

Is Sérgio Moro a Negationist? Operation “Lava Jato”, Updatism Transparency and Negation of Politics

*Sergio Moro negacionista? Operação Lava Jato,
transparência atualista e negação da política*

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ABSTRACT

This article develops the hypothesis that Sérgio Moro’s narrative at the head of Operation “Lava Jato” was built around the modalities of negationism, revisionism and negation. The denial of the politics is the assumption from which investigations should move. This narrative was produced between 2004 and 2020 by a “depoliticized” and moralizing force coming from the judicial bodies and disseminated by the mainstream press. Parallel to the Italian operation “Mani Pulite”, Moro and his acolytes admitted a form of intervention in political events marked by the idea that the operation was not only legal-investigative but a political movement capable of producing a diagnosis, an agenda and even a “revolution” in the country. The event allowed Jair Bolsonaro to rise to the center of the political system, incor-

RESUMO

Este artigo desenvolve a hipótese de que a narrativa de Sergio Moro à frente da Operação Lava Jato se movimentou em torno de modalidades de negacionismo, revisionismo e negação. A negação da política é o pressuposto a partir do qual as investigações deveriam se movimentar. Essa narrativa foi produzida entre 2004 e 2020 por uma força “despoliticizada” e moralizadora, vinda de órgãos do judiciário e disseminada pela grande imprensa. Paralelamente à operação italiana Mãos Limpas, Moro e seus acólitos admitiam uma forma de intervenção nos acontecimentos políticos marcada pela ideia de que a operação não era apenas jurídico-investigativa, mas um movimento político capaz de produzir um diagnóstico, uma agenda e mesmo uma “revolução” no país. O evento permitiu a ascensão de Bolsonaro ao centro do sistema político, in-

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porating negationism and denial of politics from the general scenario.

Keywords: Sérgio Moro; Lava Jato; Updatism; Transparency; Negationism; *Mani pulite*.

corporando o negacionismo e a negação da política oriundos do clima geral.

Palavras-chave: Sergio Moro; Lava Jato; Atualismo; Transparência; Negacionismo; Mãos Limpas.

To our friend Henrique Estrada Rodrigues.

The hero of transparency is only built in the light of darkness (Henrique Estrada Rodrigues, 2021, author's translation).

Every story is under the pressure of time. To alleviate and correct this pressure, the boundary between secrecy and advertising must always be redefined and re-established. The Watergate case was a criminal violation of that border (Reinhart Koselleck, 2014, author's translation).

The central hypothesis developed in this essay is that the narrative undertaken and symbolized by Sérgio Moro at the head of Operation “Lava Jato” involved negationism, revisionism and denial. The denial of politics is understood as the presumed way in which legal investigations should be based on. This negationist narrative of politics was produced between 2014 and 2020, by a “depoliticized” and moralizing force coming from judicial bodies, translated and disseminated by the mainstream press in the public opinion. Imbued with a spirit of revolutionary heroism, Moro and his followers admitted a form of intervention in political events, available to the public in real time, marked by the idea that “Lava Jato” was not just a legal-investigative operation, but a larger political movement capable of producing a diagnosis, an agenda and perhaps even a “revolution” for Brazil.

From the principle of transparency, several actions were taken to fight corruption having in mind publicity and spectacularization. Such practices built an environment where public perception towards facing deviations in conduct carried out by professional politicians grew, as if this perception could overcome the referent's factuality. Thus, it operated a negationist procedure since forms of twisting reality were admitted and animated by the sense of

mission that guided the *lavajatista* principles symbolized in the figure of Sérgio Moro and extended to important segments of the judiciary, such as Attorney General Rodrigo Janot.

In this sense, we start from the following distinction between negationism, revisionism and denial:

Denial: contestation of reality, fact or event that can lead to concealment, falsification, fantasy, distortion and shuffling. In general, we perceive a concealment and a distortion of factuality that either seeks to deny the veto power of the sources, or fabricates a rhetoric based on imaginary and or debatable/manipulated “evidence”. Revisionism: free interpretation that does not necessarily deny the facts, but that instrumentalizes them to justify the political struggles of the present in order to build an “alternative” narrative that, in some way, legitimizes certain dominations and violence. Negationism: radicalization of denial and/or revisionism. Falsification of facts (Pereira, 2015, pp. 865-866. Cf., also, among others, Valencia-García, 2020; Bauer; Nicolazzi, 2016; Traverso, 2017; Trucker, 2007; Virno, 2013; Meneses, 2020, author’s translation).

These distinctions will help us to argue that speeches and texts by the hero of transparency – Sérgio Moro – symbolize the emergence of a specific form of denial in contemporary Brazil since, among other factors, denial is paired with an update of the transparency discourse. In this direction, this denial was updated in the light of the present, that is, according to “public opinion”, at the same time that it promoted political negationism, with its main legacy being the emergence and consolidation of *Bolsonarismo* as political negationism: implosion of the political system in a permanent war against democracy as a *modus operandi* capable of producing a democratic corrosion within the system itself, effected through a strategic alliance between different sectors of the right and the far right ends of the political spectrum, from the intertwining of various historical durations and contingencies (Cf., also, among others, Pereira; Araujo, 2020; Avritzer, 2020; Aarão Reis, 2020; Nobre, 2020).

