Eugênio Aragão (see Chapter 4.1 above).

Historically, however, who was the enemy? Blacks, women, all those who escape the standard imposed by capital or the market, said by Professor Bartira Macedo de Miranda (see Chapter 2.3 above) and the other authors as one of the characteristic elements of this type of legal war today.

Lawfare is specific to what the German jurist Jakobs called the Enemy's Criminal Law since it focuses the persecutory actions on the political enemy, who cannot be won in the popular vote, through public debate, in such a way as to constrain the image of this enemy through frivolous accusations, in collusion or not, with the justice. And it allows the enemy to be removed from the electoral scene and public debate, or simply affect his credibility and popularity.

However, one must be careful to label any wrongful criminal prosecution as Lawfare, because even if one has criminal or public civil lawsuits initiated based on fragile accusations, even without any evidentiary backing, Lawfare, in fact, goes beyond judicialization, even if started in bad faith by the accuser.

There is, as has been said, an orchestrated scenario involving the judiciary and the media (see Chapter 2.2 above). At this point, we must understand the judiciary as a platform to support the media defamation since, when prosecuting a lawsuit, the media is in charge of condemning the accused, even if his innocence is recognized in the case records.

The fight against Lawfare is not done exclusively through the media or in the courts but in the class conflict by a change in the social paradigm. Here it is pertinent to understand that the revolutionary or conciliatory fight, such as that, for example, carried out by the petitioner governments, is indeed legitimate.

Believing in the path of conciliation or revolution, the final conception leads to the same idea: the subversion of the imposed

system: the improvement of social conditions. The class struggle, however, is continuous. One cannot rest on partial triumph or accommodate the small income transfer of the beginning of the century. It is necessary to keep the clash alive, always provoking the memory of those most punished by the concentration of income, so that Lawfare does not embody, specifically, the annihilation of the enemy, represented by the defenders of the rights of the excluded.

• Lawfare in teaching

As for Lawfare, there is the enigmatic case of the former rector of the Federal University of Santa Catarina (UFSC), professor Luiz Carlos Cancellier de Olivo, who committed suicide after being arrested, humiliated, and prevented from entering the UFSC, the institution to which he had dedicated his life. There is also the case of the rector and vice-rector of the Federal University of Minas Gerais (UFMG), who was coercively led, which fortunately did not result in the tragic outcome at UFSC.

• Lawfare in UFG

UFG is not exempt from the abusive use of legal instruments by state agents practicing Lawfare. The case of Professor Elias Rassi Neto is so impressive, and at the same time freak, that it is imputed against him non-existent damages to the treasury, persisting judicial persecution so that he returns significant capital to the hospital that has always been in full operation. The state agents practicing Lawfare charge the defendant the full value of R$ 13 million reais.

As an example of Lawfare - at the Federal University of Goiás (UFG) - the public civil action filed by the Federal Public Ministry

(MPF) against the dean, pro-rector, and course coordinator who dealt with the Coup of 2016 is also cited. Parquet requested information from UFG, which provided this information.

The discipline that the MPF asked for information did not happen due to a technical problem in the UFG's regional. The Faculty of Education, in Goiânia, however, hosted an extension course on the same subject, in which Parquet filed a public civil action, alleging, among others, that UFG had not informed about this extension course.

The signatory attorneys-in-fact should be informed that the University has not yet developed the gift of clairvoyance. In this case, the MPF was seeking pre-censorship, another absurdity.

The accusatory piece is bizarre and makes great publicity in the national media. The state agent, a practitioner of Lawfare, uses speeches by ministers of the then government of Temer, given to newspapers of wide circulation, which said it was not a coup d'état, which supported the ministerial claim. In other words, the premise was taken that, in a prompt announcement, "it is not a coup", and this legitimized the Parquet to provoke the Judiciary into embargoes of any attempt to study what happened.

In this regard, prosecutor Wilson Rocha characterized it as a performative discourse that creates the reality it enunciated. Thus, Lawfare, an instrument of coercion of the Superior Magisterium, is characterized by the use of repressive apparatus, including media, advertising the operations, measures, and decisions adopted by Parquet, which the governor Flavio Dino called theatricality of life through the mediatic show of the criminal process.

• Conclusion

To conclude, a question for everyone to reflect on: the justice system that practices Lawfare commits absurd criminal injustice, unbridled by the enormous and disproportionate destructive force of the state machine to persecute a citizen.

However important or wealthy the citizen maybe, he will not have the same parity of weapons as the accuser. The State has the Judiciary Police, the Public Prosecutor's Office, control bodies, and the Judiciary Power. With pen and ink, the public agent promotes devastation in the life of any citizen.

This happens even in other spheres, outside the criminal sphere, such as public administration control agencies. The Federal Revenue's auditor is imbued with enough power to promote inquisition in the lives of individuals and corporations, for example (a bad example) of the conduct of the fiscal auditor Marco Aurélio Canal and his group - who were arrested on suspicion of extorting the Car Wash Operation, *verbis*:

> [...] The arrest of Marco Aurélio Canal and other investigators [who] are targets of the so-called Operation "Armadeira". The group was arrested on suspicion of extorting money from Car Wash Operation investigators. In exchange, they would annul fines for tax evasion arising from facts discovered by the operation. [...]. (CONSULTOR JURÍDICO, Oct. 16, 2019b)

The implementation of restraints to inhibit oppressive state action, to reduce illegal punitive capacity, to regulate its actions, aims to balance this struggle, which stems from classic liberal thinking, exposed by Locke - cited at the beginning of the text.

Therefore, under the liberal State, there should never be the practice of Lawfare.

On the contrary, the right-wing authoritarian thought strands that have ascended to the country's central power are enthusiastic about Car Wash system, although they claim to be ardent defenders of free enterprise. In fact, they are false liberals.

The most they can formulate is to admit the struggle between equals. It would be as place an ordinary citizen in the arena to fight against a holder of mixed martial arts (MMA) world champion title: "Go on, the contenders are equal, same parity of arms, they have two arms, two legs, now they can fight on equal terms," exclaims the crowd. To the cheers of the public, the right-wing authoritarian thinkers and the extreme neoliberals echo.

Thus, there remains the questioning to motivate the debate on the subject and its importance for society, the academy in general, for the construction of improvements in the democratic field, aiming at the recovery of the Democratic State of Law.

4.2.1 Interactive debate

Regarding the question posed by Professor Marconi de Lima[37], what we have to do is popular mobilization. One should not rely on the institutions of Parliament and the Judiciary. The judicialization of politics and the politicization of the judiciary do not lead to anything. The reality reveals decisions that are the personal will of the judges, who do not follow the consolidated jurisprudence.

It is not enough to change the way of entering the bodies of Parquet, Justice, or the Judiciary Police. It is necessary to strengthen the National Council of Justice (CNJ), the National Council of Public Prosecutors (CNMP), internal affairs of justice, and other equivalent bodies to control public accounts with greater transparency and participation by social organizations. There, abuses can be contained, and the resumption of democratic normality can be promoted.

37 Marconi Moura de Lima, professor at UEG de Campos Belos, graduated in Letters from UnB, post-graduated in Public Law from Faculdade de Direito Prof. Damásio de Jesus, verbis: "[...] The lawyer Igor Escher asked a very interesting question related to the weight and size of the State in face of the individual. There is a contrast that somehow links this Lawfare problem to the logic and theory of law. What happened with Federal Deputy David Miranda (PSOL-RJ) is very much related to that weight of the State. For example, a question that has become a maxim in the networks: "Where is Queiroz? The case should be investigated by Coaf and, by extension, Senator Flávio Bolsonaro, who is a congressman in the same Brazilian Congress! And then, in a complete reversal of roles, the state control agencies make devastation in the life of David Miranda in an extremely sneaky way [...]".

THE MAGISTERIUM UNDER ATTACK

Nilton Brandão
Flávio Alves da Silva

4.3 The State of Exception and Neoliberalism

The Lawfare Debate Panel and the resulting book express the collective wish of ADUFG-Union and PROIFES-Federation - representing the Brazilian University Community - which make this undertaking an important initiative for the defense of universal rights, increasingly demonstrating that unions and civil society organizations are the voice of citizens - which must be made heard - in the debate on major national issues.

And one of the most relevant issues refers to the state of exception cherished by the extreme right-wing government to impose an extreme neoliberal project that was neither presented nor discussed, even less voted by suffrage by the sovereign will of the people in the last presidential elections.

• Who is the enemy?

Initially, two points: the first is the innovation of the debate, which comes at a time when Brazilian society is living on the impact of Lawfare. The main characteristic of this instrument of war is the selection of the enemy by the persecuting state agents.

The space of Justice, which should be of defense of society, transforms into the field of persecution of the citizen. The question arises as to how this enemy is selected: is the National Union of Students (UNE), for example, observing its survival

resources withdrawn through a provisional measure? Or are the unions and their fields of action increasingly strangled, also by a provisional bill?

Some people believe that the debated reality, so absurd, is not true. Does this reality really not exist? Would the Justice system, which practices Lawfare, be capable of creating enemies such as university rectors, the University Community, and Federal Institutions of Higher Education (IFES)?

The university deans would be enemies to be framed as incompetent, and that is why they need the "Future-se program"[38] to end the autonomy of the public university and hand it over to the private world. We see the enemy being selected from within those institutions that, in some way, express the reaction of the population's desires in the scenario of the ongoing social-political debate.

• **Democratic Rule of Law**

The second aspect is a consequence of the first. What is at stake is the Democratic Rule of Law. Brazil is living under the coup of 2016, which has been given false characteristics of legality to hide the nature of the coup d'état, as Michel Temer (EXAME, Sept. 17, 2019), the vice-president raised to the condition of president thanks to the institutional rupture that he served.

38 Program presented by MEC on July 17, 2009, that creates a private fund to finance Federal Institutions of Higher Education - IFEs. The fund will be administered through Social Organizations - OS that is legal entities under private law (Law No. 9,637/1998) to be contracted by the MEC. The fund will have R$ 102.6 billion, of which R$ 50 billion will be contributed by the Union, R$ 33 billion by constitutional funds, R$ 17.7 billion by fiscal incentives, R$ 1.2 billion by culture, and R$ 700 million by the use of public space and property funds. This is a program that violates university autonomy (art. 207 of the Federal Constitution and art. 55 of the LDB) (Source: JORNAL DO SINT-IFES go. Say no to Future-se. Goiânia, 3 (4): 3:7, July 2019).

The impeachment of the legitimately elected president of the Republic of Brazil unconstitutionally deposed, without a crime of responsibility, opened the doors to retrocession; from then on all the rights of the workers being harvested, one by one.

The worker has gone through Labor Reform, High School Reform goes through the threat of the end of FUNDEB - which ends in 2020 - in the face of the difficulty of a coup elite to make Basic Education state political, goes through the systematic attack on Paulo Freire as patron of Brazilian Education. Authorities of a right-wing extremist government demonstrate that democracy does not allow rapid advances in social inclusion policies.

The attack on education, consequently on the university as a whole, will surely spill over into the attack on the Democratic State of Law. Therefore, dear reader, to reflect is to denounce the threat to democracy in the country. Education cannot be silent. There is a Federation of Trade Unions - the authors mention it on behalf of this Federation - and, therefore, one can say: - We will not shut up!

The organized workers will be the voice of those who will not shut up and, together with society, will not accept, and will stand up, take to the streets with students, teachers, workers, and other segments of society to say no to the dismantling of Education.

This optimism comes from the certainty of being on the right side of history. Those who think that Brazil is a corral of some imperialist countries will not pass. Democracy will be defended and will win!

• The education minister interpellation

PROIFES-Federation registers a manifestation of support to the initiative of ADUFG Sindicato, through the lawyers of the entity, Elias Menta Macedo and Igor Escher Pires Martins, who presented a petition of judicial interpellation of Minister of Education Abraham Weintraub in the Supreme Federal Court (STF) , on November 25, 2019, constituting an unparalleled fact in the history of the Brazilian Republic. (MACEDO; MARTINS, 2019)

In the Cautelar Action No. 0033803212019, the representation of university teachers requires a preliminary injunction that the highest authority of Brazilian national education clarifies which universities have “extensive marijuana plantations” and that are “developing synthetic drug laboratories”.

The petition requires the minister to present pieces of evidence to these scandalous accusations. Besides it, due to the obligation of the office, ask him which measures he did adopt after the knowledge of these alleged criminal facts.

• Anti-drug law

The minister’s accusations allege that university professors practice criminal acts typified in the Anti-Drug Law No. 11,343/2006, which establishes in art. 33, items I, II and III, that it is a crime to prepare, produce, manufacture, have in deposit raw material, input or chemical product destined to the preparation of drugs, prescribe, deliver the consumption or supply drugs, seed, cultivate or harvest, use local or good of any nature that the administration has, or consent that others use it without authorization or in

disagreement with legal or regulatory determination, subjecting such criminal conduct to the penalty of imprisonment for five to 15 years and payment of 500 to 1,500 day-fines.

In this way, the minister is obliged to justify his charges. Moreover, in addition to proving, as the maximum administrator of the Federal Institutions of Higher Education (IFES), the manager is obliged to demonstrate the actions he has determined to combat such criminal practices.

If he knew that in some universities there were "extensive marijuana plantations" (criminal verbs: "to seed", "to cultivate", "to harvest"), then what steps did this authority take to combat such criminal practices?

If the minister, by hypothesis, proves any of the criminal conduct launched against university professors and institutions, without demonstrating that he has provided adequate measures to combat them, then he will be subject to liability based on the same provision of art. 33 of the Anti-Drug Law.

• Crimes against honor

But if the minister does not prove the existence in any IFES of "extensive marijuana plantations" or "laboratories developing synthetic drugs," then he has falsely accused someone of a criminal act, focusing on the crime of libel (art. 138 of the Penal Code) or slanderous accusation (art. 339 of the Penal Code).

The minister denounced the reputation of IFES in the country, focusing on the practice of the crime typified in art. 139 of the Penal Code - defamation, which applies to the individual of the university

professor and also to the legal entity IES, which has an essential concept of values before society.

For this reason, Mr. Abraham Weintraub, Minister of Education of Brazil, has possibly committed a crime against honor (art. 5, X, Federal Constitution).

ADUFG-Sindicato demanded explanations from a minister of education who lied when making statements, spreading fallacies, slanders, and defamations. The former personality who was responsible for Education in the country intends to demoralize and weaken public university autonomy within the strategy of the Federal Government.

The objective of the precautionary lawsuit is to seek the retraction of the manager and also to prepare reparatory action for moral damages caused, in the face of an unworthy, ungodly attitude, not consistent with the decorum of the office of Minister of Education, whose role is to improve teaching and public universities.

A union must protect the honor, image, and collective morals of professors from all universities and federal institutes in Brazil, and ADUFG-Sindicato queries to respect and accountability with the education community of the Goiás state.

4.3.1 Interactive Debate

Professor Marconi Moura de Lima[39] repeated inquiries in the Debate Panels about what to do to face the threats of setbacks experienced in Brazil. The path is popular mobilization, pressuring the institutions of the Judiciary, Executive and Legislative.

It is necessary to increase the direct participation of citizens in the State's deliberative instances, including in the organs of control of the Judicial System, such as CNJ and CNMP, giving them greater transparency and social control. There, it will be possible to contain the abuses of the political use of the law and resume democratic normality.

This questioning, which is added to that of the lawyer Michely Coutinho[40] , allows us to affirm that something can and should be

39 Marconi Moura de Lima, professor at UEG de Campos Belos, graduated in Letters at UnB, post-graduated in Public Law - Faculdade de Direito Prof. Damásio de Jesus, verbis: "[...] I would ask Prof. Eugenio Aragão who can help us? Because you see, there is an independence of the judiciary and you have to respect that, but some state agents end up with a whole Republic, with a whole civilization structure. When you have a rupture like that, then Moro is exempt! CNJ won't do anything against him? And Dallagnol, no one is going to do anything at the CNMP? What's the fear? [...]"

40 Michely Coutinho Oliveira de Andrade, lawyer, technical servant of UFG, director of the Union of Technical-administrative of IFES in Goiás - SINT-IFESgo, verbis: "[...] My worries about Lawfare and Magisterium are presented in three points. The first: there is almost a mixed martial arts or juridical MMA in which everything can, and sometimes, as a lawyer, they even doubt its competence, because people ask and start talking that yes, that no, that it can, has several chances. The second point reminds me of the corner guard, and there is a fear of the corner guard. That he even raped a student here at the university cruelly, cowardly, legitimated by the president's speech, that's what we are living. There is a fear of the directors of private schools in Goiânia. Yesterday there was even another accusation from a friend who called, of harassment suffered inside one of the schools, and even contacted Railton, the

done, besides judicializing the struggle, putting pressure on the responsible institutions, giving concrete answers to each attack against education and democracy. This struggle is collective, and the guideline of fundamental rights and guarantees gains the population's adherence.

The Constitutional Amendment - EC 95 - ceiling on spending - prevents public money from reaching Education, Health, and Housing. This is the new state model being built by neoliberalism, which imposes the cutting of basic rights of the population, scholarships, projects, and research.

In short, the money will be channeled to the financial market (see Chapter 4.3). The fight against the Future-se program is very important. Conscious and democratic people have to denounce society, go to the streets. Fortunately, they still want to fight while there is life. Education needs every Brazilian!

A union must protect the honor, image, and collective morals of professors from all universities and federal institutes in Brazil, and ADUFG-Union queries to respect and accountability with the education community of the Goiás State.

president of SINPRO. The third point: the university has an instrument, university autonomy, which is the fruit of struggle and resistance, but, and in private, what to do against intervention? I quote the case of a school whose principal is conservative and who wanted to send even the private social networks of the professors, that is, one lives in the case of a complete State of Exception. I ask, with optimism and hope, within this perspective: what to do? Especially in the field of private teaching, where the teacher has become a villain! What is this nation that turns the teacher into an enemy in the field of Lawfare? [...]".

CHAPTER 5

LAWFARE AND PARLIAMENTARY ACTIVITY

THE CRIMINAL LAW OF THE ENEMY

Demóstenes Torres

5.1 The Police State

Modern criminal law faces the reactionism of new jurists who believe that the current methods stimulate impunity and crime that are rampant in the world. Some modern specialists despise humanizing experiences, especially those of the past 300 years. Voices appear wanting to drop what is the written (law), to achieve, for example, customary law.

It is what we saw in drawing up the triple list[41], by an association of members of the Federal General Attorney, with a particular aim of embarrassing the President of the Republic, to appoint a hostage of the class. Fortunately, the Constitution prevailed. The voices from beyond the grave must remain in the shadows because they

41 The Triple List, for AGR (Attorney General of the Republic), is a process conducted by the National Association of the Federal Attorneys - NAFA that responds to the call of the members of the Parquet to indicate whom they believe to be the most prepared to manage the institution. From 2001 until now, the Triple List to the office of the Federal Attorney-General only was not accepted in its first edition, on 05/02/2001, by President Fernando Henrique Cardoso and now in its last edition in 06/18/2019, by President Jair Bolsonaro. In the Triple Lists resulting from the other consultations, held on 06/30/2003, 06/30/2005, 06/28/2007, 07/22/2009, 08/15/2011, 09/17/2013, 08/05/ 2015 and 06/28/2017, the presidents Luiz Inacio Lula da Silva and Dilma Rousseff named the top finishers, and President Michel Temer has appointed the second candidate from the Triple List to the post of head of the Office. (ANPR - National Association of Federal Public Prosecutors. Triple List for AGR. Available at: <http: // www.anpr.org.br/listatriplice>. Access on: 20 Sept. 2019).

are not legitimate to use three methods to incense the delay: the Criminal Law of the Enemy, the Police State, and Lawfare.

The *Criminal Law of the Enemy* is a method used by the Legislature to increase setbacks in the rule of law. It is not uncommon for law projects that contribute to increase the penalty for various crimes or try to make them hideous. In the new Ten Commandments supported and developed by the Curitiba Task Force, the maximum punishment for qualified corruption is 25 years, while murder, a crime considered the most severe of human history, is 20 years.

Even knowing that there is an express constitutional prohibition on the subjects, some make proposals for the adoption of the death penalty, life imprisonment, and the impossibility of progressing the sentence. Failure to comply with the *res judicata* of a convicting criminal sentence to early imprison a second level condemned became a mantra and began spread without dispute throughout the country.

Law is a system. The Military Penal Code provides, in times of war, the death penalty. How will this sanction be provisionally enforced? On the first day, the eye of someone is pulled off. Another day, a leg, and so on until the defendant is dead. In any democracy, some institutions work satisfactorily. Consequently, scientists live in a social context with union members, students, teachers, ministers, advisers, parliamentarians, journalists, doctors, lawyers, and others in an elegant and balanced way.

The socio-institutional balance disappears in the Police State. The prevailing solutions go through by force. The first to be remembered are the horrifying figures, the thugs with stunted

brains and batons always at hand. If there is a public security problem in the hills of Rio de Janeiro, the Armed Forces are the solution; if the Amazon is on fire, the Army is called, and for the Gay Parade? Repression.

• Lawfare

Lawfare is a little more sophisticated. It is a new expression coined by the words law and warfare. Lawfare means the political use of as a weapon law to destroy the opponent

The operators of the Law screen their targets and submit them to a series of public and legal exhibitions to domesticate them. The selected ones are victims of frivolous accusations, without any materiality, and it causes the accomplishment of a social feeling of dissatisfaction.

• Use of the law in the political game of the Ethics Council

In the Legislative, it is common to use the law as a weapon of political struggle. In the Ethics Council of the Brazilian Senate, often the law is used in the political game to try to weaken the enemy. I saw this as a relator.

The most remarkable senator I knew was undoubtedly Antônio Carlos Magalhães. In 2003, a disaffected politician accused him of tapping the telephone from a supposed mistress, a relative of a Bahian judge, in past years. Result: absolution. This fact happened before his term. And even if it had occurred during his mandate, it had nothing to do with his parliamentary activity.

The senator Saturnino Braga was accused, by a rival political party, of writing a letter, notarized, in which he promised to split his senatorial term if elected with his first alternate, Carlos Lupi. Result: absolved. The fact happened before his mandate. Note: it was the first and only time that I saw and heard Leonel Brizola. He has an unparalleled oratory. I wondered how much Brizola shook the country in command of the Campaign of Legality after the resignation of Jânio Quadros in 1961.

The senator Geraldo Mesquita Júnior was accused by the Workers Party, after leaving the party, of taking up 40% of the salary of its employees. Result: absolved. Nobody proved that he had taken money from anyone. He was a victim of politicians from Acre, his state.

The Sanguessugas Parliamentary Commission of Inquiry analyzed the case of parliamentarians suspected of embedding amendments in the Union Budget to acquire ambulances that would benefit the private company Planam, whose bosses were the “Vedoim brothers”. Three senators were under investigation in the Ethics Council: Serys Slhessarenko, Ney Suassuna, and Magno Malta.

What happened? Serys: absolved. Her son-in-law, a leery one, received R$ 35 thousand Reais (Brazilian currency) from Vedoim. They tried to incriminate her with a bank check found in the factoring company that belongs to “Comendador Arcanjo” (a ruler of organized crime in Brazil). A factoring company is legally regulated, and it assists that purpose.

Ney Suassuna: absolved. His advisor confessed to having received R $ 225 thousand, without the senator's knowledge.

Magno Malta: absolved due to insufficient evidence. He received a car Fiat van and used it for two years to do shows with his gospel band.

Federal deputy Lino Rossi said that he received it from Vedoim and lent it to Magno, but Magno did not know about the criminal origin of the van. It is another case of alleged accusation without evidence.

• Attack on Supreme Court ministers

More recently, the systematic victims of the use of the law as a weapon are the ministers of the Federal Supreme Court (FSC) Gilmar Mendes, José Antônio Dias Toffoli, Ricardo Lewandowski, Alexandre de Moraes, and Marco Aurélio Melo. Eventually, Celso de Mello. We see selective leaks, informal investigations, inquiries by the Federal Revenue Service without an order of judicial authority, combinations, and strategies between judges and prosecutors. It is all to provoke the mass uneducated to offend them publicly, detract them, and deprive them of perseverance to follow the Rule of Law.

Of all the leaks publicized by The Intercept Brazil, with partners from the so-called Vaza Jato, what was most impressive was the one revealed by Reinaldo Azevedo (AZEVEDO; DEMORI, Sep. 16, 2019). An exchange of messages between Deltan Dallagnol and Thamea Danelon; short, but enough to characterize everything that was said here about Lawfare:

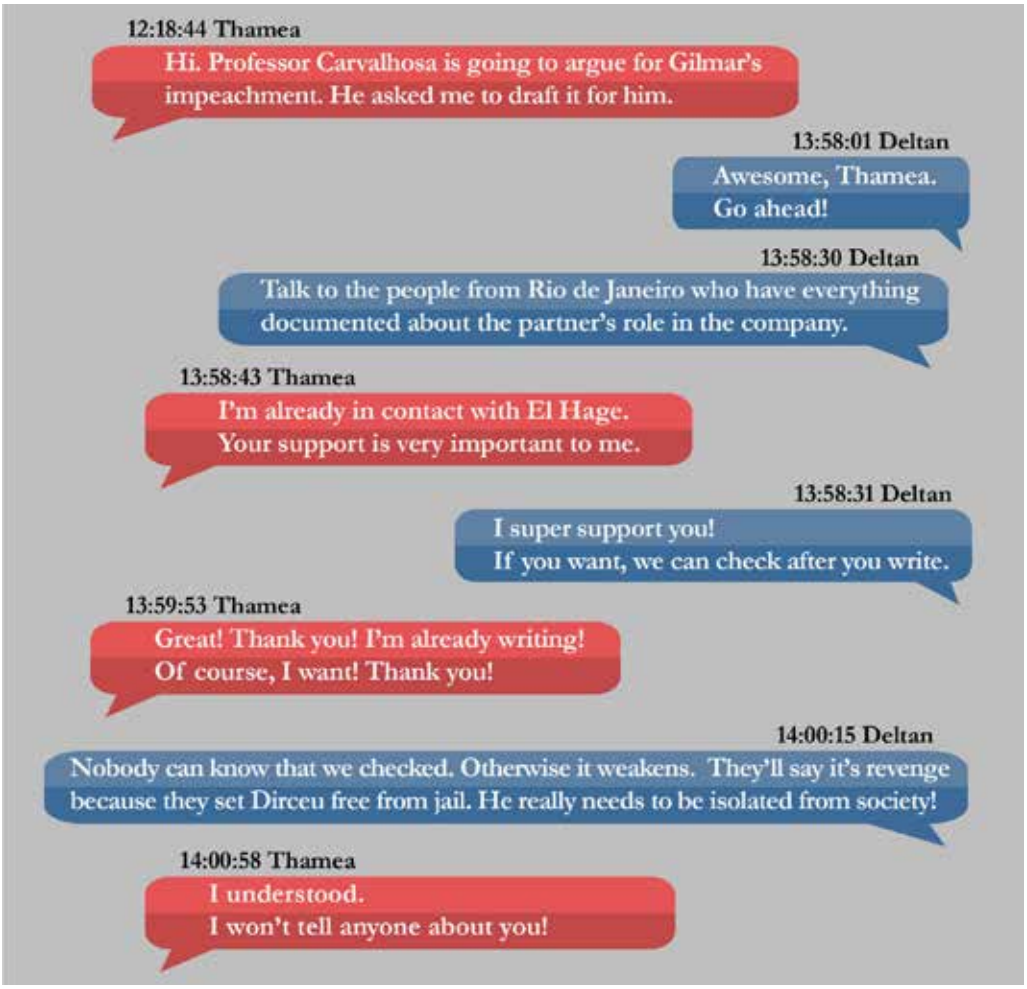

Figure 7. Private chat on Telegram: dialogue held on May 3, 2017 between Lava Jato attorneys Thaméa Danelon and Deltan Dallagnol. Source: AZEVEDO & DEMORI (2019)

From the simple observation of the document, illustrated in Figure 7, the following indicative elements are extracted: selected target - Gilmar Mendes; accusers – Federal Attorneys Deltan Dallagnol and Thaméa Danelon; stooge - lawyer Modesto Carvalhosa; accusation - none, just to maintain the feeling of popular indignation; the purpose of the wrongful act - to surround the enemy of the population. Worst of all, Car Wash Operation's attorneys were secretly, but intentionally and firmly, advocating.

• Normalization of Car Wash crimes

Federal attorneys Deltan Dallagnol, national coordinator of Curitiba Task Force and Thaméa Danelon, state coordinator from São Paulo - practiced illicit conduct, expressly prohibited by article 128, fifth paragraph, item II, item "b", of the Federal Constitution:

> Art. 128 ...
>
> § 5 Complementary laws of the Union and of the States, whose initiative is allowed to the respective Attorneys-General, will establish the organization, the attributions and the statute of each Federal General Attorney, observed, concerning its members: [...]
>
> II - the following fences: [...]
> b) practice law;

Article 237, II, of Complementary Law LC 75/93, Organic Law of the Public Prosecutor`s Office, reproduces the constitutional text transcribed above, *in verbis*:

> Art. 237. It is forbidden for the Union prosecutors member [...]
> II - practice law; [...]

Thus, it is clear that the mentioned Federal Attorneys practiced conduct subject to penalties set out in Articles 239 and 240, IV, transcribed below:

> Art. 239. The members of the General Attorney are liable to the following disciplinary sanctions:
>
> I - warning;
> II - censorship;
> III - suspension;
> IV - dismissal; and
> V - cancellation of retirement or availability.
>
> Art. 240. The sanctions provided for in the previous article will be applied: [...]
>
> IV - the suspension, from forty-five to ninety days, in case of non-compliance with the prohibitions imposed by this complementary law or in the event of a repeat offense previously punished with suspension up to forty-five days.

And see that who can advocate is Augusto Aras[42] because he fulfilled the ritual required by the Constitution (Art. 29 of the ADCT) and by LC 75/93 (art. 281):

> Art. 29. As long as the complementary laws related to the Public Prosecutor's Office and the Attorney General's Office have not been approved, the Federal Public Prosecutor's Office, the Attorney General's Office of the National Treasury, the Legal Counsel of the Ministries, the Attorneys and Legal Departments of federal authorities with own representation and the members of the Public Prosecutor's Office of public foundational Universities will continue to exercise their activities in the area of their respective attributions.
>
> §3. The member of the Public Prosecutor's Office (PPO) admitted before the promulgation of the Constitution may opt for the previous regime, about the legal situation on the date of the constitution, regarding the prohibition.
> Art. 281. The members of the Federal Public Prosecutor´s Office (FPPO), appointed before October 5, 1988, may choose between the new legal regime and the one before the promulgation of the Federal Constitution, regarding the guarantees, advantages, and prohibitions of the position.

Federal Attorney Fernando Rocha considers that the name of Augusto Aras puts in check the hope of those who believed in fighting corruption in the current command:

> "[...] Lawyer Aras, nominated for PGR! [...] ".
> What will he say about the clandestine lawyers
> Deltan and Thamea now?

Taking up the issue of punishment under article 239 of LC / 93, the warning is the simplest of penalties. If we consider leaks, for

42 Augusto Aras is the current Attorney General of the Republic of Brazil, appointed by President Jair Bolsonaro. His name was submitted to the Senate of the Republic and later he was appointed to the post, outside the triple list presented by the National Association of Federal Public Prosecutors - ANPR, breaking a tradition of nineteen years.

example, to international authorities, of confidential documents, and even to the Brazilian press, the penalty is different:

> Art. 240. The sanctions provided in the previous article will be applied: [...]
> V - those of dismissal, in the cases of [...]
> f) disclosure of a confidential matter, which one knows due to the position or function, compromising the dignity of his/her functions.

But the most astounding in this scenario is that these attorneys are not isolated. Today, they constitute an expressive majority within the institution. And the greatest proof of this could be obtained at the 23rd National Congress of the General Attorney, held in Goiânia, and which received, on September 4, 2019, the Minister of Justice, Sérgio Moro. The headline of the O Popular newspaper goes:

> [...] Sérgio Moro é ovacionado em congresso do Ministério Público. Ovacionado repetidas vezes, o ministro da Justiça e Segurança Pública, Sérgio Moro, teve recepção calorosa. Quando chegou ao local, o público, formado em sua maioria por integrantes do Ministério Público de todo o Brasil, o aplaudiu de pé [...]. (O POPULAR, Sept. 4, 2019)

In other words, deviations and crimes are seen as normal and even praised. The only reprimand should come from the Supreme Court, attacked, vilified, and subjugated for a long time by the Republic of Curitiba and its gang.

As the ball continues, Deltan waltzes the wave of the illegality of evidence, which only the Judiciary can declare; and the one who will give the last word will be the Supreme. Just to remember one

of the proposals of the new Ten Commandments in Curitiba (Anti-crime bill), maybe Glenn Greenwald - founder of The Intercept Brazil - has obtained this evidence in good faith.

Deltan called Aras; Deltan asked his colleagues to give Aras a vote of confidence, but he didn't realize that there was nothing to do. Whichever attorney general that can be chosen by President Jair Bolsonaro, Dallagnol would be uncomfortable in his post. What most impresses upon him is his rascality, the loss of dignity. He is now kneeling on the corn behind the door of the room while more news appears more he will scupper. He, who calls himself a Christian, must experience self-pity, a feeling he never had for the family of the investigated, and for the more than 10 million Brazilians he helped to unemploy.

5.1.1 Interactive Debate

Councilor Anselmo Pereira[43] adds new and intriguing themes to the debate. the Conduct Adjustment Term (TAC) has been used as a self-affirmation by the prosecutor that wants the politician to do what he would do if he were there.

43 Councilor Anselmo Pereira, verbis: "[...] Whoever wants to legislate, to write beautiful or perfect laws, put your name for universal suffrage, put your family in the public square, put your assets on availability, put your morals to be questioned, put your sexual behaviors, whatever you want, for the sake of public life. But there is a legal operator who wants to legislate, who wants to meddle and, instead of being suffrage, prefers the convenience of practicing Lawfare against that politician charged with legislating, just because the persecuting state agent does not like the legislator's thoughts, the social program that he defends and, therefore, decides: "I will punish him". It got to the point where I had to decide the City Council, between buying 53 cars or renting them. Then I consulted a prosecutor, which the community of Goiás knows very well, and obtained the following answer: "if you rent the cars, as the state government did, I will file a lawsuit against you". Based on what? I can buy, or I can rent cars according to the convenience and opportunity from the public administration, protected by law, through a bidding process. Fortunately, I bought it; I left with one less process. I put this question to the consideration of the former Attorney General Demóstenes Torres to comment [...] ".

In the case he narrates, the General Attorney representative intended to use his chair, his status as councilor and mayor, to impose a will. First, the prosecutor makes an unreasonable recommendation. There, the defendant does not accept this recommendation because he cannot admit it. Then comes the big stick.

As the parliamentary is inviolable for his words, votes, and everything regarding his job, then, the case narrated by Dr. Marcelo Mendonça[44], professor at the Federal University of Goiás in Catalão and councilor is typical of abuse of authority.

44 Marcelo Mendonça, professor at the Institute of Socioenvironmental Studies/ Federal University of Goiás, councilor in Catalão, verbis: "[...] There are three observations and a brief exposition of a case. First. Many theorists say democracy is dead, some say it is dying. We are in the process of weakening the democratic process in this country. Part of this, in my view, is the spectacularization of the Judiciary as a political condition. The second observation is how the press deals with this, why does the press behave like that? And the third observation is the hierarchy of powers, where the legislature suffers the most. I usually say that if there is a dictatorship of the Judiciary there is also a dictatorship of the Executive over parliamentarians and a large part of them, who are not professionals in politics, are distancing themselves, exactly because their first, second, third and fourth generations would be punished for alleged acts of administrative impropriety, unjustly imputed to parliamentarians. Now, I briefly present a case. In 2013, during the period of 30 months, assigned to take the Municipal Secretary of the Environment of Catalão, I was accused of misconduct for having been on secondment to that city, by Federal University of Goiás, according to Law No. 80,112, receiving functional salaries with the bonus due by the city. Just yesterday, the first instruction hearing took place. Obviously, this is a political situation in the city, they did wantonly in my personal live and since they found nothing, then, they use the weapon of dishonesty in the public administration to deconstruct the image of the condemned politician, regardless of the result that this action has. All newspapers state that more than R$ 2 million reais must be returned to the public purse. Hence the question: how to deal with this, after several years of uninterrupted terms? What mechanisms can one have to prevent or mitigate this harmful action by the General Attorney? [...] "

• Authority Abuse Act

I hope the Law of Abuse of Authority, approved by the National Congress, which overturned some vetoes of the Presidency of the Republic, could be able to control the absurd cases of abuse of power and authority, because, after all, the law in this country has to be enforced, otherwise it becomes a dead letter.

