

## **Military involvement in political disputes as a factor of institutional instability in Brazil<sup>1</sup>**

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### **Abstract**

This paper looks at how recent military involvement in political disputes raises instability in Brazil. Ahead of the presidential election in October 2022, this research sheds light on how President Bolsonaro abuses the Armed Forces' prestige and power as an instrument of intimidation and political pressure. This includes encouraging followers to call for military intervention against Congress and the Supreme Court. To analyse the political instability scenario initiated in 2013, this study identifies declarations made by senior military officers and the reactions of the other two Branches to Bolsonaro's political moves. Despite no evidence that the Armed Forces support any threat to democracy, there should be constant efforts to keep them as nonpartisan institutions. Shielding military commanders from domestic political disputes is part of this effort, which shall be considered in this study for the protection of the constitutional order.

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The central question of civil-military relations is how to strengthen the Armed Forces as an effective defender of the State without allowing them to become a threat to its internal political order (Fever, 2016). Defence studies are not yet a significant field within the classical structure of public law, but both public law and defence share common discussions about settlement and the perpetuation of the State (Traversac, 2021). On that basis, there is a significant gap in developing a constitutional understanding of the meaning of a civilian control consistent with the modern separation-of-powers scheme (Pearlstein, 2012). Nowadays, authoritarianism in Latin America arises more from disputes for power between the three constitutional branches than traditional military coups (Serrano, 2016). However, the military is still a *de facto* force able to influence the checks and balances system.

This article aims to analyse why the military's involvement in political disputes is still a factor of institutional instability in Brazil. President Bolsonaro seems to take advantage of the Armed Forces' prestige for electoral purposes. Meanwhile, some generals are moving away from the non-partisanship that has marked the Brazilian Armed Forces since re-democratisation. Despite this, it is fundamental in a democracy imposing political power over the military (Domingos Neto, 2021, p. 23). Even experienced democracies like the United States (US) and France are concerned about imposing such control. This article begins with the recent episode of political violence in the US when Trump supporters stormed the Congress building in January 2021. This serves as a springboard and interesting comparison for discussing the role of the military in Brazilian politics.

### **The Capitol's precedent**

When supporters of President Trump invaded the US Congress in January 2021, it reignited discussions about the fragility of democratic institutions. At the time, the US could not provide vaccines against the Covid-19 pandemic, and subsequently the country's political institutions were in the spotlight. The US Congress was then preparing to confirm the electoral pool results, which had not re-elected Trump as the Republican Party candidate and President of the United States. As a result of the protestor's invasion, seven people died and dozens of police officers were injured (CNN, 2021).

During his re-election campaign, Trump had declined to commit to conceding power if he loses. Such unprecedented behaviour aroused speculation about his potential to reach the military as part of an attempt to clinch another term (Ryan, 2020). In his campaign in 2020, Trump tried to utilise the prestige of military leaders and institutions when he promoted an online advertisement flanked by the chairman of the Joint Chiefs of Staff, Army General (Gen.) Mark A. Milley (Joe Gould, 2020). This defied norms that excluded uniformed leaders from appearing in political campaigns. The same general officer was criticised a few months earlier by taking part in Trump's appearance in Lafayette Square for a photo opportunity, for which authorities used tear gas and rubber bullets to clear the area of peaceful protesters (Cooper, 2020).

When Gen. Milley had to explain his conduct at Congress, he said, "we have established a very long 240-year tradition of an apolitical military that does not get involved in domestic politics".

In that moment of reckoning in the military, he explained, “we, the US military, are sworn to obey the lawful orders of our civilian leadership (...), and we will obey the lawful orders of civilian control of the military.” He also clarified the US military plays no role in determining US election outcomes (National Public Radio, 2020). A few days before Trump incited his supporters to invade Congress, rumours circulated that he could create a state of emergency. This would inevitably drag the military into a political dispute. In response to Trump’s claim, all ten living former defence secretaries had published a public letter demanding a peaceful transition of power:

Each of us swore an oath to support and defend the Constitution against all enemies, foreign and domestic. We did not swear it to an individual or a party (...). Efforts to involve the US armed forces in resolving election disputes would take us into dangerous, unlawful and unconstitutional territory. Civilian and military officials who direct or carry out such measures would be accountable, including potentially facing criminal penalties, for the grave consequences of their actions on our republic (Carter et al, 2021).

Echoing these warnings of military involvement in politics, former President George W. Bush (2021) said that the dispute over US election results were a characteristic of “a banana republic – not our democratic republic”. While it is clear that Republican voters felt disillusioned with political institutions in the United States, however, it should be recognised that public opposition to politics can spread like wildfire in younger and more fragile democracies, such as in Latin America.