The denial of politics, crystallized in *antipetismo* and translated into the *lavajatista* discourse, created the conditions for the crusade of *Bolsonarismo* against democracy, moving from the margin to the center, that is, moving from leftovers antidemocratic resentment with the end of the Dictatorship, acting in the gaps in the regime (Cf., among others, Pinha, 2020 and Bauer, 2020) to sustain and accelerate the process of State reforms, inserted in a neoliberal and conservative program.

It is also worth mentioning that these actions and this environment were built on the basis of historical legitimation, or better yet of an imprecise type of historical revisionism: reading undertaken by Moro and members of Lava Jato on the history of Italian investigation Operation “*Mani Pulite*” (Clean Hands) and its developments. That is, the relativization of the “explosion” of the political system and, consequently, the opening of the way for the construction of an outsider and anti-democratic leadership, as in the case of Silvio Berlusconi, and the lack of an effective institutional heritage in the fight against corruption in Italy.

I

Mateus Pereira and Valdei Araujo define fragments of our current experience of time from the emergence of the word update. Updatism would be a form of present that is automatically updated according to the actuality: “this actuality can be found in all history, whether from the present or from the future, but it is an identification as a variety of time that ‘updates in function of the present’” (Pereira; Araujo, 2018, p. 124, author’s translation). In agreement with this definition, we ask ourselves if transparency would be one of the projects of the future of our updatist condition.

This question seemed necessary to us especially when based on one of the definitions of democracy used by Sérgio Moro, who supported, in 2016, the exposure of conversations recorded between former President Lula and the then President Dilma Rousseff, outside the legally authorized period: “Democracy in a free society requires the governed to know what the governors do, even when they seek to act hidden by the shadows” (Rodas, 2016, author’s translation).

In an “updatist” world, is the frontier between public and private, as mentioned by Koselleck in the epigraph, being redefined with greater intensity causing different compositions and reconfigurations? Or is it that this border practically no longer exists since we are living in the realm of constant “criminal violation” (to avoid the controversial term “exception”)?

In order to illuminate these issues, we can argue that the current reorganization and/or dissolution of the public and private domains, that the excessive display and abundance of information have increasingly produced demands for transparency. As Ivar Hartmann, a professor at FGV, said in 2016 to defend the prosecutors of Operation “Lava Jato” from partiality at the time of filing a complaint against former President Lula using the famous Power

Point presentation: “Transparency is positive in any case.” (Alessi, 2016, author’s translation).

To Byung-Chul Han (2014), time becomes transparency when leveled in succession to an available present. A transparent time would, in theory, lack destiny and event. In this regard, Simmel formulated a warning that may be more than current: “if complete reciprocal transparency was possible, the relations of human beings with each other would change in an unimaginable way” (Simmel, 2009, p. 224). Following this line of thought, we ask ourselves with Vincent: “do we really want, as we say, the transparency of the other?” (Vincent, 1995, p. 185). Watching how selective Operation “Lava Jato” was and then discovering its obscurities, as evidenced in the “Vaza Jato” scandal in 2019³, a question arises: is the good transparency in the other?

Politics, as a strategic action, requires secrecy because “secrecy is one of the foundations of social stability” (Vincent, 1995, p. 185, author’s translation). We can thus say that, during the peak of Operation “Lava Jato”, the discourse of transparency often served to deny politics in a world that values exposure more and more. Apparently, in the Facebook era, one must expose themselves in order to exist: “in the exposed society, each subject is its own object of publicity. Everything is measured in its exposure value” (Han, 2014, p. 29, author’s translation).

The particularity of what Han calls a digital panopticon lies in the fact that its residents themselves actively collaborate in its construction and conservation, while they show off and undress themselves. In this habitat, the victim becomes an executioner and vice versa, with a certain frequency and intensity. In this sense, we are experiencing an important change in democratic societies since the public sphere as a space for common action would be metamorphosed into an exhibition space⁴.

This is the context that we must think about the updating of the political scandal in the age of the internet. The modern scandal, according to Thompson (2010), is based on appearances in the public domain, on practices and information from the private domain amid the perception that such practices are transgressive or inappropriate, as well as their great visibility and condemnation by the media. The current problem is that the visibility and audience of the scandal have grown, the boundaries between what is public and what is private are become thin, imprecise and change constantly since said boundaries became porous, contested, negotiated and disputed – especially with the advent of the internet.

Given the inaccuracies and the rapid transit of borders between the pub-

lic and the private sector today, power relations began to be challenged and shaken with greater frequency and intensity. Thus, “the acts for freedom of information, which gained strength in many Western societies in recent decades, are key pieces in the scenario in which the new information wars are emerging” (Thompson, 2010, p. 31, author’s translation). These *wars*, like the expenditure scandal of members of the British Parliament (2009), can – as was also the case with Operation Lava Jato – bring “entire parts of political and social life into chaos” (Thompson, 2010, p. 35, author’s translation). There is, therefore, something new, or perhaps a radicalization of the role of mediated forms, which have emerged since the diffusion of the press, since it is our ability to give visibility and/or hide that becomes increasingly difficult to control. Therefore, from a political point of view, a favorable field is created for the use of the updatist discourse of transparency as a political weapon.

