

ESTUDOS E ANÁLISES DE CONJUNTURA

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OUTLOOK FOR LATIN AMERICA

SEBASTIÃO VELASCO E CRUZ



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OBSERVATÓRIO POLÍTICO
DOS ESTADOS UNIDOS



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**INTERNATIONAL ORDER?
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INTERNATIONAL ORDER? INTERAMERICAN RELATIONS AND POLITICAL OUTLOOK FOR LATIN AMERICA¹

Sebastião Velasco e Cruz

We are living in interesting times. The privilege is doubtful, yet there is no disagreeing with the statement. Wherever we look, the events surprise us with an unfamiliar, disconcerting feeling. It is so in the field of technology, with its impact on the forms of labor organization and social life –widespread automation and robotization bringing, or promising to bring very shortly, into our daily lives wonderful machines that we used to find in science fiction books and films. It is also so in the realm of the sciences of life, which, by incorporating breakthroughs in genetic engineering, microelectronics, and nanotechnology, seem to blur the frontiers between the natural and the artificial, paving the way for more daring fantasies and challenging us every day with ethical/moral issues and even the most anguishing of metaphysics.

Amazing developments can also be seen in the field of international economy, sufficing it to mention, by way of illustration, the prodigal stimulus policies implemented by the monetary authorities of Japan, Europe, and the United States, which have prompted these economies to operate over a prolonged period with negative real interest rates, which seem to upend relations between lenders and borrowers, of vital importance in the functioning of any capitalist economy.

And since the attack on the World Trade Center twin towers, on September 11, 2001, international politics has been shaken by events that keep eroding certainties so strongly proclaimed in the decade immediately following the end of the Cold War.

In this article, I will not seek to present an overview of the international context; nor will I attempt to forecast alternative political futures to our mistreated subcontinent. Rather, I will seek to point out some emerging trends at both levels, seeking to explore their relations in order to better identify the nature of the political challenges confronting us in this piece of the planet where we are striving to overcome the exploitation and dependence legacy that marks the history of our countries. I must begin with a word of clarification on the interplay between the two terms used in the title of this article.

¹ Paper delivered at the FLACSO Ecuador/ISA joint international conference Power Reconfigurations: Regional And Global Responses in An Age of Uncertainty. Quito, Ecuador, July, 25-27, 2018.

1. Some preliminaries

1.1. International order

The commentary is accurate because, in the first place, in the international relations literature there abound contradictory notions about the meaning of international order. It would not be advisable to consider these notions separately, but we cannot move forward without accounting for their diversity.

Secondly, because some of the phenomena that more evidently threaten the “international order” in the post-Cold War— whichever the precise meaning being assigned to the notion —have arisen mostly not in the dimension indicated by the prefix “inter” (relations between a system’s units), but rather in the national sphere, in other words, in the realm of the domestic policies of the States concerned.

Some quick references to recent events are enough to illustrate the affirmation.

The crisis that erupted in Ukraine in the end of 2013, escalated shortly afterwards with the overt political intervention of “foreign” actors—the United States and the European Union and, more discreetly, Russia. This compelled the institutional actors to reach an agreement that was brokered by international mediators. This agreement was, however, immediately nullified by the intransigence of radical groups, with the veiled support of the United States; and culminated in the Crimea referendum, which laid the ground for Crimea’s secession and its reincorporation as part of the Russian territory, triggering a crisis between Russia and the “West”, still today a key element in the international scene.

The failed military coup in Turkey, in July 2016. The claim made by President Erdogan that the plot had been masterminded by a religious man exiled in the United States; the demand for his extradition; the breadth and severity of the repressive measures that befell those suspected of having participated in the failed attempt; the circumstances of the coup and the reaction it triggered; have all created the context for the rapprochement between Russia and Turkey, while prompting an escalation of tensions between the latter and its NATO allies.

The Brexit. The result— feared yet unexpected —of the Great Britain referendum contradicted the assumed irreversibility of the European integration process, paved the way for nationalist contestation in several countries, yet also removed from the European decision-making process an actor of the highest order that had always operated as a preferred ally of the United States, representing its interests in Europe and halting attempts to deepen European integration,

with the ensuing enlargement of its degrees of autonomy.

The 2016 presidential election in the United States. The victory of an outsider who prevailed against all—the establishment of his own party to begin with—as the “antisystem” candidate, and his resolve to reiterate the candidate’s pledges after his inauguration, prompted consternation and fed into a sense of risk in all quarters of the globe. Particularly worrisome to many was the emphasis with which Trump turned down some cornerstone principles of the United States’ foreign policy. Today, in office for over a year and a half and with the world pushed to the brink of a widespread trade war of unpredictable consequences, Trump’s behavior proves those fears were not far-fetched.

I will return to this point further ahead, but it is not precipitated to take this fact as a sign of the crisis of the order established in the post-Cold War period.

Let us consider this partial result. The international order has been shaken by developments that are taking place in the realm of the “internal” policy of specific States. This finding does not lead us far, yet provides a criterion, an analytical principle.

In reflecting upon the international order, we must reject notions hinged on the rigid segmentation between the national and the international, between domestic policy and the realm of interstate relations. These categories are inescapable, in that they are implied in the territorial definition of modern States. But—against the legal scholar’s view—the territory should not be viewed as an attribute of the concept of State or as an ontological reality. Paraphrasing Robert Sack’s formula, the territory is a geographically delimited area controlled by an individual or group to affect, influence, and control people, phenomena, and social relations. It is this objectified intentionality that distinguishes the territory from the area drawn on the map by the geographer, when seeking to describe phenomena like urban and industrial concentration. “This delimitation becomes a territory only when boundaries are used to affect behavior by controlling access.” In this sense, territories are sedimented expressions of strategies.²

Inside and outside; domestic policy and foreign policy. The boundaries separating these two levels are not fictitious. They exist and manifest themselves brutally in many domains. Take for example the migration policy. Yet they never happen once and for all. They are produced and reproduced through the practice of agents, and their degree of effectiveness varies significantly depending on the social spheres considered, and over time.

² See Sack, Robert D., *Human Territoriality. Its theory and history*. Cambridge, Cambridge University Press, 1986, pp. 19 and seq.

