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# The Impeachment Process of Brazil: A Comparative Look at Impeachment in Brazil and the United States

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# The Impeachment Process of Brazil: A Comparative Look at Impeachment in Brazil and the United States.

Alexandra Rattinger

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## I. INTRODUCTION

From its rich landscape of beaches and rainforest, to its growth of coffee and other leading exports, and to its colorful culture portrayed in Carnival celebrations, Brazil appears to be an unstoppable force in both South America and the global community. However, due to recent events, Brazil has morphed into a nation crippled by scandal and political corruption.<sup>1</sup> Such corruption has led to Brazil's second presidential impeachment in the past 24 years.<sup>2</sup> Brazil and the global community are left with feelings of political insecurity—unsure if the impeachment of the highest-ranking figure in Brazil is a secure process that could give way to signs of growth for a nation that has already undergone numerous political transformations.

Beginning with the Operation Car Wash scandal in March 2014,<sup>3</sup> in which dozens of Workers' Party members were arrested, Brazilians' extreme distrust of their own government has led to even greater political turmoil and economic decline for Brazil.<sup>4</sup> On August 31, 2016, Dilma Rousseff, the first female president of Brazil, was impeached on charges of having violated Brazilian budget laws.<sup>5</sup> Arguably even more controversial, the Brazilian lawmaker who led the ousting of Rousseff, Eduardo Cunha, has been overwhelmingly voted out of Congress, convicted of corruption and money laundering, and sentenced to fifteen years in prison.<sup>6</sup> While it remains contestable whether Rousseff directly used the budget for her own personal benefit, it has become increasingly clear that she

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<sup>1</sup> Vanessa Buschschluter, *Dilma Rousseff: Facing A Perfect Storm*, BBC NEWS (Mar. 4, 2016), <http://www.bbc.com/news/world-latin-america-35728133>.

<sup>2</sup> Marina Lopes & Dom Phillips, *Brazilian President Dilma Rousseff Ousted in Impeachment Vote*, WASHINGTON POST (Aug. 31, 2016), [https://www.washingtonpost.com/world/the\\_americas/brazilian-president-dilma-rousseff-faces-final-impeachment-vote/2016/08/30/c85173d4-6ee7-11e6-993f-73c693a89820\\_story.html](https://www.washingtonpost.com/world/the_americas/brazilian-president-dilma-rousseff-faces-final-impeachment-vote/2016/08/30/c85173d4-6ee7-11e6-993f-73c693a89820_story.html).

<sup>3</sup> Andrew Jacobs & Paula Moura, *At the Birthplace of a Graft Scandal, Brazil's Crisis Is on Full Display*, NY TIMES (June 10, 2016), <http://www.nytimes.com/2016/06/11/world/americas/brazil-corruption-dilma-rousseff-operation-car-wash.html>.

<sup>4</sup> See Lopes & Phillips, *supra* note 2.

<sup>5</sup> *Id.*

<sup>6</sup> See Simon Romero, *Brazil's Congress Expels Lawmaker Who Led Ouster of President*, N.Y. TIMES (Sep. 13, 2016), [http://www.nytimes.com/2016/09/13/world/americas/eduardo-cunha-brazil-impeachment-dilma-rousseff.html?\\_r=0](http://www.nytimes.com/2016/09/13/world/americas/eduardo-cunha-brazil-impeachment-dilma-rousseff.html?_r=0).

may have used budget funds to aid her reelection.<sup>7</sup> Rousseff's former vice president and coalition partner Michel Temer has now replaced Rousseff.<sup>8</sup> Within only a few months of taking the presidency, Temer has already found himself in a scandal, as Brazil's prosecutor general is investigating claims that he received millions of dollars in illicit payments and attempted to obstruct an anticorruption drive.<sup>9</sup> Thousands of Brazilians have demanded Temer's resignation.<sup>10</sup> With the recent impeachment of the most powerful political figure in Brazil, the question remains if Rousseff's impeachment will turn the once thriving nation around and give it the opportunity to regain its political balance.

This article will address the impeachment process in Brazil, reviewing relevant laws, constitutional provisions, and historical background in order to analyze how the impeachment process in Brazil functions and its impact on Brazilian governance. A comparison will be made between the impeachment process in Brazil and the impeachment process of the United States, as much of Brazil's First Republican Constitution was modeled after the United States Constitution. Part II of this article will discuss the historical background leading up to the current impeachment in Brazil and will identify times that Brazil has either impeached or threatened to impeach major political leaders. This section will include a detailed analysis of major constitutional provisions that affected the nation and address the political climate in Brazil leading to the impeachment of Rousseff. Part III will analyze the Brazilian Constitution,

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<sup>7</sup> Joe Leahy, *What is Brazil's President Dilma Rousseff accused of? Senators Declare Their Intention to Impeach Brazil's President*, FINANCIAL TIMES (May, 12, 2016), <https://www.ft.com/content/58401072-167d-11e6-b8d5-4c1fcdbe169f> ("This creative accounting, known as 'pedaladas'—Portuguese for pedaling—and roundly condemned by the TCU, the country's budget watchdog, allegedly helped her win the 2014 elections by disguising the true state of the economy.").

<sup>8</sup> See Romero, *supra* note 6.

<sup>9</sup> Simon Romero, *Brazil's President Assails His Accuser as Corruption Scandal Intensifies*, NY TIMES (May 20, 2017), <https://www.nytimes.com/2017/05/20/world/americas/michel-temer-brazil.html>.

<sup>10</sup> *Id.* (As of August 18, 2017, the President of the House of Deputies, Rodrigo Maia, has received 26 requests for impeachment of Temer; he has rejected one and is sitting on the other 25. One of the requests was made by the Brazilian Bar Association (OAB) on May 25, 2017. The OAB has also brought a writ of security action in the Supreme Court to try to compel Maia to act on his impeachment request).

specifically addressing how the Constitution mandates impeachment processes to be carried out. This section will also discuss all relevant Brazilian laws regarding the impeachment process, namely Law No. 1079, enacted in 1950, which, in part, is inconsistent with the present constitutional impeachment provisions. Part IV will compare the Brazilian Constitution's detailing of impeachment to that of the United States Constitution. Brazil, unlike the United States, has had eight constitutions, and the present Constitution, adopted in 1988, has already had 101 amendments. This section will discuss key differences in how Brazil handles impeachment pursuant to its Constitution and discuss whether voting articles of impeachment has been an effective outlet of halting corruption. Part IV will analyze modern Brazilian impeachments, specifically Presidents Collor de Mello and Rouseff, as well as modern U.S. impeachments, namely those of Nixon and Clinton. Finally, Part V will conclude with lessons that can be learned from the Brazilian impeachment process and will discuss whether this process has abated corruption in a meaningful and lasting way. Part V will additionally analyze whether the use of Brazil's impeachment power has produced beneficial results for the nation and what Brazilian impeachment has meant from a global perspective. Part VI will briefly conclude the article.

## II. BACKGROUND

### *A. Transitional Period of Military Regime to Democratic Means*

From 1964 to 1985, Brazil was governed by an authoritarian military dictatorship.<sup>11</sup> The 1964 military regime in Brazil was fully supported by the United States in hopes of deterring Brazil from

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<sup>11</sup> See *Timeline Brazil*, BBC NEWS (Aug. 14, 2012), <http://news.bbc.co.uk/2/hi/americas/1231075.stm>; see generally Thomas E. Skidmore, *The Politics of Military Rule in Brazil, 1964-1985*, (Oxford U. Press, (1988)).

slipping towards a communist regime.<sup>12</sup> Due to widespread opposition to the military regime,<sup>13</sup> this period was one of continual constitutional crisis. In response, the government issued a series of 17 Institutional Acts, modifying the 1967 Constitution to suit the military regime.<sup>14</sup> These acts were issued by three generals under the dubious authority that the military regime unilaterally conferred upon them.<sup>15</sup> While the Brazilian people were hopeful that the new military government would give more power to the citizens, unjust political maneuvers occurred—the most notable maneuver was Institutional Act 5, which disbanded Congress, suspended habeas corpus for political crimes, and increased overall censorship in Brazil.<sup>16</sup> While the military regime is understood as a dark phase in Brazilian history, marked by censorship and disarray, it was also a motivating factor for Brazil to return to democratic governance.

From 1974-1985, Brazil entered a political phase of liberalization known as *distensão*, when the major authoritarian features of the 1967 Constitution were relaxed by constitutional amendments.<sup>17</sup> While the amendments showed signs of Brazil's turn towards democracy, Brazil's first civilian president, Tancredo Neves, who died before taking office, strongly supported adoption of a new Constitution.<sup>18</sup> His vice president, José Sarney, proposed a constitutional amendment that would empower the next Congress to serve as a constituent assembly.<sup>19</sup> However, the amendment was politically unjust because the next Congress included twenty-three senators elected under the prior authoritarian regime's 1982 electoral legislation.<sup>20</sup> Thus, the twenty-three senators had no direct voter mandate to serve as part of the constitutional assembly.<sup>21</sup> Before passing the

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<sup>12</sup> See Pablo Uchoa, *Remembering Brazil's Decades of Military Repression*, BBC NEWS: BBC BRASIL, (Mar. 31, 2014), <http://www.bbc.com/news/world-latin-america-26713772>.

<sup>13</sup> See Keith S. Rosenn, *Brazil's New Constitution: An Exercise in Transient Constitutionalism for a Transitional Society*, 38 AM. J. COMP. L. 773, 774 (1990).

<sup>14</sup> *Id.* at 774.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 775.