A question that reveals the contemporary ambivalence of the subject is: why keep a secret if “someone” or a company already owns and negotiates our private data? Undoubtedly, there are more problems related to private transparency than in relation to the so-called “public transparency”. Even so, countries with few policies to combat corruption and democratic freedoms can be well placed in “public transparency” indices, as is the case with “Transparência Internacional” (Avritzer, 2016)⁵. One of the problems is that the fight against corruption, in general, is full of paradoxes. Advancement and improvement are always important, at the same time, however, the privatization of the public sector grows.

In this sense, it is very difficult to say whether corruption is greater or lesser in certain periods, such as, for example, in relation to the Brazilian Military Dictatorship – contrary, therefore, to what most Brazilians thought in 2017 (Fujita; Marchao, 2017). After all, “corruption is a secret phenomenon, and the evidence about it is indirect. Most of the indexes that measure corruption are based on the perception of its existence, which is all the greater the more corruption is combated” (Avritzer, 2016, p. 9, author’s translation).

Consulting the Google Books database, we note that, in the 1980s, the use of the word transparency doubled in appearances. Thus, it is likely that worldwide and in Brazil the word transparency has spread since that decade through the translation of the Russian word *glasnost*. For Yurchak (2005), *perestroika* and *glasnost*, by Gorbachev, are a response to the crisis, starting in the 1970s, of a political attempt to “nationalize time”. A paradoxical project for the emancipation of man, including time, but crossed by the control of society by the Party and the State.

At the same time, the post-Stalinist context enabled the emergence of a positive and liberal imaginary of the “West”. The emergence of this imaginary West occurs *pari passu* with the transition from the vision of a triumphant, hegemonic future, observed until the 1960s, to the feeling of a present in crisis. The access to information, testimonies and publications of dissidents, in view of the openness operated by the policy of glasnost, seems to have had a catalytic, transforming and even destructive effect from certain points of view.

II

Judicial independence, internal and external, the progressive delegitimization of a corrupt political system and the greater legitimacy of the judiciary in relation to professional politicians were, therefore, the conditions that made the virtuous circle generated by the *Mani Pulite* operation possible (Moro, 2004, p. 58, author’s translation).

Considering the degree of deterioration of public affairs, revealed in the “mensalão” and in Operation “Lava-Jato”, some judicial activism against corruption is still justified. It is not a matter of defending creative interpretations of the Constitution. It’s about defending the equal and impartial application of the law against the systematic abuse of power for private purposes. The law must be applied to everyone. Activism lies in the strict application of the law even against special interests. In Brazil, such a stance is revolutionary (Moro, 2018, author’s translation).

Written at different times and commenting on the Italian case and the Brazilian case, respectively, the two passages above reveal decisive characteristics of Sérgio Moro’s speech about the intrinsic relationship between the fight against corruption and the denial of politics. What is at stake in the readings on Operation “*Mani Pulite*” and Operation “Lava Jato” is the reiteration of the same argument: judicial activism.

Certainly, the literature on the Italian Operation “*Mani Pulite*” was what helped us the most to understand certain ideas of transparency and activism that underlie the denial action of politics symbolized in the practices of Operation “Lava Jato” and in the texts and actions of Sérgio Moro. We can say that, in the article “Considerations about Operation Mani Pulite”, from 2004, Sérgio Moro outlines the main lines of the *Lavajatista* discourse, ten years before the beginning of Operation “Lava Jato”. For him, the Italian operation

“constituted one of the most successful judicial *crusades* against political and administrative corruption” (Moro, 2004, p. 60, emphasis added, author’s translation), “virtuously” combining prisons, pre-trial as “a way of highlighting the seriousness of crimes”, plea bargaining/confessions and publicity. Public opinion can “impose some kind of punishment on corrupt public agents, condemning them to ostracism” (Moro, 2004, p. 61, author’s translation).

In his 2004 text, Moro states that there would be institutional conditions for carrying out a similar judicial operation in Brazil. According to him, a less rigorous judicial practice against corruption would have to be modified, “which allows a small narcotics trafficker (for example, the so-called ‘mules’) to be treated more rigorously than any person accused of a ‘white collar crime’, even the ones responsible for damages to society in the realm of millions” (Moro, 2004, p. 61, author’s translation).

Moro undertakes an exercise of historical revisionism about the consequences of the implosion of the political system caused by “*Mani Pulite*”, which later helps to explain the emergence of Jair Bolsonaro to prominence. He relativizes the emergence of Silvio Berlusconi as a result of that process, as if the two events – the implosion of the political system and the rise of Berlusconi – were devoid of causal link, not parts of the same whole.