### **Mechanisms to protect the Brazilian Constitution**

The problem of institutional crises in some countries might reside in the intrinsic vulnerability of the presidential system. As disputes about specific grievances quickly escalate into government crises, which in turn prompt challenges to constitutional order, a considerable amount of work remains to understand how presidents build protective mechanisms to prevent their downfall. Usually, challenges to the Executive Power originate both in the streets and in Congress. But, importantly for this study, the military can also play a decisive role in the crisis. Despite the limited number of military interventions in Latin America since the 1980s and the fact that military action might coincide with popular revolts against the president, unlawful activities carried out by the military constitute the ultimate threat for a legitimate governor if they side with his adversaries (Pérez-Liñán, 2014, p. 36). Hence, both the president and the constitutional order are endangered when their supporters fail to constitute a protective mechanism against groups that eventually might challenge them by illegitimate means.

The Institutional Security Cabinet (GSI) is the presidential body established to provide such mechanisms by protecting the Brazilian president. It advises him in security and military matters, and prevents and deals with threats to institutional stability (Law 13,844 of 2019, section VI; Decree 9,668 of 2019). As the National Intelligence Policy states, the GSI identifies possible actions against the rule of law and democracy as a national security threat (Decree 8,793 of 2016, annexe, item 6.11). Under the GSI overview, the Brazilian Agency of Intelligence (ABIN) is responsible for assessing

potential internal and external threats against the constitutional order (Law 9,883 of 1999, article 4, item III). This is similar to how the German Federal Office for the Protection of the Constitution is tasked. In turn, Congress (by its Joint Commission for the Control of Intelligence Activities) is supposed to oversee work carried out by intelligence, but it has had only three meetings since 2018: one with the GSI head in 2021 and two to approve the federal budget in 2018 and 2019 (Senado Federal, 2021). This reduced number of public meetings suggests its low performance.

Aiming to reduce the chances of a coup, the Brazilian Constitution urges that every “action of armed groups, either civil or military, against the constitutional order and the democratic state” must be considered a criminal offence. Furthermore, it states that such crimes shall not be subject to any statute of limitations or bail (article 5, item LXIV). Aiming to enforce such protection, the Supreme Court validated the National Security Law of 1983 (Law 7.170), which dates from a context of democratic transition (STF, 2016). However, as the 1988 Constitution states that political crimes shall be investigated by the Federal Police and judged by federal judges, there is no room anymore for the military to conduct investigations and judgements of criminal offences against national security. Besides that, the Supreme Court is the adequate forum to appreciate every appeal related to political crimes, and no longer the Superior Military Court (articles 102, 104, and 144).

Despite rare cases of its application, the National Security Law of 1983 was recently enforced both by Bolsonaro’s administration and the Supreme Court, which have been duelling about its purposes. In response, Congress approved in August 2021 a new law to replace the Law of 1983 after a long debate about how to provide adequate protection to the Constitution (Zaverucha, 2005). The new Law 14.197, which comes into force in December 2021, adds in the Criminal Code a section on criminal offences against the democratic rule of law which comprehends crimes against i) the national security, ii) the democratic institutions, iii) the functioning of democratic institutions in the electoral process, and iv) the functioning of essential services. The democratic essence of the new law arises from an interpretation norm that states that “It is not a crime (...) to criticize either constitutional powers or journalistic activity, or claim constitutional rights and guarantees through marches, meetings, strikes, gatherings or any other form of political manifestation with social purposes.” The Brazilian Constitution also contains nine articles under Title V, labelled as “The Defense of the State and the Democratic Institutions”, which regulates the states of defence and siege, the Armed Forces (as mentioned ahead), and public security. The following section contextualises the electoral dispute in Brazil.

### **The context of the 2018 electoral dispute**

In March 2013, massive protests organised on social media flooded the streets against the rising price of public transport tickets. As the number of protesters increased, their demands became broader to include better public services and the fight against corruption. There was common contempt for traditional press, political parties, Congress and the Supreme Court, which are described by Levitsky and Ziblatt (2018) as democracy watchdogs. After family members adhered to the protests, a vague feeling of national salvation replaced clashes with the police. Salvationist sentiments were

reflected in wearing the colours of the national flag, demanding for the president to be impeached, and – to a much lesser extent – crying out for the return of the military to power (The Edge of Democracy, 2019). In the 2018 elections, these sentiments were used by some candidates in their campaigns.

