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***Presidents, producers and politics:  
Law-and-order policy in Brazil from Cardoso to Dilma***

Despite being a middle-income democracy, Brazil has a serious and apparently intractable problem with violent crime, with nearly 60,000 homicides, that is, 10% of the world's total. Its homicide rate is the 11<sup>th</sup> highest, at 32 per 100,000 population (the world average is 6.7, and 3.8 in wealthy developed countries). This has steadily worsened since its return to democracy in the mid-1980s, and puts it out of step with a 16% drop in homicides globally over the last decade. Brazil's institutional responses have followed the same upward trajectory. In 2014 it had the fourth largest prison population in the world with 622,000 inmates, up 575% from 1990. Yet, the three countries above it have reversed their policies and decreases in their prison populations since 2008: the USA by 8%, China by 9% and Russia by 25%. High levels of incarceration in Brazil have not reduced crime and insecurity. On the contrary, overcrowding, appalling conditions of detention, inadequate legal counsel, and other human rights violations have prompted inmates to form self-defensive syndicates and gangs, and use their control of the prison system as a base from which to direct organized crime in the wider community (Dias and Darke 2016).

Ineffective law-and-order policies not only cause anxiety to the general population, but also pose a threat to democratic legitimacy and functioning.<sup>1</sup> Yet, in Brazil, and other Latin American countries that have transitioned from authoritarian rule or civil conflict, presidents have been ambivalent about investing political capital in security and justice sector reform, and found it difficult to enact their policy preferences (Macaulay 2012a). This article analyzes the governance tools available to three Brazilian presidents, Fernando Henrique Cardoso (1995-2002), Luiz Inácio Lula da Silva (2003-2010) and Dilma Rousseff (2011-2016), and how successfully they used them to direct and enact policy to reduce crime, develop effective and accountable policing, and promote effective penal responses. It examines the common patterns, and the differences, in the ways that each approached their key roles as president: communicating with the public on the issues, using the agencies of the

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<sup>1</sup> A survey published by Datafolha in conjunction with the Brazilian Forum on Public Security, published in November 2016, showed that 76% of the population feared being murdered. Some 55% fear police violence and 70% think the police use excessive force (Fórum Brasileira de Segurança Pública 2016)

federal bureaucracy, managing intergovernmental relations with the subnational units (states and municipalities), and managing their multiparty coalition and relations with Congress.

### **Coalitional presidentialism and producer capture**

The context for these complex roles is the specific configuration of governance in Brazil, coalitional presidentialism, where the president has to govern through a coalition of between three and ten or more parties (Power, 2010). This is required by a highly fissiparous, and therefore porous, party system, which in turn is the product of an open list electoral system, with the only bar to individual entry being sufficient finances or interest group support to run in large electoral districts. This article argues that this fragmented, easy-entry system has also facilitated *producer capture* in both the bureaucratic and legislative arenas, which has significantly impeded presidential effectiveness in this policy area. The term is generally used to denote the process by which the goals of an organization reflect the interests and prejudices of its employees (the producers) rather than those it is supposed to serve (the consumers, customers or citizens). Criminal justice institutions (police forces, prosecution service and judiciary) already tend to contain highly cohesive, organized professional groups with strong corporate identities. In the Brazilian case, this is exacerbated by the constitutionally enshrined hyper-autonomy of these groups. This resulted in resistance to reform imposed through legislation or policy initiative, as they repeatedly act as veto-players to protect what they perceive as their own professional interests.

However, a second type of producer capture also occurred. As the party system fragmented further in the 2000s, direct representatives of criminal justice producers (mainly police officers) and indirect representatives of private security actors (politicians funded by these lobby groups) increasingly entered legislative arenas, principally the Chamber of Deputies, as agenda-setters. There they formed a cross-party alliance determined to radically change the direction of law-and-order policy in Brazil. To do so they joined forces with other cross-bench interest groups to form a significant counter-reform movement that contributed to the impeachment in 2016 of President Rousseff. Thus, they ended up having the highest-level political

impact – toppling the president – as well as taking reversing the policy direction set by these three presidents and their administrations.

