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Lawfare as an Instrument of Geopolitical Warfare in Latin America: The Brazilian *Car Wash* Operation and the President Lula's Case

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Abstract

Since 2009, specifically since the coup suffered by Honduran President José Zelaya, Latin America has been marked by episodes of political and institutional disruption that show how the justice system can be used to delegitimize, harm or annihilate political and economic enemies of neoliberal projects, led by the USA. These intervention strategies and tactics have been called *Lawfare*. In Brazil, the term introduced by Cristiano Zanin, Valeska Martins and Rafael Valim gained popularity in 2016, when the first two authors took on the legal defense of the cases brought by the Car Wash operation against President Luiz Inácio Lula da Silva (2003-2010, 2023-…). In Latin America, the concept became popular not only because of the prominence of the Lula's Case as an internationally recognized paradigm case of *Lawfare*, but also because the strategies and tactics employed against the Brazilian president provided support for studying other episodes of judicial persecution experienced by various progressive leaders on the Latin American continent. This gave rise to the need to understand, using the case study method, why the Lula's Case had become paradigmatic and what the origins, agents and true aims were behind a supposed crusade against corruption in Latin American countries, the results of which, until now, have represented nothing more than great instability in the democratic regimes in force and undue international interference, with the contours of a geopolitical dispute, particularly from the United States, over the main natural and energy resources of these nations.

Keywords

Lawfare, Democracy, Latin America, Brazil, Car Wash

1. Introduction

The history of Latin America is full of examples of US external intervention in the national projects of the countries that make up this part of the continent, with the aim of aligning their governments with US geopolitical expectations for the region. The forms of imperialist intervention in Latin America are diverse[1] but to the old methods have been added new modalities of intervention that—without giving up, when necessary, the old forms—now use judicial means to destabilize governments, organizations and even private companies that are considered obstacles in their geopolitical plans for Latin America[2].

In order to understand geopolitics of Latin America, we need to analyze external intervention strategies and the context and consequences they are confronted to: the implementation of colonialist policies, the resulting inter-imperialist warfare, the domination of oligarchies and the role of national states in guaranteeing this domination. In this last aspect, it is essential to understand how the legal and institutional apparatus is redirected by internal agents working in national Parliaments and Judiciary Systems, duly reinforced by the work of national and foreign "Non-Governmental" Organizations and amplified by the media, which act as if they were a branch of US interests in the Latin-American countries.

Specifically in Brazil, this year marks the tenth anniversary of the beginning of the *Car Wash* operation by federal Brazilian police. The consequences of this operation, according to a study produced by the DIEESE institute[3], is that 4.4 million jobs were lost as a result of *Car Wash* operation. Economist Luiz Belluzo[4] estimated that the impacts of *Car Wash* operation and *Weak Flesh* operation on production chains caused the Brazilian people to lose between 5 and 7 million jobs between 2015 and 2017. On the political front, the *Car Wash* operation had a direct impact on the 2014 and 2018 elections, as well as it was decisive for the legal-parliamentary coup in 2016 and the illegal imprisonment of President Luís Inácio Lula da Silva in 2018.

In addition, *Car Wash* operation produced a change in Brazilian political grammar, criminalizing public investment and the political space itself as a space for conflicts and negotiations, as well as identifying popular and center-left governments as the main causes of corruption in Brazil[5].

[1]Read Lenin in Imperialism, the Higher Stage of Capitalism. São Paulo: Boitempo, 2021 (1916).

[2]Considering that Lawfare is one of these intervention strategies and that Operation Car Wash is an exemplary case of Lawfare, we can cite the following works: Alves (2021), Lava Jato, uma conspiração contra o Brasil, Curitiba: Kotter; Augusto Jr. et al. (2021) orgs. Operation Car Wash: crime, economic devastation and political persecution. São Paulo: Expressão Popular; Feres Jr. and Kerche (eds) (2018). Operation Car Wash and Brazilian Democracy. São Paulo: Contra Corrente; Marona & Kerche (2022) Politics in the dock. Operation Car Wash and the erosion of democracy in Brazil. Belo Horizonte: Autêntica.

[3]https://www.dieese.org.br/outraspublicacoes/2021/impactosLavaJatoEconomia.html.

[4]https://www.brasildefato.com.br/2017/07/19/belluzzo-lava-jato-e-carne-fraca-produziram-5-a-7-milhoes-de-desempregados/.

[5]See the research by Fábio Sá Silva.
https://www.viomundo.com.br/voce-escreve/fabio-de-sa-e-silva-a-lava-jato-como-plataforma-da-extrema-direita-no-brasil.html.

Several reports[6] have pointed out the close political, ideological and financial relations between US government agencies and sectors, as well as Latin American public officials, judges, public attorneys and police officers. In Brazil, the *Car Wash* operation and the President Lula's Case have exposed these relationships, throughout training courses, joint international assistance programs, logistical support, the exchange of formal and informal information, billionaire financing and transnational agencies and offices support.

If *Car Wash* operation and the Lula's Case are examples of these connections, they should be understood as another chapter in a process of change in US national security policy and its strategic objective of leading an institutional and para-institutional network of government agencies, trade organizations and international forums that enable US extralegal domination over the region.

This cannot be understood without paying attention at the global political context: the need for rapid appreciation of over-accumulated capital, which has driven productive and financial transnationalization. A new form of capitalist accumulation was built, in which investment companies, pension and high-risk funds, insurance companies and various types of venture capital managers took a leading role in the direction of the global financial system. One of the important characteristics of financialization is the increased creation of clandestine investment networks. Parallel systems and tax havens are some of the strategies of the global financial system to hide operations and evade taxes. Financialization is a form of organization to boost the extraction of produced wealth, especially for financial oligarchies.

But this type of corrupt organization must be protected and not fought by the extraterritorial instruments of the US and its Latin-American partners. For the "moral champions of the fight against corruption", this type of deviation by corrupt oligarchies is naturalized and incorporated into the deviant logic of financialization. Advocates of US intervention in Latin American countries in the name of the fight against corruption are interested in criminalizing state intervention in the economy, especially if it involves investments in social areas. Their interests also lean to criminalizing popular sovereignty and deliberative politics. This is why this type of extraterritorial US intervention weakens Latin American democratic institutions and can be seen as imperialist intervention strategies.

It's worth remembering that in the first decade of the 21st century, South and Latin America engaged into giving a popular response to neoliberalism, with the election of several center-left and left-wing governments in various countries: Brazil, Paraguay, Chile, Bolivia, Ecuador, Venezuela and Honduras. This figured an important progressive moment for the advancement of political alliances to resist US interference in the region. Meanwhile, the pressure for immediate profits and returns from international investments was increasing, as international finance agents and agencies joined forces with criminal groups and militias to invade public lands, indigenous reserves and privatize natural resources and national

[6]See the report by Natália Viana and Rafael Neves reproduced on the websites of Agência Pública and The Intercept Brasil.

companies in South American and Latin American countries[7].

With the 2008 crisis, the possibility of political resistance by popular governments, and the growth of new dynamic poles of accumulation (especially the BRICS), the US decided to participate intensively in successive coups and interventions with economic, political and war sanctions that have plagued the Global South since 2009, with the promotion of a coup against the Manuel Zelaya government in Honduras, up to the present moment with the arrest of Chilean leader Daniel Jadue[8].

