

Authoritarian Federalism in its own right? The case of Brazil

By *Thilo Herbert**

Abstract: With the establishment of the military regime in Brazil in April 1964, the military achieved its long-standing objective of exerting lasting influence as a key political actor. Despite its commitment to “restore the rule of law” and fortify democratic institutions, the regime's use of Institutional Acts bypassed constitutional checks and judicial review. These Acts, evolving over time, reflected the evolution of authoritarian governance through extra-constitutional means. Despite occasional adherence to constitutional norms, the military's consolidation of power ultimately led to the establishment of a full-fledged military dictatorship, culminating in the Institutional Act No. 5, which effectively created an authoritarian constitution of its own. The federal structure of the country, however, persisted. Although it underwent continuous constraints imposed by the regime, it continued to coexist alongside this system of authoritarian constitutionalism. Through a delicate system involving the central government, ruling party and opposition party, governors, and state elites, federalism ultimately aided the regime in strengthening its authority. This article attempts to analyze this system. It reveals a nuanced dynamic wherein the military regime initially attempted to centralize authority by diminishing the influence of state elites through “technocratic” appointments. However, facing resistance and electoral setbacks, the regime adapted its strategy and reintegrated state elites into the political apparatus. Through clientelist practices and constitutional reforms, the regime forged alliances with local power brokers, consolidating its grip on power while preserving a façade of democratic legitimacy. The study underscores the intricate relationship between formal constitutional structures and informal power dynamics, illustrating how federalism became both a tool and a constraint in the military's authoritarian project.

Keywords: Authoritarian Constitutionalism; Federalism; Brazilian Dictatorship; Authoritarian Federalism

* Research Fellow and Ph.D. Candidate at the Chair for Public and Comparative Law, Humboldt University, Berlin (Germany). Email: thilo.herbert@hu-berlin.de. I would like to thank Evandro Süsskind and João Roriz for their helpful comments.

A. Introduction

Why does an authoritarian regime that is overtly hostile to reciprocal checks on its authority require a constitution? While similar questions had been posed already in the early decades of the 20th century,¹ it is only within the last ten to fifteen years that this specific field of research has come to the forefront of mainstream legal scholarship. Beginning in 2013 with a volume edited by Alberto Simpser and Tom Ginsburg,² a substantial body of research has emerged, exploring the complex role of constitutional law in authoritarian, illiberal, and populist regimes.³ Long associated solely with liberal democracies, emerging interventions – particularly by critical legal scholars⁴ – have emphasized that the employment of constitutional law by authoritarian leaders warranted a more nuanced understanding, surpassing the simplistic dismissals of “sham-constitutions”⁵ or “constitutions without constitutionalism.”⁶ Over the years, it has come to light that constitutions assume a distinctive function within the political framework of authoritarian regimes. These functions vary from legitimizing the regime’s authority to actively facilitating the consolidation and usurpation of power, thus serving as instrumental tools for such regimes.⁷ Despite ongoing criticism

1 For example, *Karl Loewenstein, Brazil under Vargas*, New York 1942, pp. 48 ff.

2 *Tom Ginsburg / Alberto Simpser* (eds.), *Constitutions in Authoritarian Regimes*, Cambridge 2013.

3 For example, *Mark Tushnet*, *Authoritarian Constitutionalism*, *Cornell Law Review* 100 (2015); *Uladzislau Belavusau / Aleksandra Gliszczynska-Grabias* (eds.), *Constitutionalism under Stress*, Oxford 2020; *András Sajó*, *Ruling by Cheating: Governance in Illiberal Democracy*, Cambridge 2021; *Bojan Bugarič*, *Populist Constitutionalism – Between Democracy and Authoritarianism*, in: Adam Czarnota, Martin Krygier, and Wojciech Sadurski (eds.), *Anti-Constitutional Populism*, Cambridge 2022; *Andrea Pozas-Loyo / Julio Ríos-Figueroa*, *Authoritarian Constitutionalism*, in: Conrado Hübner Mendes / Roberto Gargarella / Sebastián Guidi (eds.), *The Oxford Handbook of Constitutional Law in Latin America*, Oxford 2022; *Tamir Moustafa*, *Law and Courts in Authoritarian Regimes*, *Annual Review of Law and Social Science* 10 (2014).

4 *Roberto Niembro Ortega*, *Conceptualizing authoritarian constitutionalism*, *World Comparative Law* 49, (2016); *Jorge González-Jácome*, *From abusive constitutionalism to a multilayered understanding of constitutionalism: Lessons from Latin America*, *International Journal of Constitutional Law* 15 (2017); *Duncan Kennedy*, *Authoritarian constitutionalism in liberal democracies*, in: Helena Alviar García / Günter Frankenberg (eds.), *Authoritarian Constitutionalism: Comparative Analysis and Critique*, Cheltenham 2019; *Günter Frankenberg*, *Authoritarianism. Constitutional Perspectives*, Cheltenham 2020.

5 *David S. Law / Mila Versteeg*, *Sham Constitutions*, *University of California Law Review* 101 (2013).

6 *H.W.O. Okoth-Ogendo*, *Constitutions without Constitutionalism: Reflections on an African Political Paradox*, in: Douglas Greenberg / Stanley N. Katz / Steven C. Wheatley, *Constitutionalism and Democracy: Transitions in the Contemporary World*, Cary 1993.

7 For example, *Rosalind Dixon / David Landau*, *Abusive Constitutional Borrowing: Legal globalization and the subversion of liberal democracy*, Oxford 2021; *Günter Frankenberg*, *Authoritarian constitutionalism: coming to terms with modernity’s nightmares*, in: Helena Alviar García / Günter Frankenberg (eds.), *Authoritarian Constitutionalism: Comparative Analysis and Critique*, Cheltenham 2019.

of the concept,⁸ a decade of rigorous scholarship has established authoritarian constitutionalism as, in Günter Frankenberg's words, "a phenomenon in its own right."⁹

The evolution of the study of authoritarian constitutionalism is instructive as it illuminates the scholarly progress in dealing with a phenomenon that initially lay outside the bounds of established truths. Likewise, a similar trend is gradually emerging in an adjacent field, posing the potential to question long-held beliefs: the concept of authoritarian federalism. In a similar vein to "authoritarian constitutionalism," which explores the role of constitutionalism under authoritarian rule, "authoritarian federalism" denotes the effort of authoritarian regimes to manipulate the relationship between various levels of territorial authority for their benefit. Historically, the connection between federalism and authoritarianism has been either overlooked or dismissed.¹⁰ While a small body of research has recently emerged, primarily from political scientists with a rather programmatic focus,¹¹ in-depth case studies remain the exception¹² – particularly in constitutional scholarship. This lack of scholarly focus is somewhat unexpected, considering the numerous intersections of federalism, authoritarianism, and constitutionalism across diverse contexts.¹³

8 Martin Loughlin, *Against Constitutionalism*, Cambridge 2022, pp. 7 ff.

9 Frankenberg, note 7, p. 7.

10 For example, Ronald L. Watts, *Comparative reflections on federalism and democracy*, in: Michael Burgess / Alain- G. Gagnon (eds.), *Federal Democracies*, London 2010, p. 8; Ivo D. Duchacek, *Comparative federalism. The territorial dimension of politics*, New York 1970, pp. 335 ff.; William S. Livingston, *Federalism and Constitutional Change*, Oxford 1956, p. 310; Ivo D. Duchacek, *The Territorial Dimension of Politics: With, Among and Across Nations*, Boulder 1986, p. 96; Carl J. Friedrich, *Trends of federalism in theory and practice*, London 1968, p. 8.

11 Paolo Dardanelli et al., *Authoritarianism, democracy and de/centralization in federations: what connections?*, *Regional & Federal Studies* 33 (2023); Baogang He, *Democratization and Federalization in: Asia*, in: Baogang He / Brian Galligan / Takashi Inoguchi, *Federalism in Asia*, Cheltenham 2007; Arthur Benz, *Demokratisches Regieren im Föderalismus: Neue Literatur zu einem alten Thema*, *Neue Politische Literatur* 64 (2019); Arthur Benz / Sabine Kropp, *Föderalismus in Demokratien und Autokratien – Vereinbarkeiten, Spannungsfelder und Dynamiken*, *Zeitschrift für Vergleichende Politikwissenschaft* 8 (2014); Sabine Kropp, *The Ambivalence of Federalism and Democracy: The Challenging Case of Authoritarianism – With Evidence from the Russian Case*, in: Nathalie Behnke / Jörg Broschek / Jared Sonnicksen (eds.), *Configurations, Dynamics and Mechanisms of Multilevel Governance*, Cham 2019.