A reasonable interpretation for such a widespread collective sentiment of national salvation stems from the fact that the credibility of institutions was melting – except, that is, for the Armed Forces. After demonstrators occupied the Congress` roof in a climax of civil disobedience, Congress members approved an act against criminal organisations. This regulated the plea agreement: an investigation technique already used in other countries based on exchanging information by reducing penalties (Law 12,850 of 2013). The following year, a task force carried out by the Federal Police and some federal prosecutors discovered fraud and money laundering in contracts of the state-owned oil company Petrobras. A company manager, for instance, returned US\$ 100 million of misappropriated money to avoid prison. A political scandal was soon revealed as many under investigation agreed to collaborate. The so-called Car Wash Operation, the most important anti-corruption investigation carried out in the country, has returned around US\$ 1 billion to the Brazilian government and Petrobras (MPF, 2021). At that time, Brazil was experiencing an economic downturn; its GDP shrank between 2015 and the first half of 2017. In this context of economic and political disappointment, the Car Wash Operation represented at least some hope against the impunity of political agents.

Lacking support in Congress at the end of 2015, President Roussef was faced with an impeachment process for allegedly hiding the real deteriorating situation of public finances in 2014, when she was running for a second term. In that context, widespread dissatisfaction and weariness by numerous corruption scandals had made the Workers Party and its flags under questioning. Congress impeached Dilma in 2016, so Vice President Temer completed her term. As a consequence of the Car Wash Operation, Lula was convicted for corruption in 2017, having allegedly obtained a triple-floor beach apartment from a construction company that had contracts with Petrobras. A federal court confirmed Lula`s sentence in 2018, despite suspicions that the case`s judge, Sergio Moro, had a hidden agenda. Later, the judicial procedure against Lula was invalidated and had to begin again, after it was found that Moro had advised the prosecutors. Besides that, Lula`s conviction had benefited oppositionist candidate Bolsonaro, who nominated Moro as his Justice and Public Security Minister and allegedly would have promised him a seat at the Supreme Court. At the time, however, Lula was banished from running the elections that year. His lawyers then filed a preventive habeas corpus before the Supreme Court, as allowed in the Brazilian judicial system, in a bid to avoid his arrest.

### **Warning the Supreme Court**

In April 2018, a day before the Supreme Court`s decision on Lula`s habeas corpus request, the Army Commander addressed a message to the nation via Twitter. General Villas Boas wrote, “I assure the nation that the Brazilian Army believes that it shares the desire of all citizens to repudiate impunity,

and respect the Constitution, social peace and democracy, as well as delivering its institutional missions" (General Villas Boas, 2018). Perceived as a threat to the Supreme Court, such a tweet reflected his political desire to influence the Court, as Lula in freedom would have chances to find legal gaps for running in the presidential election. In this scenario, the Court rejected the habeas corpus request by six to five votes. This meant that Lula was sent to jail and could not run for President in October. There is no evidence that Gen. Villas Boas' tweet had influenced those judges, known for its independence. But such a message represented an inadmissible violation of the separation of powers. One of them emphasised that State agents must submit to the Constitution, regardless of their status (Rocha, 2021).

The General's message referred to the Army's 'institutional missions': something that is repeatedly voiced by some supporters of military intervention in politics. Some might perceive the Armed Forces as a moderating power, as they replaced the monarchy as the referee in charge to harmonise the relationship between the other three constitutional branches. Some authors refer to them as a fourth Branch (Teixeira da Silva, 2021, p. 44; Saint Pierre, 2021, p. 260). According to this reasoning, interference in political disputes might sound legitimate because it derives from its mission as the guarantee of constitutional powers, as the Constitution vaguely states in its article 142. Villas Boas later classified his tweet just as "a warning" to the Supreme Court. He revealed that his staff meticulously wrote that tweet after consulting the 15 most senior generals within the Army's High Command (Castro, 2021). However, such messages raise concerns about partisanship, notably because they encourage members of the Armed Forces to share political content on social media (Godoy, 2021).

After the elections, the Supreme Court changed its jurisprudence (again by six to five votes) deciding that any judicial conviction would only result in imprisonment after rejecting all appeals. The Court has faced constant criticism due to the impunity of politicians, and the changes to its constitutional interpretation according to political interests. Gen. Villas Boas's tweet in 2018 still reverberates in Brazil today, and it illustrates how the involvement of military commanders in politics can create institutional stability when they express political views on social media.