The experience of the Italian case supports a legal view that guides discourses and actions in the Brazilian case. Operation “*Mani Pulite*” and the debugging of corruption are the future that Brazil should pursue. Moro does not deny that Operation “*Mani Pulite*” reconfigured the political framework in Italy but minimizes the fact, he relativizes it.

According to data provided by Fábio Kerche, between 1992 and 1994, the five most important Italian political parties declined in votes and support. The political figure of Silvio Berlusconi emerges from there, the then richest man in Italy, owner of several communications vehicles and neophyte in politics. He creates a center-right party, Forza Italia, and becomes Italy’s Prime Minister (Kerche, 2018, p. 256).

But, for Moro, Berlusconi’s rise is seen as nothing but a paradox: “whether or not Berlusconi has any criminal responsibility, it remains a paradox that he achieved such a position [of being Prime Minister] in Italy even after the *mani pulite* operation” (Moro, 2004, p. 60, author’s translation). For the former judge, the “judicial action against corruption is only effective with the support of democracy’, that is, “it is the *enlightened* public opinion that can, by its own institutional means, attack the structural causes of corruption” (Moro, 2004, p. 61, emphasis added, author’s translation). In Moro’s argumentative line,

Berlusconi is an unforeseen and disjointed effect in relation to the larger process of fighting corruption; a side effect, not a consequence. In fact, alienation from the consequences of the acts themselves seems to be one of the premises of the updatist transparency logic.

According to Pereira, Araujo and Marques (2020, pp. 200-201), “the desire for total transparency is one of the perverse traits of the digital age” and “the The Intercept scandal showed that the transparency discourse is a blank check that only applies when used in favor of the former judge. In Lava Jato’s kitchen, intransparency was the main ingredient”. For the authors,

Operation Lava Jato is not much different from the operation of Google and the capitalists of surveillance. They ask for unlimited access to your privacy, your intimate life, your data, your phone, your cell phone, with the promise that it will solve countless problems, end corruption, and actually end up building large structures of power and manipulation with the information they gather.

III

Considering the prerogative of the denial of politics as a permanent tactic to fight corruption and the establishment of an agenda for the country, we identified – from the 2004 text and Moro’s assessments of Operation “Lava Jato”’s place – the creation of a Moro legal-political program, structured in the existence of three fundamental steps.

The first step would be judicial activism to face the problem of corruption, considering a certain way of understanding it as a structural phenomenon of the Brazilian social formation. The judicial system is given the role of leading the structural transformations involved in the fight against corruption admitting, therefore, the possibility that the magistrate may extrapolate the system’s constitutional mission of applying the law.

According to Alexandre Santos de Moraes (2020), this pattern of missionary claim and the performance of the judiciary begins in criminal action 470, known as the case of “Mensalão”. “It was observed not only the progress of a process of aestheticization and spectacularization of the penal process, but also the celebration of judges as moralizing agents that fulfill the role of correcting the directions that the other powers were shown to be incapable of resolving” (Moraes, 2020, p. 291, author’s translation). The author highlights, as an example, the defense of Luis Roberto Barroso in relation to the need for

judges to consider “social feelings” and extrajudicial factors capable of passing on the judgment, creating a serious problem for the functioning of democracy:

in Barroso’s perspective, the valorization of public opinion seems to point to the need to bring the Judiciary closer to a political practice that is not within its purview, to safeguard democracy itself. Through this artifice, the illusion is created that the Judiciary makes politics in terms similar to the powers that its representatives have chosen by popular vote, contradicting the character against the majority that is at the foundation of their *raison d’être* (Moraes, 2020, p. 294, author’s translation).

In similar terms to those proposed by Barroso, the claim for judicial activism cuts across the legal perspective manifested in Sérgio Moro’s academic works. Barroso is here symbolically taken by us as a kind of Moro’s alter ego. According to research conducted by Francisco Hayashi (2020) based on Moro’s Master’s thesis, the Doctoral dissertations, articles and an authorial book, there is a persistent defense of “sensitizing the judiciary in relation to social themes, pedagogical effects of active judicial posture, even recognizing the limits of the judge’s lack of capacity to perform complex policies” (Hayashi, 2020, p. 5, author’s translation), also affirming the centrality of judicial activism with powers to order the implementation of public policies, sensitive to needs of his time.

In the article “*A missão do STF*” (The Mission of STF), published in *Veja* magazine in 2018, Moro states that, “considering the degree of deterioration of public affairs revealed by “Mensalão” and Operation “Lava Jato”, some judicial activism against corruption is still justified.” (Moro, 2018, author’s translation). In the following year, evaluating the progress of the operation, Sérgio Moro attributes to it a historic and, why not mention, a revolutionary feat: the break in the tradition of impunity for great corruption (Moro, 2019, p. 236). The object of “Lava Jato” therefore goes beyond its legal-investigative prerogative, aiming at a broader horizon: the definition of the national agenda in the coming years. From it, corruption, its prevention and confrontation have definitely entered the Brazilian public agenda, which will influence the political debate in the years to come (Moro, 2018, p. 257).

