

The Politics of Lawlessness in Brazil

How Brazilian Politics overrides the Rule of Law

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Even if you conclude that legal institutions of certain kinds are necessary to achieve [the rule of law], they will never be sufficient. The institutions... have to *count* in social life, and what makes law count, still more what makes it count as a restraint on arbitrary power, is one of the deepest mysteries of the rule of law, and it does not just depend on the law. For what ultimately matters is how the law affects those to whom it is *directed*, not how, or the particular forms which, it is *sent*. We, lawyers especially, know a lot about the latter but much less than we imagine about the former... What we need, and what we don't have is a political sociology of the rule of law, but only with that will we be able to say with any confidence, though still not in one-size-fits-all terms, how to instantiate it.

Martin Krygier, *The Rule of Law: An Abuser's Guide*, 2005, at 7.

1. Introduction

The objective of this chapter is to present a critical analysis of the major political players in Brazil, namely the military, the church, social movements, intellectuals, judges and politicians. The intention is to demonstrate that the thoughts and actions of these major political players do not serve to help establish the ideal of the rule of law in Brazil.

The transition from a military regime to a formal democracy has not changed certain patterns of radical political behaviour. Thus, an empirical behavioural analysis will serve to show that these political players are still in need of developing a more positive approach toward the realization of the rule of law.

2. The Rule of Law and Political Behaviour

Every legal system operates in a dynamic relationship with its surrounding socio-political environment. A basic pre-condition for the realization of the rule of law is that political players reasonably respect legal rules and principles. Citizens, moreover, need to effectively resist undue attempts at non-legal (arbitrary) exercise of governmental powers.¹

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¹ For a socio-political analysis of the rule of law, see Augusto Zimmermann, 'The Rule of Law as a Culture of Legality: Legal and Extra-legal Elements for the Realisation of the Rule of Law', (2007) 14 *Murdoch University E-Law Journal* 10.

In order to become a reality, in practice, and not just in theory, every rule-of-law system must rest on a 'positive' relationship between legality and political action. In contrast, any option for radical non-legal behaviour must, as a matter of ethical principle, be firmly rejected by the main political actors. If not, the entire edifice of constitutional order may eventually collapse under the overwhelming weight of political intolerance and undemocratic radicalism. In the long run, the rule of law cannot be attained only by means of legal-institutional design. The survival of the rule of law depends on a broad socio-political recognition that respect for legality must become a basic standard of human behaviour.²

3. Brazil's Major Political Players

3.1. Military

The armed forces in Brazil have developed an unequivocal tradition of extra-legal, arbitrary interference in the political affairs of the country. They have done so by often assuming for themselves the task of *salvadores da pátria* ('saviours of the fatherland') from 'bad' and 'corrupt' politicians.

This situation dates back to the 1870s, when the end of the bloody war against Paraguay's dictator Solano Lopez brought about a huge politicisation of the Brazilian army. A few decades later, in November 1889, army leaders organized their first *coup d'état*, replacing constitutional monarchy with a republican regime. This was orchestrated by military officers who 'dreamed of a republican dictatorship'.³ In a letter written in 1890 on behalf of the navy to a civilian authority in the new republican government, a military officer stated:

We hope you will use your intelligence for the installation of a type of republican government which will concentrate all the political power in the hands of one single person... To establish a felicitous, stable and prosperous republic, the government of this country needs to become dictatorial and not parliamentary.⁴

The republican movement was greatly influenced by Auguste Comte's 'positivism'. In the words of history professor Claudio Véliz, positivism gave the military 'a scientific justification, almost a mandate, to intervene in politics, and it helped to rationalize and make respectable the idea of an enlightened dictatorship aimed at the attainment of the common good'.⁵ Thus, the country's first (military) president, Deodoro da Fonseca, censored the press and persecuted the opposition, especially monarchists. When civil war broke out in 1892, after Deodoro attempted to arbitrarily dissolve the Parliament, he was forced to step down by another army officer, Floriano Peixoto. Unfortunately, Floriano was as authoritarian as Deodoro, mercilessly crushing the navy's uprising as well as civilian opposition against his government.⁶ But Floriano at least had the saving grace of leaving the presidency to an elected civilian after the completion of his mandate.⁷

² See H.L.A. Hart, *The Concept of Law*. Oxford: Oxford University Press, 1961, at 116

³ Antonio Paim, *Momentos Decisivos da História do Brasil*. São Paulo: Martins Fontes, 2000, at 219.

⁴ *Id.*, at 221

⁵ Claudio Véliz, *The Centralist Tradition of Latin America*. Princeton/NJ: Princeton University Press, 1980, at 197-8.

⁶ See Ubiratan Borges de Macedo, *Democracia e Direitos Humanos: Ensaios de Filosofia Prática (Política e Jurídica)*. Londrina: Humanidades, 2003, at 150-1.

⁷ John J. Johnson, *The Military and Society in Latin America*. Stanford: Stanford University Press, 1964, at 192-3.

Just a few decades after that, other army uprisings against the federal government occurred. In 1922 and 1924 ultra-nationalist junior officers, the *tenentes*, carried out unsuccessful rebellions in Rio de Janeiro and São Paulo, respectively. Daniel Zirker, a political-science professor, provides this account of the São Paulo uprising of 1924:

Beginning on the second anniversary of the 1922 uprising, it pitched five thousand rebels under the leadership of General Isidro Diaz Lopez against a federal force of over twenty thousand men. This time the *tenentes* enjoyed enough popular support in São Paulo to resist the vastly superior federal force for several weeks. When they finally did retreat, it was to the interior, where they met with rebel forces from Rio Grande do Sul, forming a joint force that subsequently made a quixotic fourteen-thousand-mile trek through the Brazilian *sertão*, or savannah backlands, ending with the survivors' exile in Bolivia. This adventure deeply influenced a generation of junior army officers; their perceptions... of the role the military as that of a political proponent of national development.⁸

Although these military rebellions were easily suppressed, another coup in 1930 was more successfully organized. On that occasion, army officers managed to prevent the elected president from taking office, substituting in his place the defeated candidate Getúlio Vargas, a *caudilho* (rural oligarch) who was supported by the oligarchies of Rio Grande do Sul, Minas Gerais, and Paraíba. These officers who backed Vargas were opposed to the old system of political decentralization and insisted on a process of *saneamento* (cleansing) before new elections could be held. Because most of them supported a nationalist government with authoritarian overtones, they fought for President Vargas against the 1933 constitutionalist uprising of São Paulo, and were subsequently divided over the issue of recognizing the 1933 *Assembléia Constituinte* (Constituent Assembly) which followed São Paulo's surrender.⁹

The collaboration between the army leaders and President Vargas was sustained by the belief that Brazil needed to be governed by authoritarian means. Upon taking office, Vargas placed them at the centre of political decision-making. Established seven years after the uprising which placed him in power, Vargas' *Estado Novo* (1937-1945) was a form of paternal dictatorship where the President assumed the role of 'father of the poor'. Nevertheless, it was a dictatorial regime that enjoyed the support of the military to the extent that one may describe it as 'a military regime in essence, despite the civilian status of the president and many of his ministers'.¹⁰

The army officers who orchestrated the 'revolution' of 1930 remained loyal to Vargas for fifteen years.¹¹ Since fascism and communism were the 'progressive' ideologies during the 1930s, many of them were open fascists or communists. Indeed, the Minister of War, General Eurico Gaspar Dutra, and the Army Minister, General Góes Monteiro, were extremely sympathetic to National Socialism. In April 1940, Dutra was even decorated by Hitler's ambassador Kurt Prueferwith with the Order of the Great Cross of the Eagle. Prueferwith then revealed, during the decoration ceremony, that the decoration was the highest honour a foreigner could receive from the Nazi government.¹²

⁸ Daniel Zirker, 'Brazil'. From C.P. Danopoulos and C. Watson (eds.), *The Political Role of the Military: An International Handbook*, Westport: Greenwood Press, 1996, at 23.

⁹ Phil Gunson and Andrew Thompson. *The Dictionary of Contemporary Politics of South America*, London: Routledge, 1989, at 278.

¹⁰ Zirker, *op. cit.*, at 23.

¹¹ Paim, *op. cit.*, at 243.

¹² José Fernando Carneiro, *Psicologia do Brasil e Outros Estudos*. Rio de Janeiro, Agir, 1971, at 159.

Not so surprisingly, therefore, Dutra and Monteiro offered their letters of resignation when they failed to dissuade President Vargas from aligning Brazil with the Allied nations during World War II. The dictator refused to accept the requests, although his sympathies also lay heavily with the fascist regimes in Europe. Thus, the decision to declare war against the Axis Powers was motivated solely by economic reasons, namely the many economic benefits promised by, and received from, the United States.

With the defeat of Nazi-fascist forces in Europe, the ideology of fascism lost the attraction it had hitherto enjoyed amongst the military elite. As a result, Vargas' dictatorship fell into disgrace and he was forced to resign in 1945. In the ensuing presidential elections held at the end of that year, two of the major candidates were actually military leaders: Air-Force Brigadier Eduardo Gomes and General Eurico Gaspar Dutra (who ended up winning that election).

Regrettably, the democratic period that began after the fall of Vargas' *Estado Novo* would last not longer than twenty years, because another coup would depose populist president João Goulart, on 31 March 1964. The army leaders who commanded the intervention were divided between *linha dura* (hard-line) and *moderada* (soft-line) factions. While soft-liners wished a quick restoration to democracy and the rule of law, hard-liners were instead planning a more permanent regime. The hard-line faction clearly prevailed over the moderates, especially after left-leaning groups initiated their rural and urban guerrilla warfare in 1968. Such radical actions, which included bank robberies and the kidnapping of innocent civilians, strengthened the position of hardliners who used such radicalism to justify a 'stronger' government, powerful enough to bring 'order' to the nation.¹³

While it is correct to argue that the level of repression in Brazil was not as severe as in neighbouring Argentina, Brazilian army rulers likewise deal with 'subversives' by the extra-legal means of torture and assassination. As such, torture became the main weapon employed by security forces to subdue anyone who was thought to be subversive. This was particularly evident during the presidential mandate of General Emílio Garrastazú Médici (1969-1974).

Under Médici (1970-1974) repression was a serious matter indeed. At that time the military combined intelligence service with many different methods of torture against political suspects. Some important legal guarantees were suspended and a public agency called the DOPS (Department of Political and Social Order) was charged with deciding whether or not 'subversives' could be 'more efficiently dealt with by assassination than through the judicial process'.¹⁴ In 1972, the Government also created the notorious DOI-CODI (Operations and Intelligence Detachment for Internal Defence), a department that might fairly be described as constituting the centre of torture for the military regime.¹⁵

In the 'war' against the radical left, agents of the Second Army's OBAN (Operation *Bandeirantes*) and São Paulo's DOI-CODI conducted acts of torture in which 'most victims died or were permanently impaired'.¹⁶ These agents could decide whether a 'subversive' should be dealt with according to the judicial process or by means of torture

¹³ See Ronald H. Chilcote (ed.), *Brazil and Its Radical Left: An Annotated Bibliography*, New York: Kraus International, 1980, at xi.

¹⁴ Paul Levine, *The History of Brazil*. London: Greenwood Press, 1999, at 135.

¹⁵ Boris Fausto, *A Concise History of Brazil*. Cambridge: Cambridge University Press, 1999, at 291.

¹⁶ Levine, *op. cit.*, at 130.

and assassination.¹⁷ And, in addition to government agencies such as OBAN and the DOI-CODI, there were also heavily armed, quick-response assault teams to fight the subversives. The most notorious of these was the ROTA, a specialist squad consisting of a few hundred policemen from São Paulo state. According to law professor Paul Chavigny:

In the first nine months of 1981, near the end of the dictatorship, the ROTA shot 136 people and killed 129 of them. Civil policemen were recruited to torture political suspects; under the impunity of the dictatorship, they formed a death squad to eliminate suspects, criminal as well as political. It proved to be so murderous and corrupt that it was gradually eliminated, at least in its original form, before the dictatorship ended.¹⁸

In the early 1970s, the military government decided to launch a strident nationalist campaign which urged the civilian population to remain completely loyal to the military government. Under the slogan '*Brasil: Ame-o ou Deixe-o*' (Brazil: Love it or Leave it) the campaign communicated to the population that their basic rights as individuals were utterly subject to certain matters of *segurança nacional* (national security). A 1970 booklet from this campaign, distributed to primary schools, informed children that subjection of civil rights to the military understanding of 'national security' was 'the maximum norm of the exercise of liberty in the social order'.¹⁹

As a central feature of the military training and indoctrination, the concept of 'national security' was developed during the 1950s by the War College (ESG). Founded in 1949, the ESG defined 'national security' as 'the relative degree of guarantee which the State, through political, economic, military, psychosocial actions, can provide... to the Nation over which it has jurisdiction for the pursuit and safeguarding of national objectives in spite of existing antagonisms'.²⁰ As can be seen, the concept of 'national security' expressed by military officers rests upon the undemocratic premise that they know better than elected politicians what is best for the Brazilian people.²¹

In the late 1970s, an economic crisis occurred that served at least to engender widespread discontent with the military regime. The crisis would come to weaken the social prestige of the military regime, particularly during the economically disastrous administration of General Ernesto Geisel (1974-1978) which forced the military to initiate their gradual process of *abertura democrática* ('democratic opening'). President Geisel accepted the 'democratic opening' so long as it was he who conducted the whole process. It is suggested that Geisel brought about a greater concentration of power to 'open' the regime than did Médici when he sought to keep it 'closed'.²² In a January 1975 meeting with other high-ranking officers at the High Command of the Armed Forces Geisel declared:

One of the main criticisms of the MDB [the opposition party] is the current lack of the rule of law... Well, I would not suggest here that the rule of law should not be a long-term goal for us. However, before we can even entertain the idea of having the rule of law, we need firstly to guarantee public order. For if we allow the rule of law to exist today, we tomorrow might have to face disorder on the streets. Thus I prefer to be

¹⁷ *Id.*, at 135.

¹⁸ Paul Chavigny, *Edge of the Knife: Police Violence in the Americas*. New York: New Press, 1995, at 152.

¹⁹ R.M. Levine and J.J. Crocitti (eds.), *The Brazil Reader: History, Culture, Politics*. Durham/NC: Duke University Press, 1999, at 258-9.

²⁰ Ronald M. Schneider, *The Political System of Brazil: Emergence of a Modernizing Authoritarian Regime 1964-1970*. New York: Columbia University Press, 1971, at 246.

²¹ Lincoln Gordon, *Brazil's Second Chance: En Route Toward the First World*. Washington, D.C.: Brookings Institution Press, 2001 at 73.

²² Elio Gaspari, *A Ditadura Encurralada*. São Paulo: Companhia das Letras, 2004, at 35.

more realistic and not to have the rule of law now, so as to preserve order in this country. Of course, the push for the rule of law is what we can naturally expect from the Opposition. We need, therefore, to find our own ways of being totally immunized against this sort of inconvenience.²³

Curiously, one of the reasons given by army officers for ousting President Goulart was his lack of respect for the rule of law. In 1964, they had promised that they would restore both democracy and the rule of law to the country, as soon as possible. And yet, eleven years later an army ruler openly confesses his unwillingness to respect the rule of law. This obviously shows the betrayal of the people by these military officers.

And yet the slow process of democratization was not reversed and the last military president, João Batista de Oliveira Figueiredo (1979-1985), a general chosen by President Geisel to replace him, was the army leader to make the final step towards ending military government. Oddly enough, Figueiredo vowed when taking office to *prender e arrebitar* (arrest and torture) anyone who dared to obstruct the democratization process. His government witnessed hardliners desperately trying to save the moribund regime. In 1980, some even attempted to set off bombs during a music festival at *Rio Centro*. These bombs accidentally exploded inside an automobile containing two soldiers.

Since the end of the military government, on 15 March 1985, the press has revealed numerous cases of human-rights violations carried out by the armed forces throughout their long years in power. This seems a rather positive development, as the armed forces during their reign seemed to have sometimes behaved in a similar way as an occupying force rather than the putative protectors of the country's sovereignty.

For the above reasons there does not exist at this time the climate that would allow the armed forces to arbitrarily interfere in the political process. The army left power utterly demoralized, not only as a result of their disastrous economic policies but also because of widespread corruption in the public agencies and the approximately 600 companies directly owned by the state some of which very badly managed by unqualified retired army generals. Consequently, it may take a good time for the armed forces to repair their tarnished image in the eyes of Brazilian society.

3.2. Church

Brazil is the largest Catholic country in the world.²⁴ Unfortunately, it is appropriate to say that the Catholic clergy comprise one of the main ruling groups that have done its uttermost to undermine the rule of law in Brazil. While some clergymen, to be fair, do favour the rule of law, others prefer instead to promote in its place an idea of 'class struggle' based on Marxist principles of revolutionary socialism. Those of such an ideological orientation believe that private property and free-market economy are routes to 'hell', the only corrective of which is a violent revolution to lead the nation toward a 'tropical paradise' or 'God's Kingdom on Earth'.²⁵

During the country's colonial period, however, Catholic priests were not only the main political allies of the ruling economic groups, particularly the sugar-planters, but were themselves party to the system of black slavery. Their support for the slave system was

²³ *Id.*, at 31.