This set of interventions put an end to the illusion that a sovereign and "negotiated" insertion of Latin American countries into the globalized and financialized world would be possible. Considering this scenario and given the exhaustion of the use of traditional intervention methods, it became necessary to resort to models of unconventional warfare and guarantee the permanence of interventionist practices in strategic sectors of the economy/security of the Latin America Nation-States. *Lawfare* is a kind of this unconventional warfare tactics, that combines the use of law with military strategies and extraterritorial operations of US anti-corruption policies. Since 2001, in order to pursue/eliminate enemies, theses tactics has come to fulfill the same function as the coups during the last century. These new tactics have the great interest of taking refuge in legality, and maintaining the appearances of democratic regimes, combining with an anti-corruption narrative that tends to legitimize this renewed type of warfare.

It is interesting to observe that these intervention processes cannot be considered conspiracy theories, but must be seen and analyzed as the result of economic and political changes resulting from the merger between banking and industrial capital and the political and bureaucratic changes related to this merger. And these changes are identified especially by the extraterritorial expansion of the US and the strengthening and autonomization of judicial and police bureaucratic apparatuses, paradigmatically embodied in *Car Wash* operation in Brazil.

The research problem that guides this investigation is based on the following question: "Why did the Lula's Case and the *Car Wash* operation become paradigms of US extraterritorial intervention known as Lawfare?". To answer this question, this paper presents: a) the theoretical debate and the construction of the concept of Lawfare; b) how Lawfare devices reveal US extraterritorial intervention strategies and tactics, and c) how the *Car Wash* operation and the Lula's Case are paradigmatic examples of how these devices have been efficient and permanent in Brazilian politics and the legal field.

2. Lawfare, The Device: The Origins of the Term, Dimensions and Tactics

In Brazil, the expression *Lawfare* entered the national vocabulary recently, in

[7]As an example in Brazil, there are gold miners who invade Yanomami indigenous lands with technical and informational support from Elon Musk.

[8]https://midianinja.org/lawfare-daniel-jaduecommunist-chilean-leader-is-under-preventive-prison/.

2016, through the press conference held by Cristiano Zanin and Valeska Martins, as Lula's defense lawyers. However, the global origin of the concept is much older than that analyzed from the Brazilian experience. Authors such as Zanin et al. (2019), Dardot et al. (2021), and Campos (2020), confirm that the term was first coined by John Carlson and Neville Yeomans at the end of the 20th century, in an article published in 1975, whose aim was to denounce the replacement of the investigative technique by the accusatory procedure, prioritizing a certain utilitarian tendency over humanitarian values and justice.

The term *Lawfare* is therefore a neologism, combining the words *law* and *warfare*. Carlson and Yeomans' (1975) aim was to explain to their readers how the emergence of warfare mechanisms that replaced dueling with the use of swords/arms with the use of words came about. However, it was only years later, in 2001, that the term gained greater popularity through the work of Charles Dunlap, Major general of the US Air Force, who was responsible for consolidating the expression *Lawfare* and spreading it in legal and academic circles around the world. One of the author's most striking expressions was recorded in the article in which he classified the phenomenon as follows: "disturbing evidence that the rule of law is being hijacked by another way of fighting, to the detriment of humanitarian values as well as the law itself" (Dunlap, 2001).

For Dunlap (2001), *Lawfare* could cause less suffering than a traditional war, especially in the context of the debates that took place after 2001, September 11th, when new war strategies were being planned. According to Dunlap, the replacement of military interventions by the use of legal mechanisms to justify the "war on terror" would bring less damage to the US population itself and greater effectiveness in defeating the enemy. In this way, technical-military action would no longer be aimed at faster destruction, but rather at neutralizing more effectively the ability of the enemy to resist. Hence, the strategies and measures implemented from then on would be based on eroding this resistance.

From this perspective, it is necessary to look at why *Lawfare* exists and who this kind of unconventional warfare serves. To this end, Slobodian (2021: p. 10) makes important theoretical contributions, as he is an author who reads the strategic use of law by nation states not only as a conceptual change, but within a change in the international scenario that began in the post-war period. Thus, although the term *Lawfare* only appeared in the article by John Carlson and Neville Yeomans, published in 1975, it is possible to argue that, at least since the end of the Second World War, the globalists who dictated the world order at the time were already concerned with creating laws and institutions to protect the global markets they ran. This concern, according to Slobodian (2021: p. 11), stemmed from the neoliberals' fear that mass democracies could threaten the functioning of the world market. This fear increased significantly between the 1960s and 1970s, with changes in the correlation of international forces and the independence of former colonies such as India and China, as well as pressures for self-determination in African and Latin American countries, which began to claim legitimate places in

this new order.

While the legal framework gave neoliberalism survival by creating global institutions to defend "market forces" against popular political influences, over time, due to the imperial expansion of the neoliberal world and its constant stance of policing the other, the world of law and legislation was transformed into an efficient form of warfare. In this way, this form of legal warfare has met the need of the neoliberal and imperialist powers to have endless wars to justify their interventionism. According to Dardot et al. (2021), law became both a battlefield and an instrument of war, so that when it is at the service of neoliberal ends, it can be called *Lawfare*:

> This strategy of legal warfare has two components that correspond to different geopolitical situations: on the one hand, the integration into common law of derogatory measures related to the fight against terrorism and, on the other hand, judicial interventionism in the political field to attack the political enemies of neoliberalism. France illustrates the first aspect, Brazil is a perfect illustration of the second (Dardot et al., 2021).

In President Lula's case, *Lawfare* is defined by Zanin et al. (2019) as one of the ways in which interventionist warfare manifests itself, and is configured as the strategic use of the law in order to delegitimize, harm or annihilate an enemy—a framework that has been applied to President Lula.

Zanin et al. (2019) divide *Lawfare* into three dimensions: geographical, weaponry and external dimensions. The geographical dimension is related to jurisdiction, given the importance of defining where the legal case will be judged in order to increase or decrease the chances of victory in the legal war. The weapons dimension is represented by the laws/jurisprudence applied to the case, since it is essential to define which laws will be used to achieve the end proposed in the legal war in activity. Finally, the external dimension consists of strategies that not correspond to the battle itself; external elements that help in the victory against the enemy, for example, by absorbing public opinion through media pressure.

Each dimension contains numerous tactics for its implementation, precisely because tactics are means for executing the strategy (Zanin et al., 2019). For example, the geographical dimension can be executed through the tactics of *Forum Shopping*, manipulation of competence and/or *Libel tourism*. The weapons dimension can rely on tactics such as *frivolous charges*, as a way of obtaining plea bargains, in order to delegitimize enemies through false incriminations, *overcharging*, the *carrots and sticks* method, the creation of obstacles to the work of lawyers, among others. Finally, the external dimension can make use of agenda manipulation tactics to mobilize persecution of the target enemy and promote popular disillusionment.

