

Authoritarianism Without Emergency Powers: Brazil Under COVID-19

Emilio Peluso Neder Meyer

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One of the few heads of state that insist on denying scientific and epidemiologic facts concerning the spread of COVID-19 is the Brazilian President Jair Bolsonaro. For Bolsonaro, politics comes before [truth](#). Since the beginning of the pandemic of COVID-19, he is disseminating doubts on social media (although Twitter, Facebook and Instagram [deleted](#) some of his posts) to galvanize his radical supporters while creating a distraction for his government's inability to implement social and economic aids to the low-income families affected by social distancing. For the moment, the president has failed to gather the public support that he needs for an extension of the emergency powers of the executive, like Orbán did in [Hungary](#). But his authoritarian discourse has not disappeared from the horizon. On 31st March 2020, for instance, Bolsonaro celebrated the anniversary of the Coup of 1964 as a "[great day for freedom](#)".

Going Back to Work?

Yet the risk of governmental abuse of emergency powers in Brazil comes less from the measures against COVID-19 than from possible social disturbances that may emerge in the future. In another surprising public appearance on Brasília's street markets, on the 29th of March 2020, Bolsonaro expressed his desire to enact a [decree](#) allowing people to go back to work. A decree with this type of content would hardly be surprising, since it follows a [pattern](#) that Bolsonaro traced from the beginning of his government, which is to use his presidential powers to defy constitutional and legislative obligations. Moreover, his alleged concern for economic losses of poor people contradicts his acts. On April 1st 2020, he issued the Provisional Act 936 (a "Provisional Act", in Brazilian constitutional law, is an executive legislation which must be approved by National Congress, but produces immediate effects until it is confirmed or rejected by the legislature), allowing companies to suspend their employees' salaries at the maximum of 100%.

Most governmental policies against COVID-19 (including restrictions on the commerce, interstate and intermunicipal public transport, schools, and so on) have been brought by state and municipal authorities. Despite Bolsonaro's effort to concentrate powers in the federal government, states are challenging the authority of the president and have been more successful in convincing the population of the seriousness of the disease. 24 of the 27 state governors wrote a [letter](#) to Bolsonaro expressing eight consensual coordinated actions to fight the pandemic. Their positions, which coincide with the views of the Speakers of the House of Representatives and of the Senate, attempt to curtail executive authoritarian aspirations.

Bolsonaro's [coronavirus denial](#) lacks support even among important members of his cabinet. The Minister of Health, Luiz Henrique Mandetta, has adopted a more technical position toward COVID-19 and is acting in accordance with the recommendations of the scientific authorities, despite being constantly embarrassed by Bolsonaro's pronouncements.

Authoritarian Pronouncements

Although the minister has been forced to change some of his speeches to keep his job, he has found an important ally: the two Houses of National Congress. The most important legislative basis for combating COVID-19 comes from the federal legislation, especially [Act number 13.979](#) of 2020, which establishes the competence of the Minister of Health to define the timing of the public health emergency, which cannot exceed the recommendations of the World Health Organization (WHO).

Since the beginning of Bolsonaro's presidency, the legislative branch has adopted a hesitating approach with regards to his authoritarian pronouncements, given that it endorsed the executive economic policies. But the global spread of COVID-19 changed this picture. The experience of European countries, which is widely documented by scientific authorities, generated a consensus among state governments and legislative and judicial institutions, which enhanced the capacity of the two houses of Congress to resist the illiberal rhetoric of the president of the republic. The measures provided by Act 13.979 of 2020, which is a federal law enacted by the Congress, are widely regarded as reasonable and follow the global pattern of horizontal quarantine.

Bolsonaro is isolated in his defense of a vertical quarantine—probably based on the assumption that if the economy collapses (as it will), he will be able to address his supporters as the major voice against the sanitary measures which are likely to produce a wide impact in the economy. He has, in fact, taken action to implement this policy.

After a series of quarrels with Brazilian governors, Bolsonaro issued the Provisional Act 926 of 2020 to enlarge his powers during the crisis. This provisional act intended to prevent states from suspending the so-called essential economic activities, which should be specified by the president in an executive order. Furthermore, it establishes that several activities only can be suspended in accordance with the directives of federal agencies that regulate matters such as transport, energy, fuel, agriculture and so on. Although one could suppose that this deference to federal agencies would be a kind of horizontal and bureaucratic control against Bolsonaro, the truth is the contrary. In effect, Bolsonaro controlled several of the nominations for these offices. On a public rally on the 15th March 2020 (against the orientations of his Minister of Health), Bolsonaro went to the streets of Brasília in the company of the director of the National Agency on Sanitary Surveillance, who was supposed to take action to prevent the spread of the disease.

Chaos as Method

The current chaotic scenario is intentional. As a political analyst described it, Bolsonaro uses [chaos as a method](#) for preserving the fidelity of his voters. His political ideology, [Bolsonarism](#), is based on a permanent challenge to the institutions and a promise of a populist savior. There is nothing better for creating a situation of despair than to disseminate the idea that institutions and the media are against the immediate economic recover of “the people”. One must bear in mind that bolsonarism presupposes a Schmittean notion of popular sovereignty, based on a friend-enemy relationship by which he identifies himself as a friend of true people and an enemy of the elites, institutions and the media that recurrently despises his political ideas.