²⁴ 75% of Brazilians profess to be Roman Catholics.

²⁵ See J.O. de Meira Penna, *Opção Preferencial pela Riqueza*. Rio de Janeiro: Instituto Liberal, 1991.

not just based on the premise that black people did not have a human soul, but on practice as well; priests constituted the largest landholders and slave-owners of colonial times. In colonial times, Catholic religious orders owned a 'disproportionate amount' of property despite laws created to prevent this occurring.²⁶ The Order of Jesuits alone owned, in the eighteenth century, all the largest and most profitable farms in the region of Rio de Janeiro. One of their farms, called Santa Cruz, comprised an impressive 100 square leagues and held no less than one thousand slaves. According to Dauril Alden, a professor of Latin American Studies at the University of Washington:

The properties which the Jesuits operated were managed by one or two padres who supervised the labour of Negro slaves, as in the case of sugar plantations... The Society of Jesus was probably the greatest institutional slaveholder in Brazil; certainly it possessed the largest number of slaves confined to a single plantation in all of colonial America.²⁷

While Pedro II, the eldest son of Emperor Pedro I, waited for the parliamentary declaration of his majority, the Imperial Parliament would appoint a priest, Antonio Feijó, as the nation's regent. Father Feijó, who is regarded as one of the most radical and 'energetic' rulers to succeed to the head of the Brazilian state,²⁸ remained in power until resigning for political reasons in 1837. Unfortunately, the behaviour of priest-politicians like Feijó was far from exemplary. Priests of this kind 'surely neglected their spiritual mission [and] their lives were not positively edifying'.²⁹ A document written in 1870, by the secretary of the bishop of Rio de Janeiro, reveals many priests to be 'deeply moved by all sorts of passions and ambitions'.³⁰ This document says that they were 'ignorant of the most basic elements of dogma and morals'.³¹ Some of them practised slavery and kept slave women as their mistresses.³² One of the most significant figures in the abolitionist (i.e. anti-slavery) movement, José Patrocínio, was actually the illegitimate son of a priest and a poor black woman who made her living as a street vendor.³³

In contrast to the situation in Britain, where the fight against slavery was conducted mainly by people motivated by strong religious convictions based on the morality espoused in the Gospels,³⁴ the Church in Brazil not once raised its influential voice to protest against slavery. On the contrary, no Catholic priest could be found participating in the abolitionist movement arguing for the incompatibility between slavery and

²⁶ C.R. Boxer, *The Portuguese Seaborne Empire (1415-1835)*. London: Hutchinson, 1969, at 328.

²⁷ Dauril Alden, 'Economic Aspects of the Expulsion of the Jesuits from Brazil: A Preliminary Report'. From H.H. Keith and S.F. Edwards (eds.), *Conflict and Continuity in Brazilian Society*, Columbia: University of South Carolina Press, 1969, at 29.

²⁸ Manoel de Oliveira Lima, *The Evolution of Brazil Compared with that of Spanish and Anglo-Saxon America*. New York: Russell & Russell, 1966, at 76.

²⁹ *Id.*

³⁰ ASSRJ, ACM, *Bullário*, II, at 476. .

³¹ *Id.*, at 126-7.

³² See Joaquim Nabuco, *Abolitionism: The Brazilian Antislavery Struggle (1883)*. Chicago: University of Illinois Press, 1977, at 132.

³³ See Fausto, *op. cit.*, at 228.

³⁴ Professor Charles J. Antineau comments that, in Britain, "with the Eighteenth Century, there was a greater awareness that human slavery was condemned by divine law. William Warburton (1698-1779), Bishop of Gloucester, said in a 1766 sermon that 'the infamous traffic for slave directly infringes divine law'. William Willberforce (1759-1833), wrote in his 'Appeal to the Religion, Justice and Humanity of the Inhabitants of the British Empire', urging the freedom for all slaves, explaining that slavery in many ways infringed upon divine law" – Charles James Antineau, *The Higher Laws: Origins of Modern Constitutional Law*. Buffalo: New York, 1994, at 37.

Christianity.³⁵ Though legislation was introduced in 1831 prohibiting the slave trade, once again, no clergyman was ever found denouncing the cruel violation of this statutory provision. Not only did the influential clergy ignore the suffering of all those illegally brought to the country as slaves, they also criticised the papal bulls condemning the slave trade.³⁶ As a result, hundreds of thousands of human beings were illegally smuggled as slaves from the African continent into Brazil, usually remaining in a condition of forced servitude for the rest of their miserable lives. As the main leader of the abolitionist movement observed in 1883:

In other countries the anti-slavery propaganda was religious, preached from the pulpit, fervently supported by the various churches and religious communities. Among us the abolitionist movement unfortunately owes nothing to the state church. On the contrary, the ownership of men and women by the convents and by the entire secular clergy completely demoralizes the religious feelings of masters and slaves. The slaves see nothing in the priest but a man who can buy them, while the masters see in him the last person who would think to accuse them. Our clergy's desertion of the role that the Gospel assigned to them is as shameful as it could possibly have been. No one observes it taking the side of the slaves; no one sees it using religion to ease the burdens of their captivity, or to propose moral truths to the masters. No priest ever tried to stop a slave auction; none ever denounced the religious regime of the slave quarters.³⁷

Whereas the institutional separation between church and state was brought about by the fall of the constitutional monarchy in May 1888, this did not mean that priests would become less interested in political issues. In fact, such interest seems to have increased over the years, although it is fair to say that the guiding ideology has changed considerably. Yet despite such changes, one can also observe that the Catholic clergy in Brazil still retain the same distrust of personal freedom and the whole tradition of the rule of law in institutional democracies. In the 1950s, for example, a group of Catholics established a radical organization called the *Ação Católica Brasileira - ACB* (Brazilian Catholic Action), which embraced a radical Marxist orientation that sought to undermine liberal-democratic institutions and abolish the Constitution of 1946. To achieve such an objective, the ACB's leader, a Franciscan friar called Thomas Cardonnel, created the concept of 'established disorder', which he enunciated as follows:

We can never insist enough on the need to denounce natural harmony and class collaboration. God is not so dishonest, so false as to produce a certain kind of social peace consisting of the acquiescence of all in an unnatural injustice. Violence is not only a fact of revolutions; it also militates against the maintenance of a false order.³⁸

An even more sinister organization would be established in 1962, by a segment of the ACB: the *Ação Popular – AP* (Popular Action).³⁹ The AP constituted in the 1960s, in the words of American historian Thomas C. Bruneau, 'the most revolutionary organization in Brazil'.⁴⁰ Its 1966 booklet entitled *Estratégia Revolucionária* (Revolutionary Strategy) openly advocates for 'guerrilla warfare and a plan to establish pure socialism'.⁴¹ Its 1966 booklet *Documento Básico* (Basic Document) declares:

³⁵ José Murilo de Carvalho, *The Struggle for Democracy in Brazil: Possible Lessons for Nigeria*. Port Harcourt: SEPHIS/ University of Port Harcourt, 2000, at 8.

³⁶ Nabuco, *op. cit.*, at 131.

³⁷ *Id.*, at 18-9.

³⁸ Thomas C. Bruneau, *The Political Transformation of the Brazilian Catholic Church*, London: Cambridge University Press, 1974, at 95.

³⁹ Edward Norman, *Christianity in the Southern Hemisphere: The Churches in Latin America and South Africa*, Oxford: Clarendon Press, 1981, at 82.

⁴⁰ Bruneau, *op. cit.*, at 96.

⁴¹ Chilcote, *op. cit.*, at 2.

The Popular Action basically opts for a policy of revolutionary preparation, consisting of mobilization of the people based on the development of their levels of consciousness and organization, and securing this mobilization in terms of a struggle against the domination of capitalism (international and national).⁴²

With the advent of the military regime in April 1964, church institutions sheltered guerrillas who aimed to replace authoritarian rule with left-wing totalitarianism. Church buildings such as the *Cristo Rei*, a Jesuit seminary in southern Brazil, provided accommodation for communist armed groups involved with terrorist activities.⁴³ In October 1969, the police discovered that a Catholic orphanage was also being used by a terrorist group called *Forças Armadas de Libertação Nacional* – *FALN* (National Liberation Armed Forces) to store chemical products used in the manufacture of explosives.⁴⁴

There has been little change in the reality of such political radicalism over the years.⁴⁵ On the contrary, there are many Catholics in Brazil who still believe the ‘oppressed’ class is committing a ‘sin’ when not rebelling against the ‘system’. In doing so, they regard the desire conveyed in papal encyclicals for harmonious coexistence between social classes to be ‘self-deception’. One of such ‘religious’ leaders is Leonardo Boff, a former priest who believes the ‘capitalist system’ is to be compared with ‘the 666 of the whore of Babylon’.⁴⁶ He thinks ‘there is no cure for this system’⁴⁷ so that the violent suppression of capitalism would represent the advent of ‘God’s Kingdom on Earth, and the advent of a new society of a socialistic type’.⁴⁸ Since his apocalyptic vision of the ‘Day of Judgment’ is clearly based on the emergence of violent confrontation between social classes, he advocates the use of the Catholic Church as a means of revolutionary support and indoctrination. As Boff explains:

The subordinated classes solicit the Church to aid them in their search for greater power and autonomy in the face of the domination they suffer. They ask the Church to support and justify the breakdown of the ruling classes and lend itself to revolutionary service.

Yet, the faithful are present on both sides; the Church is inevitably affected by class conflicts and so may serve a revolutionary function or serve as a strengthening force for the ruling classes. These two possibilities are not free choices or options.⁴⁹

Boff refuses, in this sense, to accept the possibility of any peaceful coexistence between different social classes. For him, every religious person has the duty ‘to rouse the working class to an awareness of class struggle and the need to take part in it’.⁵⁰ He certainly does not regard it as a ‘sin’ for a person to physically attack another person from a supposedly ‘oppressive’ class, since this would be committed by those involved in

⁴² Ação Popular, *Documento de Base*. Goiânia: Centro de Cultura Popular, January 1963.

⁴³ Elio Gaspari, *A Ditadura Escancarada*, São Paulo: Companhia das Letras, 2002, at 265.

⁴⁴ *Id.*, at 264-5.

⁴⁵ Paul Sigmund, ‘Christian Democracy, Liberation Theology, and Political Culture in Latin America’, from Larry Diamond (ed.), *Political Culture and Democracy in Developing Countries*, London: Lynne Rienner, 1993, at 338.

⁴⁶ Leonardo Boff, *Salvation and Liberation*. Melbourne: Dove, 1984, at 106.

⁴⁷ Leonardo Boff, *Ecclesiology*. London: Collins, 2001, at 43.

⁴⁸ *Id.*, at 116.

⁴⁹ Leonardo Boff, *Church, Charism, and Power*, New York: Crossroad, 1985, at 112.

⁵⁰ *Liberation Theology*, The Angelus, Volume VIII, Number 6, June 1985 (Reprinted from ‘The Economist’, 13 October 1984), at:

http://www.sspcx.ca/Angelus/1985_June/Liberation_Theology.htm

the struggle to remove social inequalities.⁵¹ Under this type of radical thinking, Cardinal Joseph Ratzinger, now Pope Benedict XVI, suggests:

The desire to love everyone here and now, despite his class, and to go out to meet him with the non-violent means of dialogue and persuasion, is denounced as counterproductive and opposed to love. If one holds that a person should not be the object of hate, it is claimed nevertheless that, if he belongs to the objective class of the rich, he is primarily an enemy to be fought. Thus the universality of love of neighbour and brotherhood become an eschatological principle, which will only have meaning for the 'new man', who arises out of the victorious revolution.⁵²

Boff left the priesthood in 1992 but he is still a prominent Catholic figure, currently the editor of *Vozes*, Brazil's leading Catholic publishing house. In his 1987 book *O Socialismo Como Desafio Teológico* ('Socialism as a Theological Challenge') Boff suggests that the then communist regimes in Eastern Europe, including the Soviet Union, 'offer the best objective possibility of living more easily in the spirit of the Gospels and of observing the Commandments'.⁵³ Returning from his 1987 visit to the Soviet Union, thus just a few years before the collapse of communism, he said these highly oppressive regimes were, believe it or not, 'highly ethical and... morally clean', and that he had not noticed any restriction in those countries on freedom of expression.⁵⁴

When Boff was summoned in the 1980s by the *Sacred Congregation for the Doctrine of the Faith* to the Vatican, two Brazilian cardinals, Dom Aloisio Lorscheider and Dom Paulo Evaristo Arns, accompanied him to the interrogation. Responsible for matters of faith and doctrine, the ecclesiastic body requested Boff to explain his concept of 'ecclesial division of labour' by which the hierarchy of the Catholic Church would be engaged 'in the gradual expropriation of the means of religious production from the Christian people'.⁵⁵ The fact that the country's only two cardinals accompanied him to the interrogation was accurately interpreted as 'unprecedented support' for his radical positions.⁵⁶

One of these two cardinals, Evaristo Arns, has constantly lobbied at the Vatican for the 'wonderful' work carried out by the *Comunidades Eclesiásticas de Base – CEBs* (Ecclesiastical Base Communities) throughout Brazil.⁵⁷ Arns is indeed a staunchest supporter of the CEBs, although Tommie Sue Montgomery, a senior research associate with the North-South Center at the University of Miami, described them as 'the most subversive institutions the Latin American church has developed'.⁵⁸ Through Bible-studies, homilies, and priest-parishioner dialogues, the CEBs have been persuading the faithful to embrace a 'theology' which basically condemns liberal democracy and, accordingly, the rule of law as a mere ideological mechanism for the alleged perpetuity of socio-economic 'oppression'.⁵⁹

⁵¹ Millard J. Erickson, *Christian Theology*. Grand Rapids: Baker Book House, 1983, at 592.

⁵² Joseph Ratzinger, *Instruction on Certain Aspects of Theology of Liberation*. Rome: Congregation for the Doctrine of the Faith, 6 August 1984, at http://www.newadvent.org/library/docs_df84lt.htm

⁵³ See Leonardo Boff, *O Socialismo Como Desafio Teológico*. Petrópolis: Vozes, 1987, p.682.

⁵⁴ Joseph Page, *The Brazilians*. Reading/MA: Addison-Wesley, 1995, at 349.

⁵⁵ *Church, Charism, and Power*, *op. cit.*, at 112.

⁵⁶ *Id.*, at vii.

⁵⁷ Sigmund, *op. cit.*, at 341.

⁵⁸ Tommie Sue Montgomery, 'Liberation and Revolution: Christianity as a Subversive Activity in Central America'. From M. Diskin (ed.), *Trouble in Our Backyard*. New York: Pantheon, 1983, at 82.

⁵⁹ Page, *op. cit.*, at 344.

Through the activism of some priests in land conflicts, the idea of violence as a valid political strategy has been perpetuated as a common practice throughout Brazil.⁶⁰ Even so, Geraldo Majella, who is both the archbishop of Salvador and the President of the *Conferência Nacional dos Bispos do Brasil – CNBB* (National Conference of Brazilian Bishops), publicly eulogises social movements that, according to him, ‘are creating a pressure cooker that is about to explode’.⁶¹ Naturally, he ignores here the message delivered by Pope John Paul II on the occasion of his last visit to the country, when he cautioned bishops against class violence and the use of radical Marxist concepts. To attain social justice, the Pope suggested:

Much more is required than the simple application of ideological schemes derived from class struggle such as, for example, the invasion of lands – already condemned in my Pastoral Trip of 1991 – and of public or private buildings, or, to mention only this, the adoption of extreme technical measures that can have much graver (and socially unjust) consequences than the injustice they are meant to resolve.⁶²

Although the penetration of communistic ideas in the Brazilian church can be reasonably understood in light of the apparent socio-economic exploitation, priests who embrace such putative remedies may in actual fact be offering people the exchange of one kind of exploitation for another, indeed one which, given the amount of empirical evidence available, appears to be even worse. According to Stéphane Courtois, the editor of a seminal book called *Le Livre Noir du Communisme* (‘The Black Book of Communism’), Marxist-inspired regimes were responsible, in the twentieth century alone, for at least 100 million killings of innocent people. Hence, one might conclude: such Marxist-inspired regimes have been far more efficient at the job of killing innocent people than at promoting any form of ‘social justice’.⁶³

The interest that some left-wing extremists have in infiltrating the Catholic Church is not difficult to explain. After all, no revolutionary undertaking can possibly be successful in a religious country like Brazil without the support of the powerful Catholic clergy. As with numerous other Latin American nations, the Catholic Church ‘can still legitimate or discredit given values and attitudes with profound impact on the prospects of the people’.⁶⁴ Recognising the fact the Cuban-Argentinean revolutionary Ernesto Che Guevara once declared: ‘When the Christians have the courage to commit themselves completely to the Latin American revolution, the Latin American revolution will be invincible’.⁶⁵

One such radical who infiltrated the church is Carlos Libanio Christo or Frei Betto. This is a friar from the Dominican Order who often accuses of selfishness or criminal behaviour any individual who has been tortured in the Cuban gulags, or simply executed by the Cuban government, or who has managed somehow to escape from the country-island. For this is what he indirectly suggests in an article published by Brazil’s leading newspaper:

⁶⁰ Monte Reel, ‘An Abiding Faith in Liberation Theology’, *The Washington Post*, Washington, 2 May 2005, at

http://www.washingtonpost.com/wpdyn/content/article/2005/05/01/AR2005050100821_pf.html

⁶¹ ‘O Grito dos Excluídos’, *Folha de S. Paulo*, São Paulo, 9 August 2003.