Here lies the second step of Moro’s legal-political program: judicial activism will bring “Lava Jato” to the status of a political-social movement of an era – it is no longer *just* a legal-investigative Task Force. It intones the voice of citizens indignant with corruption, the greatest of our evils, from a specific

understanding: systemic corruption is structured in patrimonialism and in the omnipotent presence of the State in social relations.

In this regard, Moro says in an interview with the *Roda Viva* program in 2018: “Lava Jato is not just an achievement of judges, but of the millions of Brazilians who took the streets in 2016 protesting against corruption” (Moro, 2018b, author’s translation). In the same direction, he suggests in a 2018 article that the most negative aspect of “Lava Jato” was not exactly in it, but in the political system: “the relative inertia of most Brazilian political leaders, political parties and other powers of the Republic in relation to the systemic corruption discovered, evidenced by the lack of approval of more comprehensive reforms that could reduce incentives and opportunities for corruption” (Moro, 2019, p. 256).

Years before, in “*Caminhos para reduzir a corrupção*” (Paths to reduce corruption), published in the newspaper *O Globo* in October 2015, the then federal judge proposed measures to face the payment of bribes on public contracts. According to the author, as a “rule of the game”, “endemic commitment”, “obligations agreed between the participants”, practiced by public agents in the treatment of the State, bribes should be seen as “evil to be fought by all” (Moro, 2015, author’s translation). Lava Jato thus presents itself as a flag held for a period, a cause led by the Curitiba group but not closed there. Driven by a sense of historical urgency, the task force, in particular, and the judiciary as a whole would represent the vanguard of a broader political movement. The fight against corruption followed an inexorable march, impossible to contain, and it was up to the revolutionary heroes of the judiciary to mobilize society for action.

The current times offer an opportunity for change, which requires the adoption, by the private initiative and by organized civil society, of a position of repudiation of the bribe, and, by the Public Power, of concrete and real initiatives, some activism is welcome, for the reform and strengthening of our institutions against corruption. millions have already taken the streets to protest corruption, but no relevant institutional responses have emerged. Time is passing and the moment, in part, is being lost (Moro, 2015).

The diagnosis is as follows: the politicization caused by state control in companies like Petrobras paves the way for corruption, as it facilitates the bargaining of public agents in the negotiation of contracts. The public company becomes the object of political allotment and potentially liable to corrupt

practices. As a consequence, still in Moro's terms from his 2015 text, "the economy loses efficiency" and "rationality in public management is lost". In other words, bribery justifies the excess spending, provided by the combination of political and economic centralization involved in the management of State-owned companies. Moro thus dialogues with the ideological repertoire founded on neoliberal reason, assuming that the more the economy manages to walk a depoliticized path, the more it would be rational and efficient. Petrobras should be managed without any political interest.

This perspective is even more evident in the analysis of Luis Roberto Barroso, already Minister of the STF – a publicly enthusiastic defender of the *Lavajatista* discourse – about the instinct of historical urgency that arose in the heart of Lava Jato, in an article entitled "Pushing history: corruption, change of paradigms and refoundation of Brazil" (Barroso, 2019, author's translation). Using Raymundo Faoro's well-known formulation in a very particular way, Barroso states that the omnipresence of the State in social relations and patrimonialism would be among the remote origins and causes of corruption (Barroso, 2019 p. 6). For him, since the colonial period, the patrimonialism resulting from the Iberian colonization distinguished the Brazilian social formation, marked by the bad separation between public and private sphere; "the King's Farm and the Kingdom's Farm – the king was a partner of the colonizers, meaning private obligations and public duties overlapped" (Barroso, 2019 p. 6, author's translation).

As a long-term negative development, there is a culture of paternalism and patronage around the State, above merit and virtue, in his words "a state omnipresence, which exercises control over political and economic activities, through direct exploitation or through mechanisms for financing private companies and granting benefits. Society becomes dependent on the State for almost everything that is important, be it personal, social or business related" (Barroso, 2019, p. 7, author's translation).

For Rodrigo Perez Oliveira, this conception of corruption, widely disseminated in the Brazilian democratic crisis that started in June 2013, is anchored in a grammar of emptying the place of the State and valuing the virtues disseminated by the liberal repertoire (Oliveira, 2018). In this sense, honesty and corruption would appear as attributes of individual action, leaving the "Liberal State only to plan and execute measures that would allow individuals to achieve, using their own means, their individual goals" (Oliveira, 2018, p. 393).

Although it did not appear in the recent political context, this anti-State

liberal discursive device has become a powerful political-discursive tool in the course of the crisis, as it has built a necessary relationship between *excess of State* and corruption. Understood as a political movement and an expression of social clamor for more honesty and punishment, “Lava Jato”, as outlined by Sérgio Moro and Luis Roberto Barroso, represents the most vigorous instrument in the dissemination of values associated with the denial of politics, the “depoliticization” of economy to criticisms of the excess of State. Combined with efforts for greater rationalization and efficiency in obtaining more profitable results, this speech intones and accommodates the propagation of an agenda for the country based on neoliberal reason. As a result, it affects the Partido dos Trabalhadores (PT) and the projects located to the left of the political spectrum more intensely since they advocate the centrality of the State as an inducer of economic development and an instance capable of reducing social inequalities.