### **Law-and-order legacies**

The character, ideology and power of the different contemporary stakeholders in the law-and-order field in Brazil have their roots, in part, in the military regime of 1964-85. Although the federal government maintained centralized control over the security agencies, the latter enjoyed impunity and operational latitude. The state-level military and civil police forces, which were subordinated to the armed forces in pursuit of the repression of opposition movements, subversives and Communists, adopted their tactics of extra-judicial executions, death squad activity, and torture. Due to the prolonged and negotiated nature of the transition to democracy, controlled by the armed forces, which retained some institutional links to the police, there was no purging of police ranks, restructuring or retraining. Police reform was also not on the agenda during the drafting of the 1988 Constitution, which ended up enshrining some problematic provisions. Firstly, it prescribed that every state in Brazil should have both a military and a civil police force, the first for “prevention and repression” of crime, the second for the investigation of crime. This made the federated states both powerful and hard-to-influence actors in the delivery of law-and-order, lack of co-operation between the two state police forces undermined the effectiveness of this delivery. Secondly, it left the Military Police (80% of the nation’s police forces) protected by the Military Courts, and thus ensured both impunity and a militarized conception of public security and policing that has not yet been overturned (Zaverucha and Melo Filho, 2004).

The notion of “National Security” (protecting the nation from foreign ideologies) that prevailed during the military period changed, in the new democratic period, into one of “Public Security”, the term used in Brazil for law-and-order. The term implies the need to protect the state and those who occupy, control, and benefit from, the state apparatus from the threats posed by the populace and its behaviours (criminals, drugs users/dealers, the marginal classes). This concept also encouraged producer capture among the criminal justice agencies, as they both prioritized their

own corporate interests over those of the citizens, and believed they were better at directing law-and-order policy than the politicians and legislators.

### **Presidential roles in relation to law-and-order policy**

In relation to the amount of attention that recent presidents have given law-and-order issues, a pattern of sorts has emerged. In both the Cardoso and Lula presidencies, public security was downplayed and sidelined in the first term (Soares 2007; Adorno 2003). Neither president considered it a priority in policy and governance terms, and preferred not to spend finite political capital on it: Cardoso focussed on economic and governance reforms to help consolidate financial stabilization, whilst Lula was more interested in his poverty reduction agenda. But neglect of law-and-order created a ticking time-bomb that went off in events that forced them to attend to it in their second terms. For Cardoso it was a number of globally publicized episodes of police violence, whilst for Lula it was the show of strength of the prisoner syndicate, the First Capital Command (*Primeiro Comando da Capital*, PCC), in São Paulo state's prison system, and on the streets of the state capital, in May 2006. The dynamic for Dilma was similar only insofar as she also neglected crime and policing issues in her first term, squandering a lot of the institutional impetus around justice sector reform accumulated in Lula's second term. The street protests that erupted in June 2013 around the quality of public services were met with police repression, but her only major initiative on public security was the National Plan for Homicide Reduction announced in mid-2015, and promptly ignored by Michel Temer when he assumed the presidency (Datafolha and Fórum Brasileira de Segurança Pública 2015). During her embattled second term she faced unprecedented, organized opposition to the centrist, reformist consensus on law-and-order set by the preceding PSDB and PT presidencies.

#### ***The public role: presidential discourses on public security***

The three presidents faced similar challenges in terms of exercising their various roles in relation to policy, but each dealt with them somewhat differently. Two key "faces" of the president are those that they present to the world and to the nation. On law-and-order, all three preferred what Garland terms a denial and

delegation approach. Crime and violence have ranked in the top three concerns of Brazilians since the mid-1990s, successive governments have faced criticism by regional and international human rights bodies, and Brazil's levels of violence taint its international image. Yet these reputational and electoral hazard were not evident in presidential speeches or debates. These presidents were not penal populists and saw more electoral/political risk than gain in highlighting the federal government's responsibility for citizen security. This they delegated to the federated states, which have operational responsibility for the criminal justice agencies in their jurisdiction, and spend around 80% of the national budget for the same. The Cardoso government put together a National Plan on Public Security only in 2000 in response to a notorious incident of violence,<sup>2</sup> but it was more of a hurried wish-list than an implementable plan. Lula produced a similar plan as part of his electoral platform in 2002, in the form of a 100-page policy document, written by a team of leading experts. Yet after the election he soon downgraded the profile of this policy area, partly because his key appointee was drawing too much attention, and partly for purely party political reasons. Luiz Eduardo Soares, co-ordinator of the policy document and appointed head of the National Secretariat for Public Security, allegedly knew about the party's kickback schemes in its local governments that were funding its illegal electoral war chest, and was demanding an investigation.