⁶² 26 November 2002 Speech delivered by the Pope John Paul II to Brazilian Bishops during his *ad limina* visit to Brazil. Quoted from ‘John Paul II and Land Reform’, *The American TFP – ‘Lula Watch’*, Vol.1, No.16, 5 December 2003.

⁶³ See Stéphane Courtois et al. (eds.), *The Black Book of Communism: Crimes, Terror, Repression*. Cambridge/MA: Harvard University Press, 1999.

⁶⁴ Montaner, *op. cit.*, at 61.

⁶⁵ *Liberation Theology*, *op. cit.*

If Cuba is so advanced socially, why do some people attempt to escape from this country? Well, does not Brazil also have three million of its citizens living outside its borders? The only difference is that the Cuban economy is socialist and does not accept individuals doing tourism outside the country; that is, it does not accept the evasion of capital for the purpose of individual gratification. This, however, does not stop any Cuban citizen from travelling overseas at the expenses of the state for scientific, artistic, commercial, or diplomatic reasons.

As for those who deserted Cuba in search of the 'American way of life', I haven't heard of any of these people trying to improve the conditions of the poor in the countries where they now are living. On the contrary, jails in the United States are packed with such Cuban escapees (*evadidos*).

To live in Cuba requires altruism, as it does to live in a religious convent or monastery. The 'ours' leaves little space to the 'mine'. And since selfishness is often the strongest human inclination, many are those who resist the idea of never getting rich to enjoy the mere superficialities (*quimeras*) that money promises...

I include myself among those who disagree with the execution of political criminals in Cuba. But I do not hear the people who protest against this also point out that Bush, while governor of Texas, signed 153 death sentences against [normal] criminals... Some may even criticise the government of Cuba for those killings, but no-one has the right to ask for more liberties in a country where... U.S. [economic] sanctions weigh heavily around its neck.⁶⁶

As can be seen, Betto is a 'religious' person with an enormous faith in the atheistic government of Cuba, despite the overwhelming evidence of ongoing human-rights violations in that unhappy country. In fact, Betto believes that all Cubans have the moral obligation to renounce their individual rights so as to subject themselves entirely to that totalitarian regime, even though 'state salaries average only \$20 per month in Cuban pesos, and [their] personal needs are satisfied under a state rationing system'.⁶⁷ Maybe because of such blind faith in totalitarian regimes, Betto also says in a 2002 article published by *America Libre*, that the Brazilian Left must 'not yield to the naïve concept of making revolution through the ballot'.⁶⁸

Betto has worked until recently as a special aide to the federal government on land-reform programs. Other clergy people who think like him are still working at federal agencies like the *Instituto Nacional para Colonização e Reforma Agrária - INCRA* (National Institution for Colonization and Agrarian Reform). One of them, Dom Thomas Balduino, is a bishop emeritus of Goiás to whom 'agrarian reform' is just a 'barely acceptable term', because what he really wants, he says, is an 'agrarian revolution'.⁶⁹ In a well-known interview with journalist Belisa Ribeiro, this bishop describes John Paul II as a reactionary 'Pole' who had committed the 'heresy' of struggling against communism: 'When we were beginning to open, he stepped in and forced us backwards'.⁷⁰ Of course, Balduino has just forgotten to mention the reasons why the Pope was so much hostile to communism. According to Joseph A. Page,

⁶⁶ Frei Betto, 'Cuba Resiste, Solidariamente', *Folha de S. Paulo*, São Paulo, 04 January 2004, at <http://www.consciencia.net/2004/mes/01/betto1.html>

⁶⁷ Marc A. Miles (ed.), *2006 Index of Economic Freedom*, Washington: *The Heritage Foundation & The Wall Street Journal*, 2006, at 157.

⁶⁸ Frei Betto, 'Alternativa Socialista en América Latina y el Caribe', *America Libre*, No.1, 2002, at: <http://www.nodo50.org/americalibre/anteriores/1/index.htm>

⁶⁹ Belisa Ribeiro, 'Talking to Dom Tomás, the Bishop of the Landless', *Brazzil Magazine*, Los Angeles, October 2003, at <http://www.brazzil.com/content/view/1065/36/>

⁷⁰ Id.

Having experienced the fruits of Marxism firsthand in his native Poland, he was decidedly unsympathetic to any suggestion that the Church view the world through a Marxist lens. Although he often displayed great compassion for the wretched of the earth and voiced harsh criticisms of exploitive capitalism, the pontiff made it abundantly clear that he did not want the Church to become involved in political activity, which at this time meant left-wing politics.⁷¹

In today's Brazil, a basic problem stemming from the undeniable fact that so many Catholics have embraced radical Marxist principles, is that Marxism, at least in its radical form, does not favour democracy and the rule of law. In fact, the undertone of extreme violence generated by communist regimes around the world is a mere projection of Marx's political ideas. As anyone who honestly and truly understands the political writings of Karl Marx would be able to confirm, what he advocated is not any democracy under the rule of law but the 'dictatorship of the proletariat'. According to Marx's legal theory, René David and John E.C. Brierley point out:

Law is only a superstructure; in reality it only translates the interests of those who hold the reins of command in any given society; it is an instrument in the service of those who exercise their 'dictatorship' in this society because they have the instruments of production within their control. Law is a means of expressing the exploited class; it is, of necessity, unjust – or, in other words, it is only just from the subject point of view of the ruling class. To speak of a 'just' law is to appeal to an ideology – that is to say, a false representation of reality; justice is no more than an historical idea conditioned by circumstances of class.⁷²

Marx strongly believed that a communist society necessarily requires, as he himself put it: 'A period in which the state can be nothing but the revolutionary dictatorship of the proletariat'.⁷³ For Marx, therefore, the dictatorship of the proletariat is the only way the ideal of communism can be advanced. Thus, as explained by V.I. Lenin in an important lecture delivered in 1919 at the University of Moscow, Marx considered 'law' a mere mechanism 'for holding the other subordinated classes obedient to the one class'.⁷⁴ The implication of the premise has been summed up in that famous slogan of the Soviet regime: 'All power belongs to the Soviets'. And the same premise is likewise revealed in this excerpt from a 1919 book published in Russia by English-speaking communists:

The proletarian state... is an organization of the dominating class (the dominating class here is the working class) and an organization of the violence over the bourgeoisie, as a means of getting rid of the bourgeoisie and of putting an end to it. He who is afraid of this kind of violence is not a revolutionist.⁷⁵

As can be observed in any communist regime around in the world, the practical application of Karl Marx's conception of law does not tolerate any constitutional division of governmental power. Because Marx saw law merely as an instrument of class domination, the judicial function is therefore understood as having to safeguard the particular interests of a class-dominated government. As such, judicial independence and impartiality are regarded as 'bourgeois myth'. To grasp it and understand how a communist government should behave, it is necessary to be familiar with the Marxist theory of law.

⁷¹ *op. cit.*, at 346.

⁷² René David and John Brierley, *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law*. London: Stevens & Sons, 1985, at 171.

⁷³ Karl Marx, 'Critique of the Gotha Programme', quoted from Maureen Cain and Alan Hunt (ed.), *Marx and Engels on Law*. London: Academic Press, 1979, at 163.

⁷⁴ Hans Kelsen, *The Communist Theory of Law*, London: Stevens & Sons, 1955, at 54.

⁷⁵ *Id.*, at 1.

In his seminal *The Communist Theory of Law* (1955), Hans Kelsen commented that ‘the anti-normative approach to social phenomena is an essential element of the Marxian theory in general and of the Marxian theory of law in particular’.⁷⁶ In fact, all of the most prominent jurists in the Soviet Union regarded the mere existence of legality, in a normative sense, ‘a theoretically inconvenient fact’.⁷⁷ They correctly argued that, in Marx’s opinion, the function of every legal system is to hold subordinated classes obedient to the dominating one, no matter which one this might be, so that in future communist society every law would disappear. Of course, such promise that lawlessness will lead to a ‘perfect justice’ is purely a matter of belief, ‘a utopian prophecy’ as Kelsen put it.⁷⁸ Accordingly, David T. Koyzis explains,

Marxism is based on an explicit soteriology holding out the possibility of salvation accomplished through the world historical activity of the proletariat. History is moving in a single direction, moved by a class struggle, but destined to transcend class struggle after the final eschatological consummation, that is, the revolution, occurs.⁷⁹

If a state of lawlessness is indeed the final stage of the communist ‘paradise’ suggested by Marx, which in this sense would necessarily predate ‘a period in which the state can be nothing but the revolutionary dictatorship of the proletariat’, one may consider that, in an overwhelming Catholic nation, all this ongoing Marxist interpretation of ‘social revolution’ by the clergy is indeed a quite serious obstacle to the realization of the rule of law in Brazil.

3.3. Social Movements

In November 2003, a forum described by its organizers as an attempt to feed the ‘revolutionary enthusiasm’ of participants was held in the city of Belo Horizonte.⁸⁰ This forum, the *Fórum Social Brasileiro – FSB (Brazilian Social Forum)*, was attended by approximately 30,000 members of no less than 1,200 social movements. It marked by a series of debates of a communistic-anarchistic variety.⁸¹ On the topic called *Estado e Movimentos Sociais* (State and Social Movements), Gilmar Mauro, one of the national leaders of the *Movimento dos Trabalhadores Rurais Sem-Terra – MST* (Landless Movement) stated: ‘Without the struggle of the masses, there can be neither transformation nor revolution. Without awareness-raising, no revolution finds support historically’.⁸²

For those unfamiliar with the activities of the MST, the MST actually constitutes one of the most revolutionary ‘social movements’ in Brazil. Founded in Rio Grande do Sul in 1984 by radical activists linked to the Catholic Church’s Pastoral Land Commission (CPT), the MST is certainly not only fighting for land reform in Brazil. The MST also fights in the words of the MST leader João Pedro Stédile for ‘a different way of farming that guarantees that [every piece of] land is not seen as private property’.⁸³ According to

⁷⁶ *Id.*, at viii.

⁷⁷ Igor Grazin, ‘The Role of Ideas in Political Change’. From S. Ratnapala and G. A. Moens (eds.), *Jurisprudence of Liberty*. Adelaide: Butterworths, 1996, at 249.

⁷⁸ *Id.*, at 36.

⁷⁹ David T. Koyzis, *Political Visions & Illusions*, Grand Rapids: IVP, 2003, at 174.

⁸⁰ See Fórum Social Brasileiro, ‘Metodologia de Atuação’. Belo Horizonte, 2003, at

<http://www.ifsb.org.br/default3b.asp?arquivo=texto/eixos.html>

⁸¹ *Id.*

⁸² *Id.*

⁸³ João Pedro Stédile, ‘Landless Battalions: Sem-Terra Movement of Brazil’, *New Left Review* No.15, May-June 2002, at <http://www.newleftreview.com/NRL24904.shtml>

Bernardo Kucinski, a journalist who acted as a special adviser to President Lula da Silva:

The strongest mass movement at the end of the 1990s, the MST... has a much broader and more ambitious political program than land reform... It supports the [ruling party] PT in elections campaigns and is, in turn, supported by the PT. But it has its own firmly left-wing political program, which originated in Catholic liberation theology (in which the PT also has roots). Activists study Marx and Lenin in Che Guevara schools, and the MST's strongly moralistic program proposes confiscating wealth from the wealthiest, a moratorium on the foreign debt, and changes in patterns of consumption as necessary for a redistribution of income.⁸⁴

According to Miguel Carter, a research fellow in Politics at the *Centre for Brazilian Studies*, Oxford University, the actions of the MST are invariably oriented towards 'the fulfilment of an absolute, non-negotiable goal'.⁸⁵ As he also iterates, activities of the MST normally display 'dense collective repertoires' (i.e. flags, songs, chants, marches, etc.), which are designed 'to stir courage and vitality among its participants'.⁸⁶ Good evidence of this is found in this statement sent by the MST leadership to other members of the organization:

The idea of collectiveness implies the respect of subordinates to decisions carried out by those who are in charge of controlling them.

It implies that all members of the collective body must engage themselves in actions commanded by their supreme leaders.

It implies the submission of the individual to the collective body.

It implies the submission of inferior organisms to the superior ones, with the subordination of all segments and organisms to the same collective direction.

To eliminate the contradictions between us and our enemies, we must impose a dictatorship.⁸⁷

In the many schools the MST has opened across the country, more than 200,000 children are currently being indoctrinated in the political writings of Marx, Lenin, Gramsci, Mao Tse-Tung, and other 'icons' of revolutionary socialism. These children also learn about concepts such as 'mass mobilization', 'class struggle', and 'social exclusion'. Referring to the kind of 'education' which is provided to these children an article from *Época* magazine commented:

At a time when Cuban teenagers dream about Florida, young people from Eastern Europe celebrate the end of the Iron Curtain and the Chinese try to escape from oppressive state control, the new generation of MST members is perhaps the only group of young people in the world who still believes in the dictatorship of the proletariat...

⁸⁴ Bernardo Kucinski, 'The Rise of the Workers Party', from S. Branford and B. Kucinski (eds.), *Lula and the Workers Party in Brazil*, New York: The New Press, 2005, at 52.

⁸⁵ Miguel Carter (ed.), 'The Landless Rural Workers' Movement (MST) and Agrarian Reform in Brazil', conference Report prepared by the *Centre for Brazilian Studies – Oxford University*, Oxford, 7 October 2003, at 6.

⁸⁶ *Id.*

⁸⁷ Denis Lerrer Rosenfield, *Companheiros de Guevara*, *O Estado de S. Paulo*, 29 November 2004.

A majority of these young militants were brainwashed for communism from early life... They have received their real ideological formation in courses given at camps and settlements.

An essential aspect of this pedagogy is its appeal to so-called 'mystics,' where actors stage historic passages of communist revolutions and the MST. They often feature heroic scenes with protagonists such as Vladimir Lenin, Pol-Pot, Mao Tse-Tung, and Fidel Castro.⁸⁸

The MST openly proposes to construct an organic model of community life that can generate a 'new man'. According to Elena Calvo Gonzales, a social anthropologist with a PhD from Manchester University, the idea is basically to forge a 'new man' who will carry out a social revolution which is based on the socialistic principles of 'self-discipline and the control of others'.⁸⁹ Indeed, the website of the MST informs that two of its major goals are to provoke 'massive fights' (*fazer lutas massivas*) and to bring about the 'Cultural Revolution' (*impulsionar a revolução cultural*).⁹⁰ But since there are numerous self-declared Maoists in the MST leadership, one can fairly assume that the phrase 'Cultural Revolution' is actually inspired by the brutal Chinese 'Cultural Revolution' from the 1960s. Indeed, Maria José Jaime, the president of the MST's major propaganda apparatus – The Institute of Socio-Economic Studies (INESC) – was a central-committee member of the Maoist guerrilla movement during the 1970s. She received political and military training in China in 1969.

During the 'cultural revolution' in China, Mao Tse-Tung aimed also to produce a 'new man' devoted to the cause of revolutionary socialism.⁹¹ Under the pretext of completely eradicating so-called 'black categories' (landlords, prosperous peasants, and non-communists, in general) the Chinese 'cultural revolution' led to the slaughter of at least 3 million people. Interestingly, Mao's 'Cultural Revolution' was equally preceded by a social movement for land reform such as the MST. The key element of that land reform was the establishment of 'bitterness meetings' in which landowners were convoked by 'popular assemblies' in order to be humiliated, tortured, and killed. The precise number of victims during that 'land reform' is unknown, though it is generally estimated that between 2 and 5 million were killed.⁹²

In Brazil, the MST has a membership of 1.5 million people and around 100,000 full-time 'professional militants'.⁹³ The MST leader, João Pedro Stédile, is quite openly a self-defined hardline communist who often describes MST activists as 'our army'. He has already called on his 'army' to finish the 'fight in the countryside' with ranchers and landowners. As he says: 'That is the dispute. And we won't sleep until we do away with them'.⁹⁴

⁸⁸ Alexandre Mansur, *MST - Os Filhos Querem Revolução*. Época Magazine, São Paulo, 7 July 2003.

⁸⁹ Carter, *op. cit.*, at 10.

⁹⁰ Movimento dos Trabalhadores Rurais Sem Terra; *MST – Quem Somos: Objetivos Gerais*, at <http://www.mst.org.br/historico/objetivos.html>

⁹¹ Barbara Barnouin and Yu Changgen, *Ten Years of Turbulence: The Chinese Cultural Revolution*. London: Kegan, 1993, at 24.

⁹² Jean-Louis Margollin, *China: A Long March into Night*. From Courtois, *op. cit.*, at 479.

⁹³ Carter, *op. cit.*, at 9.

