

A TRANSGRESSION ON BRAZILIAN STATE GOVERNMENT'S AUTONOMY? THE CASE OF THE FEDERAL INTERVENTION IN THE AREA OF PUBLIC SAFETY IN THE STATE OF RIO DE JANEIRO

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Abstract

The paper brings the context of violence in the state of Rio de Janeiro, Brazil, and the political cost it represents for the federal government and the state government of Rio de Janeiro to maintain the distribution of authority *vis-à-vis* institutional safeguards in Brazilian Federalism. Even though there was no judicial transgression with the Presidential decree authorizing the Federal Intervention in Rio de Janeiro, from February to December 2018, we argue that it represented a case of “credit assignment” problem given the weakness of institutional safeguards in Brazilian federalism to avoid opportunistic behavior of the federal government and Rio de Janeiro state government.

Keywords: Brazilian Federalism; Federal Intervention; Public Safety; Rio de Janeiro.

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Resumen

El artículo presenta el contexto de la violencia en el estado de Río de Janeiro, Brasil, y el costo político para el gobierno federal y el gobierno del estado de Río de Janeiro para mantener la distribución de la autoridad con respecto a las salvaguardas institucionales en el estado de Río de Janeiro en el federalismo brasileño. Si bien no hubo transgresión judicial con el decreto presidencial que autoriza la Intervención Federal en Río de Janeiro de febrero a diciembre de 2018, argumentamos que el caso representó un problema de "asignación de crédito" (*credit assignment*) dada la fragilidad de las garantías institucionales en el caso de federalismo para evitar el comportamiento oportunista tanto del gobierno federal como del gobierno estatal de Río de Janeiro.

Palavras clave: Federalismo brasileño; Intervención federal; Seguridad Pública; Río de Janeiro

Resumo

O artigo traz o contexto da violência no estado do Rio de Janeiro, Brasil, e o custo político que representa para o governo federal e o governo do estado do Rio de Janeiro manter a distribuição de autoridade vis-à-vis as salvaguardas institucionais no Estado do Rio de Janeiro na área de segurança pública. Embora não tenha havido transgressão judicial com o decreto presidencial autorizando a Intervenção Federal no Rio de Janeiro, de fevereiro a dezembro de 2018, argumentamos que o caso representou um problema de "cessão de crédito" (*credit assignment*) dada a fragilidade das salvaguardas institucionais no federalismo brasileiro em evitar comportamentos oportunistas tanto do governo federal quanto do governo do estado do Rio de Janeiro.

Palavras-chave: Federalismo brasileiro; Intervenção Federal; Rio de Janeiro; segurança pública

INTRODUCTION

Among the division of responsibilities attributed by the 1988 Brazilian Federal Constitution to its three levels of government (the Federal, 26 state governments and the Federal District, and 5570 municipalities), the responsibility for the provision of public safety leans toward the state government as the institutions responsible for law enforcement are controlled by the state governor. Since then, critical authors characterizes the role of the federal government mainly by its absence to get involved directly in the coordination of a

national public policy strategy in this area (Sá e Silva, 2012; Diniz Filho & Dutra; Dutra, 2018). The main preference of this level of government has been to make use of Federal Special Forces to intervene conveniently in the state government's jurisdiction according to the political preferences of the President. The proposal of this paper follows this line of argument as it proposes to discuss intergovernmental relations followed by the Presidential decree that authorized the Federal Intervention in the area of Public Safety in the state of Rio de Janeiro, from February 16 to December 31, 2018. Bearing in mind that the area of public safety carries a *path-dependence* trajectory that did not involve making use of the Federal Intervention as a solution to problems of public disorder, an intuitive question to this scenario would argue: did this measure raise the coordination cost of the federal government toward public safety?

The idea guiding this paper states that the Federal Intervention in Rio de Janeiro was a political strategy of the federal government intended to *encroach* the role of the state government to avoid coordination. Considering the literature on federalism, opportunistic encroachment is inherent to all federations and it seems to be the first option the federal government takes into account in his strategy toward intergovernmental relations (Bednar, 2009). However, this behavior is restrained by informal institutions that help to maintain the distribution of authority between federal and state governments. Following Jenna Bednar's (2009) idea of federal safeguards, we argue that the Federal Intervention in Rio de Janeiro, Brazil, from February to December 2018 became possible taking together the combination of the following factors: i) the intergovernmental structure; ii) the failure on popular safeguard to improve accountability; iii) the juridical safeguards that allow the Brazilian Armed Forces to become law enforcement agents.

This paper is divided into three parts. First, comes the presentation of public safety and law enforcement according to the distribution of power in the 1988 Brazilian Federal Constitution. Next, is the theoretical background of federal safeguards and the Brazilian intergovernmental relations in the provision of public policies. Finally, the political context that led to the decision to make use of the Federal Intervention in Rio as a political solution for the federal government. The findings suggest that the Federal Intervention in Rio represented a case of "credit assignment problem" given the weakness of the Brazilian safeguards to avoid opportunistic behavior of the federal government.

1. PUBLIC SAFETY AND LAW ENFORCEMENT IN BRAZILIAN FEDERALISM

Formally converted into a Federation in 1889 – after a military coup overthrew the monarchical regime – Brazilian history has been marked by a series of deep shifts in its federative balance of power (Faletti, 2006; Diniz Filho & Dutra, 2016). The 1988 Federal Constitution was drafted during a peak of subnational government's federative strength and brought a very important change: not only it invested local governments (called *municípios*, or municipalities) with federative powers equal to those held by the federal and state governments, but the Constitution also left municipalities in charge of supplying a wide range of public services directly to the population (Diniz Filho & Dutra, 2016).

The criminal justice system highlights the subnational government's strength in the Brazilian federalism. The federal-level establishes the Penal law and procedures, but the state government controls the institutions responsible for law enforcement, which includes courts, the prison system and police force (Macaulay, 2005). Brazilian state police has a dual model of policing: the Military Police (*Polícia Militar*) as an ostensive policing toward the preservation of public order; and the Civil Police (*Polícia Civil*) is responsible for the functions attributed to a “judiciary police” mainly to investigate crimes².

From the mid-1970s to the late 1980s, the democratic consolidation of Brazilian democracy after the end of the Military Regime (1964-1985) kept the military as part of the main social and political actors in the political system (Stepan, 1997; Santos, 2015). Thus, the 1988 Constitution did not complete the process of full subordination of the military to civilian authority as it was observed in other Latin American countries (Zaverucha, 2000). The concept of “national security” remained an influence in Brazil guiding the articles of the 1988 Constitution toward the concept of “security”. It means that:

The concept of “national security” establishes the idea of force majeure and effectively allows the security forces a free hand in pursuing, by all means necessary, some notion of national interest. The militarized character of the major police force in Brazil, created in its current form under the authoritarian regime of 1964-1985, continues to reflect the national security logic of that period (Macaulay, 2005, p. 145).