The third step of the legal-political program manifested by Moro is the demand for a super autonomy of the judicial institutions involved in the Lava Jato investigations, without any type of external institutional regulation. An autonomy that would allow the task force to act in a privileged condition: politically protected actions within a *dome of depoliticization*; now opening itself up to the manifestations of public opinion that corresponded to its desires, then closing itself up to critics and external interferences of professional politicians – considered enablers to corruption.

When Moro talks about the conditions that made Operation “*Mani Pulite*” feasible, he stresses the principle of full autonomy capable of promoting judicial activism that confronted politics: “Judicial independence, internal and external, the progressive delegitimization of a corrupt political system and the greater legitimacy of the judiciary in relation to professional politicians” (Moro, 2004, p. 58, author’s translation). In view of the moral superiority of the Lavajatista judiciary and denying politicians the possibility of promoting the common good of society, this principle of autonomy, taken to its limit, would break the system of breaks and balances provided for in the division of powers of the Republic. The power of decision is concentrated in the hands of the judges – seen as *revolutionary heroes* – as if they were not susceptible to imprecise decisions, the spirit of corporatist protection or even as if they could not succumb to tyranny when they saw no limitation in their own power.

For Fábio Kerche, Operation “*Mani Pulite*” offered more than inspiration to the judges and prosecutors of “Lava Jato”. It gained greater dimensions when the Brazilian judicial system approached, in practice, the Italian model

by unifying all stages of the criminal process – investigation, prosecution and judgment – in the same instance capable of operating in cooperation (Kerche, 2018, p. 259). If, on the one hand, such unification reduced the time and operational costs involved in mobilizing different institutions, on the other, the lack of a clear division of tasks and the partnership effort would dilute the distinction between the actions of the Federal Police, the Public Ministry and of the judges (Kerche, 2018, p. 273) – the messages disclosed by “Vaza Jato” show this problem, revealing situations in which the then judge Sérgio Moro guided procedures for the prosecution that, later on, he himself would judge. Thus, in the Italian case – and in the Brazilian one – “the prosecution has a significant advantage in relation to the defense in a criminal case” (Kerche, 2018, p. 273), meeting the most widespread public perception that justice is accomplished through condemnation.

Lava Jato extrapolated the autonomy proposed in the 1988 Constitution due to changes in legislation that occurred during the PT governments. The “*Lei da Delação Premiada*” (Law on Cooperation Agreements – Law 12.850/13), for example, authorized prosecutors to negotiate, without interference of a magistrate, lesser penalties for an accused in exchange for accusations of alleged counterparts in the fraudulent schemes. The prisons, in turn, served as an instrument for negotiating with defendants, encouraging cooperation agreements and including new suspects (Kerche, 2018, p. 280).

In “*Independência judicial e abuso de autoridade*” (Judicial independence and abuse of authority), an article published in O Globo in April 2017, Sérgio Moro exalts the super-autonomy of the judiciary put into practice in Operation “Lava Jato”. “The Courts of Justice need to be independent. We must ensure that judgments are linked only to laws and evidence, and that they remain insensitive to special interests or to the influence of the powerful” (Moro, 2017, author’s translation). The defense of autonomy was accompanied by an attack on the so-called “law of abuse of authority”, proposed then in the Senate by Renan Calheiros and Roberto Requião, understood as a counterattack by the powerful individuals in politics. The Legislative’s initiative to offer some degree of external counterpoint to the decisions made by the *Lavajatista* judiciary is seen as a threat or revenge. In Moro’s words, “in practice, it subjects police, prosecutors and judges to private revenge from powerful criminals” (author’s translation).

The moment of deliberation is somewhat surprising when several corruption scandals involving high political authorities are published and, therefore, an op-

portunity in which the independence of the judiciary has never been more necessary so that it, based only on law and evidence, can determine, independently and without the pressure arising from special interests, the responsibilities of those involved, separating the guilty from the innocent (Moro, 2017, author's translation).

The demand for discretionary autonomy imposes a problem to the functioning of the democratic-representative model with the sovereignty matter. After all, the denial and criminalization of politics destitute (or criminalize) those who are chosen by the people as their representatives in an electoral process, building a tension exposed by the crisis between sovereignty and political control (Avritzer; Marona, 2017, p. 360). The proliferation of extra-parliamentary channels of formal and informal representation (participation-in-participatory-spaces) – such as popular initiatives of law projects through petitions – weakened the idea of representative government and, at the same time,

opened doors to the pretension of the strengthened judicial institutions (of the Judiciary Power and, particularly, of the Public Prosecutor's) to, in mediating citizenship, dispute the representation of the public interest, which, in a scenario of increasing unveiling, control and fight against corruption, established a framework of judicial Petrorianism that brings severe blemishes to Brazilian democracy (Avritzer; Marona, 2017, p. 363, author's translation).

This is one of the most expressive results of the *Lavajatista* speech and political action, the protagonist of the Brazilian democracy crisis between 2014-2020: based on the principle of super autonomy without regulation it ends up weakening sovereignty, paving the way for all types of selectivity and political persecution.