<sup>18</sup> *Id.*

<sup>19</sup> See Keith S. Rosenn, *Brazil's New Constitution: An Exercise in Transient Constitutionalism for a Transitional Society*, 38 AM. J. COMP. L. 773, 775 (1990).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

amendment, Congress was not yet aware of the conservative Sarney's corrupt motives, even while he attempted to sabotage the entire Congressional process up until the very last draft to the Constitution had been created.<sup>22</sup>

### *B. Finally, Democracy*

Despite the President's motives to halt the creation of a more democratic Constitution, the current Constitution was drafted with the hopes of bringing in a new, democratic government to Brazil. 1985 marked the end of the military regime, as Brazil elected a president through a democratic process.<sup>23</sup> A new Brazilian Constitution was adopted in 1988 to reflect the nation's changing political scheme.<sup>24</sup> On November 15, 1989, the entire Brazilian electorate had its first opportunity in nearly 30 years to vote directly for a presidential candidate, which was an incredible political accomplishment for the nation.<sup>25</sup> Under the prior military regime, the right to vote was restricted to generals.<sup>26</sup> The current 1988 Constitution differs drastically from its predecessor to reflect Brazil's change from a military government to that of a democracy.<sup>27</sup> Consequently, the Constitution weakened the executive in order to strengthen the legislature.<sup>28</sup> The present Constitution states that the House or the Senate, or any of its committees, can require that any Minister of State appear in person before it to testify or answer interrogatories and that failure to do so constitutes good cause for impeachment.<sup>29</sup> One of the greatest changes, however, from the 1967 Constitution to the 1988 Constitution was the restoration of law making power to Congress.<sup>30</sup> This was a major change from the prior military regime, under which significant legislation was proposed and enacted solely

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<sup>22</sup> *Id.* at 777.

<sup>23</sup> *Id.* at 773. ("The election was held pursuant to Brazil's Constitution, which provided the critical framework for restoration of full democracy.")

<sup>24</sup> *Id.*

<sup>25</sup> See Keith S. Rosenn, *Brazil's New Constitution: An Exercise in Transient Constitutionalism for a Transitional Society*, 38 AM. J. COMP. L. 773, 773 (1990).

<sup>26</sup> See *id.* at 783-84.

<sup>27</sup> *Id.* at 783.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 783-784.

<sup>30</sup> *Id.* at 784.

by Executive Decree.<sup>31</sup> Furthermore, the Constitution sought to give Congress exclusive power to control rule making by administrative agencies.<sup>32</sup> Thus, in theory, all acts of the Executive are made subject to either direct control of Congress, or through control of the Chamber of Deputies, or the Senate.<sup>33</sup> Curiously, however, despite the number of constitutional provisions decreasing the power of the Executive, the drafters of the Constitution nevertheless allowed the Executive to issue provisional measures by decree. The provisional measures apparently were an oversight, left in when the Constitutional Assembly shifted from a parliamentary system to a presidential system.<sup>34</sup> Provisional measures were valid as laws for only thirty days, but Congress seldom adopted or rejected these provisional measures within this short period.<sup>35</sup> Brazilian presidents reacted by reissuing provisional measures every month until adopted or rejected by Congress. Such essentially unchecked power created the potential for corruption—far greater than what can be fathomed in the United States. Moreover, drafting issues that are blatantly apparent in the current Constitution have arguably led to an even greater number of corruption scandals than were seen under the military regime.<sup>36</sup>

### III. SUMMARY OF CONSTITUTIONS AND LAWS REGARDING IMPEACHMENT—THE BRAZILIAN CONSTITUTION AND LAW NO. 1079 AND THE UNITED STATES CONSTITUTION USED TO COMPARE THE UNITED STATES' IMPEACHMENT PROCESS TO BRAZIL'S.

In order to understand how the impeachment process functions in Brazil, it is important to compare carefully the 1988 Brazilian

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<sup>31</sup> See Keith S. Rosenn, *Brazil's New Constitution: An Exercise in Transient Constitutionalism for a Transitional Society*, 38 AM. J. COMP. L. 773, 784 (1990).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> See *Brazil Assembly Backs Presidential System*, (March 23, 1988), NY TIMES, <http://www.nytimes.com/1988/03/23/world/brazil-assembly-backs-presidential-system.html?mcubz=0>.

<sup>35</sup> Rosenn, *supra* note 13, at 784.

<sup>36</sup> See generally Barbara Geddes & Artur Ribeiro Neto, *Institutional Sources of Corruption in Brazil*, in CORRUPTION AND POLITICAL REFORM IN BRAZIL: THE IMPACT OF COLLOR'S IMPEACHMENT 1, 21-48 (Keith S. Rosenn & Richard Downes eds., 1999).



Constitution to that of the United States Constitution. Moreover, I will be discussing the key, relevant impeachment law that was introduced in Brazil in 1950, Law No. 1079. What will be readily apparent is that Brazil's reigning law on the issue of corruption and impeachment is not consistent with the current Brazilian Constitution's provisions regarding impeachment. This has created a problematic scenario for Brazil.

*A. Impeachment Under the United States Constitution*

A substantial difference between the United States Constitution and the Brazilian Constitution is the definition of impeachable offenses.<sup>37</sup> Unlike the Brazilian Constitution, which sets out a detailed list of impeachable offenses, the United States Constitution characterizes impeachable offenses as simply, "Treason, Bribery, or other high Crimes and Misdemeanors."<sup>38</sup> While the meaning of bribery and treason is clear, the meaning of the term "high Crimes and Misdemeanors" has remained unclear.<sup>39</sup> It has frequently been argued that an indictable crime is always a prerequisite for impeachment, but this argument has not been accepted in practice.<sup>40</sup> This argument was most notably discussed in the cases of Justice Samuel Chase, President Andrew Johnson, and President Richard Nixon.<sup>41</sup> In the United States Congress's proposal for the impeachment of President Nixon, the House Judiciary Committee emphatically stated that "a showing of criminality is neither necessary nor sufficient for the specification of an impeachable offense."<sup>42</sup>

A notable feature of the United States Constitution is that impeachment is a civil and not a criminal proceeding.<sup>43</sup> Alexander

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<sup>37</sup> See Fabio Konder Comparato, *The Impeachment Process and the Constitutional Significance of the Collor Affair*, in CORRUPTION AND POLITICAL REFORM IN BRAZIL: THE IMPACT OF COLLOR'S IMPEACHMENT 1, 74-77 (Keith S. Rosenn & Richard Downes eds., 1999).

<sup>38</sup> U.S. CONST., art.II, § 4).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* (citing LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW (Foundation Press, 2nd ed. 1988).

<sup>43</sup> Fábio Konder Comparato, *The Impeachment Process and the Constitutional Significance of the Collor Affair*, in CORRUPTION AND POLITICAL REFORM

Hamilton stated, “[impeachment] can never be tied down by such strict rules, either in the delineation of the offense by the prosecutors or in the construction of it by the judges, as in common cases serve to limit the discretion of courts in favor of personal security.”<sup>44</sup>

Impeachment creates no double jeopardy bar to a prior or subsequent criminal prosecution, at least for federal officials other than the President and Vice President. According to Article I, section III of the U.S. Constitution, a person convicted of impeachable charges is subject to indictment, trial, and judgment before the judiciary.<sup>45</sup> The provision states, “[j]udgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.”<sup>46</sup>

In 1989, Alcee Hastings, a sitting federal judge, was impeached for the same offense for which he had been acquitted by a jury in a criminal trial.<sup>47</sup> It is not clear, however, whether a sitting president or vice president can be indicted and tried prior to impeachment. The issue was raised when former Vice President, Spiro Agnew was indicted for crimes allegedly committed prior to being sworn in as Vice President when he was governor of the state of Maryland.<sup>48</sup> The issue remained unresolved because Agnew’s lawyers entered into a plea-bargain in which Agnew agreed to resign in 1973.<sup>49</sup> The issue actually came before the United States Supreme Court in *U.S. v. Nixon*, where President Nixon claimed that he could not be constitutionally named as an unindicted co-conspirator in the Watergate

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IN BRAZIL: THE IMPACT OF COLLOR’S IMPEACHMENT 1, 74 (Keith S. Rosenn & Richard Downes eds., 1999).

<sup>44</sup> *Id.* at 75. (citing THE FEDERALIST NO. 65 (Alexander Hamilton)).

<sup>45</sup> Comparato, *supra* note 37, at 75.

<sup>46</sup> U.S. CONST, art. I, § 3.

<sup>47</sup> David Johnston, *Hastings Ousted as Senate Vote Convicts Judge*, NY TIMES (October 21, 1989), <http://www.nytimes.com/1989/10/21/us/hastings-ousted-as-senate-vote-convicts-judge.html>.

<sup>48</sup> United States Senate, *Spiro T. Agnew, 39<sup>th</sup> Vice President (1969-1973)*, [https://www.senate.gov/artandhistory/history/common/generic/VP\\_Spiro\\_Agnew.htm](https://www.senate.gov/artandhistory/history/common/generic/VP_Spiro_Agnew.htm).

<sup>49</sup> *Id.*

Scandal.<sup>50</sup> The issue remained unresolved because the Supreme Court dismissed the writ of certiorari as improvidently granted.<sup>51</sup> The issue also came up in 1998, when Independent Counsel Kenneth Star decided to recommend impeachment charges to Congress rather than seek to indict William Clinton when he was still a sitting President.<sup>52</sup> After Clinton's acquittal by the Senate on charges of obstruction of justice and perjury, both federal criminal offenses, Robert Ray, who replaced Star as Independent Counsel in October 1999, elected not to seek to indict Clinton until after he left office in January 2001.<sup>53</sup> Just before leaving office, Clinton avoided indictment by reaching an agreement with the Independent Counsel under which Clinton admitted publically that certain statements made under oath after his relationship with Monica Lewinsky were false and agreed to surrender his license to practice law for five years.<sup>54</sup> The issue may arise again as special prosecutor Robert Mueller investigates whether there is sufficient evidence to charge President Donald Trump with criminal charges with respect to his role in the current investigation regarding Russia's interference with the 2016 presidential election and the dismissal of James Comey.<sup>55</sup>

Furthermore, the United States Constitution lays out the impeachment proceedings quite simply. Under Article II, Section IV of the Constitution, the text, with the heading "Disqualification" states, "[t]he President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."<sup>56</sup> Article I, Section III elaborates on the process, stating:

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<sup>50</sup> See *U.S. v. Nixon*, 418 U.S. 683 (1974).

