

BRAZIL UNDER VARGAS

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To
THOMAS MANN,
*in token of many years
of friendship.*

INTRODUCTION

The following study of government and politics in Brazil under Vargas strives to present to the American reader as impartial and documentally substantiated a report as is possible for a foreign constitutional lawyer. Considering the brevity of his own personal experience in the country under investigation and the prevailing difficulty of appraising a foreign system of government, such an undertaking may appear audacious and even presumptuous. But the author can plead extenuating circumstances.

In the first place there is a gap to be filled. Surprising as it is, no objective book on the Vargas regime has yet been published in English, or in any other language for that matter. No Brazilian lawyer or political scientist would undertake a task which by virtue of the controversial material might involve a good deal of faultfinding with the Powers That Be. The French, usually the first when it comes to analyzing a novel system of government, were barred from this mission by the war. To political science in Nazi Germany, Brazil does not seem to have offered much appeal. Americans, by reason of their geographical propinquity and hemisphere collaboration, should be more interested than others in present-day Brazil; but we are strangely disinclined to break down our ingrained provincialism and devote scientific effort to a task which demands for its successful completion an understanding of the Latin mind as well as familiarity with governmental processes based on European tradition.

Here lies the second of the extenuating circumstances the

author may claim for himself. He has received his legal training in European public law and is conversant with the techniques of Roman law, two factors which materially facilitate the assignment. Moreover, he is not altogether inexperienced in handling constitutional law in dictatorships, as evidenced, to some extent, by his previous study on National Socialist government in his book *Hitler's Germany* (New York: The Macmillan Company, 1939; 2nd ed., 1940).

In the third place never before in our relations with Brazil was such a study of more vital interest and so urgently needed. Brazil is the key state of South America. In the Conference of the Foreign Ministers of the American Republics held in Rio de Janeiro in January, 1942, Brazil's President Getulio Vargas linked his country to the fate of the United Nations. Brazil is now our most important ally on the South American continent. But Vargas's Brazil has a reputation which does not altogether conform to the Anglo-Saxon concept of a democracy under the rule of law. All kinds of stereotyped labels are attached to a seemingly elusive situation. They range from descriptions of Brazil as a "totalitarian" and "Fascist" dictatorship which is likened by the opposition to the most ominous European examples of that type of government, to assertions by government spokesmen of a genuine though "disciplined" or "authoritarian" democracy; occasionally these go so far as to claim that in Brazil under Vargas an entirely new form of dynamic democracy is in the making.

An attempt to solve this riddle through an unbiased investigation, by one who has professionally analyzed both democratic and dictatorial governments, seems of cardinal importance at a time when Brazil officially has become our partner in the life-and-death struggle for the preservation of the democratic way of life. It is obvious that an alignment

with a regime or a state, if it was intrinsically committed to the principles against which the United Nations are fighting, would constitute a potential danger of the first magnitude to the grand strategy of this global war. This study intends to answer this perplexing question.

In a more static period, by analyzing the written documentation such as constitutions, court decisions, and other legal literature, together with the official interpretation of the institutions, the political scientist could count on obtaining a fairly accurate picture of the political realities. In the authoritarian state of our time this approved method would lead him into the wilderness of political semantics which usually accompany the transformation of the old into the new political values. While preserving their habitual designation political institutions and procedures have changed to the extent of making the traditional nomenclature almost meaningless. The mere description in terms of the statute book would at best convey an academic and lifeless impression. Contrariwise, to reproduce opinions and reactions of friend and foe of an authoritarian regime without reference to the positive law as it is written, would result in no less distorted and one-sided a picture.

Consequently, the constitutional lawyer is compelled to convert himself into the sociological analyst who is as much interested in how political processes actually are operated as in juridical blueprints lifted from the statute book. The laws must be appraised in the light of what people think of them and how people react under them. Pragmatic realism demands that things be described as they actually are and not as they are supposed to be, either from the viewpoint of the partisan or the opponent of the regime.

This study, therefore, constitutes a novel approach to the governmental and political structure of a state *sui generis*

which does not lend itself to being fitted squarely into the customary categories of political classification. It tries to combine the inductive analysis of the constitutional lawyer with the realistic interpretation of the sociologist, undertaken with all the professional skill the author commands and—what is perhaps more—with a great deal of active sympathy and genuine good will for the Brazilian people.

Emphatically the author wishes to divorce his efforts from the political travelogues with which the market in this country are swamped. Even the more serious explorers of political life among our neighbors to the South are reluctant to delve into the legal documentation in which the governments of both the autocratic and the democratic state is embedded. At best they describe the visible motions of the governmental machinery without investigating what it is that makes the wheels go round. Were they willing or able to familiarize themselves with the positive law under which a foreign state operates—admittedly a tedious and difficult task—they would probably be less prone to mislead themselves and their readers by sweeping generalities and by value judgments gathered from personal impressions rather than from accurate information.

It may well be that, in view of the method followed here, the reviewers of the book—who are not always the most attentive readers—will dub it as “scholarly” or “learned.” The reader who beholds the vast array of footnotes might easily concur. By no means would the author consider such a label insulting. But the scientific apparatus should not be a deterrent to the legally uninitiated who seeks information on the subject. The references in the notes bear testimony to the endeavor of the author to prove by chapter and verse, wherever possible, what he tries to impart in the text. But the latter may be read while the footnotes are glossed over

without too much loss to the general reader, unless he wants to appropriate some of the personal impressions of the author which because of their anecdotal character are frequently relegated to the notes.

Badly handicapped as the foreign observer is by his lack of experience with the special habitat of the people under investigation, for the author this obstacle was overcome, at least in part, by the aid which was given him both by leading officials of the regime and by members of the opposition. The former group—among them the Minister of Justice and the Interior, Francisco Campos, and the Minister of Foreign Relations, Oswaldo Aranha, in addition to many other prominent officials of the federal and the state administration—seemed sincere in welcoming a suitable occasion to let a well-intentioned foreigner learn and see what he wished to learn and see. Even more eagerly the members of the opposition grasped the opportunity to vent their grievances in the presence of a citizen of a free country who they trusted would explain to his public what they themselves are prevented from expressing in print. Both sources of information were equally valuable and if this author can claim anything for his book it is that he was neither corrupted by the courtesies of the government of Brazil nor prejudiced by the protestations of its opponents.

Necessarily a book which is the first of its kind on such a complicated subject is liable to not a few errors in judgment and a goodly number of errors in fact. To no one are these defects more evident than to the author. Such a panoramic survey of the government of Brazil, gathered from the most variegated sources and frequently based on conflicting evidence and information, is at best tentative. Brazilian lawyers—if the government is generous enough to let this critical study come before the eyes of the experts within

Brazil—will take issue with many statements of legal facts and with their attempted interpretation. Moreover, it may well be that when this book appears in print much of its material will have become obsolete in this rapidly moving time of ours. Even so, a serious effort to appraise impartially the outstanding and most successful example of authoritarian government in the Western Hemisphere will perhaps be of more than an ephemeral value. It may constitute a lasting contribution to the process of transformation which constitutional government is undergoing at this juncture of history.

Few specific acknowledgements for advice, help, and assistance can be made here. Official personalities if quoted may disclaim responsibility for information tendered, and to refer to members of the opposition as informants may be inopportune, to say the least. But among the many who shall remain nameless, two sources of information are remembered gratefully and the author does not expect remonstrations from these quarters if they are placed on the record of his indebtedness. Minister Themistocles de Graça Aranha, Chief of the Division of Intellectual Co-operation of the Ministry of Foreign Relations, whose sympathy for the objectives of the visitor opened to him many doors otherwise closed to foreigners, has the first claim on his gratitude. Grateful acknowledgment is also tendered to the office of the Standard Oil Company of Brazil in Rio de Janeiro whose management kindly permitted the use of its well-appointed law library. Reading "in chambers" with a number of first-rate Brazilian lawyers at one's elbow resulted in most valuable assistance when the novice in Brazilian jurisprudence was in danger of losing his way in the underbrush of decree legislation.

Last but not least the author wishes to express his most

sincere gratitude to the John Simon Guggenheim Foundation which, by a Fellowship grant, enabled him to study South American constitutional law and politics "on location." To Dr. Henry Allen Moe, the Foundation's General Secretary, the author is indebted for his unfailing sympathy and active support. This book is the first—and if fortune permits, not the last—fruit of the Foundation's generosity.

Finally the author's heart goes out to the countless Brazilians in all walks of life who made it possible for him—even if he did not fully succeed in understanding Brazilian law and politics—to acquire a lasting sympathy for the Brazilian nation. The Brazilians are one of the loveliest people to behold in all the world.

KARL LOEWENSTEIN.

Amherst College
May 10, 1942

TABLE OF CONTENTS

INTRODUCTION	PAGE vii
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PART ONE

LOOKING BACKWARDS: THE HERITAGE OF THE PAST

I. EMPIRE AND REPUBLIC	3
The Empire (4) — The Constitution of 1824-1834 (5) — Dom Pedro II (6) — The Liberal Republic (1889-1930) (9)	
II. VARGAS AND THE "NATIONAL REVOLUTION"	16
The Revolution of 1930 (16) — The First Phase: Vargas's "Provisional Government" (1930-1934) (17) — Constitutional Interlude (1934-1937) (20) — The Constitution of 1934 (21) — Brazil in the Twilight of Constitutional Government (1934-1937) (26) — Communism in Brazil (30) — The Integralist Movement (32) — The <i>Coup d'État</i> of November 10, 1937 (34)	

PART TWO

THE CONSTITUTION OF THE *ESTADO NOVO*

A SHORT BIBLIOGRAPHICAL NOTE	41
I. THE PHENOMENON OF THE DOUBLE CONSTITUTION	46
Does the Constitution of 1937 Exist? (46)	
II. THE MAIN FEATURES OF THE CONSTITUTION OF 1937	50
Union and States (50) — The Legislative (52) —	

	The President of the Republic (53) — Other Provisions (55) — The Socio-economic Program (56)	
III.	FEDERAL-STATE RELATIONS	59
	The Interventor (59) — The Administrative Department (62) — The Municipalities (68) — What Has Become of the "United States" of Brazil? (70) — The Future: Centralism or Federalism? (72)	
IV.	VARGAS AND THE FEDERAL GOVERNMENT	76
	The President (76) — The Cabinet (77) — The Core of Dictatorial Government: Fusion of Legislative and Executive Powers (80) — Executive Boards (82) — Technique of Legislation (84) — The Reform of the Legal Codes (86) — The Exercise of the Amending Power (90) — Public Officials and Civil Service (96)	
V.	THE ADMINISTRATION OF JUSTICE	106
	Organization of the Courts (106) — Supreme Federal Tribunal (108) — Other Provisions Concerning the Administration of Justice (110) — The President and Judicial Power (112) — Political Questions (113) — Judicial Review of the Constitutionality of Acts of the Government (114)	
VI.	THE "IDEOLOGICAL" BACKGROUND OF THE REGIME	121
	Foreign Influences in the Constitution of 1937 (122) — Brazil and Portugal (123) — The Lack of a Political "Ideology" (125) — Homage to Francisco Campos (128)	

PART THREE

THE DEFENSE OF THE STATE UNDER
THE VARGAS REGIME

I.	THE RAMIFICATIONS OF THE PROBLEM	133
	On the Correlation of Government and Power in Dictatorships (133) — "Emotional Legislation"	

	PAGE
(134) — Defense of the State as a Problem of Pan-American Solidarity (136) — Executive Organization of the Defense of the State in Brazil (139)	
II. THE NONPARTY STATE	141
The End of the Integralist Movement (141) — The Prohibition of Political Parties (144) — The Protection of Social Order (147) — The Protection of the Security of Economic Life (151)	
III. POSITION AND CONTROL OF THE ALIENS	155
The German Element in Brazil: The Situation Before the Advent of National Socialism in Germany (156) — The Ride of the Trojan Horse (160) — Prohibition of Political Activities of Foreigners (166) — Admission and Expulsion of Aliens (169) — Entry of Aliens (170) — The Problem of the "Tourist" (172) — Misuse of Diplomatic Immunity (173) — The Japanese Element (176) — Anti-Semitism in Brazil (178) — Expulsion of Foreigners (181) — Loss of Nationality for Subversive Activities (184)	
IV. BRAZILIANIZATION OF THE FOREIGN STOCK	187
The Program of Compulsory Assimilation (187) — The Effect of Brazilianization on the German Minority (195) — The Rio de Janeiro Conference and the Future of the German Dissidents (200) — The Italo-Brazilians (204)	
V. "ECONOMIC" NATIONALISM IN BRAZIL	205
The "Two Thirds" Law (206) — Other Measures of Economic Nationalism (207) — Government in Business (210)	
VI. THE TRIBUNAL OF NATIONAL SECURITY	212
Jurisdiction of the Tribunal of National Security (213) — Organization of the Court (214) — Procedure of the Tribunal of National Security (216)	

— Objectionable Features of the Procedure (218)
 — Trial by "Blitz" (220) — General Evaluation of
 the Tribunal of National Security (224) — Personal
 Impressions (227) — Concluding Observations on
 the Activities of the Tribunal of National Secur-
 ity (231)

PART FOUR

PUBLIC OPINION MANAGEMENT AND THE
DYNAMICS OF SOCIAL LIFE UNDER VARGAS

- I. ORGANIZATION AND INSTRUMENTALITIES OF PUBLIC
 OPINION MANAGEMENT 237
 The Department of Press and Propaganda (DIP)
 (238) — The Press Code (244) — Administrative
 Penalties (249) — The National Press Council
 (250) — The Position of the Journalists (251)
- II. SOCIAL DYNAMICS OF PUBLIC OPINION IN PRACTICE 253
 (1) Public Opinion Management and Domestic
 Politics: The Situation of Organized Political Op-
 position (255) — Political Prisoners and Political
 Police (259) — The Press and Domestic Politics
 (261) — Other Attitudes of Public Opinion
 Toward the Regime (266) — Carnival and Poli-
 tics (270) — The Foreign Journalist (272); (2) Pub-
 lic Opinion Management and Foreign Politics: The
 Conflict Within the Government (274) — The
 Policy of Neutrality (276) — Public Opinion and
 the War (279) — The Turning of the Tide (281)
- III. THE MOBILIZATION OF PATRIOTISM 285
 The Vargas Cult (286) — Radio (287) — Film
 (288) — The Arts and Letters (290) — Music
 (294) — Universities (295) — Tourism and Na-
 tional Patrimony (297) — Sports and Youth:
 Physical Education (304) — National Symbolism
 (306) — The Imperial Tradition (309)

PART FIVE

THE BALANCE SHEET OF THE REGIME

	PAGE
I. THE ENTRIES ON THE DEBIT SIDE	317
Absence of Constitutional Security (317) — Arbitrary Confiscation (320) — The Split Personality of the Regime: Legality v. Arbitrariness (325)	14
II. WHAT THE REGIME HAS DONE FOR BRAZIL	329
Change of Profile (330) — Economic Factors (331) — The Attitude of the Various Social Classes toward the Regime (334) — The Regime and the Wealthy: The Businessman and the Entrepreneur (335) — The Regime and the Masses: Labor and Farmer (338) — The Urgency of Social Reform (338) — Labor Legislation (341) — Labor Syndicates (342) — Minimum Wages (344) — Social Services (348) — Labor Justice (351) — Farm Legislation (352) — The Family (355) — Those Who Are Discontented (356) — The Plebiscite Again (359)	3
III. GETULIO VARGAS	363
Portrait of a Leader (363) — The Problem of Succession (367)	
CONCLUSION: SUMMING UP	369
A Discourse on Political Terminology: Is Brazil a Fascist State? (369) — The United States and Brazil (373)	
INDEX	377

PART ONE

LOOKING BACKWARDS: THE HERITAGE OF
THE PAST

CHAPTER I

EMPIRE AND REPUBLIC

Nations, like individuals, are molded by the ever-flowing stream of experience, past and present. Nothing in a nation's recent life is so new or revolutionary that it can be wholly dissociated from its past; little of the past is so inconsequential that it has not left its imprint on the present. Like other nations, present-day Brazil must be projected on the background of its historical evolution. A number of traits in the national character strike the observer as predominant. Foremost among them is the indelible cast of Portuguese tradition and character, suave and persuasive, gentle, amiable, and with a touch of humor and self-irony. The national temperament, by virtue of its maturity, is more inclined toward tolerance and less rigid than the traditions of the neighboring Spanish colonization. This helps one to understand a fundamentally liberal climate of social and political life. Another all-present element is the vestiges of colonial feudalism, in some ways similar to but far more visible than the residues of the Old South in this country, which still exists in spite of the ostentatious aspects of modern capitalism in the rapidly modernizing country. This explains the contrasts in social status gilded over by a benevolent climate and made economically bearable by the abundance of a rich soil. A third trait derives from the vastness of a country which in size is almost a continent. Brazil, with a territory of 3,268,094 square miles is larger than the United States. The disparity of social development in the different regions

of the land, the sophistication of the seashore sections in the South and the backwardness of the interior and in the North would recall the situation in this country before the pioneers crossed the Alleghanies, were it not for recent opening up of the remotest spaces by the airplane.¹ For this very reason the country seems predestined to administrative decentralization. However, it was withheld throughout Brazilian history, except in the short interval of the Republic (1891-1930). Finally, Brazil belongs to the Latin-American family of nations among which a strong-man government, *caudilhismo*, and personalist rule have forever been customary despite liberal trimmings of the constitutions. This trend is not incompatible with and is to some extent outbalanced by the Brazilian inclination toward that form of political civilization which is commonly reflected by the rule of law which, due to the French orientation of all Latin-American culture, is the priceless heritage of the European tradition.

The Empire

Brazil attained its constitutional government together with national independence from Portugal.² The Braganza dynasty, driven from Portugal by Napoleon in 1807, estab-

¹ The most recent information is found in Alice Rogers Hager, *Frontiers by Air*, New York, 1942.

² The following observations do not claim originality; they are based on familiar sources. The Brazilian standard work is Pedro Calmon, *História do Brasil*, 3 volumes, São Paulo, 1939-40. See also *The Republics of South America: A Report by a Study Group of Members of the Royal Institute of International Affairs*, London and New York, 1937, pp. 133 ff., 152 ff., and *passim*; João Pandiá Colágeros, *A History of Brazil*, Chapel Hill, 1939; Aurelino Leal, *História constitucional do Brasil*, Rio de Janeiro, 1913; Percy Alvin Martin, "Federalism in Brazil," in *The Constitution Reconsidered*, ed. Conyers Read, New York, 1938, pp. 367 ff.; F. A. Kirkpatrick, *Latin America*, New York, 1939; J. Fred Rippy, *Historical Evolution of Hispanic America*, New York, 1932; Herman G. James, *Brazil After a Century of Independence*, New York, 1928.

lished the court not in exile, but on the soil of its own colony of Brazil. Already by 1815, Brazil had advanced to the status of a kingdom. When João VI, in 1822, decided to return to his native land, his son, Dom Pedro I, installed as regent, countered the mother country's policy of reducing Brazil again to the footing of a colony by proclaiming independence in the *Grito de Ypiranga* on September 7, 1822. On the hill near São Paulo the Declaration of Independence is commemorated today by a rather flamboyant nineteenth-century monument and an interesting museum. Dom Pedro assumed the title of Emperor of Brazil. A liberal constitution was drafted by a constituent assembly of dignitaries (May 3 to November 12, 1823), but was rejected by the ruler who insisted on his own constitutional instrument elaborated by his Council of State. Partly "octroyed," partly accepted by vote of the municipalities, it established a constitutional monarchy as a halfway house between legitimism and liberal constitutionalism. It entered into force on March 25, 1824. Revised in 1834, by the so-called *Acto Adicional*, this instrument remained Brazil's constitution to the end of the monarchical period in 1889.

The Constitution of 1824-1834

The constitution of the Empire³ did not follow the pattern of the United States constitution as did those of most of the other South American states; it established Brazil, in line with the European fashion of the period, as a limited representative monarchy. Theoretically a perfunctory bow was made to popular sovereignty; actually political power was

³ See A. Guyon, "La Constitution brésilienne de 1824," *Revue du droit public et de la science politique*, vol. II (1897), pp. 441 ff. For an English translation see Herman G. James, *The Constitutional System of Brazil*, Washington (1923), pp. 237 ff.

vested in the crown as the *Poder Moderator*, which was to decide in the last resort between executive and legislative, the latter being composed of an elected chamber and a house of peers for lifetime. Constituted as a strictly unitary state Brazil began to show as early as in 1834 some traces of decentralization. The provinces, coincident with the accidental borders of the old colonial captaincies, were granted legislative assemblies of, in practice, nominated rather than elected dignitaries, with a considerable degree of provincial jurisdiction.⁴ Conditions being widely different within the huge realm whose civilization reached scarcely beyond the seacoast, federalism as in the United States was neither envisaged nor realizable. As a matter of fact only the rigid centralization preserved the unity of the Empire, which otherwise might have been broken up into parts under separate political control.

Though the frame of government remained materially untouched to the end of the Empire it underwent considerable changes by way of constitutional evolution; by 1847, in the creation of the Presidency of the Ministry, the stage of parliamentarization was reached. With the introduction of a more extended suffrage and direct elections in 1880, constitutional government was raised to the higher level of modern democratic constitutionalism. Brazil thus faithfully reflected the nineteenth-century evolution from feudalism to a parliamentary, democratic, and in all practical aspects soundly liberal monarchy.

Dom Pedro II

All this was accomplished without revolutionary convulsions under the reign of one of the wisest, best-educated, and

⁴ See F. R. and P. Dareste, *Les Constitutions modernes*, 4th ed. by J. Delpech and Julien Laferrière, vol. IV, Paris, 1932, pp. 49 ff.

most progressive monarchs of the period, Dom Pedro II. He had ascended the throne when his father had abdicated in 1831. After a period of Regency he assumed personal control at the age of fifteen in 1840. Under his rule of almost half a century (1840-1889)⁵—comparable in length to that of Queen Victoria in Britain and Francis Joseph in Austria, although the intellectual Braganza had little in common with the bourgeois queen or with the bigoted Hapsburg—Brazil made immense strides forward from a backward feudal society to a modern state organization. Rubber and coffee became the backbone of national economy in the place of sugar in which Brazil had held, in the eighteenth century, almost a monopoly;⁶ roads were built and the stream of immigrants, mostly of Iberian, Italian, and Central European stock, began to clear the wilderness of a vast undeveloped country with tremendous potentialities. To the philosopher on the throne Brazil owes the ingrained tradition of the rule of law, the spirit of administrative honesty under a Council of State developed in line with French precedents, the difficult art of political compromise, and the appreciation of intellectual pursuits, which makes the Brazilians appear less materialistic than most of their Spanish-American neighbors. Most important of all, it stamped into the national character the realization of the values of consistent and peaceful evolution which spurned violence as a method of political change. The climate of the Empire was liberal—Dom Pedro held down the clergy; freedom of expression was granted and readily integrated and the practice of operating politics by

⁵ M. W. Williams, *Dom Pedro the Magnanimous, Second Emperor of Brazil*, Chapel Hill, 1937; Alfred W. Sellin, *Das Kaiserreich Brasilien*, Leipzig, 1885; B. Mossé, *Dom Pedro II, Empéreur du Brésil*, Paris, 1889.

⁶ Afonso Arinos de Melo Franco, *Síntese da história econômica do Brasil*, Rio de Janeiro, 1938; Roberto C. Simonsen, *História econômica do Brasil*, São Paulo, 1937.

regular political parties was introduced. Conservative, Liberal, and Progressive forces found their cadres of action; after 1871 also a Republican party, antimonarchical and federalist, began to exert an influence.⁷ Though composed largely of the landowning aristocracy and the wealthy bourgeois classes and not organized on a mass basis—illiteracy was and is still exceedingly high in Brazil—the political parties constituted sound guarantees for a normal political activity of an adolescent nation in the future. Dom Pedro's reign demonstrated monarchy at its best. It is no contradiction to state that the ruler himself was the foremost republican, liberal, and democrat of his country. The court in Rio and in the summer residence of Petropolis shone as the Medici-Florence of South America. The monarch, friend of Abraham Lincoln, surrounded himself with men of letters and savants from Europe whose lasting vestiges are not lost on the foreigner whether he visits the scientific institutions, the palaces and gardens of tasteful and moderate comfort, or when he encounters, even today under the surface of authoritarian guidance of political life, the persistent adhesion to the regular processes of law and administration. Rightly or wrongly the Vargas regime considers itself as the legitimate successor of the Empire. Be that as it may ⁸ it corresponds to a surprising degree to deep-rooted popular sentiment in upholding veneration for the Empire and its traditions of central administration, dignity, and appreciation of cultural values.

Dom Pedro fell from power over the abolition of slavery issue, although the demands for federalization of the country and for the adoption of the republican form of government

⁷ See Oscar d'Araujo, *L'Idée républicaine au Brésil*, Paris, 1893; Jose Pedro de Rodrigues Alves, *Genesis da idéa republicana no Brasil*, Santiago, 1933.

⁸ See on the Imperial tradition, *infra*, pp. 309 ff.

were contributory causes.⁹ During the absence of the emperor in Europe in 1888 his daughter Isabella, as regent, was persuaded to sign the abolition decree, the *lei áurea*, on May 13, 1888; the slaves left the *fazendas* and an economic collapse ensued. When the emperor returned he encountered the hostility of almost all political groups. A philosopher to the end, he abdicated. The republic was proclaimed on November 15, 1889. Dom Pedro died in Europe in 1891.

The Liberal Republic (1889-1930)

So suddenly had the Empire come to its close by the bloodless revolution that not even a program of a constitution suitable for Brazil was on hand. All that the bewildered victors could do was to turn for inspiration to the federal pattern of the United States without in the least considering that federalization, far from being an artifice, should be the natural outgrowth of historical evolution. After a brief period of transition under a provisional government, a rather undistinguished Constituent Assembly enacted on February 24, 1891, the republican constitution of Brazil; it followed, without much modification, a government draft, stemming in the main from Ruy Barbosa, Brazil's most eminent lawyer and humanist of the liberal era. Barbosa was a close student of the constitution and the politics of the United States; consequently his proposal reads like a replica of our constitution. The Empire of Brazil was converted into the Republic of the United States of Brazil; the unitary monarchy became a federal republic; the former provinces, without undergoing a territorial regroupment, were styled states.¹⁰

⁹ See *The Republics of South America, etc.*, pp. 236-237; Martin, *op. cit.*, pp. 376 ff.; P. A. Martin, "Causes of the Collapse of the Brazilian Empire," *Hispanic American Historical Review*, vol. 4 (1921), pp. 4 ff.

¹⁰ The names of the twenty states are as follows (in alphabetical order):

A critical study of the constitution of 1891 would be beyond the scope of this study. Suffice it to summarize its structural outline.¹¹ The federal government consisted of three branches, namely the president of the republic, himself responsible for the conduct of the government, with ministers of his choice without responsibility except to him; the legislative bodies of Chamber and Senate, the former based on universal suffrage, the latter on representation of the twenty states, with an equal number of senators from each; and the Supreme Federal Tribunal which was *in loco* of the *Poder Moderador* of the Empire and endowed with the power to declare laws of the legislative unconstitutional.¹² The powers of the federal government were strictly enu-

Alagoas, Amazonas, Bahía, Ceará, Espírito Santo, Goyaz, Maranhão, Matto Grosso, Minas Geraes, Pará, Parahíba, Paraná, Pernambuco, Piauhy, Rio de Janeiro, Rio Grande do Norte, Rio Grande do Sul, Santa Catarina, São Paulo, Sergipe. To these must be added the Federal District around the capital, Rio de Janeiro, established likewise on the American model soon after the advent of the Republic (see James, *Constitutional System, etc.*, pp. 196 ff.), and the Federal Territory of Acre, ceded by Bolivia to Brazil in the Treaty of Petropolis of Nov. 17, 1903; it should be borne in mind that the boundaries of the former provinces now called states were those of the accidentally created colonial captaincies. This is the situation still to date.

¹¹ The best description in English is by Herman G. James, *The Constitutional System of Brazil*, Washington, 1923. Legal literature on the constitution see there, pp. 259 ff., and Daresté, *op. cit.*, vol. IV, p. 53. Commentaries and treatises on the constitution abound, many in the best French tradition. One of the most authoritative is João Barbalho, *Constituição Federal Brasileira: Comentários*, Rio de Janeiro, 1902; Ruy Barbosa's scattered contributions were collected, after his death, by H. Pires under the title: *Ruy Barbosa: Comentários à Constituição Federal Brasileira*, São Paulo, 1932. See also the brief summary by Pedro Calmon, *Curso de direito constitucional Brasileiro*, Rio de Janeiro, 1937, pp. 11 f.

¹² This was one of the main contributions of Ruy Barbosa; see his celebrated book *Os Actos Inconstitucionales do Congresso e do Executivo ante a justiça Federal Brasileira*. One important modification, precluding the later constitutions of 1934 and 1937, occurred in connection with the constitutional reform of 1926. It deprived the Supreme Federal Tribunal of the power to adjudicate "political questions," that is, by definition of Art. 60, § 5 of the constitution, all *recursos* against federal intervention,

merative; otherwise all powers belonged to the states. They had their own constitutions, governors, and legislative assemblies, but in the course of evolution they attained a degree of independence and autonomy far beyond the model in the United States. On the other hand the federal government could intervene in the internal life of the states through the institution of federal intervention (Art. 6) as a device against a recalcitrant state, comparable in scope and intent to the *Bundesexekution* of the Imperial and the republican constitutions of Germany. One of the main objections raised against the exercise of federal powers under the republic consisted in the abuse of this instrument of federal coercion by the president in Rio if he felt that for political and not necessarily constitutional reasons he should exert compulsion against a state government. Moreover, the party in power in the federal government was slow to check clearly unconstitutional acts within the states if such tolerance aided its own interests. However, since the states enjoyed internal autonomy and exercised full police powers, they were permitted, by the constitution, to establish custom barriers extremely obnoxious to a unified national economy and to maintain their own militias which in many instances amounted to veritable private armies of the state governors or the controlling parties. This situation seriously endangered the unity of the nation by promoting sectionalism and at times even encouraging tendencies of separatism. The president was further empowered to decree the state of siege (Art. 48, no. 15) which function in turn he not infrequently abused in order to suspend the otherwise fully guaranteed civil liberties and fundamental rights.

Next to the introduction of federalism in a previously

the controversies in relation to parliamentary mandates, and the acts undertaken under the state of siege.

unitary country, the most striking feature of the constitution of 1891 consisted in the transformation of a parliamentary government under the constitutional monarchy into a full-fledged presidential system which assigned in practice powers to the president far exceeding those of the chief executive in the United States.¹³ Although the separation of powers had been slavishly copied from the North American model, as evidenced by the position of the ministers and the presidential veto, the position of the president, by use or abuse of federal intervention and the state of siege, amounted in practice to quasi-dictatorial powers of the head of the state. Yet public opinion did not seem to have raised too serious objections against the structure of the government as a whole, and the presidential supremacy over the other constituted powers was generally accepted as beneficial.¹⁴ No better proof of popular satisfaction exists than the fact that the constitution of 1891 remained in force over a period of almost forty years (until 1930) without basic changes. The constitutional reform of 1926, strengthening central powers, was rather an authentic interpretation than a genuine reform. In the light of Latin-American experience this is a record of remarkable stability of the fundamental organization.