For the first time the 2006 presidential debate saw the candidates (Lula and the PSDB nominee, Geraldo Alckmin) forced to debate crime and violence, following the PCC violence in São Paulo state, of which Alckmin was governor. In neither election campaign did Dilma address public security issues. Her opponents for the presidency preferred to attack her first on her political background and reproductive rights, then on management of the economy and the emerging corruption scandals. However, many candidates for the nation's *legislatures* were running successfully on explicit law-and-order platforms and the relative reticence of these three presidents left the door open for political actors with a punitivist agenda to capture large numbers of votes, and key political spaces in Congress, enabling them to shape the terms of the debate and set the agenda. This was expressed itself in a wave of tough-on-crime

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<sup>2</sup> A bus was hijacked in downtown Rio de Janeiro, and the hostage situation was streamed live on television.

legislation pushed through in 2015-16 by the same opposition mobilized for Dilma's impeachment by Eduardo Cunha, the then Speaker of the House.

### ***Directing the Federal Bureaucracy: The Ministry of Justice***

A key presidential role in delivering policy is control of the federal bureaucracy, which includes the political factors that influence appointments, the amount of personal and political capital the president is prepared to expend on this policy area, and which other actors are competing for influence. For law-and-order policy the key agencies are the Ministry of Justice, its National Secretariat for Public Security (*Secretaria Nacional de Segurança Pública* - SENASP), and subsidiary bodies. Ministerial appointments have following a number of quite different logics. Unlike some other ministries, the post has not generally been regarded as 'pork', that is, as a reward for one of the parties in the president's coalition, although a couple of appointments under Cardoso were likely for this reason. Nor is it a position regarded as requiring purely technical expertise, although all appointees under these three presidents had at least training in law, and most had professional experience as lawyers and legal professionals (Almeida 2016, 220). This Ministry is also expected to act as an important sounding board for the president, due to its interactions with the federated states, and so all three tended to choose trusted individuals from their own or closely allied parties, or from within the Ministry. That said, between 1985 and 2002 ministers of justice lasted an average of just one year in the post, casting doubt on how effective they could have been as political fixers or, indeed, as policy-leaders, and on the level of political or policy importance attributed to this ministry.

Despite the high overall turnover rate of Cardoso's Ministers of Justice, he made some significant appointments. His first, and longest-serving minister, Nelson Jobim, was a seasoned politician who had played a key role in the constitutional drafting and negotiation process. He oversaw a number of key reforms, such as the national commissions to revise the criminal code, the criminal procedure code, and the law governing prison regimes and sentence-serving. However, two leading jurists with a reform agenda whom he appointed lacked Jobim's political skills and the president's political backing. Neither José Carlos Dias or Miguel Reale Jr had been Cardoso's first choice and fell easily when they came up against entrenched

stakeholders (the armed forces) or delicate inter-governmental relations (between federal and state governments).

Lula's ministerial appointments were more stable, combining political nous with technical interest in justice issues. They also engaged in institution-building within the Ministry which greatly strengthened governance capacity, creating a special secretariat for judicial reform and a unit to investigate the prison system, and boosting the secretariat for legislative affairs. Márcio Thomas Bastos, a well-regarded criminal lawyer who had been Lula's personal counsel, lasted for more than a full mandate. He drove through a reform of the judiciary that the Cardoso government had allowed to drag on due to the lack of a clear policy vision on the part of the President, and to the power of producer groups in judicial institutions (Macaulay 2003). The reform package created an important new oversight body, the National Council on the Judiciary, which proved an important ally in confronting the collective resistance of judges to certain policy and legal changes. Tarso Genro, Minister through most of Lula's second term, brought both an intellectual interest in the public security reform agenda, and the clout as a seasoned political heavyweight from within the PT to carry through the next stage of justice reforms.<sup>3</sup> He relaunched Lula's National Public Security Plan, a comprehensive, non-partisan, technical blueprint for joined-up state policy, whose cornerstone was a Unified Public Security System (*Sistema Único de Segurança Pública* - SUSP). This was intended to finally address the vertical and horizontal fragmentation of policing and public security by inducing greater operational co-operation between police forces, both horizontally at state-level, and between the three levels of government. However, resistance within the Ministry and Lula's reluctance to lend full political backing in 2003 had prevented his first head of SENASP, Luiz Eduardo Soares, from implementing it.

Dilma continued in this vein, appointing José Eduardo Cardozo, a former law professor, public prosecutor and politician, who had helped run her election campaign. But in office he had his hands dealing full with the fallout of the Lula years such as the *mensalão* trial (involving the government buying the votes of members of its coalition), the 2013 street protest, a tide of corruption investigations, and ensuring

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<sup>3</sup> Genro was twice elected mayor of Porto Alegre, served as Minister of Education in the first Lula term, steered the party through the chaos of the corruption allegations of 2005, and in 2010 was elected governor of Rio Grande do Sul.

security for the 2012 World Cup and 2016 Olympics. As the law-and-order counter-reform forces grew more organized in Congress, much of his effort was spent in rearguard actions, defending existing legislation. He was briefly replaced as Minister by senior prosecutor Eugênio Aragão, when Dilma appointed Cardoso Attorney General to mount an ultimately unsuccessful defence against her impeachment.