<sup>51</sup> See *id.*

<sup>52</sup> See *A Chronology: Key Moments in the Clinton-Lewinsky Saga*, CNN, <http://www.cnn.com/ALLPOLITICS/1998/resources/lewinsky/timeline/>.

<sup>53</sup> Neil A. Lewis, *Transition In Washington: The President; Exiting Job, Clinton Accepts Immunity Deal*, (Jan. 20, 2011), NY TIMES, <http://www.nytimes.com/2001/01/20/us/transition-in-washington-the-president-exiting-job-clinton-accepts-immunity-deal.html?mcubz=0>.

<sup>54</sup> See *id.*

<sup>55</sup> See Evan Perez, Pamela Brown, & Shimon Prokupecz, *One Year into the FBI's Russia Investigation, Mueller is on the Trump Money Trail*, CNN (Aug. 4, 2017), <http://www.cnn.com/2017/08/03/politics/mueller-investigation-russia-trump-one-year-financial-ties/index.html>.

<sup>56</sup> U.S. CONST., art. II, § 4.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present. Judgment in Cases of Impeachments shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust, or Profit under the United States, but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment, and Punishment, according to Law.<sup>57</sup>

This section of the United States Constitution has not been amended and, as discussed below, contrasts starkly with Brazil's 1988 Constitution and its detailed law on impeachments. Brazil's provisions regarding the impeachment process are much lengthier and have been amended a number of times to reflect Brazil's historical transition to democracy throughout the years.

#### *B. Impeachment Under the Brazilian Constitution*

Impeachable offenses under the Brazilian Constitution are known as *crimes de responsabilidade*, or crimes of responsibility.<sup>58</sup> Article 85 of Brazil's 1988 Constitution states, “[a]cts of the President of the Republic that are attempts against the Federal Constitution are impeachable offenses, especially those against the: existence of the Union; free exercise of the powers of the Legislature, Judiciary, Public Prosecutor's Office, and constitutional powers of the units of the Federation; exercise of political, individual and social rights; internal security of the country; probity in administration; the budget law; and compliance with the laws and court decisions.”<sup>59</sup> Furthermore, Article 86 states, “[i]f two-thirds of the Cham-

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<sup>57</sup> U.S. CONST., art. II, § 3.

<sup>58</sup> Comparato, *supra* note 37, at 75.

<sup>59</sup> CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 85 (Braz.). (citing Brazil's 1988 Constitution in English translation, [https://www.constituteproject.org/constitution/Brazil\\_2014.pdf](https://www.constituteproject.org/constitution/Brazil_2014.pdf)).

ber of Deputies accept an accusation against the President of the Republic, he shall be tried before the Supreme Federal Tribunal for common criminal offenses or before the Federal Senate for impeachable offenses.”<sup>60</sup> Brazil’s monarchical Constitution of 1824 did not permit impeachment of the Emperor but did provide for removal of ministers of state for all criminal liability.<sup>61</sup> The Brazilian Constitution of 1891, the country’s first democratic constitution, continued the tradition of criminal liability as grounds for impeachment.<sup>62</sup> After describing specific instances for presidential impeachment, the Constitution provided that “said crimes shall be defined in a special law.”<sup>63</sup> This feature of the Constitution has been maintained by all subsequent Constitutions.<sup>64</sup> Brazil has since enacted two successive laws defining impeachable offenses, as well as establishing procedural rules for trials of impeachable offenses.<sup>65</sup> The first was Law 30 of 1892, and the second is Law 1079 of 1950, which is still in force in Brazil.<sup>66</sup>

The 1988 Constitution expanded the list of impeachable officials beyond those identified under previous Constitutions in Brazil.<sup>67</sup> Previously, the president, vice president, ministers of state, and judges of the Federal Supreme Court were the only federal officials who could be impeached.<sup>68</sup> The current Constitution added the attorney general of the republic, the federal general counsel, members of the Superior Courts, members of the Federal Tribunal of Accounts, and the chiefs of permanent diplomatic missions.<sup>69</sup>

The 1988 Constitution additionally defined who could be tried by the Senate. Only the president, vice president, members of the Supreme Court, the attorney general, and the state advocate general

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<sup>60</sup> CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 86 (Braz.). (citing Brazil’s 1988 Constitution in English translation, [https://www.constituteproject.org/constitution/Brazil\\_2014.pdf](https://www.constituteproject.org/constitution/Brazil_2014.pdf)).

<sup>61</sup> *Id.*

<sup>62</sup> Comparato, *supra* note 37, at 76.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> Comparato, *supra* note 37, at 76.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

are tried before the Senate.<sup>70</sup> Ministers of state are tried by the Senate only in cases of impeachable offenses related to such offenses committed by the president.<sup>71</sup> The remaining officials that are listed within the Constitution are charged and tried before the Brazilian Supreme Court.<sup>72</sup> Under the Brazilian system, an impeached president is suspended from duty pending the outcome of his Senate trial.<sup>73</sup> Article 51(I) states that the Chamber of Deputies has exclusive power by a two-thirds vote to authorize the institution of legal charges against the President and Vice President, and the Ministers of the Federal Government.<sup>74</sup> Article 52(I) gives the Senate exclusive power to try the President, Vice President, Ministers of the Federal Government, and Commanders of the Navy, Army and the Air force for impeachable offenses.<sup>75</sup>

A two-thirds vote of the Brazilian Chamber of Deputies is required to bring impeachment charges.<sup>76</sup> This differs from the United States' proceedings because only a majority vote of the House of Representatives is needed.<sup>77</sup> Following the vote, the Chamber must then prepare an impeachment report and appoint a committee in Congress to draft the report discussing whether the charges are grounded or not.<sup>78</sup> The Senate must also create a committee to discuss the charges and eventually vote on if the impeachment should occur.<sup>79</sup> A two-thirds majority vote in the Senate is needed to convict those officials entitled to be tried by the Senate.<sup>80</sup> The process

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Comparato, *supra* note 37, at 74.

<sup>74</sup> *Id.* at 76. (citing CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 51 (Braz.).

<sup>75</sup> *Id.* (citing CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 52 (Braz.) (citing Brazil's 1988 Constitution in English translation, [https://www.constituteproject.org/constitution/Brazil\\_2014.pdf](https://www.constituteproject.org/constitution/Brazil_2014.pdf)).

<sup>76</sup> CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 51 (Braz.) (citing Brazil's 1988 Constitution in English translation, [https://www.constituteproject.org/constitution/Brazil\\_2014.pdf](https://www.constituteproject.org/constitution/Brazil_2014.pdf)).

<sup>77</sup> U.S. CONST., art. IV, § 3.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 52 (Braz.) (citing Brazil's 1988 Constitution in English translation, [https://www.constituteproject.org/constitution/Brazil\\_2014.pdf](https://www.constituteproject.org/constitution/Brazil_2014.pdf)).

overall is quite convoluted and more complex than what is seen in the United States.

The 1988 Constitution made important amendments to ensure a more democratic system and with more tools to use against the executive. For example, the 1988 Constitution was designed to weaken the executive and to strengthen the legislative and judicial branches of government.<sup>81</sup> Thus, the current Constitution of Brazil ensures more accountability between the president and Congress, which aided in the impeachment of Collor de Mello, Brazil's first democratically elected president after the 1988 Constitution went into force.<sup>82</sup> Additionally either house of Brazil's Congress, or one of its committees, can require any executive minister to appear personally to testify or answer interrogatories.<sup>83</sup> If an executive minister fails to appear without good cause, he may be impeached under the current Constitution.<sup>84</sup>

Furthermore, one major issue with the impeachment process in Brazil is that there is considerable discourse regarding the true nature of impeachable offenses and what they fully entail.<sup>85</sup> Despite the explicit language of the 1988 Constitution, one view is that the Brazilian impeachment proceeding does not encompass crimes but rather deals with, "political offenses, related to unlawfulness of a political nature, and politically sanctioned."<sup>86</sup> The other view, adopted by Brazil's Supreme Court, is that impeachment is a combination of both political and criminal proceedings.<sup>87</sup> Impeachable offenses may be actual crimes and are thus subject to the fundamental principle of *nullum crimen nulla poena sine lege*, meaning neither crime nor punishment without law.<sup>88</sup> Such crimes, tried before

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<sup>81</sup> See Keith S. Rosenn, *Separation of Powers in Brazil*, 47 DUQ. L. REV. 839, 850 (2009).

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Comparato, *supra* note 37, at 74.

<sup>86</sup> *Id.* (citing PAULO BROSSARD, O IMPEACHMENT – ASPECTOS DA RESPONSABILIDADE POLÍTICA DO PRESIDENTE DA REPÚBLICA note 5, 74 (São Paulo: Saraiva, 2nd ed. 1992)).

<sup>87</sup> *Id.* (citing PAULO BROSSARD, O IMPEACHMENT – ASPECTOS DA RESPONSABILIDADE POLÍTICA DO PRESIDENTE DA REPÚBLICA 83 (São Paulo: Saraiva, 2nd ed. 1992)).