1.2. Latin America

And what can be said about the second part of the title? Political outlook for Latin America? This also calls for a clarification.

Indeed, is it accurate to refer to this entity— Latin America —as a given in itself, over and beyond considerations of time and place?

Naturally, features shared by the countries situated below the Rio Grande abound and are fundamental. Over and beyond those often pointed in the literature on dependence, there is this one that, in its sociologizing bias, the literature tends to silence: The embedding of these countries in the geopolitical space— they constitute themselves in formally sovereign States as detachments from decadent and peripheral empires, in an area of the globe that, from the beginning, was claimed as the exclusive sphere of influence of the expansionist power that was rising in the North. And there is also among them this common primordial trait, parasitism, which continues to pervade every level of their societies; the sociocultural abyss that separated their elite from the popular strata; the oppressive exploitation relations on which their elite's well-being and pomp rested.

Together, these two elements account, to a great extent, for the underlying political problem that strongly projects itself throughout the region till today: deplorable standards of income, and wealth inequality; deeply antisocial selectiveness of administrative agencies and the judicial apparatus; chronic brutality in police forces/popular sectors relations.

Since the States in the region were established under the influx of European liberal ideas that inspired their elite in the independence process; since these ideas— more or less deeply adapted —shaped the constitutional charters in these States, and since the debate around these ideas continued to nurture the political ideologies of their ruling classes, the citizen-building process in Latin America tends to assume apparently paradoxical features: relatively premature affirmation of social and political rights (albeit of a limited scope) and civil rights enshrined in the letter of the law, yet systematically denied in social practices.

Hence the two overarching conditions alluded to— position in geopolitical space and relations with the subalternate social strata —also translate into significant differences between the countries in the subcontinent. Let us think, for example, of those differences that separate the areas where the European conquerors erected their dominions over dense, stratified populations, endowed with complex sociopolitical structures, and strong historic memory (areas occupied by the Inca and Aztec empires), and the “new” areas, meaning occupied much later by the European immigrant, after being hygienically liberated from their original inhabitants— Argentina showcases this,

which brings her closer to countries as geographically distant as Canada and Australia.³

These differences must be taken into account if we wish to understand why the peasant-agrarian revolution was a reality in Mexico, yet always existed as a mirage in other places. This is necessary, moreover, for the keen understanding of the specificities of the distinct national trajectories in the subcontinent.

A necessary but insufficient condition. In order to account for these differences, it is indispensable to take into account the other element of the equation, i.e., how these countries came to participate in the geopolitical space; which leads us to the problem of Latin America's relation with the big brother of the North.

These relations have always been important for the region, but to varying degrees and ways. Critical from the beginning to Mexico and the Caribbean and Central American countries, they gain importance later on for the countries of South America, who stayed within the orbit of Great Britain until the end of the nineteenth century. In this regard, Argentina occupies a unique place: Having entered the twentieth century as one of the most prosperous nations on the globe, closely attached to the British empire as its main supplier of foodstuffs (wheat and beef), Argentina nurtured the dream of competing with the United States for predominance in the region and paid a high price for that.⁴ Once the war was over, and the Peronista challenge had been defeated, in the 1950s the primacy of the United States over the whole of Latin America was undisputed.

It is not possible to understand the political meaning of the term Latin America without placing at the center of our reflection the relations of the set of countries referred to as Latin America with the United States.

It is in this relation that the idea, at first mostly negative, is formed: Latin America as the other from "America" – just like that, with no adjective and in the singular: A vast, politically fragmented territory to the South, with the populations so diverse and exotic that inhabited it. A space over which to exercise political rights against third parties – "America for the Americans" – yet not incorporated into the mov-

³ For a discussion of the Argentine case building on this characterization, see Waisman, Carlos H. *Reversal of Development in Argentina. Postwar contrarrevolutionary policies and their structural consequences*. Princeton, Princeton University Press, 1987. On the "Conquista del Desierto" and the construction of the State in that country, see Oszlak, Oscar, *La Formación del Estado Argentino. Orden, progreso y organización nacional*. Buenos Aires, Editorial Planeta Argentina

⁴ This argument is made by Guido di Tella in "Argentina between the Great Powers, 1939-46: a revisionist summing-up". In di Tella, Guido and D. Cameron Watt (eds.), *Argentina Between The Great Powers, 1939-46*. Oxford, Macmillan, 1989.

ing borders of the national territory of the United States.

Pan-Americanism. Conceived back in the nineteenth century– the first Pan-American Conference was held in 1889, in Washington, during the Grover Cleveland administration, as the result of a long campaign in Congress conducted by its architect, former Secretary of State James G. Blaine –, the project of formally integrating the Iberian-American countries in a broad and disciplined system of alliances gains more clear contours during World War II, when the region becomes the object of ideological and political dispute with the forces of the Axis. The Bogotá Conference– the ninth pan-American conference –establishes, in 1948, the Organization of American States, OAS, already in the midst of the Cold War. At this point, the countries of the region were already militarily tied to the United States by force of the Inter-American Treaty of Reciprocal Assistance (ITRA), adopted in September 1947, in the city of Rio de Janeiro.

Borrowed identity, thus. But, as is customary in processes of such nature, with the passage of time, the tensions and conflicts inherent to such an asymmetrical relationship begin to assign new meanings to the concept of Latin America.

Some decisive moments in this process are easily distinguishable. The frustration caused by a relative neglect in the aftermath of the war– in flagrant contrast with the “generous” treatment afforded to Europe by the Truman administration, with his Marshall Plan– is the first of them. The other– much later and most importantly –is the Cuban Revolution, which put forward the idea of Latin America as a reference in the struggle led by the peoples of the region against the oppressive domination systems in effect in each of their countries, and at the same time against their subordination to the imperialist yoke.

What came after that is part of the experience lived by many among us. The brutal reaction of the dominant groups oftentimes expressed in the form of military coups and regimes inspired and supported by the United States. The slow learning of democratic resistance. Later on, in another international setting, more or less controlled political transitions, also under the attentive and interested gaze of the American States.