Whilst the Ministry of Justice was not the site of party political dispute, its most important agency, SENASP, saw contestation between security sector stakeholders, particularly the armed forces and police. During the Cardoso years, three of the National Secretaries came from the armed forces and two from the police. Lula appointed just one (federal) police officer, and two civil society actors and a PT politician with area expertise, whilst Dilma appointed a technocrat.

Despite the civilianization of the the Ministry of Justice, military (armed forces and police) actors remain in many strategic decision-making positions on law-and-order policy at both federal and state level. Cardoso addressed the armed forces on two fronts, establishing civilian control over the Ministry of Defence, and removing them from direct control inside the Ministry of Justice, where they controlled the national crime database. Before he did, they toppled one of his Justice ministers, José Carlos Dias, who tried to transfer counter-narcotics operations, for which the military were responsible, to the Federal Police. Dilma moved ABIN, the national intelligence agency, from the aegis of the Ministry of Defence and the National Security Office within the President's office, to which it had answered since its creation in 1999, and subordinated it to SENASP. This was prompted by intelligence officials irritated at having to answer to military officials, and a sense that ABIN had become too autonomous. Yet, the armed forces retained wider influence in public security as Cardoso amended the Constitution to accord the military a backup role in domestic policing ('to guarantee law and order'), a remit further entrenched under Lula, and used as the advance guard of the police pacification units (*Unidades de Policiamento Pacificadora*, UPPs) operating in some of the most violent and drug-ridden *favelas* in Rio de Janeiro (Macaulay 2012b).

The Lula government also encouraged the consolidation of a competitor to the armed forces, the Federal Police. Justice Minister Bastos aspired to creating a "Brazilian FBI", so appointed a federal police officer as SENASP head and

transformed a rather fragmented body riven by internal disputes into one bolstered by a wider remit, greater autonomy, a new career structure, and resources, as its staff grew by over a third between 2001-08 (Arantes 2011). This newly emboldened Federal Police earned public approval for its tenacious, high-profile investigations of corrupt politicians and bureaucrats, carrying out 2,226 in the twelve years of the Lula/Dilma administration, compared to 48 under Cardoso.

It was much harder, however, for any of these presidents to reform the state-level police, as this requires both a constitutional amendment and their corporate support. Through the 1990s human rights advocates had argued for the demilitarization of the police. But attempts by the Cardoso government to bring abuses by military police under the jurisdiction of civilian courts failed due to their proxies in Congress, such as former governors in the Senate who took their side. The Lula government, instead of trying to merge the civil and military police or demilitarize the latter, introduced the Unified Public Security System. This required support from the main stakeholders and in 2009 the first ever national conference on public security was held. But by contrast to national conferences on human rights sponsored by both the Cardoso and Lula governments that had attracted such high civil society participation, it was a disaster. The President had no clear position on the desired reform outcome, and so the executive branch itself was divided. On the one side was SENASP head, Ricardo Ballestreri, an advocate of the “single cycle” (*ciclo único*) which would maintain the institutional but not the functional division between the police forces: both would arrest suspects and investigate crimes, with the Civil Police dealing with the more complex ones. However, the National Secretary of Justice, Romeu Tuma Jr, a former civil police detective, disagreed and was backed by police unions and senior officials in the Ministry, whilst in Congress another former police detective, a PSDB federal deputy, rallied opposition (Souza, 2015: 202-212). Thus lack of presidential preference allowed representatives of the producers of public security to veto an historic opportunity. The Lula administration was then forced to take a more pragmatic line, using task forces to set up “Integrated Management Cabinets” in each state to help the two police forces work together operationally without touching their institutional structure. His original proposal was to set up a full-scale Ministry for Public Security, but this he quickly discarded as too

politically costly. However, ironically, it has now been taken up as a banner by the counter-reformist political opposition.