Obviously, the tactics applied in an episode of *Lawfare* must be analyzed together, as they are interdependent and often cumulative. That is the reason why, when a case of legal warfare is analyzed, both the strategies and the multidimensional tactics of legal warfare are generally perceived. These strategies and tactics

of imperial intervention, especially those used by the US, constitute a set of extra-territorial jurisdictions and dogmatic and deontological references in the legal-political field produced by the US and the transnational private apparatuses of hegemony. At the same time, this set finds support in the possibility of articulation with institutional and political conditions by agents within peripheral countries who establish a collusion with the aim of Lawfare being efficient as a war with the appearance of legality. In this sense, *Car Wash* operation and the arrest of President Lula are examples of Lawfare.

3. Geopolitics in Latin America

As Schulman (2023) states, the United States of America has always maintained interventionist strategies in Latin America through military force, intelligence services, the judiciary, communication and economic sanctions. From the 1990s onwards, a set of strategies and tactics was built with a new discursive logic to support the continuation of interventionist practices. In this sense, the fight against corruption, as well as the fight against drugs and terror, are presented as transnational issues that need to be tackled through US leadership. In order to build the extraterritorial legal domain of the fight against corruption, the United States operates a series of instruments of coercion and consensus through state policies and the actions of think-tanks and NGOs. This domain enables a series of direct and indirect interventions in defense of US economic interests, as well as the fight against political adversaries and enemies.

Based on these strategies, Schulman (2023) states that a new discourse justifying interventionist practices was constructed, which materialized in *Lawfare*, through the denunciation of corruption of these leaders, who came to be framed as another classification of "political prisoners", held responsible for stealing, falsifying, laundering money and "destroying the nation".

At the turn of the millennium, a favorable scenario arose worldwide in which the US seized the credibility of its anti-corruption crusade to introduce US agencies into the justice systems of various countries, especially in Latin America, on the grounds that the result of corruption in Latin American countries could provide opportunities for the emergence of various threats to US national security and stability, such as drug trafficking and terrorism[9].

These three major threats, related to the language of the *Global War on Terror* (GWT), made it possible to carry out, in Latin America, what is usually called the "securitization" of the fight against corruption, with the so-called *Foreign Corrupt Practices Act* (FCPA) as a legal parameter. This famous US anti-corruption law gained extraterritoriality, was very useful to weaken rival foreign companies, and served as a model for Brazilian laws such as the Money Laundering Law (Law no. 12. 683/2013), the *Anti-Corruption* Law (Law no. 12.850, August 2, 2013) and the

[9]"The USAID Anticorruption Strategy highlights that 'poverty, weak institutions, and corruption can make states vulnerable to terrorist networks and drug cartels, and argues that efforts to address these challenges in developing countries can contribute directly to U.S. national security'." (Ramina, 2022).

Anti-Corruption Law (Law No. 12.846, August 1, 2013). 683/2013), the Criminal Organizations Law (Law No. 12.850, of August 2, 2013), the Anti-Corruption Law (Law No. 12.846, of August 1, 2013) and the Anti-Terrorism Law (Law No. 13.260, of March 16, 2016).

Securitization expresses the procedure by which both the investigation initiative and the judicial sanction stipulated for manifestations of national and transnational corruption in Latin America have been concentrated under US jurisdiction. This efficient geopolitical *lawfare* tactic opens the way for foreign legislation to interfere with the jurisdiction of the countries that have bound themselves to this rule.

Through the foundations laid by the FCPA (*Foreign Corrupt Practices Act*), the fight against "transnational systemic corruption" began to function as a central element in the discursive and legitimizing strategy of *Lawfare*. With the FCPA, it emerged what Amorim and Proner called "a kind of unifying discourse to influence public opinion, while at the same time enabling the triggering of transnational cooperation mechanisms, involving external interference" (Amorim & Proner, 2022). Lawfare practices are usually presented as fair and just solutions to problems like corruption, or terrorism. This kind of problems have a strong appeal upon the national opinion and fits perfectly into the strategy of attracting the popular outcry needed to authorize the exceptional measures and prosecutions, especially judicial ones, that are needed in cases of *Lawfare*.

Proner (2020) explains that the FCPA was formulated to promote an imposing extraterritoriality of US jurisdiction, since it was based on the banner of combating corruption and was taken beyond US borders. In the case of Latin America, this extraterritoriality has come to fruition, either by importing the rules set out in the FCPA into the domestic laws of Latin American countries, such as the Brazilian laws that we mentioned above, or by trying to force a corrupt act to be tried in the US, even though it was carried out in the target country.

Ramina (2022) mentions that the anti-corruption discourse, which has been securitized in Latin America, is a strategy that is even provided for in official US government documents, such as the 2017 *National Security Strategy of The United States of America*. This text, adopted during the Trump administration, but already applied in essence by other Presidents before him, denotes US concern about corrupt foreign officials, as well as the need for the country to spearhead international anti-corruption "cooperation" strategies. These "cooperations" would consist in supporting local efforts to professionalize the police and other security forces, as well as stimulating judicial and legislative reforms to adapt them to the tools of coercion and sanction applied by the Americans, such as financial embargoes and plea bargains.

Anyhow, an extraterritorial interference, as it occurred in Brazil through *Car Wash* operation, could only be fully effective with the collaboration or omission of the components that represent the institutions of the justice systems of the respective interfered countries, like what was disclosed by *Wash Leaks* "Vaza Jato" (Conjur, 2020) about the relation between the *Car Wash* Task Force and the US

Department of Justice. According to Guamán (2021), when studied from a geopolitical point of view, *Lawfare* is part of a coordinated and articulated international strategy to capture the judicial and police apparatuses in order to manipulate democratic processes, so that elect foreign governments could function in accordance with the impositions of global capitalism and market authoritarianism, abandoning the Rule of Law for *Lex Mercatoria*.

Dultra (2023) states that perhaps it is precisely the geopolitical aspect that differentiates the usual political abuse observed in a country's justice system from the actual *Lawfare*. According to the author, "individuals, groups and political parties suffer *Lawfare* if and only if they are in a position of resistance to a soft power movement orchestrated to carry out a coup d'état". In other words, in Dultra's (2023) reading of the phenomenon, for a case to be classified as *Lawfare*, it needs to meet certain requirements. In particular, it must aim a direct disarticulation of a democratic government that is not geopolitically aligned with global or US market interests.

In this matter, Slobodian's (2021: p. 10) contributions reinforce the fact that neoliberalism, in order to survive, needed to create institutions and laws that would guarantee the hegemony of the main global market actors from the popular democratic demands that could challenge it through the access to power of local progressive governments. According to Wood (2014: p. 106), "it would not be an exaggeration to say that the state is the only non-economic institution that is truly indispensable to capital" since it provides the necessary institutional apparatus and is the holder of the violence needed to maintain economic coercion itself.

Thus, considering that *Lawfare* was the modality chosen among the existing types of hybrid warfare, in orders to block the self-determination of peoples in Latin America. Precisely in the case of Brazil, it relied on the autonomization of the bureaucratic structures of the Brazilian state, particularly in the judicial system.

Initially, according to Kanaan (2019: p. 91), the relationship between capital-imperialism in Brazil and the US bourgeoisie is marked by contradictions. On the one hand, US capital-imperialism seeks to boost the growth of its allies through considerable loans, which will guarantee "fiscal austerity" and the US extraction of surplus value, through the payment of interest on the debt and the profits extracted directly from the working class of peripheral countries by US companies installed in the subjugated country. On the other hand, these same investments can turn the dependent country into a new center of accumulation that is competitive with US capital.

