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Introduction

Living (il)legalities in Brazil

Sara Brandellero, Derek Pardue and Georg Wink

What on earth is happening to Brazil? Perhaps the tragic collapse on May 1, 2018, of the Paes de Almeida skyscraper, a building designed in brutal modernism, located in the once posh downtown São Paulo and a former “illegal” squatter residence, provides a more profound foreshadowing than originally thought. In fact, the urban edifice featured below (Figure 0.1) seems metonymic of the current state of affairs affecting the country. This is because this emergent Global Player, advocate of BRICS and the Global South, and not to put too fine a point on it, the world’s fourth largest liberal democracy, fifth largest and most populous country, with the eighth largest economy is currently undergoing unexpected political and societal transformations, the development of which is being followed keenly the world over. Views on these transformations have reflected differing perspectives across the political spectrum, but a striking commonality of these often heated debates is that they have tended to gravitate heavily around the legal or illegal merits underpinning the changes Brazil as a country is undergoing.

Brazilianist scholars and Brazilians alike often begin a conversation about local politics with a caveat – “Brazil is such a young country”. What is meant by this is that Brazil’s relationship with representational democracy has been intermittent and perhaps might only be effectively assessed since the formal transition from a military dictatorship to a popularly elected president in 1989. And, yet, the government under Fernando Collor did little to assure Brazilians that the massive structural problems of inequality, state repression such as that played out in Brazilians’ daily lives, especially the poor, through actions of police violence, and large-scale corruption were even being addressed. Indeed, it is significant how the banner of the “fight against corruption” has been used and abused to put a break on policies for social change and equality, with evidence of the systematic appropriation and plundering of the State by the economic elite through means of corruption. In September of 1992, the Chamber of Deputies voted to impeach Collor (who had campaigned as the “squeaky clean”, anti-corruption candidate) on grounds of “crimes of responsibility,” better known as passive corruption.



Figure 0.1 A view of the bottom floors of the Wilton Paes de Almeida Building, São Paulo, Brazil. Photo by Derek Pardue, June of 2017.

Subsequent governments representing the centre-right party of the PSDB (nominally “Social Democrats”) and the centre-left party of the PT (Partido dos Trabalhadores, i.e. Labour Party) also struggled with institutional breaches of legality. However, albeit in an arguably timid fashion, it is the PT under the charismatic leadership of Luiz Inácio Lula da Silva (“Lula”) that made the most marked strides in addressing the three basic issues cited earlier. Most visible were the debated cash-transfer programmes of *Bolsa Família* and home ownership credit programmes such as *Minha Casa Minha Vida*. The result of these programmes and other redistributive policies was the uplift of 30 million Brazilian, as a conservative estimate, from a category of “poverty” to a “low middle class” (so-called “Class C”) that contributed significantly to domestic consumption and helps explain the Brazil’s healthy economy during the first 15 years of the 21st century.

Coincidence or not, it was mainly after the government change in 2003 that practices of good governance (and the respective checks and balances) were implemented in an attempt of State-building and human rights empowerment that had already began in the 1990s. Among these measures are, to cite just a few, the Law of Fiscal Responsibility (2000), the creation of a Comptroller General of the Union (2003), the strengthening of the Federal Police and Federal Judiciary (2003), the creation of the Portal of Transparency for all public bodies (2004), the Law of Clean Record for Candidates (2010), the Law of Access to Information (2011) and against Money Laundering (2012), the Anticorruption Law (2013), the Plea Bargain Law (2013) and, finally, the Supreme Court's decision to prohibit business financing of Campaigns (2015).

Moreover, under Dilma Rousseff, Lula's successor as president (2011–2016), the state facilitated the legal machinations to investigate corruption as part of the *Lava Jato* or “Car Wash” financial scandal. The insistence on transparency under Dilma would ultimately be distorted and be used remarkably to impeach her and imprison Lula. Despite the lack of evidence (Lula) and post-impeachment acknowledgement that Dilma, in fact, had not committed an impeachable offence, the judicial coup and lawfare remained intact. In other words, these ambitious good governance and accountability policies, implemented without changing the unequal distribution of power within the social hierarchy, turned out to be political suicide for these progressive governments.

The recent election of the extreme far-right candidate Jair Bolsonaro to the country's presidency, together with a considerable shift from the centre-right to the right in the congress, was met with considerable dismay by those fearful for Brazil's young democracy. Bolsonaro's project, economically ultraliberal and die-hard conservative with regard to customs and values, is fervently supported by a sizeable number of voters (39%). Others voted for Fernando Haddad, at least abhorred by Bolsonaro's violent, racist, misogynistic views, even though not necessarily aware of the serious socio-political and economic implications of his agenda (32%). Others still others, disengaged from a largely discredited political system, negated their vote to both candidates (29%). Given this scenario, there is no doubt that the country is on the eve of a change so far unparalleled in Brazil.