### ***Intergovernmental relations: a new federative pact?***

During these three administrations the Ministry of Justice was the president's chief interface with the subnational units of government. Another key role for the president is to manage intergovernmental relations to ensure that policies are actually delivered at the lower levels of government. Their ability to do so is conditioned by both political and institutional factors. Brazil is unusual in combining a highly centralized legal framework with a strongly federal system of government. Penal law and procedure, as with other areas of law, are unitary, legislated at national level, and applied across the entire country. Although the over-arching institutional architecture of the criminal justice systems of the 26 states and the federal district is virtually identical, the day-to-day management of the courts, public prosecutorial service, police and prison services is decentralized and delegated to the state-level political authorities. Setting out a new "federative pact" in public security, that is, persuading sub-national actors, especially the state governors and heads of public security, to adhere to national guidelines, has been a slow and contested process of punctuated equilibrium (Fórum Brasileira de Segurança Pública 2010).

The issues at state level concern primarily the political control of the police, which are powerful local corporations, compete for influence among themselves and capable of resistance to imposed change (Soares 2000). Different security sector and justice institutions can influence policy through the state secretariats for public security (SSP). In the early years of the transition to democracy governors frequently appointed retired military officers or military police officers to head these. However, during the first Lula governments, from 2003-2008, Federal Police officials began to displace the military, heading up 16 of the 27 SSPs, 14 of which were run by governors linked to the governing coalition.<sup>4</sup> They were seen as more technically competent, less politicized (and less amenable to being used politically by the governor), and unconnected to the state-level civil and military police, thus above

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<sup>4</sup> <http://congressoemfoco.uol.com.br/noticias/delegados-da-pf-comandam-60-das-secretarias-de-seguranca-publica/>

corporatist interests or local institutional corruption. Given the ever increasing amounts of resources that the Lula government was making available to the states, governors also anticipated a direct channel to the Ministry of Justice and SENASP. As the Federal Police officials very well versed in the precepts of SENASP, these appointments resulted in a quiet, de facto federalization of law-and-order policy. However, the backlash against the centre-left consensus meant that in 2015 only eight governors appointed Federal Police officials to head their SSPs.

There are few levers that the federal government can use in relation to the subnational units beyond finance. Reformers during the Cardoso years often complained that the government produced excellent guidelines on human rights and law-and-order, but was reluctant to use conditionality, withholding funds from states with higher levels of police brutality. Cardoso's other political concerns - to get political support for re-election, and hold the economy steady - meant he needed as many local caciques as he could get. His Justice Minister Miguel Reale Jr resigned when Cardoso refused his request for federal intervention in the state of Espírito Santo due to persistent death squad activity there involving both political and criminal justice actors, because it was governed by an ally. The delicacies of state-federal relations and party competition meant that when the PCC riots broke out in São Paulo, Lula's offer of federal assistance was turned down by the PSDB governor.

However, federal spending could be used as a carrot as well as stick, and expenditure on public security took off from 1999 and climbed steadily through the Lula years. His Minister of Justice, Tarso Genro, created a major new programme, the National Programme of Public Security with Citizenship (*Programa Nacional de Segurança Pública com Cidadania*, PRONASCI) which was backed up by a presidential decree and a pledge to invest R\$6.707 billion by 2012. Like the National Plan, its 94 proposed areas of activity were to be delivered through *horizontal* multi-agency action (involving 19 ministries) and *vertical* state-municipal initiatives. By building relationships directly with those municipalities most affected by violent crime, the federal government effectively bypassed the states, which posed the greatest political difficulty in terms of the governors' potential resistance and local stakeholder groups such as police unions.

This meant that at one point it was the municipalities and federal government, not the states, investing the most in public security. The marked increase in spending came after 2003 when a change in the legislation regulating the National Public Security Fund allowed the federal government to channel funds directly to municipalities for the purpose of violence and crime prevention. The PRONASCI programme transferred R\$200 million a year (originally intended for the 12 most crime-ridden metropolitan regions in the country, but later spread over 200 cities). Cities have also invested far beyond what the law obliges them to: mayors have reaped a direct electoral benefit in tackling crime and insecurity about which the governors and federal authorities were sceptical for a long time (FSBP, 2010: 7). Of 5,565 municipalities, by 2012 some 993 had a Municipal Guard and 1,273 had some municipal body dealing with law-and-order.<sup>5</sup>

Despite these pragmatic policies, the ability of the federal government to drive law-and-order policy continues to encounter a range of political difficulties created by the unique contours of Brazilian coalition government and federalism. In some states the political establishment, and many criminal justice actors, are involved in organized crime networks, with no incentive to extricate themselves. Newer political actors are also finding that there are votes in law-and-order, particularly as the pendulum is swinging to a harder-line discourse.