Article 144 of the 1988 Constitution is dedicated to “The defense of the state and its democratic institutions” and defines the military structure of the three levels of government

² This dual model of police force remains in order since the Criminal Process Code of 1841 established a legal separation between the administrative police and the judiciary police (Teixeira, 2015).

towards law enforcement and public safety. The municipalities were excluded from a precise responsibility toward law enforcement. State governments remained as the main providers of law enforcement as the state police forces and the Military Fire Brigade remained subject to the Governor of the states and the Federal District, keeping the mission to maintain public order. In this case, each state government, 26 total, and the Federal District have their own *Polícia Militar* and *Polícia Civil*, leading to 54 state police forces in the country. Moreover, in regards to *Polícia Militar*, they remained as ancillary force and reserve of the Brazilian Army, which guaranteed the logic of ensuring order rather than acting on behalf of the citizens (Oliveira, 1988; Macaulay, 2005; Savell, 2016).

Finally, the military structure of the Federal government has the following institutions: i) the Brazilian Armed Forces, ii) Federal Police (*Polícia Federal*), iii) Highway Police (*Polícia Rodoviária Federal*); iv) Federal Railway Police (*Polícia Ferroviária Federal*). The role of the Armed Forces is defined under article 142 of the 1988 Constitution as a permanent and regular institution designed for “the defense of the Country, for the guarantee of the Constitutional power, and, on the initiative of any of these, of law and order” (Brazil, 1988, p. 105). The technical understanding of the use of the Army as a law enforcement agent is under the clause of “Guarantee of Law and Order” (*Garantia da Lei e da Ordem*, GLO). In 1999, a Complementary Law authorized the President to determine the deployment of the Armed Force to preserve public order once the instruments of public security have been exhausted. In 2001, a Presidential decree expanded the idea of GLO as a last resource to include situations in which “it is possible to presume disturbance of public order” (Savell, 2016, p. 63). According to this legal instrument, the Armed Forces would develop: “(...) ostensible police actions, such as the others, of a preventive or repressive nature, which are included in the constitutional and legal competence of the Military Police, observing the terms and limits imposed, to the latter, by the legal order” (Brazil, 2010).

During the mid-1990s, the conceptualization of “citizen security” was applied in the context of many Latin American countries and is based on the idea that the power to define fear, crime and security is removed from the state in order to be delegated to members of the public (Macaulay, 2005). However, given the legal apparatus of the 1988 Brazilian Constitution toward the concept and application of “security” under a “national security” doctrine, the main problems for the consolidation of Brazilian democracy since the mid-1990s have been the incomplete institutional reform of the state and that the political culture is often at odds with democratic transparency (Koonings, 1999; Santos, 2015). It remained a difficult equation between public safety and internal defense:

Given the continuity of the concepts and the operational structures of the military, public safety crises stimulate the use of the armed forces in national life. Thus, the border between public safety, internal defense, and defense of the institutions of the democratic state continue to be nebulous. This requires a Presidential or Congressional initiative to fully clarify it (Genuíno *apud* Oliveira, 1998, p. 35).

As a result, there are competing conceptualizations in Brazil toward what “security” means, and it has been applied at different moments by members of state authorities, the mass media and by civil society (Macaulay, 2005; Souza, 2016). The biggest challenge since then has been to bring the police under civilian oversight of some kind. This tension somehow reinforces the need of the Armed Forces to become agents of public safety according to the interests of the state and not the citizens. Federal Intervention is one of these examples.

Given this background over the main actors in Brazilian public safety, this paper promotes a dialogue using the literature of federalism and intergovernmental relations concerning opportunism and compliance in the distribution of authority between the federal government and the subnational states (Bednar, 2009). Even though the 1988 Brazilian Federal Constitution attributes a rigid distribution of power to each of these levels of government in this area of policy, each Constitution also brings informal elements that arise as a product of these formal structures that result in a safeguard to maintain the division of power. According to Jenna Bednar (2009), four basic types of safeguards – structural; popular; political; and judicial – work as a trigger mechanism to shape federalism:

the diverse set of institutions and actors that might react to governmental action (or intentions) in a way that could alter behavior. (...) each safeguard specifies a boundary on behavior and warns of the reaction should its boundary threshold be violated (Bednar, 2009, p. 96).

The section below will describe Bednar's (2009) four categories of safeguards and present them in the context of Brazilian intergovernmental relations. The next section will bring the context of violence in the state of Rio de Janeiro and the costs of both levels of government to maintain the distribution of authority *vis-à-vis* institutional safeguards.

2. FEDERAL SAFEGUARDS AND THE ROLE OF FEDERATED ENTITIES

Federalism is a principle that guides the political and territorial organization of a federation. The existence and participation of more than one actor with veto power in the decision-making process is the cornerstone of this form of government. Each federal entity preserves its autonomy as they have the same role in the formation – or at least in the

revision – of laws that affect the functioning system of a federation (Stepan, 1999). Thus, the political authority of the federated entities does not derive from the central government. Instead, it comes from the citizens by universal suffrage (Dutra, 2018).

Given this premise, there is no single federal state in the world that follows the same rules from another federation. Each Federal Constitution prescribes the government's formal structures and none of them are perfect or can be used as a role model to other federations. When it comes to the distribution of authority in a federation, it is common to think about problems in the provision of public goods: the temptation to let others make the sacrifice while still obtaining the benefits. In other words, an individually beneficial behavior (the temptation to free-ride) leads to a collectively counterproductive situation.

Bednar's (2009) theory on federalism proposes three types of transgression. The first one occurs when subnational governments try to *shirk* their responsibilities to the federation: "they may fail to implement national policy or may take it upon themselves to enact policy that is normally in the national domain rather than respects the division of powers" (Bednar, 2009, p. 68). The second type of transgression occurs when states try to *shift the burden* imposing externalities on other states. Finally, the third type of transgression occurs when the federal government tries to *encroach* on the authority of the states: "Shirking and encroachment are unauthorized acts of authority migration. They involve one government pulling authority toward itself (or perhaps abdicating it) when it suits that government's interests" (Bednar, 2009, p. 69).

Opportunism and compliance with the distribution of authority is a challenge to all federations. Opportunistic encroachment by the federal government can be triggered by three reasons: over partisan reasons (ideological differences between the center and the region); on efficiency grounds (such as technological or informational advances); or over electoral incentives (Bednar, 2007). To guarantee the federal bargain, safeguards are the diverse set of institutions and actors that "specifies a boundary on behavior and warns of the reaction should its boundary threshold be violated" (Bednar, 2009, p. 96). There are four basic types of safeguards: structural; popular; political; and judicial. Structural safeguards restrain the federal government to prevent encroachment. In other words, "The structural safeguards fragment the national exercise of power and force the national government to hear the perspective of the states" (Bednar, 2009, p. 104).