We lived then in a paradoxical period in which political victories were coupled with severe economic crises. We left this period under the imperative of “structural adjustment” that ushered us into the age of neoliberal reforms. We also witnessed the radicalized resumption of pan-Americanism, now under the figure of a hemispheric economic space, framed by the rules of free trade, as set by the United States.

The last act– the penultimate, rather –in this work-in-progress play was a collective effort designed to reintroduce the idea of autonomous regional integration. I am referring to the enlarged Mercosur, to the ALBA, the UNASUL, the CELAC (Community of Latin American and Caribbean States) –a diversified set of projects that reinforced each other mutually in their differences. This is a movement that was led by governments representing the “pink wave” or “progressive tide”, which ushered in the age of post-neoliberalism in the region.⁵ Not by chance, one of the strongest symbolic milestones of this process is the rejection of the FTAA at the Mar del Plata summit in November 2005.

As this unfolded, we saw the emergence of another milestone– South America. But this does not arise as a counterpoint to the other. Instead, keenly attuned to the harsh realities of geopolitics and geoeconomics, South America appears as a focal point of a will for autonomy whose space for its full accomplishment was and continues to be Latin America.

In this sense, more than reality as a given, the notion of Latin America denotes a project’s locus, or rather, its horizon.

2. ‘Concert and disconcert’ of the world

Order or disorder? Strictly speaking, neither. A combination of elements from both states, which suggests we are before an international order in crisis.

It is worth moving back a little. This order was formed in the post-Cold War period, under the undisputed hegemony of the United States. Its best known face is economic globalization: Removal of barriers to goods and services trade; free movement of capital; unbridled commodification of social life and predominance of the financial logic in all of its domains; privatization, deregulation, reduction of the role of the State, especially as strategic planner and producer of public services; broadening and strengthening of property rights; casualization of working conditions and downgrading of the social rights of the dispossessed classes.

Thus understood, the term economic globalization does not denote a really existing state of affairs, but rather a dystopian speech that begins to pervade reality as it materializes into laws and regulations and turns into institutionalized programs of governments and international organizations like the WTO and the IMF.

So, globalization it is.

⁵ Cf. Panizza, Francisco, *Contemporary Latin America. Development and democracy beyond the Washington Consensus*, London/New York, Zed Books, 2009

But a characterization of this order would be incomplete if failing to address its spiritual complement, its concomitant value: The enshrining of the human rights theme as the subject matter of international laws and the transformation of a limited model of democracy— low intensity democracy, it has been said —as a requirement for acceptance of any country as a full member of the reconstituted international community.

Along the same line, it is worth mentioning the affirmation of the struggle against bribery practices as a moral imperative and the breeding of an international regime to address the issue; this one, as all the others, was erected by inspiration of the United States, which, however, refuses to accept its disciplines. I will get back to this theme further ahead.

And the characterization would be altogether insufficient if it failed to point out the two pillars on which said order is based: Economic superiority of the western powers and undisputed military supremacy of the United States.

The present crisis stems from the finding that these two fundamentals are not so sound.

The economic pillar is beginning to be undermined by the exuberant dynamism of the new centers of accumulation in Asia that enjoy to their fullest their integrating into the liberal economy formatted over the last decades, yet practice their own kind of capitalism, marked by strong State intervention in the economy. As they expand and become more confident in themselves, these centers— I am thinking mostly of China, but also of India —begin to compete with the western powers for the power to set rules for the international economy, and thus favor those more consistent with their characteristics.

But the main element in the weakening of the economic pillar of said order are the finance dominated capitalism's internal contradictions, which have, since the end of the last century, been translating into recurrent economic crises and continued social malaise, the origin of two of the political shifts referred to in the beginning of this article (the Brexit and the result of the elections in the United States).

As for the second pillar, the decisive factors are, on one hand, the spread of military power and the vulnerability of the western military apparatus to asymmetrical forms of war (guerrilla and terrorism); on the other, the increasingly more pronounced willingness of Russia—relatively weak on the economic level, but extremely powerful on the military field —to affirm itself as a great power, even if that requires utterly violating the interdicts that underpin the order built under the guidance of the United States.

Donald Trump's election and the policies that characterize his gov-

ernment express all these tensions while also boosting them.

Actually, his victory did not come out of the blue. Since the penultimate year of the last decade, as a response to Obama's election and the policies adopted by his administration to contain the deepening of the recession caused by the 2008 financial crisis and to bail out some economic and social sectors severely hit by it, we have been witnessing the emergence in the United States of a highly conservative social movement, yet with a clear antisystem orientation. I am speaking, of course, of the Tea Party.⁶ It would be inappropriate to address this theme in this article. For the purposes of the argument outlined here it suffices to say that this movement presages, in many aspects, Trump's stunning trajectory— his campaign slogans, his outsider stance in relation to the Republican Party's machine, and his suspicion of the GOP's traditional leaders. Trump's rhetoric is not a perfect match with this movement, even though it incorporates many of its most cherished themes. Now, without this previous rank and file mobilization history it would be inconceivable to imagine the success— against everything and everyone —of the improbable candidate that was the businessman Donald Trump when he stepped forward to run in the Republican Party primaries, with his forecasts on their results that were universally taken as ridiculous bravado.

The reflected expression of the previously alluded tensions, Trump's election takes them to a new level. He does so by the tenor of his speech, the content of the measures he takes from the very first moment of his government, and the intense reactions both prompt. It is hard to choose his most disturbing actions among the many of this quality he adopted in his still short term in office— although the decision to penalize, indiscriminately, trade partners with the enforcement of unilateral customs surcharges seems to be, for now, the most serious. As to his rhetoric, I will leave out the impudence of his sound bites and instead draw attention to two passages of his first address on the State of the Union, of 28 February 2017, considered by many as exceptionally well-behaved.

One of them is how he negatively refers to the money wasted in disastrous military interventions in the Middle East that would be enough to cover the financial cost of his infrastructure reconstruction plan two or threefold.

After revisiting several themes of his "America First" campaign, the other passage— of a much broader reach —is his invocation of the principle of sovereignty in the terms that follow:

⁶ See Skocpol, Theda and Vanessa Williamson, *The Tea Party and the Remaking of Republican Conservatism*. Oxford/New York, Oxford University Press, 2012.