Since the inception of the Vargas regime it has become a favorite topic of political discussion to minimize the success

¹³ On the position of the president see Ernest Hambloch, *His Majesty the President: A study of constitutional Brazil*, London, 1935. As the title indicates, the book is an overstatement of the actually existing ascendancy of the Executive known as Presidentialism.

¹⁴ Return to parliamentarization, as it occurred in Chile under the Alessandri constitution of 1925, though demanded occasionally in academic circles (see Jose Maria dos Santos, *A Política geral do Brasil*, Rio de Janeiro, 1930) was never a real desideratum. See also J. J. Madeiro e Albuquerque, *Parlamentarismo e presidencialismo no Brasil*, Rio de Janeiro, 1932.

of the liberal constitution of 1891 and to find many flaws of a structural nature in the arrangements of the document proper. Particularly harsh criticism is directed against the ultrafederalistic character of the constitution which allegedly encouraged political disintegration of the whole, set one state against the other and all against the federal government, and permitted one or two of the most populous and economically powerful states to impose their will on the national government interests. Federalism, it is declared today, was an aberration committed by the founders of the republic, from the logical trend of national history toward unified and centralized strong government. Liberal democracy is said to have had during forty years its fair trial and been found wanting. One of the main defects of the republic, so declared an authoritative spokesman to this writer, was that of having copied the American precedent of 1787 without having the benefit of conditions auspicious for federalism. While our constitution provided for the coalescing of territorial units into a nation whose members were animated already by the consciousness of national unity, in Brazil the process unfortunately was reversed. A unitary state, which had worked well for two generations, was broken up into artificial segments which were endowed with political independence without being ripe for it or even desiring it. No economic or political reasons existed for bestowing statehood on the accidental circumscriptions of the colonial period which had become the provinces of the Empire and later the states of the republic. Prior to the fall of the Empire nation-wide parties had existed; after the creation of the states they disappeared and gave way to the rule of local bosses or *chefes*. These local bosses built up their party machines and developed the local militias into private armies in competition with the armed forces of the national gov-

ernment. Thus, federalism and republicanism, it is concluded, instead of consolidating the country and creating the consciousness of a Brazilian nationhood, only helped to paralyze the solidarity of the people and to promote a vicious regionalism in which the two most powerful states, São Paulo and Minas Geraes, dominated for their own economic and political interests the whole country.

Seen retrospectively, the truth of a good deal of such criticism cannot be denied. The federal principle of organization, applied to a country without any experience in the cooperation of divergent sections, was driven to unhealthy extremes. Party life, after the auspicious beginnings under Dom Pedro, had degenerated into cliques of local dignitaries and had failed to penetrate into the masses as a prerequisite of genuine democratization. Even national elections, and those of the president more than others, were decided by the states which cared little for the welfare of the country as a unit. São Paulo, the most progressive state, with its new and politically ambitious European population, alternated with neighboring Minas Geraes, the proudest and culturally most conscious section, in the presidency; before 1930 it was rare that any man other than a Paulista or a Mineiro was raised to the office of the chief executive. Between them they controlled the Union and arranged amicably the partition of the spoils. Most of the other states were neglected at the expense of the two partners in power. The situation was not very dissimilar to that existing in Germany under the German Confederation when Prussia and Austria dominated the rest of the members of the *Bund*.

Even granting all this, the present regime, in withholding due credit to the achievements of the republic, tries to plead *pro domo*. The forty years of the liberal republic were a definite and incontrovertible success. During this period

Brazil was the only South American state which never had to resort to outright dictatorship. Local unrest never flared up to widespread revolution. After a comparatively short period of adjustment the rule of law under regular civilian governments, without the *ultima ratio* of *caudilhismo*, had entrenched itself deeply in the popular consciousness. In no other South American country, with the exception of Argentina, did such undiluted and generally accepted liberalism prevail; nowhere were the individual rights better protected and more respected. In the climate of liberal economics a prosperous and progressive middle class was able to grow up. Militarism, anyway alien to the national character, never obtained a hold over the country. In many respects Brazil in the years around the turn of the century resembled the French Third Republic in economic structure and political atmosphere, although it must be admitted that the governing classes over a long period retarded the social progress of the masses. Presidents of the quality of Rodrigues Alves (1902-1906 and again 1918-1919) and of Affonso Penna (1906-1910), political leaders of the caliber of Ruy Barbosa and Rio Branco, the most brilliant foreign minister of the period, testify to the success of the civilian government. Revolutionary unrest, frequent only in the first formative years of the republic and recurrent after the first World War in the years of depression, was absent over most of the period. Even projected against the background of what many consider as the Golden Age of the Imperial period, the liberal republic in Brazil under the constitution of 1891 should be evaluated in fairness as one of the most propitious epochs of national history. It is evident that, in condemning federalism and state powers, the regime desires to strike at liberalism and democracy which, under the republic, had made a lasting imprint on the popular mind.

CHAPTER II

VARGAS AND THE "NATIONAL REVOLUTION"

The Revolution of 1930

(The revolution of 1930 was, to a large extent, the result of the economic depression of the late twenties) which elsewhere in South America as well as in Europe was responsible for the overturn of not a few democratic governments. (Brazil, as a mainly one-crop country dependent on foreign markets,) was particularly hard hit by the decline of purchasing power all over the world; by that time exports of coffee, rubber, cotton, and meat had equally suffered. (Economic despair translated itself into a political revolution.) The candidates for the impending presidential elections—according to the existing constitution the president in office was not eligible for a second term—were Julio Prestes de Albuquerque, a Conservative and governor of São Paulo, and Doctor Getulio Vargas, at that time governor of the rapidly progressing "Gaucho" state of Rio Grande do Sul, of which he is a native. He had received the legal training customary for the political career, had served with some distinction in the state and federal legislatures, and had held the office of federal Minister of Finance before assuming the governorship of his state in 1928. When he ran for the presidency as the candidate of the Liberal party (*Alliança Liberal*) he had the reputation of a good administrator of personal integrity and energy, and he was credited with decid-

edly leftist or social leanings as befits a man not belonging by birth to the aristocratic governing classes.) At that time he was in his early forties and well qualified for the highest office of the land.) But his candidacy was anomalous in that for the first time a man from Rio Grande do Sul entered into competition for the presidency with the traditionally alternating states of São Paulo and Minas Geraes. The president, Washington Luiz Pereira de Souza, favored Julio Prestes. The elections (May 1, 1930) were probably not more fraudulent than previous ones. Electoral honesty in republican Brazil was confined mostly to the large cities and a few states. Some people say that the elections would have gone against Vargas and the Liberals, but that Washington Luiz' highhanded pressure tactics toward some of the states aroused so much general dissatisfaction that the outcome probably was in Vargas's favor. When Julio Prestes was declared elected Vargas refused to accept the decision and resorted to force. In October, 1930, Rio Grande, supported by large sections of São Paulo and Minas Geraes, revolted under his leadership; at his side were many of those against whom he later turned. He seized government and presidency (October 26) and forced Washington Luiz to resign (October 30).¹

The First Phase: Vargas's "Provisional Government" (1930-1934)

(By decree of November 11, 1930,² the constitution of 1891 was suspended; the first phase of Vargas's authoritarian

¹ See Samuel Putnam, "The Vargas Dictatorship in Brazil," *Science and Society*, vol. 5 (1941), pp. 97-116.

² No. 19,398, in *Collecção das Leis do Brasil* (abridged hereafter as *Coll.*), 1930, vol. III, p. 72. See also the text in Dareste, *Les Constitutions modernes*, pp. 50-51.

rule had begun. The decree, in fact a full-fledged provisory constitution, assigned to the national government discretionary powers by combining executive and legislative functions in the person of the president "until a Constituent Assembly should deliberate on the reorganization of the country" (Art. 1). The chief of government was to decide exclusively on appointment and dismissal of public officials (Art. 1). All representative and deliberative assemblies (federal, state and municipalities) were dissolved (Art. 2). Constitutions, federal as well as state, remained in force subject to modifications to be decreed by the government (Art. 4). Constitutional guarantees were suspended as well as the right of the courts to review decrees and acts of the government (Art. 5). Otherwise the administration of justice was to function as before (Art. 2). The chief of government may appoint for each state a federal delegate (*Interventor*) (Art. 11). The Interventor acts for his state as does the president for the Union; he exercises jointly all legislative and executive powers; he is the executive authority of the Union within the state; he may be recalled by the federal government. On the lower level of the municipalities the mayors are appointed and dismissed by the Interventor. The latter controls the acts of the mayors. Against his decisions, appeal (*recurso*) to the chief of government is open. (All these provisions are found in Art. 11.) A consultative National Council was to be established (Art. 15) as well as a Special Tribunal dealing with political crimes and with violations of official duties (Art. 16). Of these only the latter was established as late as 1936. Finally, the future constitution had to preserve the federal and republican form of government and must not abrogate the constitutional guarantees of the citizens and the rights of the municipalities as established under the constitution of 1891.

(This was as spick and span a specimen of a streamlined dictatorship as any produced before. In a nutshell it contained all the trimmings of the present constitution of 1937, which inaugurated the *Estado Novo*. Moreover, it was the first example of dictatorial government in the traditionally constitutional evolution of Brazil.)

(Vargas must be credited with having begun his first lease of office with much energy, good will, circumspection, and moderation, which is as characteristic of Brazilian political life in general as it is congenital to the mentality of the president himself. Political revolutions in Latin America are generally undertaken in a spirit of clemency; political opponents are not put against the wall, placed indefinitely in concentration camps, or otherwise liquidated; they are either reconciled or, with or without a limited period of provisional confinement, they are exiled to the capitals of neighboring countries which in turn send out their exiles. Moderation is practiced because if and when the opposition returns to power it is expected to respect with equal consideration this customary gentlemen's agreement of leniency.)

During these first years of the dictatorial regime the ground was laid for many of the subsequent efforts toward the social reconstruction of Brazil. In the economic field the steps were taken to alleviate the crisis, such as the reduction of sugar production in which Brazil could no longer compete, the encouragement of cotton growing, and the rationalization of the coffee industry; in 1931 the National Department of Coffee was created which supervises production and stabilizes prices. But the people, too long accustomed to constitutional government, remained restless. The storm broke in 1932. São Paulo revolted. This economically leading state had been the loser of the revolution of 1930. Together with the curtailment of financial privileges the Paulistas resented

the intrusion of "foreign" officials sent over from Rio. Moreover, São Paulo, politically the most progressive state, was least willing to forego permanently the liberties guaranteed under constitutional government, since Vargas showed no inclination to legalize the situation by calling the promised Constituent Assembly. The rebellion, at once flaring up as a full-sized and bloody civil war in which modern armies fought modern battles, failed because Minas Geraes and Rio Grande, thanks to Vargas's shrewd maneuvering, did not join. After three months (July to September, 1932) the war ended with a complete defeat of São Paulo. Again Vargas handled the delicate aftermath with consummate skill; a general amnesty was declared and no reprisals were taken; even most of the mutinous army officers were reinstated; enemies were won over by conciliation.³ Yet the memory of the defeat even today still rankles among the proud Paulistas and they have not yet quite recovered from the setback.

Constitutional Interlude (1934-1937)

The Paulistas, however, had won their point in that by now Vargas was compelled to convoke the Constituent Assembly. The members were elected statewide; the government moved with caution; openly it exercised little influence on the selection of the deputies and refrained from direct interference with the elections proper. As a matter of fact, however, the political situation was so much under the control of Vargas that the majority of the deputies elected were

³ The temper of Brazilian politics can be seen in the following facts: In 1941 one of the new boulevards of the city of São Paulo was opened which was christened Ninth of July—the date of the outbreak of the abortive rebellion of 1932, Vargas personally led the inauguration ceremonies. Monuments in honor of the dead were erected with participation of the authorities.

inclined to follow his directions even without the cruder methods of electoral coercion of which there was still enough. Convened in November, 1933, the *Constituyente*, among whose members were some of the best brains of Brazilian law and politics, elaborated the second constitution of the Republic of Brazil, promulgated on July 16, 1934. In its basic structural principles and in important details the result coincided so much with Vargas's concepts of autocratic presidentialism that in many respects it appears tailored to his measure.⁴ Moreover, almost in the last minute before the promulgation of the constitution the government poured over the country a shower of decree laws of the most incisive character which it wanted to have on the statute book before a closer scrutiny by parliamentary bodies was possible. The parliament, for practical as well as for political reasons, did not revoke them.⁵

The Constitution of 1934

Although it would be tempting to analyze in more detail the constitution of 1934⁶ and to project it on the back-

⁴ The best information on the period preceding the constitution is by Ernest Hambloch, *His Majesty the President*, London, 1935.

⁵ The constitution of 1934, in Art. 18 of the "Transitory Provisions," contained an "Indemnity Act" granted by the National Assembly to the Provisional Government through which all acts of the government, the federal Interventors in the states and other delegates of the government were approved and declared as beyond the jurisdiction of the courts; see Calmon, *Curso de direito, etc.*, p. 349.

⁶ The legal literature on the constitution of 1934 is ample in quantity and of a high quality. Brazilian constitutional jurisprudence, steeped in the French tradition, is among the best trained and juridically most proficient to be found anywhere and is held in high esteem in South America. Only a few standard books may be mentioned. Araujo Castro, *A Nova Constituição Brasileira*, Rio de Janeiro, 1936; Pedro Calmon, *Curso de direito constitucional Brasileiro*, Rio de Janeiro, 1937 (the author, a prominent member of the *Constituyente*, is today the Dean of the Law School of the

ground of similar "streamlined," "rationalized," or "economic" constitutions which found favor in the latter half of the interstitial period between the two World Wars, a brief summary must suffice here; after all it was so short-lived that it constituted a brief interlude only between two phases of authoritarian government in Brazil.

Once more Brazil was nominally reconstituted as a federal republic. Although the circumstances under which federal intervention in the government of the states was permissible, were more strictly circumscribed, on the whole the powers of the federal government were strengthened and the centralizing tendencies more accentuated. Originally the Constituent Assembly had evolved a unicameral system—indeed a unique feature in a federal state; in its final form the legislative⁷ consisted of two separate houses, the Chamber and the Senate. The Chamber of Deputies had three hundred and fifty members, elected on the basis of universal suffrage and by proportional representation; but added to them in the same house—an innovation which finds no parallel elsewhere—were fifty deputies taken from professional panels representing agriculture, industry, commerce, communications, the liberal professions, public functionaries, labor and employers' syndicates. The Senate, styled *Poder Coordinador*, was less an equal partner than a co-ordinated and even politically subordinated body, with the objective of studying and promoting the interests of the states; it was composed of two members from each of the twenty states. It acted also as a sort of supervising committee in the intervals between sessions of the Chamber. As to the position of the president⁸

University of Rio); Juan C. Beltran, *La Nueva Constitución de Brasil*, Buenos Aires 1936 (in Spanish). An English translation is by H. P. Crawford, *Commerce Reports*, Department of Commerce, Washington, 1935.

⁷ Calmon, *op. cit.*, pp. 107 ff.

⁸ Calmon, *op. cit.*, pp. 141 ff.

the *Constituante* had learned the lesson of the past. The republican founding fathers of 1891 had tried to balance decentralization through the new federal experiment by a strong presidential head. Now the position was reversed. The rigid presidential system was mitigated by some elements of parliamentarism. The powers of the chief executive were strictly defined and more removed from discretionary exercise. The ministers,⁹ although called into office by the confidence of the president, were also responsible for their actions to the Chamber and when summoned had to appear before it. Students of constitutional history may well be reminded of the situation under the constitution of the Confederacy during the War between the States in this country. The Supreme Court, now called Supreme Federal Tribunal, was empowered to declare laws of the legislative unconstitutional by judicial review. In general the judiciary of the Union and of the states were placed on the same footing of independence, irremovability, and freedom from interference by the two other branches of the government.

In spite of some interesting deviations the constitution, seen as a whole, differed less from the constitution of 1891 than one might have expected. The document was the work of the same constitutional lawyers and liberal parliamentarians who had lived under the former instrument and had found it workable. But while the former constitution was strictly liberal and positivist, the new one paid its tribute to the spirit of sociodemocratic consciousness of the period. A pronounced collectivism permeates its provisions, with the emphasis on the people as a whole and on the forgotten man. A number of social institutions and schemes, which the Vargas government called into being with much fanfare after 1937, were planned already in 1934, such as the minimum

⁹ Calmon, *op. cit.*, pp. 167 ff.

wage (*salário mínimo*), labor law and labor justice, efforts to nationalize national resources and enterprises, the direct intervention of the state in the regulation of the productive forces of society, care for the family and for education, and at least an approach to a corporative structure (*organização sindical*). A more paternalistic, more responsible, less “ruggedly” individualist atmosphere prevailed. But above all that characteristic feature of Brazilian legal and political tradition was manifest, namely “judicialism”—that is, the will to rationalize and to adjust, by legal methods, possible conflicts and deadlocks between organs and powers. This was particularly true for the delicate relationship between the federal interests and those of the states.

Which are the spiritual sources from which this well-intentioned though by necessity inconclusive constitution had been derived? Calmon describes it as “confused eclecticism,”¹⁰ evolved from native rationalism, foreign ideological influences, and the compromises arrived at in the Assembly between realists and idealists;¹¹ a vague socialism is rooted in the paternalistic habits of the Empire and blended with the liberal residues of the republic. What strikes the foreign observer is the strong reflection of the socializing Weimar constitution—whose inglorious demise has obliterated the important fact that it produced a far-reaching influence on the constitutional experimentation of the postwar period. The former predominance of American constitutional thought was on the wane or at least considerably attenuated. Mexico and Spain cast their shadows over the constitution.¹² The corporative idea was in the air; Brazil after

¹⁰ Calmon, *op. cit.*, p. 15.

¹¹ See also Levi Carneiro, *Conferencias sobre a constituição*, Rio de Janeiro, 1937, pp. 10 ff.

¹² This is evident, *e.g.*, in the institution of the *mandato de segurança* (see Calmon, *op. cit.*, p. 267).

all is still sentimentally connected with Portugal.¹³ For the approximation to the parliamentary system precedents existed in other South American countries such as Chile and Uruguay.

Since we have become more realistic than our forefathers, who indulged in the belief that writing of a new constitution was a panacea of all ills of society, we know that the value of a constitution can be tested only by its operation in practice. Considered solely from the angle of comparative constitutional jurisprudence it is obvious that the Brazilian instrument of 1934 had numerous technical defects and inherent constructive weaknesses.¹⁴ Among the former were prolixity, absence of precise terminology, and lack of that secure touch which translates vague dogmatism into bold experimentation. In the relations between state authority and the individual too wide a zone of *clair-obscur* existed; public welfare of the nation as a whole was probably incompatible with the "enlightened interventionism" of the constitution, which still respected the independent statehood of the territorial subdivisions; not yet committed to full-sized centralization like its successor of 1937, the constitution turned its back on the liberal and federal tenets of its predecessor of 1891. Undoubtedly the states were the losers. The federal government took over the control of the military police, public health, regulation of labor, of natural resources, and of public lands. This situation reflects the universal fate of federalism in our time: the space on which individual nations live has become too cramped to allow for a fragmentation of national sovereignty. Nationalism has become inevitable, both economically and spiritually. Janus-headed as the constitution appears it was probably the predestined link

¹³ See *infra*, pp. 123 ff.

¹⁴ See Calmon, *op. cit.*, pp. 353 ff.

between the liberal past and the more social-minded if not collectivistic future.

Brazil in the Twilight of Constitutional Government (1934-1937)

Having finished its work of constitution making the Assembly constituted itself as the first regular parliament. Vargas, the provisions forbidding the re-election of a president for a second term to the contrary notwithstanding, was elected as the first president under the new constitution.¹⁵ His nomination was a foregone conclusion. He had fulfilled his promises; his popularity was firmly established and during the last years he had visibly grown in stature.

To appraise objectively the achievements of this all-too-brief interlude of constitutional government in Brazil is a difficult task. Under the present-day conditions of authoritarian control unbiased evaluation in retrospect is as much out of the question as would be an impartial approach to the Weimar constitution by Hitler's Germany. For the sake of justifying, before public opinion, their own existence, dictatorships are prone to repudiate entirely the accomplishments of the constitutional regimes they have superseded. They serve mainly as convenient targets of attack and as objects of unflattering comparison. Official declarations and government-inspired literature since the inception of the *Estado Novo* by the *coup d'état* of November, 1937, go to extreme lengths in pouring ridicule and contempt over the period under constitutional government.¹⁶

¹⁵ See Art. 1 of the Transitory Provisions; the four-years term of office was arbitrarily determined as to run from May 3, 1934; the constitution was promulgated only on July 16, 1934 (see Calmon, *op. cit.*, p. 146).

¹⁶ One of the numerous illustrations is Anthony Patric (probably pseudonym?), *Towards the Winning Goal*, Rio de Janeiro, 1940, a eulogy

The following tentative appraisal, therefore, is based mainly on personal information this writer was able to obtain from former members of the Constituent Assembly, practicing lawyers, and other sources not necessarily in favor of the present regime. There can be little doubt that the return to the normalcy of constitutional government was welcomed by the overwhelming majority of respectable people, by the masses of intellectuals, and also by the laboring classes which, during the past few years, had begun to take more interest in politics. That the constitution, short-lived as it was, had penetrated deeply into them cannot be claimed. Nor can it be denied that the record of parliamentary activity was, on the whole, unimpressive. Parliamentary government everywhere, in this critical period, was too cumbersome and slow. Executive leadership was needed for deciding issues. But the Chamber worked hard and supported fully the social reform legislation on the program of the government. The principal objection raised afterwards against the Congress—namely, that it obstructed beneficial government bills for selfish reasons—is certainly not proved by the evidence of the statute book.¹⁷ Vargas himself never liked the constitution which narrowed his heretofore absolute powers; but he stayed his hand and showed at first considerable

evidently by order of the Propaganda Department; on the period after 1937 see pp. 157 ff. What good commentaries and treatises on the constitution exist are written exclusively in the spirit of legal positivism which, in accordance with French training, prevails all over South America.

¹⁷ This has been explained convincingly to this writer by one of the leading members of the Chamber. Only two major projects had been left unfinished when Congress was dissolved after the *coup d'état*. One was a bill on the private insurance companies which if passed in the form presented by the government would have resulted in complete financial chaos because of an unworkable reinsurance arrangement. The other one was the organization of Labor Tribunals which had advanced, after considerable work, to the end of the second reading; the regime passed a corresponding bill by way of decree only in 1939.

tact and reticence in remaining faithfully within the constitutional limits of his functions.

The real cause why the regime likes to speak of the parliamentary interlude as "the failure of the constitutional experiment" may be found in the provision of the constitution (Art. 51) which barred a second term for the president. Vargas was not the man to step down and perhaps let the country slip back into the political confusion of the pre-revolutionary twenties. The authoritarian trend of the period no less than a number of internal events played into his hands.

On November 27, 1935, a revolt of parts of the navy and the army was suppressed with a good deal of bloodshed in Rio and in Pernambuco. Subaltern officers of the navy and the rank and file of the army were said to have acted under Communist influence. It appears, however, that the outbreak was a purely military revolt; labor and the masses at large had nothing to do with it and did not participate. Vargas utilized the Communist pretext for equipping himself with extraordinary powers which he expected would stand him in good stead later on when the issue of the presidential elections had to be dealt with. A constitutional amendment was passed by the Chamber and the Senate on December 18, 1935,¹⁸ according to which the parliamentary bodies might authorize the president "to declare a state of grave internal

¹⁸ The text is also reprinted in French in *Informations constitutionnelles et parlementaires*, 1936, no. 2, p. 27. The constitution of 1934, in conformity with the well-established tradition of the French Revolution (see Karl Loewenstein, *Volk und Parlament nach der Staatsauffassung der französischen Nationalversammlung von 1789*, Munich, 1922, pp. 366 ff.), differentiated between partial reform (amendment of the constitution) proper, and total revision, the former subject to approval by a two-thirds vote of both houses, the latter dependent on acceptance by two different legislatures, with an intervening general election (Art. 178); see Calmon, *op. cit.*, pp. 283 ff.

commotion which aims at the overthrow of the political and social institutions"; this "state of internal commotion" was identical, to all practical intents and purposes, with the state of war (Art. 161), in which all constitutional guarantees could be suspended. It should be borne in mind that the Constituent Assembly, wiser by experience, had hemmed in the powers of the executive under the application of the state of siege in order to prevent arbitrary use and political abuse of emergency powers.¹⁹ By this constitutional amendment, which was carried only against a substantial minority in both houses, Vargas obtained quasi-dictatorial powers by way of a "legal" authorization which served in Brazil, as everywhere else when the government is planning to slip out from parliamentary control, as the vehicle for overthrowing constitutional government. Subsequently also a Special Tribunal dealing with political offenses was established, the Tribunal of National Security (*Tribunal de Segurança Nacional*),²⁰ as an organ of military justice during the state of war and "internal commotion." The extraordinary powers assigned to the government were used at first for ferreting out Communism which allegedly constituted a grave danger to the commonwealth, while, at least for the time being, they were not used against the much graver danger of political extremism of the Right, namely the Brazilian variety of dyed-in-the-wool Fascism called Integralism. For a fuller understanding of Brazil's later politics it is necessary to discuss these two aspects of political extremism at some length.

¹⁹ See Art. 175, no. 1, clauses 7, 12, 13. These limitations were: maximum duration of state of siege, ninety days; automatic convocation of Congress; criminal and civil responsibility of those executing the state of siege.

²⁰ Law of Sept. 11, 1936, no. 244 (*Diario Oficial* [hereafter abridged as *DO*] of Sept. 12, 1936).

Communism in Brazil

Radical movements in South America are invariably of foreign or international origin, with the possible exception of Peru and Mexico; but as everywhere they draw their strength from existing economic grievances and the cleavage between social classes. Of all South American countries Brazil is perhaps the least fertile soil for Bolshevism. Industrialization has not advanced beyond the initial phase. The organization of a politically alert labor movement lags even behind the stage industrialization has reached. In many parts of the country and in numerous occupations the relations between management and wage earners are still those prevailing in the age of feudal paternalism, which serves as a natural brake to the development of a class consciousness among the laboring masses. It is true that, particularly in the backward rural sections of the interior, the living standard is extremely low and one encounters appalling misery even in the large cities within a stone's throw from luxury. But owing to the warm climate and the tropical richness of the soil nobody starves in Brazil. Unemployment is practically unknown. Those who know agree that Communism never was a real danger to the bourgeois order. Communist groups had existed before 1930; but it was only under the freedom of political association guaranteed by the constitution of 1934 that they developed into a political party, the *Alliança Nacional Libertadora*, as a branch of the Third International; probably it was directed from the Soviet Embassy in Montevideo, at that time the center of Communist propaganda in South America. The movement had attracted competent leaders, the most redoubtable among them Luiz Carlos Prestes. As a young army officer Prestes had been prominent in

the Paulista uprising as far back as 1924; the march of his defeated troops through the jungles of the interior to the river Amazon in the North is an epic which Brazilians of all political colors like to rank with the Xenophontean *Anabasis*. He supported Vargas in and after the revolution of 1930. In 1935 he returned from a visit to Russia as a convinced disciple of Stalin. He was promptly arrested, charged with sedition, and sentenced to seventeen years of penal servitude. Convicted with him was a German Communist of international fame by the name of Berger. It was never proved that Prestes had actively participated in the army revolt of 1935.²¹ The vigorous and ruthless campaign of suppression conducted ever since by the government against the Communist movement succeeded in driving it completely underground and in destroying at least outwardly its entire organization. Of all political suspects those accused of Communist leanings fare worst, and persons sentenced for Communist activities have little chance of benefiting by the otherwise remarkable generosity of the regime toward its political opponents. The familiar technique of labeling political opponents as Communists and dealing with them accordingly has been indulged in also by the Vargas regime, at least during the first years after the establishment of the *Estado Novo*. This does not preclude Russia's stand against the Nazis from being extremely popular with the Brazilian people if not with the government.

²¹ A good sketch of Prestes is found in John Gunther, *Inside Latin America*, New York, 1941, pp. 406 f. In 1941 he received an additional term of thirty years, for alleged complicity in the political assassination of a Communist woman Elsa Fernandez which had occurred while he was already in prison. That procedure and sentence are outrageous is admitted even by supporters of the regime; but it shows how much he is feared even as a prisoner. It is rumored that he is kept constantly in chains and that a contingent of troops guards his prison.

The Integralist Movement

The Integralist movement, the Brazilian version of international Fascism, originated in the early years of the revolution. After 1934, when political parties could move without hindrance under the constitutional guarantees, it came into prominence under the leadership of Plinio Salgado. The Brazilian "Fuehrer," though a man of personal integrity, is described as a neurotic personality with mystical streaks and a good deal of fanaticism, but more as a *littérateur* than as a man of organizing abilities and leadership qualities. In his writings he endorsed Fascist corporative ideologies and *Ganzheit* slogans which were wholly unsuitable to an economically underdeveloped country like Brazil.²² The movement followed closely and without much originality European patterns in propaganda, organization, and activities, and used as a method of facile political symbolization the mathematical sign of the sigma (Σ) which has the advantage of being unintelligible to the common man and which can be drawn easily, at least as easily as the Swastika, on house walls or on the pavement, where its blotted-out form can be seen occasionally today. The Integralists gave the Fascist salute and donned green shirts, with the Greek letter sigma on the

²² Salgado had been a prolific writer long before he entered politics; his style is obscure and heavy, his erudition, hackneyed; his mysticism, flamboyant. Among his books which reached a considerable circulation up to 1937, the following may be mentioned: *Psychologia de revolução*, Rio de Janeiro, 1937; *A doutrina do Sigma*, Rio de Janeiro, 1937; *O que é Integralismo*, Rio de Janeiro, 1937. On Salgado's literary activities see Samuel Putnam, "Brazilian Culture Under Vargas," *Science and Society*, vol. VI (1942), no. 1, p. 36. Other important literature on Integralism: Osvaldo Gouvêa, *Brasil Integral*, Rio de Janeiro, 1936; Olbiano de Mello, *Republica syndicalista do Estado corporativo*, Rio de Janeiro, 1937. An interesting account, by a Teuto-Brazilian, is Karl-Heinrich Hunschke, *Der brasilianische Integralismus*, Stuttgart, 1938. See also H. R. Eulau, "The Ideas Behind Brazilian Integralism," *The Inter-American Quarterly*, Oct. 1941, pp. 36 ff.

left sleeve, as the Brazilian variety of the multicolored political haberdashery. Although preaching the leadership principle—something very strange to the arch-individualistic Brazilian mind—the movement had, in its heyday, a "Council of Forty" as the directing group. Leading men of the army, of business, and of the liberal professions were among its members. It tended to become a sort of supergovernment, with ramifications into all layers of social and political life. The most visible feature of Integralism was militarization—which attracted even the German element in the southern states.²³ In its programmatic offerings the movement was as diversified and vague as possible. It advertised itself under the motto "*ordem e progresso*" ("Order and Progress"). The official party slogan was "God, Country, Family"—three notions dear to every Brazilian. The reader who attempts to wade through this hodgepodge of conflicting "ideas" is at a loss to say whether the program is more infantile than imbecile, or vice versa. It ranges from mysticism to rationalism, from rabid nationalism to full-sized Pan-Americanism, from anti-Semitism—heretofore unknown in Brazil—to multiracialism. This last would seem to be the only indigenous element in a country blended racially, during the miscegenation of several centuries, of Luso-Brazilians, European immigrants, African Negroes, and Indians, and their compounds and alloys.