Popular safeguards regard citizen control over the government. However, information deficiencies (such as accountability) and self-interest can lead to a "credit assignment" problem: "Although voters do not directly encourage opportunism, they reward

politicians who pursue policies that minimize the likelihood of a bad policy outcome or maximize the likelihood of a good one” (Bednar, 2009, p. 112). Political safeguards are connected to the electoral system that generates a secondary system: the organization of political parties that forms to bind together political candidates. Finally, judicial safeguards are "charged directly with the constitutional review of government action and therefore is best positioned to set its threshold according to the formal division of authority” (Bednar, 2009, p. 119).

In Brazil, intergovernmental relations rely on the different types of distribution of power between the federal government and the subnational governments (state and municipalities). During the mid-1990s, scholars tried to find a balance between decentralization and centralization. However, since the mid-2000s the virtues of centralization gained *momentum*, highlighting the creation of a national standard of welfare policies as a way to reduce inequalities among regions (Dutra, 2018). To promote changes in local realities, the coordination strategy promoted by the federal government is based on an institutional design that:

destitute the local and state governments from their federative autonomy, not by the means of any constitutional reform, but by offering access to funds in exchange for their compliance to centrally designed public policies (Diniz Filho & Dutra, 2016, p. 4).

The Unified Health System (*Sistema Único de Saúde*, SUS) created in the 1988 Constitution is the most successful case of federative cooperation and it served as an example to several other "national policies". SUS was launched as a coordination effort in a context of rapidly decentralizing public health infrastructure developed on the idea of concentration of power in the federal government acting in a wide range of roles: “from a provider of funds to state and local governments, to planner responsible to define which services might be offered by which government, at which cost and quantity” (Diniz Filho & Dutra, 2018, p. 5).

Different areas of policies implemented their own National Systems, such as education, social assistance, habitat, and culture. Therefore, in the Brazilian federal case it seems to demonstrate that there are mechanisms capable of providing an incentive to subnational governments' adherence to national policies. However, in regards to public safety, a *path-dependence* trajectory from previous governments showed the federal government's incapacity to implement the institutional design of a National System.

In 1997, former President Fernando Henrique Cardoso created the National Secretariat of Public Safety (*Secretaria Nacional de Segurança Pública*, SENASP) under the Ministry of Justice (*Ministério da Justiça*, MJ). In 2001 came the creation of the National Fund of Public Safety (*Fundo Nacional de Segurança Pública*, FNSP). Finally, in 2003, SENASP elaborated strategic guidelines to induce funding based on progressive policies and the creation of a governance structure coordinated by the federal government (*Gabinetes de Gestão Integrada*, GGI). Overall, those ideas would guide a system called the National Unified Public Policy System (*Sistema Único de Segurança Pública*, SUSP).

In almost 20 years since the creation of these mechanisms, SUSP did not become a Federal Law³ and it was never fully implemented as a national system in all its policies and all 26 state governments and the Federal District. In regards to SENASP, it is still controversial to say what has been its main achievements toward a National Plan on Public Safety, as well as is not a consensus over the main role the federal government has attributed to himself in the field of public safety (Sá e Silva, 2012; Diniz Filho, Dutra, 2016; Dutra, 2018). More recently, in 2004, former President Luiz Inácio Lula da Silva created the National Public Security Force (*Força Nacional de Segurança Pública*, FNPF) as a cooperation policy with state governors applied in situations that demand the restoration of public order. In this regard, the federal government seems to be making use of law enforcement as its main strategy toward coordination in this area.

At the same time, not all of the 26 state governments plus the Federal District have been successful in implementing a strategy to reduce homicides and other criminal activities in their constituencies. We can pinpoint the state governments that over the two last decades have implemented their own State Plan on Public Safety⁴. As a result, state governments have been delivering policies according to their constituencies and not following a national pattern as it can be observed in other Brazilian policies (Diniz Filho, 2016; Dutra, 2018).

Given the failed attempts of the federal government to induce a coordination strategy for public safety among the subnational levels of government, there is an unbalanced position of the Federal and state governments toward cooperation in this area of public policy. The most common practice of the federal government has been to make use of the Army and the National Public Security Force. Therefore, we can presume that the political

³ SUSP remained in the National Congress for more than a decade. In 2017, a group of Federal deputies revised it and approved a federal law with the same name, but under a different proposal.

⁴ The most successful cases describe by the authors are found in the state government of Minas Gerais (Teixeira, 2015; Souza, 2016; Dutra, 2018); Pernambuco (Macêdo, *no prelo*); and Rio de Janeiro (Savell, 2006). There is no consensus over the case of São Paulo.

interests of the President are at the center of understanding when public order in a state government constituency seems to be at risk.

The following section will bring the context of public safety in the state of Rio de Janeiro *vis-à-vis* the national momentum of Michel Temer becoming the President of Brazil after the impeachment of Dilma Rousseff, in 2016. We argue that the Federal Intervention was an opportunistic measure taken by the President, as it was intended to serve the electoral interests of a particular government (Bednar, 2009). However, “when the distribution of authority is manipulated to serve particular interests it may not – and most often will not – improve the union’s productive efficiency” (Bednar, 2009, p. 67).

Given Bednar’s theoretical background, we argue that the Federal Intervention was a strategy of intergovernmental relations that encroached the role of Rio de Janeiro’s state government. Bearing in mind the contents of public safety as a public policy area, does this measure raise the coordination costs of the federal government? The consequences for federal coordination will be analyzed taking into account the following parameters: i) the governance structure; ii) the popular safeguard to improve accountability; and iii) the juridical safeguards to allow the Brazilian Armed Forces to become agents of public safety.

3. THE STATE OF RIO DE JANEIRO UNDER FEDERAL INTERVENTION

Over the last two decades, crime rates have grown in the most important capitals and cities in Brazil (FBSP, 2017) and both state governments and the federal government strategies are defined as “crises management”, meaning that it prevails short-term solutions to situations of emergency that get public opinion's attention (Dutra, 2018). From one side, governors seem to rely on a lack of systematic rationality and long-term strategies, and a lack of coordination from the federal government, on the other side.

Scholars and public safety specialists agree that police violence in Brazil disproportionately targets poor young black men, and this reinforces racial lines of privilege and exclusion (Savell, 2006). As a result, there are different public safety policies applied in each jurisdiction of Brazilian cities. In this regard, the city and state of Rio de Janeiro is no exception.