### ***Coalition and opposition management: pork and producer capture***

The three presidents and their Ministry of Justice appointees also had to deal with Congress, managing their own coalition to pass important legislation and reducing the space for the opposition to veto or overturn bills, or to push their own agenda. Law-and-order legislation can be informed different motivations, from a political/ideological commitment to a certain direction of penal policy, electoral considerations, simple individual or corporate self-interest or a mix of all these. One of the key tools in the presidential toolbox is pork, that is, the preferential allocation of public resources to political allies of the government, especially at state-level. The policy area of law-and-order provides plenty of opportunities for pork-barrel politics and individual rent-seeking and enrichment. Firstly, the direct budgetary spend on

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<sup>5</sup> Source: IBGE [ftp://ftp.ibge.gov.br/Perfil\\_Municipios/2012/pdf/tab035.pdf](ftp://ftp.ibge.gov.br/Perfil_Municipios/2012/pdf/tab035.pdf)

law-and-order increased dramatically over these three presidencies, with the biggest rise in the Lula governments. In 2003 the federal government, state governments and municipalities together spent R\$22.5 billion, which doubled to R\$47.6 billion by 2009. This was spent on infrastructure such as police stations and prisons, police training and tertiary level study, equipment from vehicles to weapons and uniforms, technology, salaries and so forth, all of which could give an electoral boost to local politicians. Although the shrinking economy meant that Dilma's governments spent a lot less -- R\$8.7bn in 2013 and R\$8.1bn in 2014 -- this nonetheless represents 1.4% of GDP.<sup>6</sup>

There are also considerable private sector interests at stake. Brazil is the second largest producer of small arms, mainly handguns, in the world, with an estimated annual value of U\$100 million (Dreyfus et al 2010). Most are exported but the domestic market was depressed by the Lula government's 2003 Disarmament Statute, which allowed only justice officials or authorized private security agents to carry firearms. Just before it passed, nearly 60,000 people a year bought guns: this dropped to 37,000 six years later (IPEA 2013). The private security sector has also boomed, due to the rise in crime (especially organized crime such as cargo theft), and the deficiencies in policing. In 2003 there were 1,400 private security companies, many set up by, or employing, police officers: this had nearly doubled to 2,300 in 2014. Turnover in 2003 was R\$10.4 billion, up to R\$46 billion in 2014, and rising at around 6% per annum.<sup>7</sup> These same companies are also expanding their portfolios into prison privatization, bidding for prison building or management contracts.

### *The "bullet bench"*

Contests over law-and-order policy are also ideological, although this is rarely party-political per se. The differences between the Cardoso, Lula and Dilma administrations lay more in their governance abilities than any substantive disagreement for the PSDB and PT shared a broad liberal, centrist consensus about human rights and civil liberties protection (what is termed *garantismo*) whereas the right-wing view (distributed across representatives of many different parties) argues that society must be protected, at all costs, by the state security apparatus (the *defesa*

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<sup>6</sup> All data from the Brazilian Forum on Public Security

<sup>7</sup> Data from FENAVIST – National Federation for Security and Armoured Transport.

*social* perspective). The latter view has been articulated through a law-and-order lobby of some kind in Congress since 1990, its power determined by both presidential and party-system strength. The Collor and Franco governments were disorganized presidential coalitions and this lobby had space to operate in a Congress in which there was no dominant party linked to the President. It was thus easier to push through punitivist legislation such as the Heinous Crime bill, passed rapidly following a wave of kidnappings in 1990, and was revised in 1994 following the murder of a famous actress. This space was reduced during the Cardoso and Lula years who were much stronger coalition managers, and in such circumstances it was able to act only as a veto-player. It returned as a more pro-active and organized force as the party system fragmented further, going from 22 parties elected to Congress in 2010 to 28 in 2014. President Dilma's Workers' Party (*Partido dos Trabalhadores*, PT) controlled only 14 per cent of the seats in the Chamber of Deputies and as her coalition crumbled, cross-bench groupings began to drive the legislative agenda.

With entry to such a weak party system dependent largely on a candidate's individual resources such as money, social and professional networks, and access to mass media, the lobbying influence of private security providers and gun manufacturers grew steadily in Congress. The collective term "bullet caucus" (*bancada da bala*) is used, minimally, to denote those politicians who have received campaign finance from these commercial interests. In 2010, they were able to elect 32 senators and federal deputies, with campaign contributions totalling R\$1.5 million.<sup>8</sup> In the 2014 elections R\$1.91 million was donated to 21 candidates for federal deputy, 12 for state deputy, two gubernatorial hopefuls and a candidate for the Senate. The return to investment was impressive: 18 of the candidates for federal deputy were elected directly, the other three elected as stand-ins. Fully half came from the southern state of Rio Grande do Sul, where the majority of gun and munitions manufacturers are located.