The hegemony of US capital, since it is imperialist, goes beyond the physical territory of the state. On this point, Kanaan (2019: p. 83) explains:

> […] like no other empire in history, capitalist imperialism transfers wealth from other parts of the world to its territory without colonial occupations that force other nations to pay tribute to the empire. Through the expansion of capitalist imperatives across the globe, the empire of capital has made the peripheral countries dependent, and through economic mechanisms—such

> as the interest on foreign debts paid to the central countries, the profits repatriated from foreign companies that exploit the peripheral workforce, and the unequal exchange between computers produced in the center for primary or lower industrial level products from the third world—the imperialist bourgeoisies appropriate part of the surplus value produced by the working class in the dependent countries.

Because of this, US imperialism needs to contain the development of these countries so that they don't become potential competitors. And this control takes place precisely through the extra-economic mechanisms of imperialism, which are exemplified below: the wars and coups d'état promoted by the army, the State Department, the CIA and other US agencies, together with irregular forces such as the judiciary, which turn against countries that dare to challenge the dictates of the empire of capital and the functioning of the market economy across the globe.

Marroni and Asmus (2013), similarly, warned that in the geopolitical agenda, the economic and political importance of mineral resources and the strategic direction of the power have changed over time, having as its main influence precisely national and international relations and the reflections of the world economy and politics.

In relation to Brazil's state control over oil, US policy has historically been one of strong opposition. The US government put severe pressure on Brazil not to establish national control over oil resources, ever since the creation of the National Petroleum Council in 1938 by Brazilian President Getúlio Vargas. There was also strong US opposition to the creation of Petrobras and US political involvement in Vargas' suicide in 1954 and the Brazilian military coup in 1964. Despite this, US pressure to end the state oil monopoly was only successful under the government of Fernando Henrique Cardoso (1995-2002), who, in addition to "making the oil monopoly more flexible" (Constitutional Amendment 09 of 1995), sold around 30% of Petrobrás' capital on the Wall Street stock exchange.

The result was the expansion of the interests of private shareholders, the vast majority of whom were foreign, in the management of the company. It meant as well the Petrobras' submission to the laws and rules of the US capital market, allowing US interests to interfere directly in Petrobras governance, either through the US Securities and Exchange Commission (SEC) or through lawsuits filed by private minority shareholders in the US courts, which have generated huge compensation payments as a result of Car Wash operation.

The strategic dimension that the US gave to control over oil become clear with the ban on the purchase of Unocal Corporation by the China National Offshore Oil Corporation (CNOOC) in 2005. Opponents of the Chinese purchase used the "Exon-Florio Amendment", an amendment passed in 1988 to the Defense Production Act of 1950, which authorizes the Executive Branch to review any foreign investment in the United States that could be considered harmful to national interests. The Energy Policy Act amendment was also promulgated, ordering the Department of Energy to conduct an investigation onto Chinese energy policies.

The multinational Chevron entered the dispute, receiving official approval from the US government. Although the Chinese company's bid was the largest ever offered by a foreign company for the purchase of a US company, the determining factors in the acquisition of Unocal were political and not economic.

Faced with this reaction, the Chinese state-owned company withdrew its offer, and the shareholders voted to accept Chevron's offer. The Unocal case is a clear demonstration that the US discourse on defending competition and the free market is not matched by practice. US strategic interests prevailed over so-called market mechanisms. In the oil sector, even the world's leading economic power doesn't give up on guaranteeing its sovereignty. But it intervenes and supports operations such as Car Wash that impose the loss of Brazil's sovereignty.

To complete this frame, another company that was directly affected by Car wash operation was the Brazilian electricity company Eletrobras, privatized by the Bolsonaro government. Such privatization is forbidden by the Brazilian Constitution, because the constitutional text demands greater electricity generation at less cost to society, with due regard for sustainability and reasonable tariffs. What happened with the privatization of Eletrobrás, in addition to the crime of theft, was the imposition of a very high tariff policy on the Brazilian population.

There is a historical context of countries like Brazil fighting for political independence and economic emancipation. This implies a strategic energy production policy. After all, state-owned companies end up embodying sovereign control over natural resources. They are instruments of national economic policy, acting in accordance with the state's strategic objectives.

When seen in terms of its geopolitical connotations, the *Lawfare* episode is marked by acts of aggression against popular and national sovereignty of the affected country, as it aims to have governments at the head of these nations that are aligned with the interests of international capital—resulting, in the long term, in the erosion of rights, especially social and environmental rights. Penido and Stédile (2021) agree that the objective of a war—be it traditional or unconventional—is not the war itself, because the way it is fought, its tactics and its means, find its purposes and interests in geopolitics.

The legal war was designed to delegitimize and proscribe a popular stance that acted as effective resistance to neoliberal financialization regimes. The theoretical line linked to this research argues that the practice of legal-political *Lawfare* did not begin in Brazil as a product of the "ovation for the yellow-green unfurled by a significant part of the Brazilian population" (Saldanha, 2022). It rather had an irremediable link to the neoliberal economic model and geopolitical purposes aimed at recolonizing Latin America and annihilating any protagonism that the national sovereignties of these countries could present before the international markets.

In this respect, the fact that most Latin American court cases involving corruption have former or current Latin American leaders of progressive governments as defendants is evidence that the region is clearly facing and immersed in a new geopolitical dispute strategy (Back & Cardoso de França, 2022).

The political events that shook the South American countries[10] took place in a context of dispute and reconfiguration of the world order, which generated uncertainty and instability on the global stage, as well as requiring the use of previously unexplored tools of war. Since then, the US national security strategy[11] (2008, p. 21) has turned its attention to what was happening in Latin America, such as the reactivation of the Fourth Fleet; the hierarchy of the Southern Command; the multiplication of US bases in the region, either for explicit military purposes or to cooperate in the "fight against drug trafficking", located at strategic points on the continent[12].

Brazil, in particular, was in the international spotlight for its discoveries involving the national oil company *Petrobras*, its leading role in Latin America, among other highlights in the geopolitical world, such as its alignment with Russia and China as a member of BRICS. Since 2003, under the presidency of Luiz Inácio Lula da Silva and then his successor, Dilma Rousseff, Brazil thwarted the implementation of the FTAA and joined the BRICS group, one of whose focuses is to break the hegemony of the dollar, with the creation of the New Development Bank (NDB), as an alternative to the World Bank and the IMF. In addition, Brazil bought airplanes from Sweden and not from US Boeing; helicopters from Russia; tried to build nuclear and other conventional submarines with technology from France; continued to expand the production of enriched uranium for its nuclear power plants; did not hand over oil exploration in the pre-salt layers to Chevron and other US corporations; advanced in the markets of South America and Africa, etc. (Moniz Bandeira, 2016: p. 20). Therefore, the scenario of interest in dismantling the project represented by President Lula and its Workers Party, as well as other left-wing leaders throughout Latin American countries, was fully justified.