What it is unique about Rio is its geographical landscape and the growth of *favelas* around the metropolitan region that helped to build the idea of a "divided city". It means that the city is divided into imaginary lines among regions and neighbourhoods separating middle and upper classes with access and provision of social rights – the so-called "good citizens"

– from those regions with scarce resources of urban planning and citizenship rights – the so-called "*favelados*" – in which lower classes are barely regarded as citizens (Leite, 2012; Rocha, 2018). In such a divided city, the demand for public order requires, from one hand, guarantees of security to the former and, on the other hand, tolerance for the suppression of basic social rights for the latter (Leite, 2012). The representation of the city of Rio de Janeiro as a "city at war" comes from this internal division between the "good citizens" of middle and upper classes and *favelados* of lower classes:

Representing social conflict in big cities as a war entails triggering a symbolic repertoire in which confrontational sides or groups are enemies and extermination, as an extreme measure, is one of the strategies for victory, as it is easily admitted that exceptional situations - war - require measures also exceptional and extraneous to institutional and democratic normality (Leite, 2012, p. 379).

The continuous and disproportionate presence of the state through repression and policing in *favelas* are, most of the time, the main public policy available to *favela* residents. The prejudice over *favelados* as criminals is reinforced by a strategy of a "war on drugs", a discourse induced by the United States of America in Latin America mainly during the mid-1980s and 1990s that is widely accepted in Brazil:

In Brazil, drug trafficking is commonly associated with the poor and slum dwellers and is linked to the so-called commandos. Although the situation regarding production, trafficking, and consumption of illegal drugs in Brazil does not fit this simple framework, the link between drug trafficking and poverty has justified public safety programs that focus on prohibition and repression as a means to address the drug problem. (Rodrigues, 2019, p. 5).

The strongest metaphor to illustrate public safety in Brazil (and mainly in the state of Rio de Janeiro) is to display each municipality as a theater of operations between state security forces and traffickers with a specific battlefield: the *favelas* and poorest neighborhoods. In order to interpret this scenario as a public policy strategy, the term "militarization" is often used by scholars referring to a type of policing that "employs militaristic tactics, tools, and reasoning – and in some cases the military itself – to repress marginalized populations" (Savell, 2016, p. 60). It is a way to justify the use of war equipment and personnel in combat operations against ordinary crime and also to normalize the recurrent presence of the Armed Forces on the streets (Rocha, 2018). Given this background, both police forces and the Armed Forces became actors of public safety strategies in Rio focusing on the policing strategies toward "pacification" of areas considered to be taken by a public enemy: traffickers.

Police Pacification Units (*Unidade de Polícia Pacificadora*, UPP) became Rio de Janeiro state's plan on Public Safety implemented in *favelas* since 2008. Its design followed military connotations of territorial conquest, strategic occupation, pacification (Rodrigues, 2019; Savell, 2016). According to Rodrigues (2019):

The term "pacification" was first used in the XIX Century to describe the military victories over regional rebellions, and it was also used at the beginning of the XX century to name the military control over indigenous peoples in Brazil's countryside and the Amazon. The pacification task is taken by the Brazilian military as part of its *ethos* and mission (Rodrigues, 2019, p. 6).

Rio's UPP strategy is concomitant to international events held in Brazil, mainly in the city of Rio de Janeiro: Pan-American Games in Rio de Janeiro, in 2007; World Military Games, in 2011; World Youth Day (*Jornada Mundial da Juventude*, in 2013); FIFA World Cup, in 2014; and the Summer Olympic Games in Rio de Janeiro, in 2016. During these decades the Armed Forces engaged in Rio to act in a "pacification" strategy to recover the territory two *favela* complex: *Alemão* (with nearly 70 thousand inhabitants, occupied from 2010 to 2012); and *Maré* (with nearly 130 thousand inhabitants, occupied from April 2014 to June 2015) (Rocha, 2018). In a way, UPP was seen as a second stage following GLO. Even though each GLO that took place in Rio de Janeiro raised questions regarding aggressions and assaults against *favelas* residents, there remained an idealized notion of morale under the role of the Armed Forces by its inhabitants.

After these public and international events, in 2017, the Armed Forces were again in the streets of Rio following a perception that traffickers were taking control again of *favela* territories (G1, 2017). The new GLO Operation started in July 2017 at *Rocinha* and would remain in Rio de Janeiro until December 2018. Therefore, a GLO was still in order when the President authorized the Federal Intervention in Rio, on February 16, 2018.

The Presidential decree was published right after the Carnival in the state of Rio de Janeiro, the most popular festivity in the country and the main destination to international tourists during this time of the year. No record of an extraordinary disturbance of public order (that could justify the use of the Armed Forces to restore it) was presented by the governor or by the state police forces. Moreover, the state of Rio de Janeiro held, in 2016, the 11th position among Brazilian states in regards to homicides (FBSP, 2017), which did not indicate that the state was the most violent state government in the country. If political authorities to justify the rational decision toward a policy decision should use numbers, the situation of an emergency in Rio de Janeiro state's economy seemed at the time to be a higher problem than Rio's public safety. After all, in June 2016 Rio de Janeiro state governor, Fernando Luiz

Pezão, published a decree affirming that the financial crisis of the state government put the state government under a condition of public calamity.

The President decided to call for a Federal Intervention in a state government is a technical solution provided by the 1988 Constitution under chapter 34:

The union shall not intervene in the states or the federal district, except:

- I – to maintain national integrity;
- II – to repel foreign invasion or that of one unit of the Federation into another;
- III – to put an end to serious jeopardy to public order;
- IV – to guarantee the free exercise of any of the powers of the units of the Federation;
- V – to reorganize the finances of a unit of the Federation (...)
- VI – to provide for the enforcement of federal law, judicial order or decision;
- VII – to ensure compliance with the following constitutional principles: (...)

(Brazil, 2010, p. 42).

To understand the governance structure created to host the Federal Intervention in Rio, we must go back in time to pinpoint the political scenario of Brazilian politics that let to vice-president Michel Temer becoming the 37th President of Brazil. The political instability started in June 2013 when crowds occupied the streets throughout the country to protest:

Initially directed at a municipal issue – the price of bus fare – the agenda of the protests quickly expanded to oppose the entire political system, and their impact was strongly felt by the government (Nunes & Melo, 2017, p. 282).

In March 2014, people were out on the streets again to protest against Brazil hosting FIFA World Cup. In the same year, the National elections became extremely polarized. President Dilma Rousseff was reelected in the polls for a new term, and the National Congress (represented by federal deputies and state senators) became the most fragmented in Brazilian history. In 2015, the maintenance of political instability between the Executive and Legislative branches were augmented by a new series of protests that arose in favor of the President's impeachment process. In 2016, after months of conflict between the Executive and Legislative branches⁵, initial proceeding for the impeachment started in April at the Chamber of Deputies. On 31 August 2016, after the Senate's decision, vice-President Michel Temer formally assumed the presidency.