12 Ghazia Aslam, *Decentralization reforms in dictatorial regimes as a survival strategy: Evidence from Pakistan*, *International Political Science Review* 40 (2017); Katharine Adeney, *Democracy and federalism in Pakistan*, in: Baogang He / Brian Galligan / Takashi Inoguchi (eds.), *Federalism in Asia*, Cheltenham 2007; David Samuels / Fernando Luiz Abrucio, *Federalism and democratic transitions: The "New" Politics of the Governors in Brazil*, *Publius: The Journal of Federalism* 30 (2000); Rogerio Schlegel, *Dynamic de/centralization in Brazil, 1889–2020: The prevalence of punctuated centralization*, *Regional & Federal Studies* 33 (2022). William Case, *Semi-democracy and minimalist federalism in Malaysia*, in: Baogang He / Brian Galligan / Takashi Inoguchi (eds.), *Federalism in Asia*, Cheltenham 2007.

13 Consider only the historical past of nations like the United Arab Emirates, Yugoslavia, Nigeria, Pakistan, Malaysia, Venezuela, Ethiopia, and the Soviet Union, among others.

The primary reason for this blind spot is what I refer to as an implicit fallacy: the steadfast belief that federalism is functionally and symbiotically associated with, first, liberty¹⁴ and, second, democracy.¹⁵ There are many starting points to discuss and criticize this association, as has been done already, notably in the works of Patricia Popelier and Arthur Benz.¹⁶ This article will, however, confine itself to elaborating on one specific and perhaps overlooked reason: the conflation of federalism with liberal constitutionalism, as illustrated in the opening chapter of Michael Burgess and Alain-G. Gagnon's seminal volume on *Federal Democracies*. The authors argue that "while not all liberal democracies have federal governments, all cases of genuine federal states are founded upon liberal democratic constitutionalism."¹⁷ Following this line of thought, federalism must be understood as a subcategory of liberal constitutionalism, implying that authoritarian constitutional states cannot, by definition, embody federalism. In a similar vein, Ronald Watts argues for a conflation of federations and liberal democracies. He asserts that, since a federation is a constitutional form of government that distributes political and legal powers among several territorial decision-making entities, regimes that "nominally have a constitution but that are in reality authoritarian [...] are incompatible with federal governance."¹⁸ According to this perspective, federalism inherently presupposes liberal constitutionalism, which is inherently democratic. Thus, federalism is considered democratic due to its intrinsic alignment with constitutionalism.

This article seeks to confront this somewhat circular argument by offering some in-depth insight into the relationship between authoritarianism, constitutionalism, and federalism. To do this, it will examine the constitutional history of Brazil, a country where

14 For an overview on this matter see *John Kincaid*, Values and Value Tradeoffs in Federalism, *Publius: The Journal of Federalism* 25 (1995), pp. 36-38; *Jaroslav Kantorowicz*, Federalism, in: Roger D. Congleton / Bernard Grofman / Stefan Voigt (eds.), *The Oxford Handbook of Public Choice*, Volume 2, Oxford 2019, pp. 76 ff.; *Daniel Treisman*, *The Architecture of Government: Rethinking Political Decentralization*, Cambridge 2007, pp. 194-98.

15 For an overview on this matter see *Michael Burgess*, In Search of the Federal Spirit: New Comparative Empirical and Theoretical Perspectives, Oxford 2012, pp. 269-72; *Michael Burgess*, The penumbra of federalism, in: John Loughlin / John Kincaid / Wilfried Swenden (eds.), *Routledge Handbook of Regionalism & Federalism*, London 2013, pp. 45 ff.; *Ronald L. Watts*, Comparing federal systems, Montreal 2008, pp. 7, 192-200; *Daniel J. Elazar*, *Exploring federalism*, Tuscaloosa 1987, pp. 84-104.

16 *Patricia Popelier*, Federalism and Democracy. The Need for a Differentiated Approach, in: M. J. Vinod et al. (eds.), *Cooperative Federalism in South Asia and Europe. Contemporary Issues and Trends*, London 2023, pp. 20-32; *Patricia Popelier*, Dynamic Federalism: A New Theory for Cohesion and Regional Autonomy, Milton 2022, pp. 83-43; *Arthur Benz* / *Jared Sonnicksen*, Federalism and Democracy: Compatible or at Odds with One Another? Re-Examining a Tense Relationship, in: Cristina Fraenkel-Haeberle et al. (eds.), *Citizen Participation in Multi-level Democracies*, Leiden 2015, pp. 18 ff.; *Arthur Benz*, *Föderale Demokratie: Regieren im Spannungsfeld von Interdependenz und Autonomie*, Baden-Baden 2020, pp. 48, 80-90; *Arthur Benz*, note 11, p. 521.

17 *Michael Burgess* / *Alain-G. Gagnon*, Introduction: federalism and democracy, in: Michael Burgess / Alain-G. Gagnon (eds.), *Federal Democracies*, London 2010, p. 9.

18 *Watts*, note 10, p. 343.

these three concepts have emerged at regular intervals – and sometimes simultaneously – throughout the 20th century. As an inquiry into the entire century is outside the scope of this article, it will focus on the first fifteen years of the military dictatorship, which was a short but instructive period of Brazilian authoritarianism. The article is divided into two parts: The first part delves into the constitutional “engine room” of the military regime. It will show that the military operated through a distinct system of authoritarian constitutionalism blending elements of “extra-constitutionality” and “parallel constitutionalism.” Against this background, the second part of the article has two objectives: First, it will attempt to show that federalism did, indeed, continue to exist in the Brazilian authoritarian context. Second, it will elaborate on how the military regime attempted to utilize the country’s federal structure through constitutional means to advance its own agenda.

B. The Authoritarian Engine Room

In April 1964, the Military High Command seized state power in Brazil. This *coup d’état* differed from previous interventions by the military in the nation’s historical timeline in that it led to the establishment of a permanent military regime. No longer a transformative but temporary phenomenon,¹⁹ the military achieved its long-held goal of exerting long-term influence as a political actor.²⁰ From the outset, it demanded that “the revolution must be permanently institutionalized.”²¹ The manner in which this institutionalization unfolded was somewhat remarkable. As we will come to see, a central pillar of the military’s legitimacy was its performative commitment to “restore the rule of law,” while also aiming to fortify “threatened democratic institutions.”²² Accordingly, the High Command intended to “show that we do not intend to radicalize the process of the revolution” and, therefore, “decided not to suspend the Constitution of 1946.”²³ This constitution, however, was a liberal document in every respect. It safeguarded fundamental rights,²⁴ mandated free, direct, and secret elections for the National Congress and the President and limited the presidential term of office to five years, without the possibility of immediate re-election.²⁵ Particularly relevant for this study, it also guaranteed local self-government,²⁶ and established a system of concurrent and exclusive powers for the Union and the twenty states. In

19 See the regular, though only short interventions in Brazilian politics in 1889, 1930, 1937 and 1945.

20 José Murilo de Carvalho, *Forças Armadas e Política no Brasil*, Rio de Janeiro 2005, p. 134.

21 Preamble to Institutional Act No. 1 of 9 April 1964.

22 Maria Helena Moreira Alves, *State and Opposition in Military Brazil*, New York 1985, p. 31.

23 Ibid.

24 Art. 141 Constitution of the United States of Brazil of 24 September 1946, with particular reference to freedom of expression (§ 5) and freedom of association (§ 12).

25 Art. 37, 82 Constitution of the United States of Brazil of 24 September 1946.

26 Art. 28 Constitution of the United States of Brazil of 24 September 1946.

subsequent years, two more states – Guanabara and Acre – were added.²⁷ On the surface, the High Command thus appeared to subordinate itself to a democratic, pluralist, and federal constitutional model. In fact, however, the constitution was to be “supplemented” when the interests of “national security” demanded it.²⁸

These “supplements” were based on so-called “Institutional Acts” (*Atos Institucionais* – “AI”). These were sets of rules that included clauses through which the military conferred varying degrees of authority upon the governments they entrusted. The enactment of the Institutional Acts rested solely with the Military High Command without any involvement from Congress, making them exempt from the checks imposed by the 1946 Constitution and immune to judicial review. The Institutional Acts were a characteristic feature of the military’s authoritarian constitutional engine room. As they evolved over time, they reflected the historical evolution of authoritarian governance in the country.