⁹⁴ Gerald Brant, *Brazil's Lula and the MST*. NewsMax.com, 12 September 2003, at <http://www.newsmax.com/archives/articles/2003/9/12/95132.shtml>

In a May-June 2002 *New Left Review* conducted a rather revealing interview with Stédile. There the MST leader says he thinks the only force that can produce social change in Brazil 'is the organized mass of the people, and that people organize themselves through struggle, not through the vote'.⁹⁵ He also states that the MST rejects any dialogue with 'the Right', because, as he puts it, 'the Left has to regain the belief that we alone are going to alter the balance of forces, through mass struggles against the bourgeoisie'.⁹⁶ Finally, Stédile ascertains that 'as far as violence is concerned', the MST has 'learned a lot' from the Vietnamese dictator Ho Chi Min.⁹⁷ According to this MST leader:

Ho systematically taught the Vietnamese peasants that their strength lay not in what they held in their hands, but in what they carried in their heads. The achievements of the Vietnamese soldier – a farmer, illiterate, and poor – came from his being conscious of what he is fighting for, as a soldier and as a man. Everything he could lay hold of, he turned into a weapon... If we ever decide to use the same weapons as our enemies, we would be doomed to defeat.⁹⁸

A very significant aspect of the above statement is the rather frank admission of the leader of the MST that this organisation does not intend to use the same (legal-democratic) 'weapons' as his adversaries. Indeed, the example of communist Vietnam reveals an unwillingness to respect the rule of law. As a self-described admirer of the communist dictator Ho Chi Min, the leader of Brazil's most powerful land-reform is obviously fully aware of the fact that when Ho took control of North Vietnam, in 1954, the first thing he did was to launch a murderous land reform that resulted in the killing of hundreds of thousands of people. According to Quynh Dao, a member of the Australian-Vietnam Human Rights Committee:

Under Ho's 'land reform' campaign, people deemed wealthy were summarily executed. In war-torn, impoverished, backward Vietnam, 'wealthy' might involve merely owning a few blocks of land, a brick house or a fabrics shop. This campaign was carried out following the Chinese Maoist Model, under the directives of Chinese communist advisors..., which set a quota of people who must be declared 'class enemies'. So there were people who were killed just so that the quota was reached.⁹⁹

In 1997, Stédile advised voters that if they failed to elect the then presidential candidate Lula da Silva, Brazil could turn into a 'new Colombia', plagued by 'uncontrolled violence and perhaps even armed conflict'.¹⁰⁰ Indeed, army officers have been warning the federal government of the risk the MST poses in that it may eventually become a FARC-like terrorist organization.¹⁰¹ A source from the Revolutionary Armed Forces of Colombia (FARC), a member of its High Revolutionary Command, confirmed that excellent ties have been established between the leadership of the MST and of the FARC drug guerrillas.¹⁰² What is more, official documents of the *Agência Brasileira de Inteligência* – ABIN (Brazilian Intelligence Agency) have already confirmed the presence in Brazil of the FARC guerrillas, and that such a presence is by no means restricted to establishing

⁹⁵ *Landless Battalions, op. cit.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ See Quynh Dao; *The Vietnam War – 30 Years*, *Newsweek*, No.2705, Melbourne, 23 April 2005, at 12-3.

¹⁰⁰ William C. Smith and Nizar Messari, 'Democracy and Reform in Cardoso's Brazil: Caught Between Clientelism and Global Markets?' *The North-South Agenda* No.33, University of Miami, September 1998, at 10.

¹⁰¹ Gerald Brant, 'Brazil's Lula and the MST', *NewsMax.com*, 12 September 2003, at

<http://www.newsmax.com/archives/articles/2003/9/12/95132.shtml>

¹⁰² See 'The Landless Movement', *American TFP*, Vol.1, No.9, 23 May 2003.

strategic bases for drug trafficking, but also for the training of MST activists.¹⁰³ One such document states that courses in guerrilla tactics are held in Canindeyú, a region in neighbouring Paraguay that borders the states of Paraná and Mato Grosso do Sul. These courses teach participants special skills in dealing with firearms, martial arts, and how to prepare explosives.

In April 2004, the MST leadership fulfilled the promise of 'giving hell' to the country by carrying out the 'Red April'. As fully reported, the agricultural sector, the only one generating trade surpluses for the country, was the main target of land invasions.¹⁰⁴ During this month-long period of massive invasions of lands and public buildings, most of the invaded farms were actually applying the latest technology in agriculture. In southern Bahia, for instance, a tree plantation operated by *Veracel Celulose SA*, a paper company part-owned by Swedish investors, was violently invaded by MST members who cut down its eucalyptus trees, because, as they explained, 'nobody eats eucalyptus'.¹⁰⁵ And in Goiás the MST invaded a highly productive property used for research, training, and seed-processing, because they wish 'to stop the business of producing for export'.¹⁰⁶

More recently, in September 2005, the MST coordinated the simultaneous invasions of eight branches of the *Banco do Brasil* (Brazil's Federal Bank) in São Paulo, seven tollbooths on highways in Paraná, six farms in Rio Grande do Sul, and twenty-one public buildings belonging to the Land Reform Institute (Instituto Nacional de Colonização e Reforma Agrária – INCRA) in São Paulo and Rio de Janeiro.¹⁰⁷ The MST leadership released a statement explaining that those violent actions were part of a 'National Struggle Movement'. Yet, invasions carried out against INCRA's buildings were detrimental to land reform as they prevented public employees from working to ensure the settlement of 400,000 rural families.¹⁰⁸

As can be seen, the MST is an extremely radical organization that has done far more than occupy non-productive property. In October 2005, as another example, the MST invaded the factory owned by Standard, a food company from Rio Grande do Sul. Twelve of its workers were taken hostage during the operation, which resulted in the destruction of all the company's food stock, consisting of dairy products, meats and sweets. Refrigerators, computers, and other electronic equipment were also destroyed. The company says the incident caused more than US\$3 million damage.¹⁰⁹

¹⁰³ Maria Clara Prates, 'Farc Treina MST: Guerrilheiros Colombianos Ensinam suas Técnicas a Sem-Terra e Quadrilhas do Rio e São Paulo', *O Estado de Minas*, Belo Horizonte, 30 October 2005, at 5.

¹⁰⁴ 'Abril Vermelho: MST não Poupa Fazendas Produtivas', *Jornal do Brasil*, Rio de Janeiro, 09 April 2004, at A3.

¹⁰⁵ Raymond Colitt, 'Brazilians Invade Property to Press for Reforms', *Financial Times*, 6 April 2004, at:

<http://news.ft.com/servlet/ContentServer?pagename=FT.com/StoryFT/FullStory&c=StoryFT&cid=10794294> See Paolo Prada, 'Landless and Restless', *Boston Globe*, Boston, 24 April 2004, at http://boston.com/news/world/articles/2004/04/24/landless_and_restless?mode=PF

¹⁰⁶ 'A Thin Red Line', *The Economist*, 10 November 2005, at

http://www.economist.com/cities/displaystory.cfm?story_id=5135532

¹⁰⁷ Lilian Macedo, '14,000 Landless in Brazil Take Over Farms, Tool Booths, and Banks', *Brazzil Magazine*, Los Angeles, 27 September 2005, at

<http://www.brazzilmag.com/content/view/4077/49/>

¹⁰⁸ Juliana Andrade, 'Landless's Invasions Hinder Reforms', *Brazzil Magazine*, Los Angeles, 27 September 2005, at <http://www.brazzilmag.com/content/view/4089/49/>

¹⁰⁹ See Nilson Mariano, 'Invasão e Saque', *Zero Hora*, 27 October 2005. See also 'Invasão Emperra a Metrôpole: O Bloqueio Depois do Saque', *Zero Hora*, Porto Alegre, 28 October 2005. See also 'Dois Dias de Perdas – Quinhentas Toneladas de Alimentos foram para o Lixo Ontem

Although it is obviously not legal to occupy farmlands that are in productive use, the MST often invades them anyway, sometimes leading to violent clashes with landowners.¹¹⁰ And yet, Luiz Antônio N. Garcia from the *Democratic Ruralist Union* (União Democrática Ruralista – UDR) points out that when such land invasions are carried out, ‘the police stand by with arms crossed, because the government has no will to enforce the law’.¹¹¹ Farmers are now hiring armed private militias to protect their properties. In what resembles a situation of civil war, violent conflicts are taking place in almost every corner of the nation. According to the U.S. State Department:

Many persons were killed in recent years in conflicts involving disputes over land ownership and usage. The land rights organization known as the ‘Movement of the Landless’ (MST) continued its campaign of invasion and occupation of private and public lands that it wanted the federal and state governments to expropriate for land reform. The MST also continued its occupation of public buildings. MST activists often used confrontational and violent tactics, and destroyed private property during some occupations.¹¹²

Despite the fact that the MST is so often violating the law, some political leaders have openly supported the organization. During the last federal administration, President Fernando Henrique Cardoso (1994-2002) held a June 1995 meeting with the MST leadership, although, afterwards, he refused to meet with representatives of the agricultural sector from around the country.¹¹³ Similarly, Paraná state Governor Roberto Requião declared in April 2003 that the MST was an organization ‘blessed by God’.¹¹⁴ In May 2005, Goiás state governor Marconi Perillo sponsored with taxpayers’ money a huge march of the MST that began in Goiânia and finished in the federal district of Brasília. Each of its 12,000 participants received books by Karl Marx and communist flags.¹¹⁵

Since it is argued that Brazil’s land ownership is one of the most inequitable in the world, one might agree with land reform without having to endorse the violent actions of the MST, which, as extensively reported, includes lootings, highway robberies, invasion of factories, and hostage-taking. Indeed, a renowned law professor, Ives Gandra da Silva Martins, accuses the MST of constantly ‘trampling on the rule of law’; organising the violent occupation and destruction of both private property and public buildings.¹¹⁶

Clearly, any organization which so blatantly promises to generate a ‘new man’ and a ‘cultural revolution’ cannot possibly respect the constitutional order except as a mere façade. After all, one cannot aspire to completely rebuild society yet at the same time respect its democratic legal system. If so, the only option for the MST is to keep on

Por Conta da Invasão de Manifestantes à Empresa Standard’, *Zero Hora*, Porto Alegre, 28 October 2005. See also ‘Além do Tolerável’, *Zero Hora*, Porto Alegre, 28 October 2005.

¹¹⁰ Kenneth Rapoza, ‘Brazil’s Farmers See Land Seized’, *The Washington Times*, Washington/DC, 11 May 2004, at <http://washingtontimes.com/world/20040510-095609-3141r.htm>

¹¹¹ Brant, *op. cit.*

¹¹² U.S. Department of State (2004), *Country Reports on Human Rights Practices – Brazil*. Released by the Bureau of Democracy, Human Rights, and Labour, February 25, 2004, at <http://www.state.gov/g/drl/rls/hrrpt/2003/27888.htm>

¹¹³ Silvia Palacios and Lorenzo Carrasco, ‘Explosion Nears over Landless Movement Provocations’, *Executive Intelligence Review*, 10 November 1995, at http://www.larouchepub.com/other/1995/2245_brazil_landless.html

¹¹⁴ Rapoza, *op. cit.*

¹¹⁵ ‘Para os Sem-Terra, Tudo, Para os Militares Nada’, *Boletim da Associação dos Fundadores da FFP*, São Paulo, 16 May 2005, at 1.

¹¹⁶ Ives Gandra da Silva Martins, ‘O Retrocesso Democrático’, *Jornal do Brasil*, Rio de Janeiro, 26 August 2004, at A13.

manipulating the law until their revolutionary goals are achieved. In brief, actions of the MST pose an extremely serious threat to the future of legal-democratic institutions in Brazil. They have already provoked a disturbing situation of violence and lawlessness, particularly in the countryside.¹¹⁷

3.4. Intellectuals

One would not be mistaken in characterising many Brazilian intellectuals as having little or no respect for the liberal-democratic traditions and legal institutions of the most developed countries in the world. Rather, populism, collectivism and rejection of economic freedom are values inherent in the formation of the Brazilian intellectual elite. Thus, with a few exceptions, law schools in Brazil often are archaic repositories of old-fashioned Marxist conceptions of law and society. Such conceptions deny that anything can be regarded as 'law' unless it furthers socialism. As such, any legal system that does not advance socialism is automatically discarded by them as a 'fraud' employed by the ruling classes to oppress the poor. The rationale for this is explained by David and Brierley:

In all countries the Marxists have thought and still fight against the law, because to them it appears that law, in the non-socialistic countries, serves only to defend and perpetuate a fundamentally unjust social order. When they demand on the contrary that citizens in the U.S.S.R. conform strictly to the legal order, they must therefore justify this change of attitude... The law is of value only in relation to the order which it serves to establish and the content of the legal rules it contains. The epithet 'socialist' supplies, therefore, an indispensable justification; it underscores the idea that the principle of legality is only meaningful in a socialist economy and when it is subordinate to the interests of its economy'. A 'fetish' must not be made of law. Law only has value because it serves the interests of a socialistic state. Law is ... merely a superstructure; its authority can only be based on a sound infrastructure, that of an economy in which the means of production are collectivised and exploited in the [supposed] interest of all.¹¹⁸

In fact, Brazilian intellectuals are deeply inclined to believe that the whole concept of the rule of law constitutes a conservative mystification to perpetuate capitalism, at the dear price of every social transformation. They might suggest that every legal system is a mere instrument for property relations which must cease to exist in a future communist utopia. This being the case, one can more easily understand why so many intellectuals in Brazil view the concept of the rule of law quite negatively, and steadfastly refuse to abandon their old socialist idols such as the ruthless dictator Fidel Castro, in spite of plentiful evidence regarding the appalling absence of basic human rights in communist Cuba. As a result, such members of the intellectual elite have tirelessly worked to discredit every legal system which is not completely based on the principles of radical Marxism. In Latin American countries such as Brazil, Carlos Alberto Montaner comments:

What many intellectuals announce in newspapers, books and magazines, and television is repeated in the majority of Latin America universities... This message explains the close relationship between the lessons young scholars receive in the university and their link with subversive groups such as Sendero Luminoso in Peru,

¹¹⁷ For more information on the MST's violent tactics, see 'MST Aumenta Pressão com Marchas e Invasões pelo País', *Jornal do Brasil*, Rio de Janeiro, 06 April 2004, at A2. See also 'De Volta ao Passado', *Jornal do Brasil*, Rio de Janeiro, 08 April 2004, at A10. See also Dora Kramer, 'O Preço da Omissão', *Jornal do Brasil*, Rio de Janeiro, 11 April 2004, at A2. See also 'MST Descumpre Ordem e Invade mais Terras Produtivas', *Jornal do Brasil*, Rio de Janeiro, 15 April 2004, at A4.

¹¹⁸ *op. cit.*, at 210.

Tupamaros in Uruguay, Movimiento de Izquierda Revolucionária in Venezuela, the M-19 in Colombia, of Sub-Comandante Marco's picturesquely hooded Zapatistas in Mexico. The weapons these young men carried with them into the jungle, mountains, and city streets were loaded in the lecture rooms of the universities.¹¹⁹

Coming from a generation of scholars who were trained during the first years of the Faculty of Philosophy, Science, and Letters of the prestigious University of São Paulo (USP), Florestan Fernandes (1920-1995) is a sociologist who exercised an enormous influence over other Brazilian intellectuals. His influence, even inspiration, is indeed quite remarkable and easily observable through the academic works of well-known Brazilian academics with an international reputation, such as Roberto Ünger, Octavio Ianni, Leôncio Martins Rodrigues, José de Souza Martins, and Fernando Henrique Cardoso.

As the 'father' of Brazil's radical sociology, Fernandes had very few appreciation to the concept of the rule of law. He actually considered it a mere mechanism for socio-economic exploitation. With the rule of law, he said, exploitation will continue because 'everything must remain in its place'.¹²⁰ And since he also maintained that the ideal of the rule of law amounted to the 'monopolization of power' in the hands of the bourgeoisie, he advocated its undesirability to the working classes, proposing instead a more radical concept of 'popular government'. In his book *Reflections on the Brazilian Counter-Revolution*, he says the 'popular masses' should despise 'all fantasies' related to a liberal democratic constitution. According to him:

What is extremely urgent is to stop this infantile thinking which proposes that the masses can be politicised without having to struggle, because all struggle must inevitably start with a political space equal to zero. This means that he believed that these people should not obey the rules of the constitutional order. 'Only such a beginning', he argues, 'will make further steps possible, liberate new alternative reformist and revolutionary forces, and break the historical enclosure in which the working classes and the popular masses now stand.... It is not enough to hold dissenting views: *struggle* is demanded.'¹²¹

Of course, this sort argument is not new and has its genesis in an 1842 article written by Friederich Engels about the condition of the working classes in England:

True, the law is sacred to the bourgeois, for it is his own composition, enacted with his consent, and for his benefit and protection. He knows that, even if an individual law should injure him, the whole fabric protects his interests; and more than all, the sanctity of the law... as established by the active will of one part of society, and the passive acceptance of the other, is the strongest support of his social position.... The working-man knows too well, has learned from too oft-repeated experience, that the law is a rod which the bourgeois has prepared for him; and when he is not compelled to do so he never appeals to the law.¹²²

As with many Brazilian intellectuals, Fernandes fortunately did not attempt to take practical steps toward the application of such political ideas. Others, however, took radical ideas more seriously, engaging in acts of extreme violence that were motivated by a conviction that the state and its 'capitalist' order are 'illegitimate' and so deserving of attack at all costs. For example, Carlos Marighella, a communist leader who during

¹¹⁹ Carlos Alberto Montaner, 'Culture and the Behaviour of Elites in Latin America'. From L.E. Harrison and S. Huntington (eds.), *Culture Matters: How Values Shape Human Progress*. New York: Basic Books, 2000, at 63.