Following a convergence of preferences and agendas between the Executive and the Legislative, the government achieved a series of significant victories in Congress

⁵ In 2015, Federal Deputy Eduardo Cunha (PMDB) was elected President of the Chamber of Deputies, defeating the candidate appointed by the government and the President's political Party (PT) (Nunes & Melo, 2017).

between May and December 2016, but it was not enough to approve the government proposals to reform social security. Discussions remained throughout the year of 2017 with no success. Another pressure point for the President was the broad crisis of legitimacy that accompanied his government since day one in office:

In November [2016], a survey commissioned by the National Confederation of Industries and done by the Brazilian Public Opinion and Statistic Institute (IBOPE) showed that only 13% of the population considered government excellent or good, while 46% rated it as bad or terrible (Amorim 2016). In July 2017, the percentage of bad/terrible would reach 70% (Nunes, Melo, 2017, p. 292).

The turmoil in national politics finds common ground in the state government's agenda. Public account deficits at all three levels of government were Brazil's main problem and resulted in an economic recession accentuated during President Dilma Rousseff's term (2011-2014).⁶ In regards to the state of Rio de Janeiro, its main source of income comes from royalties and its production of oil and gas. The international crisis in these sectors hit the state's economy hard leading to low income of taxes and revenues. In June 2016, the state government of Rio de Janeiro declared a state of financial calamity, which led to negotiations with the federal government toward a recovery plan. The Federal government proposed a Fiscal Recovery program, but Rio de Janeiro State Legislative Assembly was the one responsible to approve it. Political negotiations involving the two levels of government were highly unsuccessful but ended up with an agreement signed in November 2016. This uncomfortable situation became a reason for some to argue that the state of Rio de Janeiro was already under Federal Intervention even before the Presidential decree authorizing the Federal Intervention in the area of public safety in the state of Rio de Janeiro on February 16, 2018.

Even though there was no judicial transgression with the Presidential decree authorizing the Federal Intervention in Rio de Janeiro, the curious fact is that it remained in only one area of state government's jurisdiction. As this extraordinary situation prohibits Constitutional Amendment's approval in the National Congress, we argue that the Federal Intervention could be used as a political instrument needed by President Michel Temer to fulfill his hidden agenda. Therefore, it represents a form of transgression that triggered an institutional safeguard to maintain the balance of Brazilian federation. This measure ended up raising the coordination costs of the federal government. The hypotheses will be tested

⁶ Fiscal federalism became highly centralized after a series of small changes in fiscal regulation maintained the unfair distribution of fiscal resources among levels of government (Diniz Filho & Dutra, 2016).

taking into account the following parameters: i) the institutional arrangements and the governance structure created by this decision; ii) the accountability instrument created to monitor levels of crime and the reduction in criminality; iii) the juridical safeguards created to allow Brazilian Armed Forces to become agents of public safety.

3.1 Federal Intervention Cabinet and Governance structure

Under President Michel Temer's term (2016-2018), the federal government enrolled itself simultaneously in four activities. In July 2017, a Presidential decree authorizes GLO operation in the state of Rio de Janeiro that would last until December 2018. The main reason given to make use of this measure was the restoration of organized crime in *favelas* after the occupation and pacification of the Armed Forces at *Maré*, in 2014 (G1, 2017). On February 16th, 2018, the Federal Intervention was authorized under a Presidential decree. In the same week, the Extraordinary Ministry of Public Safety (*Ministério Extraordinário da Segurança Pública*, MESP) was created as a division of the former Ministry of Justice that held SENASP as one of its National Secretariat. Finally, in July 2018, the National Congress approved a federal law creating SUSP, an updated and modified version of the previous project sent to Congress in 2003.

Gabinete da Intervenção Federal (GIF-RJ) was created It is interesting to observe the disparity of budget and staff appointed to GIF-RJ and MESP. The former was created with a staff of 67 members to be appointed by the intervenor while MESP – responsible to promote federal coordination to the whole territory – was created with a staff of 76 members. In regards to budget, Federal Intervention in Rio would cost R\$ 1,2 billion. Also, there was no connection between GIF-RJ and MESP as the former was allocated under the Civil Office of the Presidency.

In regards to intergovernmental relations, the direct subordination of the Intervenor to the President meant that the former was not under the state government's Constitution. As a *de facto* governor in the area of public safety, the intervenor subordinated the state police forces to his jurisdiction. The Presidential decree also authorized the Intervenor to make use of all necessary means provided by the state, mainly: financial resources, technological equipment, physical structure, and human resources. Therefore, GIF-RJ would be responsible to coordinate Rio de Janeiro State Secretaries of Public Safety (SESEG) and Penitentiary Administration (SEAP), as well as the Fire Brigade.

It is important to stress that during the Federal Intervention prevailed a lack of transparency and accountability in regards to i) open channel of communication created by the Federal Cabinet; ii) transparency over the resources used to fund the Federal Intervention; iii) rules of engagement and number of civilians killed during the operations conducted by the military.

The governance structure to support the Federal Intervention found in the Armed Forces its main support. First, the intervener was the Military commander of the East (and therefore responsible for GLO Operations), General Walter Souza Braga Netto. It became a military intervention as the position of the intervener and all the staff called to act in the Federal Intervention would keep their positions in the Armed Forces. In other words, they would be acting as military personnel with the guarantee that the period in service would be counted as such.

Indeed, the most favorable aspect of the governance structure created to support Federal Intervention was the positive image built around the Armed Forces: "Polls have shown that (despite widespread distaste for the memory of the dictatorship), Brazilians trust the military more than any other public institution" (Savell, 2016, p. 63). In March 2018, a report elaborated by the Brazilian Forum on Public Safety (*Forum Brasileiro de Segurança Pública*, FBSP), *Instituto Datafolha* and the Center for Studies on Public Security and Citizenship of the University Cândido Mendes (CESeC/UCAM) elaborated a poll as a way to monitor and evaluate the Federal Intervention. Conducted in March, it showed that 76% of Rio's inhabitants were in favor of the Federal Intervention in State of Rio de Janeiro, but 69% believed that the presence of the Armed Forces on the street did not make a difference on safety (FBSP, 2018). In other words, it means that one month after the Federal Intervention has taken place, 69% of Rio's inhabitants did not perceive a difference in the city's sensation of safety.

As there is no official instrument or document published by authorities to monitor instruments to evaluate the Federal Intervention, the source of evaluation stayed with criminal rates.