Around 1936 the movement grew by leaps and bounds. Though far inferior to his idols Mussolini and Hitler as organizer, Salgado imitated them successfully in his love for melodramatics and fanfare, for pomp and circumstance. Theatrical pageantry, mass meetings, and monster parades

²³ See Reinhold Maack, "The Germans in South Brazil," *Inter-American Quarterly*, vol. I, no. 3 (July, 1938), pp. 5 ff., who records, on p. 19, that 55 per cent of the Integralist leaders in Rio Grande do Sul were of German descent; but Maack adds significantly: "by a misunderstood ideology."

—all innovations in the idyllic political life of Brazil—served as vehicles of propaganda. Although the Brazilians observed the strange antics with a good deal of amusement, a political movement based on discipline and strict hierarchy could not fail to attract followers; for the first time in Brazilian history a political party had begun to obtain a real mass basis. Uniforms were seen on the streets, in the government offices, and even in the court room. A women's brigade canvassed successfully. Organized rioting, breaking up of meetings of the opposition, and individual and collective violence were the symptoms of an impending Fascist revolution with which the student of contemporary politics is familiar. Money flowed into the coffers of the party from contributions, levies, and, last but not least as substantiated rumors have it, from the subsidies of the German Embassy. Once the Nazis had realized that an indigenous movement was ready to carry the totalitarian virus into the masses they did all in their power to get it under their control and to capitalize on its emotional fervor for their own interests. Most responsible observers agree that the Integralist movement had become a serious danger to Brazil. It will be shown in the following pages ²⁴ that Vargas proved his mettle as an accomplished politician in staving off the threat to his own regime no less than to Brazil. The way in which he dealt with the Integralists was most convincing evidence of his mastery of political maneuvering.

The Coup d'État of November 10, 1937

The inevitable showdown between constitutional and dictatorial government came when Vargas's presidential term approached its end. The election for the new president was

²⁴ See *infra*, pp. 141 ff.

set for January 3, 1938. The Conservatives chose as their candidate Jose Americo de Almeida, formerly Minister of Public Works in Vargas's cabinet. Vargas, however, never endorsed him officially. The Liberal-Democratic or "Constitutionalist" opposition, backed by the powerful forces of São Paulo, nominated the former governor of São Paulo, Armando de Salles Oliveira, a democratically minded, able, energetic, and experienced man whom many considered as the only person capable of outbalancing Vargas in popular prestige. Today he lives in exile.²⁵ Judging from rather inconclusive evidence Salles Oliveira had the better chances of being elected. That the Communists would have voted for him and the Greenshirts for Jose Americo cannot be proved. It should not be forgotten that in Brazil no nationwide parties existed and that the local bossism of the state governors was a potent force in turning the presidential elections.

But Vargas seems to have decided long before to take matters into his own capable hands. Undoubtedly the army chiefs prodded him to engineer a putsch from above. They appealed personally to the country that a Communist uprising was in the offing and that Vargas must be given full powers to deal with the situation. Using the constitutional amendment of 1935 he demanded that Congress declare the existence of a state of grave internal commotion which freed him from constitutional limitations. An Act of Congress granted him the powers of the state of war for ninety days, beginning on October 2.²⁶ The leading organs of public

²⁵ The public addresses of de Salles Oliveira are collected in his *Jornada Democrática*, Rio de Janeiro, 1937; see also Joaquim A. Sandaio Vidal, *O Pensamento politico de Salles Oliveira*, São Paulo, 1937.

²⁶ The resolution was carried by a large majority in the Chamber, but by a majority of one vote only in the Senate; eighteen senators in opposition abstained from voting.

opinion strongly opposed the move. To resort to the state of war while a presidential campaign was in full swing nullified the elections in advance, because with the suspension of civil liberties and the imposition of press censorship no criticism of governmental measures was permissible. Moreover, in seizing control of the police in the states, Vargas prevented the election of a liberal governor in Rio Grande do Sul. Its governor, J. A. Flores da Cunha, not long ago one of his closest friends and collaborators—at present in exile in Montevideo—refused at first to obey but later submitted and resigned on October 18. Vargas entrusted the military commander with the administration of the state and did likewise in Minas Geraes and São Paulo. But here a storm was brewing when the home state of his strongest opponent Salles Oliveira elected, in October, 1937, Cardoso de Mello Netto, a “Constitutionalist,” as governor of the state.

The Integralists hoped—and many observers joined in the belief—that the Brazilian version of the march on Rome was now close at hand. Plinio Salgado had offered Vargas the support of one hundred thousand well-trained and highly disciplined Greenshirts in the “fight against Communism.” He expected for himself and some of his friends positions in the cabinet of the impending Fascist state of Brazil. Without committing himself definitely Vargas operated with admirable skill.

Events were moving swiftly to the climax. Vargas had the army and navy chiefs on his side. Both Eurico G. Doutra, the Minister of War, and the brilliant de Góes Monteiro, chief of staff, were in favor of eliminating the constitutional regime and setting up an authoritarian state. Without their approval Vargas could not have acted. An open letter of Salles Oliveira charging that a revolutionary coup for preventing the election was imminent was read in the Chamber.

Vargas, the man of action, decided to strike; he struck with perfect timing and with complete success.

On November 10, 1937, cavalry surrounded the seat of Congress, the Palácio Tiradentes in Rio de Janeiro. Parliamentarians arriving for the session were politely turned back. Troops were in readiness elsewhere in Rio and in São Paulo, but no resistance was offered. Addressing the stunned people of Brazil by radio on the same evening from the seat of government, the Palácio Guanabara, Vargas, "in response to public opinion and with the support of the armed forces," proclaimed himself president, dissolved Congress, and promulgated, on the same day, the constitution of the *Estado Novo*; it had been drafted and held in readiness by the Minister of Education Francisco Campos, then and hereafter the legal brain of the regime. Not a single shot had been fired. Some people packed their suitcases and left during the next few days for exile in neighboring capitals or in Europe. Only the Minister of Justice, José Carlos de Macedo Soares, refused to sign the new constitution and resigned. He was succeeded at once by Francisco Campos. One of the ministers, Marques dos Reis, signed the document but left office immediately thereafter because he disagreed with the policies of Vargas. It did not interfere with his career; he was appointed Governor of the Bank of Brazil. Subsequent changes in the cabinet are not related to the revolutionary change of regime. M. de Pimentel Brandão, Minister of Foreign Affairs, made room for Oswaldo Aranha. Subsequently several ministers accepted appointments to the position of Interventor of a state.

Judged from the strictly legal viewpoint the *coup d'état* was clearly unconstitutional. The constitution of 1934 had not been unworkable. There was no reason to believe that the election would have led to civil war, except for revolu-

tionary action of the Integralists whom Vargas himself had carefully nursed. But Vargas could refer, with a good deal of justification, to his popularity with the masses and his imposing record as the leader of Brazil during seven turbulent years. To many his disappearance from political leadership was inconceivable; he had made for himself the reputation of being indispensable. The auspicious beginnings of what is frequently likened to the New Deal had endeared him to the Brazilian masses. Nor should it be forgotten that dark clouds were rising on the horizon of international politics. The Brazilians, very sensitive to world events, were well aware that the sands of peace were running out. The impending storm demanded the strong hand of an experienced skipper. Vargas's own justification of the *coup d'état*²⁷ convinced few. But in retrospect it might seem doubtful whether any other man in his place could in the long run have prevented as successfully the nazification of the key state of South America. To the Brazilian people the change of regime was at least acceptable if not actually welcome; this has been convincingly proved by later events.

²⁷ See his communication to the *New York Times*, of Nov. 15, 1937. The preamble of the constitution motivated the supersession of the existing by the new order in the following terms: "Whereas the legitimate aspiration of the Brazilian people toward political and social peace has been profoundly disturbed by notorious factors of disorder, created by party dissensions which a nefarious demagogic propaganda attempted to translate into class warfare and which was about to reach the extreme limits of ideological conflict . . . tending to resolve itself in violence and thus exposing the nation to the imminent threat of civil war; Whereas the state of apprehension caused throughout the country by the infiltration of Communism . . . called for a remedy both radical and permanent in character; Whereas the fact that previously existing institutions did not provide the State with the normal means for preserving and defending the peace, the safety and the welfare of the people; With the support of the armed forces and yielding to the dictates of public opinion . . . Resolving to ensure to the nation . . . the necessary conditions of security, well-being and prosperity, The President of the United States of Brazil decrees the following constitution . . ."

PART TWO

THE CONSTITUTION OF THE *ESTADO NOVO*

A Short Bibliographical Note

The following study of the Vargas regime is based, on the one hand, almost exclusively on the legislative enactments and other official source material of the government, and, on the other hand, on the inductive findings obtained by this writer in Brazil by way of a field investigation—that is, by interviews with and information from government officials, practicing lawyers, businessmen, newspapermen, and men of political experience in general, from the ranks of both the government and the opposition. Except for the purpose of showing background, descriptive or interpretative material is used sparingly. The legal and political literature, published in considerable volume under the regime, is at best strictly positivistic, as a rule eulogistic and dialectic in its efforts to justify the official policies. In this respect it bears all the familiar traits of that sponsored or “co-ordinated” writing one encounters in all countries where public opinion is government-controlled. Inside present-day Brazil no critical and independent writing on national politics is possible. There are enough lawyers capable of a critical analysis of their government but they remain silent and no publisher would care to face the consequences.

One might have expected that foreign observers would have filled this gap. Brazil under Vargas is a most fascinating subject for any constitutional lawyer with a sociological bent. To this writer's knowledge no comprehensive study of Brazilian government and politics exists. Even the crop of specialized articles is surprisingly meager. A few titles may be mentioned here: Walter R. Sharp, “Methods of opinion control in present-day Brazil,” *The Public Opinion Quarterly*, vol. 5, no. 1 (1941), pp. 3-16; *idem*, “Brazil 1940; Whither the New State?,” *The Inter-American Quarterly*, vol. II, no. 4 (1940), pp. 5 ff.; Samuel Putnam, “The Vargas Dictatorship in Brazil,” *Science and Society*, vol. 5 (1941), pp. 97-116 (a Marxist interpretation, with much bias and distortion, dealing mainly with the period before

1937); J. F. Normano, "The economic ideas of Getulio Vargas," *Latin-American Institute*, Boston, 1941; Baily W. Diffie, "Some foreign influences on contemporary Brazilian politics," *The Hispanic-American Historical Review*, vol. XX (1940), pp. 402 ff.; Paul-Gérard Fleury, *Getulio Vargas*, Paris, 1938 (?) (an apology); Percy Alvin Martin, "Federalism in Brazil," in Conyers Reed (ed.), *The Constitution Reconsidered*, New York, 1938, pp. 379 ff.; Some good material is found in the *News Bulletin* of the Brazilian-American Association, 17 Battery Place, New York.

With the reservation as stated before, some treatises and commentaries on the constitution by Brazilian publicists and lawyers follow: Pontos de Miranda, *Comentários à constituição federal*, 2 volumes, Rio de Janeiro, 1938; Araujo Castro, *A nova constituição de 1937*, Rio de Janeiro, 1938; Pedro Timotheo, *O poder judiciário sobre nova constituição*, Rio de Janeiro, 1938; Augusto Estillito Lins, *A nova constituição dos Estados Unidos do Brasil*, Rio de Janeiro, 1938. Other pertinent books on Brazilian politics are (the selection is made without claim to rank or authority): Gil Duarte, *A paisagem legal do Estado Novo*, Rio de Janeiro, 1941; F. I. Oliveira Vianna (one of the most respected writers on sociological subjects), *O idealismo da constituição* (2nd edition), São Paulo-Rio de Janeiro, 1939; Geraldo Rocha, *Nacionalismo político e económico*, Rio de Janeiro, 1938; Almir de Andrade, *Força, cultura e liberdade*, Rio de Janeiro, 1940; Nestor Duarte, *A ordem privada e a organização política nacional*, São Paulo, 1939; A. J. Amaral Azevedo, *O estado autoritário e a realidade nacional*, Rio de Janeiro, 1938; Francisco Martins dos Santos, *Fato moral e fato social da Decada Getuliana* (2nd edition), Rio de Janeiro, 1941. Of a wholly eulogistic and apologetic nature are: Andre Carrazoni, *Getulio Vargas*, Rio de Janeiro, 1939; Monte Arrais, *O Estado Novo e suas diretrizes*, Rio de Janeiro, 1938; J. S. Maciel (Filho), *O homem providencial*, Rio de Janeiro, 1938 (published by the Propaganda Department); Reynaldo Bastos, *Getulio Vargas o reformador*, Rio de Janeiro, 1939; Alcides Gentil, *As idéas do Presidente Getulio Vargas*, Rio de Janeiro, 1939; J. Paulo de Medeyros, *Getulio Vargas, o reformador social*, Rio de Janeiro, 1941; Alexandre Marconde (Filho), *A*

significação Getulio Vargas, São Paulo 1941; Joracy Camargo, *Getulio Vargas e a Inteligência nacional*, Rio de Janeiro, 1940 (published by the Propaganda Department); Leão Padilha, *O Brasil na posse de si mesmo*, Rio de Janeiro, 1941. The Propaganda Department publishes a monthly under the title *O Brasil de hoje, de ontem e de amanhã*.

It should be noted that in this study quotations of a statute (act, in Portuguese "lei"), a decree (in Portuguese "decreto") and of other official documentation are referring to the Official Bulletin or Law Gazette, the *Diario Oficial* (abridged hereafter as *DO*); the citation gives, as a rule, the number of the law or decree (the *Estado Novo* began on November 10, 1937, with no. 1), date of promulgation, and, whenever possible, also date of publication in the *Diario Oficial* which follows the promulgation sometimes with considerable delay. The *Diario Oficial* is not digested and does not even have a general index; it is very badly printed and difficult to consult and to handle, to the constant exasperation of all who have to do so. Sometimes in this study, instead of the quotation from the *DO*, reference is made to a (semi)official collection of statutes and decrees *Colecção das Leis do Brazil* (in progress), abridged hereafter as *Coll.*; the Roman number indicates the volume of the series of eight issued each year. By now (Spring, 1942) the number of federal decrees has exceeded the four thousand mark by far. The decrees of each of the different ministries and of other central agencies multiply this figure by five or ten times. This accounts for the bulkiness of each individual issue of the *Diario Oficial* which is again duplicated and triplicated by parallel *Diarios* of the different states. Legislation pertaining to the Federal District is contained in the *Diario Oficial* for the Union. This writer, conversant with the legislative technique of many countries knows of no other state where access to and usability of the official legislative records is beset with so many difficulties as in Brazil.

For reference purposes the following may also be consulted: *Repositorio de legislação Brasileira do Estado Novo, organizado por Antonio Souto Sostagnino*, Rio de Janeiro, 1938, ff. (A. Coelho Branco Fho.); Jose Alves de Mousa, *Indice alfabetico de legislação e jurisprudencia administrativa*, Rio de Janeiro,

1939. Another semiofficial collection is the *Anuario de legislação federal*, Rio de Janeiro (in progress), abridged hereafter as *Ann.*

Among the numerous and frequently inaccurate English translations of the constitution of 1937 see the one published by the *Imprensa Nacional* in Rio de Janeiro, 1937.

Brazil enjoys an excellent tradition in Law Reviews and periodicals dealing with political science, e. g., *Revista do Supremo Tribunal*; *Revista de Faculdade de Direito de São Paulo* (since 1905; the Law School of the University of São Paulo has always been the best in the country and ranks high among South American institutions of legal education); *Revista Forense*, Rio de Janeiro. The recently (1940) founded monthly *Ciência Política* (editor Pedro Vergara) of the *Instituto Nacional de Ciência Política* in Rio de Janeiro is merely eulogistic and for objective legal research as useless as any Nazi publication except for what it does not contain. Political writers and lawyers who have a reputation to lose do not participate in its publication. Excellent, however, is the new *Revista do Serviço Público*, edited since 1940 by the *Departamento Administrativo de Serviço Público* (DASP.) (With regard to the latter see *infra*, pp. 101 f.).

In recent years a host of general books on South America has flooded the market which also contain information on Brazil under Vargas; they are mostly travelogues by writers, journalists, economists, and chance visitors; meritorious as some of them are, few add much to the knowledge of the constitutional lawyer. To this writer by far the best appears to be Hubert Herring, *Good Neighbors, Argentina, Brazil, Chile and seventeen other countries*, New Haven, 1941 (on Brazil, pp. 105-166); brilliantly written though irritatingly superficial and vitiated by factual errors is John Gunther's *Inside Latin America*, New York, 1941 (on Brazil, pp. 350-410). Solid information of a general nature is available in William Lytle Schurz, *Latin America*, New York, 1941. Preston E. James, *Latin America*, New York-Boston, 1942 (section on Brazil, pp. 386-571) is perhaps the most exhaustive and authoritative discussion of the country's geographical and geoeconomic conditions, with many maps and a good bibliographical selection (pp. 878 ff.); but it offers almost no political data. As a specialist on Brazil comes

Vera Kelsey, *Seven Keys to Brazil*, New York, 1940 (revised 1941); *Brazil in Capitals*, New York, 1941 (containing descriptions of the Brazilian state capitals). Both books are replete with valuable folkloristic information, brought together with a beelike industry but wholly devoid of real understanding of the Brazilian character and politics.

Of the older descriptions of Brazil James Bryce's *South America, Observations and Impressions*, London, 1912 (on Brazil, pp. 366 ff.) makes, even a generation later, still profitable reading.

Stefan Zweig's, *Brazil, Land of the future*, New York, 1941, may be appreciated by many as the enthusiastic impressions of a poet whose reaction to beauty is more germane than to economic and political subjects. The sensitive pen of the former U.S.A. Ambassador to Brazil Hugh Gibson, *Rio*, New York, 1940, reflects much of the enchantment which the land and people evoke in the foreigner. But to this writer the most vivid and true impressions of a visitor to Brazil, intuitive, dynamic, and written in a masterly prose, is Rudyard Kipling's *Brazilian sketches*, New York, 1940, a record of his visit to Brazil in the middle twenties.

Authentic material on all phases of economic, financial, social, and cultural conditions is found in a government publication *Brazil, 1938*, a volume of 424 pages edited by the *Serviço Gráfico do Instituto Brasileiro de Geografia e Estatística*, Rio de Janeiro, 1939, which may be consulted for all statistical details of present-day Brazil. For geographical information compare Clarence F. Jones, *South America*, New York, 1940 (on Brazil, pp. 410 ff.).

CHAPTER I

THE PHENOMENON OF THE DOUBLE CONSTITUTION

Does the Constitution of 1937 Exist?

As the starting point for a descriptive analysis of Brazil under Vargas a detailed presentation of the constitution of 1937 would seem logical. But the intrinsic nature of this instrument of government renders this task—enjoyable as it may be for a constitutional lawyer specializing in comparative government—a rather dubious and even superfluous one. To put it bluntly: it is a ghost constitution. It exists on paper, but its essential provisions are devoid of living reality. It was born and yet it never has lived. It is a document of no less than one hundred and eighty-seven elaborate articles, drafted in lofty phraseology, and with that technical craftsmanship for which its author, Minister Francisco Campos, is duly renowned. But it is much more profitable to read it backwards, because by reversing the usual process of acquainting oneself with a legal instrument one may save time and avoid misunderstandings.

Important in the light of positive law are only the last few articles. Art. 187: "This constitution enters into force on the date of its promulgation and will be submitted to a national plebiscite whose form will be regulated by presidential decree." Art. 186: "In the entire country the state of national emergency is declared." During the state of national emergency the constitution is suspended; this is the accepted

meaning of a situation assimilated in Brazil to the state of war. The constitution contains special provisions concerning "the state of emergency" (Art. 168-170). The measures which the president of the republic is authorized to take include detention in places other than prisons; exile to other places of the national territory or compulsory domicile; censorship of all communications; search and seizure without warrant. All acts undertaken by virtue of the state of emergency are beyond the jurisdiction of the courts. Since there prevails in Brazil, by virtue of the constitution itself, a perpetual state of national emergency, a valid Brazilian constitution destined for normalcy does not exist. Whether it ever will, depends on the national plebiscite, if it so pleases the president. So far it has not so pleased him.¹ Incidentally the constitutional lawyer with a sense of humor will be delighted by a legal puzzle which is strikingly similar to the Baron Münchhausen of the fable who pulls himself out of the swamp by his own bootstraps. Since the declaration of the unlimited emergency forms a part of the constitution and is contained in it as a specific provision, only a constitutional amendment could remove it therefrom. For a constitutional amendment, however, the collaboration of the parliamentary bodies envisaged by the constitution (Chamber of Deputies and Federal Council) is mandatory (Art. 174). But the elections for the National Parliament will not be held until *after* the constitution has been accepted by plebiscite (Art. 178). Thus, a constitutional cat is chasing its legal tail, or vice versa. A subtler *quid pro quo* has rarely been perpetrated in the field of constitutional law which otherwise has shown itself rather impervious to legal pranks and constitutional antics. Coming from men like Vargas and Campos the jest has a sardonic

¹ The subject of the plebiscite will be dealt with more in detail *infra*, pp. 359 ff.

tinge. It is the Brazilian way of talking through his hat.

But to remain on the level of similes from the realm of the animals: There is a legal tail which wags the constitutional dog. Says Art. 180: "Until the National Parliament meets, the President of the Republic shall be empowered to issue decrees on all matters of legislation for the Union." These simple words embody the essence of the *Estado Novo* and all the rest of one hundred and eighty-six articles are legal camouflage. Vargas knows it. So do the Brazilian people. Among other nations the dictatorship operates without a constitution. In Brazil the dictatorship is wrapped up in two constitutions.

But the paradox of an existing constitution which does not have a real existence cannot be dismissed or explained away so easily. In our time constitutions have ceased to be a bare frame of government with civil liberties attached or taken for granted even without specific stipulation, as were the rational constitutions of the nineteenth century. The French constitution of 1875 is the most extreme example of this type. Constitutions today are no longer purely "functional," with an implied philosophy only; on the contrary, they embody ostentatiously and even blatantly a social philosophy, an emblazoned declaration of social intentions. It is a matter of common experience that Latin-American constitutions must not be taken too literally; ² they are more an ideal maximal program whose ultimate fulfillment is striven for by the governments temporarily in power, than a positive blueprint whose execution to the letter is an obligation of government and governed alike. The Vargas regime as evidenced by the tremendous output of legislation considers

² This fact is ignored in most descriptions of the social content of recent constitution-making in Latin America. See for such an uncritical approach J. C. Zamorra, "New Tendencies in Latin American Constitutions," *Journal of Politics*, vol. 3 (1941), pp. 276 ff.

itself in honor bound to fill this ideal framework of the constitution by appropriate legislation. In the course of the last four years more and more articles of the constitution containing promises and undertakings have been "vitalized" by special laws. To this degree the constitution has assumed what may be called a virtual reality. By now it can be seen that the ambitious pattern or design as set down in the constitution has made great advances by the use of elaborate embroideries.

The vexing question—and many Brazilians who are born dialecticians like to speculate on this problem—does the constitution of the *Estado Novo* exist? may perhaps be answered thus: insofar as the *Estado Novo* has taken a material shape the constitution is a living reality. It does not exist in so far as the functioning of the governmental institutions envisaged by the instrument is concerned. Here the only living or, if one prefers, the valid part of the constitution is the president; he is not bound by any constitutional limitations. He is the constitution. Beyond that the constitution is a blueprint, a program of social aims. While transcending the frame of government proper the regime lives up, or at least tries to live up, to the program. Flesh begins to form around the bones of the skeleton. As an institutional frame of government the constitution was dead before it was born. As a social program it has come to life. The common man of today cares about the form of government less than his forefathers; what he is interested in is the substance. This may explain why the masses of the people—and not those of Brazil alone—acquiesce in a legal absurdity through which they see easily. If the government were less active and less successful they would probably remember the defective form and would have it changed in order to obtain a more satisfying substance.

CHAPTER II

THE MAIN FEATURES OF THE CONSTITUTION OF 1937

Union and States

It is proposed to present, in the following pages, first a sketch of the constitution of the *Estado Novo* of November 10, 1937, as it was planned on paper, and thereafter a more detailed and critical survey of the government of Brazil in actual operation. The constitution, after a preamble in which the dangers of "class warfare," "extreme limits of ideological conflict," and "imminent civil war" and "Communist infiltration" are invoked as justification for imposing it, follows the customary divisions of such instruments of government, namely: National Organization (including the relations of federal government and states) (Art. 1-37); Legislative Power (Art. 38-72), subdivided into Chamber of Deputies, Federal Council, and National Economic Council; President of the Republic (Art. 73-89)—this section includes two brief articles on the ministers (Art. 88, 89); Judiciary Power (Art. 90-114); then follow two sections which when taken together might be spoken of as the Bill of Rights, including nationality and citizenship (Art. 115-123); Article 122, containing the catalogue of individual rights proper, is the longest article of the entire constitution, with no less than nineteen clauses and many subdivisions. After a section on the Family (Art. 124-134) numerous provisions are devoted to Economic Order (Art. 135-155); next

follow provisions concerning the Public Officials (Art. 156-160), and the important chapters on National Security and National Defense (Art. 161-173); Constitutional Amendment is treated within the compass of one article (Art. 174); evidently the regime attaches little importance to orderly constitutional change. The document is finally capped by the Transitory Provisions (Art. 175-187) which suspend, as has been pointed out, all previous arrangements and in their place establish the dictatorship of the president of the republic. On the whole much emphasis is placed on content and aims of the constitutional order and less on the functional or operational organization.

Outwardly the constitution pays tribute to the principle of popular sovereignty (Art. 1) in the United States of Brazil (no longer the Union of Brazil) and on the maintenance of full-fledged federalism (Art. 3). Each of the twenty states, whose territorial boundaries remained unchanged, is to administer its own services by its own revenues (Art. 8). But the federal government may intervene in the internal administration of the individual states by appointing an Interventor who assumes the powers of the state executive or such powers as the president may assign to him according to the requirements of the situation (Art. 9). The right of intervention, though defined concretely in line with eventual state deficiencies and failures, is so wide as to place the states fully at the mercy of the federal government, that is of the president. Article 15 tries to draw a line of demarcation between federal and state jurisdiction. As a matter of fact, although the appearances are carefully preserved, the states are reduced to the status of territorial subdivisions under full central control; particularly in fiscal matters their rights are severely curtailed (Art. 23). The framer of the constitution was well aware that the best method for level-

ing down statehood is to cut through the roots of independent financial existence. Internal custom barriers, one of the glaring defects of the preceding era, are abolished (Art. 25) and all intra- and interstate discriminations are removed (Art. 32-35). State legislation is merely supplementary; in any case federal law takes precedence over conflicting state law. At least in theory all nonenumerated rights belong to the states, but the catalogue of federal competences is so exhaustive that all powers that really matter are assigned to the federal government. Taken together these arrangements give short shrift to independent statehood and, to all practical intents and purposes, amount to the establishment of a unitary state in which the states, having lost most of their autonomy, have become mere administrative subdivisions of the national state. This is in line with the needs of dictatorial government, which cannot tolerate independent intermediary agencies as potential nuclei of local resistance, as well as with the economic trend of this epoch, which has little patience with federalistic residues of the horse-and-buggy age.¹

The Legislative

Very little need be said about the legislative under the constitution. All existing elected deliberative assemblies (of Union, states, and municipalities) were declared dissolved by the constitution itself (Art. 178). In future the constitution provides for a parliament consisting of a Chamber of Deputies and a Federal Council (Art. 38); the Chamber (Art. 46-49) is to be based on indirect elections, the electoral college being the municipal councillors—who do not exist

¹ On parallel developments in Nazi Germany see Karl Loewenstein, *Hitler's Germany*, 2nd rev. ed., New York, 1940, pp. 71 ff.

—and ten elected citizens in each municipality. The total number of deputies, being proportionate to the population of each state, is not determined. Since each state can have no more than ten and must have no less than three members, the maximum is two hundred. They serve for a four-year term. In the Federal Council (Art. 50–54) of fifty members the states are to be represented by two members from each state; to these the president adds ten more by appointment. The functions of the Federal Council are very limited and by no means on a par with those of the Chamber; it also has jurisdiction over the Federal District and the national territories. Finally, in the institution of the National Economic Council as envisaged homage is rendered to the corporative ideas of our time; in imitation of precedents of Fascist Italy the members of this body are to be selected on the basis of a rather crude occupational representation.² Some writers who at first took these provisions literally greeted the new constitution as an embodiment of Italian corporative ideas.

None of these legislative organs has yet been created, nor is their establishment planned by the regime in the near future. They will be set up only after the plebiscite on the constitution (Art. 178) has taken place. These functional provisions, hence, are merely on paper, not even on order.³

The President of the Republic

Of greater actual interest are the provisions on the president of the republic (Art. 73–89). He is styled “Supreme

² On the influence of corporative ideas see *infra*, pp. 127, 342.

³ As a matter of precaution the provisions concerning the existing Electoral Committees in accordance with the Election Law (*Código Eleitoral*) (Law no. 48 of May 4, 1935) were formally repealed by Decree-Law (hereafter abridged as D.L.) no. 63 of Dec. 13, 1937 (*Coll.* 1937, vol. III, p. 886).

Authority of the State"; he "directs internal and external policies and represents the national interest"—whatever this may mean. His powers are enormously increased, at the expense of the states, of the parliament, of any other potential competitor in power. He nominates the ministers of state (Art. 75(c)). Not responsible to the parliament they are his confidential executives who countersign his acts (Art. 76, 88). Of particular importance are the provisions pertaining to the presidential election. The term of office is six years (Art. 80). The president designates one of the two possible candidates for his succession (Art. 75(a)). The other candidate is chosen by an Electoral College of six hundred hand-picked men, a figure whose democratic implications may be properly assessed by comparing it to a total population of nearly fifty million. Only the candidate "elected" or selected by the Electoral College can compete with the designate of the president in power (Art. 82). But even in the case of an honest election it is implicitly arranged that the presidential candidate has the better chances. The Electoral College meets only twenty days before the expiration of the term for selecting its candidate; the president may delay his own choice until the last day before the election. At best the candidate of the Electoral College has less than three weeks for campaigning. Re-election, incidentally, is not explicitly forbidden. The presidential election itself is performed by universal suffrage (Art. 84, sole paragraph). Impeachment, though provided for by the Federal Council, is impossible since the latter has not been constituted. At present Getulio Vargas is irresponsible both legally and factually. Moreover, the very provisions of the constitution are tailored to his measure. He is factually president for life and he rules and governs without constitutional limitations whatever.

Other Provisions

Very little need be said here about the other provisions of the constitution because they will be dealt with in their proper setting later on in this study. The elaborate proclamations concerning the constitutional rights and guarantees may well be passed over because they are suspended anyway under the existing state of perpetual emergency. On paper the Brazilians are guaranteed the enjoyment of the same civil liberties and fundamental rights possessed by the citizens of democratic countries. But it is noteworthy that most of the constitutionally guaranteed liberties are granted only "within the limits of the general laws." Brazil thus follows the European example in protecting the fundamental rights only relatively, that is they can be abridged by ordinary legislation at any time.⁴ Another "saving clause" in favor of governmental interference with individual rights is contained in Article 123, which limits the exercise of all rights and guarantees "by the exigencies of the safety of State and Nation."