¹²⁰ Florestan Fernandes, *Reflections on the Brazilian Counter-Revolution*. New York: M.E. Sharpe, 1981, at 107.

¹²¹ *Id.*, at 142.

¹²² Cain, *op. cit.*, at 164.

the 1960s wrote a seminal text on urban guerrillas entitled *Manual do Guerrilheiro Urbano* ('Manual of Urban Guerrillas'), also set up a guerrilla movement.¹²³ Marighela's dream was to transform Brazil into another Vietnam. In a 1969 interview published to the French magazine *Action*, he was quite happy to predict that the armed struggle against the military government would provoke an American intervention, thus suggesting: 'Brazil will be another Vietnam'.¹²⁴ He failed in such an attempt but his book became a bestseller, for many years the country's most quoted political essay. The book conferred to its author the deserved status of 'the father of urban guerrillas' and 'strategist of terror'.¹²⁵ In the words of Dr Mervyn F. Bendle,

The book offers a romanticised vision of the urban guerrilla as a sort of utterly committed and self-disciplined urban samurai who is a master of his noble craft. However, it also provides detailed practical advice on how to disrupt, sabotage, and even overthrow government and corporate institution, and was for many years the most comprehensive book on urban guerrilla strategy available.¹²⁶

Another influential Brazilian intellectual is Roberto Unger, law professor at Harvard University. Unger has long been very influential in his native country as a social activist, and close advisor to political leaders. It was Unger who drafted in the 1980s the 'manifest of foundation' of the then Brazil's largest political party, the Party of the Brazilian Democratic Movement (PMDB). A few years later, he became associated with the Democratic Workers' Party (PDT) and its controversial leader Leonel Brizola, a demagogue who died in 2005 and was broadly seen as mainly responsible for the radicalisation process that led to the military intervention in the 1960s, and the end of democratic period of 1945-1964.¹²⁷

Apart from being one of the most distinguished founders of Critical Legal Studies in the United States, Unger also helped establish the contemporary leftist movement in Brazil, a country where his political writings are extremely appreciated. It is indeed very hard to imagine any U.S. newspaper providing an individual the same space that Brazil's largest newspapers have given Unger to develop his political analysis and program.¹²⁸ Generally speaking, his journalistic pieces are part of his broader 'program for reconstructing the basic institutional arrangements of society'.¹²⁹ Unger explains such a program in these terms:

The social ideal and the view of the relation of law to social life that I have just described can be translated into a program for the reconstruction of the state and the rest of the large-scale institutional structure of society. They can be taken as the basis for a vision of transformed personal relations.¹³⁰

¹²³ See Carlos Marighella, *Manual do Guerrilheiro Urbano e Outros Textos*, Lisboa: Assírio & Alvin, 1969.

¹²⁴ Elio Gaspari, *A Ditadura Escancarada*, op. cit., at 145.

¹²⁵ *Id.*, at 142.

¹²⁶ Mervyn Bendle, *Terrorism and the New Left in the 'Sixties*, 71 *National Observer* 8, Summer 2006/7, at 23.

¹²⁷ See Augusto Zimmermann, 'Constitutions without Constitutionalism: The Failure of Constitutionalism in Brazil'. Article which will very soon be published in *Ius Gentium*, law journal of the University of Baltimore, 2008.

¹²⁸ For more details on Roberto Unger's political activism in Brazil, see William H. Simon, 'Social Theory and Political Practice: Unger's Brazilian Journalism' (1987) 81 *Northwestern University Law Review* 832.

¹²⁹ Roberto Unger, 'The Critical Legal Studies Movement', (1983) 96 *Harvard Law Review* 563, at 586.

¹³⁰ *Id.*

To achieve such a level of socio-economic transformation, Unger is willing to confer to the Brazilian state the role of re-orienting interpersonal relations in society. In arguing that people can only control their destiny by means of the state's intervening power, the state is thereby transformed into the new absolute, the new god of being. Unger is actually very clear about this 'statistic' ambition as he says that he strongly believes the state is the *only* social entity with 'capacity for transformative action'.¹³¹ Only the state, he declares, would be powerful enough to promote 'the occasions and the means to challenge and revise every aspect of the basic institutional structure of society'.¹³² As a result, H. Jefferson Powell contends that Unger has 'created for those who assent to his program a text that claims authority parallel to that enjoyed by the Bible in traditional Jewish and Christian thought'. Powell explains:

Unger's message of redemption shares with traditional Christianity belief that the locus of salvation is in community. However, Unger's community, his 'church', is a curious photographic negative of the Christian vision of the Church as a community of reconciliation and peace. The outward and institutionalized form of Unger's community is a state armed with the power to intervene in almost all aspects of human life. Its authority is coercive, and oriented toward exacerbating rather than reconciling conflict. Its central and characterizing activity is the tearing down of existing relationships, not their loving constitution.¹³³

Even if this opinion was an overstatement, the basic fact is that Unger's 'statistic' postulation, one in which the state acts as a liberating instrument of large-scale social transformation, is very common among Brazilian intellectuals.¹³⁴ Specifically for Unger's socialist theory, one may equally regard it as not just 'statist' but also hostile to the ideal of the rule of law, since Unger himself considers an impartial administration of justice a mere stratagem of economic ruling groups to hide all sorts of social hierarchy and exploitation; i.e., a mere 'mask' used by the ruling groups to hide the hegemonic, economic, and political underpinnings of law. As such, Unger's goal is basically 'to delegitimize the entire system rather than to find ways in which it might work better by ameliorating the flaws they identified'.¹³⁵ According to the late political philosopher Judith Shklar:

In his... writings Unger has come to adopt an indignant tone in denouncing the Rule of Law. He... sees it... as a pure ideological cloak that must be ripped off to expose the fraudulence of the entire ideology of the Rule of Law. As one of the spokesmen for 'Critical Legal Studies', he... regards formalism, the belief in... impersonal legal system as the chief ideological screen behind which a 'shameless' liberalism hides. In fact it is the servant of sinister interest groups, and its talk of rights is merely hypocrisy... The world ideology is moreover used here as a term of abuse that is meant to reveal the hypocritical and egoistical character of legal liberalism [i.e.; the rule of law]. A hierarchical and atomizing policy is the reality of liberalism, fairness, and legal impartiality. The object of legal scholarship is to find the weak spots in the system and to put forward

¹³¹ Roberto Unger, *Plasticity into Power: Comparative-Historical Studies on the Institutional Conditions of Economic and Military Success*. Cambridge: Cambridge University Press, 1987, at 85.

¹³² Roberto Unger, *False Necessity: Anti-Necessitarian Social Theory in the Service of Radical Democracy*. Cambridge: Cambridge University Press, 1987, at 449.

¹³³ H. Jefferson Powell, *The Gospel According to Roberto: A Theological Polemic* (1988) 48 *Duke Law Journal* 1013, at 24.

¹³⁴ See Augusto Zimmermann, 'In Brazil Work is a Dirty Word Unless You Hold Public Office', *The Hispanic American Center for Economic Research (HACER)*, Arlington/VA, at <http://www.hacer.org/current/Brazil097.php>

¹³⁵ Brian Tamanaha, *On the Rule of Law: History, Politics, Theory*. Cambridge: Cambridge University Press, 2004, at 86.

claims and to demand ever-new personal rights that will destabilize the whole system.¹³⁶

In line with his idea of a powerful state, Unger also believes that only a 'strong' political leader can 'provide the route to power less susceptible to plutocratic management and more open to national and structural concerns'.¹³⁷ According to him, a 'decentralized parliamentary context' only serves to 'secure property rights against populism'.¹³⁸ Thus, in an effort to reorganise each and singular aspect of the civil society, Unger goes to say that a strong president could 'break the power' of 'conservative forces' in the legislature,¹³⁹ thus guiding 'the masses' toward a revolutionary process in which the state finally becomes 'an agent of economic rebellion and reconstruction'.¹⁴⁰ Unger writes:

The presidential regime introduced... with nationalizing and subversive effect... can be a source of unpredictability and a lever of change in a society where everything conspires to prevent surprise. However, in its traditional form, the presidential system suffers from a crucial flaw. The people may elect a captain who promises them the world. In office, however, he soon faces the concerted opposition of the elite interests in the other branches of government as well as in the major stations of civil society. The solution is to preserve the plebiscitarian potency of the presidential system while purging that system of its bias towards politics-slowness impasse.¹⁴¹

If such a 'strong' presidential system were adopted constitutionally, the result would certainly be catastrophic for Brazil. Owing to the way that politics traditionally operates in the country, too much power in the hands of a president could lead to far more corruption and arbitrariness. The populist formula of a 'strong' president is historically responsible for socio-political problems affecting the realization of the rule of law, not just in Brazil but in Latin America as a whole. Accordingly, the late Argentinean philosopher Carlos Santiago Nino commented that:

The kernel of [Unger's] argument is that only the president... is apt to break the network of power binding conservative party leaders and to mobilize the masses after a program of structural transformation. But this argument touches precisely on the main weakness of the presidential system: if there is a wide consensus on specific programs and a certain man or group to carry it on, any system would work; the presidential one would only add the risk of abuses against minorities. The problem occurs when, as often happens in Latin America, there is no such consensus. The presidential system is the least likely to promote its formation; on the contrary, it promotes dissent even between parties with similar views, because of the struggle for the presidency.¹⁴²

In reality, Unger's model of a 'strong president' has been fully adopted in Brazil's neighbouring Venezuela, where its 1999 Constitution confers to its 'strong president' the power to issue decrees with the force of law and to dissolve the parliament.¹⁴³ It is true

¹³⁶ Judith Shklar, 'Political Theory and the Rule of Law'. From A.C. Hutchinson and P. Monahan (eds.), *The Rule of Law: Ideal or Ideology*. Toronto: Carswell, 1987, at 10.

¹³⁷ Roberto Unger, *Democracy Realized: The Progressive Alternative*. London: Verso, 1998, at 216.

¹³⁸ *Id.*, at 264.

¹³⁹ *Id.*, at 122.

¹⁴⁰ *Id.*, at 120.

¹⁴¹ *Id.*, at 122.

¹⁴² Carlos Santiago Nino, *Transition to Democracy, Corporatism, and Presidentialism with Special Reference to Latin America*. From D. Greenberg, S.N. Katz, M.B. Oliviero and S.C. Wheatley (eds.), *Constitutionalism and Democracy: Transitions in the Contemporary World*. Oxford: Oxford University Press, at 61.

¹⁴³ Venezuelan Constitution, Article 236.

that such president is subject to popular plebiscite for the revocation of his mandate,¹⁴⁴ but in practice, as one may well expect, this is almost impossible to implement successfully, when the president has already concentrated so much power. And so in the wake of a failed (and highly contested) 2004 recall attempt to revoke his mandate, the 'strong' president of Venezuela, Hugo Chavez, 'clamped down on civil liberties, property rights,... decreed new laws that define public protest as a crime, [and] imposed media restrictions that encourage substantial self-censorship under threat of operating licence confiscation'.¹⁴⁵ In sum, a stronger president leads to less democracy and the rule of law, at least in Latin America.

Similarly, another problem facing the rule of law in Brazil is that the political writings of V.I. Lenin and other radical socialists are quite popular amongst intellectuals. They appreciate Lenin's political ideas in spite of the fact that oppression in the former Soviet Union occurred not just as result of the excesses of Stalinism but rather as an integral part of the 'foundations of lawlessness' that he established. It was Lenin, not Stalin, who openly advocated that the state must base all its power 'directly upon force and unrestricted by any laws'. And Lenin also declared: 'The revolutionary dictatorship of the proletariat is ruled, won, and maintained by the use of violence by the proletariat against the bourgeoisie, rule that is unrestricted by any laws'.¹⁴⁶ However, Lenin's works provided the theoretical formulation for the academic contribution of intellectuals such as the former president Fernando Henrique Cardoso, 'the most distinguished Marxist scholar to lead a nation since the death of V.I. Lenin'.¹⁴⁷ His work on 'dependency theory' is no less than a mere revision of Lenin's theory of imperialism in which the world is analysed in terms of a planetary struggle between the rich and the poor nations.¹⁴⁸ Cardoso employed this simplistic economic theory in order to reduce relations of exchange in the international economic system to a zero-sum game where any gain made by some countries are seen as losses incurred by the others.

Another academic who is deeply influenced by Lenin's writings is political-science professor Emir Sader, currently the head of the Laboratory of Public Policies at the State University of Rio de Janeiro (UERJ). Apart from having written several well-known academic books, such as *Os Sete Pecados do Capital* ('The Seven Sins of Capital'), *Cartas à Che Guevara* ('Letters to Che Guevara') and *Estado e Política em Marx* ('State and Politics in Marx'), Sader has also written journalistic pieces maintaining that Latin American dictators of fascist leaning were rather 'democratic leader'. According to him,

Vargas, Perón, Arbenz, Goulart, Allende, amongst several others, were all leaders who fell from power just because of their democratic virtues, not vices. Their desire was to create a more democratic society based on the sovereign will of the popular masses. As such, they ended up clashing with the local oligarchies and political elites, not to mention the destabilising influence of the U.S. government and the terrorist actions of the great media.¹⁴⁹

¹⁴⁴ Venezuelan Constitution, Article 72.

¹⁴⁵ Marc A. Miles, *2006 Index of Economic Freedom*. The Heritage Foundation and The Wall Street Journal, 2006, at 401.

¹⁴⁶ 'The Proletarian Revolution and the Renegade Kautsky, Selected Works,' Volume II, Part 2, Progress Publishers, Moscow, 1951, p.41. *Quoted from* Martin Krygier, 'The Rule of Law', *op. cit.*, at 10.

¹⁴⁷ Ted G. Goertzel, 'Fernando Henrique Cardoso: Theory and Practice'. *From* Levine and Crocitti, *op. cit.*, at 289. *See also* Richard F. Kane, 'Cardoso, Brazil's Neoliberal Marxist', *Brazzil Magazine*, Los Angeles, 15 May 2005, at <http://www.brazzil.com/content/view/9272/76>

¹⁴⁸ *See* Fernando Henrique Cardoso and Enzo Faletto, *Dependency and Development in Latin America*. Berkeley: University of California Press, 1979.

¹⁴⁹ Emir Sader, 'Os Pecados de Hugo Chavez', *Jornal do Brasil*, Rio de Janeiro, 17 March 2002, at <http://jbonline.terra.com.br/jb/papel/colunas/emir/2002/03/16/jorcolem/20020316001.html>

Sader's paradigm for a democratic leader follows the classical model of tyrannical government described by those old Greek philosophers more than two thousand years ago. In opposition to so-called economic 'oligarchies' he prefers then to advocate top-down changes which are imposed by populist leaders whom those ancient Greeks would properly describe as 'tyrants'. As the political philosopher and retired Brazilian ambassador J.O. de Meira Penna put it, 'Brazil's Getúlio Vargas and Argentina's Juan Perón were typical tyrants in this classical sense... Both men subverted legitimately organized, liberal-constitutional schemes of ideological plurality'.¹⁵⁰ And yet, it is curious to see an academic who is heavily promoted by the media, suddenly turn on this and deem journalists 'terrorists' if they happen to disagree with his high estimation of 'democrats' such as Getulio Vargas, whose *Estado Novo* regime actually arrested, tortured, and sent in exile, many of its political opponents. Indeed, Vargas so much 'appreciated' democracy that a 1941 letter sent to Nazi Germany by its ambassador to Brazil comments:

President Vargas requested me to call him unofficially today... The President began our conversation by stating that he very much regretted the deterioration in economic relations with [Nazi] Germany... The President then emphasised his intention to maintain neutrality towards [Nazi] Germany and, also, his personal sympathy for our authoritarian [Nazi] state, referring at the same time to the speech delivered by him recently. He openly expressed his aversion of England and the democratic system as a whole.¹⁵¹

Together with other Brazilian intellectuals and activists, including Bishop Tomas Balduino, João Pedro Stédile (MST's national leader), Leonardo Boff (theologian), Chico Buarque (musician), Celso Furtado (economist) and Oscar Niemeyer (architect), Emir Sader signed, in August 2004, a political manifesto in support of the 'democrat' Colonel Hugo Chavez. The manifesto, which was handed to the Venezuelan leader by writer Fernando Morais, denounces the existence of a 'disinformation campaign' that is supposedly 'orchestrated by the major media and that attempts to characterize as a tyrant, a president who [so they say] has consistently respected the rule of law and the country's Constitution'.¹⁵²

As one might expect, none of these intellectuals explained how a president who swore in his oath of office in 1998 that he would do away with the Venezuelan Constitution, can possibly respect the rule of law and the country's constitution.¹⁵³ In December 1999, Chavez used a constitutional amendment to promulgate a new constitution that dramatically increased his personal power; dissolved the senate; extended the presidential term from five to six years; and provided greater discretionary powers to the military.¹⁵⁴ The new Constitution of Venezuela now includes a 'truthful information' provision which can be used to curtail TV and radio stations critical of the government.¹⁵⁵

¹⁵⁰ J.O. de Meira Penna, 'Vargas and Peron: Two Tyrants'. Reprinted from Penna's *The World and I*, March 1991, at http://www.meirapenna.org/en/publications/vargas_and_peron.htm

¹⁵¹ *Documents on German Foreign Policy, 1918-1945*, Vol. 9, Section D. Quoted from Carneiro, *op cit.*, at 74.