Consequently, *Lawfare*, due to the veneer of legitimacy it possesses, by using the law and the organs of the state justice system to persecute and annihilate targeted enemies, has the useful ability to serve as an indirect tactic to prepare the ground in the country that suffered the camouflaged intervention for the sectors and leaders of the neoliberal right, who are willing to partner with the government and the private sectors of the United States in political-ideological and economic

[10]We can mention the judicial persecution of Cristina Fernández de Kirchner in Argentina, Rafael Correa and the members of the Citizen's Revolution movement in Ecuador and, more recently, the explicit use of electoral justice to persecute Evo Morales and the members of the Movement for Socialism (MAS), in view of the imminent elections in Bolivia. […] The Brazilian case is one of the broadest and most complete. In the space of a few years, Dilma Rousseff's impeachment, Lula's imprisonment and the latter's candidacy in the 2018 elections have all taken place in a chain. (Amorim & Proner, 2022).

[11]It can be consulted on the NATIONAL DEFENSE STRATEGY website (2008, p. 21), https://www.oas.org/csh/spanish/documentos/2008%20National%20Defense%20Strategy.pdf.

[12]CONDE COTES (2009) studies documents released by the US government on national defense strategies. Among these documents is the *National Defense Strategy* published in June 2008, in which the US government admits that the well-being of the global economy depends on access to energy resources, and that the country is still highly dependent on oil, despite efforts to reduce this dependence. The same document points to strategic access to regions of the world that meet national security needs. Not coincidentally, these important regions, which are seen as unstable for US security and therefore require a greater presence of US military forces, are those that have potential from an energy point of view; in Latin America, the magnitude of these reserves has already been attested to, especially in Venezuela and Brazil. (CONDE COTES, 2009).

terms. Just as Dardot et al. (2021: p. 264) pointed out: "Law is both a field and an instrument of war". This research argues that the way in which legal war will take place depends on the geopolitical situation in which it is concentrated. In some countries, the war has materialized in legal measures against terrorism, for example. In others, as Brazil and several Latin American states, it has occurred through the interventionism of the judiciary in the political field, with the aim of attacking the adversary/enemy, this attack being directed at the electoral process, the current government itself or the image of the leadership that represented the project antagonistic to the one advocated by the USA.

In this respect, it must be said that the fact that most of the legal proceedings, accusations and arrests in high-profile corruption cases are currently concentrated on former Latin American progressive presidents or leaders is not just a coincidence. It is rather an indication that is being built a new geopolitical dispute, and that although it is considered "new" in its methods, the urge for solutions, intervening in external affairs throughout the defense of law or "democratic stability" have been legitimized since the 1970s.

In this context, the *Foreign Corrupt Practices Act* (FCPA)[13] has been used as an arm of US foreign and national security policy, as well as an instrument that enables economic and commercial opportunities for large law and accounting firms through *compliance.* These opportunities greatly increase the possibility of corruption for public officials to gain from private initiative and for private initiative to meddle in public affairs.

According to Perlman and Sykes (2018), the FCPA is extremely advantageous for American business, especially for large companies. Based on interviews with US executives and agents of the justice system, the authors say that the FCPA imposes barriers on new US competitors and protects the interests of oligopolies in "imperfect competition"[14]. The most severe punishments under the FCPA have been aimed at foreign companies and executives[15]. It is common for the companies punished to be competitors, to develop technologies that are not dominated or monopolized by US companies, and for these companies to subsequently be bought by US corporations when prices fall as a result of the FCPA[16]. There is also

[13]The US "anti-corruption" institutional apparatus is very complex. It includes the State Department, the Bureau of International Narcotics and Law Enforcement Affairs, the Bureau of Economic and Business Affairs, the Bureau of Democracy, Human Rights and Labor, the Bureau of Energy Resources, the United States Agency for International Development, the Justice Department, the International Criminal Investigative Training Assistance Program, the Office of Overseas Prosecutorial Development, Assistance and Training, the Foreign Corrupt Practices Act Office, the Anti-China Task Force, the Treasury Department, Homeland Security and others. To see how this institutional structure works and is financed, as well as its articulation with the Lava Jato operation, see Fernandes, Luís. A internacional da Lava Jato: imperialismo, nova direita e o combate à corrupção como farce. São Paulo: Autonomia literária, 2024.

[14]Term for capitalist competition in its monopolistic phase.

[15]Brazilian companies Odebrecht/Braskem and Petrobras have received the largest FCPA fines to date, 3.6 billion dollars and 1.78 billion dollars respectively. Embraer is also on the list of largest fines (205) thousand dollars.

[16]The case of Embraer-Brazil and Asltom-France. Remember that a large part of Petrobras was privatized and that to this day there are difficulties for the Brazilian government in taking control of the company's management.

the possibility of FCPA intervention through the adoption of "compliance" programs, and in peripheral countries there is also the privatization of various strategic companies and natural resources.

Thus, unlike the "fight against corruption", the anti-corruption model promoted by the United States of America is one of "regulation and control of corrupt practices" by the interests of monopoly-finance capital in the current stage of neoliberal capitalism.

If the practice of large transnational bribes becomes prohibited, promiscuous relations between public and private power, as well as the expansion of forms of appropriation, transfer and expropriation of social wealth in favor of financial interests, are boosted in the name of such an "anti-corruption model".

4. The *Car Wash* Operation and the President Lula's Case—*Lawfare* in Brazil

The *Car Wash* Operation (Lava Jato), officially launched in March 2014[17], was made up of several investigations and lawsuits that involved the Federal Police, the Federal Public Prosecutor's Office (MPF) and the Federal Courts of at least five of the 26 Brazilian federated states, as well as the higher courts and other control bodies that worked in collaboration with the task force. Despite the role of the judicial courts in the Federal District, Rio de Janeiro and São Paulo, the epicenter of *Car Wash* Operation was concentrated in the city of Curitiba, federated state of Paraná (southern region), where the Federal Prosecutor Deltan Dallagnol and the Head Judge of the 13th Federal Court, Sérgio Moro, were active[18].

Due to the limitations of the information to be compiled in this article, we will not exhaustively describe all the elements and circumstances that have shown that the origin of *Car Wash* dates back to well before the year it was officially launched; however, it can be said that from the very beginning of the first phases of the Operation, the author Romano (2017) already denounced that the entire process

[17]Officially because, in fact, the first acts associated with what would be released as material from Operation Car Wash had been collected between 2006 and 2009, and the first telephone interception authorized by Sérgio Moro was dated July 17, 2013, according to Rodrigues (2020: p. 5). However, the jurisdiction of Operation Car Wash, which is concentrated in the 13th Federal Court of Curitiba, goes back to the Banestado scandal, which was investigated from the late 1990s to mid-2003 and included Alberto Youssef, who is also being investigated in Car Wash.

[18]Sérgio Fernando Moro appeared on the national scene most prominently as the head federal judge of the 13th Federal Court in Curitiba, during Operation Car Wash, but his judicial work is directly intertwined with other major corruption scandals, such as the Banestado case—where he was already the judge of the 13th Federal Court—and the Mensalão trial itself. With the punitive jurisprudence inaugurated by the Court and with Justice Joaquim Barbosa's eagerness to be the rapporteur of the country's biggest corruption scandal. Moro was hired to work as an assistant judge of the Court, assigned to Justice Rosa Weber's office during the Mensalão case. The hiring of auxiliary judges was necessary due to the number of parallel lawsuits that were filed to deal with the forty or so people investigated in AP 470, without them being punished due to judicial delays. These lawsuits, however, were only filed in the Supreme Court due to a distortion of the Court's interpretation of the privileged forum rules, since only 3 of the 38 people investigated in Mensalão had prerogative of office and, as a rule, should be tried before the Court. For Barbosa's purposes of being the person responsible for judging the country's biggest corruption case, however, it was essential to keep all the defendants under the jurisdiction of the STF, usurping the jurisdiction of the lower courts and expanding the Court's own capacity to act, which required a massive hiring of auxiliary judges, including Sérgio Moro.

promoted by the Task Force had been carried out under the coordination and prior advice of the United States Department of Justice. At the time, *Car Wash* was framed as an exemplary prototype of a process of judicial reforms that were planned for the whole of Latin America and would be financed, promoted and stimulated by exogenous international organizations such as the IDB, USAID and the World Bank.