Broadly, four different phases of military rule can be identified: The first phase spanned from the 1964 *coup d’état* to December 1968. It included the three-year term of Humberto de Alencar Castelo Branco (until March 1967) and the first two years of Artur da Costa e Silva’s term of office (1967-1968). This period was characterized by the issuance of Institutional Act No. 1 and the enactment of the 1967 Constitution. It marked a shift of power from more moderate generals to those who demanded tougher measures against the opposition.²⁹ The second phase lasted from December 1968 to March 1974, often referred to as the “Years of Lead” (*anos de chumbo*) due to the intensification of political repression against the opposition. This period coincided with Brazil’s economic upswing and included the last months of General Costa e Silva’s presidency – cut short by illness in August 1969 –, the transitional rule of Augusto Rademaker, who governed the country for two months, and the presidency of General Emílio Garrastazu Médici (1969-1974). During this period, Institutional Acts No. 5 and No. 6 were enacted. The third phase began with the presidency of Ernesto Geisel in March 1974. Geisel came to power with the plan of a slow, gradual political opening (*abertura*), signaling the beginning of the regime’s transition away from strict authoritarianism. In the fourth phase of military rule, João Baptista Figueiredo (1979-1985) continued the process of political opening, which ended in March 1985 with the transfer of power to Tancredo Neves,³⁰ a civilian (albeit not democratically elected) president. The constitutional engine room of the military regime, which this subsection examines, primarily developed during the first two phases. The following sections will therefore focus on these periods.

27 Art. 5-36 Constitution of the United States of Brazil of 24 September 1946.

28 *Nina Schneider*, *Legitimizing an Authoritarian Regime*, Gainesville 2019.

29 *Leslie Bethell / Celso Castro*, *Politics in Brazil Under Military Rule, 1964-1985*, in: Leslie Bethell (ed.), *The Cambridge History of Latin America: Volume 9: Brazil since 1930*, Cambridge 2008, p. 168.

30 Tancredo Neves fell ill the day before taking office and subsequently died, after which his running mate José Sarney became president.

I. Transfer of Power: Institutional Act No. 1

The military government's constitutional engine room began operating with the enactment of the Institutional Act No. 1 (AI-1) by the High Command on 9 April 1964. This regulation encompassed three categories: First, an expansion of the powers of the President at the expense of Congress (Art. 3-6); second, restrictions on opposition activity (Art. 7 and 8); and third, indirect but effective influence on the country's political system in general (Art. 10 and 2).

In the first category, Article 4 stands out as it established the legal framework for a procedural mechanism known as *decurso de prazo* ("lapse of time"). Essentially, this meant that military decrees would automatically be approved by Congress unless decided otherwise within thirty days. This automatic approval held particular significance, as the pro-government party *União Democrática Nacional* (UDN) could use simple filibustering tactics to guarantee the passage of any bill deemed "urgent" by the executive.³¹ Article 5 further granted the executive exclusive authority over financial and budgetary legislation, while Article 6 empowered the President to decree a state of emergency. Congress was limited to either accepting or rejecting this measure within thirty days. It thus became evident that these provisions redefined the balance of power, markedly strengthening the presidency. However, since the 1946 Constitution remained in force, the separation of powers was not abolished. While AI-1 effectively modified the constitutional order, it did not assert normative supremacy over it.

Articles 7 and 8 laid the foundation for measures in the second category. Article 7 suspended the "constitutional and legal guarantees for public servants for a period of six months."³² Following a "summary enquiry," members of the government or military personnel could be "dismissed by decree of the armed forces [...] or placed on early retirement." This provision enabled the military to enforce political conformity with Castelo Branco's government within its own ranks.³³ By the end of military rule, around 3,000 to 5,000 people were affected by political purges with around half of them being members of the military.³⁴ Article 8 extended this control to the civilian opposition. The provision established a "special official interest" in investigating citizens who "commit a crime against the state, its property, the public or social order or participate in revolutionary acts of war." It thus provided the legal basis for the notorious special investigations by the military

31 *Alves*, note 22, p. 33. The three major parties were the *Partido Trabalhista Brasileiro* ("PTB"), the *União Democrática Nacional* ("UDN") and the *Partido Social Democrático* ("PSD"). The PTB represented the legacy of Getúlio Vargas, the PSD distanced itself from his policies but emerged from the leadership circle of the Estado Novo, while the UDN developed from the opposition to Vargas.

32 Art. 7 Institutional Act No. 1 of 9 April 1964, which also addressed municipal employees. See Art. 7, Para. 2 Institutional Act No. 1 of 9 April 1964.

33 *Alves*, note 22, p. 33. A judicial review of these measures was only possible in exceptional cases. Cf. Art. 7, Para. 4 Institutional Act No. 1 of 9 April 1964.

34 *Bethell / Castro*, note 29, p. 172.

police, the *Inquérito Policial Militar* (IPM), which led to the arrest of around 50,000 people in the first few months after the coup.³⁵ As the AI-1 did not provide for any rules of evidence or other procedural regulations for these cases, the military police thereby evaded legal supervision.³⁶

The most lasting influence on Brazil's political system, however, was exerted by Articles 10 and 2, which were enforced together: Article 10 enabled the High Command to cancel the electoral mandates of federal, state, and municipal representatives by decree (*cassação de mandato*). It also granted the military power to suspend the political rights of citizens for a decade, thereby depriving them of the right to vote and stand for election or engage in political parties. The drastic effects of this regulation became apparent when, just one day after its promulgation, a list was published naming more than 100 individuals whose mandates were canceled or whose political rights were revoked.³⁷ This, in turn, impacted the composition of the National Congress, leading to a shift in voting ratios. Of the three parties that together held over 80 percent of the seats in the National Congress elected in October 1962, the *Partido Trabalhista Brasileiro* (PTB), the party of former President João Goulart, suffered the heaviest losses. A total of eighteen of its 116 federal deputies were on the first list of forcibly retired officials whose political rights were withdrawn (*cassados*).³⁸ In contrast, the *Partido Social Democrático* (PSD), which had largely supported the coup, only lost three of its 118 MPs,³⁹ while the UDN, which had unreservedly supported the coup, remained entirely unscathed.⁴⁰

By exerting influence over the distribution of seats in Congress, Article 10 facilitated the implementation of Article 2, which outlined the procedures for transferring executive power from the High Command to the President. The President was not to be elected directly but through the now purged Congress.⁴¹ As a result, on 11 April 1964, General Castelo Branco was elected unopposed. In Congress, which now comprised 388 members – 326 members of the Chamber of Deputies and 62 senators – 361 voted in favor of Castelo Branco. This included all UDN and PSD deputies, as well as more than seventy members of the PTB.⁴² This marked the completion of the transfer of power from the High Command to a coalition of military and civilian actors.

35 Alves, note 22, p. 33, 37.

36 The *habeas corpus* principle continued to apply, although the military also found ways of circumventing it. *Ibid.*, p. 37.

37 This first list also included two former presidents, João Goulart and Jânio Quadros. Bethell / Castro, note 29, p. 172.

38 *Ibid.*

39 Alves, note 22, p. 39.

40 *Ibid.*

41 *Ibid.*, p. 34.

42 Bethell / Castro, note 29, p. 172.

II. (Extra-)Constitutionality as a Structural Feature of the Engine Room

Article 10 and Article 2 held significance because both norms clarified the relationship between AI-1 and the Constitution of 1946: Article 10 stated that, in the interests of “social peace,” the AI-1 was “not subject to the limitations of the Constitution [of 1946],”⁴³ thereby placing the AI-1 outside the scope of the 1946 Constitution. Article 2, however, imposed a time limit on Castelo Branco’s term of office (ending on 31 January 1966) and, in conjunction with Article 9, aligned it with the electoral calendar provided for in the Constitution.⁴⁴ A new President was to be elected on 3 October 1965 by direct popular vote and at a time when the election of eleven of the governors of the twenty-two states was also to take place.⁴⁵ Additionally, Article 11 limited the validity of the AI-1 itself to the date specified in Article 2.⁴⁶ This intertwined system highlights a distinctive aspect of Brazilian military rule during the “first phase”: On the one hand, the President was granted extensive powers, opposition activities were severely restricted, and the country’s political system was restructured based on extra-constitutional grounds. On the other hand, the 1946 Constitution remained in place, political parties and opposition groups were not outlawed, and scheduled elections were not cancelled. Despite undergoing purges, Congress retained its legislative role and the judicial system continued to function. Institutional Act No. 1 thus enabled the President to govern in a dominant but not unrestricted manner on an extra-constitutional basis, the temporal boundaries of which, it seemed, he accepted. In his inaugural address to Congress, Castelo Branco pledged to hand over power in January 1966 to his “successor duly elected by the people in free elections.”⁴⁷ The existing constitutional order of 1946 thus continued to be the guiding principle.⁴⁸

Within the High Command, however, this affirming stance on the constitutional order of 1946 faced controversy and ongoing negotiations. While President Castelo Branco appeared willing to accept the constitutional constraints on his authority, more conservative factions within the corps remained skeptical. They believed it was premature to declare the “revolution” complete and return to “normalcy.” These factions pushed to prolong the suspension of political rights, delay the upcoming gubernatorial elections, and extend Castelo Branco’s mandate beyond January 1966.⁴⁹ Ultimately, they succeeded: In July of the same year, Congress passed a constitutional amendment prolonging the presidential term from 31 January 1966 to 15 March 1967, postponing the next presidential elections

43 Art. 10 Institutional Act No. 1 of 9 April 1964.

44 Art. 21 Constitutional Amendment Act No. 1 of 2 September 1961.

45 *Bethell / Castro*, note 29, p. 172.