¹⁵² 'If We Were Venezuelans, We Would Vote for Hugo Chavez', Manifesto in Support of Chavez, 12 August 2004, at <http://www.venezuelanalysis.com/articles.php?artno=1240>

¹⁵³ Miguel Schor, 'Constitutionalism Through the Looking Glass of Latin America', (2006) 41 *Texas International Law Journal* 1, at 4.

¹⁵⁴ Ivan Osorio, 'Venezuela's Tyrant Hugo Chavez Must Go', *Capitalism Magazine*, 16 January 2003, at <http://capmag.com/article.asp?ID=2312>

¹⁵⁵ *Id.*

Whereas such intellectuals obviously hold Hugo Chavez in the highest esteem, as a sincere democrat and law-abiding citizen, *Human Rights Watch* has a markedly different opinion about the colonel. The organization accuses his government of widespread human rights violations, including the restriction of free speech and the independent press¹⁵⁶, the killing of political opponents¹⁵⁷, police torture¹⁵⁸ and politicization of the courts.¹⁵⁹ Under Chavez, explains Dr. Thomas A. Shannon, a senior U.S. official and assistant secretary of state for Western Hemisphere affairs, Venezuela has sheltered groups with ties to Islamic terrorism and allowed weapons from its official stockpiles to reach Colombian drug guerrillas.¹⁶⁰ Likewise, Stephen Johnson, a policy analyst for Latin America at the Davis Institute for International Studies, points out:

President Chavez sees himself taking over Fidel Castro's leadership of the Latin American left and strengthening hemispheric ties to such rogue nations as Iran and North Korea. Emboldened by defeating an August 2004 recall vote by padding the electoral rolls and intimidating opponents, Chavez has consolidated his single-party rule, eliminating internal checks on his powers. A new 'social responsibility' law permits the government to close radio and television stations for airing content 'contrary to national security'. A strengthened criminal code imposes jail sentences for even mildly protesting the actions of public officials. Meanwhile, prosecutors are rounding up opposition leaders for show trials conducted by provisional, handpicked judges.¹⁶¹

Following his 1999 electoral victory, the Venezuelan President signed a decree that 'grants the government effective control over the entire judicial system, thus worsening a situation already marked by corruption and arbitrary rulings'.¹⁶² Entitled 'Supreme Court Law', the presidential decree 'allows the government to add up to 12 new judges to the Supreme Court and to sack existing magistrates by a simple majority vote in the National

¹⁵⁶ See Venezuela: 'Media Law Undercuts Freedom of Expression', *Human Rights Watch*, 24 November 2004, at http://hrw.org/english/docs/2004/11/30/venezu9754_txt.htm See also 'Venezuela: Curbs on Freedom of Expression Tightened', *Human Rights Watch*, 24 March 2005, at http://hrw.org/english/docs/2005/03/24/venezu10368_txt.htm See also 'Venezuela: Limit State Control of Media – HRW Letter to President Chavez', *Human Rights Watch*, at <http://hrw.org/press/2003/06/venezuela062303-ltr.htm>

¹⁵⁷ 'HRW Investigate Killings of Opposition Supporters in Venezuela', *Human Rights Watch*, 19 February 2003, at: <http://hrw.org/english/docs/2003/02/19/venezu5323.htm> See also 'Venezuela: Investigate Charges of Abuses Against Protestors', *Human Rights Watch*; 5 March 2004, at <http://hrw.org/english/docs/2004/03/05/venezu8072.htm>

¹⁵⁸ 'Letter to President Hugo Rafael Chávez Frías', *Human Rights Watch*, 9 April 2004, at <http://hrw.org/english/docs/2004/04/12/venezu8423.htm> .

¹⁵⁹ See 'Rigging the Rule of Law: Judicial Independence Under Siege in Venezuela', *Human Rights Watch*, June 2004, at <http://hrw.org/english/docs/2004/04/12/venezu8423.htm> See also José Miguel Vivanco, 'Court-Packing Law Threatens Venezuelan Democracy', *Human Rights Watch*, 7 June 2004, at http://hrw.org/english/docs/2004/07/07/venezu9015_txt.htm See also 'Chavez Allies Pack Supreme Court', *Human Rights Watch*, 14 December 2004, at <http://hrw.org/english/docs/2004/12/14/venezu9864.htm>

See also 'Venezuela: Rights Lawyer Faces Judicial Persecution – Criminal Investigation Launched to Intimidate Critic of Government's Rights Record', *Human Rights Watch*, 5 April 2005, at http://hrw.org/english/docs/2005/04/05/venezu10423_txt.htm See also 'Venezuela: Court Orders Trial of Civil Society Leaders', *Human Rights Watch*, 8 July 2005, at <http://hrw.org/english/docs/2005/07/08/venezu11299.htm> See also 'Venezuela's Supreme Court Upholds Prior Censorship and Insult Laws', *Human Rights Watch*, 18 July 2003, at: <http://hrw.org/english/docs/2003/07/18/venezu6239.htm>

¹⁶⁰ Nicholas Kravetz, 'Chavez Accused of Ties to Terrorists', *The Washington Times*, Washington/DC, 17 May 2006, at A1.

¹⁶¹ Stephen Johnson, 'U.S.-Latin America Ties Need Commitment and Strategy', *Backgrounder*, No.1920, Washington/DC, 13 March 2006, at 7.

¹⁶² Miles, *op. cit.*, at 402.

Assembly'.¹⁶³ The president of this Assembly, Luis Miquilena, warned: 'Anybody who opposes the decisions [of the government] will be eliminated. If the Supreme Court of Justice were to take any measure, and it is likely it will do so, you may be certain that we shall not hesitate for a moment to suppress the Supreme Court of Justice'.¹⁶⁴

As can be seen, what those Brazilian intellectuals consider a 'democratic' leader one does far better to simply regard as a typical Latin-American tyrant. As with several other leaders of the region, Colonel Chavez, the author of two failed coups against democratically elected governments, is applauded by those in Latin America who support any oppressive and demagogical political regime that nonetheless claims to stand up against the 'evil' United States (Venezuela's main oil exporter).¹⁶⁵ All in all, Fareed Zakaria comments:

Chavez represents a persistent hope in Latin America that constructive change will come not through a pluralist political system, in which an array of political parties and interests grind away at the tedious work of incremental [constitutional] reform, but in the form of some new, messianic leader who can sweep away the debris of the past and start anew.¹⁶⁶

Because of their belief in top-to-bottom 'constructive changes', most of those intellectuals who signed the pro-Chavez manifesto would also consider Fidel Castro a 'progressive' leader.¹⁶⁷ Sader, for instance, says Cuba has 'universalised the rights of its people to education, information, and culture'.¹⁶⁸ Of course, he could not explain how these rights are enjoyed in a country where the state criminalises any political opinion that is not in accord with governmental policies. Although these rights cannot be exercised unless the citizen is reasonably free to meet with others, and without governmental control, Articles 53 and 54 of the Cuban Constitution explicitly state that any individual can be arrested if the government thinks he or she poses any form of 'danger' to the 'national security', even if no crime has ever been committed by him or her.¹⁶⁹

Since the Cuban government has taken away basic rights like free speech and writing, the entire foundation for a normal enjoyment of any other legal rights, including education, culture, and democratic participation, is gone. As far as procedure is concerned, it is absolutely pointless to talk about these social rights if citizens are not allowed by the law to think and act for themselves.¹⁷⁰ As a result, what Cubans have acquired is not real education but indoctrination masquerading as education, aimed at ensuring a subservient, enslaved population, because the denied basic rights to free speech and writing are *sine qua non* for the regular exercise of rights to education, information, culture, and political participation.

¹⁶³ *Id.*, at 401.

¹⁶⁴ *El País*, 21 August 1999, at 8. Quoted from José Maria Maravall, 'Rule of Law as a Political Weapon'. From J.M. Maravall and A. Przeworski (eds.), *Democracy and the Rule of Law*. Cambridge: Cambridge University Press, 2003, at 272.

¹⁶⁵ 'Chavez Orders Military to Disregard Supreme Court', *Militares Democraticos*, Caracas, December 2002, at <http://militaresdemocraticos.surebase.com/articulos/en/20021216-05.html>

¹⁶⁶ Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad*. New York: W.W. Norton, 2003, at 97.

¹⁶⁷ Miles, *op. cit.*, at 157.

¹⁶⁸ Emir Sader, 'A Subversão de Cuba e da Venezuela', *Agência Carta Maior*, 06 January 2004, at <http://agenciacartamaior.uol.com.br/agencia.asp?coluna=boletim&id=734>

¹⁶⁹ See Pascal Fontaine, 'Communism in Latin America'. From Courtois, *op. cit.*, at 647-65.

¹⁷⁰ See Giovanni Sartori, 'Liberty and Law'. From K. S. Templeton, Jr. (ed.), *The Politicization of Society*, Indianapolis: Liberty Press, 1977, at 257-66.

To conclude, intellectuals in Brazil are in urgent need of developing a more positive approach toward the realization of the rule of law. As an ideal of legality that places legal norms and principles at the service of human rights and freedoms, the rule of law opposes itself to the 'revolutionary superstition' of those for whom the achievement of 'social justice' depends exclusively on the arbitrary action of political rulers who might think they ought to make all decisions in the name of a passive plural entity that is vaguely called 'the people'.

3.5. Government/Politicians

Many individuals in developed countries still assume that politics in Brazil can be envisaged as a conflict between a right-wing landholding oligarchy, which is then always backed by the military, and the democratic forces of the left, which in turn are 'bravely' fighting for greater freedom and justice for the popular masses. However, this view is far too simplistic and does not reflect the substantially more complex reality of Brazil. It is far better to say of this country that on both sides of the political spectrum there is a plethora of 'bad' politicians who are often re-elected merely because their clientelistic¹⁷¹ voters really do not care about (or don't understand) all their illegal machinations.

The federal legislature is currently packed with numerous non-cohesive and undisciplined political parties. One of them is the Brazilian Democratic Movement (PMDB). It is a traditional party, founded in the 1970s as a broad opposition movement against the then military regime (1964-85). Today, however, the PMDB can be described as a non-programmatic 'catch-all party', consisting of people from a wide variety of interests and ideological backgrounds. The PMDB holds one of the largest number of seats in Congress, thereby providing very little discipline in legislative voting. This may arguably facilitate political corruption, demonstrated in the recent scandal concerning the buying of parliamentary votes by the federal government.

Since the end of the military regime (1964-85), public opinion in Brazil has come to associate 'the right' with all the authoritarianism and human-rights violations committed by the right-wing army rulers. The country's major 'right-wing' party, the Democrats, prefers to describe itself as 'centrist' and it is notably recognized for its voracious predisposition for all sorts of clientelistic bargaining. This party is, supposedly, the most conservative in economic terms, but it has abstained from running presidential candidates and joined with the centre-to-the-left Social Democratic Party (PSDB). Over the last two presidential elections, there have been no conservative candidates with programs based on lower taxation and less government interference. No political party in Brazil supports low taxation, less state interference, a free market economy and greater individual freedom.

But it is quite ironic to see that two decades after the end of its right-wing military regime, now the major threat to democracy and the rule of law in Brazil comes not from the right but from a highly anachronistic left. Ever since President Lula took office in January 2003, his government has been constantly pushing for the creation of unconstitutional bodies of external (political) control over the press, television, and film.¹⁷² Hopefully, the numerous corruption scandals that have shaken the current administration, including a

¹⁷¹ Clientelism is a patron-client relationship which rests on personal loyalties and quid pro quo between individuals of normally different social status. See Augusto Zimmermann, 'Brazil – Lula's Good Heart: 40,000 public jobs, Dole to 9 Million Families', *Brazzil Magazine*, 30 March 2006, at <http://brazzil/content/view/9561/78/>

¹⁷² See Augusto Zimmermann, 'Constitutional Rights in Brazil: A Legal Fiction?', (2007) 14 *Murdoch University E-Law Journal* 28, at 49-55.

vote-buying scheme in the Congress, may at least offer the beneficial effect of reducing the authoritarian impetus of a deeply corrupt government which seems bent on establishing a long-lasting regime based on a disguised form of elected and populist dictatorship.¹⁷³

When running as a presidential candidate for the 2002 election, Lula da Silva pledged to do everything he could to combat corruption. He even signed, in September 2002, an 'Anti-Corruption Pledge' prepared by Transparency International ('TI'). On the occasion the organisation praised him for being the first candidate to sign such a pledge containing important measures for curbing corruption. Indeed, TI hailed President Lula as 'the first candidate in Brazilian history to adopt in his election programme a series of concrete measures to combat corruption.'¹⁷⁴ Eduardo Capoblanco, TI's national president, went to the extent of naively suggesting that the mere signing of such a pledge was by itself enough 'evidence that Lula is a candidate prepared to make a commitment to stamp out corruption'.¹⁷⁵

But corruption in Brazil has ever since reached unprecedented levels. The Lula administration is now responsible for the biggest series of corruption scandals in the country's history.¹⁷⁶ No other government has ever had more top party-leaders, congressmen, ministers, and functionaries under investigation for fraud in such a brief period of time. According to James Petras, a sociology professor and expert on Brazilian politics:

Corruption has devastated the Lula regime in Brazil. Every sector of Lula's Workers' Party (PT) has been implicated in bribery, fraud, vote buying, theft of public funds, failure to report illicit campaign financing, and a host of other felonious behavior, revealed almost daily between May-July 2005. All of Lula's closest and most important advisers, congressional leaders and party bosses have been forced to resign and are under congressional investigation for illegal large-scale transfers of funds into electoral campaigns, private enrichment, and financing full time functionaries.¹⁷⁷

The first in a non-stop series of corruption scandals was unveiled in February 2004 with a video recording of the deputy chief for parliamentary affairs of the ruling Workers' Party ('PT'), Waldomiro Diniz, collecting bribes from a *bicheiro* (illegal gambling boss) for the electoral campaign of PT politicians.¹⁷⁸ Since the action was both filmed and recorded, President Lula had no other option but to dismiss the deputy chief of his political party. When the case was unveiled, the attorney general, Cláudio Fontenelles, commented that what Diniz had done was a 'normal thing' because, as he put it, corruption is a

¹⁷³ See Augusto Zimmermann, 'Corruption? No Big Deal! That's the Way Things Are Done In Brazil', *Brazzil Magazine*, Los Angeles, 27 September 2005, at <http://www.brazzil.com/content/view/9410/76/>. See also Richard Hayes, 'A Few Drops of Cheering in Brazil's Sea of Corruption', *Brazzil Magazine*, Los Angeles, 14 July 2005, at <http://www.brazzil.com/content/view/9336/76/>.