3.2 Accountability and civil society participation

According to Macaulay (2005), the areas of crime and justice in Brazil are still in the process of extending the principles of civil society participation in criminal justice institutions:

In Brazil, the professional associations of judges, public prosecutors, and police officers have been able to flex their collective muscle in a number of ways, with the police blocking long-awaited constitutional reforms, and the judges fending measures that they regard as an attack on their autonomy (Macaulay, 2005, p. 144).

One of the important tasks of civil society participation in public security regards the type of strategy currently reinforced by the state to reduce violence. Given the historical background in the state of Rio de Janeiro, the so-called "state of war" reinforces hidden violence toward residents of *favelas*. Since these residents are caught up hosting the "trafficker-enemy" in their midst, the existing institutionalized channels to protect citizens against state violence are not sufficient. The personal experiences and abuses committed by state police forces and the Armed Forces are often silenced:

Alemão residents tell stories of many people being killed during the invasion [*in 2014*], despite the official claim that there were zero deaths. Residents report returning after temporary absences to houses with blood-splattered walls and backyards where they suspected corpses had been buried and then removed. Such stories are controversial, perhaps even rumors, yet I heard them often, from different people (Savell, 2016, p. 67).

During the ten months of Federal Intervention, the Observatory of the Intervention was created as an initiative of the Center for Studies on Public Security and Citizenship of the University Cândido Mendes (CESeC/UCAM). It coordinated a network of public and private institutions and maintained a council of *favela* activists. Its purpose was to monitor, assess and publicize the impact of the intervention on public safety indicators and in the area of human rights violations. Throughout the Federal Intervention, the Observatory of the Intervention also provided journalists with data and information to improve the quality of public security coverage. Regarding the methodology and data produced by researches involved in this initiative:

The observatory began to make an unprecedented survey of police operations in Rio de Janeiro, gathering data on the location, the number of agents involved, mobilized forces, civilian and police casualties, injuries, arrests, and seizures. This survey allowed us to point out the disproportionality between the investments made in the operations and its modest results (Nunes, 2019, p. 16).

Regarding the experience of Federal Intervention in Rio de Janeiro, in 2018, it remained the problem of lack of transparency of the Armed Forces operations during such operations. It remained some of the issues already diagnosed during the Pacification process promoted by the Armed Forces in *Alemão* and *Maré* (Savell, 2016). Given this background, it is not a surprise the absence of a formal channel of communication

institutionalized in the bureaucratic apparatus created by the Federal government to support the Federal Intervention.

One of the ways to overcome the lack of transparency but still describe the *modus operandi* of the Federal Intervention is to look at the official documents published by GIF-RJ. The first one is the “Strategic Plan of the Federal Intervention”, published in May. Table 01 summarizes the 05 objectives and the number of actions proposed in each category.

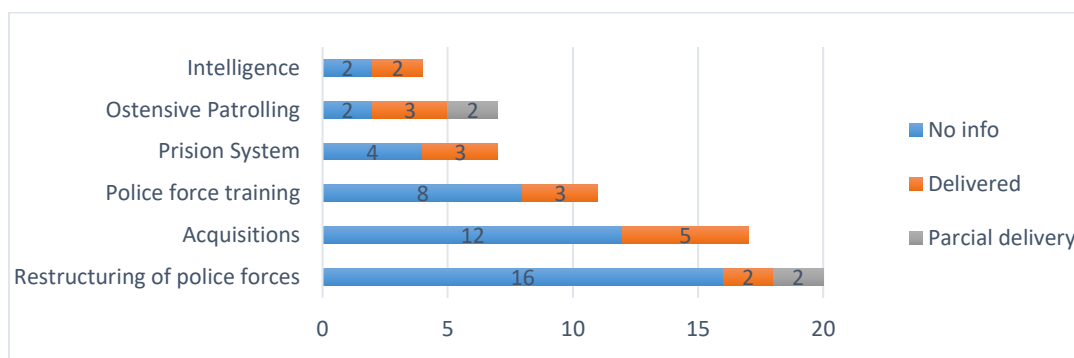
Table 01: Strategic Plan of the Federal Intervention

Objective	Description	# of actions
Decrease crime rates	To reduction crime rates related to homicides, vehicle theft, street theft, and Cargo theft	6
Recover operational capacity of state police forces in Rio	To improve the doctrine, organization, training, material, education, personnel and infrastructure	30
Articulate institutions of federal entities	To encourage the sharing of responsibilities in Public Security through the establishment of protocols	9
Strengthen the institutional character of public safety and prison system	Strengthen the institutional character of Public Safety as a technical and operational activity minimizing political factors	14
Improve the quality and management of the prison system	To modernize the prison system through technology, organizational restructuring, and infrastructure	7
TOTAL OF ACTIONS		66

Source: Elaborated by the author according to GIF-RJ (2018).

During the ten months of Federal Intervention in Rio, there was no official document provided by GIF-RJ or the federal government to present and describe the results achieved according to the objectives and actions presented in this document. The graph below presents data collected from Observatório da Intervenção with the results and achievements of the Strategic Plan during the first six months of the Federal Intervention classified according to the research team.

Graph 01: Objectives of the Strategic Plan of the Federal Intervention



Source: Observatório da Intervenção updated on September 28, 2018.

The monitoring instrument created by The Observatory of Intervention based on national and international methodologies used from other NGOs and civil society organizations such as Armed Conflict Location & Event Data Project (ACLED), Gun Violence Archive, and the Brazilian *Fogo Cruzado* (Nunes, 2019). Information was retrieved from the daily reading of *Diário Oficial da União* (the government's official newspaper) and official webpages as well as from other sources:

official numbers from state police forces and other law enforcement agencies available in social medias; GIF-RJ official website and social media network; journals and newspapers; alternative media sources on the internet; *facebook* pages from residents of *favelas* neighborhoods; and information gathered from activists network from *favelas* in all the regions of the state of Rio de Janeiro (Nunes, 2019, p. 17).

The second official document published by GIF-RJ was the "Budgetary Plan", approved in February. It is important to emphasize the lack of transparency from the announcement of the budget, in February 2018, to the final expenditure of this amount, in December 2018. On March 27, an extraordinary credit of R\$ 1.2 billion (approximately US\$ 310 million) was destined to the Federal Intervention. Out of this amount, R\$ 200 million (approximately US\$ 51 million) came from programs implemented at the House of Representatives, and R\$ 1 billion (approximately US\$ 250 million) came from financial surplus recorded in the Union's balance sheet on the financial year of 2017. This amount came as a surprise given the economic crisis and restriction of policies implemented throughout the year of 2017. Besides the federal surplus of R\$ 1.2 billion, GIF-RJ would also be in charge of managing Rio de Janeiro's state budget on public safety, which for the year of 2018 was expected to be around R\$ 12 billion (approximately US\$ 3 billion). However,

from March to December, there was no formal mechanism to monitor purchases, acquisitions and deliveries made with this budget.