Constitutional amendment is rendered rather difficult.

⁴ See on this vitally important difference between our system and the European Karl Loewenstein, "Legislative Control of Political Extremism in European Democracies," *Columbia Law Review*, vol. XXXVIII (1938), pp. 767 ff. For the sake of illustration one should refer to the considerable safeguards and restrictions in the interest of the state with which the freedom of opinion is surrounded already in the constitution proper (Art. 122, no. XV): pre-censorship of press, theater, cinema and radio is permissible "in order to guarantee the peace, order and safety of the public"; measures may be taken "to protect the public interest of the people and the security of the state." It may be mentioned that such limitations on the exercise of civil rights, objectionable as they may appear to an American lawyer, do not seem altogether inconsistent with democratic government since, e.g., the constitution of Eire, of Dec. 9, 1937 (passed by referendum on July 1, 1937, that is a few months before the Brazilian constitution was promulgated) contains the same limitations.

Brazil's new constitution belongs to the class of the "rigid" constitutions. But this is of minor importance since in past Latin-American experience anyway revolution is the proper substitute for constitutional amendment. If resorted to in the regular form an amendment of the constitution needs the cooperation of the president and both houses of parliament, and eventually, if the president is in conflict with the parliament on the issue, of the people by way of plebiscite (Art. 174). In the absence of a constituted legislative Vargas in due course arrogated to himself also the power of constitutional amendment by decree.⁵

The Socio-economic Program

A large part of the constitution is devoted to what may be called the declaration of social intentions, as has become the habit of constitution writing since the defunct Weimar constitution had added to the frame of government and the bill of rights an elaborate socio-economic program. Brazilian national traits are reflected in many provisions. In a Catholic country which still today does not admit divorce—the Reno of Brazil is Montevideo and procurement of Uruguayan nationality has become a favorite legal racket—the family as focus and core of social life deserves the special protection of the state. Other social objectives of state tutelage are childhood and youth, education and vocational training, cultural life, and insistence on physical training in line with the need for national defense.

Of the section on Economic Life only a few points can be mentioned here; others will be dealt with later. The social philosophy of the constitution is predicated, in accordance

⁵ See *infra*, pp. 90 ff.

with the Brazilian social structure, on the notions of private property and private initiative, but reserves to the state legitimate interference for stimulating and co-ordinating production and for eliminating intemperate competition (Art. 135). Work is declared a social duty (Art. 136), a rather platonic postulate if one knows Brazilian habits and climate. A progressive labor policy is promised (Art. 137), with recognition of collective labor contracts; annual holidays with pay; minimum wages; eight-hour day; restriction of night work and child labor; social security; medical assistance for workers and expectant mothers. The principle of unionization is accepted (Art. 138) but only for such unions (syndicates) as are legally recognized by the state. Labor justice is to be institutionalized, but strikes and lock-outs are prohibited (Art. 139) as "antisocial" and "incompatible with the superior interests of national production." In fairness it must be said that the regime, in line with Vargas's liberal and social antecedents, has fully lived up to its word and bestowed on a country scarcely emerged from economic feudalism one of the most advanced systems of social legislation in existence anywhere.⁶

Finally, elaborate provisions deal with the program for utilizing the national wealth, especially in the subsoil, for the general welfare, including state control of exploitation and installation with definite overtones of "nationalization" (Art. 145-153). But nationalization has a double meaning in South America. It implies no transfer of private property to state ownership; such schemes would be branded in Brazil as communistic; what it implies is elimination of foreign ownership of nationally important industries and exclusion of foreigners from certain lucrative professions and undertakings, a

⁶ See *infra*, pp. 341 ff.

deliberate effort to translate the slogan "Brazil for the Brazilians" into practice. In this field of action the regime came close to fulfilling its promises to the letter.⁷

It is of course a moot question whether the mechanism of this constitution would have worked if it had been set in operation by creating the legislative organs. The answer cannot be given with certainty but it is more than likely that a constitutional system with so topheavy a structure would soon have run aground. Even in its paper form it is presidentialism in its most extreme application, which is equal to authoritarian preponderance of the executive. And popular participation even in its diluted and enfeebled form could probably never have been given a fair trial. Perhaps the test may come if and when Vargas decides to "normalize" his emergency rule by submitting the constitution to the plebiscite.

⁷ See *infra*, pp. 205 ff.

CHAPTER III

FEDERAL-STATE RELATIONS

After this brief survey of the constitution as it is written it is proposed to see what has become of the constitution as applied in the *Estado Novo*. It seems proper to begin with the problem that has been habitually the most crucial and controversial of Brazilian political life, namely, the relations between the federal entity and the states.

The Interventor

The constitution declares in one of the important "Transitional Provisions" (Art. 176) that the governors of the states, if the president confirms their mandate within thirty days, shall remain in office until the state constitutions have been enacted. In the meantime the governors exercise also the legislative function in their respective states. (Art. 180). Where the mandate of an acting governor is not confirmed the president may appoint in his place an Interventor (Art. 176, sole paragraph). Of course, state constitutions have not been enacted since 1937.¹ Consequently Vargas grasped at once this most potent handle for extending his control over the entire national territory by appointing as Interventors men of his confidence. It should be noted at this juncture that although the Vargas dictatorship is backed by the in-

¹ Minister Campos declared to this writer that at an undetermined later date the federal government will decree uniform constitutions for all states.

visible might of the armed forces and the police it achieves its best results by utilizing the human element for the purposes of political domination. This ingredient of personal confidence without outward force distinguishes the "personalistic" version of authoritarian government in Brazil from most of its European parallels in which the technique of control is determined by suspicion and coercion.

After the seizure of power Vargas dismissed all governors of the states with the exception of the governor of Minas Geraes Benedito de Valladares; this unusually able and respected administrator had built for himself such a following that his replacement would have been difficult, besides the fact that the Mineiro was considered as loyal. For all other states Vargas appointed Interventors from the ranks of his friends and trustworthy partisans. He admits no influence upon his selection. These personal representatives are the keymen of the centralized administration of Brazil, very much like the regents in Germany after 1933 who became so instrumental in the conversion of the federal Reich into unitary Nazi Germany.² They are the agents of the president and the executors of his will in the states.

In contrast to the relative stability of the personnel of the cabinet,³ changes in the Interventorship are rather frequent. The office carries with it a powerful patronage through appointments and government contracts and is much sought for. Even ministers are inclined to exchange their portfolio against an Interventorship.⁴ Vargas has chosen as men of his

² See Karl Loewenstein, *Hitler's Germany*, pp. 73 ff.

³ See *infra*, p. 77.

⁴ Illustrations are the transfer of the Minister of Agriculture Fernando Costa to the position of Interventor of São Paulo in succession of Dr. Adhemar de Barros in May, 1941, and the appointment of Minister Agamemnon Magalhães to the Interventorship of Pernambuco.

confidence members of the liberal professions, and also businessmen and army officers.⁵

The position of the Interventor is admittedly a difficult one. He is the curbstone between the encroachments by the federal government on the residues of state rights and the understandable wish of the state to assert its rights. Though by virtue of his appointment he is the representative of the president and the national government his state expects that he identify himself with the local interests. If he is too subservient toward Rio, he loses the respect of his state; if he is too unpliant he may encounter the displeasure of Vargas and the ministerial bureaucracy in Rio. The position demands a good deal of tact and diplomacy on the part of the Interventor. The experience of the past years seems to indicate that the Interventor has not succeeded in stemming the unitarian tide which is rapidly converting once federal Brazil into a strictly centralized and unitary state.

The somewhat anomalous position of the Interventors was "legalized," in 1939, in a manner clearly reminiscent of the Reconstruction Act of 1935 in Nazi Germany, by a decree law entitled "on the administration of the states and the municipalities,"⁶ to be considered as the organic law for the

⁵ A complete list of all Interventors since 1937 stating age, occupation, previous experience, etc. would be revealing. Campos promised it to this writer but failed to deliver. Vargas's son-in-law, the husband of his favorite daughter Alzira, Elmenido Amaral Peixoto, a young naval officer, nicknamed by the "Cariocans" (the citizens of Rio) "Count Ciano," was made Interventor of the state of Rio de Janeiro, whose capital Nictheroy is located on the shore of the bay opposite to Rio; Vargas obviously wanted a trustworthy man in a neighboring capital. This notwithstanding the ubiquitous provision that appointments of relatives are forbidden (see, e.g., Art. 44 of D.L. no. 1,202 of Apr. 8, 1939 (*DO* of Apr. 10, 1939)). One Dr. Müller (-Straubing), brother of the Chief of Police of Rio de Janeiro Felinto Müller, is Interventor of Matto Grosso. Both received much publicity in the Nazi-controlled German press organs of Brazil.

⁶ D.L. no. 1,202 of Apr. 8, 1939 (*DO* of Apr. 10, 1939).

relations between the national government and the states. Without being passed as a formal constitutional amendment the act goes beyond the constitution in not a few of its provisions. Henceforward the organs of the state are the Interventor (or governor) and—an innovation of considerable originality—the Administrative Department in each state (*Departamento Administrativo*). The Interventor, who must be a born Brazilian at least twenty-five years of age, is appointed by the president (Art. 3). He is the chief executive of his state. In his keeping (Art. 6) are: organization and administration of state and municipalities; the police—subject to the approval of the president who thus can prevent the states from building up their local police into competition with the armed forces of the national government;⁷ appointment and dismissal of the state officials. He is strictly responsible for the efficient administration of his state (Art. 8). His assistant and legal substitute is the secretary general (Art. 11), an important office since the Interventor himself frequently is not versed in the technique of administrative and legal procedures.

The Interventor is assisted by departmental heads, called secretaries, with a full staff, but only for a limited number of fields such as Interior and Justice, Education, Labor. The collaborators are appointed by him but do not invariably resign when he leaves office.

The Administrative Department

The institution of the Administrative Department (Articles 2 (b); 13–22) is the most interesting innovation in an otherwise strictly authoritarian system of state government.

⁷ See Art. 38; no state must use uniforms similar to those of the federal army.

Space forbids a treatment of this subject in detail. It deserves a full-sized monograph by an observant foreigner. The Administrative Department exists uniformly in all states. It is composed of four to ten members.⁸ The smaller states (in terms of population) have four members, the middle-sized ones five, while Minas Geraes, São Paulo, and Rio Grande do Sul have ten each. The president, like the Interventor himself, is appointed by Vargas (Art. 13). The Administrative Department functions as the legislative body of the state and at the same time as the supervisory agency for the Interventor and the municipalities. It reports directly to the Minister of Justice and is in no way subordinate to or dependent on the office of the Interventor. Its main function is to study and to approve all drafts of state laws and ordinances (decrees) to be issued by the Interventor; these are valid only with the *fiat* of the president of the Administrative Department. It has the control—*fiscalização*, one of the most ubiquitous words in a bureaucratized country like Brazil—of all acts of the Interventor, including the budget, revenues and expenditures, loans and credits, and general administration. It reports on appeals against the Interventor which are submitted, through the Minister of Justice, to the president of the republic himself (Art. 17(d); 19–22). By a two-thirds majority of votes the Administrative Department may suspend a decree or an act of the Interventor pending the presidential decision (Art. 22).

The ingenious system successfully acts as check and control of the Interventor while for the individual citizen it fulfills a welcome function as the guarantee of the rule of law against arbitrariness and infringement of legal rights by

⁸ See *Portaria* (best translated by “executive ordinance”) of the Minister of Justice no. 2,083 of June 12, 1939, in *Regimento Interno de Departamento Administrativo de São Paulo*, São Paulo, 1940, pp. 53 ff.

the political official of the state. Although the president of the Administrative Department of São Paulo explained to this writer that the success of the arrangements is dependent on friendly co-operation between the Interventor and him, it is a matter of record that the president of the Administrative Department is in practice the more powerful of the two officials; without being legally the superior of the Interventor *his* is the ultimate decision unless the arbitrament of the president of the republic is invoked, a procedure which for obvious reasons the Interventor if possible tries to avoid. Consequently the press gives as much weight to the Administrative Department as to the activities of the Interventor, though the person of the latter may be more in the limelight of local publicity. How strictly the control can be enforced and how much co-operation is offered on both sides for straightening out differences of opinion depends of course largely on the personality of the two officials. In São Paulo the president of the Administrative Department, Gofredo T. de Silva Telles, holds more power than the (then) Interventor Doctor Adhemar de Barros, but in Minas Geraes Governor Valladares seems to have the edge on the Administrative Department, perhaps because in his state the traditions of administrative independence from the central government are stronger than elsewhere. To this must be added that the Administrative Department is a team of hard-hitting, hard-working, thoroughly efficient professional bureaucrats—mostly young lawyers, but also technicians such as accountants, civil engineers, agricultural experts, statisticians—while in the Interventor's office the efficiency of the staff is vitiated by ineradicable patronage.

Perhaps the situation may be summarized best as follows: by a sort of cogwheel arrangement the office of the Interventor, the Administrative Department, and the Ministry of Jus-

tice co-operate in the administration of the states, under the over-all control of the president of the republic.⁹ An arrangement of "recourses" exists by which business is expedited and deadlocks are solved. In this hierarchical system the Administrative Department controls the Interventor and the municipalities. Interventor and Administrative Department are subject to the ultimate decision of the federal government assigned to the person of the Minister of Justice and ultimately the president of the republic himself. Seen from a different angle the Interventor acts as the political coordinator of the state, under instructions from Vargas himself, while the Administrative Department, run by bureaucrats, is the legislative body of the state. In terms of German political arrangements which are more familiar in this coun-

⁹ The operation of the system may be explained by a practical illustration. To the jurisdiction of the states, subject to the approval of the President of the Republic, belongs the organization of the judiciary (Art. 32 no. XIX of the D.L. no. 1,202 of Apr. 8, 1939). At the request of the Interventor of São Paulo, Dr. Adhemar de Barros, a project for judicial reorganization in that state was prepared by a ranking member of the Supreme Federal Tribunal, a Paulista, who had just retired. The bill, drafted in consultation with the São Paulo Tribunal of Appeals, was sent to the Administrative Department. With the latter's modifications it was forwarded to the Ministry of Justice in Rio. Modified here again, it was finally signed by the President of the Republic (Decree of Apr. 16, 1940). It returned to the Administrative Department of São Paulo and was implemented there by executory provisions, and forwarded to the secretariat of the Interventor. From here it was transmitted to the Minister (Secretary) of Justice of the state of São Paulo, who countersigned the formal issuance by the Interventor. Finally it was published in the *DO* of São Paulo. Owing to the various checks and counterchecks this process may seem slow and cumbrous; but it has the definite advantage of allowing as many experts as possible to contribute to the perfection of the bill. Moreover, the central authorities insist on as much uniformity of such acts in the various states as seems consistent with regional differences. They utilize experience of other states of which the individual state probably would not be fully informed. The local experience of the Administrative Department and the state authorities in charge of the administration of justice go also into it. The entire process, signifying government by bureaucracy at its best, correlates different agencies which thus are able to benefit from all sources of technical advice.

try, it is a combination of the functions of the Reich regents under Hitler and the operation of what was called *Reichsaufsicht* before Hitler. The system bears also some similarity to our city manager arrangement though on a much larger scale, and its results are equally beneficial. It strikes the foreign observer as one of the most original and technically best-organized aspects of the *Estado Novo*, as genuine and successful an approximation as anywhere to the Administrative State which in many parts of the world slowly takes shape on the ruins of the Legislative State. In all countries, dictatorships not excepted, the actual work of administration is done by the bureaucracy and not by the politicians, of whom any dictatorship has as many as the democratic state. The real winner is the citizen who is guaranteed the fullest possible measure of honest and efficient administration available and a reasonable degree of protection of the rule of law. That Brazil has succeeded in installing and operating this system augurs well for its future and outweighs many of the more reprehensible aspects of the authoritarian regime. As a nonpolitical, purely administrative agency the Administrative Department is certainly worth its salt. But beyond that it has become one of the iron clamps by which the federal government holds together the national state.

This writer was fortunate enough to study the system in the most important state of São Paulo. The president of the Administrative Department, Goffredo T. de Silva Telles—incidentally, the only official with admitted Fascist sympathies whom this writer met in his many contacts with ranking Brazilian officials—formerly a businessman and coming from one of the leading families of the state, is now an accomplished administrator who proudly pointed out that he with his six associates does the work of the former Chamber and

Senate of the state of São Paulo and of all of the 271 town councils of the municipalities within the state into the bargain. He claimed for the new organizational scheme that it is democratic because he obtains advice on projects of law and administrative measures of general importance from all quarters affected without being hampered by politics in state and municipal council chambers. All projects of state decree laws originate in the office of the Interventor, unless they are drafted as it happens sometimes at the latter's request, by his office. Modifications are frequent. Projects coming from the Interventor's office which seem to be motivated by private interests or by undesirable pressure groups are disallowed; only in rare cases is the decision of the Minister of Justice invoked. The Administrative Department acts also on complaints from private persons against measures of the Interventor. All projects of law on which agreement is reached are published in the (state) *Diario Oficial*; criticism and comment by the public within a certain period is invited. All authorities may do so in writing or by personal calls; prefects frequently come in person or write or wire. Private persons also, if their signature is legalized by a notary public, may submit their opinion. All suggestions are carefully considered. It cannot be denied that some sort of primitive democratic co-operation is made possible and welcomed by the office. Internally the office management is businesslike and efficient; the entire procedure is streamlined, without waste of time and effort.¹⁰ Office records are among the best this writer has seen anywhere. The President of the Administrative Department pointed out that he maintains close contact with the President of the Republic; frequently he

¹⁰ See the "Standing Orders" of the Administrative Department of São Paulo in *Regimento Interno* of July 4, 1939, a sort of bureau-code of eighty-six well-considered articles, published by the *Empresa Grafica da Revista dos Tribunais*, São Paulo, 1939, pp. 7 ff.

flies to Rio to talk things over informally with Campos while the Interventor is summoned by the President of the Republic.

The Municipalities

The same decree law of 1939 regulated in a similar authoritarian manner the administration of the municipalities (a municipality in Brazil corresponds more to a county than to a township in this country). The prefect (*prefeito*) is in his district what the Interventor is in his state, with the difference however, that he combines the function of the mayor and the county commissioner. He must be twenty-one years of age and he is appointed by the Interventor. In his functions within his district he is the exact replica of the Interventor though on a more limited scale.¹¹ The responsibility of the prefects is tremendous because it is on their shoulders that the task of infusing the new national spirit into the backward rural districts rests. The selection of the prefects appears to be particularly fortunate. Preferred are not learned technicians, but men experienced in personal contacts whom we would call "good mixers," with an open mind for the needs of their fellow citizens and not professionally entangled in red tape. It appears that the medical profession offers the best crop of prefects. Whenever desirable and possible the prefect is summoned to the state capital for receiving instructions from the Interventor or the president of the Administrative Department. No traces of

¹¹ This writer had the opportunity of studying the details of administration in two municipalities in Minas Geraes and in São Paulo resp. In one case the prefect was a young lawyer, in the other a middle-aged civil engineer. Both men were energetic, well-informed and independent, and respected by their communities. The administration was technically up to the standards of most Western countries.

self-government are left; people no longer speak and do not even seem to care about local politics, which have been completely superseded by administrative paternalism. They appear to feel safe under the tutelage of their prefects. It may well be argued that, at this time, on the municipal level a paternalistic regime is preferable to disruptive party politics. Whether such management from above will, in the long run, prove detrimental to the ultimate development of self-responsibility as a prerequisite for the reasonable exercise of civic functions, is another problem.

The Administrative Department is also charged with the control—*fiscalização*—of the municipalities which function in a manner similar to that of the state administration proper. It directs the municipalities technically, financially, economically, and juridically. All business of the municipalities is cleared through the channels of the Administrative Department. It supervises the agenda of local administration by the prefect, approves his budget, and sees to it that the communes live strictly by their income (the municipalities have retained some sources of local taxes and obtain credits from the state).

A separate Department of Municipalities exists in the state of São Paulo. Founded as early as 1931, it was subjected to considerable changes under the *Estado Novo*.¹² Although it is nominally under the direct control of the Interventor who appoints the director general, it appears that it is ultimately controlled likewise by the Administrative Department. On the whole the arrangement in São Paulo indicates more a technical decentralization than a real shift in political power toward greater responsibility of the Interventor. The only municipality which is exempted—at least formally—from

¹² On the situation in São Paulo see D.L. (of São Paulo) no. 10,881 of Jan. 5, 1940.

the control of the Department of Municipalities and reports directly to the Interventor is that of São Paulo City. This somewhat duplicates the situation existing, on the next higher level, between the president of the republic and the mayor of Rio de Janeiro in the Federal District. Both the latter and the mayor of the city of São Paulo are politically powerful personalities; conflicts between the Interventor of São Paulo state and the mayor of São Paulo City were not infrequent in the past. The Department of Municipalities in São Paulo consisted (in 1940) of some one hundred and fifty full-time officials with a total payroll of close to one million dollars per year.

What Has Become of the "United States" of Brazil?

On the basis of the preceding discussion one may better understand the true situation of federalism versus unitarism under the Vargas regime. One has only to compare the provisions of the constitution of 1937 with those of the law "on the states and municipalities" of 1939 in order to realize how much distance has been covered since the adoption of federalism in the constitution of 1891, toward the goal of converting Brazil into a unitary state. The states' rights have become completely obliterated by the steamroller of the centralizing dictatorship. Practically no field of legislative action is left in which the state can act without approval of the president of the republic. It is true that the law of 1939 enumerates (Art. 32), in no less than twenty-three clauses, matters which belong to the constitutionally reserved domain of the states; among these are—only some of the essential ones are mentioned here: public security; communications; natural resources; public relief; secondary education; public health; police forces; taxes and levies; municipal or-

ganization; judicial organization; agriculture. But it is explicitly stated that all acts undertaken without the approval of the president of the republic acting through the intermediary of the federal government are null and void; such a declaration of nullity may be decreed at any time, *ex officio* or on complaint of "any interested person," by federal decree (Art. 32, single paragraph). A scarcely less-extended list of fourteen clauses explicitly forbids state interference with certain functions assigned to the federal government (Art. 33). The taxing rights, the lifeblood of independent statehood, is drained out of the states to such an extent that they consist in the main only of property taxes, a 10 per cent maximum *ad valorem* exportation tax for home products, and license taxes for certain industries and professions (Art. 23). The gist of all these incisive restrictions is to make over the states into territorial subdivisions of the national government, with a limited discretion in executing the policies of the latter. It is no longer possible to speak of the United "States" of Brazil. The states under the *Estado Novo* have been deprived not only of sovereignty and statehood but, when all is told, of local autonomy into the bargain. They have become at best decentralized areas of an otherwise strictly unitary state. Sanctioning of state legislation has shifted to Rio as has the municipal ordinance power to the capitals of the states. Streamlined government in dictatorship is incompatible with federalism and decentralization. Here the experience of Germany repeats itself in Brazil.

The changed situation was drummed properly into the minds of the people of the states. It is forbidden to the states to use denominations and uniforms similar to those of the army (Art. 38). All political symbols of the states are outlawed; the national flag, the anthem, escutcheon, and heraldic signs of national symbolism only are permissible. On na-

tional holidays all schools must show the national flag (Art. 53). A grand auto-da-fé of all state flags and emblems was ordered and held all over the country, to manifest that independent statehood had ended. One can easily imagine the enthusiasm of the proud Mineiros, Gauchos, and Paulistas who attended the funeral of their independence. Once more the regime has returned to the tradition of the Empire. But the Brazilians took it in good grace and disagreement if existing was inarticulate. Perhaps they felt that local symbolism was outmoded, that, under Vargas leadership, a new national era had begun in which both sectionalism and parliamentarism were submerged by the new wave of Brazilian *nacionalidade*.

The Future: Centralism or Federalism?

Granted that the Vargas regime had good reasons for breaking down interstate walls and for driving at full speed toward the unitary state as the prerequisite of a common nationhood, it may well be asked whether, in the long run, rigid centralization will be salutary for so vast a land—Brazil is almost a continent in itself—and with such great cultural and economic differences of its individual parts. It should be remembered that at present only the states in the East and the South with their immediate hinterland—Rio de Janeiro, São Paulo, Minas Geraes, and those farther down to the Rio de la Plata—have reached the level of modern civilization; the remainder is un- or underdeveloped and scarcely emerging from colonial neglect. Other sections of a higher cultural and economic standard such as San Salvador (Bahía) or Recife and Maranhão farther to the north are like islands in an almost uncharted sea of natural primitiveness. All the leaders of the *Estado Novo* are staunchly unitarian and con-

sider the splitting up of the country by the federal experiment of 1891 as an unfortunate heritage of the past which the regime has set out to overcome. The Minister of Foreign Relations, Oswaldo Aranha, clarified the situation to this writer by explaining that Brazil heretofore had been like an archipelago consisting of widely scattered and disjointed cultural and political islands between which communications were precariously maintained; the regime has the desire to bind them together into a continent with a common national feeling and a common economic unity, a continent on which will be created, for the first time in history, a tropical civilization. An ambitious program and one which would benefit the entire Western Hemisphere. But, on the basis of our own national experience, will not decentralization and local autonomy, once the consciousness of common nationhood has permeated the people, serve this very purpose better than the present stiff control from and by Rio? Yet there are many who consider Rio's overgrown bureaucracy and its envied pleasure grounds as the cancer of the country which feeds on the sweat and toil of the rest. To a foreign observer it may appear that the federalism of the republican period, antitraditional and artificial as it was at first, in the long run might yield better results than bureaucratic centralization.¹³ The reforming drive started in Rio diminishes and peters out in the faraway sections which it should reach. It is a common saying that the laws enacted in Rio are made anyway only for the asphalt of the Avenida Rio Branco, Rio's Fifth Avenue. Our Middle West and Northwest could not have been developed successfully from Washington, D.C., alone.

This seems for the time being a rather academic question;

¹³ Awareness of cultural differentiation pleads the thoughtful address by Afonso Arinos de Melo Franco, "Regionalismo e nacionalismo," *Auditorio da Gazeta*, Rio de Janeiro, 1939.

yet the framer of the constitution was not oblivious to the underlying problems. The territorial circumscriptions of present-day Brazil are still coincident with the boundaries of the colonial captaincies; only a few of them have an economic or cultural individuality. The intrinsic importance of most of them, measured in comparison with the populous and economically advanced states in the East and the South, is of so little weight that the maintenance of a full-fledged state—or even provincial organization—is no longer justified. To give only a few illustrations: The state of Amazonas, with a territory of 825,000 square kilometers, has a population of 450,000 only; of the twenty states, seven have a population of less than one million each (estimated according to the census of 1940); each of four other states has more inhabitants than the seven taken together. São Paulo paid in 1938 more federal excise taxes than all other states taken together (with the exception of the Federal District).¹⁴

The constitution (Art. 5) envisages that the states may incorporate among themselves, divide, or dismember their territories for annexation to another state, or form new states, after obtaining the consent of their respective Legislative Assemblies in two yearly consecutive sessions, and with the approval of the national parliament; the question may be submitted hereafter by the president to a plebiscite of the populations concerned. Moreover, the Union may create, for national defense purposes, new federal territories out of parts of dismembered states (Art. 6). These provisions, closely patterned on corresponding sections of the Weimar constitution under which they found only a very limited application, may prove unworkable for a regional regroupment of the territorial subdivisions of Brazil. If it can be done at all it

¹⁴ See Roberto C. Simonsen, *Brazil's Industrial Evolution*, São Paulo, 1939, p. 64.

can be accomplished only by cutting the Gordian knot from above; otherwise the vested local and sectional interests—some of the states are practically owned by big landowners whose estates are larger than many a European principality—will raise unsurmountable obstacles to such a scheme. It may be remembered that not even the Nazis succeeded in breaking up Germany along rational lines because of local resistance and local patronage.¹⁵ Minister Campos informed this writer that such a plan would be undertaken at the proper time, perhaps together with bestowing uniform constitutions to all “states.” But if ever the plan materializes it is tied up with the thorny problem of financing Brazil’s economic development, an undertaking for which Brazilian capital is wholly insufficient, let alone the problem of educating the existing national talent. Such a gigantic technical task will take decades and perhaps generations. It needs foreign capital, and foreign capital is treading warily in South America, with eyes on the trend toward “nationalization.”¹⁶ It is a vicious circle, of which Brazil has not a few.

¹⁵ See Karl Loewenstein, *op. cit.*, p. 79; P. A. Martin, “Federalism in Brazil,” p. 382.

¹⁶ See *infra*, pp. 205 ff.

CHAPTER IV

VARGAS AND THE FEDERAL GOVERNMENT

The President

How, then, has Brazil been governed since the inception of the *Estado Novo*? The answer is simple: by decree laws of the president of the republic, Getulio Vargas. This is explicitly stated in Article 180 of the constitution. Every decree law which was subsequently issued faithfully refers to this article. Incidentally, the constitution is by no means so much of a dead letter that it is never remembered or spoken of. On the contrary, the legislation by decree whenever it applies to a subject or a power mentioned in the document never fails to remind the reader that dictatorial decrees are meant to be the very execution of the constitution, the only proviso being therein that the constitutional limitations on the presidential competence are, at least for the time being, considered as nonexistent. Vargas's enormous powers are aptly described by the instrument of government (Art. 73): "The president of the republic, the supreme authority of the state, co-ordinates the activities of the representative organs of higher grade, directs internal and external policy, and promotes, or gives the directives, in the national interest, to legislative policy, and superintends the administration of the country." In view of this sweeping assignment it seems superfluous to repeat here all the prerogatives allocated to him by the constitution (Articles 74 and 75). A number of them are practically irrelevant since they refer to co-opera-

tion with the legislative bodies which do not exist. Taken together, the powers of the president of the republic amount to absolute control of all policies of the state internally and externally. They include declaration of war and conclusion of peace, the command of the armed forces, the appointment of all officials; he may assume the government of the states through Interventors and decree the state of emergency which is anyway permanently anchored in the constitution. It is sufficient to state that it is as complete a fusion of executive and legislative powers as in any other dictatorial state.

For technical purposes the president established, as auxiliary organs, a military and a civil staff (*Gabinete Militar and Gabinete Civil*).¹ The military cabinet assists in the control over national security; electric power; police, and radio-telephonic communications; the civil cabinet prepares the work of civilian administration.

The Cabinet

The position of the ministers is dealt with rather briefly by the constitution (Articles 88, 89). Nominated by the president (Art. 75 (c)) they are described as his "assistants," as his "confidential agents." Not responsible to the parliament they can be indicted before the Federal Tribunal only for common law crimes. At present there are ten ministries, namely Interior and Justice; Foreign Relations; Army; Navy; Agriculture; Education and Health; Labor; Communications and Public Works; Finance; Air.² It should be noted that of the liberal members of his cabinet at the be-

¹ D.L. no. 920 of Dec. 1, 1938 (*DO* of Dec. 17, 1938). See also *Reglamento* in Decree no. 3,371 of Dec. 1, 1938 (*Coll.*, 1938, vol. IV, p. 464).