¹⁷⁴ 'President Lula Should Use his Mandate to Fulfil Election Promise to Tackle Corruption', *Transparency International*, Berlin/São Paulo, 23 October 2003, at http://www.transparency.org/pressreleases_archive/2003/2003.10.23.lula_election.html

¹⁷⁵ 'Lula Signs Anti-Corruption Pledge', *Transparency International*, São Paulo, 26 September 2002, at http://www/transparency.org/pressreleases_archive/2002/2002.09.27.da_silva_brazil.html

¹⁷⁶ John Otis, 'Government Corruption at New Heights in Brazil', *Houston Chronicle*, 16 October 2005, at http://www.chron.com/CDA/archives/archive.mpl?id=2005_3912256

¹⁷⁷ James Petras, 'Lula's Workers Regime Plummets in Stew of Corruption', *Counterpunch*, July 30-31, at <http://www.counterpunch.org/petras08012005.html>

¹⁷⁸ John Fitzpatrick, 'Brazil, Land of Carnival and Scandal', *Brazzil Magazine*, 01 February, 2004, at <http://www.brazzil.com/content/view/1684/54/>

reality that exists in all parties, associations, and families. He also suggested that everyone has a 'dark side', and so corruption is just 'part of normal life'.¹⁷⁹

Luis Inacio Lula da Silva, the charismatic leader of the Workers' Party (PT), was popularly elected for his first term in November 2002, and took office in January 2003. He has since employed more than 100,000 members of his own political party in the state's machinery, including Marco Aurélio Garcia, one of the founders, along with Lula and others, of the PT. Garcia, who is President Lula's Chancellor, is a hardline communist who describes the ruling PT as 'radical of the left'.¹⁸⁰

Whether or not the ruling PT is as radical as Garcia, the fact is that this advisor to the president has openly expressed his personal desire to re-establish Soviet-style communism. In an academic paper written to celebrate the anniversary of Karl Marx's *The Communist Manifesto*, Garcia, a highly influential member of the Brazilian government, concluded: 'The agenda is clear. If the horizon that we search for is still called communism, it is time to re-constitute it'.¹⁸¹

As a way of re-constituting old-fashion communism, in 1990 Garcia and other PT members, including Lula created an umbrella organization called the *Forum de São Paulo* ('FSP'). The FSP was established to fight the 'negative effects' visited on Soviet-style communism by the dismantling of the Soviet empire. In 2004, its organizers declared that the major goal of the organization was 'to compensate for our losses in Eastern Europe with our victories in Latin America'.¹⁸² As leader of the ruling party that founded the FSP, Lula was appointed as its first chairman. In July 1990, the first meeting of the FSP was attended by delegates of Colombia's FARC guerrillas, Peru's TUPAC-AMARU guerrillas, Chile's MIR guerrillas, Basque separatist group ETA, and the Irish Republican Army (IRA). The U.S. State Department considers all of these to be terrorist organizations. Dr. Constantine Menges, a former CIA intelligence officer, observed:

Lula da Silva has been a sponsor of international terrorism because these annual meetings [of the FSP] are used by the anti-US terrorist and radical organizations to coordinate their plans for taking power in their respective countries and for planning actions against the United States.¹⁸³

Since Lula was elected president in October 2002, the FSP chairman, Garcia, has been his main political advisor. Under Garcia's auspices, the FSP has helped coordinate the program of political extremists whose names appear on the FBI's list of most-wanted terrorists.¹⁸⁴ According to Dr. Phil Brennan, from the U.S. Association of Former Intelligence Officers:

¹⁷⁹ Janer Cristaldo, 'The Thieves are Running Brazil', *Brazzil Magazine*, Los Angeles, 01 March 2004, at <http://www.brazzil.com/content/view/1698/58/>

¹⁸⁰ Marco Aurélio Garcia, 'A Social-Democracia e o PT', São Paulo, *Revista Teoria e Debate (PT)*, No.12, October, 1990, at http://www.fpa.org.br/td/colecao_td.htm

¹⁸¹ Marco Aurélio Garcia, 'Manifesto e a Refundação do Comunismo', São Paulo, *Revista Teoria e Debate (PT)*, No.36, October 1997, at http://www.fpa.org.br/td/colecao_td.htm

¹⁸² Gerald Brant, 'How Brazil is Fooling the World', *Brazzil Magazine*, May 2003, at <http://www.brazzil.com/p130may03.htm>

¹⁸³ Constantine Menges, 'A Strategic Warning: Brazil', *Brazzil Magazine*, Los Angeles, September 2002, at <http://www.brazzil.com/pages/p02sep02.htm>

¹⁸⁴ See Johan Freitas, 'Brazilian Plotter Buys Time for Chavez; Has Links to Terrorists and to Saddam', *Militares Democráticos*, Caracas, 28 December 2002, at <http://militaresdemocraticos.com/articulos/en/20021228-04.html>

In a policy dictated by Havana, Garcia has shown special interest in the terrorist Revolutionary Armed Forces of Colombia (FARC). Every year since 1990, Garcia has made it his priority to meet with the murderous FARC. The meetings have not just taken place in Havana (with Castro himself always present), but also in Mexico where Garcia travelled to meet with FARC member Marco Leo Calara on Dec. 5, 2000.¹⁸⁵

In the July 2005 conference of the FSP, Garcia delivered a speech supporting the 'great de-stabilizations' promoted by 'social movements' throughout Latin America.¹⁸⁶ He suggested that extra-legal actions would serve to bring about more 'popular democracy' in the region, and as a result eulogised 'armed struggles' that would contribute to reaching such an objective. He also stated that the rule of law ought not to become a 'straitjacket' inhibiting the radical goals of these social movements.¹⁸⁷

As Brazil's most powerful party, the ruling Workers' Party ('PT') is a mass party structured like a Leninist party, with a central committee and strict rules about adherence to party decisions.¹⁸⁸ It brings under the same banner Trotskyists, Leninists, Maoists, former guerrillas, Catholic 'progressives', renowned intellectuals and militant trade unionists.¹⁸⁹ The leading group, comments Bernardo Kucinski, a journalist who has acted as a special adviser to President Lula, is made up of trade union leaders, intellectuals, and members of the old *Aliança Libertadora Nacional - ALN* (a former guerrilla), and the armed struggle group created by Carlos Marighela.¹⁹⁰ It has moderate supporters of social democracy, but its radical wing consists of hardliners who are willing to create a dictatorship of the proletariat.¹⁹¹ As evidence of this, an article in the PT's official magazine declares:

We want far more than a mere equality before the law... We believe that the working classes and all the oppressed majorities have their own historical rights, as rights that are above the limits of legality. For as history teaches us, laws are transitory, relative, and nothing more than a juridical expression of the correlation of forces between the social classes... Do we want a party that obeys and adapts itself to the limits of bourgeois institutions, or rather a party with a clear option for the direct action of the masses, as a party which knows how to act in legal terms but never subjecting itself to the limits of legality...?¹⁹²

In 1990, the PT organized its seventh national congress. The event was held to discuss the long-term strategies for the political party. One of the discussions was on whether or not 'revolutionary rupture' is a necessary step to bring about social transformation.¹⁹³ In July 1990 the PT's official magazine reported the results of such a debate:

Over these last 10 years, the PT has... confirmed on many occasions its option for a coherent tactic of combativeness... which characterizes every revolutionary party.

¹⁸⁵ Phil Brennan, 'All Systems God for Brazil's A-Bomb', *Brazzil Magazine*, Los Angeles, March 2004, at <http://www.brazzil.com/2004/html/articles/mar04/p124mar04.htm>

¹⁸⁶ Javier Gonzales, 'The Sao Paulo Forum, Latin America and the Crisis in the Brazilian Left', *Destaque Internacional*, Year VII, No.172, Buenos Aires/Madrid, 11 July 2005, at 2.

¹⁸⁷ 'Andean Countries: Chávez and the Castrist 'Miracle Mission'', *Destaque Internacional*, Year VII, No.174, Buenos Aires/Madrid, July 26, 2005, at 3.

¹⁸⁸ Bernardo Kucinski, 'The Rise of the Workers Party'. From S. Branford and B. Kucinski (eds.), *Lula and the Workers Party in Brazil*, New York: The New Press, 2005, at 29.

¹⁸⁹ Fleisher, *op. cit.*, at 285

¹⁹⁰ Kucinski, *op. cit.*, at 38.

¹⁹¹ Fausto, *op. cit.*, at 307.

¹⁹² Partido dos Trabalhadores, 'Caminhos Estratégicos', *Revista Teoria e Debate*, No.11, São Paulo, July 1990, at http://www.fpa.org.br/td/colecao_td.htm

¹⁹³ *Id.*

A rapid look at the eight points made at our seventh national meeting confirms [our option for] Gramsci's notions of hegemonic dispute... the necessity of a powerful state and of engaging ourselves in the ongoing 'war of position'... towards a revolutionary rupture.

The question is to observe whether violence is still a valid weapon and, if so, whether or not it is our best strategy to advance the evolution of humankind towards its superior levels of coexistence and material production. Above all, we need to observe if the passage from armed struggle to non-armed struggle represents the clear desire of the popular masses in their struggle against the bourgeoisie...

The conquest of the state or, better put, its radical and revolutionary transformation, is still the first goal of this party in its long-term struggle.

However, any action leading to a radical rupture can only attain revolutionary efficacy if: a) it occurs as a clear result of our social hegemony; b) it is associated with a broader revolutionary process that involves the radical change of all social values; c) it is able to produce in the sphere of social relations (subjectivity, sexuality, social customs, culture, ethics, and spirituality) deeply rooted changes that are equally revolutionary as the ones advocated by this party for the economic and political order.¹⁹⁴

It is clear that the article considers the use of violence a feasible strategy for this party. It argues that laws must be obeyed only as long as they contribute to radical social changes. The idea is obviously inspired by the writings of Engels, who argued in a March 1884 letter to Bernstein: 'The proletariat needs democratic [legal] forms for the seizure of political power but they are for it, like all political forms, mere means'.¹⁹⁵

This sort of mentality is naturally opposed to the rule of law but helps to explain why, on 16 March 2005, *Veja*, Brazil's leading current-affairs magazine, published a cover story about the illegal offering of five million dollars by the Revolutionary Army Forces of Colombia ('FARC') to the campaign of PT candidates in 2003.¹⁹⁶ The article quoted official documents from the Brazilian Intelligence Agency, ABIN (Agência Brasileira de Inteligência), attesting to the existence of 'close liaisons' between PT members and the FARC drug guerrillas.

ABIN's document number 0095/3100, from 25 April 2003, reveals that Father Olivério Medina, a Catholic priest who acts in Brazil as FARC's 'ambassador', announced at a April 13, 2002 meeting, at a farm near Brasília, that the Colombian guerrillas were donating illegal money to the electoral campaign of PT candidates.¹⁹⁷ An undercover ABIN agent who attended the meeting reported that the money would arrive via Trinidad and Tobago. It would be sent firstly to businessmen who supported the party and

¹⁹⁴ Paulo Vannuchi, 'Adeus às Armas?', *Revista Teoria e Debate (PT)*, No.11, São Paulo, July 1990, at http://www.fpa.org.br/td/colecao_td.htm

¹⁹⁵ *Letter to Bernstein* (24.3.1884). Quoted from Cain, *op. cit.*, at 160.

¹⁹⁶ *Veja* was the first publication to uncover the corruption scheme which led President Fernando Collor de Mello (1990-92) to resign in December 1992. For Larry Rohter, a NYT correspondent who lives in Brazil, "Veja is Brazil's most widely read publication, with a weekly circulation of more than 1,2 million. In May it published the first article detailing a corruption scheme in Mr. da Silva's administration, which it has followed with numerous others that have proven to be accurate". – Larry Rohter, 'Cuba Accused of Illegal Campaign Gifts in Brazil', *New York Times*, New York, 1 November 2005, at <http://www.nytimes.com/2005/11/01/international/americas/01brazil.html?ex=1288501200&en=32a9a9e26db71586&ei=5090&partner=rssuserland&emc=rss>

¹⁹⁷ Policarpo Junior, 'Laços Explosivos', *Revista Veja*, Edition 1896, São Paulo, 16 March 2005, at 44.

afterwards would be distributed as if it were their personal contribution to the PT's regional committees.¹⁹⁸

The accusation is very serious because the Brazilian Constitution, in its Article 17, Section II, explicitly states that no political party is allowed to receive any financial assistance from any foreign organization or foreign state. Enacted in 1995, Federal Law No. 9096 regulates this constitutional provision by stating that any party found accepting this kind of financial contribution would have its registration cancelled.

The Colombian government has already confirmed that Father Medina is indeed the intermediary between members of Brazilian political parties and the FARC guerrillas.¹⁹⁹ In an interview with the daily *Folha de S. Paulo*, on 24 August 2003, the FARC leader, Commander Raul Reyes, said that his terrorist organization had close ties with the PT leadership, including highly-placed members of the current government.²⁰⁰ What is more, the Workers' Party (PT), in an official note entitled 'The Truth about Colombia, the FARC and PT', openly admitted that the FARC and the PT are both members of the subversive FSP, although it falsely maintains that there is no evidence of the FARC's involvement with kidnapping and drug-trafficking.²⁰¹

On 20 March 2002, a committee expressing solidarity with FARC was launched in the city of Ribeirão Preto during the administration of its then city mayor Antonio Palocci.²⁰² Until recently Brazil's Finance Minister, Palocci is accused of acting as the 'unofficial representative in Brazil of the Colombian narco-terrorist group called FARC'.²⁰³ In an interview on 10 March 2002 with the newspaper *Folha de Ribeirão*, one of his secretaries in the city council declared: 'I don't think elections will solve the problems of Brazil. It's the revolution. Today in Brazil the conditions do not exist for an armed revolution, but that's not the case in Colombia. They [FARC] have an organized military'.²⁰⁴

But the ruling party in Brazil is also accused of receiving illegal money from the communist government of Cuba. As reported by *Veja* on 2 November 2005, a Cuban citizen named Sergio Certantes, a diplomat in Rio de Janeiro and Brasília, may have sent three million dollars by plane to Brazil in two boxes containing Johnnie Walker whiskey and one box containing Cuban rum. According to the article, the person who would have taken this money for the party was an economist and former auxiliary of Palocci when he was mayor of Ribeirão Preto. Also, another former secretary of Palocci

¹⁹⁸ *Id.*, at 45.

¹⁹⁹ 'Así Manejan sus Finanzas las Farc', *Radio Caracol*, Bogota, 31 January 2005, at <http://caracol.com.co/nota.asp?Id=142347>

²⁰⁰ 'As Farc Tem Todo o Tempo do Mundo', *op. cit.*

²⁰¹ The FARC is a Marxist revolutionary group with about 12,000 members. Its main objective is the creation of a communist government in Colombia. During the cold war it received money from the former Soviet Union and in recent years the majority of its money comes from kidnapping, hijacking, and illegal trade in cocaine. For details about the relationship between the ruling PT and the FARC guerrillas, see *A Verdade sobre a Colômbia, as FARC – e o PT*, Partido dos Trabalhadores (PT) – Lula 2002, 16 February 2002, at http://www.lula.org.br/noticias/not_int.asp?Fnot_cod%3D30%26sis_cod%3D7&1p=pt_en

²⁰² Henrique Brás, 'Secretário de Ribeirão Preto Inaugura Comitê Pró-Farc', *O Estado de S. Paulo*, São Paulo, 20 March 2002, at 9.

²⁰³ Heitor de Paola, 'Quem é Realmente Antônio Palocci?', *Mídia Sem Máscara*, 23 November 2005, at <http://www.midiasemmascara.com.br/artigo.php?sid=4330>

²⁰⁴ *Id.*

would have been involved with collecting the money at an airport, and then travelling by car to deliver this to the PT's treasurer, Delubio Soares.²⁰⁵

The story makes a lot of sense for numerous reasons. First, it is very rich in detail and has been confirmed by former aides of Palocci at Ribeirão Preto's city council. For instance, Rogério Buratti, a lawyer who worked as Pallocci's legal advisor, has confirmed that PT members asked him of the best way to transport illegal money from Cuba.²⁰⁶ What is more, it is common knowledge in Brazil that the relations between Fidel Castro and PT leaders 'have always been cordial'.²⁰⁷

José Dirceu, the mastermind of the political generation that came to power with the election of Lula, worked and studied in Cuba until 1975. He is regarded as the 'architect of Lula's election as President' and often travels to Cuba at Castro's personal invitation.²⁰⁸ Moreover, President Lula himself is also a self-declared admirer of the Cuban dictator. On his 2001 visit to Cuba, an admiring Lula gave this moving tribute to Castro:

In spite of the fact that your face already is marked with wrinkles, Fidel, your soul remains clear, because you never betrayed the interests of your people. Thank you, Fidel, thank you for existing.²⁰⁹

The ruling party, claims the accusation of illegal money from Cuba is totally false and politically motivated. The government of Cuba, which openly financed Latin American parties and guerrilla movements in the 1980s, has also denounced these claims as part of a supposedly 'orchestrated campaign of lies motivated by the aggressive plans of imperialism against Cuba and against Lula'.²¹⁰ The argument is lent weight particularly when one considers that money in Cuba is scarce, to the extent that the country cannot even afford to place water filters in schools.