Indeed, the Task Force's investigations are said to have uncovered a complex institutional corruption scheme within Petrobras, in which contractors won bids at inflated prices by paying advantages to directors and high-ranking employees of the oil company. It was discovered that the same officials passed on part of the bribes to the political parties and politicians who appointed them to the positions, in addition to the illicit advantages paid directly from the contractors to the political parties and candidates through campaign financing. However, these discoveries did not occur by chance. They originated from exogenous collaborations and outside the bilateral agreements between agents of the Brazilian Justice System and US agencies.

In the end, *Car Wash* has been responsible for issuing 1,450 arrest warrants; filing 533 legal charges, 179 of which became criminal actions; 174 people were convicted, including President Lula himself. In addition, around 12 Brazilian, Peruvian, Salvadoran and Panamanian heads or former heads of state were implicated, and it was also discovered that the corrupt practices involving the contractors investigated by the operation covered a total of 12 countries: Angola, Argentina, Brazil, Colombia, Dominican Republic, Ecuador, Guatemala, Mexico, Mozambique, Panama, Peru and Venezuela (Lagunes & Svejnar, 2020). Due to the exponential numbers and the people who were investigated and convicted, the narrative of fighting corruption was propagated by the operation's leaders to society and the media, gaining concreteness, an admiring public and legitimacy, despite all the violations that would be employed during its phases.

Since its inception, *Car Wash* jurisdiction concentrated in the 13th Federal Court of Curitiba drew attention, but it was with the Lula's Case and the studies published by Zanin et al. (2019, p. 32) that we began to see the artificial criteria with which this court was chosen, justifying it as part of one of the main dimensions of *Lawfare*. In his work, Fernandes (2020, p. 110) makes it explicit that Moro received information obtained unofficially; he knew who he should reach out to and what to do to reach new names to be subjugated to the coercive means applied through *Car Wash*. Therefore, maintaining the jurisdiction of the 13th Federal Court in Curitiba, albeit under artificial criteria, was essential to the political success of the operation.

Zanin et al. (2019) explain that the very choice of the 13th Federal Court as the jurisdiction to process President Lula is the result of an exogenous collaboration. This is because the state of Paraná is a Brazilian federative entity that has a large border area with two other Latin American countries: Paraguay and Argentina. According to Zanin et al. (2019), places on the "triple border" are usually targeted by the United States, as the country uses the justification that these places are more

prone to the formation of criminal organizations and the proliferation of terrorism. The US even have several training projects and protocols[19] and intervention in border countries, which has greatly facilitated the importation of the US anti-corruption model to Brazil, several Latin American countries and the world, without further questioning from the nations targeted by these interventions.

At least since the 1990s, there have been records of US operations in the Paraná region, where information and techniques obtained by US intelligence services were shared with Brazilian justice agents. These relations, within the judicial cooperation between Brazil and the US, began to be strengthened during the administration of former President Fernando Henrique Cardoso, from 1995 to 2002. This information was obtained through an investigation carried out by Gaspard Estrada and Nicolas Bourcier, respectively executive director of the Political Observatory of Latin America and the Caribbean (OPALC) at Sciences Po and a journalist, for the French newspaper *Le Monde* in 2021. In the article published in *Le Monde*, Estrada and Bourcier report, in particular, on the history prior to and during *Car Wash* operation. They showed that the Task Force, under the pretext of being a major anti-corruption operation, served US geopolitical interests. Its main operators, including Sérgio Moro, whose name is constantly mentioned, have records of collaboration and contacts with foreign relations at the FBI, US Justice Department and US State Department, at least since 2007; Moro, in particular, as a result of his role as judge in the Banestado scandal.

Zanin et al. (2019: p. 117), likewise, recall that the exogenous interventions on Petrobras have become public since 2013, when Edward Snowden revealed that the US National Security Agency (NSA) spied on Brazil's largest national oil company and various authorities in the country, including top positions in the Presidency of the Republic. Part of this material, result of espionage against the Brazilian state, was handed over to the prosecutors who worked on the *Car Wash* Task Force through "informal cooperation", and was used in the major investigation that practically imploded Petrobras.

About nine months after the leak of the US *National Security Agency*'s (NSA) espionage programs, whose targets were Petrobras' data, Sérgio Moro, a judge from Curitiba, launched the *Car Wash* Task Force—which relied on information gathered in this espionage scheme—, and was responsible for dismantling the country's largest oil company, dismantling the main Brazilian construction companies that competed directly with US companies on the world and Latin American stage, but above all, he arrested and tried to eliminate from the political scene what is considered the continent's greatest left-wing leader. Here is Fábio Konder Comparato's account below:

> In 2013, a week after it was revealed that President Dilma Rousseff had been spied on by the CIA, the agency's former consultant Edward Snowden revealed that the CIA was spying on Petrobras. At the same time, an informal

[19]A document from the US State Department, made available by *WikiLeaks*, states that the US promoted the training of justice operators in Brazil in order to strengthen bilateralism between the two countries in criminal matters. WikiLeak, 2009.

> and illegal pact was established between the Brazilian Federal Prosecutor's Office and the US government to collaborate on investigations, inquiries and prosecutions, an agreement strictly linked to *Car Wash* operation. In fact, it directly violated Decree No. 3810, of May 2, 2001, which enacted the Agreement on Legal Assistance in Criminal Matters between the Brazilian and US governments, because according to Article II, "each Party shall designate a Central Authority to send and receive requests" in compliance with the Agreement, and in Brazil this Central Authority is the Minister of Justice and not the Federal Public Prosecutor's Office." (Comparato, 2017).

In the same vein, Carol Proner states that:

> The leaks from The Intercept Brasil throughout 2019 and 2020 reveal a relationship of illegal collusion between Dallagnol and the *Car Wash* Task Force with former Judge Moro, aimed at convicting the former President and forcing a relationship of systemic corruption with Petrobras and other companies. The most striking thing, however, as the latest leaks reveal, was the illegal collaboration of the members of the Curitiba MPF with agents of the FBI and the Department of Justice during 2015 and 2016, in absentia from the Ministry of Justice and in open violation of international treaties (Proner, 2020).

This relationship between agents of the Brazilian justice system and US bodies was one of the steps towards interpreting what happened in the Lula's Case as a case of *Lawfare*, but in order to test this hypothesis, it was necessary to identify the elements that make up the theory of *Lawfare* in the processes and procedures to which the then former president was subjected, more precisely the strategies and tactics mentioned in the first section.