² This Ministry of Aeronautics was created only in Jan., 1941, and assigned to a civilian, against pressure of the armed forces which wanted to keep the office under military control.

ginning of the "constitutional" period in 1934 only a few—Gustavo Capanema, today Minister of Education; Arturo de Souza Costa, the brilliant Minister of Finance; and Agamemnon Magalhães, Minister of Labor before his transfer to an Interventorship—remain in office. Góes Monteiro, at that time Minister of War, is today chief of staff of the army. All the others are newcomers. The team which came into office with the coup of 1937 showed a remarkable stability; Vargas does not believe in "changing the guard" *à la* Mussolini. Replacements of the cabinet personnel which have occurred were due only to the usual wear and tear of a governing group. In May, 1941, the Minister of Agriculture, Fernando Costa, was appointed Interventor of the state of São Paulo, in succession of Doctor Adhemar de Barros; after an extended interim Professor Apolonio Sales, an outstanding authority in agronomy, took over the ministry in February, 1942. Another change was that in the Ministry of Labor which was transferred, in December, 1941, from Waldemar Falcão to Doctor A. Marcondes Filho, one of the leading lawyers of the state of São Paulo. The turn in the official foreign policy sealed by Brazil's adhesion to the United Nations in the Conference of Rio de Janeiro in January, 1942, occasioned no visible changes in the composition of the cabinet, although it was reported at that time that the decision had been taken by Vargas over the protests and warnings of the leading men in the armed forces. However, in July 1942, Francisco Campos, on sick leave for many months, was replaced in the Ministry of Justice by A. Marcondes Filho.

None of Vargas's collaborators is out for stealing the show; but by nature of office and weight of personality some are more in the limelight than others. Personalities like Oswaldo Aranha and Francisco Campos would be to the credit of any government. Some of them are mediocre. As a rule

they are taken from the legal profession as is the habit in Latin countries; but this rule is not observed invariably. It has been said that Vargas emancipated himself from the dominance of the army and navy only in 1941; many vacillations in Brazil's foreign policy during the last years were ascribed to a tug-of-war behind the scenes between Vargas and the military men of his regime or between Aranha's pro-American and the army's pro-Axis sympathies. Today, there exists no doubt of Vargas's absolute ascendancy. He is not a "front" for others who pull the wires.

Plenary cabinet meetings are rare, as a rule not oftener than once a month, if that often. They are informal and no minutes are kept. Vargas sees his keymen individually and regularly. In cabinet meetings and in these personal interviews plain speaking is desired and readily resorted to by his collaborators. Vargas's ministers are no yes men.³

Vargas himself has gone through the parliamentary and ministerial school and knows the administrative technique well. A trained lawyer, he had no difficulty in retaining the habits of a hard-working bureaucrat, devoted to desk work as was Mussolini in his early and better years. He is too good an administrator to allow only puppets in office. He is well versed in the art of delegating power. The legend that he reads every document before signing it is unsubstantiated and, in a modern state, not substantiable.⁴ The Minister of Justice passes, at Vargas's request, on all documents involving legal questions, including those coming from other ministries. The president is less a talker than a listener. His principal *forte* is described by many who are in the know as that of waiting and timing. But he knows the secret of deciding when decision is needed. In addition to being a

³ This information was obtained from several high ranking officials and other reliable sources.

⁴ John Gunther, *Inside Latin America*, p. 358, has become a victim of this piece of propaganda. Campos told this writer the opposite.

statesman and an able administrator he is also a politician of no mean caliber, and the term "politician" is used here by no means as a derogatory epithet.

The jurisdictions of the ministries are well demarcated and there seems to be no more overlapping and "passing the buck" than in democratic countries. The hierarchy of administration is clearly defined and evidently well observed. The sound bureaucratic tradition of Brazil allows for a reasonably well-run though somewhat old-fashioned performance. Attempts at rationalization of office routine are under way.⁵

The Core of Dictatorial Government: Fusion of Legislative and Executive Powers

Perhaps the best technical explanation of dictatorial government of our times is to visualize it essentially as the fusion of legislative and executive powers. Popular participation in government through legislatures or through control over the executive is deemed inopportune and, consequently, all institutions for such participation are destroyed. In line with these principles the constitution declared all deliberative assemblies (of the Union, the states and the municipalities) as forthwith dissolved (Art. 178). No such bodies were reconstituted or newly created hereafter. The absence of all institutional devices based on free and uninfluenced elections, characteristic of all modern dictatorships, is also the attribute of the *Estado Novo*. The slogan prevails that "all is done for the people, but nothing through the people." This does not mean—and proper emphasis should be placed on this aspect—that in Brazil the Fuehrer princi-

⁵ D.L. no. 2,206 of May 20, 1940 (*Coll.*, 1940, vol. III, p. 196) created a centralized agency for the procurement of office supply for all ministries and central agencies.

ple is considered as the corollary of authoritarian control. Nothing of this kind has happened. Numerous governmental bodies—except on the highest level of the cabinet—still operate under the majority system and votes are taken as a method of internal management. Nor has the authoritarian ban on elective methods spread to associations or bodies not concerned with the sphere of politics; the private law remains wholly unaffected; corporations elect their officers and dismiss them by vote and they use the customary voting procedures for deciding their general policies. So do all associations and similarly organized multimembered groups. Authoritarian ideas have not affected Brazilian social life. While the bureaucracy is organized as a hierarchy, the Fuehrer principle is much ridiculed in Brazil and the goosestep as political symbol is as unknown as in our country.

But in the field of governmental action the functions of legislation and the supervision of its execution are concentrated in the same hands. The policy-forming power, through its agents, takes care of the execution of such policies by way of legislation (rule making) and administration (application of these rules to the concrete situations). If one adds to this system, universal in dictatorships, the trend toward centralization one has in a nutshell the Brazilian version of streamlined government.

This does not imply that suggestions for policies and legislation as the implementation of such policies emanate exclusively from the inner circle of the government or from Vargas himself. They come from many sources, from officials, from interested people and from pressure groups, to some limited extent also from public demands; but they are filtered through the ministries, in particular the Ministry of Justice, and the work done, by Campos and his staff, in an apparently nonchalant yet rather effective man-

ner, commands full praise of anyone who is able to measure the task of adjusting a vast country barely emerging from feudal economy to the exigencies of a modern capitalistic and even collectivistically tainted society.

Executive Boards

Special attention—and indeed a monographic discussion—is merited by another significant trait of the Brazilian regime; that is, the establishment and functioning of the numerous councils, boards, committees, and commissions as auxiliaries of and affiliated with the central administration. Nominally under the direction of the president of the republic, but practically, under that of the minister under whose jurisdiction they fall, these bodies serve as centralizing and co-ordinating agencies of the federal government for particular fields of action. Some of them were built from scratch, others are continuations of previously existing bodies. Outwardly they appear as executive agencies of state-controlled collectivism; some of them certainly are so intended. Some of them are equipped with wide regulatory and normative powers, not very dissimilar from our regulatory commissions such as the Interstate Commerce Commission without, however, enjoying their administrative and judicial autonomy; they lay down general policies and elaborate the rules for executing them. Others are of a merely preparatory or investigating or consultative nature without normative functions. They interfere with the natural flow of business much less than, for example, the Italian corporative agencies. As yet they do not pretend to become the vehicles of future nationalization of certain industries and branches of production.⁶

⁶ This appraisal is based on information received from leading industrialists in São Paulo and Rio de Janeiro.

Composition of these boards differs widely. Sometimes they embrace men prominently interested in that particular activity, with an admixture of high officials of the ministry to whom they belong organizationally. Membership besides being a mark of professional distinction, carries with it a good deal of patronage and business benefits of a tangible nature. Complaints are heard to the effect that some of them are only legally organized bodies of capitalistic interests amounting to an official racket.⁷ In other cases the people who have a stake in the regulatory aim of the board are explicitly excluded from membership and the bureaucracy runs them with the aid of outsiders.⁸ The most important of these councils is the Commission of Defense of National Economy, created after the outbreak of the current war, which controls imports and exports, and in general stimulates production and industry.⁹ On March 7, 1942, the National Defense Board was created. This, headed by Vargas himself and composed of the military and civilian leaders among the ministers, functions as the supreme co-ordinating agency for the war emergency. Only a few others of the numerous tribe of such councils may be mentioned here at random.¹⁰

⁷ As an illustration was given to this writer the Council of Lumber (Pine Wood) (*Conselho de Pinho*), organized Mar. 21, 1941, allegedly serving as a screen for a few big lumber exporters who corner the market and exclude independent firms. Such assertions are of course difficult to prove or disprove.

⁸ E.g., from the National Institute of Salt (D.L. no. 2,400 of June 10, 1940 [*Coll.*, 1940, vol. III, p. 322]), which controls production and distribution of salt, manufacturers and distributors are excluded.

⁹ D.L. no. 1,641 of Sept. 29, 1939 [*Coll.*, 1939, vol. VI, p. 463].

¹⁰ National Council of Petroleum (D.L. no. 538 of July 7, 1939 [*DO* of July 8, 1939]); National Council of Railroads (D.L. no. 3,163 of Mar. 31, 1941 [*DO* of Apr. 3, 1941]); National Council of Mines and Metallurgy (D.L. no. 2,666 of Oct. 3, 1940 [*Coll.*, 1940, vol. VI, p. 17]); National Council of Immigration and Colonization (Decree no. 3,010 of Aug. 20, 1938 [*DO* of Aug. 22, 1938]); National Youth Council (D.L.

Technique of Legislation

Imposing, nay, formidable and terrific is the output of legislation since the inception of the *Estado Novo*, surpassing in scope and volume even the hectic activity of the printing press in dictatorial Italy and Germany. Enactments flow from the president as decree laws over the signature of one or more ministers, and from the individual ministries as decrees, instructions, and regulations; they are duplicated and multiplied by similarly numerous and voluminous acts of the states coming from the Interventors and the Administrative Departments. It is an endless, ever-increasing stream which drowns the practitioner. In order to integrate the preparation and drafting of decree laws the president called into being a permanent commission "for the revision of the projects of law,"¹¹ which is a sort of official legislative clearing house and legal reference bureau; it revises from the viewpoint of constitutionality and legislative technique "the projects submitted to it by the government"; its members are high-ranking law officers of the various ministries, under the chairmanship of the Minister of Justice.

Nonetheless the technical quality of legislation is much complained of. The drafting is superficial and often contradictory; amendments, corrections and modifications, repeals and obscure references cram the statute books. The

no. 2,072 of Mar. 8, 1940 [*Coll.*, 1940, vol. I, p. 271]); National Commission of Sports (D.L. no. 1,051 of Jan. 19, 1939 [*DO* of Jan. 25, 1939]); National Council of Water and Energy (D.L. no. 1,285 of May 18, 1939 [*DO* of May 29, 1939]); National Council of Labor (reorganized by D.L. no. 1,346 of June 15, 1939 [*DO* of June 17, 1939]); National Council of Sports (D.L. no. 3,199 of Apr. 14, 1941 [*DO* of Apr. 16, 1941]); National Commission for Textbooks (D.L. no. 1,006 of Dec. 31, 1938 [*Coll.*, 1938, vol. IV, p. 350]); National Department for Public Service (D.L. no. 579 of July 30, 1938 [*Coll.*, 1938, vol. IV, p. 63]).

¹¹ D.L. no. 1,019 of Dec. 31, 1938 (*DO* of Jan. 3, 1939).

inevitable clause at the end of a new decree law to the effect "that prior provisions if in conflict with the present regulation are rescinded" makes the legal profession no bed of roses. The *Diario Oficial* of each year runs up to well over thirty thousand closely and very badly printed pages. Lawyers told this writer that in cases which happen to be outside their daily routine they telephone for information to known specialists or to the ministry concerned, and more often than not they fail to obtain precise information as to what the law really is. The lack of security with reference to positive law is enhanced by the practice of the government—very much adversely commented on by many—of what may be called "trial balloon legislation." A decree is published which is tentative in its objective or technically imperfect; it is intended to evoke public reaction on its general purposes, particularly when the government has no determined policy on the subject. If the reaction is favorable it stands as published; if unfavorable it is withdrawn. This device of "fact-finding" by legislation" is detrimental to legal security because the operation is frequently made retroactive. Another even more incisive criticism of rule making by an uncontrollable bureaucracy—instead of legislation by representatives under public control—is the suspicion, on which a foreigner cannot possibly check, that a bureaucracy unbridled in its zeal to reform may be easily misused by backstairs pressure groups and undercover lobbies to pass a decree which, under the cloak of the general welfare, benefits only the interests promoting it. Some such bad cases will be discussed later on.¹²

On the other hand, there is some truth in the claim of the official spokesmen of the regime that the system of legislation though strictly authoritarian in form is more demo-

¹² See *infra*, pp. 320 ff.

cratic in substance than may appear from the outside. It is true that the legislation by ministerial decree escapes the scrutiny of elected legislative assemblies, whatever such a scrutiny may be worth in practice. Nonetheless many pieces of nonpolitical legislation are not dictated from above. Without having worked out generally observed procedures the government frequently sees to it that professional experts outside the ministries and those groups in general affected by a new decree law are consulted. In such cases the draft of the decree law prior to its promulgation is communicated to individuals and certain groups whose comment is solicited and well received. For example, the projects for the reform of the civil law, one of the most important legislative tasks any government may undertake, were submitted to the courts, bar associations, law schools, and prominent lawyers, and much of their advice has gone into the final project of the Ministry of Justice. Without fully supporting the claim that the legislative process is thus made genuinely democratic, one may well admit that for technical and nonpolitical bills this system may be preferable to exposing well-considered projects of the government to parliamentary committees which are animated by not altogether unselfish motives or by outright party bias.

The Reform of the Legal Codes

The Vargas regime has to its credit the almost complete reform and unification of Brazilian civil and criminal law. A discussion of this subject is beyond the pale of this study. Only a few significant facts may be mentioned here.

The draft of the criminal code was elaborated by Professor Alcantara Machado of the University of São Paulo Law School—which in prestige in Brazil corresponds to the

Harvard Law School—former federal senator and a leader of the constitutional opposition in the parliament of 1934. The project was revised by a committee of prominent judges and practicing lawyers in Rio de Janeiro under the supervision of Campos. It is liberal in spirit—the modern Italian penological school has exercised great influence over all similar codifications in South America—and is as remote from the harsh “virility” customary in dictatorial regimes as from the amateurish experimentation of the Nazis with the artificial concepts of folkish honor and distorted anthropology. It was praised by the International Congress on Criminology in Santiago (1941) as one of the most progressive and humanitarian in existence.¹³ However, it must be clearly understood that the sanctions for violation of individual guarantees are, under existing conditions, merely programmatic and overridden by the special legislation for the Defense of the State which otherwise because of its temporary character is not included in the text of the code.¹⁴ The code came into force on January 1, 1942.¹⁵ A code on Criminal Procedure, similarly drafted by a commission of jurists (mainly judges of the Court of Appeals of São Paulo) was promulgated in 1941¹⁶ as another remarkable achievement of penal reform.

By an analogous procedure of co-operation of prominent judges, practitioners, professors of law, and high-ranking

¹³ The new code is commented on as in line with modern social and political life by Nico Gunzburg (formerly Dean of the Law School of Ghent, Belgium), *La Trajectoire du crime*, Rio de Janeiro (Jacintho), 1941.

¹⁴ See *infra*, pp. 133 ff.

¹⁵ D.L. no. 2,848 of Dec. 7, 1940 (*DO* of Dec. 30, 1940).

¹⁶ D.L. no. 3,680 of Oct. 3, 1941 (“Codigo de Processo Penal,” *Anuario Legislativo*, 1941, p. 471). Compare also the “Law on Penal Contraventions,” supplementing both the adjective and the substantive criminal law, in D.L. no. 3,688 of Oct. 3, 1941 (*Anuario Legislativo*, p. 462).

ministerial officials a comprehensive reform of the civil law is under way. The Code on Obligations—extending to both civil and commercial law and in this respect different from most codes under the influence of the Napoleonic codification—has already been published. A new corporation law (*sociedades por ações*) was promulgated in 1940.¹⁷ A new bankruptcy law (*falencia*) is in preparation.

Perhaps the most difficult task to be solved by any law reform is that of modernizing and unifying the toughest of all legal matters, namely civil procedure. The difficulties inherent in this plan may be gathered from the fact that a commission of three prominent lawyers, at first appointed to issue a draft, was unable to agree on its principles. The new draft was written by a Mineiro lawyer, Pedro Baptista Martins. The published project was subjected to much criticism, especially by the Bar Association (*Ordem dos Advogados*) of São Paulo. Campos took the matter in hand personally and with his staff made the final revision.¹⁸ The code was to come into force on February 1, 1940, but an extension of another month was generously granted for permitting the profession to acquaint itself with its innovations.¹⁹ The Code, consisting of 1,052 articles, revolutionized the civil law of Brazil in that it superseded the widely divergent codes of procedure of the individual states which, in addition to being obsolete, were extremely formalistic. In many

¹⁷ D.L. no. 2,627 of Sept. 26, 1940 (*DO* of Oct. 1, 1940). See also Henry P. Crawford, "The 1940 Corporation Law of Brazil," *Tulane Law Review*, vol. 16 (Feb., 1942).

¹⁸ D.L. no. 1,608 of Sept. 18, 1939 (*Coll.*, 1939, vol. VII, pp. 311-439). Campos was formerly a prominent practicing lawyer in São Paulo and a professor of the Philosophy of Law. He owns the largest private law library in Brazil and told this writer that after his eventual resignation from public office he expects to return to legal research.

¹⁹ See D.L. no. 2,965 of Jan. 16, 1941 (*Coll.*, 1941, vol. I, p. 17). *Tempora mutantur et nos mutamur in illis*: it should be noted that the German Civil Code of 1896 entered into force only four years later, on Jan. 1, 1900.

ways it shows the influence of recent European reforms, particularly of Nazi Germany after 1933 where likewise a revolutionary upheaval was needed to modernize the cumbersome procedure stemming from the Empire. In general, it substitutes oral for the written procedure, tries to expedite pleadings, testimony and adjudication, obviates obstructive continuations—a vice of all European procedures—and, being the most important of all innovations, it assigns more power to the court who no longer is the mere spectator of the proceedings in the hands of the parties and the lawyers. The experts whom this writer consulted were of the unanimous opinion that it not only unifies Brazilian procedure but also constitutes a vast improvement of the administration of civil justice.

Once the great work of legal reform has been completed Vargas may claim for his country an accomplishment scarcely less comprehensive than what Napoleon did on the same field for France.²⁰ This at least is asserted by the spokesmen of the government; yet the foreign lawyer, less prone to excesses of national pride, may just the same continue to place the constructive legal genius of the French above the eclectic reformism of Francisco Campos.

The regime also codified a number of other legal subjects such as the administration of military justice²¹ and established modern administrative codes for such matters as mining, water power, and fishing,²² thereby replacing previously

²⁰ Completion of the (older) Civil Code of Brazil (Law no. 3,071 of Jan. 1, 1916) had taken the parliamentary bodies several years.

²¹ *Código de Justiça Militar*, D.L. no. 925 of Dec. 2, 1938 (*Coll.*, 1938, vol. IV, p. 194).

²² *Código de Minas*, D.L. no. 1,985 of Jan. 29, 1940 (*Coll.*, 1940, vol. I, p. 40); *Código de Pesca*, D.L. no. 794 of Oct. 19, 1938 (*Coll.*, 1938, vol. IV, p. 41). See also *Código de Águas* (Decree no. 24,643 of July 10, 1934). On the latter compare Afredo Valladão, *Regime jurídico das águas e da indústria hidro-elétrica*, São Paulo, 1941.

existing fragmentary regulations by the states. People say, however, that the validity of such administrative codes in the wilderness of the interior is as doubtful as was law enforcement in the heyday of the Wild West in this country.

The Exercise of the Amending Power

The president of the republic arrogated to himself also the right to enact constitutional amendments by way of presidential decree law. The two houses of Congress on whose collaboration constitutional amendment in terms of the constitution was dependent (Art. 174) not yet being created, the president—since he has imposed the constitution in its entirety—could reasonably justify, by conclusion *per maiorem ad minus*, his claim to amending parts of the constitution by way of decree. Campos did not miss the opportunity to explain to this writer that Vargas possesses the *pouvoir constituant*. Five amendments to the constitution have so far been promulgated by this easy method of presidential decree; but in spite of the reference to Article 180 of the constitution which speaks only of decrees to be passed by the president, these more formal enactments are styled Constitutional Acts (*Lei constitucional*). None of them is of fundamental importance. The organization of the relations of federal government and the states was a much more incisive inroad into the constitutional order and yet it was treated as being merely an ordinary presidential decree law.

The First Constitutional Act, passed only a few days after the abortive putsch of the Integralists,²³ increased the number of cases in which capital punishment may be in-

²³ See *infra*, pp. 142 f. The act was promulgated on May 16, 1938 (DO of May 18, 1938).

flicted by the courts²⁴ by adding as felonies: acts of armed internal rebellion, even if the arms were only in storage; acts provoking civil war; acts directed against the security of the state if committed by terrorist methods such as devastation, looting, arson, etc.; attempts upon the life, bodily integrity, and liberty of the president of the republic.²⁵ The provisions of the constitutional amendment were not made

²⁴ See Roberto Lyra, "*A pena de morte na legislação vigente*," in *Direito*, year I (vol. III, 1940), pp. 93 ff.

²⁵ Prior to this amendment, according to Art. 122, no. 13, of the constitution, only acts of treason—that is, acts directed against the integrity of the state, if committed in connivance or in co-operation with foreign powers or for foreign interests—were punishable by death; also homicide when committed for a "futile cause or with extreme perversity."

In passing, some impressions may be recorded which this writer obtained from a visit to the penitentiary at Neves near Belo Horizonte in Minas Geraes. The Secretary (Minister) of Justice of that state conducted personally the inspection tour. The highest law officer of a state larger than France took out more than five hours of his time in order to show a foreigner without any official qualification what his state had accomplished in terms of penological progress. The present chief warden of the state prison was formerly Minister of Justice. The institution is a model of its kind; yet it may be doubted whether most of the other prisons in Brazil live up to its standards. The penitentiary contains about twelve hundred criminals, of whom no fewer than seven hundred are convicted murderers. Death penalty for homicide is rarely if ever applied in Brazil because in almost all cases the act is committed out of jealousy or on the basis of village blood feuds. With the exception of a few machine guns mounted on towers over the vast buildings no arms are carried by the officials. Heavy steel doors protect only the main entrance; otherwise communication between the different departments is unimpeded. All inmates work; the wages are partly credited to them for the time of release, partly sent to their families for support. The spotless cleanliness of the premises, the equipment of the cells, which are never locked—no solitary confinement is permissible—the quality of the food, put to shame many a similar institution in other countries, let alone the chain-gang disgrace in some allegedly more civilized places. The atmosphere was more that of a workshop than that of a prison housing dangerous criminals. Escapes are very rare since the inmates usually live much better inside than outside. The attitude of the officials toward the prisoners was that of educators and not of jailers. Insubordination does not occur. In one of the workrooms the Minister of Justice encountered a man from a village

retroactive as has occurred ignominiously in similar cases in European dictatorial states.

The Second Constitutional Act,²⁶ although suggested by the same internal rebellion, has a more ominous character. It modified Article 177 of the constitution by which the president has reserved for himself the power to dismiss any civil or military functionary (under guarantee of his legal pension and other retirement allowances) "if, in the exclusive discretion of the government, this is in the interest of the public service or opportune to the regime (*por conveniencia do regime*)."²⁷ This provision was reminiscent of the infamous Nazi "law" of 1933 styled by a misnomer "on the restoration of the professional civil service,"²⁷ but it was limited to a period of sixty days only and the authorization had been used by the president very sparingly. Now the constitutional amendment restored the power "for an indefinite period" and it is still in force; it constitutes a most potent weapon against rebels as well as against dissidents and all potential enemies of the regime. The passage of this amendment is all the more subject to suspicion since the constitution had already granted to the president (Art. 172, § 2) the right to dismiss any officer of the army or civil functionary who had been convicted by a court of law of participation in a crime against the security of the state or who had been "influential in the intellectual or material preparation of same." Henceforward dismissal and retirement of all officials of the military, civilian, and probably also the judicial²⁸

whom he had known since his youth. They shook hands, talked and laughed together without any sign of submissiveness or condescension. Social equality is one of the prominent traits of Brazilian life.

²⁶ Constitutional Law no. 2 of May 16, 1938 (*DO* of May 17, 1938).

²⁷ See K. Loewenstein, *Hitler's Germany*, p. 26.

²⁸ The latter point could not be ascertained beyond doubt. Life tenure, irremovability, and irreducibility of salary are guaranteed to the judiciary personnel by the constitution (Art. 91). But other provisions of the con-

administration is granted to the president. Anticipating the later discussion of this point it should in fairness be stated here that Vargas, in line with the tolerant and conciliatory nature of the Brazilians and also with his own judicious handling of political opponents, has abstained, during his whole political career, from wholesale retribution against political nonconformists; and that he has succeeded, like no other authoritarian ruler of our period, in winning them over and absorbing them in the service of the state. Not even an oath of loyalty in support of the regime is demanded from any official or any former opponent when he makes his peace with the regime.²⁹

The Third and Fourth Constitutional Acts³⁰ must be taken together. They modified the states rights as to control and taxation of mineral resources. By one bold stroke of the legislative pen the states were deprived of their main source of income from taxes on gasoline and lubricants. Strong opposition had been expected, but nothing happened. To the Union was assigned the exclusive right to control coal resources, lubricants, and combustibles of any kind. A single uniform tax for lubricants was introduced, of which the states and municipalities receive only such proportional quota as corresponds to their consumption within the respective territory; this tax has to be used for road improvement. These provisions were also aimed at the foreign oil

stitution were superseded by presidential decree without much inhibition on the part of the government. Whatever may be the situation theoretically, at any rate, only one case of a compulsory retirement or dismissal of a magistrate for political reasons came to the knowledge of this writer; and even this isolated case is no incontrovertible proof of dismissal for political nonconformity. Dr. Marcio Munchoz, judge of the Court of Appeals in São Paulo, appointed in 1935 by Governor de Salles Oliveira, was removed from office, under invocation of Art. 177, in Sept., 1938, "for dilatory handling of cases and political activity."

²⁹ On this subject, see *infra*, pp. 255 f.

³⁰ Of Sept. 18, 1940 (*DO* of Sept. 20, 1940).

companies and affected them adversely. For the purposes of this study this aspect of the matter is irrelevant.

Finally, the Fifth Constitutional Act ³¹ was passed on March 10, 1942, in conjunction with the anti-Axis policy decided on by the Brazilian government. In conformity with the resolutions adopted by the Foreign Ministers of the American Republics at the Conference in Rio de Janeiro in January, 1942, in which the Brazilian Foreign Minister Oswaldo Aranha was the protagonist against the forces of aggression, Brazil had severed economic and diplomatic relations with Germany, Italy, and Japan. Subsequent sinkings of Brazilian ships plying in legitimate trade between Brazil and the Atlantic ports of the United States compelled Vargas to clear the deck for reprisals against Axis property in Brazil and for an eventual declaration of war against the aggressors.

The constitution (Art. 122, introductory paragraph) guarantees to all Brazilian and foreigners alike the right to private property which may be expropriated only (Art. 122 no. XIV) "for public necessity or utility and against indemnization as provided for by the law." ³² Evidently the government believed that the abolition of such a solemn guarantee called for a formal constitutional amendment, since confiscation of alien property by way of political reprisal manifestly nullified the promise of just compensation. Hence a constitutional amendment seemed legally indicated. The government used the authorization at once for the confiscation of up to 30 per cent of the German, Italian, and Japanese assets in Brazil as indemnity for the losses incurred through action of hostile U-boats, in addition to making sure that the damages for the loss of life and prop-

³¹ Constitutional Law no. 5 of Mar. 10, 1942 (*DO* of Mar. 11, 1942). See also the reports in *New York Times* of Mar. 12 and 13, 1942.

³² On the subject of expropriation for "public utility" see *infra*, pp. 320 ff., and the apposite decree legislation in note 5, p. 322.

erty caused by the shelling of the Brazilian steamer *Taubate* in Alexandria in March, 1941, thus would be covered.³³

The same constitutional amendment assigned to the president of the republic (who according to Art. 166 has the right to declare the [internal] state of emergency—similarly without preceding or concomitant authorization of the legislative bodies),³⁴—the power to suspend the constitutional guarantees concerning liberty and property of physical and juristic persons being subjects of a state guilty of aggression.

Declaration of war, according to the constitution (Art. 74.(g)), is a prerogative of the president of the republic, after having obtained the authorization of the legislative bodies, and, without the latter, in case of foreign invasion or aggression. By strict interpretation Vargas could have considered the sinking of Brazilian boats without warning as an act of aggression and dispensed with the co-operation of the parliament, which anyway cannot be accorded because to date it has not been called into being. According to newspaper reports in this country, which could not be verified

³³ D.L. no. 4,166 of Mar. 11, 1942 (*DO* of Mar. 12, 1942). According to this decree, which in many ways is unique in the legal history of a country predicated on the sanctity of private property, assets and rights of Axis subjects are collectively encumbered with the damages suffered by Brazilians through acts of aggression of the Axis states (Art. 1). For this purpose parts of the bank accounts and securities held for Axis subjects in Brazil are transferred to the Bank of Brazil, beginning with 10 per cent of property of the value of 20 *contos* of *reis*, to 30 per cent of the property of 100 *contos* of *reis* and more (Art. 2). These portions of Axis property serve as guarantee for future indemnification of injured Brazilians (Art. 3). Other provisions of the decree-law provide against fraudulent transactions of Axis subjects to the detriment of the potential creditors and subject all Axis citizens to formal declarations as to their property within fifteen days (Art. 3, 4, 9).

³⁴ Art. 166, sole §, of the constitution, states explicitly: "For none of these acts is it necessary to obtain the authorization of the parliament." Moreover, the rights assigned to the Chamber of Deputies with reference to the state of emergency and of war are merely those of a very restricted control *ex post facto*.

by reference to the statute book, Vargas is said to have freed himself, by another constitutional amendment of the same day, of the requirement of parliamentary co-operation. If this actually has happened it is all the more surprising since the government in the past had made light of the equally required participation of the nonexisting parliament for the very processes of constitutional amendment. Perhaps Vargas might have felt that so far-reaching a step as the declaration of war necessitated the removal of a virtual obstacle by empowering him formally to take his country into the war without specific action of the parliament.

Be that as it may, next to the political implications of these most recent constitutional amendments, an important fact emerges therefrom which might be considered indicative of the attitude of the regime toward the constitution as a whole. The procedure resorted to implies that the president and his legal advisers, even during the period in which the legislative bodies are not yet called into life, consider the constitution *as it is written*, as binding on them, and that any flagrant deviation from the instrument cannot be covered alone by his implicit powers to exercise the *pouvoir constituant*. The regime tries hard to preserve the form if not the substance of the constitution, another convincing testimony of the Brazilian sense of legalism which, however, foreign observers might be tempted to label as merely formalistic.

Public Officials and Civil Service

The survey on the functioning of the federal government cannot be concluded without giving at least a summary of the status of the public officials under the regime and the efforts to create a competent civil service.