But then, the allegations begin to make sense when we observe that the Lula administration has reduced the payment of Cuban debts to its federal bank (Banco do Brasil) by 20 per cent and forced the National Economic and Social Development Bank (BNDES) to spend millions of dollars on a plant in Cuba used for the production of fuel from alcohol.²¹¹

In addition, the Brazilian government has abstained from condemning the assassination of Cuban political dissidents at the U.N. Human Rights Committee, even though Article 4 of the Brazilian Constitution explicitly states that the participation of the country in the

²⁰⁵ 'Campanha de Lula Recebeu Dinheiro de Cuba', *Revista Veja*, Edition 1929, São Paulo, 02 November 2005, at: <http://www.vcrisis.com/?content=pr/200510300902>

²⁰⁶ For more details on this scandal, see 'Campanha de Lula Recebeu US\$ 3 Milhões de Cuba', *O Estado de S. Paulo*, São Paulo, 29 October 2005. See also 'Campanha de Lula Recebeu Dinheiro de Cuba, diz Revista', *Folha de S. Paulo*, São Paulo, 29 October 2005, at <http://www1.folha.uol.com.br/folha/brasil/ult96u73587.shtml>

²⁰⁷ Larry Rohter, 'Cuba Accused of Illegal Campaign Gifts in Brazil', *New York Times*, New York, 01 November 2005, at <http://www.nytimes.com/2005/11/01/international/americas/01brazil.html?ex=1288501200&en=32a9a9e26db71586&ei=5090&partner=rssuserland&emc=rss>

²⁰⁸ Arthur Ituassu, 'Brazil: Here Lies José Dirceu, Consumed by Ambition and Arrogance', *Brazzil Magazine*, Los Angeles, 06 December 2005, at <http://www.brazzil.com/content/view/9480/76/>

²⁰⁹ Armando F. Valladares, 'Lula, the UN and a Trip to Cuba', *Diário de Las Américas*, Miami, 18 September 2003, at <http://www.cubdest.org/0312/c0309vlulae.html>

²¹⁰ Rother, *op. cit.*

²¹¹ César Maia, 'De Um Certo Modo, O Governo Lula Já Está Pagando Pelo que Recebeu', *Folha de S. Paulo*, São Paulo, 27 September 2003, at <http://la3.blogspot.com/2005/11/lula-j-est-pagando-pela-ajuda-recebida.html>

international community must be guided by the 'fundamental principle' of 'respect for the prevalence of human rights'.²¹² The ambassador to Cuba, Tilden Santiago, has spoken on behalf of the government and approved of the execution of Cuban political dissidents, calling them traitors in the service of US imperialism who are attempting to 'de-stabilise' the Cuban communist regime.²¹³

Whereas the Brazilian Constitution explicitly forbids the death penalty for opposition to the government, Ambassador Santiago, who also says Brazil's political system 'should be based on the Cuban régime', has made this sinister statement: 'Likewise, if they try to de-stabilise Lula, we will also have to take the same measures here.'²¹⁴

Added to this, the allegations of campaign donations from Fidel Castro's Cuba 'coincide with an alarming weakness in [Brazilian] foreign policy that benefits the Cuban dictator'.²¹⁵ Although Castro has 'aggressively sought' to influence Latin American countries 'on a scale not seen since the 1960s', the PT government was regarded as 'oddly passive' about the promise of his supporter in Bolivia, Evo Morales, to nationalise the energy sector of his country.²¹⁶ On 1 May 2006, the sector was then nationalized and the main victim of such expropriation was *Petrobrás*, a Brazilian state oil firm with investments in Bolivia so large that they actually amounted to about 20 percent of this country's GNP. The company controlled 46 percent of Bolivia's natural gas reserves and produced all the gasoline and diesel fuel used in the country.²¹⁷

Despite Morales' promise during his successful presidential campaign to confiscate the assets of *Petrobrás* irrespective of existing contracts, President Lula openly supported the campaign, declaring that his election would represent an 'extraordinary change', not just for Bolivia, but for Latin America as a whole.²¹⁸ This candidate whom Lula and Castro openly support in Bolivia is a leader of the coca-growers who reveres Che Guevara and had previously commanded the overthrow of two democratically-elected presidents. On his ticket as his vice-president is Alvaro Garcia Linera, a former guerrilla arrested in the 1990s for taking up arms against the country's fragile democratic regime.²¹⁹

The major ally to the ruling Brazilian party, the Communist Party of Brazil (PC do B), dedicates an entire section of its website to the Cuban government. A July 1963 official

²¹² See 'NYT Critica Posição do Brasil', *O Estado de S. Paulo*, São Paulo, 19 April 2003, at <http://observatorio.ultimosegundo.ig.com.br/artigos/asp230420036.htm> See also Catia Seabra and Tereza Cruvinel, 'Lula: Não vou dar Palpite na Política de Cuba', *O Globo*, Rio de Janeiro, 26 September 2003, at <http://clipping.planejamento.gov.br/Noticias.asp?NOTCod=82080>

²¹³ Augusto Nunes, 'Samba ou Salsa?', *Jornal do Brasil*, Rio de Janeiro, 23 April 2005, at <http://jbonline.terra.com.br/jb/papel.colunas/augusto/2005/04/23/jorcolaug20050423002.html>

²¹⁴ Roberto Romano da Silva, 'PT Über Alles e Homem Cueca', *Correio Popular*, Campinas, 12 July 2005, at 4.

²¹⁵ 'What Was Castro Buying in Brazil?' *Hispanic-American Center for Economic Research (HACER)*, Arlington/VA, October 2005, at <http://www.hacer.org/current/Cuba058.php>

²¹⁶ *Id.*

²¹⁷ Aloisio Miani, 'For Brazil's Lula Depending So Much on Bolivia's Gas Was Strategic Error', *Brazzil Magazine*, Los Angeles, 04 May 2006, at <http://www.brazzilmag.com/content/view/6287/53/>

²¹⁸ Bill Cormier, 'South America Shifting Left, Away from U.S.' *Hispanic American Center for Economic Research (HACER)*, Arlington/VA, 20 December 2005, at <http://www.hacer/current/Boli042.php> See also Javier Gonzáles, 'Elecciones en Bolivia: Interventionismo de Lula', *Destaque Internacional*, Año VII, No.183, Buenos Aires/Madrid, December, 2005, at 1.

²¹⁹ Michael Radu, 'The End of Bolivia?', *Foreign Policy Research Institute (FPRI)*, Philadelphia, 21 December 2005, at <http://www.fpri.org/endnotes/20051221.latin.radu.endofbolivia.html>

statement of this party considers the achievement of social change by pacific means 'unviable', thereby convoking its supporters to promote a violent socialist revolution.²²⁰ The PC do B is an ultra-orthodox communist party that joined the coalition which supported Lula's candidature in 1989, 1994, 1998, and 2002. The political coordinator of the government, until September 2005, was the PC do B leader, Aldo Rebelo. He only relinquished that position after he was elected as chairman of the Chamber of Deputies.²²¹

The PC do B was created in 1958 as a result of a splinter inside the Brazilian Communist Party (PCB) following Soviet Premier Nikita Khrushchev's denunciations of Stalinist atrocities. In an open letter to Khrushchev, founders of this orthodox communist party protested against his 'revisionist' agenda, and aligned themselves with Maoism.²²² When the Chinese government initiated economic reforms in the 1980s, the PC do B then aligned itself with Albania. And when Albania held its first democratic elections in 1992, the PC do B withdrew from that relationship..

Dissidents from the PT and PC do B have now created a new political party, the Party of Socialism and Freedom ('PSOL'). Members of this new party blame corruption in the current administration on the President's 'betrayal' of his Marxist origins. The PSOL's policies are directly inspired by the writings of Mr. Achille Lobo, an Italian terrorist who some years ago set fire to the house of one of his political enemies in Rome. In the fire, the two children of his political opponent were burnt to death.²²³ This party stands for old-style Marxism, advocating policies which are hostile to liberal democracy and have failed wherever they have been tried. One of its members, a student leader from the Federal University of Rio de Janeiro (UFRJ), declared this to the daily *Jornal do Brasil* on 28 August 2005:

The idea of representative democracy is a bourgeois farce which serves only to keep this oppressing class in power. Those who are elected under the liberal-democratic political system are representatives of the bourgeoisie... Lula is a traitor. He was the only one who had a real social base, but he has now been corrupted by neo-liberalism.²²⁴

As well as members of the PSOL, numerous supporters of the ruling PT argue that 'mistakes' (corruption) in the current government have been brought about, solely, by embracing corrupt methods that characterize the right rather than the left. PT founders such as the 'red priest' Frei Betto, now suggest that corruption is only caused by the fact that the Party, once in power, has ignored its 'revolutionary horizons' and 'forced itself to compete in equality of conditions with the right'.²²⁵ Another PT founder, Emir Sader, puts

²²⁰ Partido Comunista do Brasil, 'Partido da Revolução e Partido das Reformas'. Resolution from the *Central Committee of the Communist Party of Brazil (PC do B)*, Rio de Janeiro, 27 July 1963, at <http://www.vermelho.org.br/pcdob/80anos/docshists/1963.asp>

²²¹ 'A Communist is Third in Line to Brazil's Presidency', *Brazzil Magazine*, Los Angeles, 29 September 2005, at <http://www.brazzilmag.com/content/view/4113/49/>. See also Carlos Chagas, 'Believe it or Not, Brazil's Second in Line for President is a Communist', *Brazzil Magazine*, Los Angeles, 01 October 2005, at <http://www.brazzil.com/content/view/9418/76/>

²²² 'Ataques Injustificados do Comitê Central do PCUS', Resolution from the *Central Committee of the Communist Party of Brazil (PC do B)*, Rio de Janeiro, 27 July 1963, at <http://www.vermelho.org.br/pcdob/80anos/docshists/1963.asp>

²²³ Olavo de Carvalho, 'Brazilian Left: From Victory to Defeat and to Victory Again', *Hispanic American Center for Economic Research (HACER)*, September 2005, at <http://www.hacer.org/current/Brazil081.php>

²²⁴ Paulo Celso Pereira, 'O P-Sol Nasce com 8 Tendências', *Jornal do Brasil*, Rio de Janeiro, 28 August 2005, at A3.

²²⁵ Frei Betto, 'Vendem-se Candidatos', *Jornal do Brasil*, Rio de Janeiro, 24 August 2005, at A11.

it in the following terms: 'All the mistakes committed by the PT government are produced by its right-wing practices. All its merits, however, stem directly from its left-wing legacy of higher values and practices'.²²⁶

3.6. Judges

Brazilian judges have acquired from the 1988 Constitution an impressive degree of administrative, financial, and disciplinary independence.²²⁷ Thus the courts can prepare their own budget, organize their secretariats and draw up their internal regulations. Since then, they are to strike down any act of questionable legality enacted by the public authorities. Such independence, paradoxically, has not been altogether beneficial for the rule of law. A question currently raised in the country is whether the courts have very much become like an entrenched 'bureaucratic oligarchy', which is devoid of any accountability.²²⁸

In reality, the Brazilian judiciary has been so rife with corruption that years could be spent writing about them. The media has frequently reported corruption scandals among judges, but lawyers and legal scholars have not given the problem a more serious attention. Although honest lawyers are victims of judicial corruption, they avoid addressing the problem out of a reasonable fear of retaliation from disgruntled judges.

Today's corruption in the Brazilian judiciary is certainly not restricted to court functionaries. Judges are regularly accused of participation in a vast range of corrupt activities, from diverting public funds to passing lenient sentences on dangerous criminals in return for bribes.²²⁹ In 2003, for example, the police found a judge from the Superior Court of Justice (STJ), Brazil's second-highest court, accepting bribes to give writs of habeas corpus to drug-dealers.²³⁰

Another problem is that the last days of military government (1964-1985) coincided with an incredible rise of judicial politicisation. When Brazilian judges in a survey were presented with the basic choice of applying a clear positive norm and promoting their own vision of 'social justice', three-quarters expressed their preference for the latter over the former.²³¹ In doing so, they argued that the courts would be morally bound to 'play an active role in reducing social inequalities'.²³² This is, for instance, how a judge from the Supreme Court (STF) describes his peculiar way of deciding cases: 'Whenever I face a

²²⁶ Emir Sader, 'For Lula and Brazil There's No Salvation Outside the Left', *Brazzil Magazine*, Los Angeles, 17 November 2005, at <http://www.brazzil.com/content/view/9467/79/>

²²⁷ Braz. Const., Articles 96 & 99.

²²⁸ William C. Prillaman, *The Judiciary and Democratic Decay in Latin America: Declining Confidence in the Rule of Law*. Westport/London: Praeger, 2000, at 85.

²²⁹ John Fitzpatrick, 'Welcome to Brazil – Say 'Cheese'', *Brazzil Magazine*, Los Angeles, January 2004, at: <http://www.brazzil.com/content/view/1633/55/>

²³⁰ Danielle Vargas, 'Civil Justice in the Americas: Lessons from Brazil', (2004) 16 *Florida Journal of International Law* 19, at 22.

²³¹ See Armando Castelar Pinheiro and Célia Cabral, 'Credit Markets in Brazil: The Role of Judicial Enforcement and other Institutions', paper prepared as part of the research project 'Institutional Arrangements to Ensure Willingness to Pay in Financial Markets: A Comparative Analysis of Latin America and Europe', conducted by *Centre for Studies of State Reform from Getúlio Vargas Foundation (CERES/EPGE/FGV)*, December 1998.

²³² Megan J. Ballard, 'The Clash Between Local Courts and Global Economics: The Politics of Judicial Reform in Brazil', (1999) 17 *Berkeley Journal of International Law* 230, at 256.

controversial case, I do not look for the dogma of the law. I try to create within my human character a more adequate solution'.²³³

One may suggest that Brazil's social inequalities might justify a more politically active role for its judiciary. But we only need point to the research that found that the Brazilian judiciary is directly responsible for the reduction of Brazil's domestic private-sector investment by around 15 percent of the GDP to disabuse anyone of such a notion.²³⁴ One of the main reasons for the reduction of investment is the perceived lack of law-enforcement of contracts by the country's judiciary. Indeed, a June 2006 article published by *The Economist* argues that the Brazilian courts 'cannot be counted on to uphold contracts'.²³⁵

This perception that judges do not properly apply the law has discouraged private investment and reduced the willingness of debtors to pay creditors.²³⁶ Potential creditors are now reluctant to lend money to entrepreneurs (and the poor), as they reasonably conclude that judges will be unwilling to protect them from any opportunistic behaviour from their borrowers. Even when the legal norm is broadly regarded by commercial lawyers as being absolutely clear about a creditor's right, judges may prefer not to enforce it.²³⁷ Housing mortgages, which are very important for the working class, scarcely exist in Brazil because judges are broadly recognized as being reluctant to allow the banks to foreclose.

While judicial independence is essential to check political arbitrariness, judges must not abuse the principle so as to obstruct government policies they personally (and ideologically) dislike. In 1997, however, the power struggle between the government and highly politicised judges led to several suspensions of the auction of the CVRD, the world's largest iron-ore mining company. They were suspended because judges issued injunctions for minority groups who were ideologically opposed to any form of privatisation. Some, however, used the technical argument that the prospectus should have been published in popular tabloids and not only in business publications, despite jurisprudence from higher courts to the contrary. As Rosenn explains:

The auction to privatize the state mining company... had to be suspended on four successive days because 135 lawsuits were filed throughout the country, resulting in thirty-five preliminary injunctions barring the sale. One belated injunction was issued after the auction had been held. All were eventually quashed by higher courts, but only after causing Brazil considerable international embarrassment for permitting a judicial circus.²³⁸

In the same way, judges also tried in 1998 to block the sale of Telebrás, a publicly owned telephone company. The government, however, had on this occasion organized an 'army' of 700 lawyers for the battle at the courts, ready to challenge and repel last-minute injunctions.²³⁹ In fact, those judges who fought against the sale ignored its clear benefits for the working people. With the sale, the cost of a new telephone-line dropped

²³³ *Id.*, at 230 (quoting Justice Marco Aurélio Mello, from an interview to *Isto É*, a popular magazine in Brazil, 1999).

²³⁴ Arnaldo Galvão, 'Lentidão e Burocracia Comprometem a Justiça'. *O Estado de S. Paulo*, São Paulo, 11 April 1999, at 6.

²³⁵ 'Slow! Government Obstacles Ahead', *The Economist*, 15 June 2006, at http://www.economist.com/world/la/PrinterFriendly.cfm?story_id=7065735

²³⁶ See Pinheiro, *op. cit.*, at 2.

²³⁷ *Id.*, at 18.

²³⁸ Keith S. Rosenn, 'Judicial Review in Brazil: Developments under the 1988 Constitution' (2000)

7 *Southwestern Journal of Law and Trade in the Americas* 291, at 305.

²³⁹ Ballard, *op. cit.*, at 253.

dramatically, from US\$1,200 to just US\$65. What is more, as reported, a great part of the profits from the sale was allocated to public education.²⁴⁰

The rule of law means the existence of clear, stable, general norms, which must apply equally to everyone regardless of a person's social status or position in the public administration. Characterized in this way, the rule of law stands in opposition to extemporary decisions expressing the mere personal will of judges. In other words, this legal ideal cannot be truly developed if judges pass rulings without being respectful of the existence and content of legal rules. As such, Brazilian judges need to reconsider the role of the judiciary as an independent body for the administration of justice according to the law. Judges who abuse their position in order to satisfy political goals and/or personal interests cannot possibly be described as equitable upholders of the legal system. Indeed, as Chief Justice Murray Gleeson from the High Court of Australia explains,

Judges are appointed to interpret and apply the values inherent in the law. Within the limits of the legal method, they may disagree about those values. But they have no right to throw off the constraints of legal methodology. In particular, they have no right to base their decisions about the validity of legislation upon their personal approval or disapproval of the policy of the legislation. When they do so, they forfeit their legitimacy.²⁴¹

4. Final Considerations

The political players who were mentioned in this article do not exhaust the list of groups who have denied Brazil the rule of law. Yet, as has been demonstrated throughout the article, they are central to this problem.

In describing how political players in Brazil do not favour the rule of law, the ongoing question of radicalism has received special treatment. Indeed, we simply cannot develop the rule of law in a political environment where people still believe that it is their prerogative to blatantly ignore the legal rules of the constitutional order.

This being the case, it is paramount that Brazilians develop a new political culture that can serve to overcome the currently radical nature of their country's political process. In short, the rule of law will only take hold in Brazil if the prevailing anti-legal mentality of most of its political players is substantially modified.

²⁴⁰ Levine, op. cit., at 143.

²⁴¹ Murray Gleeson, *The Rule of Law and the Constitution*. Sidney: ABC, 2000, at 134.