The first and most latent strategy or dimension of this law case was the geographical one, because the choice of the jurisdiction of the 13th Federal Court of Curitiba, based on artificial criteria, in the opinion of Zanin et al. (2019), was favorable to the judicial persecution perpetrated against President Lula, since former judge Sérgio Moro, due to the bond he built with the US judicial institutions[20],

[20]According to Estrada and Bourcier (2021), Moro took part in the training of judges and prosecutors from 26 Brazilian states, as well as 50 federal police officers, during the Bridges Project, held in 2009 at the conference on illicit financial crimes. This meeting was funded by the US State Department, where, at the time, the magistrate of the 13th Circuit Court of Curitiba made contact—which would become permanent—with various representatives of the FBI, the Department *of Justice* (DOJ) and the US State Department itself (a body equivalent to Itamaraty). However, this relationship, which led to Moro being chosen as a lecturer and "trainer" for his peers who would work on task forces, had been established years earlier, according to the former magistrate's own Lattes CV. In 1998, Sérgio Moro took part in the *Program of Instruction for Lawyers at Harvard Law School* and, in 2007, he took part in a training course for "potential leaders" of the *International Visitors* Program, also organized by the US State Department and whose purpose was to visit US agencies and institutions responsible for preventing and combating money laundering (Moro, 2015). These dates of the judge's training in courses promoted by US agencies and organizations coincide with his work as a judge in the Banestado scandal, in the course of which there is a record of the first operation with task force characteristics in Brazil, in 2003. Recalling the background of the former judge of the 13th Federal Court of Curitiba, with the Banestado scandal and the judge's proximity to the American model of justice, is important to understand why Moro's insistence on establishing the absolute jurisdiction of the Lava Jato cases in Curitiba fits in with the geographical dimension of the *Lawfare* against Lula.

was committed and obstinate, from the beginning, with the purpose to be achieved in the operation: the conviction of Lula.

Therefore, the "Lula's Case" comprises much more than a single judicial trial. It involves many procedure violations perpetrated by Judge Sérgio Moro during the investigation, phases and judicial procedures. Altogether in Lula's trial, Moro engaged eleven criminal proceedings and two of them led to the President's conviction (case no. 5046512 - 94.2016.4.04.7000 related to the Guarujá triplex apartment and case no. 5021365 - 32.2017.4.04.7000 related to Atibaia rural property.

The multiplicity of proceedings brought against Lula, in itself, mobilizes two of the tactics of the *Lawfare*: *frivolous charges* or accusations without materiality, and *overcharging* or excessive accusation. These tactics are linked to the weaponry dimension of *Lawfare*—the second strategy recorded in the literature on this unconventional warfare. The goal is to convey the idea that the target enemy has been responsible for the commission of various illicit acts, even if without proven materiality, but that, due to the volume of accusations lodged against him, he should be presumed guilty.

Given this "presumption of guilt" has been built up against Lula da Silva, especially in the Guarujá triplex case which led to his imprisonment—it is necessary to recall that Sérgio Moro's impartiality to judge the then former President was already tainted in at least three key moments of *Car Wash* operation: 1) The coercive conduct order; 2) The telephone interception; and 3) The search and seizure.

Amid the many acts carried out by the Curitiba magistrate against Lula, these three moments draw attention and deserve to be highlighted due to the repercussions they had in the country and because they were cited by Lula's defense in case no. 5046512 - 94.2016.4.04.7000 as an allegation of violation of Moro's impartiality, in addition to being refuted by the magistrate in the condemnatory sentence.

These are the hallmarks of the *Lawfare* practiced in the conduct of the Lula's Case, since there were three circumstances that were not intended to comply with any procedural rite or serve as a means of proof for the investigations. In fact, the minimum rite of criminal procedure and constitutional guarantees were repeatedly disregarded, all for the sake of the spectacularization of the judicial procedures and accusations. This relates to the third dimension of legal *warfare* in the case under analysis, the so-called external strategy, where the actors involved in *Lawfare* can use agenda manipulation tactics to mobilize persecution of the target enemy and promote popular disillusionment.

The external dimension is even more effective the more is compromised the image of the accused/investigated, preparing a narrative ground for their conviction. This is precisely what happened to the then former President Lula in the three episodes mentioned, during which he was not yet a defendant in the Guarujá triplex case, since complaint emitted by the Public Federal Prosecutor's Office's was only received by Moro on September 20, 2016, when the coercive conduct and the search and seizure procedure had already taken place—March 4, 2016—as well

as the leak of the (illegal) telephone interception of the conversation between him and President Dilma—March 16, 2016.

Toron (2020: p. 51) states that from the beginning of the *Car Wash* operation's ostensible phase, the judge Moro was already showing explicit signs of his partiality. In the precautionary and interlocutory decisions he made, he gave indications that he had tried and convicted the accused—before sentencing—as well as acting to confirm the accusatory thesis, presiding over and even seeking evidence during the instructions[21].

Car wash operation has wreaked absolute havoc in several sectors of the Brazilian economy, especially in the shipbuilding sector and in the oil and gas sector. The Brazilian petrochemical industry has been devastated by the effects of *Car Wash*[22]. According to Bercovici[23], *Car Wash* works in a way that affects the image of the companies being investigated, causing damages to their reliability. It contributed to criminalize the economic policy of public investment and any State's involvement in national development.

In this sense, *Car Wash* is not fighting corruption, but the political decision to develop the Brazilian domestic market and strengthen domestic companies[24]. This is clear in the speeches of the prosecutors and judges about Brazil's National Development Bank—BNDES. The story they told was that every public investment in Petrobras had been the result of corruption.

The corruption involving the cartel of contractors in the Brazilian oil industry, which *Car Wash* was intended to "dismantle", had been going on for many years before the governments of the Workers' Party (PT). Nevertheless, there was a whole legal strategy—promises of more lenient sentences and even release—to get Petrobras executives, some directors of the contractors and politicians from various Brazilian political parties to confess to acts of corruption that occurred precisely during the PT governments. These testimonies, most of which were made through plea bargains, did not involve President Lula directly, but reported that there was institutional corruption at *Petróleo Brasileiro S.A.* during the Lula administration and that of his successor.

For Judge Sérgio Moro, this was enough to subject the former head of the Federal Executive to an intense, ostentatious and invasive investigation, as well as

[21]Reference to the following excerpt: "In a conversation that became known to Brazilian society in general, held on December 7, 2015, Sérgio Moro indicated a source of evidence to the Federal Public Prosecutor's Office, so that it could be used in criminal prosecutions against former President Lula. Worth re-reading: 17:42:56 Moro So. Next. A source told me that the person I contacted was upset because she had been asked to draw up draft deeds for transfers of property belonging to one of the former President's sons. Apparently the person was willing to provide information. So I'm passing it on. The source is serious. 17:44:00 Deltan Thank you!!! We'll be in touch. 17:45:00 Moro And there would be dozens of properties.". (Melchior, 2021).

[22]https://agenciabrasil.ebc.com.br/economia/noticia/2024-03/lava-jato-destruiu-444-milhoes-de-empregos-aponta-estudo.
https://www.dieese.org.br/notatecnica/2022/notaTec266MudancasSegmentoPetroquimico.pdf.