46 Art. 11 Institutional Act No. 1 of 9 April 1964.

47 Quoted from *Bethell / Castro*, note 29, p. 172.

48 On the legitimate question of why the military cloaked itself not only in a democratic but also in a legalistic guise, see the authoritative study by *Anthony W. Pereira*, *Political (In)Justice: Authoritarianism and the Rule of Law in Brazil, Chile, and Argentina*, Pittsburgh 2005.

49 *Bethell / Castro*, note 29, p. 176.

by more than a year.⁵⁰ The justification cited was Castelo Branco's insufficient time to implement necessary political reforms and the government's economic program aimed at reducing inflation and fostering economic growth.⁵¹ And yet, while Castelo Branco conceded to the extension of his presidential term, he resisted pressure regarding the upcoming gubernatorial elections and pledged to adhere to the established timetable for 3 October 1965.

This decision sparked a significant political crisis, as in the elections, UDN candidates endorsed by the regime suffered heavy defeats in four out of ten states. This included Guanabara and Minas Gerais, two states which had previously been governed by UDN politicians strongly supportive of the coup. Viewing these opposition victories as a "threat to the revolution" and fearing the resurgence of "corrupt politicians" whom they believed had brought Brazil to the brink of a "communist takeover,"⁵² conservative voices in the High Command advocated for intensified political repression.⁵³ As a result, on 27 October 1965, President Castelo Branco issued another rule of exception in the form of Institutional Act No. 2 (AI-2), with its validity limited to 15 March 1967. The "return to normalcy" was, therefore, postponed.

In addition to provisions aimed at restricting the competencies of the Supreme Court,⁵⁴ the AI-2 comprised two key aspects: controlling the functioning of Congress and reorganizing political representation. The first aspect included three measures: Article 2 reduced the number of votes required for the adoption of a constitutional amendment introduced by the executive from a two-thirds majority to a simple majority. Furthermore, both the *decurso de prazo* and the *cassação de mandato* were retained.⁵⁵ In addition, Article 31 granted the President the authority to temporarily close Congress and the state and municipal parliaments. During such periods, the executive branch was empowered to legislate on all matters.

The second aspect set entirely new standards, marked by the abolition of existing political parties and the imposition of stringent requirements for the formation of new ones:⁵⁶ From now on, establishing a party required the endorsement of at least 120 deputies and 20 senators out of 475 total members of Congress. As 257 deputies and 45 senators joined

50 Ibid.

51 *Alves*, note 22, p. 50.

52 Quoted after *Thomas E. Skidmore*, *Politics and Economy Policy Making in Authoritarian Brazil, 1937-1971*, in: Alfred Stepan (ed.), *Authoritarian Brazil. Origins, Policies and Future*, New Haven 1973, p. 8.

53 *Philippe C. Schmitter*, *The "Portugalisation" of Brazil?*, in: Alfred Stepan (ed.), *Authoritarian Brazil. Origins, Policies and Future*, New Haven 1973, p. 210.

54 Art. 6, 8, 14, 19 Institutional Act No. 2 of 27 October 1965.

55 Art. 15 Institutional Act No. 2 of 27 October 1965.

56 See Article 18 of Institutional Act No. 2 of 27 October 1965, which also made the creation of new parties subject to the requirements of Supplementary Act No. 4, which was passed by Congress on 20 November 1965.

the newly founded governing party – the *Aliança Renovadora Nacional* (ARENA) – it was only possible to effectively form one more party.⁵⁷ As a result, 149 deputies and 20 senators formed the opposition party *Movimento Democrático Brasileiro* (MDB).⁵⁸ It is important to note that the military’s creation of an “opposition party” was not a contradiction but a deliberate strategy. As we will see in Part C, its purpose was to performatively confront the government with “democratic criticism,”⁵⁹ allowing the regime to maintain the appearance of pluralism while consolidating power. This highlighted the regime’s need for democratic recognition both domestically and internationally.

III. The 1967 Constitution

The civil-military coalition thus faced a dilemma between the unconditional preservation of power on the one hand and the pursuit of democratic legitimacy on the other. This conceptual duality within the “revolutionary project” was mirrored in the division between two political movements within the corps: On one side was a moderate faction (*moderados*), which tended to be more democratic, legalistic, and inclined towards a constitutional order. On the other side were the so-called “hardliners” (*linha dura*), who prioritized maintaining control at any cost.

Against this background, it becomes clear why the frequent enactment of extra-constitutional provisions was met with disapproval from moderate forces, including President Castelo Branco. Measured against the revolutionary ideals of the 1964 coup (“democracy”, “rule of law”), the exceptional powers granted to the regime by the Institutional Acts were expected to be subject to clear temporal and constitutional limits. The fact that the military had ruled exclusively by extra-constitutional means since the coup presented the *moderados* with a credibility problem.

This prompted Castelo Branco to take an unforeseen step. At his behest, every provision established by the military in the Institutional Acts since April 1964, was consolidated in a new constitutional document and thus stripped of its exceptional character. Congress approved this initiative on 24 January 1967, binding the military’s “revolutionary project” to formal constitutional standards. With this move, Castelo Branco followed two objectives: For one, he hoped that it would enhance the government’s legitimacy. For another, it was prompted by the outcome of the presidential election on 3 October 1966, in which Costa e Silva – a staunch supporter of the radical conservative faction – was elected.⁶⁰ His election not only gave the Castelo Branco government cause for concern that the economic

⁵⁷ *Alves*, note 22, p. 65.

⁵⁸ *Bethell / Castro*, note 29, p. 178.

⁵⁹ *Paul Cammack*, *Clientelism and Military Government in Brazil*, in: Christopher Clapham (ed.), *Private Patronage and Public Power: Political Clientelism in the Modern State*, London 1982, p. 64.

⁶⁰ *Skidmore*, note 52, p. 11.

reforms he had introduced would be discontinued.⁶¹ Castelo Branco also feared that Costa e Silva would retain the expansion of executive powers through the Institutional Acts – and thereby prevent the return to the constitutional order of 1946 that the moderate forces were initially striving for.⁶² From Castelo Branco's perspective, the new Constitution thus served as a tool to place his successor's presidency on a constitutional footing from the outset.⁶³ This duality between "conservative" and "moderate" forces within the military corps thus revealed varying degrees of constitutional commitment. While one side sought to uphold a constitutional order, the other side demanded unrestricted political freedom based on extra-constitutional grounds.

IV. "Parallel-Constitutionalism": Institutional Act No. 5

By late 1968 it had become evident that the moderates had failed to limit President Costa e Silva's power. A key event played a significant role: On 2 September, Márcio Moreira Alves, a young congressman from Guanabara, expressed his concerns about the political repression in the country. In a highly publicized speech in Congress, he attacked the military head-on: "When will the military stop shooting people in the street? [...] When will the army stop being a haven for torturers?"⁶⁴ Alves concluded his speech with a call to boycott the annual Independence Day celebrations planned for 7 September. In response, the government sought to revoke Alves' parliamentary immunity, invoking Article 51 of the 1967 Constitution.⁶⁵ However, on 12 December, the majority of Congress members rejected the motion, voting to protect their colleagues by 216 votes to 136.⁶⁶ This outcome suggested that even ARENA members opposed the motion, challenging the idea that ARENA functioned solely as an extension of the regime. Consequently, in conservative circles, this vote was interpreted as a loss of control. The following day, President Costa e Silva placed the armed forces on alert and issued Institutional Act No. 5 (AI-5).⁶⁷

Unsurprisingly, the AI-5, like its predecessors, concentrated powers in favor of the executive branch. In some respects, the act aligned with the provisions of the 1967 Constitution, while in others, it introduced significant deviations. The most important elements of the AI-5 included the power to dissolve the National Congress⁶⁸ – a measure which Silva

61 In their eyes, the economic nationalism propagated by Silva would lead to a resurgence of inflation *Ibid.*, *The Politics of Military Rule in Brazil, 1964-85*, New York 1993, p. 69.