We will respect historic institutions, but we will respect the foreign rights of all nations, ... Free nations are the best vehicle for expressing the will of the people, and America respects the right of all nations to chart their own path. My job is not to represent the world. My job is to represent the United States of America.⁷

In both he breaks with the bipartisan consensus that has informed the superpower's foreign policy since the end of the Cold War and presided over the construction of the international order created under its aegis.

Speeches cannot be taken to the letter, but it is misguided to downplay their importance for political analysis. When Trump talks about respecting the sovereign rights of nations, he moves away from the international-liberal consensus and openly voices his distrust in the international organizations. This attitude would gain more clear contours on the following day, with the release of a document disclosing the official position of his government with reference to its trade policy. In this document it is proclaimed, in all clarity, the primacy of the national law over commitments made in international treaties, and emphatically manifested the willingness to employ the means provided for in the country's legislation to enforce the national interests in the field of trade. That is, the willingness to make unabashed use of power— in its multiple dimensions —to accomplish the goals established by his policy.

At the end of his first year at the head of the government, the general conception giving meaning to this view would be fully disclosed in the United States National Security Strategy, as strongly evidenced in the excerpts transcribed below.

The United States will respond to the growing political, economic, and military competitions we face around the world. China and Russia challenge American power, influence, and interests, attempting to erode American security and prosperity.

For decades, the United States has allowed unfair trading practices to grow. Other countries have used dumping, discriminatory non-tariff barriers, forced technology transfers, non-economic capacity, industrial subsidies, and other support from governments and state-owned enterprises to gain economic advantages.

A central continuity in history is the contest for power. The present time period is no different. Three main sets of challengers— the revisionist powers of China and Russia, the rogue states of Iran and North Korea, and transnational threat organi-

⁷ White House, President Donald J. Trump's Address to a Joint Session of Congress, March 1, 2017.

zations, particularly jihadist terrorist groups—are actively competing against the United States and our allies and partners.⁸

In short, the international system is anarchic. The United States is more powerful. The duty of its President, as the ruler of a sovereign nation, is to pursue the interests of the United States. The other nations should do the same, and all will coexist in peace— free, sovereign, and equal —provided they behave themselves.

There is an evident tension between the rhetorical affirmation that the United States is surrounded by threats, at the end of a long trajectory of decline, and the reckless bet on its capacity to recover the greatness lost by imposing its will on allies and competitors, friends and foes.

But this is not about critically addressing that speech. Instead, I set out to consider an aspect of the Trump administration’s foreign policy that maintains marked continuity with the line followed by his predecessors.

3. Contested hegemony and the crusade against corruption

The destabilizing impact of Trump’s conduct on the international regimes, central elements of the post-Cold War reconstituted order, is known. The very moment I am writing these lines, the media is being flooded with news and analyses on the punitive tariffs adopted by his government and the awkward recourse to the national security argument used to justify them. Competing with them for the audience’s attention are the reactions raised by the truculence of his migration policy, and the uneasiness caused by his attacks on allies and organizations established in a distant past to negotiate their interests and to set common lines of action. Trade, environment, human rights ... wherever we look what we see is the assumed disregard for coordination mechanisms usually considered essential to global governance.

Now, there is an international regime— just recently established – that is still healthy and is to play increasingly more important roles in the United States strategy. I am referring to that whose focus is the fight against corruption.

We can glimpse the importance assigned to the issue by glancing at the United States National Security Strategy of December 2017. In this document, the term corruption appears 13 times, the fight against that kind of practice being explicitly associated, on one level, with the promotion of an environment that will favor the success of American companies; on another, with the fight against the threats represented by drug trafficking and terrorism. On the third level—

⁸ White House, National Security Strategy of the United States of America, December 2017.

which condenses the preceding two –it appears as a weapon in tackling the Sino-Russian threat, which is founded on a state-led economic development model that is itself breeding corrupt practices.

Against this triple threat– that manifests itself more strongly in some regional contexts, as in Africa and Latin America– the United States’ response includes the strengthening of alliances and cooperation with specialized bodies in friendly countries.

We will build upon local efforts and encourage cultures of lawfulness to reduce crime and corruption, including by supporting local efforts to professionalize police and other security forces; strengthen the rule of law and undertake judicial reform; and improve information sharing to target criminals and corrupt leaders and disrupt illicit trafficking.⁹

I spoke of an international anti-bribery regime. It is worth noting the radical novelty it introduces. Until its advent, corruption had always been present as a domestic policy issue– chronic when all is normal; almost always dramatic in situations of crisis –yet it was not on the agenda of the international organizations. Instead, viewed by part of the literature as a beneficial phenomenon, akin to a lubricant that accelerates the workings of heavy and irrational bureaucracies (case of the influential book by Huntington, in *Political Order in Changing Societies*), corruption was addressed by heads of state and businesspeople as a normal and insurmountable aspect of international economic and political relations.

No longer after the Cold War. As of the mid 1990s, we witnessed the assemblage of a complex network of international agreements, conventions, and treaties against corruption, with the commitment of an increasingly larger number of countries. Though incomplete, the simple chronology below will suffice to give an idea of the breadth and pace of this process.

International anticorruption regime. As all the other regimes, it involves primarily national governments, who commit themselves to entrench in their legal frameworks the internationally agreed upon rules. Now, as the mention to Transparency International above suggests, it goes much further and includes– playing a key role – international organizations as, for example, the World Bank, and countless civil society organizations acting in the international sphere or focused on their respective countries.

⁹ Ibid.