No activity can survive without control: the General Attorney, the police, and the judiciary need control. If the offices have failed, there must be the possibility to put them under investigation for a simple reason: whoever can sue a prosecutor is just another prosecutor. So, what do prosecutors and magistrates fear? What is the reason for fear? Don't they want to abide by the law? The law only applies against those who do not act according to the principles that are listed there.

The new Authority Abuse Act is less generic than the other. In my opinion, the previous law is even better but it has a flaw: it came from the military regime, as several others - which is horrible - but it is in full force. What can we do? Repeal the legislation? So, we need to end a large part of the laws that we have in Brazil.

Abuse of authority and, in the civil area, succumbence, are pending issues. The General Attorney enters with one, two, three, five, 10 lawsuits but sometimes do not succeed in any. The General Attorney must succumb, should learn to pay also for the mistake it makes, for the sloppy demand, for the levity many times in proposing an action that the prosecutors know they will not succeed, but only with the prohibitory purpose.

• Parquet interference in the sphere of other powers

It has been happening nowadays, since I was a senator, that Parquet representatives want to interfere in the cities administration. An example of this is a case that occurred in Amapá, in which the mayor won the election campaign upon the promise of building a soccer stadium if he won the elections. The prosecutor sent him a recommendation and then filed a public civil claim saying that he could not build a soccer field because the city needed a hospital.

I agree that it is a priority to build the hospital instead of the soccer stadium, but, making the administrator change what he/she has planned, including betraying the popular will, it is not a constitutional nor legal assignment of a prosecutor, who cannot and should not interfere in the city administration.

What does the Administrative Improbity Law talk about? It talks about deviations, illicit enrichment, damage to the purse, hurting principles of the legislation, which, in this case, should not even be an act of improbity (STJ. ARESP 548.901/RJ).

• Who will destroy the General Attorney's Office?

The long history of abusive use of legal institutes by their representatives diminishes the importance of the General Attorney. I say now because I used to say before: who is going to destroy the MP is the MP himself! "Vaza Jato" exposed the Car Wash Operation, commanded by the Curitiba Federal General Attorney. The leaks reveal episodes so ridiculous that they only serve to sink the image of the Parquet.

The General Attorney has also manipulated the Law of Moral Harassment with requests for collective moral damage and, in the same action, individual moral damage. Then the person can be condemned by both. These are some examples of absurd things within a public civil lawsuit.

• The Elias Rassi Neto case

The former Secretary of Health of Goiânia and professor at UFG, Elias Rani Neto, came to me to advocate on his behalf because I advocate for free trying to help ex-politicians that are in bankruptcy. But in his cases, I could not help him because he had so many processes that I would need to hire a team. After all, I would not be able to do the job alone. So, I said to him: "Assemble a team of well-known lawyers, and my law office cover part of it to help."

It was impossible advocating on 200 cases - civil investigation, criminal action – many of them already running – and some of them in the execution phase. Elias Rassi Neto, chosen as investigated, accused, or defendant, has no money to pay a lawyer. Like the ex-mayor and deceased Paulo Garcia, who also could not afford a lawyer to defend him.

• Who judges the politician is the voter

The politician who is in charge of the Legislative or Executive does not have to be judge concerning the subjective assessment of the quality of the public administration he or she performs. The state agent must be investigated and punished for having diverted resources, causing damage to the treasury. If the politician was not able to manage, the population has to judge. Whoever politically judge the politician is the voter.

Councilor Anselmo Pereira's arguments (see Chapter 6.2) are pertinent. The issue of social control and social networking phenomenon is staggering bad use. One does anything to appear, comments on anything he/she does not understand, and activates the control organs.

This situation reminds me of the song "Torresmo à Milanesa" by Adoniran Barbosa, that says the following:

O enxadão da obra - The hoe of the work
Bateu onze hora - Beat eleven hours
Vamos armoçar - Let's have lunch
Sentados na calçada - Sitting on the sidewalk
Conversar sobre isso e aquilo - Talk about this and that
Coisas que nóis não entende nada - Things that we don't understand

Day by day comments are part of trivial and ordinary life, but now they have been raised to the status of public administration matters. The fact is that social networks have gone beyond any limits. Anonymity has become an outlet for people to say what they do not dare to speak face to face. And fake news has become powerful weapons of power struggle.

Relationship groups on social networks, instead of integrating, segregate, discriminate. If someone makes a comment that others do not like, they are liable to be criticized by everyone, in the same way, looking like the others are robots. The importance of events and books, such as this undertaken here, is to clarify controversial issues relevant to society.

• The right found on the streets

The big problem in Brazil, within the question of Lucas da Silva Rocha[45], was the so-called Right Found in the Streets, because in this type of right the person does not need to know anything, nor study, and can reach the Supreme Court peacefully, just having a cause.

There are politicians who are from groups of left, and while on the left, the population is on the left, they vote for the republican projects. And when these politicians start participating to groups of right, the population is on the right, they vote for the democrat projects. Thus, it is evident the constant and progressive deterioration of the institutions that, really, are not working anymore. It is reiterated that commiseration and piety have ceased to exist.

• How to mitigate the General Attorney harmful actions?

Professor at Federal University of Goiás and councilor Dr. Marcelo Mendonça said that, in the hierarchy of powers, today, the Legislative Power is the smallest of all. I totally agree, there is no point in saying that there is equality, it is not true.

The last act of this legislative weakening happened when the police arrested Senator Delcídio do Amaral (Workers Party -Mato Grosso do Sul). The Constitution is clear, a parliamentarian only can be arrested in flagrant, delict of unreliable crime. There was a

45 Lucas da Silva Rocha, lawyer, postgraduate in Public Law at PUC-GO, verbis: "[...] I started now in the profession. What are we doing wrong? What is the failure? Is it in college? [...] "

complaint, a black mouth invented that the senator was part of a criminal organization.

As it is a permanent crime, at any time, the senator would be caught in the act, so the Federal Supreme Court minister decreed the arrest of the parliamentarian. The Senate cowered when ratified the arrest, even knowing that, as a rule, only the sentence defines who deserves or not to be arrested.

With whom was the senator part of the criminal organization? With the informer and two more parliamentarians: one who left the Senate and another one who is there today. If they were really part of a criminal organization, why didn't they arrest all three as they had evidence of that?

Regarding the leaks from "Vaza Jato", the evidence from The Intercept Brazil really seems to be illicit, but it can only be considered so when declared by the Judiciary. This procedural detail covers attorney Deltan Dallagnol and others, as in the case of cruelty and lack of humanity revealed in the dialogues about the deaths of Lula's wife, grandson and brother.

They said: "This rascal wants to have another opportunity to get out of prison". To go to the funeral of his brother and grandson? Inappropriate behavior that reveals Car Wash prosecutors have completely lost the notion of civility.

• What is the solution?

The General Attorney has to be strictly supervised, unfortunately, the National Council of the Public Prosecutor's Office (CNMP in Portuguese) does not work, it has become a place for extra income, an agency for prosecutor of the whole Brazil to go there and be in a commissioned position and superb bonuses used to resolve salary issues immediately to someone protected. The CNMP would never act to start decreasing the General Attorney's Lawfare. What is happening is that it is not the politician who is doing the wrong thing!

I was on a brief visit to Palmelo - a spiritist city - and the mayor showed me three letters that he had received, on the same day, from the prosecutor, requesting information. The mayor told me: "As it is a spiritist city, where many people come, mainly old people, the prosecutor sends a letter to buy medicine all the time, if I don't do it, I am in danger of going to jail". In response I said: "If you buy, you will be arrested too." It is a surreal situation. It happened that, shortly after, the mayor was arrested.

It is necessary to reduce the giant size of the institutions and make them work, the teacher has to think, the union has to claim the new. People have to read, to know that they need to study and understand, otherwise, we will continue to be governed as envisioned by the dramaturgist Nelson Rodrigues, who once said: "Idiots have lost their modesty."

LAWFARE DAMAGE TO AEDILITY AND CITIZENSHIP
Anselmo Pereira

5.2 The City Council faces the TAC

In the previous section, Dr. Demóstenes Torres explains, adding new approaches, even to me who already have 36 years of uninterrupted mandates (re-elected in 2020 for the tenth term), on the topic of lawfare, this legal war that the City Council faces every day, in representing the interests and rights of the citizens of Goiás.

Initially, it is worth highlighting the clarification campaign undertaken by professors from the Federal University of Goiás, through their representative entity - ADUFG, on the *Future-se Program*. The Goiânia City Council expressed, in a special session, solidarity with the cry of awareness in defense of the public university.

• Abuse of the law as a weapon in parliamentary activity

First, this text addresses experienced facts, examples of the abusive use of the law in parliamentary activity. From the expositions made by the specialists, on the theme Lawfare - a contiguous category - Brazil goes to the extreme of a phenomenon of politicization of the Judiciary or the judicialization of Politics, revealing emerging issues to be faced in addressing the problem.

In lawfare, on the one hand, several lawsuits are containing empty accusations without any materiality. Further on, a representative paradigmatic case, among many others, of a fellow ex-councilman, president of the City Council, who is a professor at the Federal University of Goiás.

In the context of parliamentary activity, if someone wants to inhibit the tasks of a specific representative of the people, then the councilor may become the target of using the law as a fatal weapon, respond to complaints from the General Attorney, to inhibit his political actions inherent in parliamentary activity.

There are countless representations against councilors, consisting of a series of generic complaints, never specific. The teaching of Demóstenes Torres makes it clear that every criminal complaint must be highly specific, in other words, the crime, allegedly practiced by the accused, must be specifically pointed out, excluding any generic imputation, which constitutes a lack of just cause for the criminal claim.

In the case of the city council, there are frequent complaints that seek to inhibit, restrict, even provoke parliamentary action in what is essential, the right to legislate on the rights of the resident, the citizen, to extract from the city authority powers for other deprived spheres of the legislative power.

• Legific Conduct Adjustment Term (TAC)

Parquet representatives are touching areas of attribution of other powers, especially the Legislative, when they initiate public civil inquiries, abuse the procedures that induce the formalization of instruments, which are increasingly frequent in the lives of citizens, institutions, unions and non-governmental organizations, which is the Conduct Adjustment Term (TAC) - provided by art. 211 of the Statute of the Child and Adolescent - ECA (Law n. 8.069/90), art. 113 of the Code of Consumer Protection - CDC (Law n. 8.078/90) and art. 79-A of the Environmental Crimes Law (Law n. 9.605/98).

The TAC is a document used by the representatives of the Public Prosecutor's Office and other legitimate entities such as secretariats, agencies, autarchies charged with preparing and executing public policies on Health, Education, Environment, and other areas. The purpose is to adjust certain conduct to the parameter established in the law, that is, to correct the conduct considered illegal and to enforce the law.

The TAC from Public Prosecutor's Initiative is legally responsible for the composition of the dispute, to make the judicial provision speedy and effective, to reduce lawsuits and the overload of demands that reach the Judiciary. It happens that, touching in the spheres of action of the agencies of the Executive Branch, the representative of the Parquet has been intensifying its performance to give TAC a legific function, creating legal parameters, despite the Legislative Branch. It is not the role of the CAT to change the law, acting outside the law, and building regulations.

The Conduct Adjustment Term, in its legific function, is a highly dangerous and damaging instrument of lawfare. In this sense, because the TAC is written only by a public agent - the prosecutor, while the public agents who represent thousands of voters are responsible for the creation of laws.

• The generic report, abuse of power or authority

In this context, the generic denunciation develops the abuse of power or authority. Even worse, it becomes increasingly common the war between the Executive, Legislative, and Judiciary branches. The damaging effect of this dispute is to democratize the country in reverse, to protect decisions without discussing with social agents, to mediate decisions as should be done by Parliament.

One speaks about “social control” of the Legislative Power, which, given the tutelage, could not be understood in any other way than abuse of the law, which uses “social control” to stop, to patrol someone, inhibit parliamentary action, discriminate this or that behavior which, at times, would not be the “ideal of the community”.

The exacerbated social control, which can do everything in it, materializes everything in it through the proliferation of anonymous denunciation that generates a process against parliamentary action. The councilor targeted by apocryphal accusation often spends between ten to 15 years of his political activity, in his defense, an extremely painful process, under intense negative media repercussion and, in the end, as it could not be otherwise, the empty complaint is closed. After that, just a little note appears on the news saying that accusatiwas not true.

As the former Attorney General Demóstenes Torres has rightly pointed out, it is necessary to measure the exercise of society’s rights, through the Public Prosecutor’s Office, the transparent, ethical and reasonable control of the public administration, by counteracting the effective accountability of the Parquet representative whom it deviates from the Constitutional function for the crime of abuse of authority or power, in a due legal process.

- **Improbity Law**

The voter often watches, in this legal war, the use of laws as a weapon to fight the enemy. And the law that is overused is improbity. What is improbity? It constitutes improbity, according to art. 9 of the Administrative Improbity Law No. 8,429 / 1992, the illicit enrichment or undue patrimonial advantage due to the illegal exercise of the position, mandate, function, employment, or activity in the public administration.

Despite the clear definition of improbity, the law is used indiscriminately to target someone considered as an enemy through generic accusations. The accusing authority institutes the procedure, adjudicates the public civil action for administrative improbity devoid of materiality. After that, the person listed on the passive pole needs to clear his/her name among public opinion, besides, of course, justifying himself/herself in court and trying to discharge himself/herself, for years on, from the task imposed by the accuser, in other words, presenting the evidence that he did not practice what he/she was accused.

• Bullying and sexual harassment

Another aspect, which is in fashion, to be highlighted as coercion of parliamentary activity refers to moral harassment. This illegal and immoral practice must be combated, and the infringer held responsible, in obedience to the principle of human dignity (art. 1, III, of the Federal Constitution).

The concern goes back to situations in which it seeks to associate moral harassment in the public service with administrative improbity, along the lines of Bill No. 8,178 / 14, currently being processed by the Federal Chamber, which proposes an amendment to Federal Law No. 8,429 / 92 - administrative improbity, with the addition of item X to art. 11, *in verbis*:

> [...] Art. 11. It constitutes an act of administrative improbity ...
> X - Morally subordinate coercion, through repeated acts or expressions that aim to achieve their dignity or create humiliating or degrading working conditions, abusing the authority conferred by the hierarchical position (NR) [...] (BRASIL, 2014)

The norm, doctrine, and jurisprudence are harmonious in the sense that moral harassment constitutes someone's abusive behavior towards others, due to repetitive and persistent harassment or threats. In the work environment, to be considered harassment, there must be systematic behavior of the agent, to impair the development of work activities.

The imputation of moral harassment is often accompanied by sexual harassment. All are law provisions that have a lethality of weapon characterizing the Lawfare concept. Handling such an imputation is equivalent to using a weapon capable of firing projectiles that cause enough impact to destroy the enemy. The relevant provisions of the Administrative and Civil spheres are enhanced by the effect of art. 216 - The Penal Code, *in verbis*:

> Article 216-A. Embarrassing someone to obtain a sexual advantage or favoring, with the agent of his / her status as superior or inherent in the exercise of a job, position, or function prevailing.
>
> The penalty is imprisonment, from 1 (one) to 2 (two) years.

Nowadays, if someone accuses, even insinuates that a certain parliamentarian has morally harassed someone, inside the workplace, he will be penalized by society, regardless of the source of the accusation and observation of the elements necessary to characterize criminal behavior. The judgment, by the Public Opinion, is moral, and the fatal verdict is unappealable.

In a strange and atypical way, the name, image, and honor of the parliamentarian will remain soiled by so heavy imputation that it is equivalent to the guilty sentence, because, for the politician and the legislator, harassment is a highly harmful and dangerous word, at least, serves to curb his/her animus to produce good and better laws.

• Testimony of cases involving abuse of the law

In closing, the testimony of some cases considered illustrative examples of the use of the law as a weapon - the second dimension of Lawfare - inhibiting parliamentary activity concerning the Itinerant Chamber, the Ethics Council - Negro Jobes case and notorious Property Transfer Tax, as well as the cases related to the Goianiense Parliament; former mayor Paulo Garcia; and former councilor Elias Rassi Neto.

• Itinerant Chamber

Some time ago, in the presidency of the Municipality of Goiânia, when passing the power to the future president, a determined parliamentarian announced to his peers that:

> [...] I will not shake hands with the president in the ceremony for transmitting the post because he is from the governor's party, and I am against the governor, and I want to start my parliamentary performance by taking out on him. [...]

The above-transcribed announcement anticipated belligerent and harmful behavior to society, of that parliamentarian, who opened proceedings against one of the most beautiful steps taken by the Presidency of the Municipal Legislative, the so-called Goiânia Itinerant Chamber. This work involves the Executive Branch, with all its secretariats; the Judiciary Branch, with all its bodies and the Legislative Branch, making laws, developing actions, and serving, on average, 20 thousand people - for two days - in each region of the city.

This is a very serious case that is associated with Lawfare's second strategic dimension, as the complainant - a member of Parliament - sought in another power (Public Prosecutor's Office), a way to attack the disaffected. There is here the misuse of the law by the institution that received and filed a complaint, without just cause, devoid of materiality.

Thus, the Parquet - an institution charged with actively watching over the Rule of Law - without due care, triggered the Judiciary Power machine, instituted a process that inhibited parliamentary activity beneficial to the citizen, in practice, punished the positive social action of the municipal Legislative.

The accused - individual, representative of Parliament - came to court with the taint of illegality, resulting from intense negative media. At great cost and, in the shadow of society, after a long process, the accused is acquitted of administrative misconduct, and at this time with no repercussions on public opinion.

Only those who go through this situation know how terrible it is to overcome inhibitory barriers like these to continue on the right track of parliamentary action.

• Ethics Council: Negro Jobs case

The problem with the Ethics Council is that it is used to enforce the war of laws. I bring here, facts that occurred while I presided over the Ethics Council of the Goiânia City Council, therefore, the freedom to reveal names in the case related to the councilman Negro Jobs, already dead.

One day a lady came into my office and said, “I want to register a lawsuit against Councilman Negro Jobs for being harassed by him.” Therefore, it was recommended that the lady formalize the complaint in the Administrative Disciplinary Process. However, in the course of this parliamentary investigation nothing was proved, and there were conflicts of interest between the complainant and the defiant, both competing for the same electoral base. The region to which Councilman Negro Jobs benefited was the region in which the whistleblower had political intentions.

The complaint was then shelved because the Ethics Council could not be used to make that councilor's parliamentary activity inhibited by merely parochial conflict in the region dispute. When deciding to close the complaint, it was prevented that the administrative machinery of the Judiciary Power was unfairly activated against the parliamentarian, in the face of denunciation without just cause.

• Paulo Garcia

Do not discredit that the death of the former mayor of Goiânia, Paulo Garcia, at 58 years old, from a massive heart attack, has causes that may be associated with the factors of the same phenomenon - Lawfare - that also led to the suicide of the rector of the Federal University of Santa Catarina (UFSC).

The death of the former mayor of Goiânia, Paulo Garcia, occurred in the context of a multitude of procedures, inquiries, administrative proceedings, civil and criminal actions brought against him, with intense, long and persistent media repercussion, as a unique and exclusive result of the exercise the role that the people of the Capital gave him, both as vice-mayor, in the election of October 5, 2008, and as mayor, on October 6, 2012, both elections by the Workers Party.

It is important to emphasize that there is no defense of his party here, even because I do not agree with his practices, but the fact is that so many procedures and actions of impropriety were opened that it became possible to question such persecutory volume. When Garcia revealed it to readers, for the first time in public, five days before he died, he called me in anguish and confessed that he was unable to continue.

This is a dangerously revealing picture of the lethality of the legal war, used for the political purpose of interrupting the trajectory of the PT. In other words, the law is ostensibly used as a weapon of war to transmit to the population the message that public administration could not prosper with the Workers Party at the head of the City Hall.

I am not discussing here whether the PT mayor was doing right or wrong, but the ostensive and massive use of legal instruments launched against him, in clear evidence, of the characterization of Lawfare as an instrument to achieve the political objective, that is, to make it did not prosper in administration. The legal war that broke out against the former mayor achieved the literal result of the annihilation of the enemy!

• Property Transfer Tax

Another cause of a legal war that inhibits parliamentary activity occurred one year before the October 2018 elections when a municipal law was made to benefit the entire population of the city, reducing the rate of the notorious Property Transfer Tax, from 3.5% to 2%, a percentage practiced almost everywhere in Brazil.

The legislative technicians carried out a study that demonstrated the gains that would be provided by the relief, given the diagnosed reality of the 80 thousand off-the-record agreements existed in Goiânia. The reduced rate law would motivate the transfer to real property owners and increase municipal revenue. Thus, the mayor enacted the law passed by the City Council.

The Parquet accused of dishonesty all signatories to the law - mayor and 35 city councilor men. The scope of the law is the reduction of the tax, and the legalization of the property, as well as

the treasury, due to the increased collection. However, the councilor men responded at justice for having created such a law to benefit the entire population of Goiânia.

This is also an example of Lawfare against practices in public administration and against Parliament. It is a perverse instrument triggered by a political agent representing Parquet that exacerbates his attribution and plays against the interests of the population.

• Professor Elias Rassi Neto case

Finally, a brief summary of the legal opinion of Lawfare's paradigmatic case, which can be read, in full, in Chapter 6. The victim is a citizen, a former parliamentarian who presided over the City Hall of Goiânia, a university professor at the Federal University of Goiás, doctor Elias Rassi Neto. He served as the municipal health secretary of Goiânia in the periods from 1997 to 2000, during the administration of Mayor Nion Albernaz and from 2011 to 2012, during the administration of Mayor Paulo Garcia.

The case of Professor Elias Rassi Neto is revealing, at present, of politics as a high-risk activity, to be exercised, either by those who are crazy or by those very passionate about public administration.

The insanity of the public manager is in the exercise of the exhausting function, day and night, as in Lawfare, after he/she leaves power, including leaving the family with imprescriptible problems to be answered by the direct descendants until the third generation.

One day, the aforementioned former mayor and ex-councilman, doctor, decided to be secretary of health in the city of Goiânia, during the administration of Paulo Garcia (PT). He was less than two years

in office and left carrying 25 syndications in his own category - CREMEGO. In addition, 2,834 letters from the Public Prosecutor's Office of Goiás, more than every day he exercised his activity as a manager, two inquiries at the Federal General Attorney and 70 at the State General Attorney; 10 civil lawsuits in the State Courts; two in the Federal Court; a criminal action in the State Courts; 12 criminal actions in the Special Court (all filed) and more than 1,200 administrative proceedings in the Municipal Court of Accounts, with 34 debts registered in the Active Debt, totaling more than R$ 80 million reais in reparations to the treasury. The final conclusion of the opinion is transcribed:

> [...] investigations, prosecutions, and lawsuits against the consultant has all the features of the legal or lawfare war, stamping procedures investigated from anonymous complaints, indictments and accusations without materiality, extensive manipulation of the legal system for purely political purposes, abuse of power, restriction of defense and intense negative publicity to the detriment of the ordinary citizenm . [...] (MARTINS JUNIOR *et al.*, 2019, p. 30)

This is a classic paradigmatic case of Lawfare with all its characteristics of the abusive political use of the Administrative Improbity Law to persecute the enemy, of ostensible negative publicity to create the presumption of guilt of the accused and absurd disparity of arms between the contenders, for the asymmetry of the judicial system's persecutory appeal filed against the university professor.

PERSECUTION INSTITUTES
Marcello Terto

5.3 The nonsense towards a fine legislation

In this brief text, I will consider the weapons of legal warfare enunciated by the authors who preceded me, in particular the Conduct Adjustment Term, the Award Delation, and the Leniency Agreement. They are powerful instruments with high lethal power, according to the strategic dimensions of Lawfare (see Subchapters 1.2 and 8.2).

The Conduct Adjustment Term (TAC in Portuguese) was created in art. 211 of the Child and Adolescent Statute (ECA in Portuguese) - (Law No. 8,069 / 90); art. 113 of the Consumer Protection Code - (Law No. 8,078 / 90); art. 79-A of the Environmental Crimes Law (Law No. 9.605 / 98). It is intended exclusively to allow individuals or legal entities that carry out activities that may violate the rights of children and adolescents, consumers or that degrade the environment and, thus, can correct their activities, employing an adjustment or commitment with the force of an extrajudicial enforcement order, signed with the authorities of the respective competent bodies, of which the Parquet is not an integral part of any of them.

Awarded Delation, a colloquial expression for a plea bargain, is a tool provided in the Criminal Organizations Law (Law 12.850 / 2013), which defines, in arts. 3, I, 4, and 6, the term of a collaborative agreement awarded to the one who contributes effectively and voluntarily to the investigation or process, and the judge may grant pardon, reduce the prison sentence by up to two thirds, or replace it with a restrictive sentence of rights.

In turn, the Leniency Accord is the document signed between the legal entity that committed an illegal act against the public administration, national or foreign, but that is willing to assist in investigations that lead to the capture of others involved in the crime, in exchange for benefits to their penalty.

The TAC is still undergoing probation tests in the Courts of Accounts for being incipient. The great concern of the Courts of Accounts is not to act as the manager, that is, to use the power of external control to interfere in management decisions. It is a concern that must be mentioned.

The award delation and the Leniency Agreement, applied in the civil and administrative areas, were the subject of a decision by the Virtual Plenary of the Supreme Federal Court, with general repercussion, under the vote of the rapporteur, Minister Alexandre de Moraes, *verbis*:

> [...] Title of the theme: The use of the award-winning collaboration in the civil sphere, in a public civil action for any act of administrative impropriety brought by the Public Prosecutor in the face of the principle of legality (CF, art. 5, II), of the imprescriptibility of the reimbursement to the treasury (CF, art. 37, §§ 4 and 5) and concurrent legitimacy for the filing of the action (CF, art. 129, § 1) [...]. In this case, the applicant's obligation to, formally and motivated, present the general repercussion was fulfilled, demonstrating the relevance of the debated constitutional issue that goes beyond the subjective interests of the cause, according to the constitutional, legal and regimental requirement (art. 102, § 3, of CF / 88, c / c article 1.035, paragraph 2, of the 2015 Code of Civil Procedure and Article 327, paragraph 1, of the Internal Rules of the Supreme Federal Court). In effect, (a) the subject at issue has wider repercussions, and it is important for the political, social, and legal scenario, and (b) the matter is not of interest solely and simply to the parties involved in the dispute. For these reasons, I express myself by recognizing the general repercussion of constitutional matters. It is how I vote. [...]. (BRAZIL, 2019a)

The instruments mentioned here are extremely important. They are innovative, and they have a very peculiar characteristic, which differentiates them from the repressive and penal practice prevailing in the country. TACs, winning plea, and leniency agreements are proactive and consensual administrative instruments, with judicial repercussions, solving problems that encompass values never compromised in Criminal Law and the question of administrative probity.

Also, they are professional assistance tools to improve management, in the case of the Courts of Accounts. However, if such instruments are misused, they become Lawfare weapons, to undertake legal persecution, as in the Lava Jato Task Force, under the coordination of the Federal General Attorney and the former judge Sérgio Moro.

In the case of a plea bargain, this innovative institute foreseen in Criminal Procedural Law, if it were not the illicit source, would put some public prosecutors and judges in trouble, which does not invalidate the abusive use of this legal institute, as explained in Chapter 1 by former judge Flávio Dino de Castro e Costa.

CHAPTER 6

LAWFARE PARADIGMATIC CASE STUDY

VIOLATIONS TO LEGAL ORDER

Osmar Pires Martins Junior
Igor Escher Pires Martins
Eliomar Pires Martins

6.1 Legal Opinion

The physician and professor at the Institute of Tropical Pathology and Public Health at the Federal University of Goiás, Elias Rassi Neto, CREMEGO No. 3,543, resident and domiciled in Goiânia, State of Goiás, asked the legal consultant and lawyers, above epigraphs, the preparation of a legal opinion, because of the report on facts and rights below.

• From the report

The consultant worked as Secretary of Health of Goiânia, from January 2011 to December 2012, accumulating, at the end of his term:

i) twenty-five (25) investigations at the Goiás Regional Medical Council - CREMEGO;

ii) two thousand, eight hundred and thirty-four (2.834) official letters from the Public Prosecution Service of the State of Goiás, in eighteen (18) months (05/16/2011 to 12/31/2012), requesting information on management, getting eight (08) requisition letters, per working day of the Health Department;

iii) two (02) Public Civil Inquiries at the Federal Justice Department of Goiás;

iv) seventy (70) Public Civil Investigations by the Public Prosecution Service of the State of Goiás, including:

iv.a) the grotesque search and seizure of documents in the Municipal Health Secretariat of Goiânia by the Special Action Group to Combat Organized Crime from Parquet, documents that were provenly delivered by the direction of the Municipal Health Secretariat, one month before such operation;

iv.b) Public Civil Inquiry registered under No. PA 058/2015 (201500344919) - 57th Prosecutor's Office of Goiânia, which deals with the 2011 Balance of the Municipal Health Fund - FMS (case "Maternidade Dona Iris"), filed by the Council Superior of the Public Prosecution Service of the State of Goiás, in compliance with the opinion of the holder of the mentioned Prosecutor's Office, according to Official Letter No. 237 / 2017-57ª PJ, addressed to the consultant on 07/14/2017, and which generated, contradictorily, the proposed Tax Enforcement Action by the Municipality of Goiânia in the 1st Municipal Public Finance Court (Process No. 5223014.95.2019.8.09.0051);

iv.c) Public Civil Inquiry registered under No. ATENA 2016600131261, instituted by Ordinance No. 56/2016, also from the 57th Prosecutor of Goiânia, referring to the Balance of the Municipal Health Fund in the amount of R $ 35,292 .419.55, which repeats the same objects and fundamentals of the Public Civil Inquiry filed by the Superior Council of the Justice Department of Goiás, mentioned in the previous item,

and which generated Judicial Process No. 5214039.21 – Public Civil Action No. 5214039.21.2018.8.09.0051 - 3rd Court of the Municipal Public Finance of Comarca de Goiânia;

v) ten (10) civil lawsuits in the Public Prosecution Service of the State of Goiás, including:

v.a) Tax Enforcement Action No. 5223014.95.2019. 8.09.0051, of R$ 12.9 million, filed by the Municipality of Goiânia in the 1st Municipal Public Finance Court (case "Maternidade Dona Iris");

v.b) Public Civil Action No. 0092402.96.2015.8.09.0051 (Vehicle Maintenance - R$ 24,000,000.00), pending at the 3rd Court of the Municipal Public Finance of the District of Goiânia;

v.c) Public Civil Action No. 5214039.21.2018.8.09.0051 (Balance of the Municipal Health Fund of R$ 35,292,419.55), pending at the 3rd Court of the Municipal Public Finance of the District of Goiânia; urges to observe that the judge of the 3rd Municipal Public Finance Court suspended this administrative improbity act, under her judgment, until the decision of the Supreme Federal Court on actions for reimbursement to the public purse, based on the practice of acts typified in the Administrative Improbity Law;

vi) two (02) civil lawsuits in the Federal Court of Goiás;

vii) one (01) criminal action in the Goiás State Courts in progress and twelve (12) criminal actions in the Special Court, all judged and filed;

viii) more than one thousand and two hundred (1,200) administrative proceedings at the Court of Accounts of the Municipalities of the State of Goiás, totaling thirty-four (34)

debts registered in the Active Debt of the Municipality of Goiânia and sixty-eight (68) fines charged, totaling more than R$ 80,000,000.00 (eighty million reais) of reparation to the treasury, notably: viii.1) the inscription of the name of the querent in the Municipal Debt of R$ 12.918,941, 94 (twelve million, nine hundred and eighteen thousand, nine hundred and forty-one reais and ninety-four cents) and the filing, by the Municipality of Goiânia, of Tax Enforcement Action No. 5223014.95.2019.8.09.0051 in the 1st Public Finance Court Municipal ("Maternidade Dona Iris" case);

ix) in the interim mentioned, the querent was the target of more than two hundred (200) disparaging articles published in print and electronic media. Such fact demonstrates, without any doubt, the practice prohibited by the legal order of disclosure of charges in pending trial processes, defiling the name, image, and honor of the consultant in the face of the wide publicity of unproven illegal conduct, with serious moral and materials damage to him and his family.

• The scope of a legal opinion

The consultant seeks specialized advice to verify the occurrence of Lawfare, violations of the due legal process, contradictory and ample defense, among other restrictions to fundamental rights and guarantees, in the course of the legal procedures established.

The concrete cases highlighted in the report above will be analyzed given the normative, doctrinal, and jurisprudential paradigms correlated and pertinent to the matter addressed here.

In the end, it will remain evident the absolute rejection of actions of administrative improbity that, based on judgments of the Court of Auditors of the Municipality, imputed non-willful acts, supposedly practiced by the consultant, with the request of undue and illegal reparation of nonexistent damages to the public administration of Goiânia.

• Indirect merit

The inquirer is a holder of salaries and capital assets earned as a university professor - according to the Income Tax Declaration contained in the Public Civil Inquiry No. 1.18.000.000194/2018-91, already filed with the Public Prosecution Service of the State of Goiás due to absolute groundlessness. Irrespective, it responds to hundreds of administrative, civil, and criminal charges, including millionaire reparations for damage to public property. The facts reported show the disparity between the impoverished person's precarious economic situation in the face of draconian imputations for repairing damages allegedly caused to the treasury.

Interestingly, it is not even pointed out, in the hundreds of exordial pieces, any accusation of intentional conduct by the passive agent that has caused any damage to the treasury in exchange for undue advantage or illicit enrichment of its own or third parties.

As a result, it is necessary to analyze the practice of a relatively recent legal phenomenon called Lawfare which in the present case would be defined by the abusive use of investigations and processes as instruments of selective pursuit to achieve objectives outside the principles and rules of the country's legal system.

The judicial system of a democratic society must evaluate the case of a citizen selected as a chargeable person in an extravagant number of cases, at first sight, unreasonable, as a hypothesis that materializes transgression of fundamental rights or violation of Human Rights.

According to the Federal Prosecutor's Office for Citizens' Rights (BRASIL, 2019f, 2018b), the disrespect for the fundamental rights of the citizen is one of the hallmarks of the incomplete transition period of the Democratic State of Law in Brazil institutionalized by the Federal Constitution of October 5, 1988, which ended the long authoritarian and repressive period inaugurated by the coup d'état of April 1, 1964.

The brutal persecution unleashed against the applicant is not an isolated fact in the current scenario, showing the occurrence of illicit behavior by the political agents perpetrating the violent state action, given arts. 5, 8, 7, the first part, 9, 10 and 489, § 1, IV, of the Civil Procedure Digest[46], as well as arts. 9 and 10 of the Administrative Improbity Law, among other applicable provisions, outlined below.

• Transitional justice

Based on the experience carried out by the United Nations, the Federal Justice Department defines Transitional Justice as the set of judicial and non-judicial measures adopted by societies in

46 Art. 5, of the Code of Civil Procedure establishes that the procedural parties must behave under objective good faith, thus preventing illegal behavior such as abuse of rights; in the same level, it is up to the judge, under the terms of art. 8 °, to apply the legal system in strict compliance with social purposes, the common good and the dignity of the human person, among other principles enshrined in law; in turn, arts. 9 and 10, in the same legal diploma, enshrines the principle of participatory adversarial and prohibits surprise decisions, provisions that must be strictly enforced by the courts, under penalty of nullity of the decision for violation of the contradictory and ample defense (art. 489, § 1, IV, of the Civil Procedure Code).

countries that have left authoritarian regimes or internal conflicts, to overcome the legacy of serious violations of Human Rights to affirm democratic values for the promotion of justice, the accountability of dictators and repressors who have committed crimes against humanity, the disclosure of the truth, the reparation of victims, the recovery, preservation, and dissemination of memory, as well as promotion of wide institutional reform (BRASIL, 2019f).

According to Weichert (2019) , Brazil stands out as a case of incomplete transition, given the transitional experiences carried out in the world - countries of the Southern Cone of America, after military coups and extremely violent dictatorships in the 1960s and 1980s; South Africa, at the end of the racist apartheid regime in 1994; countries of the extinct Soviet Bloc in Central and Eastern Europe, after the fall of Berlin Wall in 1989.

> [...]Even the countries of Latin America - the latest being El Salvador - broke with statutes of impunity dismantled inherited repressive apparatus of dictatorial periods. and promoted broad transitional justice. Unlike the Latin American neighbors, unfortunately, our country continues as a paradise for torturers and genocides [...] (WEICHERT, 2019, p.3).

The Brazilian Federal Constitution is the normative framework of the national transitional process, based on formal political democracy and devices inserted as entrenchment clauses, especially the fundamental principles of the Republic, guarantees, and fundamental rights. The problem of Transitional Justice in Brazil is in its character devoid of public policy, therefore unable to effect the assets legally protected by the Magna Carta, according WEICHERT (2018b, p. 44-69).