<sup>88</sup> *Id.* at 75.

a political branch and not before the judiciary, also have a political sanction.<sup>89</sup>

Moreover, Brazil has two alternatives to impeachment that are important to differentiate. First, the Electoral Tribunal can find that an election was corrupt and can quash the president's mandate. For example, on June 9, 2017, Brazil's top electoral court voted to reject allegations of campaign finance violations that could have removed Temer from office.<sup>90</sup> Judges voted 4-3 against overturning the 2014 presidential election despite Dilma's impeachment and Temer's ballooning corruption scandal and disastrously low popularity among Brazilians.<sup>91</sup> A guilty verdict would have annulled the 2014 election and stripped Temer of the rest of his mandate.<sup>92</sup> Additionally, a guilty verdict would have stripped both Rousseff and Temer of their political rights for eight years.<sup>93</sup> A second alternative to impeachment is the criminal conviction of a sitting president by the Supreme Court.<sup>94</sup> If two-thirds of the Chamber of Deputies approve, a sitting president can be prosecuted on criminal charges before the Supreme Court.<sup>95</sup> The current Brazilian President, Michel Temer was charged with corruption by the Prosecutor General, but not even a simple majority voted to allow the Chamber of Deputies' prosecution to go

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<sup>89</sup> *Id.*

<sup>90</sup> Peter Prengaman & Mauricio Savarese, *Brazil's Temer gets big victory in electoral court ruling*, FOX NEWS (June 9, 2017), <http://www.foxnews.com/world/2017/06/09/brazil-court-weighs-presidents-fate-in-campaign-funds-case.html>.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> Vikram David Amar, *What We Could Learn from Brazil (and Vice Versa) About Presidential Impeachment Procedures (and Related Matters)*, VERDICT (April 22, 2016), <https://verdict.justia.com/2016/04/22/what-we-could-learn-from-brazil-and-vice-versa-about-presidential-impeachment-procedures-and-related-matters>.

<sup>95</sup> Colin Dwyer, *Brazilian President Michel Temer is Formally Charged with Corruption*, THE TWO WAY: NPR (June 27, 2017), <http://www.npr.org/sections/twotwo-way/2017/06/27/534574913/brazilian-president-michel-temer-is-formally-charged-with-corruption>.



to trial.<sup>96</sup> However, the Prosecutor General recently filed new corruption charges against Temer.<sup>97</sup>

*C. Law No. 1079 (1950)- Crimes of Responsibility*

As stated above, Brazil's current impeachment statute is Law 1079, enacted in 1950.<sup>98</sup> Law 1079 differs from the Brazilian Constitution in that it defines impeachable offenses only for the president, vice president, ministers of state, members of the Supreme Court, and the attorney general of the republic.<sup>99</sup> However, Law 1079 was amended by Law 10.028 in 2000, which added Art. 40-A, sole paragraph, which extends the list of officials subject to impeachment to: The Advocate General of the Union, the Procurator Generals of Labor, Elections and Military, the Procurator Generals of the State and the Federal District and to members of the Federal and State Public Ministries, the Advocacy General of the Union, and state prosecutors when acting as head of regional or local units of their agencies.<sup>100</sup> Thus, all of these governmental officials can be impeached using Law 1079, which is inconsistent with the Brazilian Constitution's treatment of impeachment.<sup>101</sup> Furthermore, even starker differences are apparent between Law 1079 and the current Constitution. Law 1079, as well as Decree- Law No. 201, both state that the crimes being defined in the law, even when simply an attempt, are liable for the penalty of loss of the position with the inability to exercise any public function for at least five years.<sup>102</sup> The

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<sup>96</sup> Marina Lopes, *Brazilian President Temer survives a vote to suspend him on corruption charges*, WASHINGTON POST (August 2, 2017), [https://www.washingtonpost.com/world/the\\_americas/brazilian-congress-to-vote-on-removing-the-second-president-in-a-year/2017/08/02/d384f720-76e9-11e7-8c17-533c52b2f014\\_story.html?utm\\_term=.8637bc8e6192](https://www.washingtonpost.com/world/the_americas/brazilian-congress-to-vote-on-removing-the-second-president-in-a-year/2017/08/02/d384f720-76e9-11e7-8c17-533c52b2f014_story.html?utm_term=.8637bc8e6192).

<sup>97</sup> Shasta Darlington, *President Temer of Brazil Faces New Corruption Charges*, NY TIMES (Sept. 14, 2017), <https://www.nytimes.com/2017/09/14/world/americas/brazil-temer-corruption-janot.html>.

<sup>98</sup> Comparato, *supra* note 37, at 75.

<sup>99</sup> Lei No. 1079 de 10 Abril de 1950, Presidência de Republica, define os crimes de responsabilidade e regula o respectivo processo de julgamento [Law 1079 of April 10, 1950 Defining Political Crimes and Regulating their Prosecution] (Braz.).

<sup>100</sup> Lei No. 10.028 de 19 Outubro de 2000.

<sup>101</sup> Comparato, *supra* note 37, at 74.

<sup>102</sup> *Id.* at art. 2; Lei No. 201 de 27 de Fevereiro de 1967.

current Brazilian Constitution, however, declares that the impeached official loses his political and civil rights for eight years.<sup>103</sup>

As stated, Brazil enacted Law No. 10.028, which made various amendments to the 1950 Impeachment Law.<sup>104</sup> For example, Art. 40A was added making crimes of the Procurator-General of the Republic, or of his substitute when acting as head of the Public Ministry of the Union, impeachable offenses under the 1950 Law.<sup>105</sup> Because Brazilians have adhered to the law in only finding impeachable offenses for the officials of the president, vice president, ministers of state, members of the Supreme Court, and the attorney general of the republic, it is readily apparent that Law 1079 is given significant weight, even comparable to the Brazilian Constitution itself.<sup>106</sup> In fact, the Collor impeachment was carried out pursuant to Law 1079, as well as the special rules drafted by the chief justice of the Supreme Court pursuant to his authority as presiding officer of the Senate trial.<sup>107</sup> Thus, the impeachment provisions under the 1988 Constitution were not the primary source of the rules governing Collor's impeachment.<sup>108</sup> However, Collor was banned from public office for eight years, indicating that in some respects, the current Constitution holds key provisions that the Senate still follows.

The crimes of responsibility set out in Law 1079 include crimes against the existence of the Union, meaning crimes that threaten the existence of the Brazilian federal government.<sup>109</sup> Such crimes include threats to government intelligence, for example.<sup>110</sup> Furthermore, the law includes crimes against the free exercise of constitutional powers; crimes against the exercise of political, individual, and social rights; crimes against homeland security, crimes against the administration of justice, crimes against budget laws (a crime that Rouseff was impeached for), crimes against the safekeeping

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<sup>103</sup> Comparato, *supra* note 37, at 76. (citing CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 52 (Braz.) (citing Brazil's 1988 Constitution in English translation, [https://www.constituteproject.org/constitution/Brazil\\_2014.pdf](https://www.constituteproject.org/constitution/Brazil_2014.pdf)).

<sup>104</sup> Lei No. 10.028 de 19 Outubro de 2000.

<sup>105</sup> *Id.* at art. 40.

<sup>106</sup> Comparato, *supra* note 37, at 77 (finding that the Collor affair was regulated primarily by Law 1079 and not the provisions of the Brazilian Constitution).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

and legal employment of public funds, and crimes against the enforcement of judicial decisions.<sup>111</sup> While it is apparent that Brazil has followed, and will likely continue to adhere to, Law 1079 on matters of impeachment, the statute should be further amended to align with the 1988 Constitution. It additionally should be noted that during the Collor affair, the Supreme Court took the liberty of simplifying the impeachment process by modifying or simply choosing to ignore certain provisions of Law 1079 in order to shorten the procedure.<sup>112</sup> Moreover, when the Court did so, Brazil's Congress was relieved, as Collor's impeachment may have easily taken numerous months to complete, which could have been both politically and economically disastrous for Brazil.<sup>113</sup>

#### IV. MODERN IMPEACHMENTS IN BRAZIL AND THE UNITED STATES.

##### A. *The Impeachment of Collor*

Brazilian President Fernando Affonso Collor de Mello served as President from 1990-1992.<sup>114</sup> As Brazil's first directly elected president since 1960, Collor represented a critical component to Brazil's new attempt at democracy.<sup>115</sup> Collor was additionally governing under Brazil's new Constitution and portrayed himself as the president who would do away with corruption, inefficiency, and a highly inflationary economy.<sup>116</sup> While Collor began his presidency with a triumphant start, he very quickly declined as the leading figure of Brazil.<sup>117</sup> There are several reasons why Collor began to lose favor among Brazilian citizens. For instance, Collor resorted to a political

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<sup>111</sup> Comparato, *supra* note 37, at 77.

<sup>112</sup> *Id.* at 83

<sup>113</sup> *Id.*

<sup>114</sup> Elsa Buchanan, *Petrobras scandal: Brazil's former President Fernando Collor de Mello 'took bribes' from firm*, INTERNATIONAL BUSINESS TIMES (Feb 25, 2015), <http://www.ibtimes.co.uk/petrobras-scandal-brazils-former-president-fernando-collor-de-mello-took-bribes-firm-1489438>.

<sup>115</sup> See Thomas Skidmore, *The Impeachment Process and the Constitutional Significance of the Collor Affair*, in CORRUPTION AND POLITICAL REFORM IN BRAZIL: THE IMPACT OF COLLOR'S IMPEACHMENT 1-7 (Keith S. Rosenn & Richard Downes eds., 1999).

<sup>116</sup> *Id.* at 3.