GLOBAL ANTI-CORRUPTION CHRONOLOGY

1993	Creation of Transparency International.
1994	Creation of the Working Group on Bribery in International Business Transactions of the Organisation for Economic Co-operation and Development (OECD)
1994	OECD Anti-Bribery Convention, in 1994.
1995	Transparency International releases Corruption Perceptions Index (CPI).
1995	OECD adopts Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials.
1996	OAS Inter-American Convention against Corruption.
1997	OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, with the participation of Brazil, Argentina, Bulgaria, Chile, and the Republic of Slovakia.
1998	Publication of report The Fight Against Corruption in Latin America and the Caribbean: a World Bank View.
1999	Criminal Law Convention on Corruption of the Council of Europe – Strasbourg.
1999	The Corruption of Foreign Public Officials Act – Canada.
1999	Civil Law Convention on Corruption – Council of Europe.
1999	Creation of the Interpol Group of Experts on Corruption.
2000	Ratification of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions by Brazil, enacted by Decree nr 3678, of 30 November 2000.
2002	Council of Europe Civil Law Convention on Corruption in force.
2002	Tony Blair’s government launches EITI (Extractive Industries Transparency Initiative), an anticorruption agreement that by 2017 had been adhered to by 52 countries.
2002	Law nr 10467 amends the Brazilian Criminal Code to include acts practiced by a private person against foreign public officials in international trade transactions.
2007	Conduct Principles for Public Officials – APEC (Asia-Pacific Economic Cooperation)
2010	United Kingdom Bribery Act enters into force.
2013	Enacted in Brazil Law nr 12846, which provides for administrative and civil responsibility of companies for acts against national and foreign public officials.
2016	Signing of the Trans-Pacific Partnership agreement, with a chapter on anticorruption enforcement.

That’s not all. In developing their routine activities, these organizations and agencies establish with each other institutionalized, formal or informal, cooperation standards, setting up networks of different densities that go beyond national states and often operate with great autonomy vis-à-vis their countries’ governments.

As underscored in the few studies focusing on the theme,¹⁰ the emergence of said regime was conditioned by the geopolitical change triggered by the collapse of the socialist bloc, though it cannot be explained solely by it. At the origin of this regime is the law against the bribery of foreign public officials approved by the U.S. Congress in 1977 (the Foreign Corrupt Practices Act) – amended in 1988 –and the interest of the American multinational companies in bringing their international competitors to comply with these rules. Naturally this interest would not have materialized had it not been embraced by the leadership of the American State, who shared the interest of the corporations and further reinforced it with reasons of a geopolitical order.

Decisive in its setup, the United States is at the center of this regime. This fact reflects the country's structural power– the size of its domestic market and the wealth of its financial system, which translate into unparalleled coercive ability– but also the strategic use of its technological, political, legal, and administrative resources to condition the behavior of its partners and to subordinate them to its policy goals.

We have experienced this in Brazil and learned its meaning. Less familiar to us is the use of the same provisions against the large companies of the advanced capitalist countries, long-time members of the exclusive club called West. Based on the particularities of the American law and the abusive interpretation made of these standards by courts and administrative agencies, European groups as important as Alstom, HSBC, and BNP-Paribas have been forced to pay high fines in the United States. The next excerpt, extracted from a lengthy report published by Le Monde on the backstage of the crisis that befell Airbus, is quite illustrative.

"The European companies are victims of outright legal imperialism. The Americans use the law to destroy their competitors", claimed Pierre Lellouche, former Paris (Republican) deputy and the author of an information report on the extraterritoriality of the American law published in 2016 with his socialist partner Karine Berger.

The procedure is always the same. The DOJ sends a letter to the CEO of the company suspected of corruption and gives him or her the choice: either the company pleads guilty in criminal proceedings, which exposes it to exclusion from the public markets, or it pledges to agree to conduct an internal audit of the procedures and contracts signed over the past ten years.

¹⁰ See, for example, Krastev, Ivan, *Shifting Obsessions. Three essays on the politics of anticorruption*, Budapest/New York, Central European University Press, 2004; and Bratis, Peter, "Political Corruption Under Transnational Capitalism: A Marxist View", *The Marxist*, XXX, No. 3, 2014 (Portuguese version at *Crítica Marxista*, No. 44, 2017).

After the report is submitted, the prosecutor establishes the fine to be paid to avoid legal processes.¹¹

The report mentioned in the story is a sweeping document produced by a parliamentary commission sent to the United States to investigate the issue regarding the extraterritorial enforcement of the American law. It is available on the internet, and its reading is highly instructive.¹²

4. War operations in the Brazilian theater

The political crisis in which we have been mired in Brazil for more than three years shares many traits with the other crises that preceded it, yet it can be clearly distinguished from them for some characteristics.

The most evident of them is the radicalness of the program embraced by the forces that precipitated this crisis. This program had been designed since the beginning of the crisis, that is, still in 2014, immediately after the announcement of Dilma Rousseff's victory, which, to the right, meant the bitter experience of a fourth successive defeat, and has become increasingly clearer for all to see as the government of Michel Temer took it upon itself to carry it on.

I said Temer's program, but the expression is misleading. This program was not prepared by him, or by any of his close aides. This government's platform expresses the interests of big– international and local –capital and was planned by its legitimate representatives.

Its radicalness becomes the more evident when we move away from the agent and listen directly to those whom he serves.

As they do not need to render accounts to the people, they do not measure their words. The ousting of Dilma Rousseff was not carried out to enable correcting the course required for the resolution of specific topics. The goal pursued is a constitutional change in the strongest sense of the term. It is about shifting the country's sociopolitical grid, refounding Brazil, as a fully assumed bourgeois nation, free of guilt, and disencumbered of egalitarian chimeras of social justice.

In this sense, the program of the 2016 institutional coup is closer to the market fundamentalism that disgraced Argentina in the 1970s and 1990s than to the conservative developmentalism that drove the

¹¹ “Le dessous de l'opération mains propres en cours chez l'Airbus”, Le Monde, 13 October 2017.

¹² See M. Pierre Lellouche (President) and Mm. Karine Berger (Rapporteur), Rapport d'Information Déposé Par la Commission des Affaires Étrangères et la Commission des Finances sur l'extraterritorialité de la législation américaine, National Assembly, 7 October 2016.

Brazilian military when they took power in 1964. The question about its compatibility with democratic-political contest does not admit an optimistic answer. And the violence perpetrated against former President Lula, under the guise of a flawed legal process, confirms the worst forecasts.

The second particularity of the present institutional disruption has to do with the actors it mobilizes. As in the past, the main role is played by the league gathering big capital (predominantly rent-seeking) and the big media, with their spokespeople in the political-partisan arena. This league has been a constant in our coup-riddled history.

Now, some characters leave the scene— or remain discreetly in the backstage —while others break onto the stage with unstoppable force.