Due to lack of effectiveness, the fundamentals of the Republic instituted in arts. 1, III and 3, I and III, of the Federal Constitution/1988, promoting the dignity of the human person and constituting a free, just, and solidary society, are in flagrant conflict with the social, economic, and political reality. This reality tends to worsen in face of the prevalence of authoritarian proposals based on the exacerbation of the punitive role of the State and the resurgence of violence, including summary executions, such as the false resolution of social conflicts, the fight against crime and corruption.

In this context arises the concept of legal war, related to the subject of this opinion, then addressed.

- **Legal war**

Lawfare expression is the combination in English of the terms law and warfare, which translates as legal war. It is a practice currently carried out with the most diverse objectives: military, political, commercial, even geopolitical. Originally the term was coined in 1975 as a peace tactic, expressing the good use of the law, through the judicial demand in which swords give way to words (CARLSON; YEOMANS, 1975). In 2001, the term came to express the misuse of the law to replace traditional military means to achieve an operational objective (DUNLAP JR, 2001).

In the political sphere, Lawfare translates the process of using the violence and power inherent in the law to achieve political results, manipulating the legal system under the guise of legality in the pursuit of opponents (COMAROFF *et al*, 2006).

Scientific works from the most important universities in the world, such as Harvard and Oxford, show the three-dimensionality of Lawfare: i) in the choice of law; ii) in the choice of jurisdiction; and iii) in the externalities. The latter is associated with the psychological role of the media in shaping public opinion to create a favorable environment for the intended operational objectives,

In Brazil, due to the incomplete transitional period from a dictatorship to a democracy, judicial proceedings have been initiated that aim to undermine the reputation of the selected political targets. In this sense, the due legal process (art. 5, LIV, Federal Constitution) has been overthrown concerning the protection of the constitutional guarantee of the presumption of innocence (art. 5, LVII), the contradictory and the broad defense with the means and resources inherent to it (art. 5, LV, Federal Constitution) (ZANIN MARTINS, *et al.*, 2018).

The "judicialization" of politics and the "politicization" of the Judiciary are expressions intrinsically related to Lawfare associated with the removal of the adversary by the abusive use of the legal system to replace the constitutionally valid electoral processes.

According to the doctrine, the fundamental characteristic of legal warfare or Lawfare is the use of accusations without materiality among its tactics, *in verbis*:

> [...] manipulation of the legal system, with the appearance of legality, for political purposes; initiation of legal proceedings without any merit; abuse of rights to damage an adversary's reputation; promoting legal actions to discredit the opponent; attempt to influence public opinion by using the law to obtain negative publicity; judicialization of politics: the law as an instrument to connect political means and ends; promoting mass disillusionment; criticism of those who use international law and judicial processes to make claims against the state; use of law as a way to

> embarrass the opponent; blocking and retaliating against the opponents' attempts to make use of available legal procedures and rules to defend their rights [curtailment of defense]. [...] (NOVO, 2018, p. 2)

In theory, the cases reported by the consultant, in an absurd and inhuman persecutory volume, are grounds for the Lawfare hypothesis, evidencing the persecutory activity of state agents, without a suitable legal basis and adequate factual support, through ostensible abuse of rights and power, curbing the defense and other legally prohibited practices, which cause irreparable damage to the party.

The main characteristic of legal war and its variations are analyzed here, vis a vis the inquiries, processes, and actions initiated and filed against the consultant.

- **Lack of materiality**

The main feature of legal warfare is the lack of materiality of the legal proceedings against the antagonist. This characteristic is not new in the legal system, being expressly vetoed by the doctrine, norm, and jurisprudence, harmonious in the establishment of the judicial control of the State's persecutory activity. In this sense, the peaceful understanding of the Federal Supreme Court, *verbis*:

> Jurisdictional control of the State's persecutory activity: a requirement inherent in the Democratic Rule of Law. The State does not have the right to exercise, without an adequate legal basis and adequate factual support, the persecutory power of which it is vested, as it is prohibited, ethically and legally, to act arbitrarily, either by initiating unfounded police investigations or by promoting reckless formal charges, notably in those cases in which the facts underlying *persecutio criminis* prove to be devoid of a criminal character. (SUPREME FEDERAL COURT. HC 98.237, relator min. Celso de Mello, j. DEc. 15, 2009, 2nd T, DJe, Aug. 6, 2010)

In the same measure, it appears that the complaints made against the consultant are generic, especially those of a criminal nature, affecting a violation of constitutional rules, as can be seen from the consolidated jurisprudence of the Maximum Court, *in verbis*:

> COMPLAINT. RULE OF LAW. FUNDAMENTAL RIGHTS. PRINCIPLE OF THE DIGNITY OF THE HUMAN PERSON. Requirements of art. 41 of the CRIMINAL PROCEDURE CODE is not completed. The denunciation technique has merited reflection in terms of constitutional dogmatics, associated especially with the right of defense. (...) Generic complaints, which do not describe the facts in their proper form, are not in line with the basic postulates of the Rule of Law. Violation of the principle of human dignity. It is not difficult to see the damage that the mere existence of a criminal action does to the individual. Need for rigor and prudence for those who have the power of initiative in criminal proceedings and those who can decide on its course. (SUPREME FEDERAL COURT. HC 84.409, Report. for ac. Minister Gilmar Mendes, j. Dec. 14, 2004, 2nd T, DJe, Aug. 19, 2005)

There is no doubt that the enormous volume of inquiries, processes, and actions, without materiality, initiated and filed against the consultant, containing generic, groundless, and reckless complaints, violate basic constitutional principles. See the Supreme Court judgment, *verbis*:

> [...] The mere opening of an investigation, when the atypical nature of the conduct is evident, constitutes a capable means of imposing a violation of fundamental rights, especially the principle of human dignity. [...] [Federal Court of Justice. HC 82,969, the report by Minister Gilmar Mendes, j. 30-9-2003, 2nd T, 10/17/2003 DJ]

From the above, it can be said that, in the Democratic State of Law, any denunciation without materiality, generic and without just cause must be extinguished or filed.

• Abuse of rights and power

Abuse of rights is the unlawful action perpetrated by the holder of rights that violates the rights of others, causing damages or losses. Such abuse constitutes an irregular exercise of the power when its holder goes beyond the limits imposed by the economic or social purpose, by good faith, or by good customs. Applies to this category the conduct of state agents that, through voluntary action or omission, recklessness, negligence, emulation, or bad faith, establish unfounded, repetitive demands, with no legitimate interest or impartial cause (v. Objective Risk Theory)[47].

The judgments of the Superior Court of Justice (STJ) and the Supreme Federal Court, listed below, *verbis*:

> SUMMARY. REGULAR EXERCISE OF LAW. ABUSE OF RIGHT. The whistleblower may be held responsible if his behavior, intentional or guilty, contributes decisively to the imputation of a crime not committed by the accused. (FEDERAL SUPREME COURT. Special Appeal 470.365-RS, Rapporteur Minister Nancy Andrighi, j. Oct. 2, 2003)

> SUMMARY. SECOND DECLARATION EMBARGES. [...] PROVISION [...]. 1. The regular exercise of law, including procedural ones, is honored by the legal system, which, however, finds a limit in the system when resulting in abuse of rights, configured as illegal, even liable to a fine (Process Code Civil, article 557, § 2). The practice of this policy qualifies as incompatible with the ethical-legal postulate of procedural loyalty, as it delays, through improper use of the appeal, the final delivery of the judicial provision. 2. Omissis. 3. Second embargoes of the declaration provided to support the delaying nature of the appeal. (FEDERAL SUPREME COURT. ED in the EDs in the Appellate Appeal in the AI 776239 DF. j. Mar. 20, 2011)

47 The Theory of Objective Risk, founded on arts. 186, 187 and 927, sole paragraph, of the Code of Civil Procedure, establishes the State strict liability for the damages that its agents cause to citizens, through the relationship between an illegal act, damage and consequent reparation, regardless of fault, in the cases specified in the law, or when the activity normally carried out by the perpetrator of the damage by its nature, poses a risk to the rights of others..

In turn, the abuse of power or abuse of authority is a crime typified in the arts. 3 and 4 of the Authority Abuse Law (Law 4.898 /65) w/ art. 350, sole paragraph, items I and IV of the Penal Code. It is an arbitrary exercise or abuse of power, whose material object is the freedom of movement or individual freedom, which presents only the public servant as an active subject, being a crime of its own. In the civil sphere, the abuse of power is confused with the abuse of rights.

The consultant also narrates the injurious use of the right to inform, through intense and persistent disclosure of more than two hundred (200) mass media reports, almost all of which originated in press-releases from the Justice Department of Goiás or statements (interviews of the Parquet representatives). This fact has nothing to do with the regulatory rules for the advertising of procedural acts (arts. 5, LX, 37, caput and 93, IX, Federal Constitution), which aims to ensure access to the acts practiced in the process to the accused.

The exposure of cases containing charges pending judgment (v. Art. 36, III, da LOMAN)[48] conflicts with fundamental rights and guarantees and represents a flagrant violation of legal precepts. It constitutes an unlawful act that causes damage to the victim, his rights, image, and professional dignity. In close harmony with the rule, the jurisprudence of the Superior Court of Justice is strong in condemning the abuse of the right to inform, *in verbis*:

48 Article 36, III, of the Organic Law of the National Judiciary - LC 351/19790); art. 12, I and II, of the Resolution of the National Council of Justice 60/2008 (Code of Ethics of the Judiciary); art. 26, § 2, of the Organic Law of the Public Prosecutor`s Office No. 8.625 / 93; art. 8 of the Resolution of the National Council of the Justice Department No. 23/2007.

> [...] INTERNAL AGAINST SPECIAL APPEAL. INDEMNITY. MORAL DAMAGE. Publication of derogatory material in a magazine. Offense against the right to image and professional dignity. Restricted indemnity amount. [...] (FEDERAL SUPREME COURT. Special Appeal 1480340 SP. DJe. Jun. 29, 2018)

Because of the recurrent abuse of the right or power, practiced by the state agents, responsible for the initiation of thousands of inquiries and actions of administrative improbity, against the investigated, accused or defendant, now consultant, focus the hypothesis of the occurrence of a violation of the most common constitutional principles that guarantee the fundamental rights.

• Violation of fundamental guarantees

The thousands of procedures initiated and filed against the consultant end countless violations of the principles inscribed in art. 5th of the Magna Carta. It is enough to bring to light the two Public Civil Inquiries of the Justice Department of Goiás, shown below to demonstrate this.

A prosecutor of the Republic of the Federal Justice Department/ Attorney of the Republic in Goiás (MPF-PR/GO)[49], on 08/15/2016,

49 The law and State instruments have been used to restrict university autonomy, academic freedom, of thought/expression, and science, protected by the Federal Constitution - arts. 205, 206, II and III, 207 and 213, § 2, art. 5, IV, IX and XVII. The designated prosecuting agent is responsible for the Preparatory Procedure for the investigation of "administrative improbity, in addition to the criminal offenses provided in arts. 315 and 319 of the Penal Code ", against leaders and teachers from Federal University of Goiás due to the offer of the "Golpe de 2016" subject. The persecutory procedure pointed out that "the course would not have an academic or knowledge dissemination character, but political party propaganda carried out with the use of public goods and paid for by the treasury, in favor of the Workers' Political Party". In: ESTADÃO. The Prosecutor's Office investigates 'Golpe de 2016', by Federal University de Goiás, Julia Affonso, March 23, 2018, 12:22 pm. Available at:

through Order No. 1028/2016, on pages 02, NF 2131/2016, heeded crime news without identification of authorship, determined investigative procedures, without any judicial authorization, that violated the fiscal, patrimonial, airport and professional secrets, in addition to wanton in the academic life of the professors of the Federal University of Goiás, including the consultant.

The procedures determined by the appointed representative of the Federal General Attorney-PR/GO are illegal, violate the national law, specifically the Statute of the Union Magisterium (LC nº 75 of 05/20/1993)[50].

Thus, in deviation of function and social purposes, resulting from the constitutional burden of guardian of the law, the representative of the Federal General Attorney-PR / GO practiced abuse of authority - an unlawful act subject to administrative, civil, and criminal sanction, typified in the arts. 3, c, 4, h, and 6, caput, of Law No. 4,898, of Dec. 09, 1965[51].

The abusive act practiced by the mentioned state agent deserves severe reprimand from the Maximum Court, as judged below, *verbis*:

<https: // politica.estadao.com.br/blogs/fausto-macedo/procuradoria-investiga-disciplina-golpe-de-2016-da-federal-de-goias/>. Accessed: Jul. 13, 2019.

50 LC nº 75 of May. 20, 1993 - Art. 6, XVIII, a. "It is incumbent upon the Federal Prosecutor's Office to represent the competent judicial body for breach of confidentiality of correspondence and telegraphic communications, data and telephone communications, for criminal investigation or criminal procedural instruction, as well as to express itself on representation addressed to him for the same purposes ".

51 Law n° 4.898, from Dec, 09, 1965 - Art. 3, c. "Any attack on the confidentiality of correspondence is an abuse of authority"; art. 4, h. "An act that harms honor, or the property of a natural or legal person, is also an abuse of authority, when practiced with abuse or misuse of power or without legal competence"; art. 6th. "Abuse of authority will subject its author to administrative, civil and criminal sanctions".

> [...] The violation of confidentiality cannot be manipulated, in an arbitrary way, by the government or its agents. If it were not so, the breach of secrecy would become, illegitimately, an instrument of generalized search and indiscriminate wanton of the sphere of intimacy, which would give the State, in disagreement with the postulates that inform the democratic regime, the absolute power to search, without any limitations, the secret records of others. [...] (FEDERAL SUPREME COURT. Habeas Corpus 84758, Minister Celso de Mello's report, j. May 25, 2006, P, DJe. Jun. 16, 2006)

- **Defense restraint**

The contradictory and broad defense, with the means and resources inherent to it, with the health of the accusatory system, the parity of arms, and the guarantee of fair jurisdiction, are principles established in art. 5 °, LV, of the Federal Constitution as entrenchment clause of the fundamental and essential rights to the conformation of the democratic State of law.

According to Brasil (2019), the 20 years of experience of the Federal General Attorney in the transitional justice process allow us to conclude that the country has failed to adopt the public policy in the implementation of the fundamental principles of the Republic.

As a result, there is an institutional environment marked by weak democracy and a justice system that allows thousands of lawsuits to be filed in a short period, against a selected target, such as the case in question, configuring the hypothesis of flagrant curtailment of defense, under art. 5, caput, I and LV, of the Federal Constitution, c/c 7 and 139, I, of the Civil Procedure Code - CPC[52].

52 Civil Procedure Code - art. 7th. The parties are guaranteed parity of treatment with the exercise of procedural rights and powers, to the means of defense, to the burdens, to the duties, and the application of procedural sanctions, with the judge being responsible for ensuring effective opposition; art. 139, I. The judge will conduct the proceedings following the provisions of this Code, with the responsibility of ensuring equal treatment for the parties.

> Art. 5, LV, Federal Constitution – to the litigants, in judicial or administrative proceedings, and the accused in general, are guaranteed contradictory and ample defense, with the means and resources inherent to it.

The consultant did not have the opportunity to defend himself in the processes of the Municipal Court of Auditors that judged decisions adopted as a permanent employee of the Municipal Health Secretariat. According to the established jurisprudence of the Supreme Federal Court, this situation violates the constitutional principles of a fair trial, *verbis*:

> [...] It assists the interested party, even in administrative procedures, as a direct emanation of the constitutional guarantee of the due process of law (regardless, therefore, of whether or not there is a normative provision in the statutes that govern the performance of the bodies of the State), the prerogative unavailable to the adversary and full defense, with the means and resources inherent to it, as prescribed in the Constitution of the Republic, in its art. 5th, LIV, and LV. [...] (SUPREME FEDERAL COURT. MS 34,180 MC, Report by Minister Celso de Mello, j. Aug. 01, 2016, monocratic decision, DJe. Aug. 01, 2016)

The proceedings initiated by the Court of Auditors of the Municipality resulted in judgments that declared unlawfulness or annulment of administrative decisions, to the detriment of the interested party. There is, therefore, striking aggression against the Precedent No. 3 of the Supreme Federal Court, *verbis*:

> BINDING SUMMARY No. 3, Supreme Federal Court. In proceedings before the Federal Court of Auditors, the adversary and wide defense are guaranteed when the decision may result in the annulment or revocation of an administrative act that benefits the interested party, except for the assessment of the legality of the initial retirement, military retirement, and pension concession.

Thus, the processes of the Municipal Court of Auditors that support inquiries and public civil actions of administrative

improbity, initiated and filed against the querent, are affected by the incurable defect of nullity and must be immediately extinguished or closed.

• Administrative improbity

The cases brought to the analysis by the querent show the national framework of misuse of public civil action for acts of public improbity with the filing of absolutely unfounded claims of convictions that make the accused victims of institutional abuse (SILVA JUNIOR; FERREIRA, 2010).

To stop such abuses - unfounded criminal actions and Public Civil Actions of administrative improbity that flooded the national courts - the Supreme Federal Court established the judgment that the administrative impropriety action has a civil nature (Federal Constitution, art. 37, § 4), not equating to a criminal action being applicable, *in verbis*:

> [...] Acts of administrative impropriety are those that, having a civil nature and duly typified by federal law, directly or indirectly violate the constitutional and legal principles of public administration, regardless of whether they import illicit enrichment or cause material damage to the treasury; they can be practiced both by public servants (own improbity), as well as by a private individual or legal entity - who induces, compete or benefit from the act (improper impropriety). [...] (SUPREME FEDERAL COURT. AO 1.833, a report by Minister Alexandre de Moraes, j. 10-42018, 1st Panel, DJe. May 8, 2018)

The Supreme Federal Court is firm in declaring the unconstitutionality of criminal actions against merely administrative, unproblematic acts, *verbis*:

> [...] administrative probity is the most important content of the principle of public morality. Hence the particularly severe way in which the Constitution

> reacts to its violation, administrative probity [...]. Indeed, this constitutional regulation does not have the power to turn criminal offenses into practices that eventually offend the performance of simply administrative duties. That is why the incidence of the penal rule referred to by the Public Prosecutor's Office depends on the presence of a clear subjective element - the free and conscious will (deceit) - to harm the public interest. For this is how the distinction is guaranteed, in my opinion necessary, between acts typical of the political-administrative routine (controlled, therefore, administratively and judicially in the competent bodies) and acts that reveal the commission of criminal offenses. And otherwise, it cannot be, under penalty of transferring to the criminal sphere the resolution of issues involving inefficiency, managerial incompetence, and political-administrative responsibility. Issues that are resolved in the context of actions of administrative improbity, therefore. [...] (STF. AP 409, vote by rapporteur Minister Ayres Britto, j. May 13, 2010, P, DJe. Jul. 01, 2010)

Law No. 8.429/92 defines three types of acts of administrative improbity: i) in art. 9, I to XII, acts that imply illicit enrichment as any undue patrimonial advantage obtained due to the exercise of the position; ii) in art. 10, I to XXI, acts that cause damage to the treasury as a result of any action or omission, culpable or intentional by the public agent; and, iii) in art. 11, I to IX, acts that violate the principles and norms of public administration.

Therefore, a brief normative and jurisprudential analysis is required on the hypothesis of incurring the calculation of the act of administrative improbity that implies unlawful enrichment by obtaining an undue asset advantage, during the exercise of public office, with the resulting damage caused to the treasury.

The Federal Supreme Court, at the Plenary Session of 08/08/2018, judged Extraordinary Appeal No. 852475

and approved Theme 897 with general repercussion: "[...] Reimbursement actions based on the practice of intentional acts typified in the Administrative Improbity Law are impermissible [...]"(BRAZIL, 2018a)

The thesis contained in the above-transcribed theme clearly shows the prescriptibility of the claim for reimbursement to the public purse in the face of public agents for an act of administrative impropriety. Only acts of improbity that imply illicit enrichment of the agent, illicit favoring of third parties, or intentionally cause damage to the public administration are imprescriptible.

Therefore, non-willful administrative acts, such as those imputed to the querent in improbity actions filed based on judgments of the Municipal Court of Auditors are not impermissible, subject to the limitation period provided in the legislation of administrative improbity - Law 8,429 / 1992, for five (5) years.

The decision of the Supreme Federal Court characterizes administrative improbity as a willful act, constituting an indispensable condition for the request for reimbursement to the treasury, which is applicable when there is a willful act of administrative improbity, which violates the principles of public administration, which causes damage to the treasury and the consequent illicit enrichment of the agent or third parties.

According to Flávio Luiz Yarshell, lawyer and professor at the Department of Procedural Law at the Faculty of Law of the University of São Paulo, *in litteris*:

> [...] The jurisprudence of the Superior Court of Justice is in the sense that "when investigating the act of administrative improbity, provided in art.

> 9, VII, of Law 8,429 / 92, the author [Public Prosecutor] is responsible for proving the disproportionality between the patrimonial evolution and the income earned by the agent in the exercise of public office. Once this disproportionality has been proven, the defendant, in turn, will have the burden of proving the lawfulness of the acquisition of goods of value considered disproportionate "(STJ. ARESP 548.901 / RJ, rapporteur Minister Assusete Magalhães, j. Feb. 02, 2016) [...] (YARSHELL, 2016)

In the case files initiated by the Federal General Attorney, it was required to break the consultant's revenue confidentiality. It remained proven, with official documents issued by the Federal Revenue, that there is no patrimonial evolution disproportionate to the income earned during the exercise of the position of municipal secretary of Health of Goiânia, between January 2011 and December 2012.

Despite this, the Municipal Court of Auditors imputed debts to the querent reaching amounts of R$ 80 million and fines totaling R$ 70 thousand. The Parquet filed Public Civil Actions against the querent asking for reimbursement to the treasury of equally astronomical values, as in the aforementioned Public Civil Action No. 0092402.96.2015.8.09.0051 - Vehicle Maintenance - in which the required reimbursement, of R$ 24 million, is triple the value of the sub judice contract. The processes, inquiries, and actions of administrative improbity instituted and filed against the querent are in disagreement with the doctrine and jurisprudence, transcribed above, evidencing, without any doubt, the absolute nullity with the extinction or annulment of the same or, at least, the unfounded total requests and the consequent acquittal.

• Execution of undue obligation

According to what we discuss in more detail in the next item, Public Civil Inquiry No. 058/2015 (Dona Iris Maternity Case) was filed by the Superior Council of the State Attorney Office from Goiás because the investigation concluded that there was no damage to the treasury and that the work was carried out following the bid, being in full operation.

Despite the filing of the Public Civil Inquiry and based on it, the Municipal Account Court promoted the registration of querent in the Active Debt, and the Municipality of Goiânia filed a tax enforcement action corresponding to the full amount of the legally implemented work.

In this way, the consultant is under judicial execution for an unenforceable obligation (art. 917, I, of the Civil Procedure Code) and undue (art. 5, I, of Law 8,429 / 92), ending vilification for the most basic constitutional and legal principles of the Democratic rule of law, causing unjust and irreparable damage.

The jurisprudence of the Superior Court of Justice is imperative in the sense that the return of values is only required in the case of an act that, in addition to being intentional, causes damage to the public administration, *ipsis litteris*:

> [...] characterized by administrative improbity for damage to the treasury, the return of values is imperative and must be accompanied by at least one of the legal sanctions that, effectively, aim at repressing the improper conduct and avoiding the commission of new infractions (Appeal Special 1.184.897 / PE, rapporteur Minister Herman Benjamin, 2. T., Electronic Journal of Justice 27/07/2011)

As demonstrated, there is not a single inquiry, administrative process, or action that points out the least damage to the public administration during the period that the consultant exercised the position of municipal secretary of Health in Goiânia.

• Direct merit

The analysis of the principles and concepts established in the norm, doctrine, and jurisprudence correlated and applied to the concrete cases reported by the consultant and confirmed through declarations, certificates, and reports of each mentioned agency, allows concluding that the consultant is one target of Lawfare, abuse of rights and power, defense restraint and other arbitrary practices, prohibited by national and international law, in processes of administrative improbity riddled with illegalities, unfounded and unreasonable.

• The conclusive report

Public Civil Inquiry No. 058/2015 - Records No. 201500344919 was initiated in light of the communication from the Court of Auditors of the Municipality, referring to Judgment No. 06799/12 that found the Municipal Health Fund management accounts - the financial year 2011 to be irregular. The Superior Council of the Public Prosecutor of Goiás promoted the filing of the mentioned Public Civil Inquiry, under the terms of the Relator, *ipsis litteris*:

> [...] During the management of Elias Rassi, only the payments resulting from the execution of the contract with Elmo Engenharia were made, and no subsequent illegalities were pointed out by the Court of Accounts of the Municipality / Goiás regarding the fulfillment of the deal.[...] On the other hand, it appears that the Court of Accounts of the Municipality /

> Goiás limited to capitulating the possible acts of impropriety committed by Elias Rassi when authorizing the payments resulting from Contract No. 217/2010, not, however, verifying if there was actual damage to the treasury, which would be the only remaining foundation for proposing action. Furthermore, it is not possible to conceive the damage of R$ 12.918,941.94 - equivalent to the full contract value - since the service was provided [...]

The decision that promoted the filing of Public Civil Inquiry No. 058/2015 provides full proof that the consultant has been executed for non-existent debt! Even so, based on a Public Civil Inquiry filed by the Public Prosecutor's Office/Goiás, the Court of Auditors of the Municipality notified the head of the Municipal Executive of Goiânia to adopt the enforcement measures of the non-existent debt to the debtor.

• Tax enforcement action

In sequence, the Municipality of Goiânia filed a Tax Enforcement Action No. 5223014.95.2019.8.09.0051 at the 1st Municipal Public Finance Court, requiring the collection of all sums spent on the construction of the Dona Iris Hospital and Maternity, in the amount of R$ 12.918 .941.94. The querent was registered in the Municipal Debt in the amount of R $ 12.9 million, due to the alleged illegality of the contract signed by the Municipal Health Secretariat, with resources from the Municipal Health Fund, with Elmo Engenharia for the construction of the referred hospital and he became a defendant in a tax enforcement action, filed by the Municipality, based on arts. 5 and 10, caput, I, of Law 8.429/92198[53], ending an

53 Law 8.429 / 92 - art. 5th. In the event of injury to the public equity due to an act or omission, intentional or culpable, by the agent or third party, full compensation for the damage will be given; art. 10, caput, I. It constitutes an act of administrative improbity that causes damage to the treasury any action or omission, intentional or culpable, which leads to loss of property, deviation, appropriation, squandering or dilapidation of the assets or possessions of the entities referred to in art. 1 of this

evident contradiction between the fundamentals of the inscription in the active debt (contract illegality) and those of the tax enforcement action (reimbursement of alleged damage to the treasury).

There is no damage to the Municipality of Goiânia - the Maternity Hospital was implemented at the bid price and is in full operation. Therefore, the enforcement action is without foundation! As stated above, acts of administrative improbity that imply illicit enrichment and damage to the treasury must be fully proven by the plaintiff in the extraordinary execution action based on a public civil inquiry into an act of administrative impropriety.

As stated elsewhere, the Superior Council of the State Attorney´s Office/Goiás filed Public Civil Inquiry No. 058/2015 of administrative improbity. Strangely, based on this same investigation, the Municipality filed a Tax Enforcement Action, of equal value, stipulated in the mentioned procedure filed for lack of proof of damage to the public administration.

But the Municipality did not discharge its obligation, did not even point out the unlawful behavior of the consultant in the contract execution, considered illegal, which caused damage to the treasury. The prosecuting body did not demonstrate the illicit enrichment of the agent during the exercise of the position of Municipal Secretary of Health as a result of any illegal act of overpricing the work. The patrimonial evolution of the consultant is proportional to the income earned during the period of public office.

law, especially [...] facilitating or competing in any way for the incorporation of assets, rents or values included in the collection of the entities mentioned in the private patrimony, of individuals or legal entities [Municipal Health Secretariat or Fund Municipal Health for Goiânia] (emphasis added).

• Public Civil Action No. 0092402.96.2015.8.09.0051

The Public Civil Action No. 0092402.96.2015.8.09.0051 - Vehicle Maintenance - R $ 24.000.000.00 - twenty-four million reais), proposed by the Public Prosecutor's Office / Goiás, pending at the 3rd Court of the Municipal Public Finance of the District of Goiânia, has sui generis characteristics.

This bidding process was initiated on June 10, 2010, by the Administrative Department of the Municipal Health Secretariat (Memorandum No. 434/2010), followed by orders from the Procurement Division, Administrative Department, Transportation Division, Planning Advisory and forwarded to the General Bidding Commission of the Administration Secretariat on 10/05/2010, with the authorization of the municipal mayor obtained on 10/18/2010.

After, the Statement / Notice / Term of Reference / Contract receives the signatures of General Tender Committee members. On 11/03/2010, a Legal Note is issued - signed by three attorneys from the Municipality - attesting that there is no obstacle to the feasibility of the bid, carried out by the General Tender Committee of the Secretariat of Administration, on January 11, 2011. Indeed, despite two appeals against the bidding notice, they were filed at the end of December. The bidding notice was maintained and justified by the Secretary of Health on 12/27/2010.

The On-site Auction was held on 11/01/2011, with the presence of the three qualified bidders and, after General Tender Committee dispatches, the Administrative Director established the Inspection Commission (20/01/2011), and the auctioneer adjudicated on 15 / 03/2011 to the winning company. Only on 04/12/2011, the process forwarded for approval by the Secretary of Health, and on April 24, the Municipality's Comptroller issued the Certificate of Legality No. 3369.

In parallel, since 12/14/2010, the Director of the 1st Region of the Municipal Court of Auditors has been running a request for a Precautionary Measure. The process is forwarded to the Goiânia City Hall Purchasing Secretariat, returning with statements from the General Tender Committee/Purchasing Secretary. The Court of Accounts of the Municipality, on 07/06/2011, decided to determine the annulment of the bidding (Judgment nº 22/11).

On 08/17/2011, the Municipal Health Secretary, now a consultant, submitted justifications and requested inclusion in the agenda of the Municipal Court of Accounts (Official Letter No. 3483/2011 Municipal Health Secretariat / Office). The procedure adopted by the holder of the Municipal Health Department resulted in the suspension of the effects of canceling the bidding and continuity of fleet maintenance services, of more than 500 vehicles, by the Municipal Health Department.

On 12/8/2011, the Municipal Court of Accounts published Judgment No. 10548/11, which recognized and declared the bidding and contract legal. It turns out that the consultant did not participate in the drafting of the notice and did not even ratify it, with these facts occurring before the consultant became Secretary of Health. The secretary, at the time, was not even mentioned in the petition of the State Attorney´s Office/Goiás, nor were the Administration and Purchasing Secretaries responsible for CGL.

On August 8, 2012, the Municipal Court of Auditors surprisingly judged this action again to consider this contract illegal (Judgment No. 8029/12) for "considering the requirement for a certificate of qualification in the Regional Engineering Council" to be impertinent.

It is remarkable that, from the realization of a new bidding procedure, for the subsequent periods (Face trading n. 37, Process

n. 49082291/2012-CEL / Municipal Health Department of Goiânia), the same company from the previous bidding won.

Nor were the Municipality's attorneys who issued opinions, the Municipality's general controller who issues the Certificate of Legality and the counselors of the Municipality's Court of Auditors who decided on the legality of the Bidding Process and the Contract called into action.

In the Public Civil Action mentioned above, the State Attorney´s Office of Goiás requires the payment of R $ 24 million reais, distributed as follows: R$ 8,000,000.00 (eight million) referring to the total fee of the contract, for two years; R $ 16,000,000.00 (sixteen million) of fines.

The plaintiff was not even caring to check the amounts paid for the maintenance of a fleet of 492 vehicles of which approximately 100 were ambulances and, of the total, approximately 80 vehicles were out of work due to lack of maintenance. It should be noted that, of the 28 ambulances of the Mobile Emergency Care Service, only ten (10) were in conditions of use, with the rest being either out of use in the parking lot or at mechanical workshops, awaiting authorization for miscellaneous repairs.

- **The seek and seizure by the Special Action Group**

In the context of the records No. 33519-80.2012.8.09.0175, which dealt with investigations about the supply of medicines by the Araújo Jorge Hospital, in 2010, the Special Action Group to Combat Organized Crime – State Attorney's Office of Goiás requested in January 2012, the Municipal Health Secretariat to

send copies of some administrative procedures that was granted on February 2, 2012.

On March 9, 2012, the Special Action Group for the Repression of Organized Crime requested and was granted, by the judgment of the 5th Criminal Court of Goiânia, a Search and Seizure Mandate for these documents already delivered. Three public prosecutors guarded by armed police carried out the search and seizure. At the headquarters of the Attorney's Office of Goiás, prosecutors called a press conference that preceded this action with accusations and threats of imprisonment of the Secretary of Health who had already attended and sent the documents.

• Public Civil Inquiries

The Federal General Attorney initiated the first Public Civil Inquiry, on 06/27/2016, based on a complaint signed with a non-existent Individual Taxpayer Registry, evidenced, immediately, an insurmountable constitutional obstacle, according to the firm jurisprudence of the Federal Supreme Court, listed below:

> ANONYMITY. CRIMINAL PRACTICE NEWS. CRIMINAL PERSECUTION. IMPROPRIETY. The news of criminal practice does not serve the criminal prosecution without identification of authorship, considered the constitutional prohibition of anonymity and the need to have parameters specific to the responsibility, in the civil and criminal fields, of those who implement it. [SUPREME FEDERAL COURT. Habeas Corpus 84.827, rapporteur Minister Marco Aurélio, j. 7-8-2007, 1st Class, Electronic Journal of 11/23/2007]

The Federal General Attorney based on the accusation of alleged "incompatible standard of living, luxury cars and trips abroad".

Based on crime news, in the absence of any court order, the fiscal secrecy was broken, investigations were carried out by the Federal Police and similar forces in search of assets, travel histories, records at the airport. and job posts. There was still a thorough investigation in academic life, requiring the Federal University of Goiás, Work Plans, scholarship records, external activities, among others. However, nobody found something illegal or disappointing. Not satisfied, the Parquet representative opened another Public Civil Inquiry No. 1.18.000.000194/2018-91, with the following content:

> [...] Notwithstanding the absence of illegalities as to the object of this Civil Inquiry, from the analysis of the tax data obtained in the interest of the investigation (page 12), it is possible to envisage the possible occurrence of other illegal acts [...] On the other hand, it appears that ELIAS RASSI NETO was the municipal health secretary of Goiânia in 2011/2012, having accumulated, in principle, the salaries of a teacher in the exclusive dedication regime and a municipal secretary, and the legality of such cumulation will depend on the analysis of the relevant municipal legislation and the percentage received from the subsidy. [...]

Once again, the consultant had his life debased so that, in the end, on August 8, 2018, the Federal General Attorney could file the second Public Civil Inquiry according to the decision transcribed below, *in verbis*:

> SUMMARY. ARCHIVING PROMOTION. SUPERVISION OF ADMINISTRATIVE ACTS IN GENERAL. CIVIL PUBLIC SERVER. Commission position. Concomitant receipt of the salary of a professor at the Federal University of Goiás and subsidy from the municipal secretary of Goiânia / Goiás. The irregularities reported were not confirmed. By approval according to the reasoning presented by the officiating member. (54th Extraordinary Session. Vote number: 11419/2018).

It is appalling that an institution of the importance of the Federal Public Prosecutor's Office receives an anonymous report and, from there, initiates two inquiries. Even in the face of explicitly recognized illegalities, the Parquet promoted investigative procedures, regardless of the embarrassment caused to the incumbent citizen, who was carefully chosen as a persecutory target.

The Federal General Attorney knew, in advance, about the "absence of illegalities as to the object of this Public Civil Inquiry", but it instituted another procedure with an equally imprecise object - "there is a glimpse of the occurrence of other illicit acts" - and vague suspicions of illegality, in the end: "unconfirmed".

The folly is in moving the state apparatus to investigate reported irregularities based on crime news without identification of the authorship, therefore, useless, resulting in an unconstitutional investigative procedure.

• Conclusion

Quod erat demonstrandum, the inquiries, processes, and actions initiated against the querent have all the characteristics of the strategic use of the law and the judiciary to persecute and harm through investigative procedures originating from anonymous denunciations, indictments, and accusations without materiality, overt manipulation of the legal system for political purposes, abuse of power, restriction of defense and intense negative publicity to the detriment of the taxpayer.

It results from the analysis of the principles and concepts established in the norm, doctrine, and jurisprudence on specific cases, reported elsewhere, the conclusive statement of the occurrence of Lawfare and other correlated, illegal, and arbitrary practices perpetrated against the consultant. Thus, the consultant has the right to request the prompt filing, in the form of the law, of the inquiries, processes, and lawsuits to which one responds, beholden by insurmountable vices about the national order, tainted by illegality, unfounded and unreasonable, therefore, absolutely null and void.