According to data collected from Observatório da Intervenção, until December 31 GIF committed 97% of the extraordinary credit (meaning that contracts were signed and orders of payment were made purchases and acquisitions of equipment and services), but the amount properly spent represented only 10%, around R\$ 121 million (approximately 31 million).

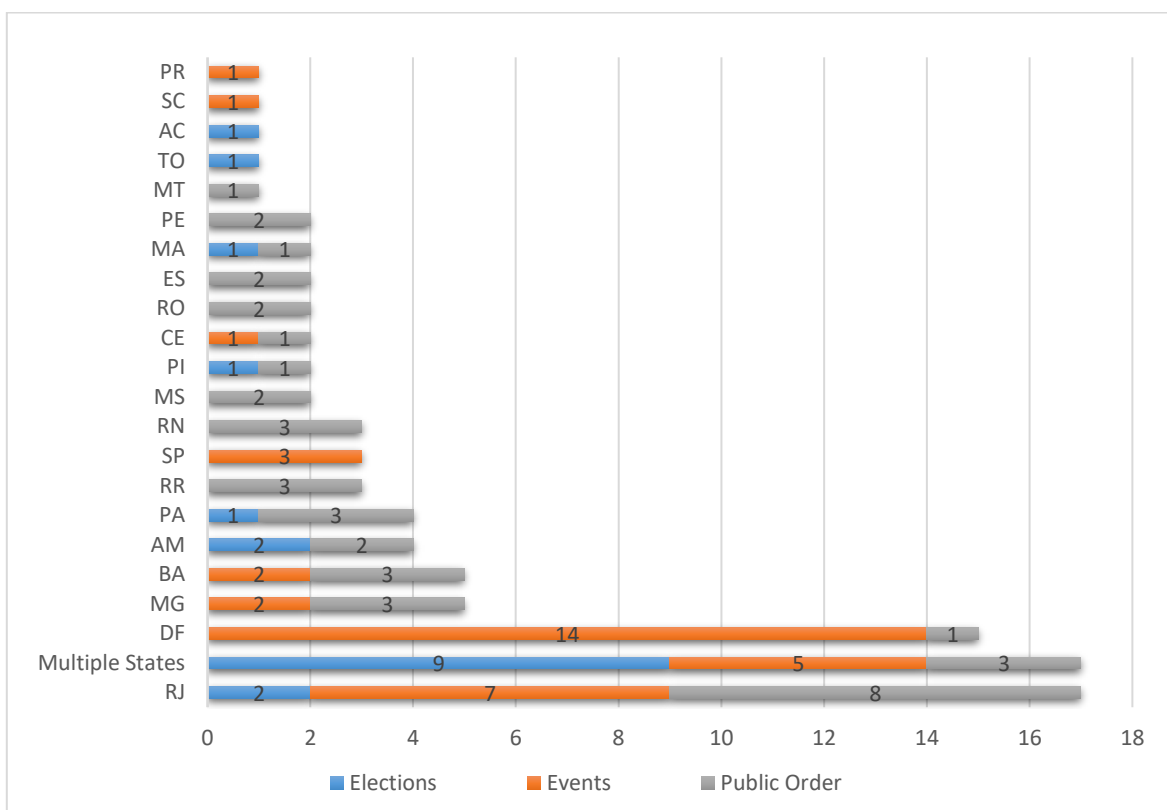
Overall, both the strategic plan and the budgetary plan of the Federal Intervention cannot be regarded as accountable. There were no legal apparatus to instruct the type and form of accountability to be delivered by GIF-RJ:

there are no legal and normative provisions applicable to the circumstances that characterize the Intervention, as it is the first since the promulgation of the 1988 Constitution. In this regard, GIF-RJ, through the Secretariat of Administration and the Special Advisory of Internal Control (AECI) is conducting consultations and negotiations with the Brazilian Court of Audit (TCU), the State Court of Accounts (TCE) and the Federal Attorney General's Office (AGU), in order to determine whether the intervenor is required to be accountable, to whom it must do so, and under what conditions in regards to deadlines and content (GIF-RJ, 2018, p. 11).

3.3 Juridical safeguards and the Brazilian Armed Forces as agents of public safety

According to the legal apparatus, GLO operations can be applied in three situations: i) public or official events with the presence of the head of the state and international representatives; ii) elections; and iii) public disorder. According to graphic 01 below, out of 95 GLO operations authorized from 2002 to 2018, the state of Rio de Janeiro holds the record of 17 operations in its territory.

Figure 1: GLO Operations in Brazil (2002-2018)



Source: Elaborated by the Author according to official information from the Ministry of Defense, and official documents provided by the Armed Forces through *Lei de Acesso a Informação* (LAI).

The State of Rio de Janeiro holds the record of GLO among the other state governments not only for its touristic and diplomatic destination hosting international events (as it counts 7 GLO in the “events” category) but also for situations of disturbance of Public Order, as it counts 8 GLO in this category. According to Oliveira (1998), the category of “public disorder” used to justify GLO operations in Rio de Janeiro fall under the following situations: challenges from organized crime; corruption and bankruptcy of Rio’s police forces; disobedience and a lack of legitimacy of local commanders; and most commonly the fight against drug trafficking (Oliveira, 1998). The Federal District holds the second place due to hosting public and official events in the national capital of the country, Brasília. Finally, the category “multiple states” is justified by the presence of the Armed Forces during national elections and public or official events.

The Ministry of Defense has the responsibility to issue detailed manuals laying out GLO protocols, but even so, operations in the scope of the guarantee of law and order (GLO) raise some specific questions. After all, the use of the Armed Forces in public safety is a controversial topic in Brazil (Rodrigues, 2019), and there is no consensus even among the