The centrality of the legal system (politicised judiciary, or “lawfare”), the stretching of the limits of legitimate means in Brazilian far-right politics (such as in public relations but also intimidation and tampering), and the fostering of disreputable political communication styles (hate speech, fake news and defamation) provide much food for debate and controversy both within academic and non-academic circles, in and outside of Brazil. Bolsonaro's ultraliberal legislative action plan (most recently with the Law of Economic Liberty) in order to move the already flexibilised Labour Laws towards “informality,”¹ in a country where half of all occupations already are in the informal sector, raises important questions. Moreover, the appointment of Sérgio Moro as Minister of Justice in Bolsonaro's government threw into sharp focus the

contentious nature of the situation. After all, Moro had been the secret prosecutor, disguised as judge, of former president Lula, who was leading the polls before and even after his imprisonment earlier in 2018, until his candidature was suspended by the Superior Electoral Court through the Clean Record Law –while other 1200 candidates in similar juridical circumstances were allowed to run. As Minister of Justice in Bolsonaro’s government, and the declaration of a “culture war” to reestablish nostalgic forms of “social normality” throw into sharp focus the contentious nature of the situation. While at this moment the effects of the government change on legality/illegality can only be assessed in a preliminary way, it is crucial to approach a more comprehensive understanding of the slanted idiosyncrasies the current and upcoming government policies represent. Discussions surrounding legality and illegalities are central and therefore closely connected to the scope of this volume.

Through a transdisciplinary approach, the book assesses the relation between legality and illegality at institutional levels, (daily) practice and cultural representation. (Il)legalities, we argue, are not only relevant in understanding Brazil’s current political situation, but have relevance for established Brazilian cultural and societal practices, as we elaborate below. They are even enshrined as doxa in the country’s national identity; at least this is what notions such as “jeitinho,” “malandragem” and “cordiality” suggest. But the question of the disputed borders of what is considered legal also resonates beyond Brazil, as concepts such as “lawfare” have crept into vocabularies, and countries the world over grapple with issues of state interference, fake news, the definition of “illegal” migration, and so on.

The chapters included in this volume contribute with different methodological and theoretical approaches and case studies, but are driven by the unifying understanding of (il)legalities as socio-political *productions*. The authors explore the limits of legality, including spatial, discursive, creative, aesthetic, political, economic and theoretical, as contested and confrontational. Hard, violent lines are drawn; creative and risky transgressions occur – the manifestations of which are considered through the varied selection of case studies and the transdisciplinary approach brought together here.

Recent anthropological scholarship on trust is worth noting at this point. In particular, the work of Florian Mühlfried (2018) and Matthew Carey (2017) has been refreshing by steering the inquisitive reader back to rethink trust as central to social ideals and mistrust (as well as distrust) as inherently disengaged, detached and epiphenomenal to producing a healthy society. Just as both trust and mistrust require “attitudes of engagement,” so too do legality and illegality often suggest or even require contingent social relations. The upshot is that such relationships are not oppositional or negative. Rather, in a gesture to Emile Durkheim, it might be more accurate to state that crime and other forms of illegality are fundamental to society, not as a necessary evil but as a mirroring measure.

For millions of Brazilians modern “normal” life is just a step away from illegality. People are forced into unlawful or socially sanctioned practices and,

sometimes, are actively seeking them. The (il)legal practices we focus on are not simply illicit transgressions such as criminal offence or State violence. We explore phenomena of a vast grey area between the legitimate and the illegitimate: a more or less hidden field of (day-to-day) practices that might be not legal any more, or not yet legalised, legal but socially not accepted, or just deemed beyond any legal normalisation. Some of the questions posed by the chapters in this book are: How does the fluid boundary between legality and illegality manifest itself in Brazil and how can we productively understand this relationship in a contemporary context? And following on from this: How are informal, illegal practices, in fact, institutionalised in Brazil? How is a fluid boundary between legality and illegality spatialised in the city? Which narratives emerge from these life experiences? What moral or ethical values are at stake?

Reflecting the broad range of expertise of scholars included in this volume, spanning the Humanities and Social Sciences, the book addresses some of Brazil's foremost societal challenges in 11 chapters clustered around two main themes: the production of (il)legalities and the representation of (il)legalities. The first section centres on studies that adopt ethnographic and sociological/historical approaches. Section 2 brings together chapters focused on instances of cultural representation of the complex boundary of legality/illegality as created in social contexts today.