V

From a conceptual point of view, we would like to add at the end of our reflection that, even when working with the distinctions between negation, negationism and revisionism by Pereira (2015), our research led us to the conclusion that despite being different phenomena, they overlap, interconnect, intersect and constantly interpose. They are, therefore, dynamic phenomena of difficult distinction when confronted with the reality of the historical past.

At the same time, as we hope to have shown, they are, above all, political phenomena. To make this point clearer, it is also necessary to analyze more closely how Moro's judicial activism updates and, paradoxically, denies the dimensions of a historical political figure: the revolutionary hero.

What does judicial activism mean in Moro's texts and speeches? From our point of view it is a claim and legitimation that magistrates occupy a role that goes beyond mere law enforcement, serving as an instrument for the establishment of a war against professional politicians and, as an outcome, a denial of politics. Activism points in the direction of an agenda for the country, identifying in the State protagonism the mainspring that causes endemic corruption, from a very specific reading of the idea of patrimonialism in Raymundo Faoro. On the other hand, the demand for autonomy for the discretionary action of the judiciary also exists, which does not involve inspection, restraint or counterweight by the other powers of the Republic due to being considered the only power capable of guaranteeing sincere transparency of public life.

As a result, in addition to establishing a privileged condition for the judiciary to operate without contrast, the procedure entailed between 2014-2020 – a sovereignty problem – as the judicial over-activism involving cases of fighting corruption is not anchored in the delegation of power and representation established under the terms of representative liberal democracy. In other words, in whose name and through which representative pact does a judge act when they extrapolate their role of applying the law, investing themselves in a hero's role in the crusade against corruption?

That is, in addition to the risk of judicial tyranny without restraint and balance, popular sovereignty, in Moro's reflections, is at all times threatened, as the representative elected to legislate is replaced by the magistrate who, in addition to not having to negotiate their agenda with society in an electoral process, must agree with equally elected peers – as occurs in the legislative game – to form consensus or majorities capable of establishing structural measures to fight corruption.

Thus, operating within the institutional stability of the liberal-representative democratic model and by the depoliticization of the judicial power produced within PT's governments, Operation "Lava Jato" and its bet on the tyranny of perception and the continuous activation of political scandals, driven by the updatist transparency principle, established the conditions for the operationalization of "negationism as a political tactic" (Cf. Valim; Avelar, 2020), a constitutive and permanent feature of *Bolsonarismo*.

During his term as president, Jair Bolsonaro has acted so that the *Lajajatista* promise of permanent confrontation of systemic corruption is not fulfilled. It promises that, in the end, it is effectively unenforceable: the lack of a stable democratic system precludes, in advance, the effective and permanent fight against corruption. Bolsonaro has acted to “turn the page” and end the *Lavajatista* experience in the circumstances of the crisis that removed the Partido dos Trabalhadores from power and imploded the political system forged during the redemocratization of the 1980s. Bolsonaro *updates*⁶ and *closes*⁷ “Lava Jato” to the circumstances prior to his government, leaving it with no continuity into the present. Subject to the personalism/heroism of its protagonists, Sérgio Moro and Deltan Dallagnol, removed from their duties in the Operation, it became easy prey to Bolsonaro’s attempts at politically influencing the judicial institutions. For Jair Messias Bolsonaro, Lava Jato’s greatest legacy is the rise of himself as a myth.

It is noteworthy that the registration and publicity strategy of the denial used by Operation “Lava Jato” is not the same as the *Bolsonarist* denial. Such denial operates fundamentally on the margins of mainstream media, starting from a diffuse center around social networks – mainly the WhatsApp application – through digital masses, building an “outsider” political identity in relation to the so-called “old politics” by *bolsonarists* and *lavajatistas*. *Lavajatismo*, on the other hand, used, above all, conventional instruments of mobilization such as large communication companies, keeping public opinion in a state of permanent updating based on the spectacularization of the actions of the judiciary (Cf., among others, Pinha, 2020; Singer, 2018). While the *bolsonarist* modality of denial suggests an aversion to the truth effect channeled by the mainstream media, Lava Jato frames its entire narrative from the mainstream media, also counting on the multiplication of the effects coming from the internet. Such multiplication of effects suggests a continuous updating, mobilization of the public and radical openness so that legal decisions correspond to the desires of “enlightened public opinion” (Moro, 2004, p. 61, emphasis added, author’s translation).

In the name of a moral *crusade* to fight corruption, involving problems of misuse of powers, constraints on the relationship between judiciary autonomy and popular sovereignty, broadening the scope of the judge’s role as a *revolutionary hero* monopolizing moral virtues, “Lava Jato” produced and operated a particular type of denial of politics, which has translated into a form of intervention in politics driven by public opinion, through the production of scandals channeled by mainstream media in constant update. Thus, following

the analogy between the history of Lava Jato and a liberal idea of Revolution suggested by Lynch (2018)⁸, we can say that Moro updates the heroism of sincerity.