Though to a somewhat lesser extent than most other Latin-American countries, Brazil too has been suffering chronically from incompetence, lack of integrity, and insufficient technical and professional training of its public officials. Relatively and absolutely small salaries invited corruption and venality and prompted the more ambitious to discharge several public functions simultaneously, to the detriment of all services rendered. Admission to the career of public service was obtained rather through nepotism and convenient connections than on the basis of personal qualifications or objectively ascertainable standards. Only the top layer of the public officials lived up to a high professional standard; it attracted able men by relatively good compensation and considerable social prestige. Brazil inherited the excellent tradition of a competent ministerial bureaucracy from the Empire which in turn had learned a good deal from French precedents. Although the spoils system does not exist in Brazil, political appointees in the higher ranks of the ministries were not uncommon, with attendant frequency of substitution in case of change of the party color of the government.

Unless based on extended observation personal impressions are obviously deceptive. The personnel on the highest level of both the federal government and the administration of the states of Minas Geraes and São Paulo with whom this writer came into contact made the very best impression almost without exception. Among the lower officials who deal with the public in the routine business of administration, a good deal of corruption of a petty nature and lack of efficiency cannot be overlooked. Corruption among public officials may be due to the lack of efficient popular control—as it is the case in Nazi Germany—or to the indifference of public opinion, or to the wretchedly small salaries of the

lower officials who are simply compelled to raise their income by petty grafting. This is probably the case of Brazil.³⁵ In dealings with any official agency—police, immigration, obtaining of a business license—and there are few things which are not licensed—considerable amounts often have to be included for bribing purposes, if only for the sake of accelerating the otherwise endlessly procrastinated performance. For all applications to the authorities of some importance one or more lawyers have to be employed who “know” the “inside” people. The common man is plagued with such extra costs resulting both from overbureaucratization and outright graft. To obtain a license for a news-dealer, street peddler, or bootblack is sometimes reminiscent of a story by Anatole France. The masses of subaltern officials are the profiteers of the regime and this army of job-holders is constantly increased together with the growth of new boards, bureaus, and commissions. This is one of the familiar traits of authoritarian government; because it is centralized and suspicious it increases the staffs of all offices—and the offices themselves—beyond the limit of the necessary. It is often said in Brazil that one well-paid official could easily do the work of five badly paid loiterers. The petty police bureaucracy and the immigration service are professionally bad-tempered and bad-mannered in all countries outside the United States. But the lack of efficiency and the abundance of red tape cannot be attributed to the regime. No government in Brazil may be able to overcome the influence of ingrained habits, of climate, and of temper of the population.

This situation is by no means inconsistent with the

³⁵ The foreigner is forewarned to have airmail or other stamps of higher value canceled in his presence, lest the official for whom the amount constitutes a full day's food for his family be tempted to misappropriation.

astounding sense of dignity one encounters everywhere among Brazilian officials. Tipping a trolley car conductor would be bad taste and met with firm refusal. He is miserably paid but he fulfills a public function. Why the railroad conductor expects a tip is a mystery not to be unraveled without extended psychological exploration. This writer observed a characteristic scene in a postoffice in Rio de Janeiro. An official behind the counter—there are no windows in the streamlined chromium-shining office—was blamed for delay by an impatient client waiting in line. After a dignified exposition of his praiseworthy zeal and known devotion to his duties he felt constrained, in view of unjustified attacks on his personal honor, to desist from serving the public for the day. Bystanders and listeners fully agreed with him and did not conceal their disapproval of his opponent's lack of tact. The foreigner is usually treated with so much civility, friendliness, and tolerance for his linguistic shortcomings that whatever defects in efficiency may exist he feels at ease. With malice to none it may be said that the atmosphere is delightfully reminiscent of pre-Nazi Austria whose administration has been aptly described as "despotism mitigated by sloppiness."

Corruption in higher places takes more subtle, or as the case may be, more direct forms.³⁶ How big business flouts the tax laws is a story by itself. Prominent businessmen are frank about their tax evasion practices, as they used to be in France. Tax morality is something which develops slowly in Latin countries. People in whose judgment this writer has complete confidence consider as one of the most tangible sins of omission of the regime that it did not succeed in

³⁶ This writer was told of a man high up in the army administration who, before granting a particular contract, invited the applicant to dine with him at his home and prophesied that on the same evening he was to lose a specified amount in poker. The guest obligingly lost.

eradicating grafting on a large scale, particularly in the states where many an opportunity is opened for what may euphemistically be called "local patronage." But in fairness it should be noted that no complaints about corruption are raised against the leading men of the regime except that they are said to participate in "pools" or that they obtain valuable information for lucrative transactions as members of the various boards. The gambling racket, a national vice and pastime, is in the hands of a small group of very rich people with good government connections. On the whole Brazilian public officialdom is probably not much better, but certainly not worse, than in most of the other South American states.

The Vargas regime, however, must be credited with what appears to be a strenuous effort to improve the conditions of an efficient civilian administration and to lay the foundation for a reliable civil service. In the first place the regime prohibited in the constitution (Art. 139) the accumulation of remunerated public positions in one person, serving at the same time for the Union, the states, or the municipalities (Art. 159). The Interventors and prefects are forbidden to employ in remunerative positions, except temporarily in places acquiring "immediate confidence," relatives to the fourth degree.³⁷ The ban against cumulation of services was extended also to government-controlled enterprises such as the Bank of Brazil and the *Lloyd Brasileiro*, a shipping company.³⁸

The basic reform of the status of civil servants (as a matter of fact, the inauguration of an integrated civil service in Brazil) was initiated in the constitutional period before

³⁷ D.L. no. 1,202 of Apr. 8, 1939, Art. 44. This act contains numerous other provisions in order to reduce illegitimate patronage and spoils of public officials; especially the members of the Administrative Department are subject to stringent incompatibilities (see Articles 14 and 15).

³⁸ D.L. no. 24 of Nov. 29, 1937 (*Coll.*, 1937, vol. I, p. 30).

1937³⁹ in a comprehensive act passed by Congress in 1936.⁴⁰ The statute put the federal civil service on a rational footing by classifying the positions according to rank and importance of function, and by setting up general rules for recruitment by entrance examination, and for promotion. After the advent of the *Estado Novo* the previously created Federal Council of Public Service was superseded by the *Departamento Administrativo do Serviço Público*⁴¹ whose alphabetical abbreviation DASP is one of the most familiar symbols in present-day Brazil.

The DASP is more than the United States Civil Service Commission; it deals not only with the internal management of the civil service but it operates also as a sort of transmission belt for complaints against public officials and for suggestions for the entire federal administration, thus constituting a link between the bureaucracy and the public at large. In this function it is appreciated by public officials and the public alike because it helps to remove friction and to create better relations between them. The DASP is composed of a president, appointed by the president of the republic, and the heads of the subdivisions, who are as a rule high-ranking officials transferred from the various ministries for temporary service. At present there are six such subdivisions, among them one for Organization and Co-ordination which deals with the establishment of new and the eventual merger of existing federal agencies. It corresponds roughly to what in Germany is called the exercise of the

³⁹ For the following discussion was used Bryce Wood, "The Brazilian Civil Service," *Inter-American Quarterly*, vol. II, no. 4 (Oct., 1940), pp. 42 ff., a valuable description with a wholly irrelevant introduction by F. M. Marx.

⁴⁰ Law no. 183 of Jan. 13, 1936 (*Coll.*, 1936, vol. IV, p. 27), and D.L. no. 284 of Oct. 28, 1936 (*Coll.*, 1936, vol. IV, p. 194).

⁴¹ D.L. no. 579 of July 30, 1938 (*Coll.*, 1938, vol. III, p. 63).

Organisationshohheit or in this country the government reorganization power. The Division of Material has to do with the standardization and rationalization of material and supply. Moreover it makes suggestions for the maintenance and construction of federal buildings, an important task considering the vast building activity in Rio and all state capitals with federal offices; the new skyscraper of the Ministry of War in the capital has become one of the landmarks of the *Estado Novo*.⁴² The Division of Functionaries is entrusted with the personnel management, including the discipline over public officials against whom complaints are lodged from outside. This division is supplemented by one on "*extraordinarios*," the vast army of nonclassified public officials.⁴³ This category embraces many of the more important government positions which are filled, on a temporary contract basis and not as a career, by qualified outsiders (*mensalistas*) who for some time devote their services to government work, similarly as it is done in wartime in this country. Many of them work only on a part-time basis and it is not unusual that a government employee of this class continues as a practicing lawyer, engineer, or doctor.

Salaries in the federal civil service are now comparatively high.⁴⁴ Admission to civil service is accorded, as a theoretical rule, on the basis of competitive examinations, but university diplomas are considered as official and "pull" still as unofficial equivalents. The selection for many of the classified positions is under the control of the Division of Selec-

⁴² For details on the control over the construction activities see D.L. no. 1,720 of Oct. 30, 1939 (*Coll.*, 1939, vol. VIII, p. 134).

⁴³ See D.L. no. 240 of Feb. 4, 1938 (*Coll.*, 1938, vol. I, p. 84), and no. 1,909 of Dec. 26, 1939 (*DO* of Dec. 26, 1939).

⁴⁴ Law no. 183 of Jan. 13, 1936 (*Coll.*, 1936, vol. IV, p. 27), with many subsequent increases and reclassifications; such regulations figure prominently in the *DO*.

tion and Training of the DASP, with the co-operation of the *Instituto Nacional de Estudos Pedagogicos* (INEP).⁴⁵ The foreign visitor observes with some amazement the relatively low age of many of the officials and what appears as a complete absence of race discrimination. As a rule fulfillment of the military service or proof of legal exemption therefrom is the prerequisite of appointment.⁴⁶ In line with the "nationalization" drive only Brazilian nationals can be public officials.⁴⁷ In the middle stratum of officials one may find a good many of Italian and also of German descent; but they seem not to have penetrated into the higher positions in which the Luso-Brazilians have a sort of unofficial monopoly; in this respect Brazil is different from most other South American countries where German and Italian names are found among the highest ranking officials and even the ministers. Many of the leading positions in the ministries are political appointments; ministers and Interventors select their own staff of secretaries and advisers. Up to the present the rigidly stereotyped curriculum of the universities does not offer specialized instruction in public administration because, as everywhere in continental Europe, the legal education is considered the proper training for all nontechnical civil service positions. Study in foreign countries by officials is encouraged and also subsidized to a limited extent, but on the whole the outlook and training of the officials are rather provincial.

Needless to state that the organization of the administration is strictly hierarchical, the Fuehrer principle being non-existent. Importance of the work done in terms of respon-

⁴⁵ See D.L. no. 580 of July 30, 1938 (*Coll.*, 1938, vol. III, p. 67).

⁴⁶ See D.L. no. 1,202 of Apr. 8, 1939, as to identical requirements for appointment in the service of states and municipalities.

⁴⁷ The D.L. no. 1,202 contains elaborate provisions (Art. 40) for the non-federal services.

sibility and professional prerequisites, on the one hand, and salary, on the other hand, are not altogether logically correlated.⁴⁸ In application the system is rather elastic, but it is no bar to favoritism within the different departments. Promotion is legally by seniority and merit,⁴⁹ on the basis of rather mechanical ratings on which ultimately the Commission on Efficiency in each ministry decides. This decision, however, may be overruled by the minister himself.

Finally in 1938 the reform was crowned by a codifying act on Public Functionaries,⁵⁰ an organic statute of two hundred and eighty articles comparable to the German Public Officials Act of 1937,⁵¹ which evidently is the inspiration for many of its technical arrangements without being tainted by its political implications. The act fixes hours and conditions of work, vacations and absences, remuneration for extra work and work under exceptional circumstances, ("gratifications"), tenure, retirement pensions, social assistance, and social services.⁵² The officials are not permitted to form unions but have the right to petition, which may lead, after the exhaustion of administrative remedies, to the decision of the ordinary courts. Officials are prohibited from indulging in

⁴⁸ Law no. 284 of 1936 divided the positions into *quadros* (frames) and determined the salary in accordance with the *padrão* (subdivision) to which the official is assigned. The *padrões* are marked by letters of the alphabet. The minimum salary is 200\$000 a month (about \$10, U.S.A. currency), the maximum 7,500\$000 (about \$375); this amount is a very substantial income in Brazil.

⁴⁹ See Decree no. 2,290 of Jan. 28, 1938 (*Coll.*, 1938, vol. I, p. 49).

⁵⁰ *Estatuto dos funcionarios publicos*: D.L. no. 1,713 of Oct. 28, 1938 (*Coll.*, 1938, vol. III, pp. 92-130). Compare also D.L. no. 3,070 of Feb. 20, 1941 (*DO* of Feb. 22, 1941), which extends the federal regulation to the officials of the states, the municipalities, the federal territories and the Federal District; another inroad into the residues of states rights.

⁵¹ See Karl Loewenstein, *op. cit.*, p. 174.

⁵² Retirement pensions are provided for by the Institute of Insurance and Assistance to Servants of the State; see D.L. no. 288 of Feb. 23, 1938 (*Coll.*, 1938, vol. I, p. 194), and D.L. no. 970 of Dec. 21, 1938 (*Coll.*, 1938, vol. IV, p. 318).

unlawful criticism of the government and of the administration, and generally official loyalty is enjoined. No provision, however, exists which limits political activity of officials more than that of the other citizens. Even the closer scrutiny of these regulations does not reveal any traces of "authoritarian" governmental control.

This entire system of a rationalized government service is still on trial. Government service in Brazil as in other South American states has a very considerable attraction, not only for the talent but also for the only too common individual who seeks to combine the maximum of security with the minimum of exertion. All responsible people in the country agree with the observation of the foreign visitor that the services are vastly overstaffed. The reform cannot succeed within a few years in ferreting out the cancer of South American administration—the attitude toward work for the government as a sinecure. To this must be added a quality characteristic of the Brazilian people in general, namely the absence of a time sense or, to be more precise, the lacking consciousness of the value of time. This happy people has not yet been infested by the vices of haste and rush. The present regulation of the civil service shares with many similarly ambitious reforms of the regime the objection that it is an undertaking, which, copied from the experience of administratively more advanced states, is not yet quite operable in a land just emerging from the tradition of feudal paternalism. Fully satisfactory results cannot be expected for a considerable time to come. Yet a start had to be made and that it has been made with vigor and circumspection is another asset of the *Estado Novo*.

CHAPTER V

THE ADMINISTRATION OF JUSTICE

Organization of the Courts

Brazil has always enjoyed the reputation of possessing the ranking class of lawyers and jurists in South America. The Brazilians are by nature a law-abiding people who hold the legal profession no less than the administration of justice in high esteem. The foreign observer who digs only a little under the surface is surprised to encounter everywhere that essential feature of the Brazilian character, *judicialismo*, that is, the tendency to subject the social dynamics to rules of law, the effort to head off eventual conflicts by finding neat and incontrovertible legal solutions in advance. The Brazilians are an extraordinarily legalistic people and it is by no means accidental that the rigid and implacable positivism of Hans Kelsen and his school made a deep impression on them, as is the case all over South America. In the legal realm the Austrian scholar has taken the throne from which for the last two generations Auguste Comte ruled social thought. Positivism is also the dominant note of Brazilian jurisprudence. The traditional concept of the administration and interpretation of the law is that the political bodies, government and legislature, make the rules of law and that the judges apply them as the law is written without questioning its political motives or social content.

Seemingly this attitude of the legal profession and of the public would lend itself readily to an authoritarian admin-

istration of justice. To bend the bench and the bar under its control is one of the hallmarks of modern dictatorship, for which the enforcement of strict positivism is the natural complement. It is to the credit of both the Vargas regime and the legal profession that no efforts were made by the former to make bench and bar over into subservient instruments of political power and that the latter if such efforts had been made would not have submitted. This, with some reservations, is the actual situation.

Consequently, the sections of the constitution on the organization of the judiciary (Articles 90-114) are those which show the least changes under the *Estado Novo*. Outwardly the traditional separation of powers is faithfully maintained. The federal judges are appointed by the president of the republic (Art. 74 (1)). Similarly in the Federal District the appointment is left directly to the president. Since the courts of the states are no longer under the exclusive jurisdiction of the latter but under the supervision of the federal government,¹ the appointments of all judges, with the exception of those for purely local competence not belonging to the "magistracy," are made directly or indirectly by the president. Only nominally have the states retained the power to provide for their own judicial organization, subject to the approval of the president. For appointments to the highest of the state courts, the Tribunal of Appeals, the Interventor, acting on proposals of the court itself, prepares a panel of three candidates from which the president makes the final selection. Yet the government has not abused its vast powers of appointment and control. To this writer no case is known in which the selection of the higher judges has deviated from traditional methods and standards. For a vacancy on the highest level of the judicial

¹ See D.L. no. 1,202 of Apr. 8, 1939, Art. 7, no. III with Art. 32, no. XIX.

hierarchy a panel of candidates is usually prepared by the court itself from which the president makes his selection. Political reasons do not seem to enter. Occasionally, however, the Interventors are said to exercise pressure.² Contrariwise, it has happened that judges of the higher ranks have resigned of their own accord for political reasons. The system of promotions is similar to that of France, namely, to let judges rise to the higher courts from the bench of the lower courts; the merit of promotion is ascertained, by the members of the higher court, on the basis of judicial aptitude shown on the bench below. Vacancies in the Courts of Appeals are filled from among the judges of the District Courts, on recommendation of the former. The first appointment is always made on the basis of competitive examinations. The career of the judge and the public prosecutor (*procurador*)—the latter patterned traditionally on the model of the French *ministère public*—are strictly separated from that of the practicing attorney-at-law. In deviation from the former procedure it occurs now that practicing lawyers without previous experience on the bench are appointed to judge-ships. No harm has arisen therefrom.

Supreme Federal Tribunal

The members of the Supreme Court (*Supremo Tribunal Federal*) (Articles 97–102), which has its seat in the capital Rio de Janeiro, may number from eleven to sixteen; at pres-

² In 1940 a vacancy in the Tribunal of Appeals of São Paulo was filled by a protégé of the Interventor Adhemar de Barros. The appointee, Perceval de Oliveira, had at first not been on the panel set up by the court; only under pressure had he been placed on the list of three candidates. The choice, however, was admittedly a good one. Complaints of liberal lawyers in São Paulo that the judiciary is no longer free seem exaggerated.

ent there are thirteen. They must be "of outstanding professional ability and of immaculate repute" (Art. 98), not below thirty-five and not above fifty-eight years of age on the day of appointment. The provision was framed at the time of President Roosevelt's court reform plan. Their official title is "minister." In case of a vacancy a panel of possible candidates is prepared by the chief judge from which the president is expected to make his selection. No doubt is raised under the regime as to the qualifications of the members of the Supreme Court and no complaints are heard as to the quality of justice they dispense. The regime has taken great care not to lower the traditional standard by interference with the personnel.

The jurisdiction of the Supreme Federal Tribunal cannot easily be summarized without a fuller discussion of the legal organization of Brazil as a whole. Some of the cases of jurisdiction, such as suits and disputes between the Union and the states or between the latter, are obsolete; it is not conceivable how such controversies should arise under the impact of unitary control as is practiced now. Nor is it feasible that ministers of state be indicted for common crimes (Art. 101 no. I (c) and (b)). Most of the cases deal with appeals from the State Tribunal of Appeal when a federal law or a treaty is involved, or when the final decisions of a lower court conflicts on a matter of federal law with a decision of the Federal Supreme Tribunal itself (Art. 101 no. II (2) and III (a)-(d)). Finally the Supreme Federal Tribunal acts in cases of refusal of habeas corpus of subordinate tribunals or, as the case may be, coming under the original jurisdiction of the court (Art. 101 no. I (g) and no. II, 2 (b)). The latter function is an important guarantee of personal liberty even in political cases.

Other Provisions Concerning the Administration of Justice

Space forbids a fuller presentation of other courts with special jurisdiction of which the Tribunal of Accounts (Art. 114) and the courts of Military Justice (Art. 111-113) are mentioned in the constitution. The latter, dealing with offenses both of members of the armed forces and of civilians against the military establishment, offer little of interest except perhaps for the fact that the bench is composed of officers of the armed forces and of civilian lawyers. Crimes committed against the security of the state and of the structure of its institutions come before a special tribunal, the famous Tribunal of National Security of whose activities a detailed account will be given later on.³ Nor can more than a few of the various Administrative Courts be mentioned here, such as the Taxation Courts of the Ministry of Finance (*Conselho de Contribuintes de Fazenda*) dealing with appeals against decisions of the Federal Internal Revenue Collectors; tariff courts (*Conselho Superior da Tarifa*) deciding controversies with custom authorities; Maritime Administrative Tribunal for admiralty cases, and the important Labor Courts (*Junta de Conciliação e Julgamento*) established recently all over the national territory. All these administrative courts have in common the fact that their decisions are enforced through the assistance of the ordinary courts by way of a summary procedure in which no review of the fact-finding and frequently not even of the case as decided is permissible. None of these institutions shows any noticeable trends toward authoritarian control by the regime.

But a number of other features in the administration of justice deserve attention because they demonstrate the re-

³ See *infra*, pp. 212 ff.

luctance of the regime to interfere with the established liberal tradition of the rule of law. The institution of the trial by jury has been preserved and even extended.⁴ In conformity with the French system, which all countries under the influence of the Napoleonic codes follow, trial by jury had always existed only for criminal cases and is unknown for civil matters in continental Europe and South America. But in theory and practice it is considered as one of the cornerstones of liberal administration of justice. Dictatorial states, for this very reason, abolished the institution or converted it into an instrument of political justice. Not so in Brazil; under the regulation in force it is a function of the presiding judge of the Jury Court to select for his district, on the basis of personal or otherwise trustworthy information, a general list of three hundred to five hundred jurors (Art. 10) from citizens who offer the guarantees of "personal firmness, probity and intelligence" (Art. 7). From this general list the panel of seven jurors for each session is drawn by lot (Art. 2). The government has no visible opportunity of interfering with the composition of both the general lists and the special panels; the high standard of personal integrity of the bench which has in no way been affected by the regime is a full guarantee for excluding political pressure and discharging impartially the function of selecting the jurors.

Nor did the regime make the slightest attempts at regimenting or influencing the bar, whose independence from government control is the foremost guarantee for the preservation of the rule of law. No dictatorial regimes from Napoleon to Hitler missed the opportunity—or indeed the

⁴ D.L. no. 167 of Jan. 5, 1938 (*DO* of Jan. 12, 1938). On the history and application of trial by jury under the Republic see H. G. James, *Constitutional System of Brazil*, p. 121. See also Silva Telles, *Justiça e Juri no Estado Novo*, São Paulo, 1938.

necessity—of making the bar subservient to the political intentions of authoritarian control. In Brazil, as in all other Latin-American states, the bar is “integrated” in the sense that the attorneys-at-law form a guild in which membership is compulsory. It exercises full autonomy of internal organization including disciplinary control over the members. The “*Ordem dos Advogados*” had been reformed by a statute of the constitutional period.⁵ Vargas did not touch it; elections of *bâtonnier* and officers take place by vote of the members as before; prominent lawyers who are known to be opposed to the regime are among the officers in Rio and São Paulo. Vargas and Campos, having been practicing lawyers themselves, know well that tampering with the free and independent profession of attorneys would destroy the confidence of the people in the administration of justice. Here again as in many other aspects the *Estado Novo* showed the prudence to avoid political pressure.

Finally it may be mentioned that in Brazil access to the courts is not a monopoly of the rich. Dispensation of justice is relatively cheap, the fees and costs being fixed at a level attainable for all.⁶ Free legal aid to the poor is an old Brazilian tradition.

The President and Judicial Power

Independence of the judicial power is the touchstone of constitutional government under the rule of law. As has been shown the regime wisely refrained from all interference, for political reasons, with the appointment of the judicial personnel. It remains to be seen whether the same

⁵ Law no. 510 of Sept. 22, 1937 (*DO* of Oct. 6, 1937).

⁶ See, e.g., D.L. no. 2,506 of Aug. 20, 1940 (*Coll.*, 1940, vol. V, p. 190), on the court fees in the Federal District.

reticence has been exercised by Vargas as to the performance proper of the judicial function.

Political Questions

In one respect Brazilian legal tradition of long standing obviates possible conflicts between the policy-forming power of the government and the discharge of judicial duties. The constitution contains a provision (Art. 94)—binding all judiciary organs—to the effect that “the judiciary power is forbidden to take cognizance of matters which are exclusively political.” Admittedly stemming from our own judicial practice⁷ the ban on judicial decisions of questions properly belonging to the domain of the “political department” of a state can claim for itself undisputed acceptance in the past.⁸ Minister Campos, questioned by this writer, emphasized that the provision should be narrowly interpreted and its application confined to matters which are under the exclusive jurisdiction of the other organs of the state and hence not “justifiable,” such as the right of a deputy to his seat in parliament, the appointment of officials by the president, diplomatic and international relations, for example, the recognition of a foreign government. It is ob-

⁷ *Luther v. Borden*, 7 How.1; *Pacific States Telephone Company v. Oregon*, 223 US 118; *In re Cooper* 143 US 472; *Coleman v. Miller*, 307 US 433, 454; for European parallels which are well-known in Brazilian jurisprudence see Paul Duez, *Les actes de gouvernement*, Paris, 1935.

⁸ Already in 1893 Ruy Barbosa, himself a close student and fervent admirer of our constitutional order, had insisted on excluding merely political questions from the jurisdiction of the Supreme Court. He had even tried to establish a catalogue of such “non-justiciable” problems which anticipates much of the later jurisprudence of the French *Conseil d'État*. See Ruy Barbosa, *Os actos inconstitucionaes do Congresso e do Executivo ante a justiça Federal*, Rio de Janeiro, 1893; see also Pedro Lessa, *Do poder judiciario*, Rio de Janeiro, 1915, p. 59, and H. G. James, *op. cit.*, p. 109. The constitution of 1934 legalized the existing situation explicitly in Art. 68.

vious that the customary judicial self-restraint in such political matters is intensified by the peculiar structure of the regime which perforce cannot admit inroads into the policy-forming function by the courts. On this point no difficulty has arisen. Nor does the government appear to have withdrawn from the ordinary courts—for decision at its own discretion—any matter which is assigned to the judicial power by statute, as it happened repeatedly in the Third Reich.⁹

Judicial Review of the Constitutionality of Acts of the Government

Yet there remains another source of potential conflict in the problem of judicial review proper over the constitutionality of presidential decree laws. Here again the constitution of 1937, in solemnly assigning to all courts—not to the Supreme Federal Tribunal alone—the right of judicial review (Art. 96) over the laws and the acts of the president follows a solidly established legal tradition.¹⁰ The constitution of 1937 provides that, once a statute or an act of the president has been declared unconstitutional by a court with a majority of votes, the president may submit it again to the

⁹ See Karl Loewenstein, *op. cit.*, pp. 118, 121, 211.

¹⁰ Recognition of judicial review by the Supreme Court had been established, mainly through Ruy Barbosa's vigorous advocacy, since the beginning of the Republic. See H. G. James, *op. cit.*, pp. 106 ff. However, the power had been used only sparingly (James, on p. 253, gives some of the decisions of the court up to 1922). The constitution of 1934 assigned formally to the Supreme Court the power to declare statutes unconstitutional (see Calmon, *Curso de direito*, pp. 189 ff.). If the court, by an absolute majority of votes, had so decided, the Attorney-General notified the Senate which, in its capacity as Co-ordinating Power, nullified the statute, or the unconstitutional part of it as the case might be (Articles 91 no. IV, 96, 117). The Supreme Federal Tribunal may decide on the constitutionality of federal statutes (Art. 101 no. IV) in a number of precisely circumscribed cases.

parliament, if he considers the law struck out by unconstitutionality "necessary to the well-being of the people, to the promotion or defense of a considerable national interest." In case the parliament reaffirms the law by a vote of two thirds of both chambers, the decision of the court shall be void.

The court reform controversy raging at that time in the United States is clearly reflected in these arrangements; however, their wisdom may well be doubted. It is rather unlikely that the parliament would side with the court in outlawing its own statute, unless it had been amended and thus had had the sting of unconstitutionality taken out of it. Moreover, it is difficult to understand how an intrinsically unconstitutional statute, that is an enactment in conflict with the supreme law of the land, should become constitutional by the mere formality of being voted on twice by the parliament. But obviously the fundamental point is that the parliament does not exist and that, consequently, the entire machinery for adjusting the controversy about judicial review is in suspense.¹¹

¹¹ One Brazilian author seems to assume that, in its second vote, the parliament transforms itself into the Constituent Power. This opinion is absurd in view of the strict provisions of the constitution for the exercise of the amending power—see Carvalho dos Santos, *Comentarios*, quoted by Candido Môta (*Filho*), "A evolução do controle da constitucionalidade das leis no Brasil," *Revista Forense*, Rio de Janeiro, 1941 (off-print, pp. 20 ff.). This article is an indication of the level of dishonest abuse of formalistic jurisprudence to which some of the opportunists among the law professors have descended in their blind adulation of the regime. The "study" claims for the system of judicial review in Brazil under the *Estado Novo* the title of being "profoundly democratic" and in conformity with the principles of genuine democracy because it refers the unconstitutionality problem to the parliament. But the author ignores, or forgets to mention, that no parliament exists, and that the president in the cases described in the text—which a professor of constitutional law at the University of São Paulo must know no less than this writer or any lawyer in Brazil—has supremely overridden the right of the Supreme Federal Tribunal to declare acts of the president unconstitutional.

The issue was joined when, in the summer of 1939, the Supreme Federal Tribunal, in conformity with the power assigned to it by the constitution, for the first time declared a part of a decree law of the president of the republic unconstitutional. The provision in question¹² subjected the emoluments of all magistrates (federal, state, municipal) to the federal income tax. Such a tax, argued the court, was inconsistent with Art. 32(c) of the constitution which forbids the Union and the states "to tax the properties, services, and revenues of each other."¹³ Not for a moment did the president hesitate to overrule the decision of the Supreme Federal Tribunal by another decree law a few days later. Retroactively it invalidated all judicial decisions to the contrary and restored the tax burden on the salaries of all magistrates.¹⁴ In order to alleviate widespread indignation and consternation about this high-handed violation of a solemn provision of the constitution the Minister of Justice argued in the press that, as long as the parliament has not been established, the president holds in its place the constituent power. The same argument, it will be remembered, was

¹² Art. 27 of the D.L. no. 1,168 of Mar. 22, 1939 (*Coll.*, 1939, vol. II, p. 121).

¹³ The legal situation was by no means unequivocal since Art. 91(c) guaranteed irreducibility of judicial salaries only with the reservation that they are subject to taxation. Lawyers in this country will realize without fail that the situation was similar to that existing in this country under *Evans v. Gore*, 253 US 245, and *Miles v. Graham*, 268 US 501.