Producing (il)legalities

This section opens with a chapter by Jean Wyllys, three-time elected Federal Deputy to the Brazilian parliament and prominent human rights activist. Forced to leave his post and go into self-exile since early 2019 due to repeated death threats, in “Borders of (Il)legality” Wyllys questions the issue of how justice is dispensed in Brazil and how those historically excluded from the democratic process cannot claim to have ever had justice. Wyllys's chapter considers new forms of political propaganda delivered through new social media platforms in the context of “lawfare,” seen not as a new phenomenon but as a historic model that has ensured the continued disenfranchisement of certain sections of society.

Homing in on some of the social groups to which Wyllys refers, Daniel Hirata's chapter, entitled “The Government of Street Vending: Formalizations of Informality and use of Force,” analyses the precarious condition and ongoing struggles of street vendors, with particular attention to the transversalities, that is, points of potential policy connection, present in Rio de Janeiro and São Paulo during the decades 1980–1990 and 2000–2010, when major changes emerged in the government of street vending. Hirata focuses on the dynamic use of force to regulate the (il)legalities and (in)formalities of commerce in urban public spaces.

Connecting with Hirata's discussion on policing, labour and social dynamic in the public spaces of urban thoroughfares, Derek Pardue and Igor

Machado's "Migrant Refugee Spatialities Lived and Legislated in São Paulo" investigates the intersections of the new Immigration Law (2017) and lived realities among newly arrived African migrants in a range of cities in the state of São Paulo. Ultimately, the authors assess the fact that "black" migrants are both hyper-visible and invisible. Migrants create presence through a myriad of occupations on the one hand, via precarious employment and orientalist ethnicity, and are written off of the social map of the city through personal and institutional racism, on the other hand.

Such discussion hinges on questions of power and inequality that are explored from a cultural history and theoretical perspective in Georg Wink's "*Jeitinho* revisited," a chapter that focuses on what is without doubt the most famous umbrella term used to describe social practices existing in the grey zone between legality and illegality in Brazil. Understood as "typically Brazilian," the *jeitinho* is seen as creative problem-solving strategy to circumvent norms and rules with the purpose of attaining personal objectives. The legitimacy of this concept and its limitations as a useful label for Brazilianness is questioned here in Wink's critical literature review, considering how the term has been deployed to veil and preserve asymmetric power relations and the status quo of social inequality.

Closing the first section of the book, Márcia Tiburi's chapter "Political Sexology" addresses this same question of social inequality from an avowedly gendered perspective. In considering an issue described as relevant to authoritarian regimes around the world, Tiburi argues that sex is deployed as a weapon of combat – in the form of discourses, practices, performances and even production of artefacts – used by the extreme right to reach power. Indeed, sex, Tiburi argues, becomes part of a complex political strategy made up of discourses and practices that go far beyond moralism, but aim to dismantle the serious work carried out by those involved in the field of gender studies and, finally, reach the core of democracy.

Representing (il)legalities

This section turns the reader's attention to cultural representations and opens with a chapter on Brazil's musical production, in an acknowledgement that music is one of the cultural manifestations, and an often politicised one, for which Brazil is often most widely known internationally. Moving beyond common perceptions of Brazil as the land of the feel-good rhythms of *Bossa Nova*, Alexander Dent adopts an innovative take on the issue by considering the lesser-known counter-cultural punk movement and its run-ins with the "law" in his chapter "Using Lime Juice to Make Yourself Puke, and the Correct Way to Beat an Old Lady: Policing Early Punk Rock in São Paulo." In the early development of punk rock in 1980s São Paulo, conflicts with the police were frequent. Sometimes, police were called upon to break up fights, or because of noise complaints. However, at other times, police simply knew that punk events were taking place and showed up ready to make arrests;

this was the case for the largest early punk event, “The Beginning of the End of the World” – held at SESC Pompeia and designed to unite Brazil’s two warring punk factions from the city of São Paulo itself and the satellite cities known as *ABC* (Santo André, São Bernardo do Campo, São Caetano do Sul). This chapter provides a historical perspective that will shed light on similarly illegalised contemporary music styles such as funk, by investigating the relationship between policing of punk in the late seventies and early eighties, and the social critique that punks were carrying out, focusing on the co-constitutive relationship between the two.

Following Dent’s discussion of the relations between cultural production and the politics of law and order, Gabriel Feltran’s chapter *Illegal realities in the lyrics by Racionais MC’s* provides a complementary perspective on the relationship between popular music and legalities. His text discusses the distinct *realities* produced by illegalities in contemporary urban Brazil. The essay departs from the lyrics to the song “I can hear someone calling me” (original: *Tô ouvindo alguém me chamar*), performed by the group Racionais MC’s, which was released in the acclaimed album *Sobrevivendo no Inferno* (Surviving in Hell) in 1997. Its lyrics tell the story of a typical trajectory of life in crime in São Paulo, and are narrated by a man who is in between life and death. The real consequences of real stories, similar to the ones that inspire the song’s plot, are discussed in this essay, which is also based on the ethnographic work Feltran carried out in São Paulo’s periphery neighbourhoods (1997–2017). In the conclusion, he argues that there is a reality to the illegal, which is recurrently fictionalised as a cultural product and serves to hold up the official as an ideal.