Among the first, by far the most important is the military. Protagonists of the events that inaugurated our republican history, the military remained at the epicenter of all the political crises that happened in Brazil in the last century, with the remarkable exception of that that culminated in the impeachment of Collor de Mello.

But that episode was short-lived and unfolded against a backdrop of consensus— in the very first weeks after his wrongdoings came to light, the big media was calling for Collor's resignation in favor of preserving his reforms. The deposition of Dilma Rousseff is a whole different story. It takes place almost two years after the opposition's war cry was issued, just as the results of the polls were being announced; it develops in the context of a deep economic crisis, unmatched in modern Brazil; it is marked by unprecedented tensions in interinstitutional relations; and polarizes the country with an intensity rarely seen in our history.

Even in the presence of these elements— all of them very worrisome in the military perspective —and even witnessing some of their dearest projects being mortally wounded by the unfolding of the national crisis, the military remain silent most of the time, albeit the rising protagonism Temer has conferred upon the Armed Forces in his administration. It would not be the case of asking the reasons for this fact, much less so of attempting forecasts. But there is no ignoring it.

As for the second, the highlight is segments of the Judiciary and of the Federal Prosecutor's Office.

The protagonism of the Judiciary— in particular of its highest body —in the crisis is not surprising, given the key role it has always had in analogous situations in the past and the trending judicialization of the political and social conflicts, a trend Brazil shares with many other countries and one that has given rise to an abundant, yet very uneven, literature. What is striking in our case is the expected outcome

of this process, when exacerbated: The politicizing of Justice, with its corollary, increased the loss of institutional autonomy.

We saw that with several challengeable and publicly challenged rulings by the Supreme Federal Court (STF, from the Portuguese acronym). We see it again in the extravagant behavior of some of its members, in flagrant violation of the decorum rules inherent to the offices they exercise. We saw it again in the appointment of a justice coming from his circle of loyal collaborators by an illegitimate president who is also seriously suspected of acts of corruption. And we concluded there was nothing left to see with the spectacle of a split and a frightened Supreme Court sheltering a host of illegalities perpetrated by its subordinates to keep former President Lula in jail and prevent him from participating in an election that, even from behind prison bars, he is by far the favorite candidate.

The Prosecutor's Office issue is much more complex. The starting point for its analysis is contained in this passage, extracted from an article published some time ago by Higher School Foundation of the Public Prosecutor's Office for the Federal District. Commenting a statement by a Spanish jurist who presented the Brazilian case as the perfect example of "*Ministerio Público, como órgano del Estado, con entidad propia e independiente*" [Prosecutor's Office, as State body, with its own and independent entity]", the author of the study notes:

*The Iberian jurist could have gone much farther had he considered the position of the Brazilian 1988 Constitution as regards said institution. ... It can be seen, therefore, that the country's legal framework has not followed the tendency of other Constitutions that include the Prosecutor's Office within the sphere of one of the three Branches.*¹³

This is the essential fact: the Brazilian Prosecutor's Office enjoys unique autonomy among us, thus allowing the author of the aforementioned study to present it as "an example to contemporary constitutionalists", without failing to insist on the need to struggle for additional powers.

¹³ Kahmann, Andrea Cristiane, "O Ministério Público e seu posicionamento em frente aos Poderes de Estado: uma análise sob a ótica do direito constitucional comparado", Rev. Fund. Minist. Público Dist. Fed., Territ. Brasília, Year 12, nr 23, 2004, pp. 11-27.

This state of affairs is the result of a complex process whose contours have been well outlined in some specialized studies.¹⁴ The essential element of the history we are told is the integration of the Prosecutor's Office in the democratic front that presided over the end of the authoritarian regime. In the Constituent Assembly, the alliance between the Prosecutor's Office and the wing to the left of this front is clearly expressed in the distribution of votes at the Judicial Branch Subcommittee—presided over, not by coincidence, by Workers' Party representative Plínio de Arruda Sampaio – and in the following votes— at the Systematization Committee and in the Assembly's plenary session.

Comparison of the texts approved in each of these spheres shows the weight of the conservative bloc in attenuating the initial accomplishments made by the Prosecutor's Office.¹⁵ No wonder, therefore, that upon reviewing the battle of the Constituent Assembly, a high-ranking member of the corporation qualified as “timid” the breakthroughs made, insisting on the need to abolish the appointment of both Republic and states' General Prosecutors by the heads of the respective Executive branches, as a requisite to ensure the body's independence and autonomy.¹⁶

In the hierarchy of the themes it addresses— emphasis on diffuse rights –, the references it mobilizes, and in its rhetoric said text illustrates to perfection the results of the aforementioned analyses, as can be seen in the passage below:

*... heighten the key role the Prosecutor's Office is to play as an institution constitutionally mandated to stand up for the democratic regime, the legal order, and social interests. And this key role must be understood ... also by the social groups committed to the construction of democracy, enabling coordinated, joint, and effective action in the war of position being waged in civil society, in the fight for hegemony.*¹⁷

The language used makes reference to Gramsci, who, as a matter of fact, appears in the book's epigraph. Inspired by the teachings of the Italian theorist, the author closes the argument with a conclusion of a practical order:

¹⁴ See Kerche, Fábio, *Virtude e Limites: autonomia e atribuições do Ministério Público no Brasil*. São Paulo, Edusp, 2009, and Maciel, Débora Alves & Andrei Koerner, “O processo de reconstrução do Ministério Público na transição política (1974-1985)”, *Revista Debates*, Porto Alegre, vol. 8, nr 3, 2014, pp. 97-117.

¹⁵ See Kerche, Fábio, *op. cit.*

¹⁶ Goulart, Marcelo Pedroso, *Ministério Público. Teoria e Praxis*, Leme-SP, 1998.

¹⁷ *Ibid.*, p. 103.