62 *Ibid.*

63 *Ibid.*

64 Márcio Moreira Alves quoted from *Bethell / Castro*, note 29, p. 186.

65 *James N. Green / Victoria Langland / Lilia Moritz Schwarcz* (eds.), *The Brazil Reader. History, Culture, Politics*, Durham / London 2019, p. 49.

66 *Skidmore*, note 52, p. 14.

67 *Ibid.*

68 Article 2 Institutional Act No. 5 of 13 October 1968.

exercised immediately after enacting the provision.⁶⁹ The act also authorized the executive to annul electoral mandates,⁷⁰ suspend the right to vote and stand for election of certain citizens for ten years,⁷¹ dismiss judges,⁷² and declare a state of emergency.⁷³ Additionally, the AI-5 provided for the option of suspending the principle of *habeas corpus* in cases involving “political crimes” and excluded legal remedies in corresponding proceedings before military courts.⁷⁴ However, the most significant feature of the AI-5 was *not* stated in the text: In contrast to the previous Institutional Acts, the AI-5 was not subject to any temporal limits but was to remain in force until the President signed a decree expressly repealing it.

This marked the distinct legal nature of the act. Unlike its predecessors, the AI-5 did not exist *outside* the existing constitutional framework established by the 1967 Constitution but operated *alongside* it. It did not comprise extra-constitutional (though temporally limited) grounds for the exercise of power but instead formed a parallel authoritarian constitution in its own right. The regime’s response to the moderate wing’s ongoing call for “constitutional restoration” was, therefore, to craft a constitutional document tailored to its own political objectives. Authoritarian constitutionalism, one might argue, evolved from extra-constitutionality to a form of parallel constitutionalism. As the AI-5 effectively dismantled the horizontal separation of powers and signified the peak of state repression,⁷⁵ this indicated that the constitutionalization of military rule went hand in hand with the deepening of authoritarianism. To borrow the words of *Juan Linz*, the regime’s nature and appearance shifted from an “authoritarian situation” to a full-fledged military dictatorship.⁷⁶ This development, however, raises the question of what transpired at the vertical level. How

69 *Schmitter*, note 53, p. 210.

70 Article 4 Institutional Act No. 5 of 13 October 1968.

71 Article 5 Institutional Act No. 5 of 13 October 1968.

72 Article 6, paragraph 1, Institutional Act No. 5 of 13 October 1968.

73 Article 7 Institutional Act No. 5 of 13 October 1968. Although this point was also included in the 1967 Constitution, it only allowed recourse to the state of emergency under certain restrictions. See Article 155 of the Constitution of 24 January 1967 in the version of Constitutional Amendment No. 1 of 17 October 1969.

74 The STF could therefore no longer be called upon in these cases, see Article 10 Institutional Act No. 5 of 13 October 1968.

75 During its ten-year period, the AI-5 served as the basis for the political persecution of more than 1600 civilians. In addition, the electoral mandates of 113 deputies and senators and 30 mayors were revoked. A report published in 2014 by the Brazilian Truth Commission (*Comissão Nacional da Verdade*) revealed the broader scope of the regime’s human rights violations. It recorded 8,341 victims across the indigenous people, 6,491 persecuted military officers and 10,000 people that were forced into exile. In addition, 7,367 people were persecuted by military courts, and 4,862 people had their political rights suspended. See *Emilio Peluso Neder Meyer*, *Constitutional Erosion in Brazil*, London 2021, p. 34.

76 *Juan Linz*, *The Future of an Authoritarian Situation or the Institutionalisation of an Authoritarian Regime: The Case of Brazil*, in: Alfred Stepan (ed.), *Authoritarian Brazil. Origins, Policies, and Future*, New Haven 1973, p. 235.

was the federal system affected by the subsequent employment of “extra-constitutionality” and “parallel constitutionalism”? Did it offer any resistance to military dictatorship, or did it prove to be conducive to it?

C. The Persistence of the “Underside of the State”: Federalism and the Military

To address these questions, it is necessary to revisit the year 1965. As mentioned above, gubernatorial elections were held in ten states on 3 October. In these elections, opposition forces secured victories in four states, exposing the military’s political vulnerability. To maintain political control, President Castelo Branco enacted the AI-2, with the objective of replacing the existing political parties at national, state, and municipal levels with a two-party system. However, this measure did not fully resolve the issue, as according to the 1946 Constitution, gubernatorial elections were still scheduled for the following year in those eleven states where no elections had taken place in October 1965. Within the military corps, it was widely agreed that winning these upcoming elections was imperative.

1. *The “Democratic Dilemma” and Clientelist Continuities: The Institutional Act No. 3*

In light of this context, the Branco government issued Institutional Act No. 3 (AI-3) on 3 February 1966. Unlike previous measures, the AI-3 did not address the political system in a horizontal sense but instead altered the vertical separation of powers outlined in the 1946 Constitution in that it replaced direct popular elections for gubernatorial positions with an indirect voting system.⁷⁷ Under this new system, governors would be elected solely by state parliaments from a pool of three candidates, requiring a simple majority vote. A crucial aspect of this reform was the requirement that candidates receive approval from the central government.⁷⁸ Typically, the candidate pool included at least one representative from ARENA and at least one representative from MDB. This significant shift in electoral modalities was supplemented by two additional measures: first, the ongoing practice of canceling the electoral mandates of federal, state, and municipal representatives by decree (the High Command justified these targeted political purges as necessary measures to maintain control over the state parliamentarians); second, a mandate for strict party loyalty among ARENA and MDB parliamentarians, prohibiting them from supporting candidates of the opposing party in gubernatorial or presidential elections.⁷⁹ Since parliamentarians

77 Art. 1 Institutional Act No. 3 of 3 February 1966.

78 *Tulia G. Falleti*, *Varieties of Authoritarianism: The Organization of the Military State and its Effects on Federalism in Argentina and Brazil*, *Studies in comparative international development* 46 (2011), p. 148.

79 Cf. Supplementary Law No. 19 from 1966.

were responsible for electing governors, this system was designed to provide the regime with unrestricted influence over the selection process.⁸⁰

In combination, these measures had a significant effect: In the 1966 elections, ARENA candidates secured a total of 56.6 percent of the valid votes for the Senate and 64 percent for the Chamber of Deputies, while the MDB garnered 43.4 and 36 percent respectively.⁸¹ The disparity was even more pronounced in state parliamentary elections, where ARENA received 64.1 percent of the valid votes compared to 35.8 percent for the MDB.⁸² Consequently, all eleven gubernatorial positions were won by ARENA candidates,⁸³ ensuring that the central government retained effective control over the political process.⁸⁴ In 1972, President Médici further solidified this system, by extending it to the 1974 elections.

The formal transfer of competencies in favor of the state parliaments may appear contradictory at first. At the very least, it raises the question of why the AI-3 was enacted in the first place – could the regime not have exerted just as much influence over direct popular elections? One explanation lies in the performative commitment to democracy inherent to military rule. While the military could influence popular elections, its self-presentation as democratic barred it from outright banning them. Accordingly, while the likelihood of ARENA facing electoral defeat could be reduced, it could not be completely eliminated. This dialectical tension in the regime’s democratic self-image extended to the opposition party, MDB, as well: On the one side, the MDB could not be banned outright, as its existence served to legitimize the regime. On the other side, it evolved – contrary to its intended role – into a significant political competitor, posing a genuine threat to the military government’s grip on power.⁸⁵ This “democratic dilemma” explained the rationale behind the AI-3: Shifting the power to elect governors to state parliaments ensured greater control over the selection process while avoiding the credibility problems that would have arisen from manipulating or outright banning direct popular elections.⁸⁶

1. Skepticism towards the AI-3

However, the AI-3 was not without controversy. Within the military, doubts emerged regarding whether the governors’ dependence on state parliamentary majorities would con-

80 As a result, the MDB lost a total of seven members in Congress and 38 members in the state parliaments. *Samuels / Abrucio*, note 12, p. 48.