¹⁴ D.L. no. 1,564 of Sept. 5, 1939 (*Coll.*, 1939, vol. VI, p. 273). The text of this decree-law may be quoted in full: "In view of the fact that the Supreme Federal Tribunal declared unconstitutional the imposition of the income tax on salaries paid to public officials of the Union and of the states; in view of the fact that this judicial decision did not conform to the material interest of the state and the principle of equal distribution of burden, it is declared: Single article: The texts of the laws enacted by the Union which subject the payments from public funds to taxation (state, Union or municipal), are confirmed. The decision of the Supreme Court and of any other tribunals or judges which may have declared such texts unconstitutional, are invalid (*ficando sem efeito*)."

used for justifying the exercise of the amending power by the president alone.¹⁵ If the president can amend the constitution he may as well overrule a judicial decision. This is pure sophistry because it puts at naught the principle of judicial review so proudly enshrined in the constitutional document. Moreover, the open contempt of the Supreme Federal Tribunal occurred in a matter of minor fiscal importance whose financial benefit for the federal treasury could not possibly compensate for the fact that the presidential action had played the devil with the constitution. Yet Minister Campos himself, who was responsible for this cynical violation of the rule of law, addressed the judges of the Supreme Federal Tribunal in a public session in April, 1941, as follows: ¹⁶ "You are the judges over the limits of governmental power, and, in passing judgment on these powers, you decide, in the last analysis, over the substance of power. The power to limit evidently includes that of reducing and of annulling." But he cancelled out at once the implications of this statement by adding that the Legislative Power always contains the Constituent Power "in its potentiality." Under the conditions of constitutional exigencies the legislative possesses the constituent power. Enunciated in this form the doctrine differs in nothing from the exercise of political power without constitutional limitations in European dictatorships. This illustrates why it has been said before that present-day Brazil lives under two constitutions, one on parchment, the other in the powerful hands of Vargas.

Yet here the comparison with other dictatorial regimes ends. Something happened which could not have happened under Hitler, Mussolini, Franco, or Pétain. In the public

¹⁵ See *supra*, pp. 90 ff.

¹⁶ Quoted from *O Globo* of Apr. 3, 1941.

session of the court on September 14, 1939, the vice-president of the court, Minister Eduardo Espinola, acting on behalf of Chief Justice President Carvalho Mourão and joined by other judges whose decision had been overruled, protested in strong terms against this insult, by the executive, to judicial dignity and independence, unheard of in the history of the country. Two other judges who had not participated in the overruled decision declared publicly their conformity with their brethren. The text of these remonstrations was prominently published in the press and the action of the judges made a sensational impression.¹⁷ Like hammer blows fell the accusations of the court: "The executive power has not reserved for itself in the constitution which it has enacted, the authorization to absorb or concentrate in its hands the constitutionally judicial function in its technical sense." "The interpretation of the constitution belongs to the courts. No decree disguised as interpretative law can deprive the judge of his constitutionally established function." "A decision which sustains what has been categorically enshrined in the constitution, cannot violate 'the higher interests of the state.'" "Judicial review is the touchstone of Brazilian public law." "To bar the highest judicial agency of the land from fulfilling its constitutional duties is a blow to the prestige of judicial power; to perform the constitutional duty cannot be against the material interests of the state unless words lose their significance."

The government stood castigated before the people. But it is indicative of the tolerant character of the Vargas regime that none of the fearless judges was demoted, dismissed, pensioned, or sent, for political confinement, to the *Ilhas*. Nor would a judge under a European dictatorship have mustered the courage of overt protest. Nothing happened. The

¹⁷ See text in *Jornal do Commercio* of Sept. 15, 1939, p. 6.

government stood by its guns. But the judges in Rio had saved their souls.

Not only did the government stand by its guns in this first case but it fired them again and again at the target of court decisions with which it disagreed. Several other cases occurred in which the principle of the *res judicata* in civil suits was invalidated by subsequent government decrees. They were much less publicized than the first one—perhaps because the judges had realized the futility of formal protests—and this writer did not succeed in verifying them by chapter and verse; no lawyer approached in this matter was able or willing to assemble a full and documented list of them. The gist of these cases can be given here only *salvo errore et omissione*. In one instance the government changed an article of the new Code of Civil Procedure in order to invalidate *ex post facto* the judgment in an otherwise uninteresting civil case which had gone against the government-controlled Bank of Brazil. Another one was again a tax case in which the court, on the basis of the existing statute, had decided that material bought by the contractor is not subject to the sales tax (*imposto de venda*) because the tax had been paid already by those on whose behalf the house was built; the government overruled the decision retroactively by a new decree law.¹⁸ Another case reported to this writer was even removed from the jurisdiction of the ordinary court and dealt with by administrative order of the Ministry of War. It concerned the restitution of students dis-

¹⁸ No. 2,383 of July 10, 1940 (*DO* of July 17, 1940). A similar problem was involved in *Alabama v. King & Boozer*, 314 US (1942) 1. The new government decree law overruled two older regulations (Decree no. 22,061 of Nov. 9, 1932 (*Coll.*, 1932, vol. V, p. 40) and Law no. 187 of Jan. 15, 1936 (*Coll.*, 1936, vol. IV, pt. 1, p. 38) which had stood unchallenged for a considerable number of years. The new rule as applied is valid as of the promulgation of the first decree of 1932 (!).

missed from the Military Academy. All these cases of invalidated court decisions were justified by the government by referring to the practice of "interpretative laws" which the government as legislator was entitled to issue in order to legally clarify ambiguous or obscure situations in previous decrees. That the use of such interpretative decrees would not affect judicial independence, was declared to this writer by Minister Campos. Such cases of authentic legislative interpretation are not altogether uncommon in Brazil.¹⁹ But there is of course a substantial difference between such "interpretations" or modifications of a statute prior to a court decision and the use of the "legislative interpretation" for a situation which has been decided already by the courts. No "interpretation" can remove the complaint voiced by many lawyers in Brazil that the regime no longer respects the separation of executive and judicial, that is, the independence of judicial power.

¹⁹ See D.L. no. 2,875 of Dec. 16, 1940 (*Coll.*, 1940, vol. VII, p. 313), interpreting D.L. no. 251 of Feb. 4, 1938 (*Coll.*, 1938, vol. I, p. 119); D.L. no. 139 of Dec. 29, 1937 (*Coll.*, 1937, vol. III, p. 500), interpreting Art. 89 of Decree no. 54 of Sept. 12, 1934.

CHAPTER VI

THE "IDEOLOGICAL" BACKGROUND OF THE REGIME

The international classification of contemporary governments and states has not yet reached anything like unanimity. To the detriment of political science no less than of international relations the terms "dictatorship," "totalitarian," "authoritarian," "Fascist," are used more or less indiscriminately. Perhaps this study of present-day Brazil will contribute materially to a better terminology,¹ but within its compass the problem as such cannot be adequately solved. While we leave it open until the end whether Vargas's Brazil may properly be spoken of as "totalitarian" or "Fascist," it is certain beyond doubt that it is an authoritarian state because the authority of the government in forming national policies and executing them is not based in any way on an organized participation of the people. It is also incontrovertible that present-day Brazil is practically ruled by a dictatorship in which the people are dictated to by the government without being able to make it amenable to its will through institutionalized methods.

No modern dictatorship is known to have missed the opportunity of evolving a convenient "ideology," that is, a system of seemingly transcendental values governing that specific political society. Such an ideology is needed to justify before the citizens the imposition and continued exist-

¹ See *infra*, pp. 369 ff.

ence of irresponsible domination. Lofty ideals make submission under it more palatable to the people. Germans, supposedly more metaphysically minded than other nations, have the reputation of being past masters in sweetening the bitter pill of reality by transcendentalism. Nor did the Latins do so badly although Mussolini had to borrow heavily from the teutonic Hegel. With ladies' fashions these "ideologies" have it in common that, in spite of some differences in trimmings, they are considerably stereotyped, so much so that they are almost interchangeable from state to state. Only the very first ideology of the absolutist state was really original. Centuries have woven the fabric of Divine Rights, of One God, One Father, One King. In our technological era ideologies are no longer homespun; they are manufactured and, when looked at closely, rather threadbare. Franco's Spain, Pétain's France, and even the very minor imitations such as Tiso's Slovakia, Antonescu's Rumania, and last but not least the murderer Pawelich's Croatia are cases in point.

Foreign Influences in the Constitution of 1937

In vain may one look in Brazil for such an ersatz of the officially discarded liberal democracy. After more than four years in office the regime has produced nothing of importance, let alone a full-fledged authoritarian philosophy. As a matter of fact not even a Hegel, had he been hired to do the job, could have worked out an integrated doctrine on the basis of such an international *tutti-frutti* as is consummated by the constitution of 1937. The document is loudly eclectic and Campos, its procreator, is the last to deny it—at least, not in the face of one who could tell him point blank from where the ingredients of his constitutional cocktail had come. The ghost of the Weimar constitution is much in

evidence in the frame of government and in the social program; its premature death has not prevented its assassins and many subsequent constitution makers from picking the pockets of the corpse. Other instruments of authoritarian government of contemporary Europe have served equally well, to mention only those of Austria (1934), Poland (1935), and especially Eire whose constitution of 1937 had just been submitted to a plebiscite (July 1, 1937) when Campos sat down at his desk to write the draft for his own country. In the corporate structure of the Senate and in a number of provisions pertaining to labor and management the influence of the Italian model cannot easily be missed. As a cross section of constitutional thought in the latter half of the period between the two World Wars Campos's work will remain of interest for the history of the decline and fall of constitutionalism.

Brazil and Portugal

Quite naturally one looks to Portugal for precedent and ideological influence. From there admittedly the appellation *Estado Novo* which in itself has the ring of a new “ideology,” has been borrowed. The Portuguese constitution of 1933 and the regime of Doctor Antonio Salazar enjoy the enviable reputation of being the world's sole “benevolent despotism.” He seems to consider his version of dictatorship as an “authoritarian democracy,” designed to “strike a balance between liberty and authority” which “nevertheless rejects the totalitarian exultation of the state over family, church, and society.”²

² See A. Rendle Elliott, “Portugal, Beleaguered Neutral,” *Foreign Policy Report*, vol. XVII (1941), no. 19, pp. 238 ff., a remarkably well-informed survey with many sidelights on Brazil. For a realistic study of the Portuguese corporative state as it actually functions see Francisco I.

All this sounds very much like the official doctrine of the Vargas regime. When Campos was interrogated on this point, he appeared to make little of the Portuguese inspiration of his own work. Nor is there much evidence of Portuguese tradition and influence on present-day Brazil. One cannot ignore the fact that the spiritual relations between Brazil and its mother country are much looser than those between the United States and Britain. In spite of almost the same language—Brazilian Portuguese has been enriched by many Indian (*Guarani*) and African words, owing to admixtures to the population³—Portugal for a long time has ceased to be the well from which Brazil's cultural garden is watered. Economically, politically, culturally, Brazil has outgrown Portugal by far. Brazilians consider it an elderly, very venerable, very old-fashioned relative for whose well-being they have a mild and at best sentimental interest.⁴ Portuguese immigrants have no political ties with their homeland. They are desirous only of becoming citizens of the more progressive and dynamic Brazil. Preferential tariffs exist for Portuguese goods and the press reserves a sort of place of honor for Portuguese news. Otherwise Brazil is fully emancipated from Portugal. Even modern literature and art have nothing in common with what is going on in that little strip of land beyond the sea which once ruled them and on which they look down now with a benevolence free from nostalgia, proud citizens of a great country as they are. The influence of the past does not go farther back than to the Empire.

Pereira dos Santos, *La Constitution sociale et politique Portugaise*, 2nd ed., Porto, 1940.

³ See *The Republics of South America, etc.*, pp. 287 ff.

⁴ See D.L. no. 3,483 of Aug. 12, 1941 (*DO* of Aug. 13, 1941), by which Vargas made his colleague, President Carmora of Portugal, a general *honoris causa* in the Brazilian army.

However, there is another aspect which should not be ignored. Portugal is one of the channels through which the current of a Fascist-controlled feeling of *Latinidade*—that is, the spiritual and political solidarity of the “resurrected” Latin race—may enter Brazil. It is a propaganda instrument of international Fascism whose emotional appeal—and were it only for the sake of counteracting Anglo-Saxon hegemony—should not be minimized on a people which feels itself part and parcel of the Latin civilization. This type of foreign infiltration has so far made little impression on the popular mind in Brazil, certainly less than the parallel *Hispanidad*—the movement of the Falangists on the Spanish-speaking countries of the Southern Hemisphere. But the Catholic high clergy all over the world is affected by Fascist sympathies out of gratitude for what Franco has done for the Church against the “Reds.” The Portuguese prelates are no exception.

The Lack of a Political “Ideology”

The regime has evolved no political theory of its own; as a matter of fact this is conspicuous by its absence. Even the most painstaking scrutiny of the many addresses and speeches of Vargas—under the wholly unwarranted assumption that they were not composed by “ghost” writers—will not yield a consistent political theory. They are pragmatic, opportunist, and in many parts, thoroughly sound.⁵ But Francisco Campos himself published in 1940 a volume *O Estado Nacional* which was widely advertised abroad as the Fascist credo of the regime.⁶ People in this country who

⁵ See Getulio Vargas, *A Nova Política do Brasil*, Rio de Janeiro, 1930 and later, 10 vols. to date.

⁶ Francisco Campos, *O Estado Novo: Sua estrutura, seu contendo ideológico*, Rio de Janeiro (Jose Olympio), 1940. See also two other vol-

have not read it denounced it as the Brazilian version of *Mein Kampf*; Brazilians who have read it, with their inborn sense of humor, shrug their shoulders; another literary prank of their versatile "Chico" Campos. On closer inspection, the volume, written with an unobtrusive though rather superficial erudition, is neither diabolic nor more Machiavellian than Brazilian political opportunism in general. It envisages implicitly the *Estado Novo* as the realization of the Brazilian application of Hegel's *Weltgeist*. Campos harbors admiration for the Italian "Hegelians" Federzoni and Gentile. Undeniably the book adopted a considerable number of Fascist slogans. It is thoroughly antiliberal and to a large degree also antidemocratic. But far from being an ideological blueprint for the future it is more an apology of sorts on behalf of the existing constitution, and an *ex post facto* commentary on his work; opportunistically it justifies all deviations from the customary rule of law under the constitutional state. In its violently sophistic diatribes against what is described as the "aberrations and perversions" of the "*democracia dos partidos*" and the inherent defects of the "Legislative State" it is an example of brilliant dialectics—and the Brazilians, by temperament and education, excel in that art. But the solutions are less Fascist than authoritarian; it does not extoll violence nor does it indulge in state mysticism. Moreover, it is so legalistic in its entire approach that one easily understands why the volume completely failed to serve the purposes of a persuasive and dynamic ideology. Today it is

umes published by him: *Educação e cultura*, Rio de Janeiro, 1940, which is a collection of addresses and articles before 1937, mainly on education, of a laudably liberal and humanitarian character; and *Antecipações á reforma política*, Rio de Janeiro, 1940, a collection of legal essays and parliamentary debates on various political subjects, also mainly before 1937 when the author was still a parliamentarian, a professor of law, and a practicing lawyer.

rarely quoted and seems to be forgotten by intellectuals. Nor should the time of its publication—shortly after the outbreak of the war—be overlooked. Vargas himself, under the impression of the impending collapse of France, came out bluntly for Fascism in June, 1940. This has not precluded him from being today our staunchest ally in South America. South of the Rio Grande politics are a merry-go-round.

Likewise the Fuehrer principle has not been introduced in Brazil. With its regimentation and automatism—both wholly alien to the liberal and individualistic temperament of the Brazilians—it is as much ridiculed as in this country. Nor have corporative ideas made much headway⁷ though they may be congenial to the frame of mind of a Catholic land. The social philosophy of the Church in the Encyclicals *Quadragesimo anno* (1931) and *Divini Redemptoris* (1937) are much referred to; but the regime evidently soft-pedals corporativism in the wise recognition of how unprepared the country is for its adoption. To build an “ideology” on racialism would be suicidal even for the Luso-Brazilian ruling class. If there is a country in the world to which the criteria of a “pure” race are inapplicable, it is Brazil.⁸ A reason why so many marriages on the highest social level remain childless, this writer was told, is the fear that some black or brown

⁷ During the period of Integralist incubation the corporative idea was much publicized. See Tasso da Silveira, *Estado Corporativo*, Rio de Janeiro, 1937; Olbiano de Mello, *República syndicalista dos Estados Unidos do Brasil, contendo um schema do Estado Corporativo*, Rio de Janeiro, 1937; Anor B. Maciel, *O Estado corporativo*, Porto Alegre, 1936. After the outline of the Vargas regime had become more definite the literature on corporativism lost much of its interest.

⁸ On this point one may find a still pertinent discussion in James Bryce, *South America: Observations and Impressions*, London, 1912, pp. 366 ff., 454 ff. On the Negro problem see the book by a famous anthropologist, Arthur Ramos, *The Negro in Brazil*, Washington, 1939 (transl. by R. Pattee).

or otherwise colored grandmother would unexpectedly make her appearance.

The truth in the matter of "ideology" is that Brazil since 1930 has not gone through a genuine social revolution. What has happened and still is happening is accelerated social reform in the course of which political institutions are adjusted to changing economics. The process did not call for a new "ideology." And there is another aspect of which the foreigner may be wholly unaware unless Brazilian friends tell him who know. What emotional outlets a realistic and mature nation like the Brazilians may need—beyond expression in rather innocuous dialectics—takes refuge in the mystical undercurrents of social life, reflected in and serviced by Christian mythology as well as the half-pagan, African traditions. Under the surface of Westernized rationalism deep layers of folkloristic superstitions are submerged. Where they cannot be satisfied by what the Church has to offer they institutionalize themselves in the religious-mystical groups and societies of the *Macumba* to which even intellectuals pay dues as a matter of precaution. For the masses Catholicism has been blended with the aboriginal cults. They need no soporific in the form of an artificial political ideology. The men who lead Brazil, with their feet on the rich and mysterious Brazilian earth, know well enough that no spurious indoctrination would take root in it.

Homage to Francisco Campos

At the close of this section perhaps a word or two on Francisco Campos may not be out of place. He appears, even more than Vargas himself, as the hero of the preceding pages. Brazilians who ought to know consider him as the

one-man brain trust of the regime. However correct this may be he impresses the visitor as an unusual personality, perhaps less as a forceful leader with imposing will power than as a person of endless resourcefulness for whom the legal technique which he masters to perfection is as much a means toward an end as it is *l'art pour l'art*. He is the Ulysses of the epic of the *Estado Novo*. It has been said by one observer with much experience in the human menagerie that he is “Levantine”; this seems inadequate; many Latin Americans of the guileless as well as of the sophisticated variety make that impression. He seems suspicious, always on his guard, frank only by indirection. The versatility of his political career reflects the Protean qualities of his character and intelligence. In his earlier years he was a liberal. At one time he was the leader of a Fascist movement of his own in his state of São Paulo. Today he is an authoritarian; he may well be a democrat in the future. He has many facets and his Latin cynicism blends them together into a personality certainly not altogether likable though fascinating for one who has understanding of the Latin mind. People say that his family life—his wife is incurably ill in an asylum and he cannot obtain a divorce from her—is unhappy; this would explain much if not all of his burning ambition. His active political career came to a sudden end, at least for the time being, when, in the fall of 1941, disagreeing with Vargas on what was declared a domestic issue, he tendered his resignation—which, however, was not accepted at that time. Campos was officially declared to be on an extended sick leave and the office was conducted *ad interim* by the Under-secretary of Justice, Vasco T. Leitão da Cunha, said to be in agreement with Campos’s fundamental policies. It came as a surprise when, in July, 1942, it was announced that the President

had "accepted his resignation" and that the Minister of Labor, A. Marcondes Filho, had been commissioned with the additional charge of the all-important Ministry of Justice and the Interior.⁹

What specific circumstances or reverberations have induced Vargas to finally dissociate himself from a man whose merits are equalled by few and surpassed by none, who had served his leader with a seemingly unswerving loyalty, is beyond the knowledge of the writer. But coming simultaneously with the enforced removal of two other key men of the regime—both suspected in the past of totalitarian sympathies by many reliable informants—namely, the Director of the Department of Press and Propaganda, Lourival Fontes, and the ill-reputed Chief of the Police of the Federal District, Felinto Müller, his withdrawal from politics has the audible overtones of a dismissal. It may be true that his illness is so serious as to incapacitate him for office. Whatever the political future of this remarkable man may be as a successor to Vargas, under the expectation of a normal evolution few had given him much chance. He has not enough real friends. Many people distrust him and there were even some informants, whose opinions carry weight with this writer, who were speculating about his role should Brazil become an Axis satellite. But in fairness it should be noted here that this writer found none who did not admire Campos's intellectual capacities, of which to convince himself he had ample opportunity. If the secret of success of the strong man of our time consists in finding able and devoted collaborators Campos certainly testifies to Vargas's qualification as a leader.

⁹ See *New York Times* of July 18, 1942.

PART THREE

THE DEFENSE OF THE STATE UNDER
THE VARGAS REGIME

CHAPTER I

THE RAMIFICATIONS OF THE PROBLEM

On the Correlation of Government and Power in Dictatorships

Without being committed to an invariable pattern, modern dictators have in common the fact that they gain political power through the active support of a minority only of public opinion which is organized for this end as a militant and military political party. Control is obtained by methods of at best constitutionally questionable nature, more often combined with outright violence or revolution. Once in power autocracies are little interested in "legalizing" themselves by a formal constitution. Their main objective is that of establishing the machinery of compulsion through which they will be able to maintain themselves in power against possible attacks of political opponents and a dangerous defection of public opinion. The instruments used for these purposes are, next to a government-controlled single political party, legislative and administrative measures for the "Defense of the State." In correlation with them, a mechanism is created for "molding" public opinion in such a way as to make it appear endorsing the regime. With local variations all modern dictatorships have followed this "classic" pattern, as can be seen from the anatomy of autocracy in Germany, Russia, Italy, Spain, and elsewhere.

Brazil under Vargas does not at all fit into this stereotyped pattern. First: The constitution of 1937 which Campos

pulled out of his desk, as the prestidigitator produces the rabbit from his top hat, has no parallel in other dictatorial countries. It took the Russians twenty years to decree a constitution; Hitler after nine years can still do without one. Second: Brazil is not a single-party state, but a nonparty state. There is no government-controlled party; there are no parties at all. Third: The regime came into power, if not with the approval of the majority of the nation, at least with their acquiescence. The fact that the *coup d'état* met with no resistance and that at no time after the suppression of the Integralists in May, 1938, has an organized opposition arisen, confirms this singular phenomenon. Fourth: In view of the general support of the majority of the nation no machinery was ever needed for deliberately "molding" public opinion. Public opinion is still relatively free from compulsion.

"Emotional Legislation"

Only in one trait does the regime conform to the universal pattern, and that is in the setting up of an elaborate legislative and administrative machinery for the "Defense of the State." But herein the autocratic state is not very different from the democratic state; the latter too, in these recent years of social and political unrest threatening its very existence, has increasingly been forced into a new—or relatively new—type of legislation which, because it is directed against emotions and actions influenced by such emotions, may be properly called "Emotional Legislation." Under the impact of disruptive forces of political emotionalism the efforts of both the autocratic and the democratic state to deal with what is from their respective viewpoints a "subversive" political activity have begun to show a good deal of similarity

in all countries.¹ It may safely be expected that the substance-matter of emotional legislation, though seemingly a by-product of a politically restive period, will command attention for a long time after the war has ended.

The reader of this study may well be surprised that relatively so much space is devoted to a subject which is either transient or common to all present-day governments. The reason is that Brazil has worked out not only what is perhaps the most comprehensive system of this type of legislation, but that a number of special problems enter which Brazil shares with many other South American countries, namely the existence, within its borders, of foreign nationalities which, inspired by foreign—National Socialist, Fascist, and to a considerable extent also Falangist—totalitarian ideologies and resultant political ambitions, have become the principal source of what the awakening nationalism in South America considers as subversive activities.

The vast majority of the legislative material now dealt with in this study is aimed at the specific South American problem of controlling the alien element within the country

¹ The term "emotional legislation" for the subject in question is used here for the first time in legal or political literature. The importance of the subject as such has been emphasized by this writer incessantly for the last few years. See Karl Loewenstein, "Militant Democracy and Fundamental Rights," *American Political Science Review*, vol. XXXI (1937), pp. 417 ff., 638 ff.; *Idem*, "Legislative Control of Political Extremism in European Democracies," *Columbia Law Review*, vol. XXXVIII (1938), pp. 591 ff., 725 ff. The last-mentioned articles were also published, in an enlarged French version, under the title *Contrôle législatif de l'extrémisme politique dans les démocraties Européennes*, Paris, 1939. As the only monograph existing on the subject this book, the author found to his surprise, was widely in use in government offices in all South American countries dealing *de lege ferenda* with legislation for the defense of the state. See also Karl Loewenstein, "El Problema del controlor legislativo del extremismo político y la legislación uruguaya," *La Revista de Derecho* (Montevideo), vol. 39 (1941), pp. 228 ff.

and of forestalling a Nazi conquest by internal revolution. In this sense a remarkable likeness, frequently to the point of identity, exists among all South American states threatened by the danger of a totalitarian infiltration. As a concomitant factor, if not as a result of this situation, legislative and administrative efforts are under way—in Brazil more than in any other South American state—to assimilate the alien element to the national environment; and, as an antidote against objectionable foreign influences, a movement has been initiated for instilling into the masses of the people national pride, consciousness of patriotic values, and the idea of nationhood. Intimately related to the latter element is the tendency to transfer ownership and management of economic enterprises from foreigners to nationals and thus to make nationalism a reality in the realm of economics and culture.²

Consequently, the following discussion will take up one by one these interrelated subjects of (1) legislation for the defense of the state proper; (2) legislation directed against objectionable foreign influences; (3) legislation aiming at economic and cultural “nationalization”; and (4) legislation intended to infuse patriotism and nationhood-consciousness into the people.³

Defense of the State as a Problem of Pan-American Solidarity

Before presenting a survey of what Brazil has done to safeguard its internal security against the machinations of what is commonly called the Fifth Column, it may not be

² The Swiss have known this problem for a long time under the untranslatable term of *Überfremdung*—that is, exclusion of foreigners from preponderant influence on nationally important fields.

³ The author plans to present a comprehensive study of this subject of “emotional legislation” as it exists today in most South American countries.

aniss to review briefly the proposals adopted by the Third Meeting of the Ministers of Foreign Affairs at the Rio de Janeiro Conference (January 15–28, 1942). It should be borne in mind that these resolutions incorporated in the Final Act constitute for the time being little more than an ideal blueprint which, though not legally binding, may serve as the minimum program of independent legislative action by the individual members of the Pan-American family of nations. It will be seen that when projected against the background of these proposals which are applicable to all American nations, the Brazilian legislation, placed on the statute book long before the Rio de Janeiro Conference, goes considerably beyond the minimum requirements. Actually, the Vargas regime has done more in counteracting foreign subversive infiltration than any other Latin-American state.

The subject is dealt with in Resolution XVII of the Final Act of the Rio de Janeiro Conference.⁴ The resolution reaffirms the determination of the American Republics to prevent individuals or groups within their respective jurisdictions from engaging in activities detrimental to the individual and collective security and welfare of the states. It is recommended that the governments adopt similar legislative measures tending to prevent or punish as crimes, acts against the

⁴ Resolution XVII is found in the *American Journal of International Law*, vol. 36 (1942), Supplement, pp. 64 ff. For the corresponding Resolutions see (1) Lima Conference (Dec., 1938), Resolution XXVIII (political activities of foreigners), *American Journal of International Law*, vol. 34 (1940), Supplement, p. 198; (2) Panama Meeting (Oct., 1939), Resolution VIII (co-ordination of police and judicial measures for the maintenance of neutrality), *American Journal of International Law*, vol. 34 (1940), Supplement, p. 14; (3) Habana Meeting (July, 1940), Resolutions V (issuance of passports), VI (foreign activities against domestic institutions), VII (diffusion of subversive doctrines), *American Journal of International Law*, vol. 35 (1941), Supplement, pp. 8 ff. From a comparison of these Resolutions it will be seen that the proposals became more stringent and specific year after year in conformity with the increasing awareness of the potential danger of totalitarian infiltration.

democratic institutions of the states of the continent; the governments are advised to expand their systems of surveillance designed to prevent subversive activities of nationals of non-American countries that originate in, or are directed from, a foreign country, as well as to control organizations directed or supported by elements of non-American states whose activities are harmful to American security. For the study and eventual co-ordination of such measures the "Emergency Advisory Committee for Political Defense" was set up; this consists of seven members elected by the Governing Board of the Pan-American Union and was subsequently convened in Montevideo in April, 1942.

These resolutions were supplemented by a "Memorandum on the Regulation of Subversive Activities" which, predicated partly on existing legislation of the various states, partly on ample experience with the technique of the Fifth Column, submitted specific recommendations for future legislative action, among which the following may be summarized here: ⁵ registration of all aliens and strict supervision of the nationals of the Axis; detention or restrictions of free movement of Axis aliens considered as dangerous; prevention of such aliens from the possession and use of firearms, explosives, transmission sets, and airplanes; prohibition of participation of aliens in organizations controlled by, or acting in the interest of, Axis states, protection of aliens not deemed dangerous from unfair discrimination or other

⁵ For an excellent survey of the measures agreed between the republics of the Western Hemisphere for combating Fifth Column activities see Willard B. Cowles, "Joint Action to Protect an American State from Axis Subversive Activity," *American Journal of International Law*, vol. 36 (1942), p. 242. The texts of the Final Acts of the Conferences of Panama (1939), Habana (1940), and Rio de Janeiro (1942) may be found in the *American Journal of International Law*, vol. 34 (1940), Supplement, pp. 1 ff.; vol. 35 (1941), Supplement, pp. 1 ff.; vol. 36 (1942), Supplement, pp. 61 ff. A full discussion of this subject is beyond the scope of this study.

interference with their normal social and business activities. Another set of recommendations deals with the abuse of citizenship, such as denying citizenship to persons still in allegiance to Axis states or states subservient to them; loss of citizenship or of the rights inherent in it for continued allegiance to an Axis state or for acts detrimental to national security; control of entry and departure of all aliens and particularly of those suspected of being agents of the Axis states or of being engaged in political activities on their behalf; registration with an agency of the state of any person or organization seeking to act in any way on behalf of, or in the political interest of, any non-American state which is not engaged at war on the side of any American Republic; this includes specifically clubs, societies, and institutions whether of a social, humanitarian, sporting, educational, technical, or charitable character. Finally it is recommended to supervise all communications to or from states subservient to, or in communication with, members of the Axis groups.

Executive Organization of the Defense of the State in Brazil

Returning now to Brazil one notes that the constitution (Art. 161 ff.) stipulates that the army, under the authority of the president of the republic, is the foremost instrument for safeguarding national security. The president is the head of the National Security Council, an old institution, established in 1934, composed of the ministers of state and the chiefs of staff of army and navy. The chief of staff of the army, General Pedro Aurelio de Góes Monteiro, is considered the most powerful man of the regime after Vargas himself. The functions of the council are advisory and consultative. But the nerve center of all policies designed to assure the stability of the regime, in fact its watchful eye, is

the "Section of National Security" of the Ministry of Justice and the Interior, reorganized in 1939 when the European war threatened and precautions had to be taken against eventual unrest among the foreign minorities.⁶ This office consists of five high-ranking officials appointed by that ministry, who, however, carry on their other official duties. Other persons may be called in from time to time and for special purposes. Procedure and activities of the section are strictly confidential (Art. 5 § 2; 12). Here is the point of co-ordination of all activities of other ministries affecting national security (Art. 4, no. II), such as: suggestions of propaganda methods for stimulating the spirit of nationhood and national defense; public morale; policing the frontier zones; supervision of state activities on this field; control of foreigners (including registration, naturalization and denaturalization matters, expulsion); direction of police activities. The section operates directly under the responsibility of the Minister of Justice and of the Interior (Art. 5) who for these specific functions is the superior of the other ministers. He thus is the police minister of Brazil, and the police of all states—but not of the Federal District—are under his orders, a situation not particularly to the liking of São Paulo and Belo Horizonte. As a result the political police under federal control is an efficient instrument of political power for the maintenance of both the regime and of public order.⁷

⁶ See Decree no. 4,517 of Aug. 12, 1939 (*DO* of Aug. 15, 1939).