<sup>117</sup> *Id.*

device for the clear purpose of bypassing Brazil's Congress.<sup>118</sup> The device is known as the *medida provisória*, and is a device that has been commonly used by Brazilian presidents.<sup>119</sup> Brazil's Constitution permits Presidents to issue decrees with the force of law that take immediate effect.<sup>120</sup> While these provisional decrees were theoretically void ab initio if not adopted by Congress within 30 days, Collor routinely reissued them until Congress either converted them into law or rejected them.<sup>121</sup> Indeed, the controversial Collor Plan, which froze virtually all bank deposits for 18 months, was issued and reissued many times as a provisional decree before Congress eventually enacted it as law.<sup>122</sup> While this power had been a favorite of the general-presidents of Brazil's military past (also used liberally by President Sarney), Collor implemented the device 141 times in 1990 alone.<sup>123</sup> Collor's strategy angered many in Congress and instigated numerous court challenges.<sup>124</sup> Eventually, the Supreme Court declared that reissuing provisional decrees was an unconstitutional procedure but only if they had been specifically rejected by Congress.<sup>125</sup> Finally, in 2001, Congress adopted Constitutional Amendment No. 32, which prohibited presidents from issuing provisional decrees in many areas, such as nationality, citizenship, political parties and rights, criminal and procedural law, and budgetary matters.<sup>126</sup> To prevent another Collor Plan, Amendment No. 32 also prohibited any provisional decree from detaining or sequestering property or any financial assets.<sup>127</sup> It also made provisional decrees valid for 60 days rather than 30 days, a period that could be extended only once for another 60 days if Congress failed to act.<sup>128</sup> This means provisional decrees normally have a maximum life of 120

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<sup>118</sup> *Id.* at 5.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> Skidmore, *supra* note 115, at 6.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> Keith S. Rosenn, *Separation of Powers in Brazil*, 47 DUQ. L. REV. 839, 858 (2009).

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

days.<sup>129</sup> Moreover, a provisional decree that lapses is no longer void *ab initio*; any legal relations constituted under a lapsed decree must be regulated by legislative decree.<sup>130</sup>

Another major issue that led to Collor's eventual impeachment was his failure to stabilize Brazil's declining economy.<sup>131</sup> Collor's drastic economic stabilization plan, which froze bank accounts for 18 months, failed within less than a year, proceeding a major recession accompanied by vast unemployment.<sup>132</sup> Similar to the Watergate scandal in the United States, the press played an important role in Collor's downfall.<sup>133</sup> Because journalists had been censored during Brazil's military regime, the media did not hold back in printing stories of both Collor's unfortunate personality traits (Collor was known as one of Brazil's most arrogant presidents) and numerous scandals, constantly putting Collor on the defensive.<sup>134</sup>

The primary scandal of Collor's presidency occurred in May of 1992, when Collor's brother accused him of operating a corruption scheme through Collor's campaign treasurer, Paulo César Farias.<sup>135</sup> Following the scandal, thousands took to the streets to protest Collor.<sup>136</sup> Only four months later, on September 1, 1992, impeachment proceedings were initiated.<sup>137</sup> The Chamber of Deputies brought impeachment charges against President Collor on two grounds: that he allowed, "expressly or tacitly, the breach of law and order" and that he behaved in a way incompatible with the dignity, honor, and decency of the office.<sup>138</sup> Collor pled not guilty in the Senate.<sup>139</sup> Similar to the customary plea in United States impeachment cases, Collor

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<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> Skidmore, *supra* note 115, at 6.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* at 9 ("Yet Collor's good looks could not conceal an attitude of arrogance befitting an earlier era of Brazil's politics.").

<sup>135</sup> *Id.* at 10.

<sup>136</sup> *Id.*

<sup>137</sup> Skidmore, *supra* note 115, at 10.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

contended that an indictable common crime was required for impeachment.<sup>140</sup> Because a breach of law and order, as well as behavior that is incompatible with dignity, is not technically an indictable common crime, Collor argued that he could not be impeached.<sup>141</sup> Color additionally argued against the vagueness of the legal provisions, contesting that they did not comply with the constitutional requirement of the previous definition of a criminal offense.<sup>142</sup> As stated above, the impeachment of Collor was done through both Law 1079, the internal rules of the Chamber of Deputies, and by special rules drafted by the chief justice of the Supreme Court, as he has special authority as president of the Senate during the impeachment trial.<sup>143</sup> However, because the Constitution itself was not the sole law followed during the impeachment proceeding, legal incongruity persisted.<sup>144</sup> Although Collor technically resigned in an attempt to prevent his trial of impeachment by the Brazilian Senate, the Senate voted to continue its impeachment proceedings.<sup>145</sup>

On December 30, 1992, by the required two-thirds Senate majority, the Senate voted 76-3 to convict Collor on charges of official misconduct.<sup>146</sup> It is clear, based on the mere three votes against his impeachment, how immensely unpopular Collor was at the time. Regardless of Collor's contentions against the proceeding, Collor was swiftly impeached and succeeded by Vice President Itamar Franco.<sup>147</sup> Collor was later acquitted on ordinary criminal charges in his trial before Brazil's Supreme Court, ostensibly due to lack of valid evidence.<sup>148</sup>

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<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> Comparato, *supra* note 37, at 77.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.* at 78 ("The most delicate of all legal issues of the Collor affair arose from the president's decision to resign just before the start of his trial before the Senate.").

<sup>146</sup> Jeb Blount & William R. Long, *Brazil President Resigns in Wake of Impeachment*, L.A. TIMES (Dec 30, 1992), [http://articles.latimes.com/1992-12-30/news/mn-2585\\_1\\_vice-president](http://articles.latimes.com/1992-12-30/news/mn-2585_1_vice-president).

<sup>147</sup> *Id.*

<sup>148</sup> *See id.*

### *B. The Impeachment of Dilma Rousseff*

The impeachment of Dilma Rousseff signifies that now half of Brazil's elected presidents in its post-1989, democratic era have been impeached. Similar to Collor's impeachment, Rousseff's impeachment was likely not caused by one individual scandal. Rousseff too was handed a difficult presidency due to Brazil's immensely struggling economy, leading to anger and outcry from Brazilian citizens. With Brazilians desperately wanting their economy to return to the days of growth and stability, citizens were demanding a return to substantial economic growth.

In 2014, prosecutors, judges, and federal police began to uncover a multi-billion dollar kickback and bribery scandal at the state-run oil firm Petrobras.<sup>149</sup> The kickback scheme, known in English as Operation Car Wash, began in 2004, but the federal investigation began in 2014.<sup>150</sup> The accusations were brought by federal prosecutors mainly before a state court judge in Paraná, Judge Sergio Moro, who gained popularity among Brazilians as someone willing to take on the nation's most power leaders.<sup>151</sup> Petrobras was the largest Latin American company until the scandal leaked.<sup>152</sup> Contracts were inflated,<sup>153</sup> and a portion of the bribes were channeled to the three Brazilian political parties that had previously formed a ruling coalition.<sup>154</sup> The three parties included the Workers Party (Rousseff's party), the Democratic Movement Party of Brazil, and the Progressive Party.<sup>155</sup> The scheme had grown to include other parties and Brazilian projects, such as the Belo Monte hydroelectric dam.<sup>156</sup> While some felt the scandal was merely a way to end the 13 years of Worker's Party rule and to sweep from the government the older ruling parties, it has become increasingly apparent that funds were

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<sup>149</sup> Jonathan Watts, *Dilma Rousseff impeachment: what you need to know- the Guardian briefing*, THE GUARDIAN (Aug. 31, 2016), <https://www.theguardian.com/news/2016/aug/31/dilma-rousseff-impeachment-brazil-what-you-need-to-know>.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> Watts, *supra* note 149.

<sup>156</sup> *Id.*

being inappropriately used to benefit specific political parties, politicians, and government officials or contractors.<sup>157</sup> The Petrobras scandal has had disastrous effects on the Brazilian government.<sup>158</sup> Bribes were essential for building coalitions because of the vast number of political parties within Brazil.<sup>159</sup> No single party has ever been near to a commanding majority in Congress, so support is generally bought with cabinet posts and direct bribes.<sup>160</sup> Additionally, the sheer size of Brazil, as well as the three levels of government with regular municipal, state, and national elections, have fostered a corrupt scheme in Brazilian politics.<sup>161</sup> The scandal has additionally been detrimental to business as prosecutors had ordered the suspension of contracts between Petrobras and its primary suppliers, which unfortunately included nearly all of Brazil's largest construction and shipping firms.<sup>162</sup> Perhaps even more shocking, in approximately two years, 61% of Petrobras' 276,000 employees have lost their jobs.<sup>163</sup> Moreover, numerous smaller firms depended on Petrobras' business and have consequently become bankrupt due to the scandal.<sup>164</sup> Some believe that the scandal could have a positive effect on Brazil's government, potentially punishing the corrupt politicians who were involved and beginning a new era of clean government.<sup>165</sup> However, it may be difficult to both pinpoint exactly who was directly involved in the scheme and to give Brazilians any sort of time frame for bringing to justice all those who may have been involved.<sup>166</sup>

Prosecutors claim that former President da Silva (or Lula, as most refer to him) was the primary figure in charge of the scheme, though he strongly denies violating any law.<sup>167</sup> Judge Moro has since convicted Lula, sentencing him to nine years in jail and seizing

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<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> Watts, *supra* note 149.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> Watts, *supra* note 149.



all of his assets.<sup>168</sup> One major issue that divided the nation is whether and if so, how much, Dilma Rousseff has been involved with the Petrobras scandal? Currently, prosecutors have not found evidence that Rousseff was involved in the scheme.<sup>169</sup> Even more illuminating, many of Rousseff's political enemies have conceded that Rousseff is one of the few politicians in Brazil to not accept bribes.<sup>170</sup> However, it is widely thought that Rousseff must have at least known what was occurring, as she chaired the board of directors of Petrobras at the peak of the scandal.<sup>171</sup> Many in favor of Rousseff's impeachment argue that, even if she was merely aware of the scandal and did not directly participate, she still benefitted from the illegal campaign funds and did nothing to stop the wide-scale corruption.<sup>172</sup> Moreover, many question Rousseff's attempt to appoint Lula to her cabinet, to give him the shield of the privileged forum.<sup>173</sup>

One impeachment petition accepted by the Chamber of Deputies (out of 37 petitions filed) charged Rousseff with criminal activity by failing to investigate and prevent Operation Car Wash.<sup>174</sup> The Procurator General took the position that a sitting president could not be charged with crimes committed before her presidency, a position subsequently affirmed by Minister Teori Zauski of the Supreme Federal Court.<sup>175</sup> Therefore, the Chamber of Deputies found only

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<sup>168</sup> *Brazil's former President Lula has assets frozen*, (July 20, 2017) BBC NEWS, <http://www.bbc.com/news/world-latin-america-40664371>.