### **The relation between the Army and Bolsonaro**

Bolsonaro became a public figure in 1986, in the first year after the fall of the military regime (1964-1985). The then 31-year-old Army captain criticised the low wages paid in the Army in an article published in *Veja*, one of the most influential news magazines. At the time, other cases of indiscipline plagued the troops, such as when a commissioned officer invaded a city Hall with 50 soldiers to voice the same complaint. The following year, *Veja* also published Bolsonaro's plans to detonate bombs in a move to force President Sarney (1985-90) to increase the military's wages and dismiss the Minister of the Army, Gen. Leônidas (Veja, 2018). Because of this plan, Bolsonaro was found guilty of committing a military crime. The Superior Military Court later acquitted him by 9 to 4 votes, but he decided to leave the Army instead and begin his political career in 1988 (Martins Filho, 2021, p. 73).

It is worth mentioning that Gen. L eonidas would have decided that Sarney (then the Vice-president) should assume the role of president in 1985 (Teixeira da Silva, 2021, p. 49). This helps explain why some generals see themselves as legitimate interpreters of the Constitution. Due to the cases of indiscipline within the Army, L eonidas and his successor denied Bolsonaro entry to any Army facility until 1992. However, this turbulent relationship has changed since then because Bolsonaro was considered useful for advocating military interests as a Congress member (Godoy, 2021, 54-60; Santos, 2021, p. 161-164).

As a federal deputy, Bolsonaro was alone in expressing public support for the military regime of 1964. He was also one of the prominent critics of left-wing parties in Congress. After 13 years of the natural deterioration of the Workers Party's rule, Bolsonaro gained visibility as its most aggressive political adversary. In terms of communicative practice, Bolsonaro was keen to compensate for his lack of resources in the campaign through bold speeches against left-wing politicians, which were echoed on social media. An episode of political violence sealed Bolsonaro's victory in 2018. After he was stabbed during an election rally, Bolsonaro gained more support among voters and emerged victoriously, believed to be due to his status as an outsider with origins in the Army who could defeat the Workers Party.

### **The Military Club**

As a Congressman, Bolsonaro was against Lula's initiative of giving power for an ad hoc commission to investigate human rights violations in the 1964 regime. Congress approved such initiative in 2011, under the administration of his successor, Dilma Rousseff (also from the Workers Party). As she appointed all the seven members of the National Truth Commission, its works were perceived as revanchism. Such a tendentious attempt to write an official version of historical events seems to come from the Orwellian Ministry of Truth. Rebelo (2021) considered such an initiative as a mistake – he was Rousseff's Defence Minister and, like her, was part of an armed left-wing organisation. Differently from what is usually prescribed for intergenerational reconciliation in a country that is transitioning to a democracy, the Commission presented some partiality. For example, it did not investigate the participation of other sectors (left-wing groups, the Catholic Church, media groups, foreign supporters, businessmen). Controversially, the Commission sent its final report to prosecutors aiming to see some military punished, although the Supreme Court had validated the Amnesty Law (ADPF 153).

In this context of animosity between the Armed Forces and Rousseff's administration, Army Gen. Mour ao, ahead of the Southern Military Command, was removed to a bureaucratic position after supposedly criticising the president (Cruz and Gielow, 2015). Yet as an on-duty general, he would later criticised President Temer and offered support to Bolsonaro's candidature (Santos, 2021). After retiring, Mour ao became the president of the Military Club (*Clube Militar*). This private entity headed by retired senior officers advocates military interests, encourages demonstrations and keeps up with issues that may hurt military honour (CPDOC-FGV, 2021a; Clube Militar, 2021). It is because of Mour ao's prestige within the military that Bolsonaro chose him as Vice President.

The origin of the Military Club dates from 1887. In one of its meetings that year, senior Army officers refused to employ troops to capture fugitive slaves, which forced the monarchy to abolish slavery (Werneck Sodré, 2010, pp. 199-203). As a result, the oligarchical elites withdrew support to the king, and some Army generals dethroned him in a coup in 1889. Since then, the Brazilian republic has experienced prolonged episodes of political instability, which are closely linked to military interference in politics (Murilo de Carvalho, 2019). Evidence of such instability stems from the fact that after Army Gen. Dutra's administration (1946-50), only the civilians Kubitschek (1956-61), Cardoso (1995-2002), Lula (2003-10), and Dilma I (2011-14) were able to complete their elected terms.