Building on Dent’s earlier discussion on politics of law and order, Stephanie Dennison brings the issue of the Law centre stage in “Kafka and Lawfare in Maria Ramos’s *The Trial*.” Dennison discusses the issue of lawfare, defined as the improper use of legal mechanisms as a means for political persecution, as it transpires in Maria Augusta Ramos’s 2018 documentary *O Processo* (*The Trial*). The film follows the work of the defence team during the final months of the impeachment of Brazilian president Dilma Rousseff in 2016, and Dennison discussion of the film illustrates how *lawfare* has manifested itself in contemporary Brazilian politics and of how a cultural studies perspective can provide valuable support for understanding Brazil’s far-reaching contemporary legal questions.

The significance of Brazilian cinema in recording the negotiation of the borders between legality and illegality is addressed from the point of view of its fictional production in the chapter by Sara Brandellero – “Night Trespassing in Contemporary Brazilian Cinema: Unveiling (Il)legalities in *Neighbouring Sounds*.” Focused on urban Brazil, a topic widely discussed in contemporary scholarship, the chapter in fact zooms in on the city at nighttime, addressing the fact that little attention has been given so far to the daily temporal shifts that affect how spaces are shaped and experienced. Thus, the chapter argues that the nightscapes in the film are where the limitations of contemporary

urban living in Brazil are exposed and when the slippages between legality and illegality are most eloquently revealed. Focusing specifically on Kleber Mendonça Filho's *O som ao redor* (*Neighbouring Sounds*) (2012), this chapter takes its cue from Matthew Beaumont's (2015) discussions on the historical figure of the nightwalker as one who "embraces the outlaw status," to consider how nighttime mobilities in the film appear as acts of trespassing, dramatising the tension between guilt and retribution. What happens while the city "sleeps," Brandellero argues, provides a foray into the complex web of social relations that determine who can be where and when and how guilt and responsibility are apportioned.

Moving from film to literature, Claire Williams's "Something to Declare: Illegal Immigrants in Contemporary Brazilian Literature" connects with Pardue and Machado under the rubric of (il)legal migration, from a cultural analysis perspective. Despite the trend, particularly since the new millennium, of novels describing Brazilians travelling abroad or even set outside the country's borders (e.g. Bernardo Carvalho's *Mongolia*, Adriana Lisboa's *Hanoi*, the ten "Amores Expressos" novels), there is a distinct lack of representation of illegal migrants to other countries in contemporary Brazilian literature. Williams addresses this gap and homes in on works by Luiz Ruffato, Regina Rheda and Claudia Canto, which do articulate the undocumented Brazilian migrant's experience of bureaucracy, working conditions, survival and acculturation.

The final chapter of this volume develops on the question of prejudice discussed in Williams's chapter by focusing on the issue of racism in relation to indigenous people within Brazil's borders. In their chapter, "Painting Racism: Protest art by Contemporary Indigenous Artists," Lúcia Sá and Felipe Milanez Pereira take on one of the most foundational and persistent ideological practices of Brazilian (il)legalities. Racism is a non-bailable offence in Brazil, a crime punishable with one to five years in prison. Yet, in contradiction to the far right's trivialisation of racism as huffiness of hypersensitive minorities, racism is pervasive in Brazilian society, in practices that range from the direct violence of police targeting of black youth in favelas and the extermination of indigenous populations by land grabbers, to insidious, generally accepted everyday attitudes, such as the telling of racist jokes or the denial of indigenous people's right to their identity, once they have adopted the use of modern gadgets. Sá and Milanez Pereira focus on the work of two contemporary indigenous artists, Denilson Baniwa and Jaider Esbell, and their depiction of racism and the persistence of colonialist practices against indigenous populations in modern Brazil. Both artists have adopted Western media, such as painting, video, graffiti, social networks, and engage critically with Western/Brazilian art movements. Their work highlights particular characteristics of racism against indigenous populations in Brazil, such as the invisibility of indigeneity (particularly urban), the expectation that indigenous persons should look like and behave as stereotypical images of "o índio," and the attacks on traditional knowledge and religions by religious

and academic institutions. Their works often question the colonialist roots of Brazil's legal system and its blindness to the violence committed against Indigenous populations. At the same time, they call attention to practices that, although perhaps not illegal, are definitely racist and have a devastating effect on the sense of identity of Indigenous populations.

Note

1 www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/lei/L13874.htm.

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