<sup>169</sup> Watts, *supra* note 149.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> Stan Lehman, *AP Explains: Why Brazilian President Faces Impeachment*, THE SAN DIEGO UNION-TRIBUNE (April 16, 2016), <http://www.sandiegouniontribune.com/sdut-ap-explains-why-brazilian-president-faces-2016apr16-story.html>.

<sup>175</sup> Jonathan Watts, *Brazil's Congressional Committee Votes in Favour of Impeaching Dilma Rousseff*, THE GUARDIAN (April 11, 2016), <https://www.theguardian.com/world/2016/apr/12/brazilian-congressional-committee-votes-to-impeach-dilma-rousseff>.

the budgetary charges.<sup>176</sup> However on September 5, 2017, the Procurator General of Brazil charged Lula and Dilma before the Supreme Federal Court with a series of crimes including cartel formation, corruption, and money laundering.<sup>177</sup>

While the Petrobras scandal substantially hurt Rousseff's public image, the principal charge brought against her was misappropriating government funds to aid her reelection campaign.<sup>178</sup> Rousseff was accused of misusing government accounts before the last presidential election to make her appear more favorable to Brazilian citizens and create a false visage to aid in her reelection.<sup>179</sup> Her critics charged that Rousseff's government filled holes in its accounts by accepting loans from state banks without the approval of Congress.<sup>180</sup> Rousseff's critics contested that this form of *pedaladas*, or pedaling scheme, allowed her administration to fund social welfare programs using funds that were not authorized by Congress.<sup>181</sup> Rousseff argued that the money was not being used as a loan because it was merely being transferred through state banks from public coffers.<sup>182</sup> Rousseff contested that the impeachment proceedings were used as a coup d'état against her, as it gave her enemies the opportunity to remove her from office without waiting for the next presidential election.<sup>183</sup> Additionally, she argued that prior administrations had practiced similar schemes.<sup>184</sup>

While such scandals should not be taken lightly, many argue that the alleged corruption was being directly used against Rousseff for

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<sup>176</sup> Simon Romero, *Dilma Rousseff Is Ousted as Brazil's President in Impeachment Vote*, NY TIMES, (Aug. 31, 2016), <https://www.nytimes.com/2016/09/01/world/americas/brazil-dilma-rousseff-impeached-removed-president.html?mcubz=0>.

<sup>177</sup> *Brazil Former Presidents Lula and Rousseff Charged in Corruption Case*, REUTERS (Sept. 5, 2017), <https://www.reuters.com/article/us-brazil-corruption/brazil-former-presidents-lula-and-rousseff-charged-in-corruption-case-idUSKCN1BH013>.

<sup>178</sup> Watts, *supra* note 149.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Brazil impeachment: Key Questions*, BBC NEWS (Aug. 31, 2016) <http://www.bbc.com/news/world-latin-america-36028117>.

<sup>184</sup> *Id.*

the purpose of throwing her out of office. Like Collor, Rousseff became widely unpopular among Brazilians and became the scapegoat for Brazil's multiple crises.<sup>185</sup> However, also similar to Collor, Dilma has been viewed as a highly arrogant politician, often too proud to concede or negotiate and even turning members of her own party against her.<sup>186</sup> Thus, Rousseff's harsh, stubborn demeanor aided in the alienation of her own allies and added more fuel to the fire.

On April 17, 2016, the lower house of Brazil's Congress voted in favor of impeaching Rousseff 367 to 137,<sup>187</sup> meeting the necessary two-thirds majority to send the charges to the Senate.<sup>188</sup> If the lower house had not reached its two-thirds majority, the impeachment proceedings would have abruptly ended, and Rousseff could have remained in office.<sup>189</sup>

On May 12, 2016, the Senate voted on whether to begin the impeachment process.<sup>190</sup> The Senate needed only a majority vote.<sup>191</sup> By a vote of 55 to 22, the Senate voted to begin impeachment. Consequently, Rousseff was suspended from office.<sup>192</sup> Next, the Senate, on August 9th 2016, voted on whether to proceed with the impeachment Rousseff.<sup>193</sup> Once again, a majority vote was needed to pass.<sup>194</sup> The Senate passed the vote 59 to 21 and Rousseff was consequently charged.<sup>195</sup> In order to convict, the Senate needed a two-thirds majority to vote for the impeachment.<sup>196</sup> On August 31, 2016, the Senate, by a margin of 61 to 20, voted to convict Rousseff, leaving her

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<sup>185</sup> Watts, *supra* note 149.

<sup>186</sup> Andrew Jacobs, *Dilma Rousseff, Facing Impeachment in Brazil, Has Alienated Many Allies*, NY TIMES (May 1, 2016), <https://www.nytimes.com/2016/05/02/world/americas/brazil-president-dilma-rousseff-impeachment-allies-alienated.html>.

<sup>187</sup> *Brazil impeachment: Key Questions*, BBC NEWS (Aug. 31, 2016), <http://www.bbc.com/news/world-latin-america-36028117>.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Brazil impeachment: Key Questions*, BBC NEWS (Aug. 31, 2016), <http://www.bbc.com/news/world-latin-america-36028117>.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

center-right Vice President, Michel Temer, a member of the Brazilian Democratic Movement Party, as Brazil's new president.<sup>197</sup>

Curiously, the Senate, with the approval of the President of the Supreme Federal Tribunal, split its impeachment vote into two: (1) whether to convict Rousseff; and (2) whether to deprive her of her political rights for eight years.<sup>198</sup> On the second question, the Senate voted 42 to 36, with three abstentions.<sup>199</sup> With the requisite two-thirds majority lacking, Rousseff has retained her political rights.<sup>200</sup> The division into two votes is contemplated by the sole paragraph of Article 68 of Law 1079 of 1950, which provides, "if the affirmative answer obtains at least two-thirds of the votes of the senators present, the President shall re-consult the plenary on the time not exceeding five years, during which the convicted person shall be disqualified from performing any public function."<sup>201</sup> On the other hand, the sole paragraph of Article 52 of the 1988 Constitution provides, "the President of the Supreme Federal Tribunal shall preside, and a conviction, which may only be rendered by two-thirds vote of the Federal Senate, shall be limited to the loss of office, with disqualification to hold any public office for a period of eight years, without prejudice to any other judicial sanctions that may be applicable."<sup>202</sup> Although numerous actions contesting the constitutionality of dividing the Rousseff impeachment with two votes have been filed with the Supreme Federal Tribunal, no decision has yet been rendered on the matter.

Temer swiftly named an all-male, all-white cabinet upon gaining seat to the presidency and is as unpopular, if not more, than Rousseff

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<sup>197</sup> Watts, *supra* note 149. (Unlike the United States, the Vice-President in Brazil does not need to be of the same party as the President).

<sup>198</sup> Daniel Flynn and Brad Haynes, *Brazil's Senate Votes to Remove President Dilma Rousseff From Office*, HUFFINGTON POST (Sept. 1, 2016), [http://www.huffingtonpost.com/entry/dilma-rousseff-impeached-brazil\\_us\\_57c6f89ee4b0e60d31dc8599](http://www.huffingtonpost.com/entry/dilma-rousseff-impeached-brazil_us_57c6f89ee4b0e60d31dc8599).

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> Lei No. 1079 de 10 Abril de 1950, Presidência de Republica, define os crimes de responsabilidade e regula o respectivo processo de julgamento [Law 1079 of April 10, 1950 Defining Political Crimes and Regulating their Prosecution] (Braz.).

<sup>202</sup> CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 52 (Braz.) (citing Brazil's 1988 Constitution in English translation, [https://www.constituteproject.org/constitution/Brazil\\_2014.pdf](https://www.constituteproject.org/constitution/Brazil_2014.pdf)).

herself.<sup>203</sup> The attorney general of Brazil has now charged Temer with receiving money from the massive meatpacking firm JBS, which itself is already implicated in a corruption scandal.<sup>204</sup> The charges have already been delivered to a Supreme Court judge who referred the question of whether Temer should be tried by the Supreme Federal Tribunal to the lower house of parliament.<sup>205</sup> A two-thirds majority vote is needed to waive Temer's immunity.<sup>206</sup> On August 2, 2017, the Chamber of Deputies rejected the bid to waive Temer's immunity by a vote of 238 against, 198 for.<sup>207</sup>

Temer has already lost five of his cabinet picks to the Petrobras scandal, insinuating that a number of his cabinet choices were directly involved in the scandal and may continue to be questioned.<sup>208</sup> Time will eventually tell if Temer will develop into the leader that Brazil so desperately needs; however, with Temer already cloaked in corruption himself, the future appears bleak for the newly seated president. While the government did impeach Rousseff in accordance with the Constitution and through democratic means, numerous forms of corruption and instability remain within the Brazilian government that must be addressed.

### *C. The Impeachment of Richard Nixon*

On July 27, 1974, the United States House Judiciary Committee recommended that President Nixon, the 37<sup>th</sup> president of the United States, be impeached and removed from the office of the presidency.<sup>209</sup> Unlike the Brazilian impeachments of Collor and Rousseff, which were the culmination of scandals and factors that resulted in an eventual impeachment, Nixon's fall resulted from a

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<sup>203</sup> *Id.*

<sup>204</sup> *Brazil Corruption Scandals: All You Need to Know*, BBC NEWS (July 13, 2017), <http://www.bbc.com/news/world-latin-america-35810578>.