It is worth noting that the 1990s inaugurated a long period of stability which ended in 2013. By the time Amendment 18 was made to the Constitution in 1998, President Cardoso succeeded in legally forbidding the military from joining unions and strikes. Since then, if a member of the military wishes to run for election, he must first leave the Armed Forces (Article 142, s. 3, items IV-V). Cardoso also established the Ministry of Defence in 1999. However, subsequent administrations – including Lula's – failed to strengthen civilian control (Fuccille 2021). The Ministry of Defence does not yet have permanent civil servants on its staff, which weakens the ability to impartially evaluate national security policies. Another evidence that the Ministry lacks effective control over the troops comes from the fact that each Armed Force has its own bureaucracy (to deal with finances, contracts, payroll, procurement, social communication etc), which allows each one to overlap without proper coordination. Such autonomy shields them from proper civilian control (for instance, it should be a political decision to freeze resources that feed rebelled troops, not a decision of their military commanders).

The Army's official website still encourages serving troops to associate with the Military Club (Exército Brasileiro, no date). The fact that the Club has press releases displaying Bolsonaro's flags against Congress and the Supreme Court raises concerns about how this private entity encourages political loyalties among the troops. Amendment 18 also states that on-duty military cannot affiliate with political parties; however, the Military Club bypasses this law when voicing political claims. Legally speaking, every reservist must refrain from mentioning their military rank in political activities or discussions about either political or military issues, as such conduct is considered a disciplinary offence against military ethics (Law 6,880 of 1980, article 18, item XVIII). As a consequence, the Club must adhere to the democratic premise that the serving military must refrain from domestic politics. Thus, the Minister of Defence and the democracy watchdogs should not tolerate the conduct of those reservists who refer to their military ranks when voicing political opinions. It is in direct contradiction of democratic principles, therefore, when the Electoral Superior Court admits that candidates can use their former military ranks as nicknames in the voting pools, and some federal deputies might be seen wearing military uniforms in Congress.

### **Armed Forces and society**

The relationship between the Armed Forces and Bolsonaro changed from the beginning of Lula's



rule. Since 2004, Bolsonaro has been honoured with distinction medals in military ceremonies. In a ceremony at the Army Military Academy in 2014, Bolsonaro announced his intention to run as a presidential candidate in 2018 (Santos, 2021, p. 164). The video of his announcement was distributed widely on social media as campaign material. It is essential to clarify that the Brazilian Ministry of Defence does not channel the communication between the military and society. Instead, each Force has its own public relations strategy. Because of that, some argue that the Armed Forces might try to influence the public debate (Domingos Neto 2021, p. 25).

In 2017, Bolsonaro attended at least twelve ceremonies in military facilities. In some of them, he was flanked by generals who later he invited to be part of his administration. At the beginning of his term, nine of the twenty-two ministers were members of the military, and three of them were serving generals. One explanation for this march towards politics is based on the ideas of Samuel Huntington. The training received during the Cold War, combined with the absence of external wars, would drive the Brazilian military towards internal conflicts (Penido and Kalil Mathias, 2021, p. 227). Therefore, these generals share common experiences of needing to control domestic order, like the Haiti peacekeeping mission between 2004 and 2017 and some operations for internal security.

President Bolsonaro often speaks about political issues at military ceremonies and uses videos to give the impression that his administration has the institutional support of the Armed Forces (Pimentel Jorge de Souza, 2021, p. 132). At the beginning of his administration, he nominated a serving Army general, Rêgo Barros, as his spokesman. Barros headed the Army Social Communication Centre between 2014 and 2019, which he transformed, he claimed, into the public agency with the most significant digital influence in Brazil (Exército Brasileiro, 2019). The relevance of this discussion comes from the fact that social media is used to incite people against democratic institutions.

As Bolsonaro focused his communication strategy on speaking directly to his supporters via social media, however, Rêgo Barros' task became irrelevant. After resigning, he published a newspaper article warning about the president's intentions in the words, "The population, as the supreme arbiter of political activity, will be forced to demarcate a Rubicon river whose illegal transposition by a pyromaniac ruler will be strictly punished by society" (Rêgo Barros, 2020). Well-known among military commanders, the reference to Rubicon alludes to the violation of the law that forbade a general to lead an army out of the province to which he was assigned. Julius Caesar's forces over the Rubicon into Italy in 49 BC amounted to a declaration of war against the Roman Senate. It resulted in the three-year civil war that left Caesar ruler of the Roman world (Encyclopaedia Britannica, 2021). The message to the nation was clear:

Unfortunately, power inebriates, corrupts and destroys! And if there are no more loyal discordant slaves to whisper: 'Remember that you are mortal', the political stability of the empire is at risk. The other institutions of this republic - part of the triad of power - will then need to protect themselves against the indecorous acts out of alignment with the interests of society, which will come as decisions of the 'immortal emperor'. They must be firm, not back down under pressure. (Rêgo Barros, 2020)

Yet in that article, Rêgo Barros referred to a concept that explains the reason for this research: “Understand the loyal disagreement, a concept in force in professional armed forces, like well-thought-out and well-intentioned verbal action, sometimes contrary to current thinking, to help a leader successfully fulfil his mission.” These passages reflect the disillusion of some generals that, after dragging the credibility of their military institution in support of Bolsonaro’s candidature, consider to have the ability to exercise some kind of control over the president. Piero Leiner suggested that his candidature was an Army’s political project (Soares, 2021). However, Bolsonaro personality contradicts this hypothesis. For instance, President Army Gen. Geisel (1974-79), who started to distend the military regime, had described him as “a bad military” because of his undisciplined behaviour; the GSI head already classified Bolsonaro as an “uncontrollable” person (Simon, 2020). Perhaps a more reasonable interpretation is that it might have sounded appropriate to support him as a viable candidate to compete against any Workers Party’s candidate.

### **No rights to do domestic politics**

Many episodes of indiscipline in the Brazilian Armed Forces resulted from electoral disputes (Murilo de Carvalho, 2019). In 1963, the Supreme Court confirmed that non-commissioned officers were unable to run in elections. As a result, hundreds of rebelling troops occupied federal buildings and sabotaged Brasília’s communication lines (FGV-CPDOC, 2021b). In this context, President Goulart’s inability to restore cohesion over the troops was followed by a coup the following year, by which some generals supported by civilian sectors and by the US government suppressed the democratic regime. Recently, a veteran elected congressman in the Bolsonaroist wave suggested a constitutional amendment to allow conscripts to vote (Câmara dos Deputados, 2019). If conscripts could vote, the number of veterans in politics would increase even more, as would their influence over the budget, public policies, state-owned companies, etc.

Further evidence of military involvement in politics is the number of generals in politically influential positions. Presidents Temer and Bolsonaro appointed 15 of the 17 generals of the Army High Command of 2016 for the following positions: vice-president, four ministers, judge of the Military Superior Court, ambassador, chairmen of three state-owned companies, president of a state pension fund, secretary of public security, and three executive secretaries or in equivalent position (Pimentel Jorge de Souza 2021, p. 126). Under Bolsonaro’s rule, the number of military personnel in governmental functions is higher than in the military regime of 1964 (Assam, Holanda and Godoy, 2019). The attempt for dominating other institutions unbalances the political representation in the State bureaucracy (Santos Cruz, 2021a). Besides that, the military involvement in politics fed the perception that the Armed Forces somehow support Bolsonaro’s administration.

Although internal sovereignty arises from the people according to an ideal perspective, the facticity of power within the State stems from weapons, as the previous coups have proved. Hence, Brazilian law restricted some political rights to the military. There are four basic categories of the military in terms of political rights, which differs in a gradient from no rights to full rights:

- i) Conscripts: 18 and 19-years old soldiers and enlisted health professionals are prohibited from voting and running in elections while in compulsory service (Constitution, article 14, s. 2).
- ii) Other on-duty military: they can vote but cannot run in elections, except if they have served for more than ten years. In this hypothesis, the candidate shall be discharged from military duties. If elected, he automatically leaves the active service (article 14, sec. 8). Except for some health workers, the on-duty military is forbidden to work in temporary civil positions for more than two years or in permanent civil positions (Amendment 77 of 2014).
- iii) On-payroll reservists: they have full rights for voting and running in elections, but commissioned officers are still submitted to disciplinary control if under 65 years old.
- iv) Off-payroll reservists or retired personnel: both off-payroll reservists (who served less than ten years) and retired officers (older than 65 years old or with disabilities) have full political rights. Although the Military Statute prescribes ethical refrains (e.g., the inactive military should not refer to his military rank when voicing opinions on politics or military issues), such disciplinary norms are enforceable only for on-payroll reservists.

Such clarification is important to differentiate a legitimate aspiration of influencing governmental policies from unlawful interference in political matters. Nonpartisanship in the Armed Forces is as relevant for the rule of law as the premise that refrain its coercive agents of questioning the democratic regime.