The term *bancada da bala* is also used to include the former police officers elected to legislative office, and those who broadly sympathise with their aims (these may include individuals who have been personally affected by crime, or who have an ideological position on crime and punishment. The numbers of former police officers

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<sup>8</sup> All data from Instituto Sou da Paz.

elected to the Chamber of Deputies was relatively stable (seven in 2002 and in 2006, four in 2010), but shot up in 2014 to 19. Representatives such as “Delegado” Waldir, a civil police officer, emerged as the highest voted deputies in their states as a result of penal populist campaigns and the open list electoral system. Thus the pork-barrel chain whereby career politicians act as intermediaries for the business interests in their district has been short circuited by public security officials seeking to represent *directly* their own individual and corporate interests, such as the institutional autonomy of distinct police forces, impunity and protection from scrutiny, career structures and perks, and budgetary allocations to those services. Similarly, they are no longer using proxies (retired governors in the Senate) to support their position, but entering the political arena to do so themselves. The *bancada da bala*’s roots also lie in the state police strikes of the 1990s, and the formation of local police unions, representing not just individual forces, but categories within them. They began to mobilise to elect members to municipal and state legislatures, resulting in a progressive “police-ization” of the country’s legislative arena, which had enabled local *bancadas da bala* to work in the spaces of coalitional gubernatorialism and mayorism, veto-playing and agenda-setting around law-and-order and human rights. São Paulo city council has had a *bancada da bala* for several mandates. This intensified under the PT presidencies: in the municipal elections of 2008, across the country 4,144 civil and military police officers ran for office, compared to 3,886 in 2004.<sup>9</sup> It also helped prepare the ground for those running for the National Congress.

*Bancadas* function like informal identity and affinity groups, or advocacy coalitions in Congress, However, there are also much wider, formally constituted, policy communities, the issue-specific “fronts”. The *Frente Parlamentar* on Public Security has 240 signatories from across the political spectrum but it is clearly dominated by the key members of the *bancada da bala*. The *bancadas* drive the ideas; the *frentes* mobilise the votes. The second Dilma administration saw a change in behaviour by the *bancadas* and *frentes*, as they joined forces in a grand anti-government coalition led by Speaker of the House, Eduardo Cunha. The *bancada da bala*, the *bancada evangélica* (Neo-Pentecostals), and the *bancada ruralista* (landowners) acted in concert in the so-called *bancada BBB* (standing for “bíblia, boi

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<sup>9</sup> Data from the Tribunal Superior Eleitoral, reported in [www.conjur.com.br/2008-out-02/mil\\_policiais\\_sao\\_candidatos\\_nessas\\_eleicoes](http://www.conjur.com.br/2008-out-02/mil_policiais_sao_candidatos_nessas_eleicoes)

and bala” – “bible, beef and bullet’), lending votes to one another to get their individual agendas passed, and to form a cross-party opposition. Indeed, 313 out of the 367 deputies that voted to initiate impeachment proceedings against Dilma were members of one of the associated *frentes*, and 53 were members of all three.

As the President lost control of her coalition, and thus of agenda-setting spaces in Congress, the union of the three main cross-party *bancadas* ensured the election of Cunha as leader of the house. They also captured key committees, which the PT seemed to have abandoned, and thus could not use to defend the government’s agenda. For example, in the past any Parliamentary Committee on Inquiry (CPI) into the prison system would, like the standing Committee on Human Rights, have been the domain of the PT and other centre-left parties. However, the 2015 CPI on the prison system was chaired by retired Military Police Colonel Alberto Fraga, the *bancada da bala*’s leading light. The committee invited private security providers to give evidence and, unsurprisingly the final report enthusiastically advocated more public-private partnerships and privatization.

The Committee on Public Security and Organized Crime is an even more important agenda-setting arena, due to its filtering function: in 2013 it received 246 bills but considered only 88. Yet since 2007 the chairs and rapporteurs of most bills have been representatives from the opposition, not from the governing coalition’s two largest parties (the PT and PMDB). It is not considered a high priority committee as it is one of only two that allows its members to sit on other committees. One fifth of its members were financed by the firearms and munitions industry and thus had a conflict of interest, whilst eight out of the 20 were facing ongoing criminal charges linked to electoral misconduct. Half of its members in 2013 were lawyers, former police chiefs and army reservists. The problem was that half of the bills considered by the committee concerned police salaries, benefits and equipment, that is, corporate concerns. The next largest category of bills concerned penal toughening, increasing sentences and incarceration. Very few bills dealt with prevention or structural issues in the criminal justice system (Instituto Sou da Paz 2014).