CHAPTER 7

ATTACKS TO THE NATIONS INTERESTS

LAWFARE AND NATIONAL SOVEREIGNTY

Roberto Requião

7.1 The holy war against the Constitution

With due respect, and due date, reverent greetings to the people of the very first line in the operation of Law in Brazil who wrote this book (I read it carefully, like the attentive student I was from the Law course at the Federal University of Paraná and no less diligent lawyer). I dedicate myself now to develop this controversial topic: Lawfare and National Sovereignty.

So, try to ask: but is not that what it is? This whole war, this shattering of the Constitution, crunching of codes, disrespect for all sorts of legal provisions, so much boldness, cynicism (and ignorance!), just to arrest someone, however big, gigantic he may be (and is!)

It is essential and immanent the relationship between Car Wash devices and the slow march for the transformation of Brazil into a satellite country where imperialist financial capital and geopolitical interests are playing games with democracy.

Luis Inácio Lula da Silva, the Workers Party, politics, corruption in Petrobras and elsewhere are the pretext to mobilize the intermediary masses, once again, pressured by the economic crisis

and the existential drama of not having been and possibly not be. Touched by resentments arising from this dilemma, between the impossibility of rising and the threat of decline, the middle class (or petty bourgeoisie, as we used to say) is not vexed to fill with hate and prejudice against workers, poor sections of the city rural, Northeastern, blacks, Indians, minorities, against labor, social and social security rights, to the detriment of compensatory policies.

It is from this mass, tamed by the fear of losing the few rights they have conquered, shepherded by a new (but so old) evangelism that feeds on the Republics of Curitiba, Porto Alegre, Rio, Brasília (the one in São Paulo is a joke), judges and ministers of all levels. But not only.

Still instrumentalized by national and transnational capital with the commercial media support as a megaphone, the revolution colored by the shirts of the Brazilian Football Confederation raises the frayed flags of anti-communism, the defense of Christian and Western values, the unconditional alignment to the American empire, in opposition to the concepts of Brazil-Nation, the national sovereignty, self-determination, popular and democratic nationalism.

It is what matters: the existence of a country as an independent and proud nation, owner of its wealth, protector of its people, its traditions and culture, irreducible guardian of its soil and subsoil, of its waters and forests, of its seas and airspace, a country that makes, dominates and leads its destiny. Is there something more old-fashioned to characterize the late imbecility that this anti-communist wave, added by the religious fanaticism of the medieval

crusades? See how far goes the manipulation of idiots, besides till what point fools allow themselves to be shaped.

• It is not (only) Lula

The fury, hatefulness, and anger with which the Task Force of Car Wash Operation, the judge of the 13th Federal Court of the District of Curitiba - Paraná and the media attacked Luiz Inácio, promptly takes to denounce the dirty war of the law, to expose the frauds, falsifications of the facts, the most terrible and monstrous injustice of the condemnation of the ex-president.

Some make comparisons with Getúlio Vargas, the Republic of Galeão, the corruption that Carlos Lacerda and the ineffable National Democratic Union said that existed in Catete. They allude to the merciless siege of João Goulart that concludes with the 1964 Coup. However, nothing equates to the effort to destroy Lula from the Workers Party, and the idea, even if diffuse, about left groups.

Nevertheless, the highest trophy is not Lula. The embalmed head over the fireplace in the big white house is not of Lula, who is perhaps a stone in the way, a hindrance to be removed, blown up, shattered, pulverized. After all, because of his history and origin, he symbolizes the possibility of a country for Brazilians as himself.

• Popular and national sovereignties

Therefore, destroying Lula echoes as disqualifying the lefts, progressives, and nationalists. It is vital as it was for taking Getúlio Vargas to suicide, giving the 1964 coup, and leading Dilma Roussef to impeachment in 2016. A bridge to the future is not built by the construction of a satellite country, under economic interests and

geopolitical exploitation by an empire. A Federal Constitution in full force is necessary, with the supremacy of the laws to inaugurate a real democracy.

There is a direct line without intersections or fissures between the attacks on the sovereignty and judicial system. The subversion of laws, their convenient interpretation, the elastic hermeneutic of Curitiba stakeholders are not just the result of the few knowledge, provincialism, meanness, dazzle (even idiocy) of those two boys (mainly). Perhaps, in the beginning, Car Wash Task Force eluded us. They seemed to be moved by healthy impulses of walking knights, millenarian prophets that even led the population to defend and recommend them. Just for a brief time.

The destruction of the Brazilian engineering and construction industry, which used to compete in the sector with advantages in the world market; the abolition of the Brazilian offshore platform industry; of the national shipbuilding industry; the opening soon afterward of the billionaire market of supply to the exploration of the pre-salt to multinational companies; the increased privatization, incorporation and denationalization policy; the opening for the purchase of land to foreigners, with no size limit; the underground water basins mined; in short, all this and more, this brutal sequence of attacks on national sovereignty came concurrently with the campaign against corruption, persecution of Lula, criminalization of the left, depreciation of nationalists.

Compare the measures of the governments of the United States, England, France, Germany, China, India, Russia, Japan, and other countries to protect their national companies, when

the 2008/2009 crisis exploded, and the delivery of the Brazilian economy on the trail Car Wash Operation. Just look at the supreme heresy: Barack Obama came to nationalize General Motors for a while to save it from insolvency.

And we, Brazilians, under the baton of Moro, Dallagnol, and others Torquemadas of the media and financial market - of Edir Macedo, of the development program "Bridge to the Future" from Michel Temer and his government minions - Eliseu Padilha, Moreira Franco, Rodrigo Maia, and Marcos Lisboa - delivering everything, almost for free. A disgrace!

Guess who came, panting, to the auction, burning scraps, to the liquidation of the national engineering: Dick Cheney's Halliburton, after getting fed up with contracts in Iraq.

If the autonomy of the law shatters, national sovereignty is demoralized, it also loses any support, and it raises the kingdom where anything is possible.

The perversion of the law to eliminate certain leaders from the political scene is correlated to the corruption to get rid of social rights and guarantees (Labor and Social Security reforms), and to the degradation of Brazil as a sovereign country.

Disrespecting and reinterpreting laws, as a result of political-ideological tendencies (or oddities), is central to initiatives that violate, undermine both social rights and guarantees. It prevents Brazil from achieving permanent national objectives.

In other words: instrumentalizing the law is essential to embarrass, discredit and annihilate opponents, fabricate enemies,

retaliate against opponents, manipulate investigations and sentences, judicialize politics, influence public opinion.

In 2009, the penultimate year of the Lula government, The Economist magazine, with its 176 years of liberalism experience, printed a cover page headline showing Christ the Redeemer as if it was a space rocket: Brazil takes off. Despite a world economic reversal in the following year, the growing economy of Brazil drew the attention of the world. In the G20 meeting, Obama celebrated Lula as "this is my man!".

Perhaps, conspiracy theorists could say that the English magazine's prediction was the key to Lula's death sentence, the milestone, and the beginning of the end of the dream of a sovereign Brazil. In any case, for the next four years, by leaps and bounds, the government that succeeded Luís Inácio still enjoyed the wonderful wealthy (and the deceptive world) of commodities.

In addition to the political inability of the successor, the disastrous economic policy put in place at the beginning of the second quarter, the aftermath (and learning) of the 2013 protests, and the triumphant start of Car Wash Operation, we had the conditions for another coup against Brazilian people.

The episode that destroyed the last hope of avoiding the coup was the recording of the dialogue between Dilma and Lula. Leaked from Sérgio Moro for TV Globo, it was illegally, cynical, immoral, impudent, obscene, dirty, and sordidly (collect all the adjectives - there is still little to classify the monstrosity of action). Perhaps, it was the founding monument of Lawfare against the former president, or at least one of its Himalayan peaks. March 16,

2016. Keep that date in mind, as it was on that day that the coup triumphed.

Aside from the gentle whistle of the coordinator minister of Car Wash at the Supreme Court, no judiciary was seen by the Public Prosecutor, and their so affectionate, delicate Councils, any minimally dignified attitude, adjusted to their so high responsibilities. Of course, no one hooted on the benches of the Liberal-Democrats, on the benches famous for outstanding lawyers, in the so-called "class organs" or around Higienópolis (São Paulo neighborhood famous for presenting a residential profile, a population belonging to the upper-middle and upper classes). The media, well, the media... After all, does an enemy deserve the protections of the law?

- **It is (also) the economy**

Nothing compares to the hell doors Car Wash Operation opened to another monstrosity: the attacks against national sovereignty. For sure, it was more harmful than the preventive arrests, coercive conducts, awarding sentences, false testimonies, lack of evidence or manipulation, blackmail, pressure on defendants, family members, clandestine eavesdropping, selective and illegal leaks, legal excuse to investigate, prosecute, and sentence, probation for partner thievery.

Without Car Wash and its intimate carnal coordination with the United States Department of Justice - (US Department of State and American intelligence services), there would not be the coup against Dilma Rousseff, nor the beginning of the execution of the cursed Bridge to the Future Program, which the current government radicalizes and applies with extreme accuracy.

Car Wash and the Bridge to the Future Program are inseparable, as well as rope and bucket, Sérgio Moro and Paulo Guedes. Jair Bolsonaro is the necessary buffoon, the duce of the bullies, of the militias, of the middle class, stirred up by threats to their status, of the religious fundamentalists, of the opportunists of the theology of prosperity, of the sub proletariat, and all sorts of disqualified (in the original sense).

Of course, Bolsonaro is the necessary evil for the process of sovereignty corrosion remain successful: the oil and gas from pre-salt continue to be delivered; the privatizations go deepen; so that the denationalization of the economy, the deindustrialization, and the dismantling of public structures for education, research, innovation, and technological development happen. The ideal of a dependent country, producer of commodities despite increasing poverty satisfies and enriches our elites even more.

Bolsonaro is the necessary evil for banks and financial capital to continue filling the coffers, gloating over the population that goes out on the avenues to support the regime.

The moral agenda, the exclusion of illegality by Sergio Moro, which legalizes, releases and encourages executions, the stupidities of ministers Damares Alves (Woman, Family, and Human Rights), Abraham Weintraub (Education), Ricardo Salles (Environment), and the Culture Secretary Roberto Alvim (argh!), the former aide of Senator Flávio Bolsonaro, Fabrício Queiroz (a fugitive for more than a year from Justice), all of them 'to zero' (one, two, three, now, the four). Also, Alliance for Brazil (a political party created by Bolsonaro that has bullet capsules of different caliber as a symbol) and other things that horrify the

most sensitive spirits, are diversions to distract the Motherland while it is dilapidated.

Sergio Moro's rise to the ministry of Justice was the consolidation of Lawfare's triumph so that leveled the ground for the annihilation of national sovereignty. And his fall from the government is evidence of the unlawful practice of the inquiry proposed in the Supreme Federal Court by Attorney General Augusto Aras (CONSULTOR JURÍDICO, 2020).

A necessary parenthesis: the photo of Sergio Moro revering, almost drooling over Michel Temer is the documentation for the history of the indescribable marriage between Car Wash and Bridge to the Future Program. If someone there sighs, shrugs or mobs, it is good to remember Moro's answer "- It doesn't matter", concerning the former president Temer when he was threatened with impeachment.

• **And now?**

Yeah, now what? Lula's release from prison should not cool the fight against Lawfare that persecuted him, injured him, and defrauded lawsuits and convictions. The minimum allowable is the annulment of all proceedings against him or the recognition of his innocence.

Lawfare against national sovereignty remains an absolute priority. The machinations, the artifice, the diabolical fabric that, at the time that Moro charged Luiz Inácio Lula da Silva, gnawed away, eroded the permanent national objectives, the guarantee of the wholeness of Brazilian nationality. How can we confront

the most lurid and obscene of conspiracies against the national sovereignty of all time?

These days, on Twitter, the statement that "the anti-dictatorship Front (1964-1985) could perhaps serve as a reference, inspiration for the union of Brazilians against the destruction of national sovereignty and labor, social security and social rights" was discussed. . However, there were those who disagreed, considering that we do not live under a dictatorship.

The rising tide of the country's fascism, the exclusion of illegality by Sergio Moro - which exempts the lethality of the police against protesters -, the freedom of action of the militias, and the sharpening of racism are leading Brazil to the state of exception.

But, that is not what I intended to talk about. It´s about the National, Popular, and Democratic Front in defense of Brazil. A Front without exclusivity, chiefs, hegemonies. The speed or not of the fascist advance, the speed or not of privatization, denationalization, delivery of petroleum, and national wealth, depends on the organization of this forefront.

It is not the task of a single man, a single party, or just a current of opinion. It is bigger than that. For the front to be successful, it must put itself above differences, vanities, resentments, even if the hurt is justified. And above the elections. Who will join this movement?

NATIONAL DEVELOPMENT ISSUES

Aldo Rebelo

7.2 Globalization Agenda Upheaval

This text addresses the defense of values and national interest in the current conjuncture of the country. The national interest continues to be the axis around which contemporary societies gravitate - with a focus on national interest is that the hegemonic nations of the world guide their geopolitical decisions, diplomatic, economic, commercial, financial, scientific, technological, and cultural initiatives.

Brazil built the National State, but it is still in the process of creating and inventing the nation. It took an important step with Independence, in the figure of the patriarch José Bonifácio de Andrada e Silva, the articulator, thinker, and politician who led this historical event in the country. And now that we are on the eve of the 200 years of Independence of Brazil, the conjuncture of National Question, the current situation of José Bonifácio de Andrada e Silva summons the country intelligentsia, political, spiritual and intellectual forces, concerned with national construction, to establish the centrality, primacy, and priority of the National Question as an axis for a socially balanced, democratically advanced society, capable of distributing the fruits of development, progress, and collective effort among its members.

• National question: idea-force of globalization

The National Question is, in fact, a strong idea in this time of globalization, in which the most important thing for an emerging country seems to insert itself competitively in the global economy. In this regard, two observations are necessary. First, globalization itself, financial, technological globalization arises from the interest of the hegemonic nations of the world. Of course, they rely on the development of science and technology, means of communication, originating in the national interest of strong countries.

And the other observation is that the country that achieved the most success in the international insertion process was China. China did it by the national interest in the development and well-being of the population. It is the nation that most distributes income, increases wages, produces billionaires, where the State has more presence and greater strength to discipline economic and social life. And at the same time, the place where market instruments have been most successful in pursuing these goals. In other words, the biblical principle works in China: to the market what belongs to the market, and State what belongs to the State. The market supporting state instruments to achieve their objectives. And the mark*et al*so feeds from the interests of Chinese society, which means national interests.

In Brazil, this contradiction is artificially manufactured, transforming a natural conflict into an antagonistic contradiction, as if the market were a threat to the State that would prevent or hinder the market actions. Brazil needs a powerful State to fulfill its objectives and must stimulate market actions to generate income, employment, foreign exchange, jobs for the population.

• USA and Germany strengthen industry's defense

Financial globalization, this cybernetic globalization, as you might call it, happened to other stages of previous globalization, such as the globalization of sailing, promoted by Portugal and Spain, in the 15th and 16th centuries; the globalization of the steam engine during the Industrial Revolution; the globalization of oil, which took force in an ideological, political and geopolitical operation, which was the end of the Soviet Union. And it was born with a great promise, and hope, to generate a world of progress, more well-being, peace, more democracy. However, these goals have been prevented.

The truth is that the world has not known more well-being, more than ever before the threats of racial, national, ethnic conflicts are present. And democracy seems threatened by these disturbances that the world is experiencing. It generated a crisis of confidence and credibility in the promises of globalization, with many difficulties around the world, where countries broke down, even the United States faced a major banking and financial crisis.

This scenario generates questions and proposals for rectification. Right now, in celebrating its 175 years, the liberal magazine The Economist has launched a great manifesto in which it proposes, in fact, a line of adjustment. The publication recognizes that globalization has only produced positive effects on financial activities.

• Davos Forum: China defends, and the USA attacks

China has achieved great benefits from globalization. Its economy was highly internationalized, without losing control of the process. And it has recently created an initiative around the

"Silk Road" belt to integrate commercially with the whole world. In other words, it is about great ambition, a daring project. This, in a certain way, ended up scaring the United States.

China has long benefited or has benefited from the exchange process. It was with the opening of the United States to China, at the time of President Richard Nixon, that the great opportunity appeared for that country to acquire technology that it did not know, nor dominate, in some areas, including services. That effort continued today, but the Americans would have concluded that it is enough.

China's technological development, especially in the area of information technology, can be seen by Americans as a threat. In this phase, China experienced high growth rates, not only economic but scientific and technological achievements as a result of this process.

The United States began to see the fact as a threat, hence the reaction, apparently unexpected and disastrous, of the Trump administration, which presented a project of remanufacturing, reindustrialization, protection of its high-tech companies, the largest in the world, before the arrival of the giants' Chinese companies. It is not a coincidence that one of the targets of this American offensive is the Chinese giant Huawei. So, the United States, which started as the major protagonists of globalization, today considers itself in a defensive position and reacts.

• Is it possible to reverse the globalization process?

There are anti-globalization movements in different parts of the world, in general, led by conservative forces. The conspicuous Brazilian Foreign Minister proposes to reverse the globalization process. Indeed, I do not know how the globalization process will

change. How could this process be reversed - that of sailing, promoted by Portugal and Spain? How the process of globalization of the steam engine would be reversed by the merchant navy? By the railways, telegraph? And today, by electronics, cybernetics? It is difficult.

The problem is to manage who wins and who loses with it. People's reaction is not against globalization, but about the effects of globalization on countries' jobs, wages, economies. People feel excluded because the movement has become exclusionary. And when the forces - progressive or left-wing - do not assume the defense of the interests of the workers, of their nations, conservative forces do it. And the people follow them because they feel represented by them.

It is not a coincidence that part of the votes of the French Communist Party migrated to these right-wing tendency, because they came to defend France, the country's economy, in this recent movement of yellow vests. Left-wing forces said the yellow vest movement was fascist because it sang the national anthem and used the French flag.

Here, during Bolsonaro's election, some people said it was not to wear green and yellow because they are colors of the right. We cannot allow the national symbols, the national identity, the national interests to become the prerogative of ideologies of the right, as has happened. It is vital to make clear what the national interest is.

At this historical stage in the existence of nations, we must defend the national interest. It is not just the territory, economy, employment, culture, language, memory, and history. A part of the left embarked on the globalization of peoples as if national struggles no longer made sense.

• The national issue on the Brazilian agenda

Brazil lived around the National Question recurring conflicts. In the first initiative, with Independence, José Bonifácio de Andrada e Silva conceived a national project for economic development, the industrialization of Brazil, the emancipation of slaves, integration of Indians, peaceful coexistence with neighbors, independent foreign policy. Furthermore, he was defeated.

Brazil experienced a process of stagnation during the Regency and Second Reign decades. A new attempt took place with the Proclamation of the Republic. There was also the outline of placing the National Question at the center of the construction of the Country. First, under the Deodoro government, then under Floriano´s administration.

Rui Barbosa's administration at the Ministry of Finance conceived an industrialization project in Brazil, which was also defeated. And it was only successfully resumed in 1930, during the cycle of President Getúlio Vargas.

Later on, the process was again aborted. Even though it was not a nationalist project, Juscelino Kubitschek's government also suffered a lot of pressure from anti-national sectors. It happened in 1964, which was also a period of great contradiction. During the Brazilian military dictatorship, the Geisel government had national gestures and initiatives, but, after this period had ended, the successor Figueiredo ended the military period.

The Lula's government was also the management of contradiction, in other words, the National Question was addressed, but it was not central. It was the social issue that predominated. In Dilma's

government, this contradiction continued. With Temer, Brazil deepened with the process of deindustrialization and the loss of scientific and technological capacity. Bolsonaro's government does not focus on the National Question either.

Thus, the centrality of the National Question remains a challenge for patriots, for national forces that have to work wherever the possibility arises: in politics, in the intellectual sphere, wherever possible. That is the challenge.

• Overcoming widespread disorientation

The disorientation in Brazil about the National Question continues and worsens. The country is divided around the secondary agenda, losing its way in important things of its tradition and memory. In the case of foreign policy, the government moves towards an almost unilateral alliance with the United States of America. The Minister of Foreign Affairs declares that he is an admirer of President Trump and places himself at the service of the geopolitics of the United States. He despises the history and the Constitution of the Brazilian Nation.

Article four of the Constitution, for example, establishes that Brazil governs by some principles, among them: national independence, self-determination of peoples, non-intervention, equality between States, defense of peace, and the peaceful solution of conflicts. It also says that Brazil will seek economic, political, and cultural integration with the peoples of Latin America, aiming at building a Latin American community of nations.

This fourth article is on the wall of the Foreign Affairs and National Defense Commission of the Chamber of Deputies. It was

fixed when Congressman Franco Montoro, a Latin Americanist, chaired the Commission. José Bonifácio sketched this in the Manifesto of Independence that he wrote. Dom Pedro read this document dedicated to friendly nations on August 6, 1822.

• Bonifácio: the precursor of Mercosul

José Bonifácio is considered the grandfather of our diplomacy, the first to conceive the so-called independent foreign policy. He gave this guidance to representatives of Brazil in legations from around the world, from England to Argentina. Then it was followed by Baron of Rio Branco, who peacefully resolved the border demands with the neighbors. Beside them, peaceful solutions were found and based on arbitration.

There is a text by Gilberto Freire, from 1963, entitled “Brazil, the destiny of a mediating country”, which says that this nation has this vocation. In other words, Brazil is destined to mediate the great civilizing conflict in the world as a synthesis nation. Here are present the Portuguese, indigenous, and African civilizations. Then, the influences of Asians and other Europeans. This vocation is now abandoned by an Itamaraty (Ministry of Foreign Relations) that despises all the memory, tradition, and history of the country.

Brazil has always been heard with attention in the world of external relations. It lost that role, decreased in size to the world, Brazilian diplomacy decreased in size within the country also.

The doctrine of foreign policy was incorporated into the defense. The National Defense Policy, approved by Congress, already in the introduction, establishes that Brazil privileges peace,

defends dialogue, negotiation for the solution of controversies. It accomplishes principles of the peaceful settlement of disputes, multilateralism, South American integration.

The Constitution, in its fourth article, talks about Latin American integration. The National Defense Policy states about this integration, taking into account the 17 thousand kilometers of borders and ten neighbors countries.

For example, the case of Venezuela. Brazil has 2,200 kilometers of border with this country, a line that is greater than the distance between São Paulo and Salvador. In this area, there are demarcated indigenous reserves, binational tribes that transit between the two countries, where there is also the risk of international crimes.

What happened? At a meeting in Lima-Peru, Itamaraty, without warning the Ministry of Defense, canceled all military cooperation between Brazil and Venezuela, canceling the defense diplomacy that, along with military officers, exists because of an incident in the commercial area. When it reaches only commercial interests, has limited consequences, but an incident in the military area can have serious and unpredictable consequences. That is why this defense diplomacy exists. The National Defense Policy establishes exactly the need for military diplomacy to operate alongside traditional diplomacy, to avoid this risk.

This is a demonstration of disorientation, an inability to understand what is important for Brazil. Of course, there is scope in other episodes. The statements of the minister responsible for human rights create also a very great confusion level. Society is polarized around secondary debates.

• Import of identity struggles

Today, identity struggles are imported, that is, Brazil is transformed into a place for whites and blacks. The cultural genocide of the mestizo, the identity of the miscegenation, is ongoing. Here, the names of flora and fauna, street names, geographic accidents are marked by the indigenous presence, mostly of Tupi origin. Surnames of several families - Tamandaré, Tupinambá, Tibiriçá, Tocantins, Guarani, Caiová, are indigenous surnames.

All of this no longer makes sense in Brazil, For the Academy, for the media, for the sectors of the left, because the country turned into a bicolor land. That is the concept imported from America. Caboclos or mamelucos built Brazil on their backs. The people are mestizo with primacy overall, but this quality is being scorned by imported racial bipolarity. Brazil is becoming, from a doctrine, of the thought imported from the universities of the United States, in a bicolor nation, even dispersing its mestizo heritage, the indigenous and African heritages. It is also part of the disorientation.

• Brazil's behavior towards neighboring countries

About the neighborhood, Brazil must be guided by the vocation of a mediating nation. Not even in the conflict involving the Revolutionary Armed Forces of Colombia, an organization outside the state, did Brazil take a position like that assumed in the case of Venezuela.

In Venezuela, there is an institutional conflict between Parliament, the Constituent Assembly, the Supreme Court, the Attorney General's Office, the Executive Branch, and the Judiciary - and Brazil, under the Bolsonaro government, decided to take

sides. Venezuela became the stage for the dispute of the new cold war, due to the large energy basin of oil, the largest in the world under its guard. And, with the interests of the United States and other powers, Brazil decided to take aside.

Historically, Brazil mediated wars and conflicts between Peru and Ecuador, for example. Now diplomacy has abandoned that role, becoming part of the conflict in an area of great interest. If there is an international conflict there, who guarantees that it will not be able to migrate to Brazilian territory, in an area of 2,200 kilometers of border, with low demographic density and small economic activity?

Among other risks, mass immigration, which has already started on the Venezuelan border. Diplomacy was made by General Zenildo Zoroastro de Lucena, Minister of the Army under Fernando Henrique's government when he named Simón Bolívar the Engineering Battalion of Roraima.

Recently, the Minister of Defense, Silva e Luna, crossed the border to meet the Minister of Defense of Venezuela and deal with the migratory crisis on the border. That is what Brazil should do, and not be a spokesman for the radical wing of the United States Republican Party, or other interests embedded in this conflict with Venezuela.

It is not for Brazil to meddle in the internal affairs of other countries. The internal solution to the problems of neighboring countries is up to them to solve. Venezuela's problems are supposed to be resolved by Venezuelans. Worldwide, there are difficult institutional situations. In Egypt, Saudi Arabia, Yemen, Libya, Syria. And Brazil has to be guided by what the Constitution and the National Defense Policy say.

The mediation proposed by Mexico and Uruguay indicated a more appropriate solution for that the opposition, and the Venezuelan government finds a way to end the impasse. Brazil should make an effort in this regard, without claiming that has one side.

• Brazil versus the United States

The relationship between Brazil and the United States must be one of cooperation, trust, friendship, and respect, considering that there is a dispute, that is, they are two nations whose interests will not always coincide. Recently, the Navy commander said that Brazil participated in three wars, alongside the United States. He considered the cold war and warned that he should probably prepare to participate in a fourth. It is a unilateral evaluation.

Brazil along with the United States participated during World War II. Before that, the United States supported the effort to build the Republic in Brazil. Marshal Floriano Peixoto bought and deployed a United States squadron to face the naval blockade of the port of Rio de Janeiro.

The great poet Walt Whitman greeted the Proclamation of the Republic in Brazil with a beautiful poem, alluding to the meeting of the two constellations, which are the stars of the American and Brazilian flags. When Frei Caneca was shot, an American citizen was shot beside him, because there was open participation by the United States in the Confederation of Ecuador. In fact, with the possibility of sending arms and diplomatic support to the Confederation of Ecuador.

In 1964, the American government considered open intervention in Brazil, through a squad that would be willing to promote the operation, if the fall of João Goulart's government did not consummate.

Two American sailors crossed and navigated the Amazon River in the 19th century. There is a letter from Dom Pedro II to the Countess of Barral, saying that he would not allow the opening of navigation in the Amazon, precisely because he was afraid of the installation of possessions, military posts in the Amazon Basin by foreign powers, such as England and the United States.

In the Acre crisis, already in the middle of the 20th century, an American gunboat sailed through the Amazon Basin in search of Rio Branco and arrived in Manaus. The gunboat commander, who did not know the navigation of the Amazon, gave nationality to two Amazonian pilots who swore to the flag of the United States to lead the gunboat down the Amazon River channel.

That said, there is a conflicting history. President Geisel denounced the military cooperation agreement with the United States, which led the Carter government to send Ms. Rosalynn Carter to begin the process of isolating the military in Brazil.

It is therefore not possible to make a unilateral concession to American interests. They even want to grant a visa exemption without reciprocity to Brazilians. We must have every interest in maintaining a cooperative and friendly relationship with the United States.

Despite the importance of this country, it needs to be aware that the interests of the two countries do not always coincide. Brazil must have a matter: the irrevocable principle of the demilitarization of this subcontinent. An American base cannot be admitted to any country in South America. What would prevent that, if that base was built, a Chinese, Russian base would not be built in another country? For Brazil, it would be a major constraint.

• Anti-Americanism: childhood illness of nationalism

Brazil should not be dogmatic anti-American. In other words, there is even a certain admiration for the history of the construction of the United States. Brazil followed the culture of the United States, its writers, cinema, music. This is a respectful relationship between peoples, the great virtues in the construction of the United States. But there is also the interest of the empire, of the superpower.

In fact, in 1903, England, Germany, and Italy imposed a blockade on Venezuela due to the non-payment of debts. And when Venezuela tried to claim the Monroe doctrine, that of "America for the Americans", the United States stated: "No, it does not apply in this case. For payment of a debt, the Monroe doctrine does not apply. It would only apply if there was a threat of recolonization from any Latin American country.

In this regard, said the Minister of Foreign Affairs of Argentina, Luís Maria Drago: "Yes, it does apply. We cannot admit military intervention in any country on account of debt. In the case of debt, a peaceful, negotiated solution must be sought ".

The United States openly supported England in the Malvinas War, a different position from Brazil, which did not allow its diplomacy and Armed Forces to offer support for English intervention.

As Minister of Science and Technology, Minister of Defense, Sport, President of the Chamber, high-level cooperation relations with the United States authorities were sought at all times. This cooperative experience has always been successful. Now, there has always been an awareness of the contradictions and conflicts that surround this relationship.

• Union of heterogeneous forces

Brazil is a place with many contrasts, imbalances, and inequalities. The common denominator for removing obstacles in times of crisis is the gathering of heterogeneous forces. Why? Because no determined forces or political groups in the same field are capable of undertaking the profound changes that Brazil needs alone. It is necessary to expand the arc and gather forces of different ideological nuances.

The first meeting of heterogeneous forces in Brazil took place in the remote episode of the struggle for the expulsion of the Dutch from the Northeast region in the 17th century. Together with the generals of the Portuguese Crown, such as Matias de Albuquerque, the farmers, led by João Fernandes Vieira; a third of the Indians, commanded by the great general Filipe Camarão; the Poti Indian; a third of the freed blacks; Henrique Dias – fought, all blessed by Father Antônio Vieira. Even the pennant Raposo Tavares went from São Paulo to Bahia to fight against the Dutch.

This alliance made it possible for an army of guerrillas to defeat the traditional, better trained, and equipped military force of great power at the time. The heterogeneous alliance defeated the Dutch, marking what Gilberto Freire writes: at that moment Brazil chose to be one and not several. For Barbosa Lima Sobrinho, it was the first nativist movement.

And that same general Zenildo Zoroastro de Lucena - from Pernambuco, Minister of the Army of Fernando Henrique´s government, who named the military headquarter of Roraima as Simón Bolívar - created the post of founders of the Army for those

three generals, Fernandes, Poti, and Henrique. The founders of the Brazilian Army are the whites, the Indians, and the blacks who led the war against the Dutch, the genesis of the miscegenation of the population.

In Independence, there was also a heterogeneous alliance, between conservative and progressive sectors. The alliance is repeated in the Slavery Abolition and Proclamation of the Republic when farmers in São Paulo joined the radical positivist and republican military in Rio de Janeiro, the middle class, and the workers of the time.

The 1930 Revolution was another heterogeneous alliance, when the great rancher of Rio Grande do Sul, Getúlio Vargas led urban and military forces in the process of resuming national construction. There were also heterogeneous alliances in 1964, this time, for the democratic setback. And the heterogeneous alliance that re-democratized the country, in 1984.

- **Heterogeneous development-oriented forces**

There is no other way. The most successful Brazilian experiences are the union of heterogeneous forces. Lula's government was characterized by a union of this nature. Vice-president José Alencar was a great industrialist. He was president of the second main Federation of Industries - in Minas Gerais State.

There was also great leadership in agribusiness, Roberto Rodrigues. Another, Luiz Fernando Furlan, in Industry and Foreign Trade. That was the alliance of Lula's government. Although it was not central to the National Question, it was a broad link.

The challenge of developing a heterogeneous alliance in such an unequal country is not unknown. In the past, the Nation made these alliances in even more unequal situations than today. The alliance is even made to remove these inequalities. Because it presupposes multiple concessions among the members, The country needs to develop, and that is in the interests of businessmen, industrialists, farmers, as well as the interests of the poor people.

Development generates employment, expectation, and hope for progress. The wealth must be equally distributed. It helps to consolidate democracy because development is a factor of institutional stability. The National Question can generate hope, if not for everyone, for almost everyone.

The so-called elites have the understanding and may come to be determined to participate in the vanguard by renewing development. They already had that understanding at some point, at others, they didn't. At the time of Independence, no one represented or was the highest expression of this elite than José Bonifácio, because he was educated, rich, white, and cultured. He was the head of that process.

Abolition and the Republic also had important participation by sectors of the elite, mainly the coffee bourgeoisie of São Paulo. In 1930, Getúlio was, as I said, a representative of Rio Grande do Sul's agrarian elite. But there were times when this elite was disoriented and worked against national interests.

Organized political forces would engage in such a movement, although some are well disoriented. There is a right that looks at Miami as if it were a manifest destiny, a paradise. And there is part of the left that targets New York, for identity and multiculturalist policies. But there is an environment of great fertility in Brazilian

society, in the intelligentsia, sectors of the workers, the union movement, churches, and business, which they believe to be the decisive National Question.

• Bolsonaro's government

Bolsonaro's government is the result of the disorientation, the crisis that hit political institutions, and politics as an expression and form of democracy in the country, when the objective is only electoral, just to defeat the opponent, without a program or project. Therefore, people suffer from the conflicts inherent in this type of process, that is, whenever they come together heterogeneous forces without a clear object. That is the case, immediately, it will establish the conflict.

There are liberal sectors, operators of the financial system with great influence on the government, who are only interested in privatizing, reducing the role of the State, minimizing costs. At the same time, military sectors coexist, representing the institution of the State. Armed Forces is a state institution. It only makes sense if there is a state. If there is no State, what is the meaning of the Armed Forces? For what? There is a party created to support the President of the Republic, which is always in conflict, behaves in the government as if it were in opposition.

We have already lived alliances between positivist military and liberal sectors, as in 1930. The government that most strengthened the state in Brazil, that of Getúlio, came to power through a pact called Aliança Liberal, which later formed again to overthrow President João Goulart and instituting military government, again, between military and liberals. Then the liberals allied

themselves with the left to defeat the military, in 1984. And now, they have joined, again, against the Workers Party, the threat of Lula's election. The conflict resulting from the lack of a major objective has already been established, that is, the government has barely started and the disagreement is open. The presidential familial democracy broke with the party itself, announced the creation of another, of neo-fascist inspiration (THE INTERCEPT BRASIL, Nov. 17, 2019).

There is disorientation, for example, between the area of foreign policy and the doctrine of the military. It cannot be admitted that Brazil's defense minister recently, in Temer´s government, crossed the border to talk to the Venezuelan defense minister. And, months later, the Foreign Minister proclaims that the Venezuelan government is an enemy to be slaughtered. Conflict over the relationship with the Arabs. The minister says one thing, the vice president of the Republic, who is in the military, says another.

There is a conflict between the minister's statements about China and the contradictory one of the vice president of the Republic. President Bolsonaro said earlier that China's Communists wanted to buy Brazil and now, at the BRICS Summit meeting, he apologized to the Chinese president, saying that the Asian country is the hope for the future for Brazil. In addition to the other disagreements at the institutional, party, and congressional levels.

• Unbreakable faith in Brazil

Despite the disappointments, one should take into account the advice of the Mexican essayist and po*et al*fonso Reyes, who served in Brazil in the 1930s as an ambassador: one must take a look at the behavior of sailors during the storm. In moments of the storm, the sailor cannot look at the ship's hull, otherwise, he gets drunk, gets bored, gets disoriented. So you have to look at the horizon.

Brazil is a country with great civilizing qualities, expressive virtues. An American sociologist who was here, during the military regime, when there were no political, political party, and/or press freedoms, observed the following: it was the nation with the greatest promise of democracy in the world. Precisely because this promise of democracy arose from the origin of the place, from the civilizing process, from miscegenation. It's not a blood thing, it's a culture thing.

From the above, Brazil should be viewed with critical optimism. Watching the world and there is no way to predict a country destined to do better than this. No novelty is stated here, Gilberto Freire's prophetic visions are reinforced.