### **Anti-democratic acts**

Some demonstrations claiming for military intervention had the participation of the GSI chief. Yet in the third month of Bolsonaro administration, the Supreme Court opened a controversial investigation to identify who was organising anti-democratic acts and spreading fake news against the Court and its judges. Its president, Toffoli (2021), revealed that those investigations already found evidence of foreign sponsorship. The controversy of such investigation resides in the inertia from the Attorney General Aras, nominated by Bolsonaro. The spread of anti-democratic ideas has led to a debate about the extent to which democracy should tolerate the protestors. After all, it is feared that unlimited tolerance may lead, paradoxically, to the disappearance of tolerance, as suggested by Karl Popper (2013).

Based on that investigation, the Court already ordered the arrest of a Bolsonarist Congress member, thus legitimating the controversial National Security Law. Previously, the Minister of Justice Mendonça, who replaced Moro, requested investigations based on that Law against oppositionists (Faria, 2021). Because of their loyalty, Mendonça and Aras competed to the Supreme Court's vacant position. In August 2021, Congress responded to its potential arbitrary misuse replacing it with a "Law for the Defense of the democratic State". In reaction to that arrest, Bolsonarists tried to impeach the judge who ordered this arrest and will head the Superior Electoral Court next election. Yet hundreds of senior reservists wrote a manifesto against the Supreme Court.

They advocated themselves as the constitutional guardians (Teixeira da Silva, 2021, p. 45). Similarly, Army coronels wrote a similar manifesto in 1954 – as such conduct went unpunished, some led the 1964 coup as generals. Recently, some open letters were published in France warning the government of the possibility of a civil war (Fabre-Bernadac, 2021). Unlike Brazil, the French minister in charge of the Armed Forces emphasised that those authors – reservists and serving members – must be punished (BBC 2021).

In August 2021, Bolsonaro started another offensive that raised concerns about the endurance of the Brazilian democratic institutions (Vilhena, 2021). He streamed a live video suggesting fraud in the voting system. Tension escalated when Bolsonaro organised a rare military parade in the Three Powers Square a few hours before Congress was preparing to vote an amendment bill to modify the ballots. Considered opportunist, such a bill was refused by Congress but fuelled his supporters. This ‘banana republic’ scene involving tanks and military trucks near of the Supreme Court and Congress is further evidence of the use of the Armed Forces’ prestige for electoral purposes. It is perhaps an image similar to that which George W. Bush had in mind when reprimanding the Trump supporters’ refusal to accept democratic voting outcomes. In comparison, four months before the elections in the US, Trump aimed to celebrate the 4th July 2020 with a large military parade. Army Gen. Milley would have said: “Don’t you learn? That’s not how we do it. That’s what North Korea does, what Stalin did. We don’t do parades like that.” (Gaspari, 2021).

Bolsonaro aims to revive the salvationist rhetoric that facilitated his victory in 2018. Besides stimulating tensions with Congress and the Supreme Court, Bolsonaro also instigates indiscipline within the state military polices, which rebellion would authorise a federal intervention in the states with the potential employment of troops. Many military police officers share with other Bolsonaroists the hope of a coup in which Bolsonaro would be authorised by the article 142 of the Constitution to intervene in the other two Branches.

## Article 142

Despite being ahead of the GSI, retired Army Gen. Heleno (2021) openly supports the claim that the Armed Forces can exercise a moderating power between the three constitutional branches. This possibility was originally suggested by the jurist Gandra Silva Martins (2020). According to the article 142 of the Constitution, the president is the supreme commander of the Armed Forces. Thus, it is convenient to Bolsonaroists to believe in the constitutionality of a ‘military intervention’ against Congress and the Supreme Court, as expressed in some street demonstrations with the participation of Heleno. However, the GSI chief was supposed to prevent threats against the constitutional order, not to fuel them. Inciting conflicts and spreading such constitutional interpretation fit Bolsonaro’s strategy to drag the military in his electoral rhetoric (Santos Cruz, 2021b).

The article 142 does not mention any possibility of moderating power, as the Supreme Court has already decided (ADI 6457). On the contrary, the guardian of the Constitution is the Supreme Court, as stated in article 102. Yet, according to the article 142 the Armed Forces are intended for *i)* the homeland defence, *ii)* the guarantee of the constitutional branches, and *iii)* the guarantee of law

and order. Based on the second role, the Judiciary requests, for instance, military support to distribute voting devices within the Amazon region. But some Bolsonarists see in the expression 'guarantee of the constitutional branches' a trump card able to erode the checks and balances system.