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> Dom Phillips, *Brazil's President Keeps Job as Congress Votes Against Corruption Charges*, THE GUARDIAN (Aug. 2, 2016), <https://www.theguardian.com/world/2017/aug/03/brazil-michel-temer-president-corruption-charges-vote>.

<sup>208</sup> Watts, *supra* note 149.

<sup>209</sup> Impeachment, WATERGATE INFO, <http://watergate.info/impeachment> (last visited Sep. 23, 2017).

single political scandal known as Watergate.<sup>210</sup> The scandal first erupted following a break-in, on June 17, 1972, at the Democratic Party's national headquarters in the Watergate apartment-hotel complex in Washington, D.C.<sup>211</sup> The group of men who conducted the break-in were arrested and eventually linked to the White House.<sup>212</sup> While Nixon fiercely denied any involvement with the crime, several of his staff members were implicated in an illegal cover-up and resigned.<sup>213</sup> Government investigations revealed a political campaign of dirty tricks by the Committee to Re-elect Nixon, along with a White House "enemies list."<sup>214</sup> In July 1973, a former Nixon staff-member revealed the existence of privately taped conversations between the president and his aides.<sup>215</sup> The government demanded that Nixon release the tapes; however, Nixon adamantly refused, arguing executive privilege and national security.<sup>216</sup> A federal judge eventually ordered Nixon to turn the tapes over and, after the Supreme Court affirmed the order, Nixon did so (he did not provide all of the tapes; however, and on one tape, a portion of conversation seemed to have been erased).<sup>217</sup>

On February 6, 1974, the House of Representatives passed House Resolution 803 by 410-4 to authorize the Judiciary Committee to consider impeachment proceedings against Nixon.<sup>218</sup> The text of Resolution 803 stated,

RESOLVED, That the Committee on the Judiciary acting as a whole or by any subcommittee thereof appointed by the Chairman for the purposes hereof and in accordance with the Rules of the Committee, is

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<sup>210</sup> Joan E. Greve, *What Richard Nixon's Impeachment Looked Like*, TIME (Aug. 5, 2014), <http://time.com/3063704/nixon-impeachment/>.

<sup>211</sup> *1974 House begins impeachment of Nixon*, HISTORY <http://www.history.com/this-day-in-history/house-begins-impeachment-of-nixon> (last visited Sep. 23, 2017).

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> *1974 House begins impeachment of Nixon*, *supra* note 211.

<sup>218</sup> Impeachment, WATERGATE INFO, <http://watergate.info/impeachment> (last visited Sep. 23, 2017).

authorized and directed to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach Richard M. Nixon, President of the United States of America. The committee shall report to the House of Representatives such resolutions, articles of impeachment, or other recommendations as it deems proper.<sup>219</sup>

In May 1974, the United States House Judiciary Committee initiated formal impeachment hearings against President Nixon.<sup>220</sup> In July, the first article of impeachment against Nixon, obstruction of justice, was passed.<sup>221</sup> Two additional articles, for abuse of power and contempt of Congress, were approved on July 29th and 30th.<sup>222</sup> Finally, the United States Supreme Court ruled that Nixon must provide transcripts of the missing tapes, as new evidence had clearly implicated Nixon as being involved in the cover-up.<sup>223</sup> However, on August 8, 1974, Nixon announced his resignation, a remarkable announcement marking the first president in United States history to leave office voluntarily.<sup>224</sup> Thus, while the House had voted to recommend Nixon for impeachment, he resigned before full impeachment proceedings were carried out.<sup>225</sup> Unlike Brazil, where the Senate impeached Collor after he resigned, the United States Congress dropped the impeachment charges against Nixon after his resignation. Nixon was succeeded by Vice President Gerald Ford.<sup>226</sup> In a hotly contested move, Ford decided to pardon Nixon, making it impossible for former President Nixon to be prosecuted for any potential crimes committed while he served as president.<sup>227</sup> Moreover, the

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<sup>219</sup> *Id.* (citing Resolution 803 passed by the House of Representatives).

<sup>220</sup> *1974 House begins impeachment of Nixon*, HISTORY <http://www.history.com/this-day-in-history/house-begins-impeachment-of-nixon>.

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *See* United States v. Nixon, 418 U.S. 683, 683 (1974).

<sup>224</sup> *1974 House begins impeachment of Nixon*, *supra* note 211.

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

pardon was a major factor in Ford losing his bid for reelection to President Carter in 1976.<sup>228</sup>

Nixon's impeachment proceedings marked a difficult time for the United States and left citizens with feelings of doubt and mistrust towards their own president. The scandal additionally cast a dark cloud over the Republican Party of the United States, as clear corruption and misconduct had taken place. The United States has not seen the likes of such a massive government cover-up as was seen in Watergate. The event sent a message to the world that the powerhouse country too had faults and would be willing to use its impeachment power—more than 100 years after the prior presidential impeachment of Andrew Johnson occurred in 1868.<sup>229</sup>

#### *D. The Impeachment of Bill Clinton*

The impeachment of President Bill Clinton began under odd circumstances and is quite unlike any other scandal that resulted in impeachment in United States history. In 1995, a woman named Monica Lewinsky began an internship in President Clinton's office.<sup>230</sup> Lewinsky and Clinton allegedly became romantically involved even though Clinton was married.<sup>231</sup> Lewinsky eventually left the internship for a paid position within the federal government, and over the next two years, allegedly had romantic encounters with the president.<sup>232</sup> In 1997, a separate sexual harassment allegation against Clinton arose, brought by a former Arkansas employee named Paula Jones.<sup>233</sup> During the investigation, Lewinsky was subpoenaed and an alleged secret affair soon turned into a national fiasco.<sup>234</sup> While

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<sup>228</sup> Joel Roberts, *Nixon Pardon Defined Ford Presidency*, CBS NEWS, (Dec. 27, 2006), <https://www.cbsnews.com/news/nixon-pardon-defined-ford-presidency/>.

<sup>229</sup> *1974 House begins impeachment of Nixon*, HISTORY <http://www.history.com/this-day-in-history/house-begins-impeachment-of-nixon>.

<sup>230</sup> Julia Glum, *Bill Clinton Impeachment Facts: How Monica Lewinsky Scandal Affects Hillary's Presidential Campaign*, INTERNATIONAL BUSINESS TIMES (July 26, 2017, 2:02 PM), <http://www.ibtimes.com/bill-clinton-impeachment-facts-how-monica-lewinsky-scandal-affects-hillarys-2394926>.

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*



Lewinsky denied ever having an affair with Clinton, one of Lewinsky's coworkers, Linda Tripp, secretly recorded Lewinsky's comments about her relationship with Clinton.<sup>235</sup> In 1998, President Clinton plainly rejected all allegations, famously stating, "I did not have sexual relations with that woman."<sup>236</sup> However, Clinton was later investigated by a grand jury and admitted to inappropriate intimate contact with Lewinsky.<sup>237</sup>

Special prosecutor Kenneth Starr, who was originally appointed to investigate the Whitewater Land scandal, submitted a report to Congress with eleven causes for impeaching President Clinton.<sup>238</sup> Among the causes were perjury and abuse of power.<sup>239</sup> While this scandal involved only a consensual affair with another woman, the report claimed that Clinton's choices were "inconsistent with the president's constitutional duty to faithfully execute the laws."<sup>240</sup> On December 20, 1998, the House of Representatives impeached Clinton on two of Starr's eleven charges, perjury and obstructing justice.<sup>241</sup> Clinton, however, did not resign.<sup>242</sup> In January 1999, Clinton was tried in the Senate, which never reached the two-thirds majority needed to convict Clinton.<sup>243</sup> A vote of 67 was necessary to convict, but only 45 voted to convict on the perjury charge, while 50 voted to convict on the obstruction of justice charge. Thus, Clinton was acquitted of both charges but still offered an apology to the American people.<sup>244</sup> Clinton finished his term in January 2001 as the 42<sup>nd</sup> President of the United States.<sup>245</sup>

President Bill Clinton's impeachment serves an important lesson: a United States president can be impeached under almost any circumstance. Here, a president was impeached for having an affair and lying about it. Many were left wondering if impeachment was an appropriate tool to use under such a circumstance. Was it fair to

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<sup>235</sup> *Id.*

<sup>236</sup> Glum, *supra* note 230.

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> Glum, *supra* note 230.

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

label Clinton as a president who could no longer faithfully execute the laws simply because he had an extramarital relationship with another woman? No great corruption occurred; no major U.S. secrets leaked. Did his conduct come anywhere close to “high crimes and misdemeanors,” or was this really a political vendetta by a partisan House of Representatives? Great disagreement on the matter is still widely discussed today in the United States. While some are undoubtedly still angry with the former president for engaging in a scandalous affair, perhaps many others have quickly forgotten, as Clinton to this day is known as one of America’s greatest and most popular presidents.<sup>246</sup>

#### V. IMPEACHMENT IN BRAZIL—A TOOL FOR AIDING OR ABETTING CORRUPTION?

While, provisionally, the United States and Brazil handle the process of impeachment quite differently, both systems have benefits and weaknesses. As stated above, under the Brazilian Constitution, an impeached president is suspended from the duty of holding office pending the outcome of his trial.<sup>247</sup> In contrast, under the United States Constitution, an impeached president may continue to hold office pending the outcome of the Senate trial.<sup>248</sup> The framers of the U.S. Constitution were concerned with other branches of government receiving too much power during the process and thus felt that the government would be in a more secure position with the president still in office.<sup>249</sup> However, there are clear drawbacks to having a potentially scandalized and corrupt president continuing to hold office throughout the impeachment process. Perhaps he would attempt to swiftly enact a law or executive order that would directly benefit himself or offer forms of protection. Most notably, the pres-

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<sup>246</sup> Alex Greer, *The Least and Most Popular Modern U.S. Presidents*, GRAPHIO (Aug. 13, 2015), <http://us-presidents.insidegov.com/stories/5342/least-most-popular-presidents> (“Although his popularity took a hit after the Monica Lewinsky scandal broke in 1998, Clinton still left office with a higher approval rating than when he started.”).