For Henrique Estrada Rodrigues (2021), a certain interpretation by Rousseau, especially among Jacobins, operates with the dichotomy between transparency (nature, purity, truth) and opacity (politics, theater, culture, corruption) to support the action of the heroism of sincerity /transparency. Moro is thus the judge who acts in the revolutionary court (Lava Jato) to reveal the true face of the ailments of the corrupted Republic. The hero of transparency is that of ideological purity and actions devoid of political interest. The enemies, on the other hand, are corrupt and act in a masked, veiled and disguised manner. Revolutionary heroism, as Rodrigues (2021) suggests, is a heroic conception of the revolutionary politician and actor. The risk is excessive in the transformation of oneself into an example to be followed; a human beyond the human condition, since they are superior to most mortals. The dimensions of the politician, that is, plurality and equality, for example, escape the contradictions of this way of acting in the world between the different.

Would it have been possible to preserve the political dimension of the hero Moro? Yes. As long as he was spared the risk of Hybris, his curse. Like the Jacobins, he seems to have lost himself in Hybris and, in particular, in denying the political dimension of heroism. After all, as Rodrigues also points out, the principle of transparency as a personal and group attribute very easily escapes the political by moralizing it based on exemplary action. In other words, in view of the relationships between the heroic dimensions of the politician and the hero's politics, we realize, in our analysis, that Sérgio Moro's negationism can be perceived precisely in an attempt to deny, hide, distort, conceal and shuffle the hero's political dimension through the "rhetoric of technique" (Silveira, 2020). In this regard, it is exemplary that, as Silveira quotes, Moro stated, when he became a Minister in Bolsonaro's government, that he was *not* "entering politics as a true politician", since his position would be "technical" (Silveira, 2020, p. 215).

In addition, the denial of politicians and politics underwent, between 2014-2020, above all, the moralization of the politician and politics through the rhetorical dimension of the updatist transparency. After all, however difficult it is to define politicians and politics, we know some things: these instances are not defined by and do not operate through the dimensions of morality. As Rodrigues (2021) also points out, the space for politics is not the

space for the self-configuration of models of conduct that want to shape the world.

The “Vaza Jato” scandal showed how much this heroism of transparency needs the dark, impure, opaque and obscure instances to act and communicate, including STF ministers. After all, they tried to act based on the logic of secrecy, behind the scenes, through opacity, manipulation and, in particular, on a word that is one of the human actions that permeate and justify the basis of the issues considered here: lie.

Last minute update: while we were making the final grammatical and formatting adjustments to our article, after the return from the referees, we saw the monocratic annulment of Lula’s condemnations by the STF minister Edson Fachin, which represented the return of the former president’s political rights. On the following day, March 3rd, 2021, the Federal Supreme Court ruled, through its second group, the resumption of the judgment of the partiality of former judge Sérgio Moro in relation to his decisions in Operation “Lava Jato”, after examining the conversations released by *The Intercept Brasil* between Moro and Task Force Attorneys. On this day, Ministers Gilmar Mendes and Ricardo Lewandowski voted in favor of Moro’s partiality and, afterwards, the trial had to be suspended due to Minister Kassio Marques’ request for views. Minister Mendes stated, among other important things, that Moro’s conduct at the head of Operation “Lava Jato”, supported to a considerable extent by the mainstream media, was guided by attempts to remove former President Lula from the 2018 election run and this fact means that the former judge was the protagonist of the biggest judicial *scandal* in the history of Brazil.

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NOTES

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³ Cf., especially, The Intercept Brasil, 2020.

⁴ For Han, Facebook and Google work as secret services, as they profit from knowing users' wishes, often without their knowledge. Thus, for the author, there would be a transition from foucauldian biopolitics to "digital psychopolitics". Psychopower would be more efficient than biopower, since it controls from the inside and no longer from the outside (Han, 2016). See also, among others, Zuboff (2019).

⁵ On this topic, cf. Transparência Internacional.

⁶ It is important to remember that Moro was the Minister of Justice of Jair Bolsonaro's government for 15 months.

⁷ Bolsonaro, for example, on October 7, 2020 stated that he ended Lava Jato because there is no corruption in his government.

⁸ As Lynch (2018) states: "The concept of revolution is here mobilized in a liberal way, in the Enlightenment way of an abbot Sieyès, that is, as a process of wide transformation promoted by a civil society tired of privilege and impunity. Headed by a vanguard of heroes, as once lieutenants such as Juarez Távora and Eduardo Gomes, who rose up against the Old Republic, the new revolution of 1930 would find its heroic bearers in judges like Sérgio Moro and prosecutors like Deltan Dallagnol". In this sense, it should also be noted that Rosanvallon (2020, p. 22), when analyzing a certain independence of the judiciary as part of the current crisis of democracy on a global scale, highlights that the opposition between law and democracy is not new, since it was discussed in the American and French revolutions. In both cases, the question of the election of judges was put into practice, and in the French case, it was revised later. However, for the author, in the contemporary world, this opposition would have been radicalized for several reasons (Cf. Rosanvallon, 2020, author's translation).



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