81 *Bolívar Lamounier / Octavio Amorim Neto*, Brazil, in: Dieter Nohlen (ed.), *Elections in the Americas: a Data Handbook: Volume 2 South America*, New York 2005, p. 194, 211.

82 *Alves*, note 22, p. 73.

83 *Bethell / Castro*, note 29, p. 181.

84 *Tulia G. Falleti*, *Decentralization and Subnational Politics in Latin America*, New York 2010, p. 157.

85 See also *Alves*, note 22, p. 9.

86 *Ibid.*, p. 70.

tinue to provide adequate control over their election process in the future.⁸⁷ One frequent argument was that the candidates running for election could exert more influence over state parliamentary majorities than the military itself, thus significantly affecting the outcome of the ballot.⁸⁸ This concern becomes clearer when one considers the clientelist structure of Brazil's political system, in which the so-called "state elites" played a central role. Historically, both during the "Old Republic" (1889-1930) and the *Estado Novo* (1937-1945), this group had resisted centralization efforts by the national government. As U.S.-American political scientist Frances Hagopian illustrated in her authoritative work on Brazil's political clientelism, the political strength of the state elites endured into the post-1945 era, and also became apparent under military rule.⁸⁹ Hagopian's research focused on the concept of the "political elite", which she defined by two characteristics: first, its members either held elected office at the municipal, state or national level, were leading figures in political parties at the state level, or maintained family connections to people who held such positions;⁹⁰ second, this elite differed from other forms of social elitism – such as the military⁹¹ – in that it operated not through formal, hierarchical structures, but through clientelist networks and informal exchanges of favors.⁹² This system extended to state levels, where political support translated in government positions or material benefits, ensuring that state affairs were controlled by a small, closed circle of politicians.⁹³ This elite network was largely inaccessible to the military, complicating its ability to exert influence over gubernatorial elections and raising questions about the long-term efficacy of the AI-3 as a control mechanism.

Given this context, the widespread skepticism surrounding the effectiveness of the AI-3 becomes clearer. Critics questioned the regime's ability to sway parliamentarians to favor military-backed candidates over those with long-standing allegiance to the political elites.⁹⁴ The prevailing presumption was that, in cases of uncertainty, loyalty conflicts between the clientelist network and the regime would typically favor the former. Therefore, it could not be ruled out that candidates perceived as unfavorable by the military might still ascend to

87 *Samuels / Abrucio*, note 12, p. 49.

88 *Ibid.*

89 *Frances Hagopian*, *Traditional Politics and Regime Change in Brazil*, Cambridge 1996.

90 *Ibid.*, p. 17.

91 Bryan Pitts, in his most recent study examining the "political elite" during military rule, highlighted this mutual rejection. Building on Hagopian's work, he emphasized two key distinguishing features. First, the gap between the political elite and the military stemmed from their class affiliations: the political elite typically belonged to higher social classes than the military. Second, the two groups were at odds due to their differently justified claims to power. *Bryan Pitts*, *Until the Storm Passes. Politicians, Democracy, and the Demise of Brazil's Military Dictatorship*, Berkeley 2023, pp. 5 ff.

92 *Hagopian*, note 89, p. 18.

93 *Ibid.*

94 *Samuels / Abrucio*, note 12, p. 49.

governorships. This fear was realized in 1978, when members of ARENA in parliament rejected the regime-appointed gubernatorial candidate. Instead, they opted for Paulo Maluf, the former mayor of São Paulo, highlighting the limits of the regime's control over its own political apparatus.⁹⁵

2. Continuing Influence of the Governors

The governors' dependence on state parliamentary majorities, however, underscored only one of the issues with the implementation of AI-3. Equally contentious was the regime's decision to convert gubernatorial elections to indirect parliamentary votes, while maintaining direct elections for all other offices in the country. Citizens could still directly elect members of parliament at both national and state levels, as well as senators and mayors.⁹⁶ This placed the central government in a difficult position. From the perspective of its conservative critics, it could not be ruled out that the governors, once appointed, might use their position to support opposition candidates in the remaining direct elections. This, in turn, increased the likelihood of another electoral defeat.⁹⁷

Hagopian's study substantiated this claim through a detailed micro-study of the state of Minas Gerais. She demonstrated that from the mid-1950s to the late 1970s, a small group of politicians entrenched in a long-standing system of patronage and nepotism dominated the state's political system.⁹⁸ Subsequent studies made similar observations in other states, reinforcing her conclusions.⁹⁹ Hagopian noted two key points: First, clientelist networks reshaped the binary party landscape. In other words, state elites organized themselves across party boundaries, weakening the strict dichotomy between ARENA and the MDB. Second, the political elites were concentrated in the state government apparatuses, which were headed by the governors. This form of state-level clientelism heightened the military's concerns that the governors' primary loyalties were not to the regime, but to their clientelist networks.¹⁰⁰ This reintroduces the 'democratic dilemma' previously discussed. To preserve the façade of civilian democratic governance, the military reluctantly allowed direct popular elections. However, this inadvertently empowered the governors, the very figures the regime sought to control in the first place. To resolve this conundrum and ensure continuous control over election outcomes, the military began adjusting its strategy, now shifting its focus toward influencing the state elites themselves.

⁹⁵ *Pitts*, note 91, p. 71.

⁹⁶ This only changed with Supplementary Law No. 1 of 1969. Under this law, mayors of state capitals were now nominated by the governors subject to approval by the state parliaments. However, the appointment of mayors in the capital Brasília and municipalities of "national importance" became the direct responsibility of the president. Falleti, note 78, p. 148.

⁹⁷ *Samuels / Abrucio*, note 12, p. 49.

⁹⁸ *Hagopian*, note 89, pp. 118 ff.

⁹⁹ For São Paulo, see *Pitts*, note 91.

¹⁰⁰ *Cammack*, note 59, p. 64.

3. The técnicos

When President Médici assumed power in October 1969, he initiated significant changes to the profile of ARENA candidates. In an effort to curb the influence of state elites, the military introduced “technical governors” for the upcoming gubernatorial elections. This notable shift extended beyond governorships, reverberating throughout cabinets and the broader state apparatus. Subsequently, at both national and state levels, from high-ranking offices to basic administrative roles, positions previously held by political elites were now to be filled by “*técnicos*.”¹⁰¹ This term referred to civilian officials who lacked political backgrounds or institutional affiliations prior to the coup. *Técnicos* were distinguished by their professional trajectories, which were – supposedly – free from state elite influence. The objective was to replace state elites with a different ruling class: an inherently “unpolitical” and purely “technocratic” elite believed to be unquestionably loyal to the regime.

During Médici’s presidency, the technocratic influence reached its apex. In October 1969, Médici declared that his government was “immune to any political pressure” and “rose above society to act in the best interests of the unrepresented sectors of society.”¹⁰² Consistent with this proclamation, none of his close advisors possessed a “political” background.¹⁰³ Even at lower administrative tiers, the proportion of individuals understood to be part of the technocratic spectrum rather than the state elites increased.¹⁰⁴ This shift was especially evident at the state level: By 1970, ten out of the twenty-two governors were *técnicos*, compared to only five in 1966.¹⁰⁵

II. Continuity despite Change

However, the anticipated clash between state elites and *técnicos* did not unfold as expected. In the parliamentary elections of 1974, MDB made substantial gains. In the Chamber of Deputies, it received 48 percent of the vote – an improvement of almost eighteen points and 74 seats compared to the 1970 elections. In contrast, ARENA suffered considerable losses, securing only 52 percent of the vote, a sharp decline from the nearly 70 percent it had won four years earlier.¹⁰⁶ In the Senate, MDB secured 59 percent of the valid votes,¹⁰⁷

101 Ibid., p. 66.

102 Emilio Médici quoted from Thomas E. Skidmore, *The politics of military rule in Brazil, 1964-85*, New York 1993, p. 106.

103 Edson de Oliveira Nunes, *Legislativo, Política e Recrutamento de Elites no Brasil*, Dados 17 (1978), p. 63.

104 Between 1946 and 1964, 60% of the presidential cabinet comprised “conventional” politicians, with only 26% being técnicos. However, this trend reversed in the subsequent years. Between 1964 and 1974, only 29% came from the party-political spectrum, while 52% were técnicos, and 11% were directly recruited from the military. *Ibid.*, p. 61.