The *bancada da bala* had by this point developed its own agenda, and mobilized the votes of the *bancada BBB* through the Speaker, Cunha. It first took on the age of criminal responsibility, set at 18 in Brazil in line with the Statute on

Children and Adolescents, which follows the United Nations Convention on the Rights of the Children. The first proposed constitutional amendment to lower the age had been tabled by a federal deputy back in 1993. This was picked up in April 2015 by a specially constituted committee, and approved by this and the house standing committee on justice and constitutional affairs, both by now dominated by members of the *bancada da bala*. Put speedily to plenary vote in July 2015, the bill failed narrowly, gaining only 303 votes instead the 308 required. But twenty-four hours later the Speaker sent it back, ‘amended’, for another vote: this time it passed with 323 votes in the first round, and 320 in the second round (Lino 2016). Like the *bancada* itself, this policy reversal had both ideological and rent-seeking elements. The decision means new prisons will have to be built specifically for offenders aged 16-18 and Brazilian companies involved in private prison management had already an eye to future contracts. In the 2014 elections Umanizzare Prison Management, which runs six prisons in Amazonas and two in Tocantins, shelled out R\$750,000 in campaign contributions to Federal Deputy Silas Camara (AM) and his wife and daughter,<sup>10</sup> and he received a further R\$400,000 from two security firms specialized in armed escort services.

The *bancada*’s second priority was to overturn the Disarmament Statute which had passed in Lula’s presidential honeymoon period in 2003. However, the subsequent 2005 referendum to prohibit sales of firearms failed with an opposition vote of 65%, partly a protest vote against the breaking *mensalão* scandal. Thus the very political tool the President had chosen for governability in coalitional presidentialism scuppered this important violence-reduction policy. It also galvanised the small arms industry and *bancada da bala*, who had reframed the issue as the citizen’s right to self-defence in the face of incompetent policing. In the mean time some 40 bills had put forward in Congress to amend the Statute. In October 2015 a special Committee was established in the Chamber of Deputies, again dominated by the *bancada da bala*, and the Statute was revoked, liberalising gun ownership.

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<sup>10</sup> INESC 27/4/2015 “Conheça a “bancada da jaula” e os interesses milionários por trás da redução da idade penal

## Conclusions

This article has analysed the difficulties experienced by three consecutive centre-left presidents in Brazil in pushing through an effective policy agenda on law-and-order. All three shared a broad understanding that insecurity was best tackled by ensuring basic human rights (Cardoso, in particular, built up a national human rights architecture), increasing accountability within, and executive control over, in the repressive institutions of the state, and preferring prevention and alternatives to incarceration as a penal response. However, although none of the Presidents was a penal populist, other political actors in the system such as state governors and candidates for Congress were also aware of the electoral rewards of a tough-on-crime stance, and often tugged policy in the opposition direction. In addition, the political and strategic demands of coalitional presidentialism also had directly negative effects on policy initiatives on law-and-order. The need to maintain political alliances with governors stopped the federal government intervening in catastrophic local security situations. The PT's strategy for winning the presidency required a campaign slush-fund, knowledge of which toppled a key reformer in the Ministry of Justice. The scandal over Lula's main governance tool, the *mensalão*, scuppered the referendum to restrict firearms, and thus gave succour to the gun manufacturers and *bancada da bala*.

What tools can a president use, then, to get around producer capture in the area of law-and-order, which is not unique to Brazil? The personal authority of the president plays a considerable role: this enabled Cardoso to pass some key human rights legislation, and for Lula to get through the Disarmament Statute. This authority was also combined with governing coalitions of high coalescence. Removing certain actors from the bureaucratic field proved a successful move, as all three reduced the direct influence of the armed forces on law-and-order policy. However, producer groups remained powerful actors in the federated system, protected by the difficulty of reaching the threshold for passing constitutional amendments in a multiparty system, and the autonomy of subnational units of government. Coalitional presidentialism is a very suboptimal system of government when the president lacks personal authority, her party has lost critical mass in the legislature, and the parties both inside and outside the coalition have proliferated and become meaningless labels, enabling the parties and key posts to be captured by producer groups with ambitions

for direct self-interest representation. This has, unfortunately, given free rein to a resurgent penal populism that threatens to roll back many of the hard-won law-and-order reforms of the last three presidencies.

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