The correlation of antagonistic social forces is a determining factor for the success of the juridical endeavor... It presupposes a strategic project and the defining of a tactic, which entails:

-coordination of the Prosecutor's Office with the other civil society bodies that share the same goals;

-sense of opportunity for mobilization and the unleashing of a campaign of struggles and the political and legal actions stemming thereof.¹⁸

It is hard to know what Gramsci would have to say about the use of his teachings by the unlikely disciple. But in all likelihood he would not be surprised with the end of the story. The “civil society bodies” that the Prosecutor’s Office strategist had in mind were the trade unions and the social movement organizations. Since the Prosecutor’s Office is a branch of the state’s bureaucracy, and not the “new prince” that inhabited Gramsci’s imagination, the alliances it ended up making in “civil society” were with the “antagonistic social forces” situated on the other side.

Not quite so. Besides its link with the State, the Brazilian Prosecutor’s Office exhibits organizational features that place it with the antipodes of the new prince, thought by Gramsci with the aid of military metaphors: This is just an administratively hierarchized body that assigns full functional autonomy to each and every of its members.

External alliances, in this context, are established not by the institution as a whole, but by segments— and even by its own individual members.

This is the path to understand the relations of power inside the Prosecutor’s Office and the radical shift of its priorities: Marginalization of themes dear to the social movements— and of the professionals devoted to them —and skyrocketing rise of the corruption, money laundering, and organized crime theme.

They are at the heart of the present political crisis, just as they were in so many crises of the past. But between these moments there is a striking difference. Until the end of the last century, corruption was an important ingredient of domestic politics. It was the target of moralizing campaigns and in its name governments were brought down, like that of Vargas in 1954. But the actors that promoted them were native and their reasons explained by power disputes in the national arena. Not now. As we saw elsewhere in this article, with the end of the Cold War the corruption theme became, by inspiration of the United States, the subject of an international regime. Since then, multilateral and bilateral agreements on the matter have multiplied

¹⁸ Ibid., p. 105.

while close cooperation relations between specialized bodies in Brazil and other key countries, in particular with the United States, are consolidated.

Under the crisis conditions we are living in, this fact grants these bodies an extreme level of autonomy— which forces us to think of them as actors, in the strong sense of the term, endowed with self goals and capable of deciding, at any moment, about the opportunity of the movements they make. Taking this fact into account is imperative to understanding the war with no quarter we are watching today between the political staff of the new regime and the forces gathered around Operation Car Wash.

This role of this conflict in the political decomposition of the Temer government should not be downplayed. As suggested before, its apparent strength came from “market” expectations— allow me the euphemism in the name of brevity —that he was the man cut for the job of implementing the reform program commissioned. At the end of his first semester as incumbent president, Temer seemed to live up to the confidence he had been entrusted with. At that point, Congress had already passed the outsourcing bill dreamt by the bosses and had voted, on December 13, the constitutional amendment that froze public spending for 20 years. The most important point on the agenda was still missing— repealing the labor code and passing the pension reform. But the odds that that would happen shortly were still very high.

The first strong sign that the road to them would be rough came with the general strike of April 28, 2017, which brought together all the national trade union confederations and managed to effectively bring activity to a halt in the country’s main centers. At the end of the day, we could already hear government coalition lawmakers contending that the pension reform, as proposed, would not pass.

But the blow that actually strongly destabilized the Temer administration came from elsewhere. The facts are widely known in Brazil and abroad; we might refer to them telegraphically. Already rocked by the decision of the reporting STF justice in charge of the Car Wash case to remove the secrecy of the petitions filed against a host of politicians, among them a number of members of his government (the “Fachin list”), Michel Temer was personally hit by the release, on a nationwide network, of a highly compromising dialogue recorded during a furtive meeting with a big entrepreneur who had just made a plea bargain agreement with the Prosecutor’s Office. The revelation—made with great fanfare and without any notice on Jornal Nacional, the leading news program of broadcasting conglomerate Rede Globo de Televisão —fell like a bomb. On the following day, the announcement of Temer’s resignation was taken for granted, until he appeared on nationwide network to inform, in emphatic terms, that he was the victim of a plot and that he would resist to the end.

There would be little to profit from the reconstitution, even if brief, of the comings and goings of this hybrid conflict involving the Federal Police, the Prosecutor’s Office, the Federal Supreme Court, the Globo group, the Planalto presidential palace, and its surroundings. For the purposes of the argument outlined here, it is sufficient to say that said entrepreneurs– the Batista brothers, owners of JBS, catapulted with the aid of social development bank BNDES into the world’s largest beef conglomerate –were preparing to move the company to the United States. And to give the floor to a renowned jurist, with in-depth knowledge of the meanders wherein these ties are woven.

In order to understand the JBS plea bargain it is necessary to understand what went on and is still going on between the company and the authorities in the United States.

As JBS is a global group, with some 56 companies in the United States, a plea bargain would hardly be approved here without a previous or potential deal there, with the American authorities.

For such jurisdiction to be established, it suffices to have a bank account in the United States. JBS does. It suffices to have companies in the United States. JBS does. It suffices to have operated in the securities market. JBS has. Or just having made transactions in dollars anywhere in the world. JBS did that.

In fact, that is why the Batista brothers, the owners of JBS, chose a law firm, Baker McKenzie, from the U.S. And from there they manage the negotiation here in Brazil.¹⁹

The argument laid out in this part of the article– it could be extended to segments of the Judiciary equally –emphasizes the autonomy supplement the Prosecutor’s Office enjoys from having joined the international anticorruption regime and, through it, the “carnal” relations it established with United States police and judicial agencies. The JBS case suggests that this autonomy should be reexamined.

¹⁹ Falcão, Joaquim, “JBS e a globalização da Justiça americana”, Folha de S. Paulo, 15 June 2017.

5. The Brazilian crisis and Latin America's challenges

The special attention devoted to the Brazilian case is warranted because the crisis in this country role-plays many elements common to situations of political reversal that are under way or have taken place in the region.

Indeed, the political processes we have witnessed in Latin America in the first decade of the twenty-first century have been heavily affected by the systemic trends referred to in this article.

Undoubtedly, the appearance of progressive governments is explained, above all, by the frustrations derived from the neoliberal inability to meet the expectations raised by its promises of continuous growth and shared prosperity. Coupled with the learning effect that benefited its opponents, its resulting weakness from its repeated failures is the immediate determinant of the electoral defeats the neoliberal governments reaped with the turn of the century in so many countries of the subcontinent. Yet, we cannot understand the progressive cycle set in motion then if we do not assign due weight to special circumstances that favored the significant degree of success these governments attained with their policies and in their systematic pursuit of greater autonomy in the international arena.