105 Falleti, note 84, p. 158.

106 Lamounier / Neto, note 81, p. 194.

107 21 per cent of the votes were declared invalid.

gaining nearly 20 points, while ARENA fell from 60.4 to 41 percent.¹⁰⁸ This resulted in the opposition winning 16 of the twenty-two Senate seats up for election.¹⁰⁹ Signs of the opposition's growing strength were also evident at the state level. In the state parliamentary elections, MDB garnered 38.8 percent of the votes, marking an increase of approximately fifteen points compared to 1970.¹¹⁰ This surge gave the opposition a majority in five additional state parliaments, a notable achievement considering that, prior to the election, they had only held a majority in the state of Guanabara.¹¹¹

In a sense, the outcome of the 1974 elections echoed the gubernatorial elections of October 1965, during which ARENA also failed to meet the regime's expectations. Similar to a decade prior, it sparked concern within the military about its waning control over the country's political trajectory. Despite the strategic appointments of governors by the military since 1965 and the inclusion of *técnicos* in executive positions, ARENA – and, by extension, the government – experienced a significant decline in approval ratings. This decline can be attributed to several factors. One key issue was the limited scope of the *técnicos*' appointments. While they were confined to executive offices, parliamentary representation remained subject to popular elections, over which the military, as shown above, had far less influence than the locally and regionally anchored political elites.¹¹² Another significant challenge arose from the fact that, by nominating technocratic governors, the regime alienated those state elites who had historically supported the government. This loss of support had two primary causes: The first concerned the heterogeneous composition of ARENA at the national level. As the military had decided to leave the nomination of MPs standing for election at the *national* level to the ARENA branches in the *states*,¹¹³ the state elites continued to select ARENA deputies who were sent to the National Congress. This arrangement created a conflict of loyalties: on one side, MPs were expected to align with the *national* party leadership and its military-driven agenda, regardless of whether it corresponded to the interests of their regional supporters;¹¹⁴ on the other, they remained accountable to their voter base, led by the state elites, who demanded that their *regional* interests take precedence. As a result, ARENA's national party organization developed into a fractured amalgamation of competing interests. Since the military exclusively determined ARENA's national agenda, the party was unable to programmatically address these diverse demands.

108 Lamounier / Neto, note 81, pp. 211 ff.

109 Cammack, note 59, p. 69.

110 Samuels / Abrucio, note 12, p. 51.

111 Hagopian, note 89, p. 149.

112 David J. Samuels, The Political Logic of Decentralisation in Brasil, in: Alfred P. Montero and David J. Samuels (eds.), Decentralization and Democracy in Latin America, Notre Dame 2004, p. 76.

113 Ibid.

114 Margaret J. Sarles, Maintaining Political Control Through Parties: The Brazilian Strategy, Comparative Politics 15 (1982), p. 51.

The second aspect revolved around the elitism inherent in the *técnicos* themselves. Once again, an example from Minas Gerais is instructive. Like many of his colleagues, Governor Rondon Pacheco (1971-1975), himself a *técnico*, had appointed only “technocrats” to his cabinet after taking office. In an attempt to sway the governor’s mind, some ARENA deputies sought the assistance of Senator Gustavo Capanema, a “traditional” politician and representative of the state elites. On multiple occasions, Capanema urged Pacheco to include politicians from a broader spectrum in his government to secure electoral support – but to no avail.¹¹⁵ What became evident was that the *técnicos* sought to establish autonomous political networks separate from existing structures. This radical reshaping of the political landscape, combined with their inclination to disregard clientelist agreements,¹¹⁶ alienated many ARENA supporters embedded in these networks.¹¹⁷ As a result, ARENA effectively split into two factions.¹¹⁸ One consisted of representatives with little popular support and limited connections to state elites but strong ties to the central government. The other comprised politicians with weaker links to the military but extensive clientelist networks. This division led to significant conflicts within the party. In some cases, members of the first group nominated by the government for ARENA leadership roles received little to no political support from members of the second group.¹¹⁹ For instance, in São Paulo, the military pushed its preferred candidate for the 1974 Senate elections, Carvalho Pinto, despite objections from some local ARENA branches. This conflict prompted some ARENA politicians to break ranks and oppose their party’s candidate and support the MDB candidate, Orestes Quércia, instead.¹²⁰ A similar dynamic unfolded in Minas Gerais, contributing significantly to the election results of 1974. In the Southeast Region, MDB achieved a nearly 21-percent increase in votes compared to the 1970 parliamentary elections.¹²¹

These developments marked yet another setback for the regime’s strategy. A decade after the coup and nine years after the disastrous election outcomes in October 1965, the technocratic elite had failed to replace the state elites and ensure compliance of regional ARENA party branches with the central government. As Frances Hagopian put it, the “underside of the state” – the entrenched organizational structures of state clientelism – proved resilient to the central government’s regulatory efforts.¹²² This development underscored

115 Samuels / Abrucio, note 12, p. 50.

116 Cammack, note 59, p. 67.

117 Sarles, note 114, p. 49.

118 Samuels / Abrucio, note 12, p. 52.

119 Ibid.

120 Carlos Estevam Martins, O Balanço da Campanha, in: Bolívar Lamounier and Henrique Fernando Cardoso (eds.), Os Partidos e as Eleições Brasil, Rio de Janeiro 1975, p. 84.

121 Lamounier / Neto, note 81, p. 222.

122 Hagopian, note 91, pp. 123 ff. The term was originally coined by the US political scientist Peter McDonough. Peter McDonough, Mapping an Authoritarian Power Structure: Brazilian Elites During the Medici Regime, Latin American Research Review 16 (1981).

the enduring strength of Brazil's informal multi-level system. Crucially, ARENA continued to lose public support, dashing the regime's hopes of shaping political competition in its favor without compromising its democratic façade.

III. New Change of Strategy: Reintegration of the State Elites and State Clientelism

With *técnicos* unable to secure sufficient votes, the regime sought alternative methods to garner political support at the state level. Remarkably, this support was found among the state elites themselves. By 1976, the regime had significantly altered its gubernatorial nomination process, with an increasing number of state elite candidates being selected instead of *técnicos*.¹²³ Additionally, the regime loosened its control over ARENA's state branches, enabling political elites to re-establish their connections with the national executive.¹²⁴ As a result, the state elites were reintegrated into the state apparatus, marking a complete reversal in the military's strategy: whereas prior to 1974 the regime had sought to weaken the state elites, from 1974 onward, it actively collaborated with them.

1. State Clientelism

The effects of this shift became evident when the military itself began to adopt clientelist practices to secure electoral support. This was particularly apparent in the allocation of transfer payments. From 1974 onwards, social programs targeting the lower and working classes expanded nationwide. Notably, loans for small farmers were increased and social housing programs grew significantly.¹²⁵ For example, in 1974, 7,831 housing units were built for low-income families, accounting for around 12 percent of the national housing program's budget. By 1980, nearly 200,000 units were constructed.¹²⁶ What made this development particularly significant was that fund allocations were concentrated in regions where the regime enjoyed strong political support. This was especially evident in the Northeast Region, where ARENA had consistently achieved favorable results in Chamber of Deputies and Senate elections since 1970.¹²⁷ During the presidencies of Ernesto Geisel (1974-1979) and João Figueiredo (1979-1985), a substantial portion of these benefits was redirected to the lower class and labor forces in these regions.¹²⁸ Furthermore, loans to farmers were granted based on political evaluations: states where the MDB had a weaker presence received higher loan amounts per farmer compared to regions like the Southeast,

¹²³ *Samuels*, note 112, p. 77.

¹²⁴ *Ibid.*

¹²⁵ *Barry Ames*, *Political Survival: Politicians and Public Policy in Latin America*, Berkeley 1987, p. 157.

¹²⁶ *Ibid.*, p. 168.

¹²⁷ *Lamounier / Neto*, note 81, p. 206-07, 16-18. ARENA's dominance was even more pronounced in the national parliaments, where the opposition was regularly outnumbered by a ratio of 3 to 1.

¹²⁸ *Hagopian*, note 89, p. 156.

where the opposition was strongest.¹²⁹ In essence, the regime appeared to purchase political support through social programs, thus deviating from its previous stance that economic development should be guided solely by efficiency criteria.