<sup>247</sup> Comparato, *supra* note 37, at 75.

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

ident has the power to disburse public funds and to secure free access to broadcast and television networks.<sup>250</sup> Consequently, the president has enormous control over public opinion, able to swiftly shut off channels of communication among his citizenry.<sup>251</sup> While such a response has not commonly occurred in the United States, it is a common feature in executive-heavy nations and the world has seen the danger that can erupt. While the framers of the Constitution of Brazil tried to ensure that the executive does not have too great power, the Brazilian President still has vastly greater power than does the United States President.<sup>252</sup> While the United States enforces its checks and balances in a more democratic manner, Brazil's impeachment provision suspending an impeached president from office is a safer practice. However, would it have been safer to remove Clinton from office merely because he engaged in sexual relations with a mistress? Was he a threat to the other branches of government? Perhaps Brazil has created such a provision because, in such a strong executive nation, there are greater instances of the executive acting corruptly or acting to protect himself during the impeachment process. Additionally, in Brazil, a two-thirds majority of the Chamber of Deputies is needed for the impeachment charges to be brought, while in the United States, only a majority vote of the House of Representatives is needed.

In the United States, a president convicted on impeachment charges is permanently barred from public office. In Brazil, he or she may not hold office for eight years according to the Constitution, and for five years according to Law No. 1079.<sup>253</sup> It remains unclear which, if either, is the operative provision in this respect. Interestingly, following Rouseff's impeachment, the senate also voted to allow her to maintain her political rights and run for public office.<sup>254</sup> In the United States, no impeached president has had to face the

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<sup>250</sup> *Id.* at 83.

<sup>251</sup> *Id.*

<sup>252</sup> *See* Rosenn, *supra* note 81, at 854.

<sup>253</sup> Lei No. 1079 de 10 Abril de 1950, Presidência de Republica, define os crimes de responsabilidade e regula o respectivo processo de julgamento [Law 1079 of April 10, 1950 Defining Political Crimes and Regulating their Prosecution] (Braz.).

<sup>254</sup> Lisa Alves, *Impeached Rouseff Still Able to Hold Political Office in Brazil*, THE RIO TIMES, (September 2, 2016), <http://riotimesonline.com/brazil-news/rio-politics/maintenance-of-rousseffs-political-rights-questioned-in-brazil/>.

harsh punishment of losing his ability to run for public office. Nixon resigned before being tried in the Senate on impeachment charges and that resignation stopped the impeachment proceedings. Ford's pardon stopped any criminal proceedings. The impeachment against Clinton failed to receive a two-thirds vote in the Senate, and no criminal charges were brought against him afterwards. Such instances vary starkly from the modern impeachments in Brazil. Both Collor and Rouseff were impeached and their convictions were quickly voted by the Brazilian Senate.<sup>255</sup> Perhaps Brazil should adopt the United States' provision of a permanent ban because if a president has engaged in substantial instances of corruption, it seems likely that only five or eight years later, he could be capable of committing corrupt acts once again.

Another key difference between the impeachment process in Brazil and the United States is the source of law that explains how the impeachment proceeding will function. In the United States, only Article II, Section IV of the Constitution very briefly explains the impeachment process and precisely what is needed to impeach a president or other high-ranking executive official.<sup>256</sup> The process is further elaborated in Article I, Section III of the Constitution, which discusses the required two-thirds majority in the Senate in order for the impeachment to be carried out.<sup>257</sup> As seen in the attempted impeachments of Johnson and Clinton, the Senate was unable to reach the two-thirds majority.

Unlike the United States Constitution, which briefly lays out what impeachment entails and under what circumstances an individual may be voted in for articles of impeachment, Brazil's organization of its impeachment proceedings is quite the opposite. As discussed in greater detail above, Brazil has given more weight of au-

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<sup>255</sup> Leticia Casado, *Brazilian Ex-President Collor Now Defendant in Petrobras Graft Probe*, Folha de S.Paulo, (August 23, 2017), <http://www1.folha.uol.com.br/internacional/en/brazil/2017/08/1912270-brazilian-ex-president-collor-now-defendant-in-petrobras-graft-probe.shtml>. (Since his impeachment, Collor has become a member of the Brazilian Senate but is still a criminal defendant in Operation Car War. On August 22, 2017, the Brazilian Superior Court voted to accept 22 corruption charges against the former president, including passive corruption, criminal organization, and money laundering).

<sup>256</sup> U.S. CONST. art. II, § 4.

<sup>257</sup> U.S. CONST. art. II, § 3.

thority to the 1950 Impeachment Law No. 1079. In fact, the law differs in some respects to Brazil's current Constitution. Until amended, the law only defined impeachable offenses for the president, vice president, ministers of state, and the procurator general of the republic.<sup>258</sup> Brazil has followed this aspect of the law even when the Brazilian Constitution said otherwise. Moreover, during the impeachment of Collor, Law No. 1079 was the primary law used to carry out the impeachment, even over the Constitution.<sup>259</sup> While some would perhaps view this as a major downfall with Brazilians left perplexed as to which body of law to follow, for the time being, it is important that Law No. 1079 exists and is actually respected by Brazilian congressmen and citizens. Because Brazil's government has transformed in major ways, as seen in its transition from a military regime to a democratic government, the Constitution has had to be amended—even totally rewritten more than one hundred times. Because of the constant amendments and rewrites, Brazilian congressmen and citizens alike do not view their own Constitution as a Constitution meant to endure for ages to come. While it is important that, at the very least, Brazilian law-makers adhere to Law No. 1079 and have carried out what the law deems to be a proper impeachment, as seen in Collor and Rouseff's impeachments, Brazil must consolidate and simplify its sources of the law to better clarify the impeachment proceedings. For example, while Law No. 1079 states that the impeached individual cannot hold public office for five years, the current Constitution states that the individual loses political rights for eight years.<sup>260</sup> Such a provision is critical for Brazil to clarify in order for Congress to have better understanding of which is the correct form of punishment for the impeached individual. Thus, there was likely a large rift between part of the population who wanted Collor to stay as far away from public office for as long as

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<sup>258</sup> Lei No. 1079 de 10 Abril de 1950 define os crimes de responsabilidade e regula o respectivo processo de julgamento [Law 1079 of April 10, 1950 Defining Political Crimes and Regulating their Prosecution] (Braz.).

<sup>259</sup> See Comparato, *supra* note 37, at 77.

<sup>260</sup> Lei No. 1079 de 10 Abril de 1950, Presidência de Republica, define os crimes de responsabilidade e regula o respectivo processo de julgamento [Law 1079 of April 10, 1950 Defining Political Crimes and Regulating their Prosecution] (Braz.); CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 51 (Braz.).

possible (wanting the eight-year loss of rights from the Constitutional provision) and another part of the citizenry wanting Collor to return to public office and thus hoping for Law No. 1079 to be followed. As previously stated, Collor's impeachment was governed by a combination of both the Constitution and Law No. 1079, with the Senate deciding to halt his ability to run for office for the full eight years. While both the United States' and Brazil's impeachment provisions have flaws, no political device of such severity is a totally smooth procedure. What is more important is for both nations to continue aiming for as great of a democratic process as possible, as it will reflect the democratic nature of the government to each state's citizens and the other nations throughout the world.

## VI. CONCLUSION

Impeachment has served as an incredibly important tool in both the United States and Brazil. It serves as a critical reminder to the executive that the people will hold him or her accountable for actions that go against the best interests of the nation—corruption, inappropriate usage of the budget, even for instances that go against society's morals, as seen in the United States.

What is clear is that Brazil has had to use the device of impeachment frequently since the adoption of the 1988 Constitution, as Brazil has vastly greater work to do to halt its numerous forms of corruption that still exist today. Thus, while impeachment is an important political tool used to abate corruption and hold leaders accountable, it has not halted corruption in Brazil in a meaningful way. Until Brazil begins to rebuild its failing economy, as well as build its once booming presence in South America, the people of Brazil will continue to find reasons, even if they are misplaced, to blame the president. Such has been the case with the impeachment of Dilma Rousseff. It is likely that Rousseff was aware that bribes were being given, yet it is more likely that she was impeached simply due to the state of the economy and the clear lack of popularity that she had in her final days as president (arguably also due to her well-known arrogance and inflexibility as a leader). While Brazil is no longer under military rule, Brazil must take greater strides to become a true democratic nation. And unlike the United States, the

Brazilian citizenry simply do not follow and respect the Constitution—it is not viewed as the all-mighty, even holy document as the United States Constitution is viewed. The same deference is not given to authority or to the law in Brazil, making it tremendously difficult for rules to be followed and making corruption a common occurrence. Unlike the United States Constitution which has had only 27 amendments in 230 years, Brazil's current Constitution has had 102 amendments in 29 years, leaving Brazilians with a sense of aloofness over their own nation's Constitution.

While the 1988 Constitution was an important shift in the direction towards democracy, there is still substantial work that must be done. Brazil's government must rid itself of corruption and no longer involve itself in scandals such as Operation Car Wash. Brazil must create greater checks and balances on the executive branch and allow the judiciary and legislature to fulfill their responsibilities in accordance with the Constitution. Brazil must consolidate its countless political parties, thereby eliminating the common act of politicians accepting bribes to form majorities. Until Brazil takes the necessary steps towards democracy, impeachment will continue to be a common tool used against the executive. Thus, it is likely that more impeachments in Brazil will continue to occur as the Brazilian citizenry will stay ever vigilant and hold political rulers accountable for any actions that they find to be a misstep for the once flourishing nation.