There is hope, however, that Bolsonaro’s populist response to the crisis might fail. Political institutions have presented adequate responses to Bolsonaro’s COVID-19 campaign of lies. The National Congress expanded the economic aid to low income families proposed by the government. Whereas the executive intended to pay US \$39 to each family per month during the health crisis, the legislature approved the amount of US\$116, which can be doubled if a family household has two working-age parents or is funded by a single mother. By the same token, when Bolsonaro’s government approved a public campaign to make people go back to work (“Brazil Can’t Stop”, was the title), a federal judge in Rio de Janeiro suspended it on the ground that the propaganda could harm the health of the population—a similar decision was taken, on 31st March 2020, by the Justice [Roberto Barroso](#), of the Federal Supreme Court.

In another important decision, the Federal Supreme Court stopped Bolsonaro’s attempt to grab legislative powers through the suspension of the period of legislative approval for provisional acts. In an important decision to uphold the rule of law, the court [rejected](#) Bolsonaro’s intent to keep his “Provisional Acts” indefinitely valid during the COVID-19 emergency. By the same token, the court also halted the intended restriction to [access to information](#) established by the federal government.

State of Defense and State of Siege

In the everlasting March 2020, such different political positions must be confronted with the Brazilian Constitution of 1988. Until now, the vocabulary of a constitutional crisis has not been pronounced. The 1988 Constitution provides for two systems to deal with serious crises: the state of defense (Article 136) and the state of siege (Article 137). The state of defense can be declared by the president with the aim of recovering public order or peace, in determined places, when they are threatened by institutional instability or natural calamity of huge proportion. In any case, the state of defense is subject to a thirty days deadline (with one renewal), and its decree must be approved by the National Congress and must specify the rights that will be limited (the Constitution allows only for limitation of specific rights—liberty of reunion, post, telegraphic and telephonic communication) during the measure.

The state of siege is even more serious. The president asks the National Congress permission to issue the decree in this case. It can only happen in cases of serious civil commotion, inefficiency of state of defense and war declaration or foreign aggression. The decree shall specify the duration of the state of siege, the measures to be adopted and the rights that will be suspended. It must endure for thirty days with a single renewal—in the case of war, it can last for the period of the conflict. Since the promulgation of the Constitution of 1988, the measure was not invoked by any president.

As the president of the [National Bar Association](#) already opinioned, the COVID-19 crisis does not fulfill the requirements for the state of siege. Although Bolsonaro asked federal authorities to issue legal opinions about this possibility, no sustained legal defense of a state of siege has been presented until now.

Federal Intervention

Another measure not directly related to the constitutional system of crisis, but which calls the attention for its centralist profile, is the “federal intervention” in the government of the states (Brazilian Constitution, Article 34). The measure should be used in cases where the whole federal system is endangered. Again, after 1988, Brazilian presidents were reluctant to adopt this measure, until Michel Temer reached power following Dilma Rousseff’s controversial impeachment trial. Facing huge unpopularity, Temer used the device to supposedly attack public security problems in the state of Rio de Janeiro. Bolsonaro allegedly could invoke the federal intervention in his war against Brazilian state governors, although his political support seems to decrease as he proceeds with his anti-truth health policy. It seems unlikely, in our judgment, that the two houses of National Congress will support this political adventure.

Conclusion

As of this writing, Bolsonaro’s government was not able to shut down the legislative chambers or excessively centralize power, as his supporters expect. His rhetoric is more salient than his capacities. However, if democratic collapse was not reached, deterioration is gaining ground. In the current political setting, leftist and centrists are together against Bolsonaro. And even among his voters, some already seem to regret it. Perhaps this resistance may increase the chances for him to try a suicidal political assault, if the military decided to back him. If this is the case, instead of being close to Orbán’s Hungary, Brazil is more likely to follow the traditional political tragedy. With everyone on quarantine in their houses, Brazilian democracy hangs on the capacity of conservative institutions—National Congress and the judiciary—to recognize the failure of Bolsonaro’s project. On the 31st March, he went to [television](#) to deliver another speech, this time more moderated (or frightened?). Still, he used WHO Director Tedros Ghebreyesus’ words to defend his own view on balancing the struggle against the virus against the need for daily bread. Yet for the fifteenth consecutive day, Brazilians went to their balconies with their pans.

We can extract two conclusions from the Brazilian case. First, it seems to show that emergency powers may not be necessary for a situation of health crisis. Using the legislative and executive apparatuses, governments can enforce measures for protecting public health, at least in a good scenario. Of course, the economic perspective must be considered—and that is the most important thing Ghebreyesus communicated: governments must, in times like these, take care of their citizens and support, specifically, the poorer ones. Second, it can show that perhaps a coordinated effort among local governments, legislatures and judicial authorities can provide a relevant resistance against illiberal populist leaders.

The Brazilian case, with Bolsonaro, becomes more dramatic because of his irresponsible tactics to influence behavior and to challenge democratic institutions. When we turn to the people that live in Brazilian favelas, sharing spaces that, in most of the cases, do not allow for separate rooms, the situation becomes dramatic. This is the reason why, sooner or later, Bolsonaro must be held responsible for the deaths he is influencing.