The best interpretation, however, must come from both a systematic and a historical perspective. Only the Constitution of 1824 stated a moderator power as a fourth branch. The 1988 Constitution is clear about only three branches (Executive, Legislative and Judiciary, as stated in article 2). Besides that, the president must guarantee the free exercise of any Branch within the states (articles 34 and 84, item X). Since the advent of the republic, the Armed Forces are 'obliged to uphold the constitutional institutions' (Constitution of 1889, article 14), not interfere with them. From the Constitution of 1934, the expression 'to guarantee' replaced 'to uphold' (article 162), as seen in the Constitutions of 1945, 1967, 1969, and 1988. Thus, there is nothing in the 1988 Constitution authoring any suppression of congressional or judiciary powers, even in states of emergency (articles 136-141). The insistence of such interpretation raises concerns that Bolsonaro will impose inadmissible constraints over the two other Branches after forecasting his defeat in the 2022 elections.

### **Pazuello case**

This case also illustrates how President Bolsonaro benefits from the military institution's reputation. Army Gen. Pazuello was nominated as the health minister after his two predecessors resigned because of disagreements about the pandemic coordination. His expertise in logistics supposedly compensated for his lack of experience in public health. However, a Congress's inquiry later revealed that Pazuello did not have power enough even to replace his logistics director, who would have negotiated a suspicious acquisition of vaccines (Agência Brasil, 2021). After Pazuello was removed under widespread criticism, the Army commander Gen. Pujol denied him any possibility to re-assume a military post.

Pujol (2020) had voiced that the military do not want to be part of politics, nor do they want politics to enter the barracks. But the relationship between Pazuello and the Army deteriorated definitely in May 2021, when the on-duty general joined Bolsonaro in a political event and spoke out in his support. Although the new Army Commander tried to punish such political engagement, Bolsonaro would have expressed his wish not to see Pazuello punished. This case indicates how an on-duty military in a politically exposed position reduces his commander's capacity to impose discipline among the troops. As a Superior Military Court judge already warned, "when politics enter one door of a barrack, the discipline leaves it by the other door" (Fuccille, 2021, p. 220). As a consequence, the Armed Forces' reputation of non-partisanship was scratched.

### **The Minister of Defence**

Under pressure to prove his loyalty, the Minister of Defence, retired Army Gen. Azevedo, accompanied Bolsonaro on a helicopter flight over a demonstration against Congress and the Supreme Court in May 2020. On the other hand, Azevedo supposedly tried to shield the military

from closer adherence to Bolsonaro's flags. When removed, Azevedo ensured he had 'preserved the Armed Forces as State institutions' (Azevedo e Silva, 2021). The abrupt removal of Azevedo in March 2021, followed by an unprecedented joint resignation of the three military commanders, arouse concerns about his successor's ability to preserve the troops from political misuses.

Retired Army Gen. Braga Netto then assumed as the defence minister. Previously, he was the federal intervenor in Rio de Janeiro state in 2018, when President Temer sent troops to restraint the violence on the streets. Because of his close ties with Bolsonaro, he initially was nominated as the minister in charge of negotiating posts and budgets with Congress members, an unconventional task for an on-duty general. Now retired, his loyalty to the president reflects the ongoing changes in the Ministry, as the unusual military parade mentioned above. For instance, Braga Netto (et al 2021) criticised the president of the congressional inquiry that investigated failures in the pandemic coordination in a press note signed jointly with the military commanders. Because of that, he had to explain his conduct at Congress. But after that, Braga Netto (2021) supported Bolsonaro's questioning of the electoral process' credibility. However, the defence minister should refrain from expressing opinions not related to the Armed Forces, notably because they must be kept as nonpartisan institutions (Pujol, 2020; Santos Cruz, 2021).

## Conclusion

There is no evidence the Armed Forces support threats to democratic institutions. However, it is true that President Bolsonaro uses the prestige and power of the military as an instrument of intimidation and political pressure. This includes inciting his followers to call for military intervention in Congress and the Supreme Court. By involving on-duty high ranked military in his administration, he damaged the credibility and the non-partisanship of the Armed Forces. As occurs in other democratic countries, the Ministry of Defence should mediate the relationship between Armed Forces and society. This means to integrate the redundant departments of public relations, institutional relations (including advisory to Congress members), disciplinary control, honour awards for civilians, finances, procurement, and payroll management. The enhancement of the Ministry protects military commanders from political decisions that have nothing to do with their operational activities. Besides that, the Military Statute should state that inactive military (members who are reservists or retired) should be considered as civilians. Only this could prevent them from referring to their military rank for political benefits. Distance needs to be achieved between the military and politics in Brazil, especially for members of the Armed Forces who wish to enter politics.

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