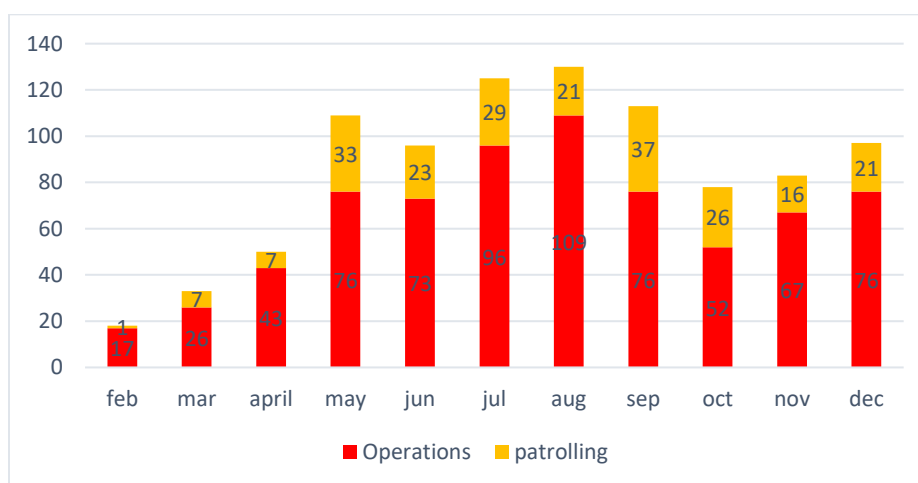
military personnel as they claim to be a mistake to establish a regular pattern of military involvement in policing (Savell, 2016; G1, 2017). As Savell (2016) pointed out when analyzing the role of the Armed Forces in the invasion of *Alemão* Complex, in 2014:

when military personnel, along with the press and the police, legitimize the spectacle of state violence like war, this has repercussions. Though in the humanitarian frame favela residents are portrayed as vulnerable, the performance of war turns residents into a population that harbors the enemy and thus does not deserve to be protected (Savell, 2016, p. 67).

One of the many controversies over the use of the Armed Forces in typical police functions as law enforcement agents regards accountability abuses and human rights violations. During the ten months of implementation of the Federal Intervention, it remained unclear the engagement rules applied to the Brazilian Army during the Federal Intervention. What needs further clearance are the rules of engagement of the Army during such operations especially because the last GLO operation authorized by the President was still valid when the Federal Intervention was approved. Therefore, this superposition of tasks and roles removed civil society from taking control of the situation.

According to Observatório da Intervenção, the Armed Forces joined police forces in 22% of operations monitored from February to December 2018. The final numbers of operations conducted by the Armed Forces and police state forces are represented in table 02.

Table 02. Operations and patrols monitored during the Federal Intervention in Rio de Janeiro (Feb-Dec, 2018)



Source: Observatório da Intervenção (2019).

On the one hand, "the Army does not have their channels to disseminate information, nor do protocols for the accountability of their actions as enforcers of law and order" (Rodrigues & Armstrong, 2018, p. 6). On the other hand, Observatório da Intervenção monitored a proliferation of violent and deadly police operations. The cases most documented by mass media were reported on March 24, when police incursions in *Favela da Rocinha* left eight dead. On June 13, military forces killed four in *Cidade de Deus*, including a 14-year-old-boy. Finally, on August 20, Army soldiers directly clashed with armed gangs in *Complexo da Penha* where three soldiers were killed in the conflict.

Overall, data collected by Observatório da Intervenção and civil society organizations working in partnership with this initiative, the main categories of abuses and human rights violations during the Federal Intervention in Rio de Janeiro (from February to December 2018) were stray bullets (122 total), execution and homicides (26 total), physical aggression and excessive use of force (20 total).

Residents became closer to shootings and law enforcement agents are also victims of this "war on crime" model. According to Observatório da Intervenção, from February to December a total of 8.613 shootings and gunfire were registered in the state of Rio de Janeiro, representing a rise of 56% compared to the same period in 2017. Given these astonishing numbers, we can assume that GIF-RJ has modified the pattern so far used and applied to the Armed Forces during GLO as this measure became even more uncertain and violent in this context.

The issues raised in this section promote a spillover effect over the intergovernmental relations between the state government and the Federal government. After all, the distribution of authority between federal and state government judicial courts involving the Armed Forces and state police are often blurred and remained as such during the period of the Federal Intervention in Rio de Janeiro. Official documents from GIF-RJ stressed its lack of liberty act to achieve the objectives designed for the Federal Intervention:

there is a constant demand for information from the most varied stakeholder groups on the actions of the Intervention, while the "interest groups" in favor of the Federal Intervention need to organize and unite in a positive discourse and with the capacity to implement complementary actions in support of Intervention activities (GIF-RJ, 2018, p. 23).

In January 2019, Wilson Witzel became the new elected governor in the state of Rio de Janeiro and Jair Bolsonaro became the new elected President of Brazil. One of the first measures announced by governor Witzel was to dismantle former Secretary of Public

Safety, which caused discomfort among members of GIF-RJ (G1, 2018). Therefore, the “legacy” of the Federal Intervention ended up as it began: under dispute.

CONCLUSION

The political and economic events that led to the decision to take over the control of the police and the prison system in the state of Rio de Janeiro does not mean that Brazilian democracy is at risk. We agree with Nunes and Melo (2017) that the country “is experiencing a political crisis for which there seems to be no simple cure” (p. 299). As a result, the political instability context that started in 2013 and continued until the end of Michel Temer’s term as President, in December 2018 showed that institutional safeguards could not sustain compliance among the federal entities. We have shown that the Federal Intervention in Rio de Janeiro, Brazil, from February to December 2018 became possible taking together the combination of the following factors: i) the intergovernmental structure; ii) the failure on popular safeguard to improve accountability; iii) the juridical safeguards that allow the Brazilian Armed Forces to become law enforcement agents.

On the one hand, it could not avoid encroachment of the Federal government in Rio de Janeiro state government’s autonomy in Public Safety. On the other hand, Rio de Janeiro state government’s economic crisis and acceptance of Federal government Recovery Plan regards shirking of its responsibility toward policies. The weakened position of the state government did not trigger structural safeguard.

Despite the rigid attribution of responsibilities to the levels of government toward public policy and law enforcement, throughout the last decades the federal government made a move over this policy mainly by authorizing the Armed Forces to act as law enforcement agents. Even though the juridical safeguard was not at stake, as GLO operations were never a consensus between scholars and specialists, it became easier for the federal government to act beyond the legal status to resolve a situation that demanded extreme measures. Also, the lack of accountability on law enforcement and public safety weakened popular safeguard and opened space for the credit assignment problem.

As Michel Temer Presidential’s term remained highly unpopular toward the citizens and under dispute in Legislative branch, it indicates that the Federal Intervention in Rio de Janeiro was a strategy to deliver policies that found common ground through encroachment. Given the political context that led to the authorization of the Federal Intervention in the State of Rio de Janeiro, from February to December 2018, the case seemed to be an example of

a credit assignment problem, meaning that the federal government acted in its electoral interest by exploiting voters' uncertainty to transgress state government's authority on public safety. At the same time, Rio de Janeiro state government shirked its authority by abdicating from its responsibilities. Both preferences are unauthorized acts of authority migration that ended up suggesting that the Brazilian federal system needs improvement on its informal institutions in order to strengthen debates on public safety and law enforcement.

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