IN DEFENSE OF DEMOCRACY

Clair da Flora Martins

7.3 The Society Mobilization

The Movement for National and Popular Sovereignty is being organized and launched in several states of the country. In Brasília, an act of the Mixed Parliamentary Front in Defense of Sovereignty was held on September 4, 2019, in the Federal Chamber (see section 10.2), which had a party and social representations. On that occasion, Deputy Patrus Ananias (Workers' Party - Minas Gerais) highlighted:

> [...] The Front is committed to three pillars of Sovereignty: the Democratic State of Law, anchored in the Citizen Constitution of 1988 that restores the admirable figure of Ulysses Guimarães; the defense of the territory and heritage of the Brazilian people; the reconstruction of the rights that ensure life and the conditions for the exercise of the rights and duties of citizenship [...].

Throughout decades, with a lot of struggle, humanity has achieved a civilizing level, diverse rights have been ensured, allowing a level of well-being of the population, although there are still glaring challenges such as socio-regional inequalities, with a gap in the appropriation of income and assured achievements among populations of different countries.

Nowadays, a wave of counter-reforms is facing, which aim to curb the advances achieved and, in many countries, implemented rights are being derogated, because of the neoliberal policies of

"economic/social adjustment", given the impositions of big capital. The social explosions that take place in several countries are the result of this worldwide scenario.

In Brazil and other Latin American countries, democracy is threatened, institutions are weakened, rights are threatened, wealth is plundered. This situation results from the task of facing the challenges that arise, formulating, and raising the priority flags of society. How to guarantee the sovereignty of a country and the welfare of society? How to contribute to the debate on the agenda, looking for ways out for the mobilization of society, in the difficult moment of current history?

A Nation needs the territory, its people, but the sovereignty of a country depends on much more than that, it needs to maintain dominance and power over the territory and the people, which is not an easy task, mainly because it is interconnected with other countries in a global context. Today, governments and the population of countries are under pressure of all kinds, they are not always able to maintain, in reality, independence, autonomy, non-economic/military intervention, nor to build a development program, where their natural/mineral wealth and technology are at the service of improving the quality of life of the population.

• Powerful corporations take over the world

Nowadays, there are powerful corporations that dominate the world, there are countries that dictate the rules, establish the division of each one's role in the international context. And when other minors fail to comply, the consequences are devastating such as coups d'état, economic embargoes, missiles, bombs, armed invasions, the extermination of the population, and threats of all kinds.

These actions are dictated by the greed of the imperialist powers, of the big banks and multinational corporations, by the usurpation of the territory, by the predatory extraction of the natural and mineral wealth of the countries that own them.

The dominant global system articulates the use of the force of arms and the strength of the distorted legal apparatus to remove governments and impose representatives who are following their economic, ideological, and political guidelines.

So, how to resist the overwhelming fury of attacks on the Constitution, the dismantling of the Democratic State of collective and individual rights, to promote the destruction of national wealth, which have been hard-won and maintained in the civilization level so far implemented?

It is known that, historically, state-owned companies are inducers of development, contributing greatly to improving the living conditions of people from various nations, including our country, making it one of the ten largest world powers.

• What is the perspective of the Movement?

The Movement for National and Popular Sovereignty is very broad, current, and important because it is up to the Brazilian people to defend sovereign national development and democracy, whose values and principles instituted in the Citizen Constitution of 1988 aim to guarantee the well-being of the population.

To maintain an independent country, unity of the people is required, a strong state that represents the interests of the population, solid institutions, and the availability of resources to support the population.

Furthermore, promote the development of technology that guarantees the necessary advances in the defense structure that preserves the territory, the borders, and a project for a sustainable society; it needs to establish a level of rights and combat social and regional inequalities.

Unfortunately, Brazil is going against history. There is a government that, in its economic policy, privileges the financial system, cuts labor and social security rights. It goes further, lets forests burn, decimates biodiversity; intends to deliver natural wealth, and promotes the liquidation of state-owned companies.

The April 2016 Post-Coup governments approved backward projects such as the amendment that imposed the limit on health and education spending, proposes the exclusion of illegality or defends positions that confront constitutional principles, inserted in Constitution/88, such as the defense of Institutional Act no. 5 and freedom of the press (such as the exclusion of newspapers from bidding), among others.

The political and social climate is troubled. Society is polarized. And not only that, many principles and individual rights inserted in the Constitution, such as the presumption of innocence, the guarantee of due process, and wide defense, were and are being disrespected by the judicial system.

The power system, in the three spheres, has sought ways to use the law to legalize abusive, illicit practices, such as arbitrary arrests, selective leakage of sensitive information, illegal wiretapping, to seek, in many cases, biased and partial outcome or decisions that face the legal text imposing the political and ideological interpretation of those who hold power (Lawfare).

And yet, supported by the media that serves corporate interests, the government acts to denaturalize the democratic process, imposing information, comments, views on the population that are in line with the dominant system.

• Spoliation and privatization

The plunder of Brazilian wealth has its origins at the time of the Discovery. In the beginning, brazilwood, then gold, precious stones, oil, much more. The Nation continues to allow predatory exploitation, to export primary products, to import value-added products, without establishing legal norms that guarantee that part of these resources is destined for the development of the place and the well-being of its population.

Many of the companies were privatized under the fallacy of reducing public debt, which has only grown. Vale do Rio Doce, for example, was auctioned in 1997, with the sale of its controlling interest (41.73% of common shares), for R $ 3.338 billion. Vale's net profit in 2018 was R $ 25.6 billion.

And what is the balance of this privatization? Did the extraction of millions of tons of minerals, natural resources, contribute to the development of the country? Did the income, profits, and dividends generated by privatization contribute to the reduction of social or regional inequality? In concrete terms, the privatist policy left a trail of destruction of the local society in its environment, in the flora and fauna of the region, in the lives cut off, houses buried by the mud of the collapsed dams, polluted, polluted rivers, sea, and ocean, in the face of the irresponsibility of the mega private company, which was not concerned with the people who live there,

workers who work there, with the safety of the activity. And they continue to exploit mineral resources in a predatory way.

In Brumadinho - Minas Gerais, the rupture of the dam at the mining company Vale, at the beginning of 2019, caused the most serious accident of Brazilian and worldwide mining in human damage, with 259 dead, plus 11 people who remain missing, until December 28th of the same year. A similar tragedy in Mariana - Minas Gerais, on November 5, 2015, left 9 dead and buried Doce River with the release of 39 million cubic meters of mud and pollutants contaminated by heavy metals, in the worst environmental disaster in the country.

Thus, because of this context - as an example the privatization of Vale -, it is reaffirmed that companies that exploit local natural and mineral wealth, aim only at profit, without worrying about the development of the region or the country, with the environment or with the well-being of workers and the population.

In the Decree-Law of Getúlio Vargas, which created the state company Companhia Vale do Rio Doce, on June 1, 1942, it states that:

> "[...] The maximum dividend to be distributed will not exceed 15% and the rest of net profits will constitute a fund for improvements and development of Vale do Rio Doce [...] ".

The Decree-Law that created Companhia Vale do Rio Doce was solemnly breached in the last 32 years, after privatization. If not, Brazil's development would be different and we would not be facing the chaos that reigns today. The task, not only about Vale but to the country's wealth, is to fight for this wealth to be exploited

sustainably, to benefit the whole Brazilian population and the development of the Nation.

Thus, at a time when jobs are scarce, when technology advances, robotization replaces a man with machine, it is necessary to redefine the legal norms for the sustainable exploitation of Brazilian wealth and to establish a Sovereign Fund with part of the profits earned by companies that explore them.

Not a Fund with resources to be invested in the financial markets, but, immediately, in education, health, infrastructure, innovation, science, and technology so that one can seek the development of the Nation and benefit the population as a whole, generate income and jobs, establish minimum income program based on local wealth.

For that, it is urgent to have governments committed to national and popular sovereignty, solid institutions that fight to preserve the Citizen Constitution of 1988, to implement the constitutional principles of the Republic provided for in article 3 of the Constitution.

• Aggregating progressive forces

It is necessary to put these ideas on the agenda of society, to make the population aware that there is no alternative but to build a Social Economic Program that enables our development, which combats income inequality, violence, guarantee the necessary legal security, democracy, the Sovereignty of the Country.

All progressive forces of society must be brought together and each corner of this diverse place must be taken, carry these flags in defense of heritage, natural and mineral wealth, in defense of culture, traditional peoples, biodiversity, water, climate, the survival of the local people.

This is all more than a movement, they are actions that intend to bring messages of hope to the Brazilian, win hearts and minds, aiming to build a development model based on new values and paradigms.

A development that makes possible the construction of a truly democratic state, with organized popular strength, to preserve and defend the territory, the riches of the fate of corporations. And that these serve our development and the Brazilian population as a whole.

But it would be naive to think of achieving these goals alone. Much more is needed. It is necessary to take the flags of sovereign development to all of Latin America, to strengthen Mercosur, not only commercially, but to form a political, ideological, and economic bloc with these countries. Join others who can group and seek changes in world geopolitics, establish and constitute a new global force based on new paradigms, seek solidarity, sustainable development, the eradication of poverty, the radicalization of democracy, respect for the self-determination of peoples, the equal representation of countries in international organizations.

It is not an easy task, nor a short term, neither of one day. But it starts today! And it should last as long as the united people fight for the National, Popular, and Democratic Sovereignty of the country!

CAR WASH AND GEOPOLYTICS

Osmar Pires Martins Junior

7.4 The Lawfare Chess Against Rights

The arrest of journalist Julian Assange, founder of WikiLeaks, by the English police on April 11, 2019, at the Ecuadorian embassy in London, vilified the well-known institutions of asylum and national sovereignty, consummating geopolitical lawfare by the United States. The great American power has unleashed relentless international persecution against Wikileaks' independent journalism, which has publicized the crimes of Yankee imperialism against democracy and human rights, covered by the classified documents.

The understanding of the problem addressed here is associated with the concept of geopolitical Lawfare, as exposed in this book, especially in Chapters 1; 2.2; 4.1; 5.2. This concept corresponds to legal war practiced for geopolitical purposes, of the violence and power inherent in American law, applied outside its territory, to achieve geopolitical results of interest to the Yankee nation, manipulating the legal system under the guise of the legality of persecutions. The state organs of the United States and allied countries employ persecutory instruments toward the enemies, represented by defenders of sovereign national development.

• Huawei, a paradigmatic case

The United States vs. Huawei case is a scandalous paradigm of geopolitical Lawfare denounced by WikiLeaks and which led to Julian Assange's unjust imprisonment.

The U.S. Department of Justice, since the beginning of 2019, has denounced executives at the Chinese company Huawei, whose chief financial officer, Meng Wanzhou, remains arrested in Canada pending extradition to the United States. On February 13, 2020, the Yankee government lodged an indictment, against the Chinese company, in a federal court in Brooklin for allegedly violating US national security, conspiracy to steal trade secrets, money laundering, among other imputations, promptly unfounded, given the non-existent universal jurisdiction of the American State to judge international conflicts, which are the competence of the multilateral organs of the United Nations.

At the same time, the United States government is trying to pressure allied countries not to hire advanced 5G network technology, developed only and originally by the Chinese telecommunications giant. See what the representative of the US Public Prosecutor said:

> [...] "Today we announce that we have filed criminal actions against the telecommunications giant Huawei and its associates for nearly two dozen alleged crimes", said interim prosecutor Matthew Whitaker. [...] (EL PAÍS, Feb. 13th, 2020)

• Lawfare in Latin America

WikiLeaks, shortly after its founder's arrest, released the entire collection of secret files of the United States government that depict crimes committed against the international democratic order, nations, and peoples. From the extensive material, among other important information, there is the document of the Department of Justice of the US government of international cooperation to apply, in Latin American countries, the anti-terrorism and the anti-corruption and illegal financial crimes legislation. (WIKILEAKS, Oct. 30, 2009)

One of the events was the International Cooperation Seminar[4], held in Rio de Janeiro, between October 4 and 9, 2009, with representatives from several Latin American countries such as Brazil, Argentina, Chile, Bolivia, Ecuador, Venezuela, Mexico, and Uruguay. The Brazilian delegation presented itself with significant representation - all the states of the Brazilian Federation, the Judiciary and the Public Ministry, together with 50 delegates from the Federal Police.

Researcher Silvana M. Romano, Ph.D. in Political Science from the University of Buenos Aires, coordinator of the Geopolitical Analysis Unit of the Latin American Strategic Center for Geopolitics, developed studies on "psychological warfare, development assistance, and democracy" in the relations of United States with Latin America (ROMANO, 2019).

The political scientist points out that the relations of the American power with the satellite countries, Latin, remains based on the old methods of disinformation and perversion. However, in a new level of qualitative and quantitative development, with speed and penetration capacity unimaginable, thanks to the fake news and Lawfare. All of this, within the classic scenario of global competition by the imperialist powers of the Northern Hemisphere - rich countries hegemonized by the United States - struggling to control poor, underdeveloped or developing countries in the Southern Hemisphere.

In the context of Latin America, rich northern countries control the application of lawfare practices against the excluded, the vast and growing majority of the population. In tune with the pro-imperialist domestic allies, they use sophisticated domination technology to dismantle the weak Social States of Law constituted by the Latin American peoples in the last decades.

She says that Latin America is today, more than ever, a space of dispute settled in the legal field within the framework of the "war against corruption". It is only operating against the progressive left. Under the command of the United States, such a legal war operates through three lines of action. First, legal reforms and modernization of legal apparatus through the United States Agency for International Development (USAID); second, the embassies of the United States, in different Latin American countries, have participated in the processes of judicialization of politics, through links with business, political and local information sectors.

Third, the United States exercises the role of an "international judge", applying the Foreign Intelligence Surveillance Law and the Foreign Corrupt Practices Act in Latin America. The country demands are disguised as a crusade against corruption in the face of government officials and executives from Brazilian multinational companies, such as Odebrecht, which carries out major infrastructure works throughout the American continent, but also against Petrobras (in this sense, see ARAUJO, A. M; PINHEIRO, 2019).

The author argues that the experience of Lawfare, in South American countries, points to multiple objectives of promoting the cleansing on politics contaminated by government corruption, through the selective use of the organs of criminal prosecution against progressive governments; the criminalization of politics, resulting in the distancing of any political participation by citizens; in the promotion of the notions of the Minimum State, in the privatizations and consolidation of neoliberalism.

The author cites the event conducted by Columbia Law School on Car Wash: "Brazil's Car Wash Scandal and the Use of American Tools to Bring the Perpetrators to Justice". Center for the Advancement of Public Integrity. Columbia Law School. 6-8 February 2019.

• Car Wash Operation's Lawfare Headquarter in Brazil

As revealed by WikiLeaks, exposed in later lines, the state agents of the Brazilian judicial system received training, directly from the FBI and DoJ, among them, Sergio Moro, then judge of the 13th Federal Criminal Court of Curitiba, today, Minister of Justice of the Jair government Bolsonaro.

It remains that the Car Wash Task Force is the headquarters of Lawfare in Brazil to surrender or denationalizing judicial operations. It works like the post of abuses of the law that cause irreparable damage to citizens and Brazilian society, all disguised in the (selective) fight against corruption.

At the same time, journalist Luís Nassif brought to light a reliable document revealing the source of Lawfare in Brazil. He confirms that the FBI and DoJ are instructors of political agents from the Judiciary, from the Public Ministry, from the Federal Revenue and other authorities of the agencies of control of the public administration invested with superpowers, applied according to the strategic military, economic and political objectives of the American government. He said:

> [...] Since 2015, there was clear evidence of this cooperation and how judges and prosecutors in Paraná used the alibi of fighting corruption to destroy national engineering, especially companies that competed with American groups in Latin America and Africa. In Rio, Car Wash also had a clear economic bias, which cannot be attributed solely to the ignorance and exhibitionism of unprepared prosecutors and judges. The way they invested against the National Bank for Economic and Social Development, against financing the export of services, followed the same logic of dismantling the economy of the Paraná group. Now, released documents show that Judge Marcelo Bretas - the Sergio Moro from Rio

> de Janeiro - participated in courses in the United States, including the FBI, on the eve of the explosion of Car Wash in Rio de Janeiro. From January to March 2015, Bretas attended the Visiting Foreign Judicial Fellows program at the Federal Judicial Center. He reportedly worked on an article about the US' legal system, and how it balances the needs of law enforcement with individual privacy rights. Shortly after, the Car Wash Operation exploded. [...] (NASSIF, 2019)

Following the strategic dimension of geopolitical Lawfare, the choice of the law with potential for lethality to target and annihilate the enemy results in the application of American law - FISA, and FCPA, expanding the scope of action of the American authorities beyond national borders, aiming to achieve the objectives of the government and Yankee multinational private corporations, besides illegal cash from drug laundry for financing other clandestine operations worldwide.

In this regard, Intercept revealed that ex-judge Moro and the prosecutors of the Car Wash Task Force were at the service of the strategy of the hegemony of US imperialist interests. Petrobras was the only large state-owned oil company on the planet submitted to a billion-dollar compensation process by the US Department of Justice.

Minister Gilmar Mendes, at the Plenary Session of the Supreme Federal Court, on March 14, 2019, denounced the transaction as a criminal act perpetrated by the Republic of Curitiba to create what he called the Car Wash Party electoral fund. After the leak of The Intercept, Minister Alexandre Moraes of the Supreme

Federal Court suspended the private foundation of Car Wash and transferred a millionaire fund to a judicial account, making its application subject to the criteria of probity in the public administration (O GLOBO, Mar. 15, 2019).

According to André Araújo (ARAUJO, 2019) - lawyer and consultant at Potomac Partners, in Washington -, and Murilo Pinheiro (PINHEIRO, 2019) - president of the National Federation of Engineers -, Car Wash anti-corruption crusade led to the judicial recovery of nine of Brazil's 15 largest contractors. The Operation promoted the destruction and dismantling of the greatest asset of national engineering - made up of the large construction companies of public works that had eroded the technical capital ahead of the largest infrastructure work in the world. Brazilian multinational companies, experienced exporters, also global competitors, have become bankrupt companies, with executives imprisoned in Curitiba, and their engineers fired.

Car Wash caused the dismantling of important sectors of the national economy, mainly the oil industry and its supply chain, such as civil construction, metalworking, the shipbuilding industry, heavy engineering, in addition to the Brazilian nuclear program.

The crusade against corruption, undertaken by Car Wash Operationstate agents, had a clear negative impact on national economic indicators: closed jobs account for the condition of 67.6 million unemployed Brazilians, without a formal contract and/ or working in a precarious situation (informal), according to the Brazilian Institute of Geography and Statistics.

In summary, the dismissal of President Dilma Rousseff, in August 2016, was accompanied by the dismantling of important sectors of the economy, worsening the country's economic and social indicators.

The expert Murilo Pinheiro says that, in the first year of Lava Jato, the operation removed R$ 142.6 billion from the national economy, three times higher than the alleged loss of R$ 50 billion caused by corruption (v. PORTAL G1, Oct. 31. 2019; Aug. 11, 2015).

In this way, the performative discourse, based on the strengthening of the punitive state, with an exclusive emphasis on combating government corruption, repeats historical experiences of campaigns based on the coup strategy of fighting corruption, used to disengage the governments Vargas, JK and Jango, that proposed to carry out national development plans.

CHAPTER 8

LAWFARE'S DIAGNOSTIC AND PROGNOSTIC

THE STRATEGIC DIMENSIONS OF LAWFARE

Osmar Pires Martins Junior

8.1 Characterization

This diagnostic and prospective chapter on Lawfare, based on an extensive literature review, brings the main characteristics of the concept, with emphasis on its strategic and tactical dimensions (ZANIN MARTINS *et al.*, 2019b). The perspectives of the application of the theme are indicated from the contributions of specialists, enriched by the interactive debate with social agents - university professors, from the public and private schools, students, lawyers and professionals from other categories - participants in the Debate Panel on Lawfare.

The themes discussed by the authors take into account the Constitution of the Federative Republic of Brazil, specifically Articles 1, III and 3, I and III, according to which the main foundations for establishing the Democratic Rule of Law are the promotion of the dignity of the human person and a free, just and solidary society.

Contradictorily, nowadays, the Brazilian high representatives, in articulation with state agents of the judicial system, has acted in confrontation with the aforementioned constitutional commandments, frustrating legitimate and historical aspirations for a truly democratic society.

At the center of the debate, a new term emerges, which deserves to be studied and used as an instrument of struggle, defense, and advancement of democratic freedoms, as discussed in sequence. The use of judicial proceedings, though apparently legal procedures, for political purposes is not new (KIRCHHEIMER, 1961). The novelty is in the complexity of the strategic dimensions of Lawfare, which is not to be confused with the reciprocally associated concepts of judicialization of politics and politicization of the Judiciary.

The debate now being held contributes to understand the concept and characteristics of the term to test its usefulness, adequately characterize the strategies and establish the counterattack to defend the foundations of the Democratic Rule of Law, often violated by agents who systematically pursue countless people, always the most unprotected, in the passive pole of demand.

Lawfare is a neologism resulting from the grammatical contraction of the words Law and Warfare (war), which means legal war. It is an asymmetric war, fought from the illegitimate use of State's organs, including the justice system, intending to pursue and eliminate the opponent, with the most diverse objectives - military, political, commercial, and still geopolitical.

The Lawfare's target incorporates the figure of an enemy, selected in any field of public or private political relations, to paralyze him, by attacking fundamental, electoral, and even financial rights. Interestingly, Lawfare prospered in Latin America at the same time that government systems that were not aligned with conservative forces in international political relations reached power, internally aligned with democracy, defenders of more inclusive, participatory, and egalitarian public policies. Simultaneously, the neoliberal forces, always aligned with the institutional doctrines of the states of exception, formulated and executed Lawfare as a war strategy in defense of their interests.

• **Etymology**

Etymologically, the term was coined by Carlson & Yeomans (1975), as a peace tactic, expressing the good use of the law through the judicial demand in which swords would give way to words. But soon after, an American general used the term as an instrument of war against the Human Rights Courts to defend the interests of Yankee imperialism. Thus, Lawfare started to express what today means: the misuse of the law to replace traditional military means to achieve an operational objective (DUNLAP JR, 2001).

South African legal anthropologists and Harvard University researchers Jean Comaroff and John Comaroff established the strategic dimensions of Lawfare as a legal war unleashed by representatives of the colonialist state against the weakest target, aiming to defend the colonizer interests (COMAROFF *et al.*, 2006).

• **Definition**

Indoctrinators Cristiano Zanin Martins, Valeska Teixeira Zanin Martins, and Rafael Valim gave political meaning to the term. It means the use of the process, violence, and the power inherent in the law to achieve political and electoral results, through legal maneuvers, under the guise of legality, to pursue and eliminate the opponent from the electoral race, replacing the sovereign will of the people manifested at the polls.

According to the authors, “Lawfare is the strategic use of law to delegitimize, harm or annihilating an enemy” (ZANIN MARTINS *et al.*, 2019a, p. 26). The strategy of law and the instrumentalization of legal norms for Lawfare practices has three strategic dimensions, outlined below.

8.2 Strategic Dimensions

In the teaching of Zanin Martins *et al.* (2019a), the strategic use of the law has the purpose of destroying a determined enemy, extracting the central element of the Lawfare concept, constituted by its triple dimension: geography (choice of jurisdiction), armament (choice of law) and externalities (manipulation of information).

Understanding the concept of Lawfare involves studying the art of war, appropriating categories that have long been used by scholars in this field, such as Sun Tzu (TZU, 2006), author of the oldest military treaty in the world, written two thousand years ago or Prussian general Carl von Clausewitz (CLAUSEWITZ, 2017) or, at the same time, the colonels Qiao Lian and Wang Xiangsui, high-ranking Chinese officials who stated:

> [...] strong countries make rules, while those that stand up break them and exploit loopholes ... The United States breaks [UN rules] and creates new ones when those rules don't fit [their purposes], but one must follow your own rules or the whole world will not trust it [End FBIS Editor's Note]. (LIAN; XIANGSUI, 1999)

According to Kitrrie (KITRRIE,2016), the Lawfare concept has a triple dimension, similar to the "Art of war" that defines strategies based on the choice of geography or terrain where the confrontation will take place, the choice of weapons to be used, and the preparation of the climate subjective necessary to victory in the conflict. That is, the three dimensions of Lawfare are: i) the choice of jurisdiction; ii) the choice of law, and iii) externalities.

In military war or legal war, there are two well-defined sides: the ally and the enemy. In Lawfare, the state's agent will define hybrid warfare strategies - jurisdictional, legal, media, and psychological to pursue and destroy the enemy.

• **First dimension**

The first dimension of using the justice system to destroy the enemy concerns the strategic choice of the place where the legal battle takes place, that is, the choice of jurisdiction. This guidance is in the guide of the International Association of Promoters - IAP (ZANIN MARTINS *et al.*, 2019b), which makes it clear: for the success of the prosecution, it is necessary to identify the jurisdiction that brings together the almost absolute possibilities of condemning the enemy.

Regarding jurisdiction, in the Democratic State of Law, the principle of the natural judge prohibits the creation of a court of exception as well as determines that the judge must be competent to judge. If the case deals with Real state law, the legal attribution is of the court where the property belongs; if the demand involves a consumer relationship, the competence to judge the matter is the competent judge of the region where the consumer resides and so on.

It is not by chance that the processes that dealt with the allegations of corruption in the Brazilian state-owned oil company Petrobras were all distributed to a court specially defined for the judgment of a specific case, that is, the exception court of the 13th Federal Court of Curitiba, chaired by an exception judge - Sérgio Moro.

Thus, the acceptance of 100% of the denunciations and the confirmation of the conviction of 95% of the cases, by the court of appeal - the Federal Court of the Fourth Region, in Porto Alegre, capital of the State of Rio Grande do Sul -, are because the convict was not only an enemy's intimate enemy but also a target that was declared selected by the Car Wash Task Force.

• Second dimension

The second dimension of legal war refers to armament or the choice of the most appropriate law to target and annihilate the enemy. In Brazil, laws that have potential for lethality, from the point of view of the law as a weapon of legal war, can be highlighted those that define a criminal organization and prize-giving agreement (Law nº 12850/2013), money laundering (Law nº 12683/2012) or the Administrative Improbity Law (Law No. 8429/1992).

The formulation of the legal basis for the entrance exam and the condemnation request addressed to the appropriate court were fundamental for the state agents of Lava Jato to succeed in condemning and destroying the enemy. The strategic dimension of using the law as a weapon of war makes Brazil the second country in the world with the highest indexation of data in the Foreign Intelligence Surveillance Act (FISA). It is an American federal law that provides for procedures for physical and electronic surveillance of the collection of intelligence information.

Abroad, such information collection takes place under the Foreign Corrupt Practices Act (FCPA), which, in general terms, prohibits the payment of bribes to representatives of foreign governments to favor a business. Therefore, FISA and PCPA are laws with high harmful potential that, taken as a whole, allow the expansion of the action of USA authorities beyond their national borders, aiming at the achievement of the strategic objectives of the USA government and corporations.

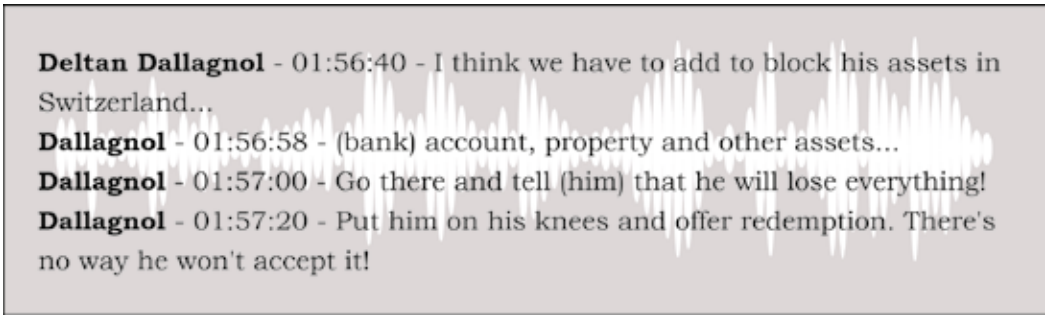

Figure 8. Private chat on the Telegram (on June 22, 2015): message sent by the Attorney of the Republic Deltan Dallagnol to the members of the Task Force of Car Wash Operation of the Federal Public Ministry - Curitiba, Paraná State (Fonte: THE INTERCEPT BRASIL, Aug. 29, 2019)

It is worth mentioning the dialogue published by The Intercept Brasil between Car wash attorneys, which took place on June 22, 2015 (Figure 8). Vaza Jato unmasked the strategy of leaking selective information to the commercial media and producing headlines to blackmail the executives of the largest Brazilian companies.

The people chosen as targets of the prosecutors underwent measures such as blocking assets, values, and assets, including abroad, to bend their knees, forcing the investigated executives to enter into winning collaboration agreements.

Within the scope of Lawfare's second dimension, we highlight the legal aspects of international political relations involving the use of justice bodies to subject Latin American countries to the hegemony of the interests represented by the imperialist powers, led by the United States.

• Lawfare and National Sovereignty

The strategic use of the law as an instrument for the destruction of sovereignty and the plundering of national heritage (cf. discussed in Chapter 8 below) can be exemplified in the scandalous to woundedly injure Brazil regarding US$ 3.5 billion deal between Petrobras and the United States Department of Justice (DoJ). It occurred as part of the action to repair injuries suffered by foreign minority shareholders as a result of lawsuits to combat corruption in the state-owned company.

The ill-fated settlement resulted in the transfer of R $ 2.66 billion to a private foundation, managed by prosecutors from the Car Wash Operation of Curitiba. However, the STF blocked it, and allocated the resources to a judicial account, and conditioned the application of the amounts to the legal and constitutional criteria of the public administration.

At the Plenary Session of the Supreme Court, on March 14, 2019, Minister Gilmar Mendes, casting his vote in Inquiry 4435 with harsh criticisms on the creation of the billionaire "Car Wash Foundation" and the United States government. Mendes disclosed the injury-homeland character about reimbursement of losses caused to US investors by corruption cases in Petrobras, describing the illegality of the initiative as an electoral fund with spurious power objectives by the Car Wash Party (v. AGÊNCIA BRASIL, Mar. 14, 2019).

In the scope of state oil companies, lawyer André Araújo, director of the National Electric Industry Union, advisor to the Minas Gerais Energy Company - Cemig, puts his finger on the wound, *verbis*:

> [...] The Brazil-US Judicial Agreement, 2001, was never designed to subject Brazilian state-owned companies to the jurisdiction of the US Department of Justice for crimes not committed in the United States. Petrobras - a giant state oil company, positioned among the 13 that are in the ranking of the

> 20 largest oil companies on the planet - was the only one submitted to the Justice Department, in an entirely irregular manner, which was only possible because Brazilian prosecutors took the case to the Department of Justice to sue Petrobras, something absurd, unusual and against the interests of Brazil. Under the Agreement, any of the Contracting States may invoke national interest in any matter and thereby withdraw the case from the scope of the Agreement, in the case of Brazil, the Central Authority is the Minister of Justice. Brazil had this "waiver" (escape) and did not use it due to disrespect and the spirit of voluntary submission. [...] that is to say, the Minister of Justice, at no time, invoked this or any other clause to remove Petrobras from the jurisdiction of the Department of Justice, which he could perfectly do, is a right provided for in the Agreement; not even the Embassy in Washington acted politically to defend Petrobras. At the same time that the Brazilian state company was punished, the Angolan state oil company Sonangol, where billionaire fortunes were dug, such as that of Isabel dos Santos, daughter of then-President José Eduardo dos Santos, the richest woman in Africa, according to Forbes magazine, signed an agreement with the American company Exxon to explore the Angolan pre-salt, an agreement that had the full approval of the United States government, which saw no problem at Sonangol, the Angolan billionaire factory. [...] (ARAÚJO, 2019, p.3)

- **Third dimension**

Lawfare's third strategic dimension is associated with externalities - mainstream (media), social networks, disinformation, and planned psychological warfare operations. Such a strategy consists of creating an environment favorable to law enforcement, condemnation, and destruction of the enemy, through the establishment of the collective conscience on the presumption of guilt and consequent systematic violation of the presumption of innocence.

The dimension of externalities appropriates and develops ideas and concepts from classic authors such as Clausewitz and Sun Tzu to amplify the "war on corruption with the elimination of the corrupt" - the enemy. The resources ostensibly used to make this strategy

feasible are fake news, false information, misinformation spread deliberately to influence or confuse public opinion (disinformation).

Commercial media is Lawfare's most important strategic instrument in terms of externalities. Journalist Leandro Demori, editor-in-chief of The Intercept Brasil, demonstrates that the commercial media unconditionally adhered to the condemnatory purposes of Car Wash Operation, broadcasting news originating from the Task Force or the 13th Court Federal de Curitiba, without checking the veracity of the fact, investigate, or listen to the other side, for convenience and interests unrelated to the professional exercise of journalism.

Laurindo Lalo Leal Filho, a retired professor at the School of Communications and Art at the University of São Paulo (USP) presents data on the sharp drop in newspaper sales during 2015, *verbis*:

> [...] According to the Circulation Verifier Index (IVC, an entity maintained by the advertising medium to measure media audiences) from January to December 2015, the journal Folha de São Paulo fell 14.1% in printed and 16.3% in digital. The journal Estado de São Paulo fell 6% in printed and 14.4% in digital. Only the journal O Globe went up a little bit in digital (0.5%) but fell 9.1% in printed [...] (LEAL FILHO, 2018, p. 152)

According to Leal Filho, the drop in sales regards the tireless repetition of subjects and editorial partisanship, increasingly open partiality, which tire the reader. In these circumstances, a systematic and long-running "fight against corruption" operation presented itself as a low-cost news source by calling a reporter on duty at the door of the Curitiba Task Force headquarters - which Leandro Demori describes as a "hotel journalism" of great popular appeal because corruption has the potential to increase sales of major newspapers.

According to the Manchetômetro[1], since January 2015, the news contrary to ex-president Lula - the main defendant and political prisoner of Car Wash Operation, a kind of trophy for the ruthless judge Sergio Moro, have prevailed. The alliance between the commercial media and Car Wash contributed to forming in the public opinion the presumption of guilt regarding former President Lula as "the head of the PT criminal organization" (see Figure 9).

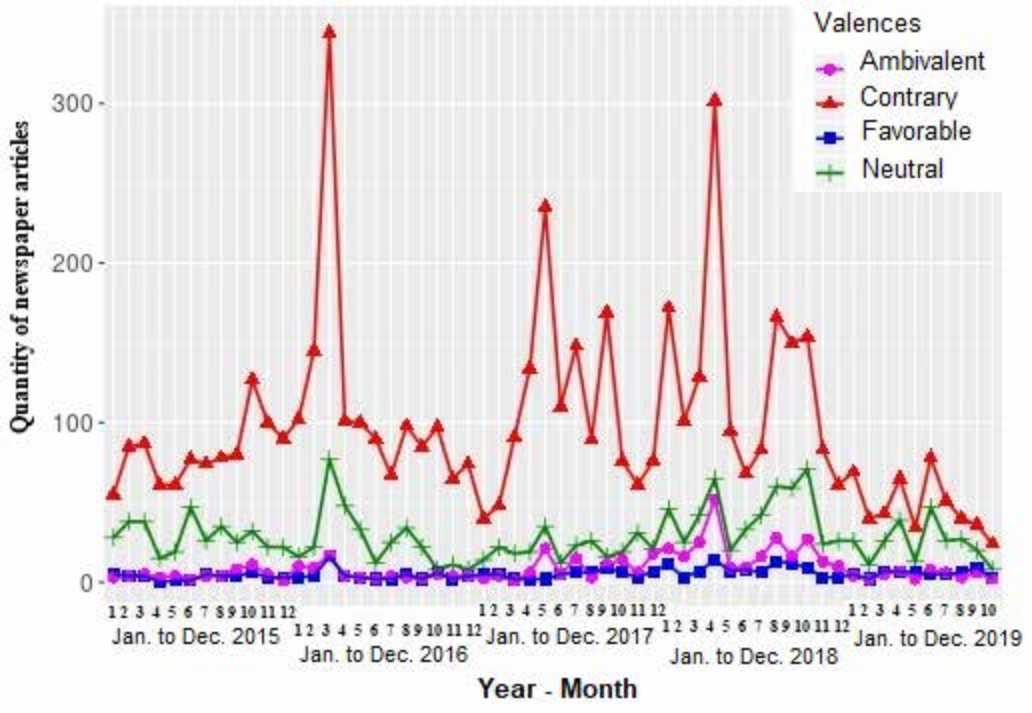

Figure 9. Distribution of articles about former President Lula in the commercial media from January 2015 to October 2019 (Source: Manchetômetro http://www.manchetometro.com.br. Accessed on Oct 15, 2019)

47 The Manchetômetro is a website produced by the Laboratory for Media Studies and the Public Sphere of the Institute of Social and Political Studies of the State University of Rio de Janeiro - UERJ, under the coordination of political scientist João Feres Júnior, to monitor the coverage of the mainstream media on economic and political issues and has no affiliation with a political party or economic group.