The resurgence of state clientelism was also evident in the fiscal dynamics between the states and the central government. In 1966, the military set up two funds, one for the states (*Fundo de Participação dos Estados*) and one for the municipalities (*Fundo de Participação dos Municípios*), through which the central government automatically transferred a portion of the income tax and the tax on industrial products.¹³⁰ These funds were intended to be allocated according to a formula that accounted for population size and tax revenue, ostensibly favoring economically disadvantaged regions in the country.¹³¹ In practice, however, the North, Northeast, and Center-West – regions loyal to the regime – disproportionately benefited.¹³² Between 1976 and 1982, transfer payments rose by 208 percent.¹³³ By 1983, around 45 percent of all transfers were directed to the Northeast, even though the region accounted for only 29 percent of the population.¹³⁴ This demonstrated that political allegiance to the central government was the primary determinant of fiscal support. Clientelist practices also permeated at the municipal level, where mayors were drawn into the central government's clientelist network.¹³⁵ The central government offered material incentives to encourage them to join ARENA, a phenomenon that became known as *adesismo*.¹³⁶ After the 1972 local elections, ARENA successfully persuaded around half of the 466 mayors elected as MDB members to switch parties in exchange for transfer payments.¹³⁷ Even in São Paulo, a state traditionally resistant to the regime, clientelist practices were employed. Between 1976 and 1982, Governor Paulo Maluf managed to convince 78 of the 101 mayors elected in the 1976 municipal elections and 16 MDB deputies to switch their allegiance to ARENA.¹³⁸

2. Reforms in the “Engine Room”

However, the regime did not rely solely on clientelist practices. Another key aspect of its strategic shift was an electoral system reform. The first measure, enacted in 1975,

129 Ames, note 125, p. 176.

130 David J. Samuels, *Ambition, Federalism, and Legislative Politics in Brazil*, Cambridge 2003, p. 160.

131 Ames, note 125, p. 176.

132 Wayne A. Selcher, *A New Start Toward a More Decentralized Federalism in Brazil?*, Publius 19 (1989), p. 172.

133 Samuels, note 112, p. 77.

134 Selcher, note 132, p. 172.

135 Hagopian, note 89, p. 160.

136 Cammack, note 59, p. 67.

137 Ibid.

138 Hagopian, note 89, 160.

aimed to address the distribution of Senate seats after ARENA's considerable losses in the 1974 parliamentary elections. The regime believed that ARENA's poor performance in the Senate stemmed from the existing electoral law, which allowed only one candidate *per party* to be nominated per ballot in each state.¹³⁹ According to the government, this system had led factions within the state elites, who were generally aligned with ARENA but unable to secure the nomination of their preferred candidates, to shift their support to the opposition MDB instead.¹⁴⁰ This, the regime believed, explained the disparity in ARENA's performance between the Senate and the Chamber of Deputies elections,¹⁴¹ as the latter allowed representatives from *all* internal party factions to run for election in the respective constituencies.

To address this issue and ensure that Senate seats left unfilled in the 1974 election¹⁴² were subsequently secured by ARENA, the regime introduced the *sublegenda* electoral system. Already in use at the municipal level since the mid-1960s,¹⁴³ this procedural maneuver allowed both MDB and ARENA to nominate multiple candidates – referred to as sub-candidates – for Senate elections. Under the *sublegenda* system, each party could present multiple lists of candidates, with their votes collectively attributed to the party. For instance, candidates from ARENA 1, ARENA 2, and ARENA 3 could all run for the same Senate seat, with the cumulative vote total determining which candidate assumed office. This system was designed to incentivize various factions of the state elites to align with ARENA, allowing them to preserve their traditional networks without forcing them to compromise their rivalries.¹⁴⁴

Sharing a similar rationale, President Geisel implemented the “April Package” in April 1977, a comprehensive reform consisting of fourteen amendments to the 1967 Constitution and six new legislative decrees.¹⁴⁵ Key provisions included extending the presidential term from five to six years and lowering the quorum required for constitutional amendments to a simple majority.¹⁴⁶ Another measure aimed at strengthening ARENA was the redistribution of Chamber of Deputies seats based on the number of registered votes rather than the total population. This was intended to reduce the influence of the opposition's urban

139 Cammack, note 59, p. 69.

140 Claudio Ferraz/ Frederico Finan/ Monica Martinez-Bravo, Political Power, Elite Control, and Long-Run Development: Evidence from Brazil, NBER Working Paper No. 27456 (2020), p. 10.

141 Lamounier / Neto, note 81, pp. 194, 212.

142 The term of office for senators was eight years. See Art. 41, Para. 1 of the 1967 Constitution, amended by Constitutional Amendment No. 1 of 17 October 1969.

143 Law No. 5.453 of 14 June 1968.

144 Antonio Otavio Cintra, Traditional Brazilian Politics: An Interpretation of Relations between Center and Periphery, in: Neuma Aguiar (ed.), The Structure of Brazilian Development, New Brunswick 1979, p. 151.

145 The 1967 Constitution was amended once before, in October 1969.

146 The reason for this was that the government was no longer able to muster a two-thirds majority after the 1974 elections. Hagopian, note 91, p. 150.

strongholds.¹⁴⁷ Additionally, the April Package altered the country's territorial structure to increase the likelihood of retaining control over both chambers of Congress.¹⁴⁸ As part of this strategy, Mato Grosso do Sul was separated from Mato Grosso on 11 October 1977 and recognized as an independent state. What is more, a particularly controversial provision of the April Package introduced the indirect election of one-third of all Senate seats. Under this system, one senator per state was nominated by the central government and confirmed by state parliaments,¹⁴⁹ while the other two seats remained subject to direct election as per the existing constitutional provisions.¹⁵⁰ These appointed legislators – later dubbed “bionic senators” due to their “artificial” character – provided the regime with an additional instrument for political leverage, as it allowed the government to conciliate dissatisfied factions within ARENA over gubernatorial nominations, enabling the regime to navigate competing interests within the party.¹⁵¹ Once again, the military's intention to co-opt state elites and consolidate control over the political system became apparent. This approach proved successful, as the military secured victory in almost all national elections in 1978.¹⁵²

D. Conclusion

When examining the interplay between the subnational and national levels of government during the initial ten to fifteen years of military rule, three key observations emerge. First, the federal system remained intact. Brazil's authoritarian constitutionalism consistently retained a federal character. While measures such as the constitutional amendment of 1969, AI-3, and the “April Package” of 1977 sought to weaken the political power of governors and disrupt the entrenched loyalties of state elites, the regime never abolished the office of governor, eliminated the states, or dissolved the Senate. The formal structure of federalism – self-rule of the federative states, shared rule through a federal constitutional body, and a constitutionally enshrined division of powers along territorial lines – was continuously modified but never entirely dismantled.

Second, the military government sought to preserve the appearance of constitutionality, legality, and democratic legitimacy without relinquishing its grip on power. The federal multi-level system, which included popular elections for state legislatures and the Senate, played a key role in sustaining this façade. However, the effort to maintain a veneer of legitimacy placed the military in a “democratic dilemma.” To avoid accusations of arbitrary rule, the opposition party MDB was granted space for political maneuvering. Yet this

147 Ibid.

148 Ibid.

149 *Samuels*, note 112, p. 77.

150 Art. 41 of the 1967 Constitution, amended by Constitutional Amendment No. 1 of 17 October 1969.

151 *Cammack*, note 59, p. 69.

152 *Samuels*, note 112, p. 78.

concession enabled the MDB to evolve into a potent opposition force, challenging the regime's authority in both the National Congress and state legislatures.

Third, the regime adopted a dual strategy to counter its political adversaries. Against both parliamentary and extra-parliamentary opposition, it alternated between repression and constitutional adjustments to democratic rules, seeking to curb the MDB's unexpected success without banning the party outright. In contrast, the regime approached the traditional elites in the states differently. Initially, it sought to neutralize their influence by appointing *técnicos* to administrative positions. However, once it became evident that clientelist structures were too deeply entrenched to dismantle, the regime shifted tactics and began to co-opt these networks for its own purposes rather than opposing them.

This returns us to the question posed at the outset: Was the federal system a factor that facilitated the authoritarian development of military rule? Could the military regime – much like it did with constitutional law – transform federalism into an instrument of authoritarian governance? The answer is nuanced. While the entrenched clientelist nature of the federal system posed challenges to vertical centralization, it also provided a framework for compromise. With varying degrees of success, the regime navigated the complex relationships between the central government, ruling and opposition parties, governors, mayors, and traditional elites, leveraging clientelist practices to maintain control. Ultimately, the federal system emerged as both a catalyst for subnational resistance and an institutional framework for negotiations between regional and national power centers. This dynamic enabled the regime to sustain its grip on power without resorting to widespread violent intervention in the states. The shift from initial resistance to informal federal structures toward their strategic integration into the authoritarian system highlights the adaptive and pragmatic nature of the Brazilian military dictatorship. This duality – federalism as both a constraint and a tool of authoritarianism – captures the intricate political dynamics of the era. It leaves a legacy that not only defined the regime but also shaped the country's political evolution in the post-dictatorship era.



© Thilo Herbert