[23]sindipetrolp.org.br/noticias/27764/venda-de-estatais-brasileiras-e-crime-de-receptacao-diz-jurista-gilberto-bercovici.

[24]https://www.brasildefato.com.br/2021/03/24/impactos-economico-da-lava-jato.

putting him on trial. According to the legal doctrine Judge Moro followed (known as "theory of de facto domain"), the fact that former President Lula had governed during the years in which the corruption cases investigated around Petrobras took place, would make him someone with dominance over the illicit acts carried out, so that the application of the theory would serve to mask the *frivolous charges* or the lack of materiality, in addition to the lack of evidence of the complaints filed against the target enemy.

President Lula's conviction, however, would depend on other even more virulent devices, since he was still the main popular political leader in Brazil and Latin America. Thus, it was urgent to delegitimize and demonize him in the eyes of public opinion, turning him into an enemy to be fought. According to Cittadino and Moreira (2017: p. 117), the perspective adopted by *Car Wash* was precisely that of the "criminal law of the enemy" (*Feindstrafrecht*), whose practices affront the constitutional criminal law in force in the country, especially when the presumption of innocence is made more flexible, non-existent means of proof are created, and the functions of accusing and judging are mixed.

What was actually presented in the *Car Wash* case was the biased use of legal norms with a very specific purpose: to promote the degradation of the image, conviction and imprisonment of the former President in 2018, in time to prevent him from contesting the presidential elections that same year and to try to extend the effects of the Operation until he was definitively removed from the political scene (Neuenshwander & Giraldes, 2022). Therefore, what happened to Lula can be classified as *Lawfare*: we can observe in every step of the procedures that led to his conviction and imprisonment, a coordinated, finalistic and sometimes competitive action of centers of political, economic, media, judicial and military power.

The first instance case against former President Lula, involving the Guarujá triplex, was concluded in an emblematic time by Moro, around ten months. On the other hand, the appeal was also judged in a record time by the Federal Regional Court of the 4th Region (TRF4). According to Soares de Araujo and Santos (2020), such a process rapidity had never been seen in a judgment of a second degree appeal, especially in a case of such repercussion and complexity.

The speed related to Lula's conviction and subsequent imprisonment, according to Zanin et al. (2019), is linked to internal political factors: it enabled the rise and election of a political project in the 2018 general elections, that would have been difficult to be successful in a different scenario. Let us remind that the Judge Moro was an interest part of this political process, since it had been rewarded by Bolsonaro with the Ministry of Justice portfolio! The remarkable speed of Lula's process is also linked to external, geopolitical factors, in that all the wear and tear on the political universe represented by the former President, allowed Petróleo Brasileiro S. A and consequently all the assets it held to be offered to the international market. Consequently, all the assets it holds, especially in relation to the "pre-salt" oil field that had been discovered in 2006, could finally be offered to the international market.

One of the first acts of Michel Temer's government, following the political coup in Brazil, was Law No. 13,365 of November 29th, 2016. This law denied Petrobras to become the exclusive operator of the pre-salt reserves. Since then, the company's assets have been sold off without a bidding process and without respecting Brazilian legislation on mixed-economy companies. As it sold off many assets, Petrobras reduced its capacity to structure the country's production chain. Temer and Bolsonaro's business plans demonstrated a very short-term bias and ignored the essence of an integrated energy company that was counting on verticalization in a chain to balance its revenues (compensating for the inevitable variation in the price of oil and its derivatives). This was, indeed, essential to minimize the company's business risks. What resulted from those poor political decisions was the privatization of Petrobras, through slicing and dicing, that led to increasing costs for domestic consumers and restricted possibilities of the Brazilian economic actors in the global market.

Furthermore, still under the Temer and Bolsonaro governments, Petrobras' assets were sold at prices far below market prices[25]. This type of "sale" can be likened to the crime of selling stolen goods. Indeed, public assets have been illegally withdrawn from the public patrimony, without a bidding process. They were sold at a vile price, for less than their market value and without any public competition.

Until 2013, according to studies by the *Boston Consulting Group* (Fontes & Garcia, 2014), Petrobras was one of thirteen companies that Brazil had on the list of *global challengers*, i.e. multinationals with the capacity to take on other international giants (as well as JBS-Friboi, Marcopolo, Natura, Odebrecht, Brazil Foods, Magnesita, Votorantim and WEG).

We must understand that Petrobras is a company that produces two and a half million barrels of oil a day[26]. The value of this crude oil production alone is almost 50 billion dollars a year, at current prices. When *Car Wash* aims and accuses this company, it has an immense impact on Brazilian development, as well as it affects national sovereignty. It's no coincidence that *Car Wash* intensified its operations shortly after the discovery of the pre-salt layer.

The Brazilian geologist Guilherme Estrela[27], one of the responsible for the discovery of oil reserves in the pre-salt, says that this is not only important for oil production but is also rich in gas and raw materials for fertilizers. The FAO projects that, by the 2020s, Brazil will be one of the largest food producers on the planet. Nevertheless, Brazil is a fertilizer importer. It depends on foreign supplies to fulfill its full economic strength in this sector. In other words, the pre-salt was about to bring Brazil the possibility not only of energy security but also of self-

[25]https://www.brasildefato.com.br/2024/01/05/cgu-aponta-que-venda-de-refinaria-da-petrobras-foi-abaixo-do-preco.
https://istoedinheiro.com.br/preco-de-venda-da-eletrobras-e-15-vezes-menor-do-que-concorrentes-diz-instituto/.

[26]https://www.cnnbrasil.com.br/economia/macroeconomia/petrobras-registra-producao-media-de-21-mi-de-barris-de-petroleo-por-dia-no-2o-tri/. Production that was only resumed with the victory of Luís Inácio for the presidency of Brazil.

[27]https://ineep.org.br/guilherme-estrela-conta-historia-do-pre-sal-em-entrevista-a-nozaki/.

sufficiency in fertilizers, which would mean an extraordinary wealth for Brazil, and a greater national sovereignty in the face of global food market.

Therefore, along with the Brazilian contractors who were competing for markets in Africa with US construction companies, as Campos (2017) pointed out, Petrobras, especially due to the discoveries in the pre-salt oil field, was representative not only of the country's energy potential, but also of Brazil's role in a sovereign foreign policy in Latin America. In this context, control over the Brazilian state-owned oil company was essential to any foreign interest that considered as a threat a Brazilian leading role in the energy sector. Weakening the Brazilian sovereignty and international Brazil protagonism depended on destructuring, paralyzing and decapitalizing the state-owned oil company.

5. Final Considerations

The great legacy of *Car Wash*, and therefore a paradigm for the entire continent, is the emergence of "Lavajatismo" (*carwashism*) as a political and ideological current that is changing the political scene throughout Latin America. In short, the Lavajatistas (*carwash supporters*) identify the state and "politics" as the main promoters of corruption. Bringing together US legal doctrine, the demonization of popular sovereignty and the criminalization of state investment in social policies.

Even if *Car Wash* operation has gone into decline, "Lavajatismo" has not. In other words, the model for fighting corruption, along the lines of US jurisdiction, continues to be used and strengthened. So do the institutional and political bases for free intervention and formal and informal cooperation with US authorities. Until now, these have not even been questioned in Latin American countries, even after all the scandals revealed about the corruption schemes of *Car Wash* operation itself.

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Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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