The process that accused former presidents Lula and Dilma and another three PT leaders of forming a criminal organization closed in December 2019, when a definitive absolute sentence was handed down by Judge Marcus Vinícius Reis Bastos, from the 12th Federal Court of Brasília. In the same period, since January 2015, articles about two major political parties - the Workers Party (PT) and the Democratic Party (DEM) - right-wing, were distributed with the opposite valence, concerning the left party, and with a neutral valence, about the right-wing conservative party, even though it was the protagonist of major corruption scandals.

The data from the Rio de Janeiro Federal University - UFRJ's Media Studies and Public Sphere Laboratory unravel the myth of impartial media and reveal the partiality of the journalism broadcasted by big media, which occupies the side of the operation that self-proclaimed "sweeping corruption" and "hunting the corrupt". The media support resulted that the Superior Courts confirmed, until the advent of Vaza Jato, 95% of the condemnatory decisions rendered by the judge of the 13th Federal Criminal Court of Curitiba (ZANIN MARTINS *et al*., 2017).

Therefore, commercial media and Task Force of Car Wash Operation satisfied each other, although the journalism has become a powerful oppressive tool decisively interfering in the prosecution of criminal cases. Vaza Jato series of journalism started in June 2019 by The Intercept Brasil website and antagonized Lava Jato. Headed by Glen Greenwald, the press organ promoted an important critical reflection about the anti-legal methods of Car Wash in the editorial line of some vehicles from major commercial media, such as Folha de São Paulo journal, Veja magazine, and BAND NEWS Radio. Not coincidentally, for the first time, in August 2019, the Supreme Court overturned two sentences handed down by judge Sérgio Moro in the context of the operation (FOLHA DE S.PAULO, Aug. 27, 2019).

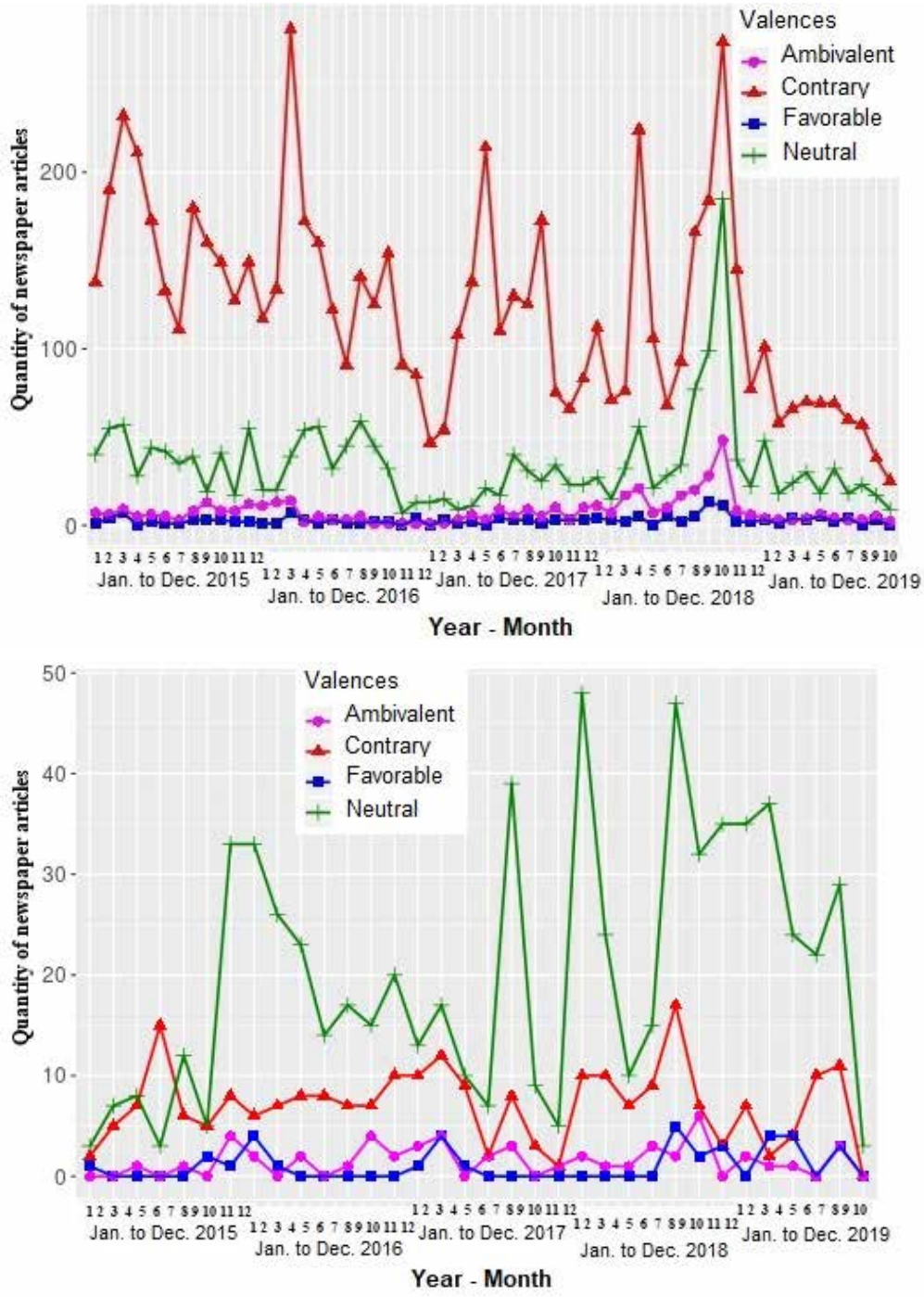

Figure 10. Distribution of articles about PT (upper) and DEM in the commercial media, January 2015 to October 2019 (Source: Manchetômetro, 2019)

8.3 Brazilian Media and Democracy

Political scientist João Feres Junior (*In*: ZANIN MARTINS *et al*, 2019b) teaches for better understand the emergence of Lawfare in Brazil is necessary to conceptualize it in the international context of state coercion, resistance, and postcolonialism.

The widespread belief in conservative political thinking that power is coercive leads governments to exercise force or coercive power through the use of government sanctions or the use of the force of laws. Contemporary political scientists like Morris Fiorina challenged the belief in the centrality of coercion and strength. The alleged authority of state power predates the strength they exert. By definition, legitimate democratic states do not use force and coercion as other states do.

In resistance to colonialism, it flourished in the countries of the colonized continents, especially in South America and Africa (CARNEIRO, 2013), several authors who have developed theories associated with the practices of freedom and sovereignty.

Neoliberalism reinvigorates the coercive power of the State with the centrality in the force of law as a weapon to destroy the dangerous enemy. And the enemy is anybody who defends the Democratic Rule of Law, anywhere and especially in peripheral nations, as Latin America is proof of this.

Lawfare is a very complex problem of internal and external connections that are difficult to visualize, given the specific lack of international political references such as those that regulate Human Rights. So it is necessary to resort to them to characterize the phenomenon and support the defense of the affected citizen or segments.

João Feres Junior states the deliberative and the agregationist theories to evaluated a democracy in the context of Lawfare. The deliberative theory presupposes a continuous process of transferring legitimacy in the sphere of public performance through representative institutions, based on laws and alternation of power (HABERMAS, 1997).

A country consolidates its democracy through permanent deliberations produced by state agents of the judicial system - courts and legal processes; Parquet, Judiciary Police, Federal Police, and their instruments of prosecution and investigation - all supposedly immune to political influences. This point of view comes from the deliberative theory.

The agregationist or realistic theory, on the other hand, considers that the choice of the representative suffrage by the citizen must be sanctioned permanently through accountability techniques to make possible the sign of the approval or disapproval of the represented to the representative.

Only the Legislative and Executive powers, under the status of actual democracy, are accountable. Therefore, this parliamentary's accountability passes through the thought control by media and the press, and deliberative state organs of the public administration.

From the points of view of both deliberative and agregationist theories, it is crucial to formulate the problem of a double dysfunction that affects the press and the justice system, both immune to the popular vote.

• The pattern of media coverage of presidential elections

João Feres Junior and Luna Oliveira Sassara, researchers from the State University of Rio de Janeiro (UERJ), examined the phenomenon of the corruption scandal in Brazilian journalism, analyzing the presidential elections of 2010 and 2014. They found a strong bias in journalistic coverage, with 95% of the stories about scandals of the administration of the popular democratic government of the center coalition - Left, against a paltry 5% of stories related to scandals by conservative governments in the center-right coalition. The quantitative analysis of the researchers reinforces the hypothesis of bias and partiality of the traditional Brazilian media, as evidenced by the press coverage data during the presidential elections of 2010 and 2014 (FERES JUNIOR; SASSARA, 2016).

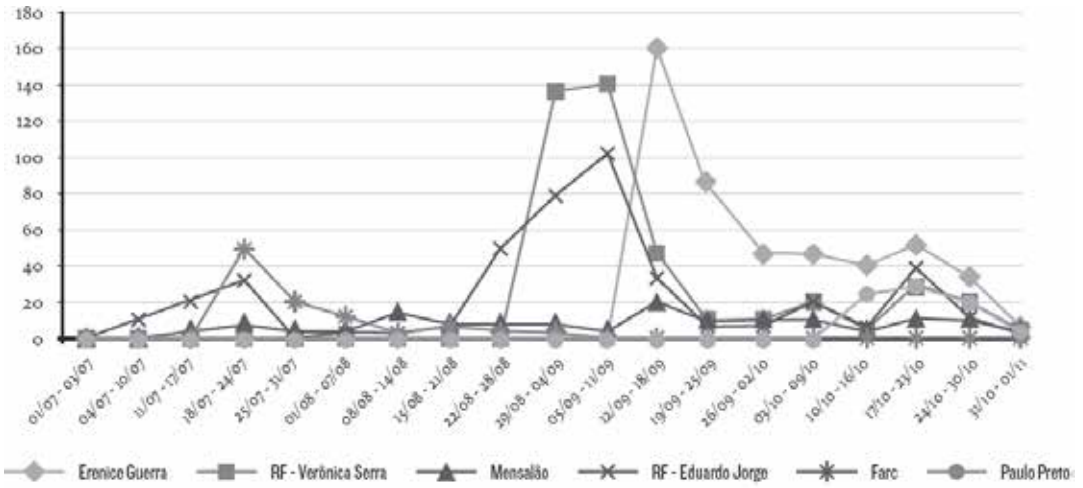

Figure 11. Time series of scandals in printed media during the 2010 election campaign (FERES JUNIOR *et al*, 2016)

The Figure 12 tells that the closer the electoral election date of 2010 approached, the more the media published articles about the alleged scandal involving the name of Minister Erenice Guerra, of

the Lula Civil House, the successor to former Minister Dilma who resigned from her position to run for President of the Republic. In July 2012, Erenice Guerra was declared innocent, and the case also for lacking evidence (FOLHA DE S.PAULO, Jul. 24, 2012).

According to the same authors, mass media replicated the pattern in the 2014 presidential election, when scandals again played a prominent role, with bias in the news coverage strongly opposed to popular democracy parties and their supported presidential candidate.

The division of cases confirms the partisanship of media coverage. There are five scandals attributed to the presidential candidacy of the center-left parties – "Petrolão" (Petrobras Scandal), "Mensalão Petista" (corruption trial in the Supreme Court against leaders of the Workers' Party), Parliamentary Commission of Inquiry - CPI on the management of Graça Foster ahead of Petrobras, and Correios MG (bribery scandal at the state postal company) - and only three related to the candidate of the conservative spectrum parties – "Cláudio Airport" (airport built with public funds and spotted with a helicopter containing 500 kg of cocaine on the farm of Senator Aécio Neves of the Social Democratic Party - PSDB), "Metrô SP-Alstom" (corruption in the construction of the São Paulo subway) and "Mensalão Tucano" (corruption action in the Supreme Court against leaders of PSDB). The coverage of these events was distributed throughout the campaign, with a massive predominance given to "Petrolão".

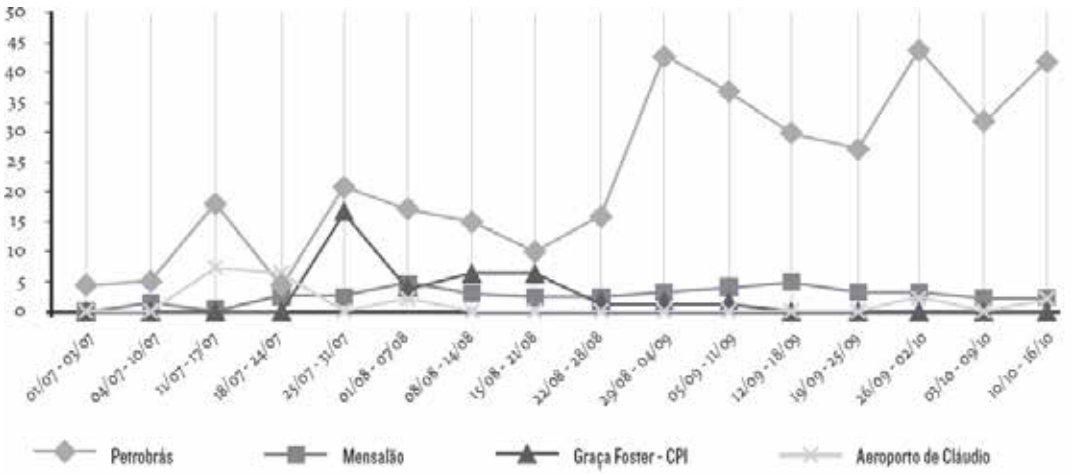

Figure 12. Time series of scandals most covered by print media during the 2014 election campaign (FERES JUNIOR *et al*, 2016)

The phenomenon of using the law to pursue the enemy, configured in Operation Lava Jato, accentuated the historically biased pattern of media coverage to involve the political leaders of the parties aligned with the formulation of public policies for the regime democratization, social inclusion, income distribution, and national sovereignty.

Feres Junior and Sassara conclude in the cited work that:

> [...] The scandalization of politics combined with extreme political bias, detected in this study, reveals a serious deficiency in the functioning of contemporary Brazilian democracy, despite the institutional progress achieved since its return in the 1980s. It is imperative to change this reality because, with the type of journalism practiced by the main Brazilian press, Brazil is the loser [...]. (op. cit., p. 224)

• Media and Car Wash Operation

In the current context, the media and the judicial system are even more aligned, from the last semester of 2014 to the present, in the dissemination of news generated by Car Wash Operation to criminalize political agents from various parties with accusations of corruption. Meanwhile, when media coverage concerns specific political agents, it seems that the news generated by Car Wash only heightened "facts" against determined political agents - the enemy -, while news related to their allies are "not facts".

In such cases, the permanent distribution of negative material as facts for a long period has the power of creating in public opinion the presumption of guilt of the person involved. Therefore, it is not enough to inform that a political agent was issued for this or that. The mass media works to multiply news by numerous other data regarding the resulting measures - investigative operations, search and seizure, coercive conduct, precautionary arrest, selective leakage, plea bargain, filing of criminal action, conviction, and imprisonment.

The selectivity from Car Wash Operation is not verified simply in the choice of the target attacked, but also through unseen subtleties to the general public. Since the beginning of the operation, the Task Force knew that former President Fernando Henrique Cardoso - FHC is the protagonist in several corruption cases - Miriam Dutra, Argentine oil company, Banestado (ESCOBAR, 2020). Likewise, in the same period, a dozen complaints were reported involving the former candidate for president of the Republic, senator, and current federal deputy Aécio Neves (PSDB-MG) in corruption. Despite the news on the ally's involvement in those cases of corruption, only the news against the enemy became a case for Lava Jato (see Figure 13).

The news generated by Lava Jato, from 2014 to 2019, of denouncements against former President Lula, were permanently covered by the mainstream media on topics so quantified and qualified: 777 articles on "Petrolão"; 546 on impeachment; 336 on the Atibaia site; 320 on the Guarujá triplex; and others of a smaller number, containing the following values: 72% contrary, 26% neutral or ambivalent and 2% favorable.

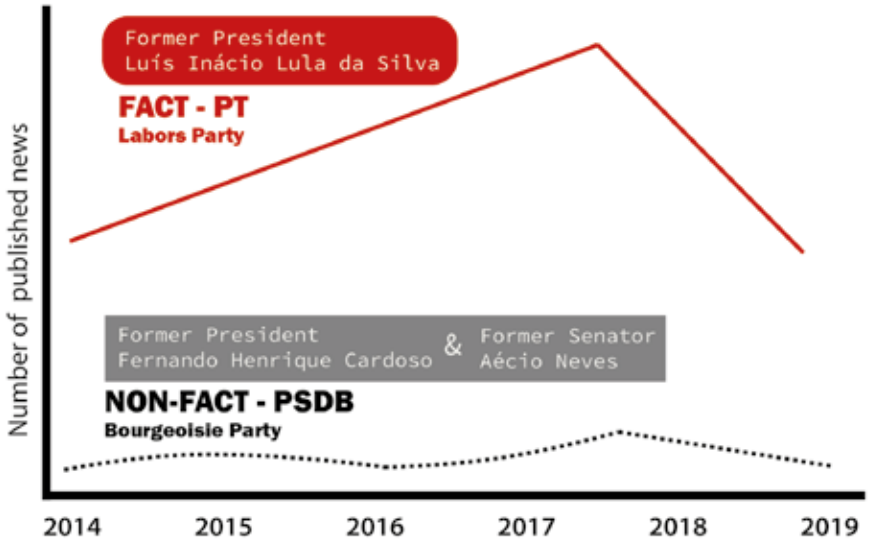

Figure 13. The distribution model of media coverage about Lula (PT), Fernando Henrique Cardoso (PSDB), and Aécio Neves (PSDB) in the news generated by Car Wash Operation in the period from 2014 to 2019. Source: FERES JUNIOR, In: ZANIN MARTINS *et al.* (2019b)

The evidence pointed out by Feres Junior allows us to diagnose that Car Wash depends upon mass media complicity for surviving. In the same way, it is possible to predict that the consolidation of the Democratic Rule of Law requires communication democratization as provided for in arts. 220 to 224 of the Federal Constitution, whose provisions were not regulated, such as the prohibition of monopoly or oligopoly, regionalization of cultural, artistic, and journalistic production, and the strengthening of other initiatives.

• **Hybrid Warfare**

According to Santiago Goméz (In Zanin Martins *et al.*, 2019b), Lawfare has a close relationship with hybrid war by using various instruments such as laws, cybernetics, the media, espionage, and psychological operations, including weapons and military equipment, based on the maximum "power, art and science" as formulated by Clausewitz in the book cited.

The political and geopolitical phenomenon of Car Wash induce the presumption of guilt and promote the popular reaction in support of the outbreak of the war against corruption. The general objectives of shaking morale and weakening the enemy through the news is a major, if not only, the cause of the evils that afflict our society.

• **Psyop**

Santiago Goméz teaches that, initially, Psychological operation (Psyop) was developed as a strategy of the United States Department of Defense, *verbis*:

> [...] The Psychological Operations manuals, known as Psyop, released by former National Security Agency agent Edward Snowden, are operations designed to transmit information to foreign audiences to influence emotions, motivations, reasoning, and, finally, the behavior of their foreign governments, organizations, groups, and individuals. Psyop's goal is to induce or reinforce foreign attitudes and behaviors favorable to the organizer's goals. [...] (GOMÉZ, 2018, p. 5)

According to Goméz, several pressure groups have emerged in Latin American countries against popular democratic governments. They organize demonstrations through social networks, such as

MBL in Brazil, Vem Pra Rua, and others following the suggestions in the manual for online intelligence operations Behavior Science Support for JTRIG'S Effects And Online HUMINT Operations, written by the United States in conjunction with the United Kingdom and NATO.

Nowadays, psychological operations are planned based on information such as emotions, motivations, reasoning, and behavior related to Anthropology, Sociology, History, Economics, and Neuroscience, allowing us to know the profile of the desired society. For example, in 2015, only 7% of the Brazilian population read a newspaper; this data is essential to know the people profile combined with the data of Social Psychology in its five senses - social cognition, persuasive communications, conformity, obedience, and interpersonal relationships.

IBM Watson Big Data is a tool for cognitive computing and predictive analysis based on information about friendliness, awareness, extraversion, emotional state, and openness that define personality models, allowing to establish a scale for measuring the emotions of a population.

Through such techniques, stereotypes are developed and reproduced, as well as slogans based on associations without coherent arguments such as "the proof about Lula's triplex is that the property is not in his name", abusively exploited by Car Wash.

• The Intercept catches Car Wash Operation

Journalist Leandro Demori explains, in Chapter 2.2, that the articles published by The Intercept Brasil in the scandal known as Vaza Jato surprised the Supreme Federal Court (STF), part of the mainstream media, and large segments of the population.

Vaza Jato revealed illicit acts in the shadow of public institutions that came to light with leaks from the dialogues held in the private Telegram chat among members of the Car Wash Task Force, coordinated by the Attorney of the Republic Deltan Dallagnol under the orders of Judge Sérgio Moro, holder of the Federal Court head office of the persecutory proceedings. Vaza Jato highlighted their relationship of complete promiscuity between the functions of the State-Judge and the State-Prosecution.

The content revealed by The Intercept Brasil is so alarming that it promoted reflection on the posture of commercial media vehicles, until then, entirely profiled with the news generated by the Task Force. On June 23, 2019, the Folha de S. Paulo newspaper started analyzing the Intercept collection, publishing, in this edition, and in several others that followed it, news about serious criminal facts practiced by Car Wash Operation members (FOLHA DE S. PAULO, Jun. 23, 2019).

In the same vein, the Veja magazine, a vehicle that has always given full support to all initiatives, hitherto disclosed by Judge Moro and prosecutors of the Republic of Lava Jato, entered into a partnership with Intercept and also began to publish articles on the irregularities found. A reflection published in the editorial of July 10, 2019, *verbis*:

> [...] About Principles and Values - In this edition that reaches you, reader, Veja publishes a report in partnership with the website The Intercept Brasil. The text uses as raw material the set of dialogues passed on by an anonymous source to journalist Glenn Greenwald and reveals fully how Sérgio Moro exorbitated his duties as a judge, commanding the actions of Lava Jato prosecutors. From reading the material, it is evident that the orders of the then judge were strictly carried out by the Public Ministry and that he behaved as part of the investigation team, a kind of technician of the team - and not as an impartial magistrate. [...] Veja has always been - and continues - in favor of Car Wash. The fight against corruption has been one of the pillars of our history. But the dialogues we publish violate due process, a cornerstone of the rule of law. [...] As a responsible media vehicle, we cannot support attitudes like this. This edition's report is the first in partnership with The Intercept Brasil. Commanded by editor-in-chief Sérgio Ruiz Luz, our reporters continue to search the enormous amount of dialogues and audios exchanged between prosecutors and judge Sérgio Moro. Like Folha de S. Paulo, also a partner of the site, we analyzed dozens of messages exchanged over the years between members of our team [reporters from the magazine] and the prosecutors. All communications are reliable - word for word (which reveals strong signs of the group's veracity). If this team comes across other irregularities during the investigation process, new reports on the topic will be published. [...] (VEJA. Editorial. On Principles and Values. São Paulo: Editora Abril, 10 Jul. 2019, p. 10, 34-43)

The Veja magazine report in the editorial transcribed that a large file was subjected to rigorous analysis, attesting to being real information, word for word, showing the Car Wash Operation case as extremely serious, *verbis*:

> [...] In the material that Intercept says it received from an anonymous source, there are almost one million messages, totaling a file with more than 30 thousand pages. Just a small part had been released so far - and it was enough to cause a huge controversy. In partnership with the site, VEJA analyzed 650 thousand messages with 20 thousand pages. Word by word, the communications examined by the team are true. The investigation shows that the case is even more serious. Moro did commit irregularities.

> [...] (VEJA. Justice at all costs. Unpublished dialogues analyzed by the partnership between Veja and The Intercept Brasil website show that Sérgio Moro did, indeed, irregularities during his period as the judge of Lava Jato. São Paulo: Editora Abril, July 10, 2019, p. 35) (VEJA, Jul. 10, 2019, pp. 10, 34-43)

The leaked conversations exposed illegal collusion between the prosecution - represented by the Federal Public Prosecutor's Office (MPF) and the judge (authority of the 13th Federal Court) - to harm and condemn the accused in corruption processes at Petrobras. The Intercept dossier unmasked, with concrete evidence - transcript of the conversations, audio, video of those involved -, a penal system that corrupts and destroys the Democratic Rule of Law.

• Convictions tainted by the illegality

Vaza Jato revealed Car Wash Operation as a typical example of Lawfare. The leaks from behind the scenes opened up the practice of innumerable crimes by the state agents charged with "fighting corruption" in Brazil.

The article published by Veja magazine showed the collusion between the accuser and the judge to promote prejudging justice in the 2nd Instance. The Federal Court of the Fourth Region (TRF4) judge made illegal and criminal arrangements with the Car Wash attorney to convict the selected target.

The judicial convictions handed down within the scope of the Task Force on-screen are tainted by illegality, according to decisions taken by the STF, not by coincidence, after Vaza Jato. In the case under discussion, the structuring of task forces in the judicial system violates the rules of criminal jurisdiction, established in the Constitution and

the laws, creating the figure of "thematic universal corruption judge" who mixes in one person the functions of investigating, accusing and judge, constituting a partial judge, who acts under the Lawfare strategies in pursuit of political targets.

The then-Attorney General Rodrigo Janot, who instituted the task forces in the MPF (see Janot's confession, below), raises the suspicion that Judge Sérgio Moro commanded the selection, condemnation, and removal of the enemy from the presidential election of 2018, for the benefit of the political ally, receiving in exchange the position of Minister of Justice of the beneficiary, the far-right government of Jair Bolsonaro. In this way, remain questionable the "advances in the fight against corruption" by non-constitutional means, produced at the expense of setbacks to the universal fundamental rights that were hard-won in the struggle for the democratization of Brazil.

• PFDC/MPF condemns illegal practices of Car Wash

Because of the series of Intercept articles published in partnership with Folha de S. Paulo, Veja, El País, UOL portal, and Rádio Band, exposing the dialogues held between state agents in the context of Operation Lava Jato, the Federal Attorney for Human Rights. Citizen - PFDC, an organ of the Federal Public Ministry responsible for the defense of Human Rights, analyzed the regulatory framework that affects this scenario and issued a public note containing strategic guidelines of great relevance for the debate now underway, *verbis*:

> [...] Corruption is a serious obstacle to the affirmation of the Democratic Rule of Law. It reduces the ability of governments to provide fundamental services, widens inequalities and injustices, and undermines the

> legitimacy of democratic institutions and processes. As the United Nations High Commissioner for Human Rights says, both rich and poor countries suffer from corruption and its effects, in public and private spheres, regardless of their political or economic systems and the degree of development. However, it is always the most disadvantaged and least represented populations in democratic spaces that bear the highest burden. In extremely unequal societies, such as the Brazilian one, the corruption contaminates at the root of the fundamental accomplishment fixed in the Constitution, of building a free, fair, and solidary Country (CR, article 3, I). National and international human rights institutions are committed to stopping and preventing corruption. It is, moreover, within the framework of the United Nations (UN) that the Convention Against Corruption was approved by its General Assembly in 2003, ratified by more than 180 countries, including Brazil. The preamble to the Convention recognizes the importance of fighting corruption as an adequate means of protecting democracy, the rule of law, sustainable development, and, as a result, human rights [...]. Thus, it is the duty of the Public Ministry, the Judiciary, and other organs of the justice system to promote the fight against corruption as an essential strategy for the democratic reinforcement and the affirmation of Human Rights. [...] (DUPRAT *et al.*, 2019, p.1)

At the same time that corruption overwhelms the fundamentals of the dignity of the human person and the rule of law, its confrontation requires that all human rights are fully respected, *verbis*:

> [...] The fight against corruption as with any other violation of Human Rights must fully respect all fundamental or human rights established in the Constitution and international law. Otherwise, the legitimacy of the effort to combat it would be removed. It is unacceptable that the State, to repress a crime, however serious it may be, becomes itself an agent that violates fundamental rights. The investigation, prosecution, and punishment of crimes under any circumstances can be confused with a moral crusade or become an instrument of persecution of any kind. For this reason, the Brazilian Constitution (among other provisions, Article 5, items XXXVII, LIII, LIV, and LV) and international law (for example, the American Convention on Human Rights, Article 8.1; the Statute of

> the International Criminal Court, Article 21.3 and the International Covenant on Civil and Political Rights, Article 14.1) require that criminal prosecution employes strict observance of the due legal process and the broad right of defense. [...] (DUPRAT *et al.*, Op. Cit. p.2)

According to the PFDC/MPF, the fight against corruption must take place within the due process, *verbis*:

> [...] One of the essential elements of due process is the right to a trial before competent, independent, and impartial judges, in which the defendant and his lawyers are treated equally with the accused. Therefore, the magistrate must not have participated in the definition of prosecution strategies, advising the prosecutor, or interfering to hinder or create animosity with the defense. In the same sense, international human rights law and international criminal law are oriented, which determine that, in any legal-criminal system, whether accusatory or inquisitorial, the accused are entitled to a fair trial. In the Brazilian case, taking into account that the 1988 Constitution adopted the structural accusatory system of the penal system, by which a fair trial will only occur when strictly observing the separation of the role of the accusing State office (MP) with the judging State (judge or court). Therefore, the defendant has the right to be prosecuted and tried by neutral and equidistant judges of the parties. The process in which judges, even without fraud, just act directly or indirectly, in promoting the interest of one party, to the detriment of the other, will be compromised. The dynamics of complex cases often culminate in conversations, outside the file, between the judge, the lawyers of the parties, and the members of the Public Ministry. [...] The magistrate must listen to the lawyer or member of the Public Ministry, being able to make inquiries. However, it is not allowed to make prior judgments about the specific situation and, even less, to advise the parties, recommend initiatives to them or transmit privileged information to them. If the Constitution and international treaties were not enough, the CPP and CPC define these conducts as suspicious, giving rise to the removal of the judge from the case and the nullity of the acts performed by him. These rules of due process and fair trial are mandatory. It cannot be

> considered that the fight against corruption, or any other serious crime, justifies tolerance with the breach of these principles, both constitutional and international. The costs of an argument in favor of results, despite the means used, are too high for the Democratic Rule of Law [...] (id., Ibid, p.3).

In the end, the PFDC/MPF public note analyzed the issue of freedom of the press about the legality of obtaining messages, concluding that, even if illegal, it does not obstruct the right of publication. In this way, the MPF's human rights defense body condemns the illicit practices perpetrated by Car Wash State agents, based on the revelations of Vaza Jato. The condemnation of such Lawfare practices is reinforced by the confession of the creator of Car Wash Operation, as the following section.

8.4 The Criminal Liability of Justice System Agents

The PFDC public note of the MPF condemning, in theory, illegal practices of Car Wash reveals frustrating behaviors of the agents of the judicial system that configure a dilemma to be faced by society in redefining the roles of judicial offices, without giving rise to the democratic setback, the guarantees, and rights of the citizen. State agents of the justice system who, in the exercise of their functions, work intentionally in deviation from the legal purposes of their respective public offices, must merit strict punishment, based on the rule established by article 37, paragraph 6 of the Federal Constitution, combined with articles 43 of the Civil Code and 181 of the Civil Procedure Code.

In the same vein, the sound doctrine of well-known specialists advocates for the control of the performance of state agents,

in general, and of parquet magistrates and representatives, in particular. However, there is still no substantial jurisprudence in this regard, as there are few judgments handed down by the national courts that managed to demonstrate punitory intent in the conduct of the specified State agent.

Nevertheless, there is no doubt that the political agent responsible for the law and the magistrate are responsible for damages caused to third parties, above all, in the judgment of unfounded actions to which the accuser, if not the judge, gave prior publicity, sometimes even before the filing of the lawsuit and the final decision, muddling the name of the person being investigated or accused.

According to the legal norm, the intent of the State agent must be proven through evidence attached to the case file. Unfortunately, points out Juliana During Almeida, "[...] even when such evidence is present, it is difficult for the singular judge to convict the responsible State agent for sponsoring reckless charges [...]" ALMEIDA, 2010, p. 59).

Given the lack of solid jurisprudence on the cases in question, the control organs are limited to verifying "technical failures" of the State agents. In the different stages of presentation and judgment of the persecutory actions, they skip entering into the merit of the conduct, in the illicit thesis, of the judge, accuser, or State investigator who produced an unfounded investigation or action, resulting in irreparable damage to the person enrolled in the passive pole.

Probably because of the jurisprudential limitation, the judicial system control bodies collude to stimulate the performance of a systematic accuser, in partnership with a justice judge, possessing

a genetic code that atavistically predisposes them to the enemy's destructive fate, muddying the name, honor, and image of a citizen who has not committed a crime or illegality.

• The Janot's confession

The concerns on partiality, partisanship, and politicization of the judicial system by Rodrigo Janot's unsuspected account about the backstage of Car Wash reveals that the operation "set the political system into check". In clear words, Operation Car Wash instrumentalized political objectives, namely the impeachment of President Dilma, the arrest of former President Lula, in addition to the destruction of the most expressive leaders from the center-left political coalition. The Operation caused the resumption of the hegemony of secular oligarchic domination that has always marked the history of Brazil.

The reading of chapter 4 - "How it all started: all power to Curitiba!", in Janot's book, shows that the choice of jurisdiction aimed at achieving a carefully planned political objective. The former Attorney General of the Republic narrates that, in the first half of 2014, at the request of the Attorney General of the State of Paraná, he instituted the Curitiba Task Force in that jurisdiction to investigate the 13th Federal District Court of Curitiba. Therefore, Lava Jato is a court of exception, judgment ex post facto, instituted in opposition to the principles in stone clauses of the Federal Constitution (art. 5, XXXVII and LIII).

Janot's confession contains the strategic conceptual elements of Lawfare associated with the first, second, and third dimensions - the territory in the jurisdiction of the Curitiba City, the selective

weapons of the investigation to destroy the "corrupt enemy", and the media partner for the formation of the presumption of the fault of the investigated, *ipsis litteris* (emphasis added):

> [...] At the end of 2014 [...] Teori Zavascki ratified the plea bargaining agreements of Alberto Youssef and Paulo Roberto Costa. Their allegations were seen as two bombs that would implode the political structures in Brasilia. Half of the National Congress would fall. The Planalto Palace would be hit hard. The fuse was on, and it would be enough for us, the recipients of the deliberations in Brasilia, to seek a good position to watch from the box the implosion of a rotten system. Truth? It was not so. When we saw the content of the deliberations, conducted by Curitiba, and started to unravel the annexes of the "atomic bombs that were going to blow up Brasília", we had a big disappointment. "This sucks, there's nothing, this thing is shallow!", I said in a conversation with Eduardo Pelella and Vladimir Aras, close advisers. Aras then remembered a dialogue he had with Carlos Fernando dos Santos Lima, less incensed than Deltan Dallagnol, but certainly the main strategist for the Task Force in Paraná. According to him, Santos said that the Task Force intended to "horizontalize to get there ahead of time", and not to "verticalize" the investigations, and that, therefore, we would have difficulty in substantiating the inquiry requests. What would it be like to "flatten out to get there ahead"? I didn't quite understand the concept. I don't think my colleagues do either. It was only after a long time, when I saw Sérgio Moro traveling to Rio de Janeiro, to accept the invitation to be Minister of Justice of the Bolsonaro government, that expression came to mind again. Would horizontalizing imply an investigation focused on a particular result? I didn't want to imagine that back then, and I don't want to dwell on that now either, but it still bothers me a lot, especially when I think of two separate episodes in time, but very similar. I am talking about leaks from excerpts from testimonies by Youssef and former Minister Palocci in the final stretch of the 2014 and 2018 presidential elections, respectively. Youssef's statements, according to which Lula and Dilma knew about the scams at Petrobras, were devoid of any legal value. Youssef did not share the intimacy of the Planalto Palace and had no proof of what he said. But even so, they had a strong

> political content, and there is no doubt that they had a huge electoral impact. The disclosure of part of Palocci's accusation had less effect. The topic addressed was no longer new. But it is not too much to suppose that it also helped to arm one side of the political game. These two cases, in my view, expose against Lava Jato which, at all times, has to defend itself from acting with a political bias. [...] (JANOT, 2019, p. 41-42)

The above transcript reveals the strategic dimension of media externality for the formation of the presumption of guilt of the selected target and the protection of the ally. This strategy was carried out in close partnership with Rede Globo, which led an intense and persistent media campaign to destroy the enemy, while omitting, withholding, hiding information to protect the ally. It reads in chapter 5 - "The day that the Lava Jato almost ended", of the book quoted, that:

> [...] Even before we started working with the reports made by the former director of Petrobras, Paulo Roberto Costa, and the illegal money handler Alberto Youssef, there was a serious discussion with the Car Wash people in Curitiba, which almost resulted in the implosion of the Task Force in Paraná. Suspicious that I was sponsoring an "agreement" with the contractors to stifle the Car Wash and the continuation of the investigations, the prosecutors in Curitiba threatened to make a rebellion against me. They even warned a TV Globo reporter that they would resign in the case. If that request had been carried out, it would probably have meant the end of Car Wash and my administration at the head of the Attorney General's Office. Fortunately, the crisis was circumvented and ended up being a turning point so that the relations between the prosecutors involved in the investigation of the Operation, in Brasília and Curitiba, hitherto marked by suspicion, became less strained. [...] (JANOT, 2019, p. 54)

Prosecutors of the Curitiba Task Force, with the support of Rede Globo, imposed a retreat on the Attorney General of the Republic

in dealing with the leniency program with the legal entities investigated from the Seventh Phase of Operation Lava Jato, when Justice arrested executives from nine contractors with contracts worth USD 60 billion with Petrobras - among them, Camargo Corrêa, OAS, Mendes Júnior, Engevix, and UTC. From that moment on, then Minister Teori Zavascki - succeeded by Minister Edson Fachin, after his suspicious death in a plane crash - started to function as the headquarters of the Lava Jato Task Force.