In this context, the two key elements were, on one hand, the strong economic expansion driven by the Chinese –and, more broadly, Asian –growth, which heavily impacted demand and the price of the commodities exported by these countries; on the other, the politically permissive environment created in the region by the involvement of the United States in long, costly, and disastrous wars in other parts of the world (Afghanistan and Iraq, in particular).

The compensation for these two movements was the diversification of economic and political ties in the region, as China became the main trade partner of several of the countries that make it up– in the Brazilian case this had already occurred in 2009 –plus the strengthening of diplomatic relations with that country, but also with Russia, as expressed in Brazil's participation in the BRICS and its conduct at the UN– not to mention the military agreements between Venezuela and Russia.

It is worth underscoring the geopolitical meaning assigned to these developments by the governments involved and by broad sectors of the United States security community. From the point of view of our governments, the phenomena briefly alluded to herein were embedded in the long-term trend of world power shift toward a multipolar configuration. To American experts, what emerged was the risk of strategic competitors solidly placed at its rear and the loss of a space historically regarded as its area of exclusive influence.

This generalizing statement is backed by official documents, as the aforementioned National Defense Strategy of the United States, and by the speech of public officials, as in this statement by Admiral Kurt W. Tidd, Commander of United States Southern Command. It is worth listening to him.

Mr. Chairman, I'll speak plainly: if we care about what's going on in the South China Sea, Eastern Europe, and the Middle East, it's worth keeping an eye on Chinese, Russian, and Iranian activity in this part of the world, too. For Russia, China, and Iran, Latin America is not an afterthought. These global actors view the Latin American economic, political, and security arena as an opportunity to achieve their respective long-term objectives and advance interests that may be incompatible with ours and those of our partners.²⁰

The owl of Minerva spreads its wings only with the falling of the dusk. When the assessment made by the American military consolidated itself in his country's security community, the trends that had prompted it were undergoing a profound shift in Latin America.

Several factors contributed to that effect.

One of them— possibly the most obvious one —was the change in the economic environment that started in 2013, with the intensification of the crisis in Europe and the slowing down of China, with two equally heavy consequences for the economies of Latin America: The end of the commodities boom and industrial idleness, which triggers fiercer international competition, particularly brutal in the medium technology-intensive sectors. To these developments should also be added the dizzying fall of oil prices, under the combined effect of decreased demand and increased supply brought about by the “fracking revolution” in the United States, with the strategic response given by the OPEC countries under the leadership of Saudi Arabia.

Another one— an element common to all the experiences considered here —was the mobilization of broad sectors of the middle class, by a host of organizations funded by local and foreign business groups. They form the core of what has been dubbed the “new right”. Strongly embedded in international networks, these movements make use of elaborate methods and advanced communication techniques to discredit their opponents and propagate a much more doctrinaire version of neoliberalism, one much tougher than that of the preceding neoliberal wave.

²⁰ Tidd, Admiral Kurt W., Posture Statement of Admiral Kurt W. Tidd, Commander, United States Southern Command, before the 115th Congress. Senate Armed Services Committee, 6 April, 2017.

But the factor closest in connection with the phenomenon at hand was (and has been) the concerted management of the civilian branches of the State apparatus in the dreadful task of overthrowing popular governments and imposing regressive, antinational reforms to populations increasingly more deprived of their political rights.

Lawfare, hybrid war. As a general rule, the Judiciary branch and the Prosecutor's Office are on the front line of this offensive.

Their characteristics vary widely from country to country. The circumstances in which these bodies operate are also quite variable. But everywhere they exhibit two common elements: 1) the absolute priority given to the corruption issue; and 2) the discretionary powers these bodies come to exercise, openly defending measures blatantly in violation of fundamental rights and guarantees as essential tools for the fulfillment of the self-assigned sacred mission.

The convergence of so many countries toward the same pattern is no mere coincidence. Nor is it fortuitous that this strategy has found in Brazil and Argentina privileged fields for implementation.

In this regard the teachings of Nicholas Spykman are still very enlightening. He said,

...those countries outside the zone of our immediate predominance, the larger states of South America, must try to counter-balance our strength through common action and through the use of weights from outside the hemisphere. They rejoice in the competition for their favors between Uncle Sam and the European states and try to play one against the other. Europe seems far away, much farther than Washington. It is to them neither a danger nor an abomination but a weight with which to balance the "Colossus of the North".²¹

...the nations of the extreme south enjoy a sense of relative Independence from the United States which the smaller political units of the American Mediterranean can never possess. The A.B, C states represent a region in the hemisphere where our hegemony, if challenged, can be asserted only at the cost of war.²²

These words were written some 75 years ago. Since then, the world has taken many turns, yet the configuration analyzed by Spykman has not changed that much. The "European States" were replaced by China, Russia, and Iran— and the war hypothesis was changed into that of political destabilization as an initial stage of a change-of-

²¹ Spykman, Nicholas J., *America's Strategy in World Politics, The United States and the Balance of Power*. New Brunswick, Transaction Publishers, 2007 (First edition, 1944), p. 64.

²² *Ibid.*, p. 62.

regime strategy, yet its propositions keep a disquieting resemblance with the present days.

In the mid 1970s, when the military who oppressed us, on both sides of the border, established in their war games both countries as enemies, Hélio Jaguaribe sustained the thesis that the rapprochement between Brazil and Argentina would be the critical variable for the expansion of the levels of freedom in both countries, and of the region in the international system. This conviction constituted one of the intellectual foundations of the Mercosur and of other associated integration projects.

What Jaguaribe did not consider was the possibility that, in quite different conditions, congruence between Brazil and Argentina would serve as the basis for a socially and economically international subordination project.

But the strategic commitment to integration was not illusory. The situation we are going through in our countries is far from consolidated. The promise to their peoples it contains is that of a disheartening future of impotence and inhumanity.

Over time, the truth contained in the generous project that inspired countless initiatives in Latin America will prevail, I have no doubt.

Through force of will, translated into actions, for sure. But among these actions are included thoughtful reflection, fearless critique, and rigorous analysis.



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