In March 2016, Minister Teori accepted the complaint of Attorney General Janot in the case that became known as "The list of Janot" or "statement of the end of the world", based on documents by the executive Benedicto Barbosa, seized in a Car Wash action, at the Odebrecht company office. These documents included a list of politicians from conservative center-right parties who received frequent payments from the contractor, containing names, codenames, passwords, accounts, and values deposited as bribes and corruption in the governments of the Union and States since the 1990s.

The "Janot's List", for reaching political leaders such as Eduardo Cunha, Michel Temer, and Aécio Neves, who commanded the removal of the President of the Republic, could not be divulged, under penalty of breaking the strategy to fight selective corruption initiated by Sérgio Moro and Dallagnol. For this reason, it was kept in the secret of justice and only disclosed in the mainstream media, after the senate impeached President Dilma Rousseff in August 2016 (PORTAL G1, Mar. 16, 2017).

- **The guardian of the Constitution**

Proven this political bias, not only by the leaks of Vaza Jato – the series of reports from the Intercept Brasil, Veja, Folha, El Pais, Band News Radio, and others, but also by the confession of Janot – the creator of the Car Wash Operation, the Constitutional Court finally exercise its role as guardian of the Magna Carta. The Supreme Court adopted decisions on matters of general repercussion and social interest that imply the absolute nullity of cases containing illegal sentences handed down by judge Sérgio Moro, namely:

> i) In the judgment of the Declaratory Action of Constitutionality 43 / DF, on November 7, 2019, the Plenary of the Supreme Court ensured the principle of the presumption of innocence (art. 5, LVII, § 2, of the CF88 combined with art. 8° of Decree 678/1992 promulgating the American Convention on Human Rights – Pact of St. Joseph of Costa Rica). The Supreme Court declared the constitutionality of Art. 283 of the Criminal Procedure Code - CPP, that forbidden imprisonment before the final sentence, with the only exceptions of imprisonment in flagrante delicto and substantiated precautionary imprisonment - both temporary and preventive. The winning thesis remained consigned in the conclusion of the vote of relator Celso de Mello, *verbis*:
>
> > [...] the provisional (or premature) execution of the condemnatory criminal sentence, even the one emanating from the Jury Tribunal, proves to be frontally incompatible with the defendant fundamental right to be presumed innocent until the final judgment of his conviction criminal, as expressly ensured by the Constitution of the Republic itself (CF, art. 5, LVII) [...] (MELLO, 2019, p.36)
>
> ii) The Plenary of the Supreme Court, on Oct. 2, 2019 Session, secured the fundamental right of the adversary and the broad defense with the means and resources inherent to it (Art. 5, LV, § 2,§ of the Federal Constitution combined with art. 8° of the Pact of St. Joseph of Costa Rica). In the Habeas Corpus number 166373, the majority of the judges of the Supreme Court decided on the general repercussion of the thesis that consecrates the full right of defense. According to it, in signed criminal proceedings of voluntary

> collaboration by collaborating and non-collaborator defendants, it is the right of the defendants to present the final allegations after the defendants who signed the collaboration agreement. The Supreme Court held that, as the interests are conflicting, deadlines must be successively granted, and not a regular deadline, to enable the defendant to speak last and, thereby, to defend himself against the allegations of the snitch defendant. This decision affects all Car Wash cases that have accused acting as a witness of the prosecution, in the face of the agreements of plea bargain signed with the prosecutors from Curitiba Task Force. (BRASIL, 2019b)

> iii) The President of the Supreme Court, Minister Dias Toffoli [3], ensured the inviolability of the tax secrecy of data and communications (Art. 5°, XII, Federal Constitution), except by court order, for criminal investigation or procedural investigation, in the form of Law 9.296/1996. The decision went to the Plenary of the Court for approval of a guarantor thesis regarding the threat posed by gigantic illegal and discretionary persecutory institutions triggered by the Minister of Justice, former-judge Sérgio Moro (BRASIL, 2019c).

> iv) Minister Gilmar Mendes, rapporteur of habeas corpus filed by the defense of former President Lula, made available the habeas corpus for trial in the 2nd Panel of the Supreme Court of the request for absolute nullity of the proceedings filed under Car Wash, based on the incompetence and suspicion of Judge Sérgio Moro (Art. 5°, XXXVII, LIII and LV, CF combined with art. 564, I and 572 CPP).

The first mentioned decision of the Constitutional Court resulted in the immediate determination of the Release Permit of former President Lula, deflating a reactionary wave of violent personal threats against the ministers of the Supreme Court. Veja magazine stated the above-mentioned decisions as reasons for the attack and identified those responsible, *verbis*:

> [...] Street movements, parliamentarians, and prosecutors raise pressure against decisions such as a veto of arrest in the second instance and restriction on the use of data. Most called for the impeachment of Ministers Gilmar Mendes and Dias Toffoli [...]. Violation of Gilmar

> Mendes' data, such as a residential address, income, and even the zodiac sign, represented the culmination until now of an angry escalation directed at the members of the Supreme Court. Other attacks come from an informal anti-Supreme Court parliamentary bench in Congress, consisting mainly of representatives from the support base of President Jair Bolsonaro. Prosecutors and public prosecutors also help to thicken up the chorus of heavy criticism [...]. Outside the offices, the protests are led by movements born from the campaign for the impeachment of Dilma Rousseff (PT), such as "Vem Pra Rua" (Come to streets) and "Nas Ruas" (On streets), and others that had already emerged in the wake of the Bolsonaro partisans wave, such as the "Brazil Conservative Movement". All with common points: they are anti-petistas, right-wing, conservatives, support the government, and have as their flag the fight against corruption. [...] (VEJA, Nov. 22, 2019)

- **Free Lula**

In turn, just after his freedom, former President Luiz Inácio Lula da Silva made an important statement, associating the attacks on the Supreme Court with threats against national sovereignty, democracy, and the fundamental rights and guarantees of the population. He said:

> [...] For 580 days, I was isolated from family, friends, and comrades, departing from the people, even though I had the constitutional right to appeal in freedom against the unfair and fraudulent sentence of a partial judge. A citizen right that has only now been proclaimed by the Supreme Court, for all, without exception. With the weapons of truth and law, I will continue to fight for the courts to recognize now that I was convicted by those who could not even have judged me: a former judge who acted outside the law, wiretapped private lawyers, lied to our country and the courts, before baring his political goals. I will fight for overturning the sentence they give me and for a fair judgment I didn't have. At 74 years of age, I have no place in my heart for hatred and resentment but for those in this country that suffered the humiliation of a false accusation because of the color of their skin or by their humble social origin. I know the weight of

prejudice, and I can feel how I have been wounded in my dignity. And that doesn't go out. [...] I came back with a lot of wish to talk about the present and especially about the future of Brazil. But soon [...] they said I should be careful not to polarize the country. It would be more useful to silence certain truths so as not to disturb the political environment [...]. Saving the country from the destruction and social chaos that this government is producing is not a task for a single party. We have been elected and governed in alliance with other forces in the popular and democratic fields. As much as they try to isolate us, we are together in opposition with parties of the center-left and with social movements, central unions, and leaders of society. Although so many have made mistakes before and after our governments, it is only we who demand the self-criticism we make every day. They want from us a humiliating act of contrition as if we had to ask forgiveness for continuing to exist in the hearts of the Brazilian people, despite everything they have done to destroy us. I need to tell you some truths about this. [...] The self-criticism democracy and the rule of law expect is for those who in the media, Congress, sectors of the judiciary, and prosecutors who promoted the greatest judicial farce that this country has ever witnessed, in the name of ethics. The world today knows that, unlike fighting impunity and corruption, Car Wash has corrupted itself, the electoral process, and a part of the Brazilian judicial system. Sergio Moro has left dozens of confessed criminals unpunished whom he has forgiven, and they remain very riches. What to say about fighting impunity if were released 130 from 159 defendants at least? [...]. What ethics is this that condemns unemployment, without appeal, two million workers, destroying companies to save bosses accused of corruption? [...] Brazil's economic indicators worsened [...]. The cost of living for the poor has increased, and people have returned to cooking with firewood because they cannot buy a gas canister. You have to tell some truths about that, too. First, Brazil has not yet bankrupt because of the 370 billion dollars in international reserves that we (PT governments) accumulate - and they want to waste in the interest account [...] The international markets that we open - and their irresponsible foreign policy is closing [...]. We discovered the pre-salt oil field - and they are selling it cheap and quickly [...] I always believed Brazilian people are capable of building a great nation as height as their dreams in this privileged place in which we live

> of immense natural and human wealthiness. We have already proved that it is possible to face backwardness, poverty, and inequality, challenging powerful interests opposed to the country and the people. Sovereignty means independence, autonomy, freedom. The opposite is dependency, servitude, submission. It is what is happening today. [...]. Betraying sovereignty is the greatest crime a government can commit against its country and its people. [...] Be alert to ones who are taking advantage of this spree of handing over the sovereignty to predatory privatization because it will not last forever. The Brazilian people must find the means to recover what belongs to them. And you will know how to collect the crimes of those who are betraying, delivering, and destroying the country. [...] A country that does not guarantee quality public education to all its children, adolescents, and young people is not preparing for the future. But it seems that they forwarded Brazil in a time machine and sent us back to a past that we had already overcome. The past of slavery, hunger, mass unemployment, external dependence, censorship, obscurantism. Brazil needs to travel back into the future. [...] Today I make myself available to Brazil to contribute to this journey to a better life [...]. Without hatred or resentment, which build nothing, but aware that the Brazilian people want to resume the construction of their destinies that we must make together a sovereign, democratic, just Brazil, in which everyone and everyone has equal opportunities to grow and dream. [...] (LULA DA SILVA, 2019, pp. 1-13)

• The Car Wash Political Party

As can be seen from the reading of the passage-discourse, the political activity of former President Lula bothers the regime of far-right government established through Lawfare practices. The elite, impotent to defend before public opinion the dismantling of the Democratic Rule of Law, makes use of the partisan and partial judicial system – the "Car Wash Party" – to annihilate the enemies.

The Federal Regional Court of the 4th Region - TRF-4, in Porto Alegre/RS, quickly exceeded 1941 cases and judged the appeal of

the case Atibaia grange (Criminal Action No. 5021365-32.2017/ PR). The sentence was handed down by Moro's substitute judge, in the 13th Criminal Court of Curitiba, who sentenced Lula for corruption and money laundering to the penalty of 12 years and 11 months in prison.

The appeals court of Car Wash not only maintained the conviction handed down by the first-degree judge but increased the sentence. The regional prosecutor of the Republic – representing the accuser body of the Federal Public Prosecutor's Office (MPF) – changed position in the opposing declaration embargoes in the file that called for an annulment of the sentence – now manifesting by the conviction with an extended sentence of Lula in the case Atibaia grange, *verbis*:

> [...] So what do we have here? Works paid for by people who benefited from the management of former President Lula made in a grange that was used by him. Is that a crime? Yes. [...] (Regional Prosecutor of the Republic of the 4th Region Mauricio Gotardo Gerum – initial allegations presented at the trial session of the defense appeal on Nov. 17, 2019)

The judges of the 8th Panel of the Federal Regional Court of the 4th Region - TRF-4, in Porto Alegre / RS, followed the position of the accuser through the unanimous, unfounded, absurd, and atypical conviction demonstrated by the simple confrontation with the Penal Code – CP. The CP defines corruption as a crime committed in the active and passive modality as an illicit of corruptors and people corrupted.

• Passive and active corruption

Article 317 of the Penal Code typifies the crime of passive corruption as "soliciting or receiving, for themselves or others, directly or indirectly, even if outside the function or before assuming it, but because of it, undue advantage, or accepting the promise of such advantage". There is no evidence in the prosecution that Lula requested or received the Atibaia grange – rural real state located in a municipality in the State of São Paulo – in exchange for any unlawful advantage, but that he only used it.

According to Article 333, sole paragraph of the Penal Code, active corruption is: "Offering or promising undue advantage to a public official, to determine him to practice, omit or delay act of office", subject to the penalty of "imprisonment, from two years to 12 years, and fine", which may be "increased by one third, if, due to the advantage or promise, the official delays or omits an act of office, or practices it by infringing functional duty."

If active corruption has to do with the act of offering unlawful compensation, then passive one is related to receiving such benefit. The corrupt public agent is who commits this illicit. The accusation occurred after Lula ended his presidential term, so he is not even a public operator or corrupt because there is no evidence of solicitation or receipt of the undue advantage.

Despite the atypicality of the complaint, the Federal Regional Court of the 4th Region – TRF-4 maintained the conviction handed down by the singular judge, and increased Lula's corruption penalty to more than 17 years for attending to Atibaia grange, which the accusers recognize is not owned by Lula. Indeed, the reforms in the

Atibaia grange were made after Lula left the post of President. In summary, the accusation did not dislodge the obligation to present evidence linking the works on the property to any act of office (e.g. one document signed by Lula that relates the reform of the grange with contracts for services at Petrobras).

• Copy & paste sentence

Contradictorily, the same judges of the 8th Panel of the TRF-4, in the appeal of case no. 5062286-04.2015/PR, in the session before the case of the Atibaia grange, unanimously annulled the sentence of Judge Gabriela Hardt for irregularities such as usurpation of the jurisdiction of the High Court, communication of information allegedly false to a magistrate, and lack of foundation of the decision.

The judge Leandro Paulsen accompanied the relator's vote, of judge João Pedro Gebran Neto, and pointed out that the "Ctrl+C Ctrl+V" sentence assigned by Gabriela Hardt, the substitute judge of Moro in the 13th Criminal Court of Curitiba, was null and void. The sentence is opposing to Article 93, IX, of the Federal Constitution, which determines that all judgments and decisions of the justice will be public and reasoned, *verbis*:

> [...] appropriated *ipsis litteris* of the grounds of the final allegations of the Federal Public Prosecutor's Office, without making any reference that she was adopting them as reasons to decide, bringing as if they were her arguments, which can not be admitted [...] (CONSULTOR JURÍDICO, 2019a)

Meanwhile, the irregularities that led to the annulment of the sentence of the judge of Curitiba, in the mentioned case 5062286-04.2015 / PR, were not considered in the trial of the case of the

Atibaia grange, despite Complaint No. 30.372/PR (BRAZIL, 2019d), intervened by the defense of former President Lula, who pointed out similar irregularities. The Car Wash Court continued the trial, in a clear violation of art. 5, caput, the first part, of the Federal Constitution, which states: “all are equal before the law, without distinction of any nature”.

- **Kelsen Pyramid**

According to the consecrated doctrine of the Pyramid of Kelsen that establishes the hierarchy of legal norms: the lower ones (founded norms) remove their basis of validity from the superiors (founding norms). The Constitution occupies the apex of the basis of the validity of all other laws of the system. Thus, no rules from the legal system can be owed to the Constitution, of which the Supreme Federal Court (STF) is the guardian.

In analyzing the constitutional appeals on the cases tried by then-Judge Sérgio Moro, approved by the Car Wash Court (TRF-4), the Supreme Court decided that before-mentioned cases are subject to absolute nullity, for the transgression of the basic constitutional principles, as follows:

i) The jurisdiction to judge facts relating to a rural property located in a state of the Federation rests with the Federal Court of that State, e.g., a lawsuit about a grange located in Atibaia / SP should be judged by the Federal Court of São Paulo, and not in the City of Curitiba / PR;

ii) All cases, including those of Car Wash Operation, which have whistleblower defendants and denounced defendants, are subject

to the constitutional principle of the broad defense of the accused. The Supreme Court ruled with the general repercussion that the accused should defend himself after the snitch defendant. The accused has to know about what is the accusation. Otherwise, it harms the constitutional right of the broad defense, nullifying the whole process.

- **Meritorious aspect**

The merits of Criminal Action No. 5021365-32.2017.4.04.7000 – case Atibaia grange demonstrates the lack of typification of the crime concerning Lula conviction: there is no proof of corruption or act of office. The renovation works on the grange were made to receive the presidential collection after leaving the post of President of the Republic. No document or witness has proven any wrongdoing at Petrobras when he served both presidential terms.

International audits carried out by Petrobras during the government Michel Temer (political enemy of Lula and Dilma) and joined to the record, by determination of the Federal Court, according to news of broad public knowledge, attest to the dismissal of the accusation against Lula of use of resources of the oil company in the reform of the grange (EXAME, May 29, 2017). Moreover, the Car Wash Court (TRF-4) denied joined the file of the Atibaia grange of the Expert Opinion Documentoscopic, prepared by the Del Picchia Institute, to the clear detriment of the defense (cf. Complaint No. 30,372/PR).

• ***Reformatio in pejus***

Without any evidence of corruption in the Atibaia grange case, the penalty imposed in the sentence of the judge a quo was increased by the court ad quem. The TRF-4 violated the prohibition principle of reformatio in pejus, according to which there can be no reform of the decision for the worse. It is what article 617 of the Code of Criminal Procedure determines:

> [...] The court, chamber, or class will comply with its decisions as provided for in the arts. 383, 386, and 387 of the Code of Criminal Procedure, in what is applicable, but the penalty cannot be aggravated when only the defendant has appealed the sentence.[...]

That is, as there was an appeal of the defense against the sentence of the singular judge who sentenced Lula to 12 years and 11 months, the recursive body of the 8th Panel of Car Wash Court (TRF-4) aggravated the situation of the defendant. and did increase the sentence to 17 years, one month, and ten days.

The three judges of the 8th Panel of the Car Wash Court (TRF-4) keeps a clear complicity relationship with the illicit acts committed by the partial judge Sérgio Moro. After condemning and having Lula arrested, Moro assumed the position of Minister of Justice of the far-right government of Jair Bolsonaro – betting on the confrontation with the Supreme Federal Court - STF.

Dear readers, if the crazy decision of the Atibaia grange is applied, then, be prepared for neofascism arrived: the Supreme Court will be closed without even needing a cable and a soldier (FOLHA DE S. PAULO, Oct. 21, 2018), the National Congress will be banned, the free press will cease to exist for good, constitutional guarantees and

fundamental rights will be extinguished. If you see on the horizon an old acquaintance: the dictatorship that comes galloping! (PORTAL UOL, Nov. 29, 2019)

8.5 New Policy for Old Practices

Lawfare's conceptualization brings strategic elements to understand the use of the law as an instrument of political, geopolitical, commercial, and other goals. It is not new in western democratic countries. Liberal John Locke, in the Second Treaty on Civil Government, warned of the misuse of laws by the administrators of justice to start a war against victims.

In Brazil, the novelty lies in the characterization of Lawfare, in conceptual terms already under consideration, as a coordinated and articulated instrument of attack on fundamental rights and guarantees, aiming to rewind the Democratic State of Law established by the citizen constitution – the Federal Constitution of Brazil, promulgated in 1988.

The conjuncture imposes the adoption of brakes to regulate state action, inhibit its performance and reduce its punitive capacity, to be able to balance the struggle between the interests of authoritarian far-right thinking that has recently ascended to collective and individual power. This challenge stems from the classic liberal thought, as exposed by Locke, in the face of the threats posed by the central coalition in Brazil. Those forces falsely manipulate liberalism, but in practice, relativize, restrict or systematically affront all dimensions of human rights, including the first, generated by classical liberalism for the defense of the citizen against the State of exception.

• Lawfare germ in judge Sanches case

The perversion of the justice system for political purposes was hard fought for decades, especially after the end of the military dictatorship in Brazil. The enactment of the 1988 Constitution reopened the path of re-democratization in the country. However, the elite conservatism of the civil service began to influence the reactionary behavior of the operators of the laws, who disrespect the Magna Carta. as illustrated in the excerpt, *verbis*:

> [...] Unfortunately, as absurd as it may seem, situations arising from the misuse of the law are repeated throughout the country. Civil and police investigations are launched behind closed doors by authorities constituted of accusatory power, without social control, from forged evidence that disrespects the contradictory and subjects the defenseless citizen to a condition of inequality, without power reaction before the judiciary. This arbitrariness causes kind to the judge Eduardo Walmory Sanches who wrote the book "The illegality of the evidence obtained in the civil inquiry", recently released by Forense publishing. The author states, on page 3 of the work, that "society is in the face with a serious and dangerous fact. It seems that Brazil escaped the dictatorship of the military and fell into the dictatorship of the Public Prosecutor's Office." I believe that the dictatorial mandate of which Judge Sanches tells us has a tripod in the corrupted police, in the partisan Prosecutor's Office, and the partial media dressed of neutral. It is the dictatorship of the MP's formed by a triumvirate that yields injustice, media headlines, and newspaper sales. [...] (MARTINS JUNIOR, 2008, p. 398)

For more than a decade the misuse of legal processes for political persecution has been pointed out. In 2006, Judge Sanches diagnosed the seeds of a legal war baptized as "dictatorship of the MP (Public Ministry)". According to Sanches, the reality of the regime now is worse than the military dictatorship, because, against

it, there is no way to escape unless for the Judiciary, where the accuser - prosecutor or prosecutor of the Republic - is placed next to the judge – judge of the law, judge or minister, in all instances of the judicial system.

The accuser is interested in the action, provides witnesses, gathers evidence, assembles the charge behind closed doors, all according to his convenience and interest. The accused – the other party, citizen, public agent, businessman, union leader, others – arrives at the judiciary in disadvantaged conditions and inequality in the dispute. The citizens trapped into a persecutory net are punished by a moral lynching through sensationalist headlines which condemn by summary rite. After that, an exception court of justice based on public opinion prejudges and convicts the defendants.

For a long time, Lawfare has been gestated teratologically in the incubator of a justice system constituted by the triumvirate political police, partisan prosecutors, and partial media. So, the initial term coined by Judge Sanches - MP's dictatorship - gained expanded meaning, in 2008, when the author who signed this chapter requalified the expression: the tripod of the Judiciary Police, equipped for illegal political purposes from the partisan Public Prosecutor's Office and of partial media dressed as neutral.

The seed of the MP's dictatorship germinated in the bowels of the organs of the justice system, a structure dedicated to promoting injustice, exemplified in the case of Eduardo Walmory Sanches. He is a Judge of Law from the Court of Justice of the State of Goiás, with a postgraduate degree in Diffuse and Collective

Interests from the Superior School of the Public Ministry of the State of São Paulo, university professor and author of the book "The illegality of the evidence" published in 2006. His book is key to understanding the case that involved him as a victim of using the law to destroy the enemy.

The magistrate develops a topic of great socio-legal utility that remains current and controversial today. It addresses Public Civil Action - ACP from the perspective of responsibility with the democratic principles established by the Citizen Constitution of 1988. He criticizes the role of the Parquet member in filing ACPs based on Public Civil Inquiries - ICPs instructed in permanent conflict with fundamental rights and guarantees such as the adversary, the broad defense, and due legal process (art. 5, LIV and LV of the Federal Constitution).

During the 21st century, the inquisitorial ICP represents the vilification of Human Rights. It inflicts enormous losses upon an increasing number of citizens listed as subjects to investigations conducted by State agents, only to justify the preconceived conclusion. Under these conditions, the pre-procedural phase of the ICP contaminates the procedural one. It is unconstitutional.

Because of this, the magistrate Sanches defends the condemnation of the Public Prosecutor in the penalties of litigation in bad faith and payment of attorney fees with the consequent personal liability of the state agent. In addition to the doctrinal, normative, and jurisprudential discussion on the subject, the author indicates models of petitions for a defense of the Parquet's victims. Sanches also proposes the change of federal legislation on this concern.

Conceived as procedural instruments for the defense of democracy, of diffuse, collective, and individual rights that are unavailable, ICP and ACP have become nor only the realization of personal whims, in the satisfaction of momentary evidence from State agents in a tool of power struggle, but powerful tools of Lawfare.

The rule of the ICP is the unilateralism of the investigation. On the other hand, when manipulates public opinion through selective leaks and wide media advertising, it accomplishes the conviction of guilt, resulting in an imitation of the lawsuit filed according to the performative speech of the state agent. Thus, in ACP, the real truth is less sought to avoid contradictory arguments and broad defense.

These deviations that are now evident in the light of day were discerning by Sanches more than a decade ago. Such aberrations thrived in the shadows of the lack of personal and patrimonial responsibility of the State agents in charge of the investigation, prosecution, and trial. These authorities acted with liberty as if they were holders of a safe-conduct to practice all sorts of illegality within the scope of the ACPs, as evidenced by the leaks behind the scenes of Car Wash Operation revealed by The Intercept Brasil (see Chapter 2.2).

It is worth to remember that only after the state authorities of the infamous Operation produced their national damage, the National Congress did pass the Abuse of Authority Act. In the book mentioned, Judge Sanches guides victims to defend themselves against Parquet's unfair accusations. In reprisal, the magistrate had his name involved in police investigations mounted by the

prosecution and widely disseminated in the regional and national media, in the context of the "success" of the time - the scandal of the sale of sentences, *verbis*:

> [...] Petrolina's administration assistant, Rogério Castro, 27, was arrested yesterday on charges of trying to sell a court order. He was filmed inside a steakhouse in Goiânia, allegedly receiving bribes to benefit the company in the compensation process (in the civil area) established in Nerópolis. The egregious was set up by prosecutors, who have been investigating the case for a week. [...] With the help of seven military police officers of the Group for the Suppression of Organized Crime (GRCO), yesterday [24/01/2007], at 1:14 am, the aide was arrested inside the bathroom of a steakhouse at the time he counted the money [six hundred and fifty reais equivalents to US$ 116,90 advanced as part of the negotiated amount of sixteen thousand reais equivalents to US$ 2.877.69). After the accused arrest, the police drove him to the State Police Of Crimes Against Public Administration (Derccap), where the delegate responsible for the case, Celso Euzébio Ferreira, began to listen to witnesses. [...] The accused is an employee of Petrolina administration. Two years ago, he was available to the judiciary of the municipality and was appointed advisor to Judge Eduardo Walmory Sanches, holder of that district. Walmory also replaces, since the beginning of the month in Nerópolis, where the aide acted. [...] "I've lost the ground and I'm so far based on tranquilizers." The statement is from judge Eduardo Walmory Sanches, who became aware of the arrest of his employee through the Internal Affairs Court (TJ-GO). The magistrate says that when he received the news of the arrest, he asked if Rogério Castro had killed anyone. "When the corrections man told me no, he was arrested for corruption, I was shocked," he says. The judge has already signed a document returning the employee to the Municipality of Petrolina, at least until the final decision on the case. Acting in Petrolina, since 2004, Walmory reports that Castro has been working alongside him for about two years. [...] In this period, as the judge says, he never received any complaint about the aide's performance. He says that last year he worked four days a week in Goiânia, and one day in the countryside. In this period, the advisor was responsible for bringing proceedings for analysis of the magistrate in the Capital and, therefore, always had free access to the file. (O POPULAR, Jan. 25, 2007)

Magistrate Sanches entered the crosshairs of the Public Prosecutor of the State of Goiás, which triggered several proceedings against him, *verbis*:

> [...] The Attorney General's Office referred, yesterday [28/01/2008], to the Attorney General of Justice of Goiás, judge Floriano Gomes da Silva Filho, the procedure initiated by the Public Prosecutor's Office to investigate alleged irregularity practiced by police delegate Jônatas Barbosa Soares dos Santos, of the District of Nerópolis. [...] When heard by the Public Prosecutor, the delegate declared that despite having signed the document, the content of the report of the police investigation was the responsibility of the judge of law Eduardo Walmory Sanches, who was replaced in the District of Nerópolis. [...] When forwarding the procedure, the MP asks the Internal Affairs of Justice to investigate possible abuse of authority practiced by the judge [...] (Public Prosecutor of the State of Goiás wants to investigate possible "abuse of authority" practiced by a judge of the Court of Justice of the State of Goiás – TJ/GO. ASCOM, Jan. 29, 2008).

And more, *ipsis litteris*:

> [...] The National Council of Justice (CNJ) ordered the Court of Justice of Goiás (TJ-GO) one examine to an appeal brought by the Public Prosecutor against the filing of administrative proceedings, to investigate irregularity practiced by Judge Eduardo Walmory Sanches, in Piracanjuba (GO). [...] The judge is accused of changing statistics of the system that counts the productivity of magistrates and appointing experts from São Paulo to act in his District. [...] (CONSULTOR JURÍDICO, Aug. 12, 2013)

Anybody argues the attribution of Parquet in the application of law and the legal principles of ethics and integrity in public administration. The questionable is the selectivity of the action against targets chosen for reasons that do not have correspondence with the constitutional desideratum of the institution of safeguarding the Democratic State of Law.

• Usurpation of rights in the fight against corruption

In everyday Brazilian life, facts are proliferating related to state agents of judicial bodies – police delegates and prosecutors – who act in flagrant violation of fundamental rights. According to SILVA JUNIOR *et al.* (2010), defenseless citizens have been suffering persecution through arbitrary procedures and illegal proceedings conducted by representatives of the judicial system.

Law enforcement officers who fulfill the profile of systematic and persistent investigator-accuser-judge, adopting, for this, procedures that relativize or nullify human rights, are awarded by the majority current as ruthless combatants of crime. Antonio Carlos Mariz de Oliveira argues that it is the common sense of society thirsting for revenge, expressing an uncompromising feeling with the ideal justice.

The inquisitorial justice system adopted in the investigative phase strategically uses the right to place in the passive pole of investigation, for alleged practice of civil and criminal offenses, in general, a member of the most disadvantaged social class – black, poor or peripheral – or some representative of the segments excluded in the game of political power.

On the other hand, those who stand up in defense of the principles of due process, fair hearing, and broad defense travel in the counter-majority current of people who bind such manifestations by legality to the macula of the suspicion of collusion with a crime.

• **Public lynching**

The asymmetric procedure of systematic prosecution promotes "public lynching" of a person allegedly involved in unproven facts. The name of the accused, released to public opinion, obliges him to use the media themselves to express his version of the facts persecution. Thus, the contradictory, that is, the version of the accused, must also be made through the press, raised to the condition of Court of Public Opinion – a singular instance, in which the ordinary person does not have the slightest chance of defense. The procedure described here occurs in absentia of the basic constitutional principles, such as the right of reply, respect for the dignity of the human person, the right to a fair hearing, and due process.

By Lawfare State investigators gather evidence and testimony, behind closed doors, in their offices, at their leisure, to satisfy the procedural convenience, and also publish their acts knowing that despite the brand of illegality, the investigative procedure and the complaint formulated will be strategically protocoled to be received by the Judiciary.

The Lawfare practices are a disservice to justice and judgment because it harms the most basic rights of citizenship. Strictly speaking, not all advertising is of interest to society, especially when it comes to facts investigated about a particular crime against the public interest, because it means disclosing information whose beneficiaries are potential criminals.

These warned of the investigation, and the legal procedures will give disappearance to evidence, will hide the products of the crime, all to the detriment of the air. In civil and criminal proceedings, the

disclosure of investigative and legal proceedings generally benefits the offender who will escape the scope of justice. Contrary to the sense, in legal actions contaminated by Lawfare, the use of the media highlights the accusation, given the political objectives unrelated to the function of criminal law (see, in this regard, the performative discourse of Lava Jato, cf. addressed in Chapter 2.1).

- **The brutal disparity of weapons**

The criminal system is a distortion of the constitutional function and adopts procedures that blatantly violate the principle of fair hearing and broad defense with the means and resources inherent to it (art. 5°, LV). A striking expression of this unconstitutionality is the brutal disparity of weapons between the contenders in the procedures and processes of a partial and politicized state justice system.

The persecution system triggered for political purposes throws on the passive pole an extensive volume of administrative, civil, and criminal investigative procedures, established in multiple relevant state agencies such as police station, Parquet, Court of Auditors, and Judiciary. This characteristic impacts the paradigmatic case study of the strategic use of the Judiciary (see Chapter 6).

As stated, the suspect/investigated/accused will arrive at the Judiciary in a precarious situation, with his name and honor tainted by the flaw of illegality, practically condemned by the Court of Public Opinion, making it almost impossible to overcome the barrier of the disparity of weapons and to effect, in the appropriate time, the fair judicial provision.

As pointed out by former judge Flávio Dino de Castro e Costa, who chaired the National Council of Justice (CNJ) and the Association of Federal Judges (Ajufe) (v. Chapter 1), the attorney of the Republic Wilson Rocha Fernandes Assis (v. Chapter 2.1), Prosecutor Jacson Zilio (v. Chapter 3.1), former prosecutor of the Republic Eugênio Aragão (v. Chapter 4.1 above) and the former Attorney General of Justice of Goiás Demostenes Torres (v. Chapter 5.1), the political behavior of the Judiciary for strategic purposes in Brazil develops as a structure of autonomous political power within the state organization, with adverse potential to the rule of law.

In this sense, these authors make repeated warnings about the severity of the Brazilian situation, *verbis*:

> [...] I draw attention to the flirtation of Car Wash with a fascist strategy: revolutionary promise, mobilization of the masses, confusion between state and society [...] (ASSIS, 2019)

- **Aggression to human dignity**

The justice system, contaminated by Lawfare practices, accepts, stimulates, and prospers imputations contained in public criminal actions against citizens unjustly imprisoned in the passive pole. Such practices violate the dignity of the human person, one of the foundations of the Federative Republic of Brazil (Art. 1°, III, Federal Constitution) as well as violates constitutional clauses of the intimacy, honor, and image of people (art. 5°, X, Federal Constitution).

Gonçalves (2019) teaches that honor is the set of moral, physical, and intellectual attributes of a person, which make them deserving of appreciation in social life and that promote their self-esteem. Crimes against honor, in their objective or subjective modalities, are typified in the Penal Code - CP, such as slander (Art. 138, CP), defamation (Art. 139, CP), and injury (Art. 140, CP).

Slander consists of falsely attributing to someone the responsibility for the practice of a particular fact defined as a crime, and the imputation of such fact is false. Defamation is the unlawful practice of attributing to someone a certain fact offensive to his/her reputation. It refers to objective honor. And the knowledge of a third party. The injury occurs without the imputation of a fact, but negative quality, with vague and imprecise words, which offends the dignity or decorum of someone's subjective honor, and it is achieved with the simple knowledge of the victim.

8.6 Awareness and engagement for democracy

From the above, we highlight the relevance of the problem put into debate, referring to the various conceptual aspects of Lawfare. We have addressed in the panel the subsidies for the reflection and performance of social agents interested in the improvement of the theoretical and practical instrumental of defense of the Democratic State of Law.

In what concerns the Brazilian democracy, Executive, Legislative, and Judiciary - the Republic powers - remain characterized by the autocratic structure, especially in the organs of the justice system, whose composition reproduces the elitist character of the Brazilian

State. Therefore, the occupants of the Attorney General's Office, Public Prosecutor's Office, State Courts, and Superior Courts do not reflect the ethnic and socioeconomic profiles of Brazilian society.

The struggle against the military regime led Brazil to the drafting of the Magna Carta of Brazil of 1988. In the political and legal aspect, the democratization of Brazilian society has established constitutional principles and guarantees to freedom of expression, thought, the press; in the establishment of the rule of law, unavailable, collective, and diffuse individual rights established as standing clauses in the Political Charter of 1988.

Given these advances, the constituent redefined the role of the Public Prosecutor's Office (MP) and instructed it to protect society, to watch over legislation, defend fundamental rights, and guarantees democracy and dignified citizenship. The job of the member of the Parquet is to enforce the law, fight corruption, determine the primacy of ethics and legality in the "public issues", defend collective rights, sovereignty, and action of institutions, in the different spheres of power. In all instances, at the service of the country, states, and municipalities, the constituent power promoted changes in the constitutional and legal framework of the country, made the transition, the least traumatic in the republican history of nations, from dictatorship to democracy.

In this context, the National Constituent Assembly of 1988 promoted the institutional remodeling of the old Parquet, which, once linked to the Empire, the Estado Novo and Regime of Exception post-1964, gained airs of modernity and new stuff. Despite the noble function of ensuring compliance with the laws conferred on the Public Prosecutor's Office by the Citizen Constitution/1988, regulated

by constitutional devices, came the false notion of sovereign power, equated or above other powers. This situation resulted from the lack of social control, says Minister Gilmar Mendes of the Supreme Court (see text in the first ear of this book).

• Incomplete transitional justice

After a few years of the Brazilian democratization and institution of the so-called Democratic State of Law, the country has not advanced in its civilizing march, moving towards serious setbacks. The impeachment of Mrs. Rousseff, with the invalidation of 54 million votes confirms the abusive use of the law for political purposes and the tiny democratization of the Republic powers.

It involves understanding the concept of Transitional Justice. This concept is based on the balance sheet of the MPF working group and discussed in Chapter 6 (BRAZIL, 2019f). The setbacks resulting from the lack of implementation of public policies of social, economic, educational, and social equity are associated with the promotion of well-being, in a mutually reciprocal cause-and-effect relationship, between public policies, and incomplete transitional justice. The analysis of the problem addressed, therefore, is not restricted within the legal sphere and also concerns political aspects.

State agents use the justice system as a tool for political persecution and criminalization of social movements and their representatives. They exasperate their almost unlimited powers in the alleged fight against corruption, the country's sickness. It is worthy to remind that such reality stems from a democracy still

in formation and its institutions are in consolidation. We watch, complacently, the “anything goes in the fight against what is wrong”. The performance of law and society tutors resulted in the Car Wash Operation fighting corruption through some corruption practices, as revealed by Vaza Jato leaks (see Chapter 2.2).

- **Court of exception**

The jurisdiction of the 13th Federal Criminal Court of Curitiba characterizes the strategic dimensions of Lawfare as the State of Exception made permanent in the judicial system. The weapons employed in this “legal war” are abusively legal institutes (see Chapter 1.4 above), as public civil actions despite the absence of just cause and devoid of legal and technical foundation.

This juncture transforms the Judiciary and enslaving innocent people to the passive pole, with an expenditure of time, energy, resources, in addition to the exhaustion of intangible values of their personal, family, and social life. Numerous cases fall under this situation, such as the case study presented in Chapter 6.

Prima facie, Car Wash’s review indicates that a significant part of the representatives of Parquet, Judiciary, and judicial police did not exercise the tasks of protecting the rights of citizenship. In the undoubtful eager to extend the mantle of legal protection to the unprotected, they assuredly made voluntary or involuntary misconceptions. This assessment is self-evident from the exposures of unsuspecting experts who have exercised or exercises functions of a federal judge and of prosecutors (see Chapters 1; 2.1; 3.1; 4.1; 5.1).

• And the House of the Elderly of Goiás Disappeared

In the same ground, it is critical to consider the reflections on the necessity to establish a limit to the performance of law enforcement agencies, given the serious complaint filed by lawyer Arthur Rios, a retired professor at the Faculty of Law of the Federal University of Goiás (UFG), former federal advisor to the Brazilian Bar Association (OAB). It is the mysterious and criminal case referring to the disappearance of the House of the Elderly of Goiás State, summarized in the following terms:

> [...] Professor Osmar Pires Martins Junior is pleased to collaborate constructively with the reflection on immaturity and lack of limits to the performance of political agents who tutor the law. We should draw more attention to such aspects aiming at social improvement, in this case, the protection of the rights of the elderly in the 1988 Constitution, the National Policy of the Elderly of 1994, the Statute of the Elderly of 2003, and other diplomas. [...] Let's look at the chronology of the facts of a case presented to the Public Prosecutor's Office of Goiás State, concerning art. 74 of the Elderly Statute, that much was left behind: "And the House of the Elderly of Goiás disappeared..."
>
> 1. On June 9, 1982, it was born and registered with the Registry of Legal Entities of the 2nd. Zone of Goiânia, the philanthropic society "Ancianato Divina Providência Casa dos Idosos de Goiás", in Book 174 under n. 365, p. 180 v. and 181, of June 9, 1982. The president of the organization was Dr. José Alair Martins Batista, a selfless humanist, one of the founders of Goiânia [...].
>
> 2. Through hard work, with the collaboration of the civil society and Anhanguera Television, the entity acquired an area of 20,400.17 m², on Avenida Planalto, Setor Parque das Laranjeiras, in Goiânia. This property was transcribed and then registered under no. 28,360 of the 4th CRI/ Goiânia, and was almost ready for the construction of the House of the Elderly of Goiás, which was later demolished.
>
> 3. On October 15, 1998, at an Extraordinary General Meeting – AGE, without proof of prior convocation, the replacement of the creator, José

Alair Martins Batista, without the same knew, by A.J.F.S., including vice-presidency Z.C.S. Here begins a story worthy of a cinematic script.

4. On July 10, 2001, new AGE is held and the President stated that: "[...] for completion of the works would require an 'impractical import', so proposed the incorporation of the heritage of the "Ancianato Divina Providência - House of the Elderly of Goiás" with that of the Educational Foundation of Goiás - FEG [...]" (fl. 80 of the minutes). Under these conditions, the latter would be in charge of finishing the works and administering the "Ancianato".

5. As the State of Goiás encroached a portion of the area, this one proposed an exchange of the area by another area. The AGE had authorized the before-mentioned switch. A decision registered in long protocol was that the property should be given to the FeG, to complete the construction of the House of the Elderly. The protocols, visibly, had several insertions and lines later duplicated, seeking to divert the actual decision. The decision to assemble was in the sense of donation with charges, that is, the continuity of the "Ancianato Divina Providência – House of the Elderly of Goiás" with its purpose of protecting the poor.

6. On October 18, 2001, the public deed of donation is drawn up, here it appears as having been pure and simple, that is, the donatary would have no obligation to the gift he had received. The Educational Foundation of Goiás (FEG) would have received, by liberality, all the assets obtained for the House of the Elderly of Goiás, for a decade of donations and contributions from the entire Goiás society without any clause that linked the donation to the specific purpose of creating the Asylum of Old. The forced deviation of purpose and legality was obvious.

7. It was a donation of the property of the Ancianato Divina Providência - House of the Elderly of Goiás, to the Educational Foundation of Goiás (FEG), represented by the vice-president of the first and president of the latter. You see a conflict of interest in the act. The donation was donor to donor.

8. On October 18, 2001, via the real estate launch (R-2-49.723) the Exchange Deed is recorded of the total available area of the land (82.32%) by lots 95/97/99/101/103 of Q.F-42-A of Alameda 136, corner with Rua 115 - Setor Sul - until then belonging to the State of Goiás. It took the FEG, 17.68% of the original land, the one that was invaded by the State. The FEG negotiated the urban lots from the Southern Sector with third parties for "a few million Dollars".

> 9. And where are the rights of the elderly? What about the will of all those who contributed to build the House of the Elderly of Goiás?
>
> 10. On July 2, 2007, a request was registered in the protocol of the Public Prosecutor's Office of the State of Goiás to ascertain the retro facts referred to, which would constitute an offense to the diffuse rights of the elderly and much more (Law 10,741 of 01.10.2003). Case No. 182/2007 sent to the 9th Prosecutor's Office of Goiânia - Civil - Foundations, titular prosecutor Marlem Gladys Ferreira Machado Jayme.
>
> 11. The stated prosecutor did not want to investigate and determined the filing of the application and, praise to heaven, "because there would have been slanderous denunciation" (sic), against the applicants of the request for investigation: a) police investigation; b) compensation for moral damages.
>
> 12. Interposed 'suspicion exception' against the occupant of the 9th. Prosecutor's Office, according to Art. 306 and 313 of the Code of Civil Procedure - CPC/1973, which corresponds to Art. 146 of the CPC/2015, appeal against its decision to dismiss and represent with the Internal Affairs Office. Nothing of practical effect. One doesn't know why. It is not believed that there was a million-dollar influence of the money from the sale of the lots, nor corporatism, or a bias that would deserve the intervention of the National Council of Public Prosecutions - CNMP. No investigative procedure of the facts mentioned above by the Public Prosecutor's Office of Goiás - MP / GO, to date. [...] (RIOS, 2011, pp.1-9)

This case represents a scandalous and unacceptable crime committed against society. The Public Prosecutor's Office of the State of Goiás - MP / GO, instead of investigating and accusing the wrongdoers who stole the elderly of Goiás, formulated charges against the victims of theft, who are the associates of the House of the Elderly of Goiás signatories of the complaint in Parquet.

There is no news of action adopted by the control bodies of the Justice System to investigate the described criminal case. The prosecutor involved in the scandalous case was denounced by the lawyer Arthur Rios, but came to impunity by his action devoid of justice. He is the same state authority denounced by Professor

Doctor João Batista de Deus - from Institute of Socioenvironmental Studies - IESA / UFG, which narrates:

> "[...] we went through some problems with the performance of the MP in the Research Support Foundation - FUNAPE, through a promoter who is a terror [...]" .

In the wake of the illicit and uncontrolled action by state agents members of the Brazilian Justice System, Professor Marcelo Mendonça - Federal University of Catalão-GO, and councilman in the municipality of Catalão, narrates, *verbis*:

> [...] In 2013, during 30 months, I responded to the Municipal Secretariat of the Environment of Catalão, and, because of this I was charged of misconduct in a civil action for having been made available to this Municipality by UFG, according to Law No. 80.112, and receiving my functional salaries with the bonus due by the municipality. Just yesterday, we had the first hearing. This is a political situation in the municipality. They made a debauched in personal life, as they found nothing, so uses the weapon of dishonesty in the public administration to deconstruct the image of the politician. I've already been convicted regardless of the outcome this action has. All the newspapers print that I have to return more than two million reais (equivalent to US$ 373,134.32), which caused a loss to the public office. [...]

The narratives of the cases prove that the protected citizens are treated as living in a lawless society, in disregard of the rule of law. The performance of the law's guardian agents frustrated society's longings, impregnated in the musical poem: "We don't just want food [...] We want food, fun, and art / We want to go anywhere" (Titãs Brazilian rock'n'roll band).

The people expectation was for the protection of the Democratic State of Law since it was structured, organized, and functionally composed of significant bodies, such as the Public Prosecutor's Office, Centers for The Defense of the Environment, Minor and Youth, Women, Minorities, Black Communities, Quilombolas, LGBTQ, Indigenous, Consumer, Public Heritage. Besides, the National Councils of the Public Ministry (CNMP) and the Justice (CNJ), as well as the Judicial Police.

- **The tutored society**

The political agents of the organs of the judicial system have the noble task of defending and protecting the Democratic State founded on Universal Rights. But the actions of such agents frustrated the nation in the face of party-political activism, evidencing functional deviations, abuses of power, and authority that confronts the constitutional mission of tutoring society in its democratic rights. According to the Koogan/Houaiss Dictionary:

> [...] Guardianship s.f. Jur. the position and responsibilities of a guardian; Tutoring. / Fig. Protection, aid: the guardianship of laws. / Surveillance or vexatious dependence. [...] Guardianship v.t. Exercise guardianship over, protect, or care as tutor / Fig. Reap, protect. [...] Tutelar adj. Relating to guardianship. / Who has someone under his guardianship or protection; Protector. Guardian angel, guardian angel. [...]

Something is wrong, especially in the criminal sphere. To appoint state agents as guardians of society, giving them unlimited powers, refers us to the concept of the guardianship that makes the guardianship tabula rasa. The citizen is nothing more than an

object of this office's agent who is part of a corporation. As stated by former Judge Flávio Dino de Castro e Costa (see Chapter 1); the attorney of the Republic Wilson Rocha (see Chapter 2.1); and the journalist Leandro Demori (v. Chapter 2.2), the State agents abused of legal institutes such as bench warrant, pretrial detention, and plea bargain promoting the dehumanization of the accused, under the mantle of the performative discourse of combating corruption that hid numerous practices of corruption by the Car Wash Operation.

- **The primacy of democracy in the rule of law**

The lesson of specialist Afrânio Silva Jardim is that the struggle for the Democratic State of Law must be intense and perennial, against authoritarianism, the massacre of economic power, the withdrawal of rights of the population, and racism, it is worth saying, against fascism (SILVA JARDIM, 2019). It is necessary to ensure and implement the primacy of democracy, consistent in the defense and unrelenting application of constitutional principles and guarantees. Political agents and state agents of the justice system are also responsible for the democratic order, passively responding to the consequences of any act harmful to the primacy of democracy.

The justice system that is contaminated by Lawfare's practices acts in permanent and systematic conflict with citizenship and the fundamental rights of the citizen. One of the most important aspects refers to the media behavior of state agents, making

accusations without proof, before the final and often, even before the conclusion of the lawsuit.

In the exercise of the constitutional desideratum conferred on the Judiciary and the control bodies of the Democratic State of Law, some of the representatives of the constitutional powers began to act without limits, through the partial exercise, partisanship, suspected of jurisdiction.

The elements of this conceptual framework are the abusive use of legal institutes legally established, the triggering of police operations and prosecutions with collective interviews, selective leaks of information and spectacularism of the criminal process of combating corruption, the media campaign of hunting without break to the corrupt and criminals who assault the public power, forming in public opinion the conviction of guilt of the selected target.

Any judicial system impregnated by such characteristics destroys the reputation, name, and image of the person investigated or accused, who is now treated as something devoid of the human condition.

• Conclusion

Based on the doctrinal evolution and thoughts of the most recent indoctrinators, like the signatories of articles published in this work, we can highlight that Lawfare, in Brazil, represents the worst threat ever experienced in the republican history of institutional regression to the constitutional and legal principles of safeguarding fundamental, collective and individual rights unavailable, reaching even the individual guarantees established in the first generation of Human Rights.

The legal instruments of control of the rule of law, in the face of incomplete Transitional Justice (BRASIL, 2019f, 2018b) have been used as potential weapons of high lethality to reach the political enemy, identified according to parameters established by right-wing authoritarian conservative thinking.

The Vaza Jato scandal revealed irresponsible, if not illegal or criminal, action by state agents in the pursuit of the enemy, in flagrant disregard for the constitutional and legal principles of respect for the dignity of the human person, due process, contradictory and other universal human rights.

In the day-to-day of national life, acts and facts practiced by state agents who protected by the mantle of impunity violate the foundations of the Democratic State of Law. Such agents operate freely judging or conducting legal proceedings aimed at political purposes.

The mantle of impunity thrives in the face of the corporate interest manifested in the decisions of few and ineffective disciplinary administrative processes, established within the scope of control bodies, such as the National Council of Justice (CNJ) and the National Council of Prosecution's Office (CNMP). But beyond corporatism, the abusive action of the persecutory state agent is part of the strategy of extremist conservative thinking of an authoritarian, anti-democratic, anti-people, and anti-national society.

Alongside the challenge of recommending a better democratic regime, it is necessary to institutionalize a justice system that balms the action of State agents to the dictates of the rule of law, without the deviations and abuses in the use of legal instruments legitimately positive in the national order, as a fundamental premise for the control of legality and public interest.

In a corollary to Lawfare, the diagnosis of Zanin Martins *et al* (2019a) resumes in the current national and international court. It is necessary to confront the Lawfare phenomenon, which makes strategic use of the law to annihilate a certain enemy, extracting the prognostic lesson of Afrânio Silva Jardim, according to which, more than ever, the struggle for the Democratic State of Law and, extensively, by the Citizen Constitution of Brazil 1988, must be intense and perennial!

9. GLOSSARY

Attorney General of the Republic - PGR: is the head of the MPU, appointed by the president of the Republic among members of the career, after the approval of his name by an absolute majority of the members of the Federal Senate, for a two-year term, which may be renewed.

Atypicality: a term that characterizes a complaint without just cause for criminal prosecution, because the described conduct does not correspond to a criminal type described in the law as a crime.

Author, whistleblower, investigator, accuser, petitioner, persecutory agent, active subject, active pole: is the agent responsible for conducting the investigation or police action, administrative or judicial.

Award-winning denunciation or collaboration agreement: it is an instrument provided by the Law of Criminal Organizations (Law 12.850/2013), containing a statement signed by the collaborating defendant who effectively and voluntarily contributes to the investigation or process, hypothesis capable of giving rise to the granting of judicial pardon, reducing the prison sentence by up to two thirds or replacing it with a restrictive penalty of rights (plea bargain).

Car Wash Operation: team of representatives of the Federal Public Prosecutor's Office (MPF), headed by the Federal Prosecutor Deltan Dallagnol, instituted by the former Attorney General of the Republic Rodrigo Janot, in the first half of 2014, in compliance with the request of the Attorney General of the State of Paraná, with the responsibility of investigating allegations of crimes against the public administration allegedly committed at Petrobras, before the 13th Federal Court

of the District of Curitiba, presided over by the then criminal judge Sérgio Moro, who became Minister of Justice of the government Jair Bolsonaro, a position he held for 16 months until he was exonerated by the President of the Republic on April 24, 2020.

Citizen Constitution: is the Magna Carta of Brazil (CF/1988) promulgated on October 5, 1988, by the Brazilian people, through its representatives gathered in the National Constituent Assembly, which formally closed the Dictatorial State, established by the Military Coup of 1964 and which "instituted a Democratic State, destined to ensure social and individual rights, freedom, security, development, equality, and justice as supreme values of a fraternal, pluralist and unprejudiced society, founded on social harmony and committed, in the internal and international order, to the peaceful solution of controversies" (BRAZIL. Constitution of the Federative Republic of Brazil. Preamble. Brasília/DF: Senado Federal, Oct. 5, 1988) (Preamble of the Constitution of the Federative Republic of Brazil).

Civil Inquiry and Public Civil Action - ICP/ACP: these are the legal instruments available to the Public Prosecutor to fulfill its constitutional function.

Collaborator: is the investigated, accused, defendant, or convict who signs the award-winning accusation agreement.

Conduct Adjustment Term - TAC: is the document used by representatives of the Public Prosecution Service and other legitimate entities such as secretariats, agencies, autarchies in charge of preparing and executing public policies on Health,

Education, Environment, and other areas, to correct certain conduct considered illegal and enforce the law.

Coup d'état: it is the result of a process reiterated in Brazil's history of breaking democratic normality in order to kick back inclusive public policies, hard-won by the people, through the establishment of totalitarian regimes, such as the one established in 1964, which overthrew president-elect João Goulart, or the illegitimate government of Michel Termer in 2016, which unconstitutionally ousted Mrs. President Dilma Rousseff on the basis of the nonexistent crime of responsibility called "fiscal pedaling".

Courts and Judges of the States: they constitute the Justice organized by the States, obeying the rules of the CF/1988.

Court of Public Opinion: a popular term that expresses intense publicity by commercial media organizations of accusations of corruption, selectively leaked by agents of the Justice System acting in Car Wash Operation. It is a strategy of Lawfare to form in public opinion the prejudgment of the guilt of the accused, besides destroying effect on the name, image, and honor of the selected target, similar to a public lynching practiced by the Inquisition in the Middle Ages.

Criminal jurisdiction: is established objectively in the Constitution and in the laws due to the place of the infraction, the domicile or residence of the defendant, the nature of the infraction, the distribution, connection or continence, the prevention and prerogative of function or "privileged forum".

Defendant, denounced, investigated, charged, defendant, taxable person, and passive pole: is the person submitted to the investigative procedure of the ICP or the imputation enrolled in the ACP.

Due Process: it is the one that assures the investigated, accused, or defendant the right to contradictory and broad defense, with the inherent means and resources, especially, the trial by a natural, competent and impartial judge (art. 5, item LV, CF).

Electoral Justice: constituted by the organs TSE, Regional Electoral Courts - TREs, and Electoral Judges.

Essential Functions to Justice: according to CF/1988, are those exercised by the Public Prosecutor's Office, by the Public Advocacy (Advocacy General of the Union - AGU), by the Advocacy (according to the Statute of the Brazilian Bar Association - OAB) and by the Public Defenders of the Union (MPU), the States, and the Federal District - DF.

Exception Court: This is an *ex-post-facto court,* strictly forbidden by art. 5, subsection XXXVII of the Constitution of the Federative Republic of Brazil.

Federal Institution of Higher Education - IFES: public or private university of educational function, research, and extension, endowed with administrative, didactic, and political autonomy.

Federal Justice: constituted by the organs TRFs and Federal Judges.

Fernando Henrique Cardoso (FHC): partisan of Brazil's Social Democracy Party (PSDB), was President of the Federative Republic of Brazil for two terms (1994-1997 and 1998-2002), so-called FHC Era, implemented the Real Plan to control inflation and promoted broad privatization of state companies. During his time at the head of government, Brazil inaugurated the electronic voting system in the elections, as well as illegal espionage and the massive sending of resources to tax havens via CC5 accounts. became a model for hiding the activities of politicians and big corrupt businessmen by the press. FHC has always acted as a fierce opponent of the Workers Party and an important ally of the coup forces of 2016 for the approval of the unconstitutional impeachment of then-President Dilma Rousseff.

Fiscal "pedaling": press's conspiratoy denomination to routine acts of federal government budget execution, practiced by all the rulers of Brazil, indistinctly until 2016, when they were considered crimes of responsibility to unconstitutionally remove Mrs. President of the Republic Dilma Rousseff, in the impeachment approved by the Senate on August 31, 2016. The "tax rides" were again conducted by its vice president Michel Temer, who replaced her in the presidency, and continue in the current government of President Jair Bolsonaro.

Getúlio Vargas: was President of the Federative Republic of Brazil from 1930 to 1945 and 1951 to 1954. Getúlio came to central power with the 1930 Revolution and established the Estado Novo (New State) in 1937, being ousted in 1945 by a military coup commanded by General Góes Monteiro. The Estado Novo was a historical period marked by political authoritarianism, along with the promotion of the development of the National State, Labor Laws, and the creation of important state companies like Petrobras. Getúlio returned

to power in 1951, this time by popular vote, and resigned in 1954 when he committed suicide, pressured by antinational political and economic forces.

Holder of the public criminal action: in the crimes of public action, this will be promoted by the denunciation of the Public Prosecutor, but will depend, when the law requires, the request of the Minister of Justice, or representation of the offended or of those who have the quality to represent him. Thus, the representative of the MP is the political agent who has exclusive competence for the establishment of the ICP and the filing of the ACP in the criminal sphere, that is, the Prosecutor, within the scope of the MPE and the Prosecutor of the Republic, within the framework of the MPU.

Holders of Diffuse, Collective and Individual Rights Unavailable: are the representatives of the competent entities and empowered by the CF/88 and regulatory legislation, such as the MP and the OAB, among others, to defend in court the diffuse, collective and individual rights unavailable, such as the rights of consumers, Indians, minors and the elderly, the environment, public health, education, and work.

João Goulart: elected president of Brazil in 1961 and overthrown by the Military Coup of 1964, for achieving a nationalist and left-wing government, based on the union movement, the defense of agrarian reform, and the suspension of payment of the foreign debt.

Judicial activism: consists in the manifestation of internal phenomena (judicialization of politics) and external phenomena (politicization of the judiciary) to the Judiciary.

Judicialization of politics: this is a phenomenon that manifests itself from within the Judiciary, consisting of the extrapolation of the limits of its legal action over others. In the judicialization of politics, there is an intervention beyond the punctual and contingent issues of rights, that is when the other powers do not evidence illegal action, resulting in the breaking of the separation of powers and usurpation of the discretion of the other.

Jurisdiction to judge the action: it is objectively established in national law because of the place of the infringement, domicile or residence of the defendant, nature of the infringement, and procedural mechanisms.

Justice System: state power constituted by the judicial bodies responsible for exercising the functional tripartite investigation (Polícia Judiciária), accusing (Ministério Público) and judging (Judge), the accumulation of any of these functions by the state agent submits the process to a nullity.

Labor Justice: consists of the organs TST, Regional Labor Courts - TRTs, and Labor Judges.

Leniency Agreement: is the document signed by the legal entity that has committed an illegal act against the public administration, national or foreign, but is willing to assist in investigations that lead to the capture of others involved in the crime, in exchange for benefits for their sentence.

Luiz Inácio Lula da Silva: metalworker from São Bernardo do Campo, in the metropolitan region of ABC Paulista, born in the interior of the State of Pernambuco, in the municipality of

Garanhuns, in the Drought Region of northeastern Brazil, elected and re-elected by the Workers' Party (PT) as the first worker in the President of the Federative Republic of Brazil (2003 to 2006; 2007 to 2010). He left the government with 87% approval, world record for popularity (IBOPE and CNT/Sensus surveys). Lula made the successor in office, Ms. President Dilma Rousseff (2011 to 2014), who was re-elected in 2015 but deposed in the coup d'état in 2016.

Manchetometer: is a website with technology for measuring news headlines. It has no affiliation with any political party or economic group, produced by the Laboratório de Estudos de Mídia e Esfera Pública of the Instituto de Estudos Sociais e Políticos of the Universidade do Estado do Rio de Janeiro (UERJ), for the monitoring of the coverage of the major media on economic and political topics.

Media monopoly: a term that characterizes the monopoly or oligopoly of the media in Brazil, directly and indirectly, in the hands of a few families and or economic groups, in violation of art. 221, § 5 of the Federal Constitution, constituting a factor of political instability and a powerful instrument of manipulation of public opinion, breaking the law and coups d'état.

Members of the Public Prosecutor's Office: these are state political agents representing Parquet in the establishment of the ICP and the adjudication of ACP, i.e., the Prosecutor of Justice and the Prosecutor of Justice under the MPE and the Prosecutor of the Republic under the MPU.

Mensalão petista: press's conspiratoy denomination to the criminal action 470, judged at the STF, based on the unconstitutional application of the Theory of Realm of Fact, by German jurist Klaus Roxin. The STF condemned, without evidence, leaders of the Lula government and leaders of the Workers' Party (PT), based on the complaint filed by the Attorney General of the Republic (PGR), of fanciful purchase of votes by congressmen to approve constitutional amendments - EC such as number 45 that approved the Judiciary Reform, created the National Council of Justice (CNJ) and consolidated Labor Justice, among other equivalent measures.

Natural Judge: is the competent judge, according to the law, to judge the action distributed to him; there is no figure of the universal criminal judge and much less the thematic criminal judge (of corruption, for example).

Partial, suspect, or impeded judge: partiality, suspicion, and impediment constitute conduct prohibited to the exercise of the magistracy and cause the nullity of the decisions rendered: partiality can be objectively verified as lack of exemption and deviation from a purpose; suspicion stems from subjective assessment, under the terms of the non-exhaustive list of art. The hypotheses of impediment are objective and peremptory, according to art. 144 of the CPC.

Petrobras: a company responsible for the state monopoly of Oil & Gas exploitation, created by the President of the Federative Republic of Brazil Getúlio Vargas, in 1953, as part of the campaign "O Petróleo é Nosso" (Oil is Ours), launched by the unions and civil society entities, with support from the Communist Party of Brazil (PCB). According to Law no. 2004/1953, Petrobras exercised the Union's monopoly in the exploration, production,

refining, and transportation of oil and its derivatives in Brazil. Such functions are targets of privatization programs, after the re-democratization of the country, promoted by neoliberal governments, weakening not only the oil company but other state companies.

Petrolão: partial press nickname to the corruption scandal connected to institutionalized bribery practices investigated and strategically publicized by Car Wash Operation to charge former President Lula and President Dilma Rousseff with responsibility for the crimes of embezzlement of Petrobras' public resources to finance a "100-year power project" in Brazil.

Politicization of the Judiciary: tis a phenomenon that manifests itself within the Judiciary, due to its extremely subjective performance, charged with political, ideological, or moralistic tonality, configuring a punitive and judicial bias to the conduct of the state agent of the justice system.

Procedural mechanisms: the most relevant are distribution or registration (at which the petition is filed), connection or continence (meeting of two or more actions to be judged jointly, according to the elements of the action, namely, the parties, the request and the cause of asking), prevention (the distribution or registration defines the jurisdiction of the judgment of the action), special forum by prerogative of function or "privileged forum" (which alters the jurisdiction to judge actions against public authorities objectively appointed in the CF/1988 and infra-constitutional legislation).

Public opinion court: a popular term that expresses intense disclosure by commercial media of corruption allegations, selectively leaked by agents of the Justice System who work in Operation Lava Jato. It is a strategy of Lawfare to form in public opinion the prejudgment of the guilt of the accused, with a fulminating effect on the name, image, and honor of the selected target, similar to a public lynching practiced by the Inquisition in the Middle Ages.

Public Prosecutor's Office (MP): is an institution of permanent, essential character and judicial function of the State, entrusting it with the defense of the legal order, the democratic regime and the social and individual interests unavailable, covers the Public Defenders of the Union (MPU) comprising the Federal Public Prosecutor's Office (MPF), Public Ministry of Labor (MPT), Military Public Prosecutory (MPM), Public Prosecutor's Office of the States (MPE) and Federal District Public Defenders (MP/DF).

State Courts and Judges: they constitute the Justice organized by the States, obeying the rules of CF/1988.

State of exception: is a conceptual category characterized by three constituent elements, namely, i) the sovereign (the one who decides that the rule is not valid), ii) the overcoming of the normativity (inconsistency in the overcoming of antinomies) and iii) the enemy (of political, commercial or geopolitical nature). Such elements are also prevalent in punitivism, judicial activism, and Lawfare.

Superior Courts: are the highest organs of the Brazilian Justice in charge of the Constitution (Supreme Federal Court - STF), the Federal Law (Superior Court of Justice - STJ), the Electoral Law and its correlative law (Superior Electoral Court - TSE) and the Labor Law (Superior Labor Court - TST).

Superior Court of Justice - STJ: is the organ of the Judiciary, created by the CF/1988, in charge of watching over the Federal Law, so that the Federal Regional Courts - TRFs and the State Courts of Justice - TJEs harmonize their judgments in the scope of infra-constitutional legislation. The STJ is composed of at least 33 ministers, appointed by the President of the Republic, after approval of the Senate, being 1/3 of judges of the TRFs, 1/3 of judges of the TJEs, and 1/3, in equal parts, among lawyers, appointed by the Brazilian Bar Association and members of the Public Ministry.

Supreme Federal Court - STF: is the Maximum Constitutional Court composed of eleven Ministers, native Brazilians (art. 12, § 3, IV, CF/88), chosen from among citizens over 35 and under 65 years of age, of outstanding legal knowledge and unblemished reputation (art. 101 CF/88), and appointed by the President of the Republic, after approval by an absolute majority of the Federal Senate.

Transitional Justice: is the term that defines the set of judicial and non-judicial measures adopted by societies of countries egressing from authoritarian regimes or internal conflicts, to overcome the legacy of human rights violations, to affirm democratic values, promotes justice, hold accountable those who have committed crimes against humanity, reveal the truth, repair the victims, recover, preserve and disseminate the memory, as well as promote broad institutional reform. Brazil stands out as a case of incomplete transition in the face of the transitional experiences in the world - countries of the Southern Cone of America, after military coups and violent dictatorships in the 1960s to 1980s; South Africa, at the end of the racist apartheid regime in 1994; countries of the former Soviet bloc in Central and Eastern Europe, after the fall of the Berlin Wall in 1989.

Vaza Jato: series of behind-the-scenes reports of the Car Wash Operation Task Force, published from June 9, 2019, by The Intercept Brasil website, founded by award-winning journalist and lawyer Glenn Greenwald. The headlines were published in partnership with VEJA magazine, Folha de SãoPaulo newspaper, El País newspaper and Radio Band News, which analyzed huge leaked data – including private messages, audio recordings, videos, photos, court documents, and other items. Vaza Jato revealed unethical, illegal, and unconstitutional behavior among State agents against selected targets, whether in the political, commercial, or geopolitical sphere.

10. PHOTO GALLERY

10.1 Lawfare under Debate Panels (UFG, Sept. 11-12, 2019)

Image: ADUFG

Rafaela Félix - coord. CAXIM UFG School of Law; Osmar Pires Martins Junior, coord./ organizer; Nilton Brandão - pres. PROIFES; Bartira Macedo - director Fac. Direito UFG; Sandra Chaves - Pro-Reitor UFG; Edward Madureira Brasil - Dean UFG; Flavio Dino Castro e Costa - Governor of Maranhão; Tatiana Lemos - councilwoman; Flavio Alves da Silva - President of ADUFG; Fernando César Mota - Pres. of SINT-IFESgo

Images: still photographs by Fernando F. Ferreira from original ADUFG

Sandra Mara, Edward Brasil and Flávio Dino

Anselmo Pereira, Marcello Terto and Demóstenes Torres

Tatiana Lemos, Flávio Alves da Silva and Fernando César Mota

Nilton Brandão, Flavio Alves da Silva, Igor Escher, Jacson Zilio and Eugênio Aragão

Image: ADUFG

The opening plenary had a working public linked to the university community composed of students, teachers and servants, in addition to professionals from various areas of expertise

Images: still photographs by Fernando F. Ferreira from original ADUFG

Elias Menta, Luciana Oliveira and Jacson Zilio

Wilson Rocha, Bartira Macedo, Leandro Demori and Virmondes Cruvinel

Image: ADUFG

The people gave prestige and participated actively in the debates organized by themes in the Federal University of Goiás

DEBATERS

Images: still photographs by Fernando F. Ferreira from original ADUFG

Matheus Zuza - Forest Enginnering student

Lucas Cardoso - Law student

Nara Bueno e Lopes - Lawyer

Bruno Pena - Lawyer

Igor Escher - Lawyer

Adriano Knupp - Biologist

Bia de Lima - Unionist (SINTEGO)

Marconi Moura - College professor (UEG)

DEBATERS

Marcelo Mendonça - College professor (UFG)

Lucas da Silva Rocha - Lawyer

Lucas de Sousa Mendes - History student

Michelly Coutinho - Unionist (SINT-IFESgo)

Elias Rassi Neto - Doctor

Eliomar Pires Martins - Lawyer

Rafael Langaro - Computer Engineering student

Frederico Noleto - Journalist

DEBATERS

Mariana Falone - Civil Engineering Student

Bárbara Wendell Lawyer

João Batista de Deus College Professor (UFG)

Raphael Guimarães Professor

10.2 MOVEMENT FOR NATIONAL AND POPULAR SOVEREIGNTY

Image: Ana Paula Schelder

Clair da Flora Martins (in red) and Roberto Requião (in gray blazer)

Image: Ana Paula Schelder

Act held in the Legislative Assembly of Paraná State, in Dec. 12, 2019

Image: Lula Marques/RBA

Former president Dilma Roussef in the act of the Mixed Parliamentary Front in Defense of Democracy at Brazilian Federal Chamber (Sept. 4, 2019)

Image: Cleia Viana/Câmara dos Deputados

Former governor of Paraná State and senator Roberto Requião on the microphone

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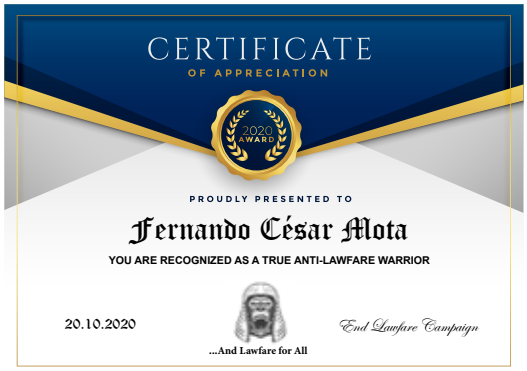


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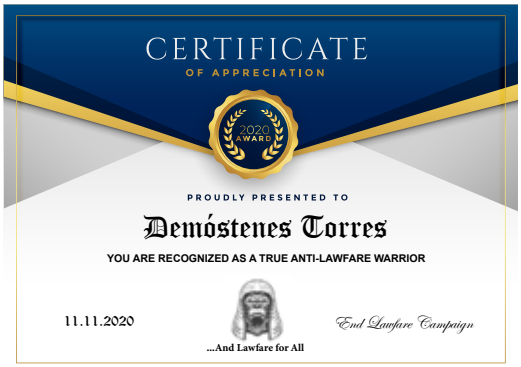
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If anything goes in the State of Law why we must care about lawfare?

Who, when, how, where, what lawfare means to the common citizen in the context of an impressive era of mediatic disinformation, fake news, sabotage, neoliberalism, deep state, mammonism, racism, persecution, mass incarceration, and other anti-humanitarian phenomena.

The comprehensive debate about lawfare in this book brings together students, academics, lawyers, prosecutors, magistrates, politicians, and victims.

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