⁷ This writer found that leading officials in the states were reluctant to disclose the facts of the situation. They contended that the Political Delegate in each local police administration is under orders of the Interventor; but they had to admit that the police takes direct instructions from Rio, and that the Interventor is not even always advised of political action taken by the local police on orders from Rio. The statement of the Secretary of Justice of one state to the effect that he would arrest federal police officials who acted in "his" state without his authorization, did not sound very convincing.

CHAPTER II

THE NONPARTY STATE

The End of the Integralist Movement

From the start the regime had little to fear from the constitutional parties of the defunct parliament, whether the *Alliança Liberal* or the Conservatives. No strong nationwide parties existed and Vargas knew how to deal with individual leaders. Some of them went temporarily into exile, the majority found it convenient to array themselves with the powers that be. What remnants of the Communist movement existed were well under control and caused no further anxiety. But the Integralist movement remained a real danger. Salgado and his backers of the German Embassy had hoped that he and other Integralist leaders would be taken into the cabinet and Brazil would be converted in due course into a full-fledged Fascist state. The Greenshirts offered themselves as the appropriate single government party. Whether Vargas had given them pledges, promises, or substantial prospects of sharing the power is unknown. Probably he had played both ends by neither encouraging nor alienating them. But the Integralists felt double-crossed when only confidants of Vargas from among the old governing class were taken into the cabinet and they were left in the cold. Yet during the first weeks of the "national revolution" their hopes ran high. A few days after the *coup d'état* they staged a mass demonstration in Rio; fifty thousand stalwarts, filing past the impassive Vargas, gave the Fascist

salute. Much unrest occurred when the delirious followers believed that at long last their January 30 had arrived. But Vargas acted at once and with force.¹ Two days later he outlawed the party and closed its offices all over the country. For some time only cultural and sports activities were permitted. On December 2 a decree law² prohibited all political parties; aimed at all political parties, it struck the Integralists in the first place. Unprepared for the shock, they split into factions after having lost financial support and the advertising value of emotional propaganda. Salgado, never a leader, was unable to assemble the debris. During the following months acts of individual terrorism occurred and arrests continued. The contention of the police that, in March, 1938, it prevented a dangerous plot at the eleventh hour, is largely propagandistic. The story that five thousand daggers marked with the Swastika had been found deserves no credence; the Germans are not given to silly gestures. But Vargas had in the meantime convinced himself of the undercover activities of the German Embassy and the well-organized German minorities in the South of Brazil whose support of the Integralists had been an open secret for a long time. On April 18, 1938, he issued another decree law³ which severely curbed political activities of foreigners. The situation reached its climax on May 11, when a group of disgruntled Integralists staged a coup for assassinating the president and seizing power by force. Its technique was too reminiscent of the murder of the Austrian Chancellor Dollfuss by the Nazis in July, 1934, not to reveal the skilled hands of the German wirepullers. The plot would have succeeded except for the cold-blooded courage of Vargas and his

¹ Rumor has it that an official film was taken of the parade which enabled him to pick out the leaders with ease.

² D.L. no. 37 of Dec. 2, 1937 (*DO* of Dec. 4, 1937).

³ D.L. no. 383 of Apr. 19, 1938 (*DO* of Apr. 19, 1938).

daughter Alzira, who held off the attackers of the Palacio Guanabara with machine guns, rifles, and pistols until—suspiciously late, only after five hours—the Minister of War with troops raised the siege. The chief of the general staff Góes Monteiro, had been also attacked in his house. Other Integralist groups in vain tried to seize the naval arsenal, the airport, and the Ministry of War.⁴

This time the government cracked down on the rebels without mercy. Martial law was declared. The “field commander” of the Greenshirts, Doctor Belmiro Valverde (a physician) and many other leaders were arrested, among them a number of high-ranking naval officers. The subsequent investigation revealed wide and deep ramifications of the Integralist movement. Many of the conspirators were brought to trial before the National Security Tribunal. Working overtime, it sent more than five hundred convicted plotters to the penitentiaries and penal colonies with sentences ranging from one to fourteen years. None, however, was sentenced to death; capital punishment for political crimes was decreed, by constitutional amendment,⁵ only after the putsch and was not made retroactive. Participants, backers, and sympathizers were ferreted out and a large number of German foreigners were expelled. The plot was stamped out to the last vestiges, very much to the satisfaction of the general public in Brazil, which never had a flair for Fascism of any brand. Salgado himself, whose implication could not be proved, had gone into hiding after the March events. His abode was known to the police but he was not molested. He left Brazil as late as July 22, 1939, for

⁴ John Gunther, *Inside Latin America*, p. 355, describes the putsch imitably thus: “What followed was a wonderful *mélange* of Hollywood, Latin American atavisms, bloodshed, cowardice, confused ineptitude and farce.”

⁵ See *supra*, p. 90.

exile in Portugal where he still lives as a sick man.⁶ Vargas's stock was immensely boosted by his energetic action and even more by his subsequent conciliatory attitude which permitted many of the former Integralists to make their peace with the regime. More lately a goodly number of those serving long terms were released on parole.⁷ With the breakdown of the abortive rebellion the last organized opposition to the regime had been crushed.

The Prohibition of Political Parties

Brazil under Vargas is a nonparty state. The legal basis for the dissolution and prohibition of all political parties was created by a decree law of December, 1937, patterned closely on the corresponding one of National Socialist Germany.⁸ In terms of the preamble—these, in authoritarian states, are verbose and usually overreach themselves in explaining the *raison d'être* for the measure they introduce—the law is intended to offset “the proliferation of artificial political combinations,” to counteract “groupments of purely electoral character which are opposed programmatically to the *Estado Novo* or espouse doctrines or ideologies in contradiction to its aims”; the regime, it is declared, does not need intermediaries between government and nation. Consequently, all political parties registered or in

⁶ Hugo Fernández Artucio, *The Nazi Underground in South America*, New York, 1942, p. 83, reports that Salgado issued recently a manifesto from Lisbon in which he advised his partisans to support Vargas because the latter had fulfilled to the letter the Integralist program. This writer found no evidence for the existence of such a manifesto. Nor is he willing to believe that Salgado still maintains close relations with Berlin. The Nazis are not in the habit of coddling political failures.

⁷ On the present potentiality of the Integralist movement see *infra*, pp. 258 f.

⁸ D.L. no. 37 of Dec. 2, 1937 (*DO* of Dec. 4, 1937); on the Nazi act see K. Loewenstein, *Hitler's Germany*, p. 25.

process of registration with the Electoral Court were dissolved (Art. 1). Nor are associations under the civil law permissible which "behind innocuous forms hide the immediate or remote intention of transforming themselves into instruments of political propaganda" (Art. 3); this provision aims evidently at the efforts to constitute new parties under the camouflage of nonpolitical societies. Simultaneously that most dangerous offspring of political organization, the militarization of political parties, is outlawed; party militias and auxiliary organizations, whatever their aims and purposes, are no longer tolerated (Art. 1, § 2). This prohibition is directed against the private militias which governors of the states had maintained in the past as well as against the Fascist type of nation-wide military organizations such as the Greenshirts. The monopoly of armed force belongs exclusively to the executive power of the state; organizations of a military nature, characterized by hierarchy and subordination, cadres, and formations, are forbidden.⁹ Also forbidden are all ostensible manifestations of party allegiance and party symbolism, such as uniforms, banners, badges (Art. 2), as had been established already by the constitution (Art. 2, sentence 2) and restated later on with reference to the states.¹⁰ These provisions are strictly enforced by the police and loyally observed by the population. As a matter of fact Brazil is perhaps the only country in the world where the lapels of private citizens are not disfigured by some provocative emblem, button, or pin loudly announcing allegiance to some political group or conventicle. However, political parties may continue, though under different names, as associations for purely cultural, charita-

⁹ See Art. 8 of D.L. no. 431 of May 18, 1938 (*DO* of May 19, 1938). On this important "Public Order Act" see *infra*, pp. 147 ff.

¹⁰ See Art. 53 of D.L. no. 1,202 of Apr. 8, 1939.

ble, or sportive purposes (Art. 4), a rather dangerous provision considering the experiences with such camouflaged continuations of political parties in Europe, Argentina, and Brazil itself. Members of the armed forces must not belong to such transformed associations, obviously in order to avoid indoctrination or being misled to lend their military experience to illicit training in arms. The penalties under the law—prison terms from two to four months and fines—are rather mild.

Later on, this study will try to access the volume and intensity of still existing political opposition against the regime.¹¹ But one point cannot be too strongly emphasized here: Brazil under Vargas belongs to that—not very numerous—group of authoritarian states which operate successfully without a government party.¹² It testifies to the solid popular backing of the regime that since its inception it has been able to maintain itself without the aid of a militant party supporting it for the sake of holding on to the spoils. Vargas's autocracy is strictly personalistic, based on and rooted in his personal prestige and the achievements of his government. Naturally enough it could not have obtained nor remained in power without the support of the armed forces for which it had to pay by increased salaries, emoluments, and an influence on politics which at times, at least during the first years of office, accounted for many strange moves and shifts internally and externally.¹³ Moreover, the

¹¹ See *infra*, pp. 255 ff.

¹² Portugal under Salazar and Greece under Metaxas are or were other illustrations. Efforts of some Vichy-men to create, from among war veterans and other nationally "reliable" followers, a "legion" as single government party have thus far failed.

¹³ On the army see the booklet by Minister of War Eurico Gaspar Dutra, *O Exército em dez anos de governo do Presidente Vargas*, Rio de Janeiro (published by the Propaganda Department), 1941; see also the

regime had to enlist for the manifold purposes of extended state regulation vast armies of officials without, however, exacting from them an oath of loyalty to the person of Vargas himself or a similar promise of political subservience. Most of them would not be affected by a change of the government anyway. In this—and in many other respects—the Vargas dictatorship is clearly different from Fascist states for which the maintenance of the Fascist single party is the prime requisite of continued existence.

The Protection of Social Order

The abortive putsch of the Integralists in May, 1938, was dangerous enough to induce Vargas to strengthen the existing common law—that is, the provisions of the criminal code—by special legislation. One of the measures taken through an amendment to the constitution consisted in establishing capital punishment for a number of felonious acts committed, with the help or subsidy of a foreign state or organization—the latter clause directed against the NSDAP of the Third Reich which was believed to be implicated in the uprising—against internal security and the integrity of the national territory.¹⁴ Another one was a comprehensive and stringent Treachery and Public Order Act.¹⁵ The statute, one of the most detailed and intelligent of its type in existence anywhere, utilized both Brazil's own recent experience with Fascist and Communist extremism and similar

recent comprehensive *Estatuto dos Militares* in D.L. no. 3,084 of Mar. 1, 1941 (*Anuario Legislativo*, 1941, p. 255).

¹⁴ Constitutional Law no. 1 of May 16, 1938 (*DO* of May 18, 1938). See *supra*, p. 90.

¹⁵ D.L. no. 431 of May 18, 1938 (*DO* of May 19, 1938), "defining crimes against the international personality, the structure and security of the state and against social order."

measures for the defense of the state in other countries under similar predicament.¹⁶ Of the main provisions only the following may be mentioned here: by way of a general clause, without sanctions, the law threatens punishment for "all attempts against the state, public order, security, and those agencies and institutions, which are instrumental in fulfilling the aims of the *Estado Novo*" (Art. 1). Under death penalty are (Art. 2, with nine factual situations as specific felonies): (a) high treason, that is, in conformity with the system of the French Penal Code, endeavors to subject the state to a foreign sovereignty and to endanger its security and international independence (nos. 1-3); transformation of the political and social order, with support of or subsidies from a foreign state or an international organization (no. 4); attempts to establish, by violence, the dictatorship of a social class (no. 5), clearly directed against Communism; armed insurrection (even if arms are held only in readiness) and civil war (nos. 6 and 7); all terroristic acts (arson, devastation, looting, etc.) (no. 8); attempts at the life, bodily integrity, and liberty of the president (no. 9). Death is meted out by the firing squad.

Article 2 contains, in no less than thirty subdivisions, a complete catalogue of all crimes involving political violence, a veritable antirevolutionary code of which only a few felonies can be submitted here: attempts against the constitution or form of government (no. 1); against life and liberty of high public functionaries (no. 2); conspiracy

¹⁶ If there are still liberal doctrinaires left who take issue with such special legislation designed, in abnormal times, to deal with subversive movements of international criminality, they may be referred, for their own enlightenment, to what the United States is doing in this respect. See "Recent Federal Legislation Against Subversive Influences" (note) in *Columbia Law Review*, vol. XL (1941), p. 159; J. W. Brabner Smith, "Subversive Propaganda in the Past and in the Present," *Georgetown Law Review*, vol. XXIX (1941), p. 809.

for rebellion, insurrection, and treason (nos. 2, 4, 6); promotion, organization, or management of any society whose activities are directed against the security of the state (no. 8); practicing subversive propaganda (no. 9); incitement to hatred against social classes (no. 10); paralyzing public services (no. 12); incitement to disaffection of members of the armed forces (no. 13); hostile propaganda against the armed forces and against the authorities in general (nos. 24, 25); creating animosity between the classes of the armed forces or between them and the civilian institutions (no. 15); impeding the exercise of the duties of the public functionaries (no. 27) who, on the other hand, cannot strike or cease work (no. 28); propaganda for war (no. 17)—a provision inscribed in view of the impending European conflict in which Brazil intended to remain neutral. Elaborate provisions deal with the manufacturing, possessing, importing and exporting of arms, ammunitions, and explosives without authorization (no. 18); incitement to collective disobedience or to disobedience of public officials (nos. 20, 21). Another set of provisions pertains to the so-called economic crimes which later on were subjected to heavy penalties by a special law.¹⁷ Propaganda for strikes and lockouts is punishable (no. 28). One of the most insidious techniques of totalitarian propaganda is hit by prohibiting and penalizing the spreading of false information which is “apt to create anxiety or fear among the population” (no. 26).

If such crimes as stated in the law are committed through the press the copies may be apprehended, in addition to penalties under the law (Art. 4). In case of repetition the periodical may be suspended, at first for fifteen days, eventually from one to six months. Subversive literature—whether of national or foreign origin—if it contains one of the offenses

¹⁷ See *infra*, pp. 151 ff.

under the law may be confiscated and destroyed (Art. 5). Similarly subject to heavy fines are radio stations when violating the law (Art. 6).

Benefiting from European precedents the act deals effectively with the potential disloyalty of public officials. Functionaries participating in or conniving at subversive activities are the maggots in the living tissue of the state. According to the constitution of 1937 (Art. 172, § 2) any officer or official found guilty by the court of a crime against the security of the state forfeits his position or appointment. In addition, an official found guilty of open or secret affiliation with a groupment, center, or junta of illegal character, loses his position and all advantages derived therefrom (Art. 9). An officer of the armed forces involved is dealt with by the military courts (Art. 10). Those convicted for crimes as established in the act are incapacitated for ten years from holding any public office or function (Art. 11). Nor can a person who has been affiliated with illegal or subversive groups be employed in any enterprise of public character (of Union, states, municipalities); their superiors are responsible, under penalty of dismissal, for the control of their employees (Art. 12). Similar restrictions exist for active members of the merchant marine (Art. 13). The government will close all private institutions of educational character which retain as directors, teachers, officials, or employees persons having been implicated in an activity forbidden by the act (Art. 14). Enterprises connected with publicity have to submit to the chief of police a list of their employees as to name, nationality, and residence and must keep them so informed, under penalty of being closed down (Art. 15). If a foreigner, a naturalized citizen, or an official violates the law it is considered an aggravating circumstance (Art. 18). The

penalties are harsh, ranging from considerable minimum prison terms up to thirty years, in addition to heavy fines and the penalties under the ordinary criminal code which, however, is superseded, to a large degree, by the more specialized provisions of the act. All felonies are adjudged by the National Security Tribunal (Art. 23).

The act is stiff and has little in common with the idyllic form of insurrection in a bygone age when church bells are rung and the insurgents with their rifles assemble in the market place to march on the town hall. It is conditioned by the totalitarian technique of preparing for civil war by undermining the authority of the state through propaganda and subversive infiltration which in turn is predicated on the support of emotionalized masses and organized subversive groups.

The Protection of the Security of Economic Life

The regime went one step farther. Abuse of economic power, exploitation of the economically weak by the strong, dishonesty in the daily transactions of business in which the common man, the consumer, participates, are dangerous to the stability of the social order. Fully realizing that the success of a government depends to a large extent on economic security, violations of economic honesty are raised to the level of political crimes against the social order and dealt with accordingly. Consciously or subconsciously are Russian precedents utilized here. Already the Public Order Act had made price fixing in articles of primary necessity, perpetrated for mercenary reasons, a crime directed against the security of the state (Art. 23). By way of an authentic interpretation this provision was later elaborated to the effect that this cate-

gory embraced food, clothing, sanitary goods, light, and combustibles, rents, and construction material.¹⁸ These provisions were implemented by the Act on Economic Life (*economia popular*).¹⁹ Of its detailed provisions only a few offenses may be mentioned here by way of exemplification: to render unusable, or to destroy, for the purpose of raising the price and with the intention of profit, goods necessary to popular consumption (Art. 2, no. I); to suspend work for the sake of competition (Art. 2, no. II); to impede or render more difficult the competition in goods of production, transportation, or commerce if the act is committed by capitalistic combinations with the intent to increase profits arbitrarily (Art. 2, no. III); to retain or to accumulate goods of primary necessity with the intent to control the market or to create rising prices (Art. 2, no. IV); illicit gain by fraudulent speculations (Art. 2, no. VI).²⁰ Other punishable offenses under the act are: underselling in order to prevent competition; fictitious operations for lowering or raising values; fraudulent statements on prospectuses in stock exchange transactions; fraudulent banking and other capitalistic practices in the field of corporative organization of any kind. Other provisions of the statute refer to fraudulent speculations, price fixing (Art. 3), and especially to usury—one of the cancers of a residuary semicolonial economy—when committed in transgression of legally fixed in-

¹⁸ See D.L. no. 1,716 of Oct. 23, 1939 (*DO* of Oct. 31, 1939).

¹⁹ D.L. no. 869 of Nov. 18, 1938 (*DO* of Nov. 21, 1938).

²⁰ The latter provision strikes mainly at the more sinister forms of gambling. The popular vice of gambling is exploited by the state through licensed lotteries and canalized into so-called casinos, or gambling houses of frequently considerable elegance in which the minimum stake for the "little fellow" is as low as five cents. It may be added here that in Brazil, as in all other South American countries, practically everybody plays in one or more of the official lotteries which are authorized by the federal government, the states or the municipalities; the lottery ticket seller is one of the characteristic figures of the street life.

terest rates, and to other illicit gains (Art. 4).²¹ The law declares it an aggravating circumstance if the act is committed in a period of a grave economic crisis; if considerable individual damage is caused; if the usurious nature of the act is dissimulated; if committed by a public functionary, a military person, a minister of a religious cult, or by any person manifestly superior in socio-economic status to the victim, or if perpetrated against a working man or agricultural laborer (Art. 4 § 2, no. IV(b)). The penalties are heavy though less so than under the Public Order Act. All crimes involving violations of the *economia popular* are adjudicated by the National Security Tribunal.

Most informants agree that the provisions are among the most praiseworthy enacted by the regime. Of decidedly social character they are directed against tangible excesses of predatory capitalism and against the misuse of superior economic power against the weak. They protect effectively the little fellow and try to put a brake on "rugged" individualism of the liberal period. In its anticapitalistic provisions the act reveals clearly the influence of our legislation in the Sherman Anti-Trust Act and in the laws passed by the New Deal for the protection of the public against fraudulent practices in securities (Securities Act of 1933, Security Exchange Act of 1934, and Public Utility Act of 1935).²² Although the act gives many a headache to the legal staffs of the large foreign corporations, thus far it has not been applied to break monopolies or for anticapitalistic purposes; the regime carefully avoids conflicts with big business which it needs for opening up the industrial potentialities of the new land. But the public at large considers the protection

²¹ This provision follows verbatim the famous Sect. 38 of the German Civil Code of 1900.

²² See the excellent monograph by J. H. Meirelles Teixeira, *O problema das tarifas nos serviços publicos concedidos*, São Paulo, 1941.

against unscrupulous exploitation of the consumer as beneficial and the businessman no less welcomes the law because it serves as a deterrent against usurious practices and unfair competition. How the judges of the National Security Tribunal handle the law—cases under the popular economy label form a vast proportion of all cases on the docket of the court—will be discussed later.²³

²³ See *infra*, pp. 224 ff.

CHAPTER III

POSITION AND CONTROL OF THE ALIENS

The socio-political position of the foreign element has so many facets in Brazil—and for that matter in all still semi-colonial countries of South America—that no attempt can be made here to deal adequately with all political, economic, anthropological, geographical aspects of the problem. There is no lack of general information on this subject of alien minorities. The role the foreign Fifth Column has played in the preparation and conduct of this global war has attracted wide attention in recent years, so much so that as a matter of fact it has become a “must” topic for all South American observers regardless of whether they have tried to study the situation inductively “on location”—which is extremely difficult—or whether they operate mainly by the hearsay technique.¹ But all these reports are guilty of one essential omission: there is next to no information on what the governments in charge of national security and public order have done in order to meet the danger arising from an unassimilated and largely foreign-controlled element within the national borders. This study tries to fill a gap by way of a

¹ Only a few books may be mentioned. Carleton Beals, *The Coming Struggle for Power in Latin America*, Philadelphia, 1939; Ernesto Guidici, *Hitler conquista America*, Buenos Aires, 1938; Herring, *Good Neighbor*, pp. 152 ff.; Gunther, *Inside Latin America*, pp. 386 ff.; Duncan Aikman, *The All-American Front*, New York, 1940; T. R. Ybarra, *America Faces South*, New York, 1940. The discussion of the “Axis intrigue in Brazil” by Hugo Fernández Artucio, *The Nazi Underground in South America*, pp. 55 ff., is not accurate; nor does it take into account the very complex internal situation of the country.

systematic though necessarily incomplete survey of the apposite legislative and administrative measures.

The German Element in Brazil: The Situation Before the Advent of National Socialism in Germany

At the risk of being repetitious a number of observations as to the factual background cannot be omitted here. We deal first with the German element in Brazil; it implies the most acute danger and offers the greatest difficulties to an appraisal free from sensational exaggerations. Foreign and especially German immigration has contributed to the development of Brazil to an extent which can hardly be overestimated. The first settlers from Germany came to Paraná, and the other southern states of Santa Catarina and Rio Grande do Sul in 1824.² After 1848 and again during the second half of the reign of Dom Pedro II (after 1860) small farmers from Germany were drawn to Brazil, followed later, before and after the turn of the century, by a stream of immigrants mainly from Italy but also from other sections of Central and Eastern Europe. The Portuguese immigration had always been relatively strong. But Brazil

² A revealing discussion of the Germans in Brazil is by Reinhard Maack, "The Germans in South Brazil: A German View," *Inter-American Quarterly*, vol. I, no. 3 (July, 1939), pp. 5 ff. The author is a German geographer living in Brazil since 1930 who is credited with having prepared valuable maps (valuable for whom?) of southern Brazil. While not overtly propagandistic the article is as brazen a manifestation of the German superiority complex as can be found, by one who evidently is ready to play his part when, in not too distant a future, he expects Brazil to become a colony of the Third Reich. The most recent and informative revelations on the German element in South Brazil are found in Ewart Edmund Turner, "German Influence in South Brazil," *Public Opinion Quarterly*, Spring, 1942, pp. 57 ff. The author, formerly pastor of the American Church in Berlin, presents an analysis of the Nazi danger in the southern states which, though perhaps overpessimistic confirms and enlarges most of the impressions of this writer.

proved less a melting pot than our country under somewhat similar economic conditions.³ The Latin element—Italians and Iberians—became assimilated with considerable readiness in the first and at the latest in the second generation. Language, social surroundings, similarity of climate and occupation, and the Latin background in general accelerated cultural absorption and social acclimatization, promoted by a good deal of dispersal among and intermarriage with the Luso-Brazilian element. São Paulo was and is perhaps that metropolis in the Western Hemisphere which bears most visibly the Italian imprint. The Germans, on the other hand, settled mostly in the then remote interior of the southern states. With scanty communications they remained for a generation and more among themselves in homogeneous and contiguous settlements. They cleared the woods and transformed the wilderness into something similar to the regions from whence they had come. The temperate climate, the rich soil, and the entire landscape were congenial to them. They preserved their racial and folkish characteristics to such an extent that as late as in the period before the first World War the geography textbooks in primary and secondary schools of Imperial Germany described these settlements with pride as full-fledged German “colonies.” Even today, Blumenau, Joinville, Florianopolis, Porto Alegre, and many other towns of southern Brazil have all the familiar marks of the prosperous, clean, and well-administered towns in Württemberg, Franconia, or Schleswig-Holstein. The Germans were deservedly respected for their civic virtues, their energy, honesty, adaptability, and economic efficiency. They did the hard and dirty work while the Luso-Brazilians of the feudal

³ On population problems in general, see F. J. Oliveira Vianna, *Raça e assimilação*, São Paulo, 1934; Alfredo Ellis, *Populações Paulistas*, São Paulo, 1934.

period were inclined to shun physical labor. Their new homeland gave them ample rewards. The memoirs of the German leader of the late nineteenth century, Karl von Koseritz, convey a convincing picture of self-contained prosperity of the Germans in this halcyon period. Culturally they felt superior to their hosts and that not without justification. Their aloofness from native intellectual life, or from what rudiments of it may have existed in that still feudalistic era, was also due to a large extent to neglect by the government and the centralized administration in far-away Rio; they could be neglected because they were able to take care of themselves. They had no interest in the local politics around the clique of the *chefe*; neither did they seek nor attain access to the ruling oligarchy of the Imperial period. Culturally and commercially a close intercourse was maintained with the mother country. In the period before the first World War the rich German Brazilian, returning for a leisurely and lavish visit with the "folks back home" was a familiar figure in Germany, perhaps no less than his well-to-do counterpart from Pennsylvania and Ohio. All cultural and social institutions remained German, schools subsidized by the inhabitants of the district under German instructors and with German curricula, the German church with German pastors, an excellently handled German press, German bookstores and German goods, the German *Wirtshaus* and all the manifestations of German social gregariousness, *Turnverein*, *Gesangverein*, *Kegelverein*, the vast network of German societies and their paraphernalia of *Gemütlichkeit* as the complement of German *Tüchtigkeit*. The language was the most important cultural link. Many of the Brazilian Germans, even in the second generation, did not speak Portuguese, and even Brazilians of other stock living in the same communities felt induced to learn German as the

lingua franca of southern Brazil. It is easily understandable that for those who cared at all, Schiller and Goethe meant more than Camoens or Euclides da Cunha. Later on, particularly before and after 1914, the farmer element was joined by a higher-class professional group of German immigrants, composed of craftsmen, skilled laborers, salesmen, and merchants, and finally, after 1920, intellectuals whom postwar misery at home had driven to the fabulous new country. They installed themselves all over the country in the towns: in Rio, São Paulo, Petropolis, Curityba, Santos, Belo Horizonte, Bahía, Pernambuco, and Fortaleza. Among the well-to-do middle class of Brazil, German merchants and storekeepers, small manufacturers, foremen in plants, teachers, and innkeepers hold a prominent position today. Inter-marriage with the Brazilians, Italians, and Poles was common in this group. Politically they did not aspire much to compete with the Luso-Brazilian governing class, to which a number of the successful Italian immigrants, like the Crespis, Mattarazzos, Martinellis in São Paulo, had found access. German trade with Brazil had always occupied a front rank in Brazilian international relations until it was cut off by the blockade of the second World War. German merchandise, both capital and consumption goods, made a prominent place for itself because the German manufacturer catered skillfully to the individualized taste of the population, much more so than the old-fashioned Britisher or the supercilious Yankee.

The relations between the German element and the Brazilians were cordial as long as there was no aggressive German nationalism and its reaction, Brazilian stimulation of nationhood. Although the Germans considered themselves superior to their hosts in *Kultur*, they were much respected for their colonizing ability and civic qualities. In spite of their

cultural and sentimental ties with the fatherland the naturalized Germans—the Teuto-Brazilians—were intensely loyal citizens; many, however, did not become citizens, partly because the Brazilians themselves did not care whether they did, partly because the Germans abroad always severed allegiance with the fatherland more reluctantly than other national stock in foreign countries. They remained *Auslandsdeutsche*. But their children born in Brazil automatically became Brazilian nationals according to the *ius soli* to which all three constitutions successively adhered.⁴

Exact statistics as to the number of born Germans or German descendants in Brazil are not obtainable; estimates vary greatly.⁵ Perhaps a calculation not too far from the truth would assess for the entire country the Germans born in Germany in the neighborhood of 150,000, those of more or less unmixed German descent at somewhat over a million, those with German blood close to or somewhat above two and a half millions.

The Ride of the Trojan Horse

These, as a rule, harmonious relations between the Teuto-Brazilians and their hosts underwent a profound change

⁴ Constitution of 1891, Art. 68 nos. 1 and 4; constitution of 1934, Art. 106, 107; constitution of 1937, Art. 115 (a).

⁵ Diffey, *Some Foreign Influences on Contemporary Brazilian Politics*, p. 402, gives the total German immigration from 1820 to 1937 as 222,951; the total Italian, as 1,502,958. He estimates that the population of German descent is about 900,000; of Italian, about 3,500,000. Herring, *op. cit.*, p. 152, speaks of some 50,000 Germans born in Germany and 800,000 to 900,000 of German descent. Schurz, *Latin America*, p. 97, estimates the Germans of the first and second generation at no more than 500,000. Maack, *op. cit.*, pp. 7 ff., gives the following figures for the 1939 population of German descent, which are probably the most reliable: Rio Grande, estimated at 520,000; Santa Catarina, 275,000; Paraná, 126,000, out of a total population of these three states of 5,100,000.

after the advent of National Socialism. It began slowly and at first in a tentative, almost experimental way. Contrary to general belief there are indications that the missionary zeal of the *Auslandsinstitut* in Stuttgart, of the *Fichtebund* in Hamburg or the *Kyffhäuserbund* and of other less conspicuous agencies of the NSDAP were initially not based on a diabolic plan for converting the world to Nazism but originated more or less as a side show arranged by people who desired an outlet for their unspent political energies. Be that as it may, Brazil, with its well-known German "colonies" offered itself as the most convenient laboratory test for finding out what could be done by a scientifically conducted and deliberate propaganda, in order to Nazify a compact and prosperous German minority abroad. If it succeeded in Brazil it would succeed everywhere else.

On the familiar technique of Nazi infiltration in foreign countries so much has been written that some summarizing remarks must suffice here. The German settlements in Southern Brazil and the German element in general proved to be a particularly fertile ground for disseminating Nazi ideologies and for simultaneously creating a strong Nazi organization. In the postwar period a considerable number of better—that is, more educated and socially more ambitious—Germans had gone to Brazil; many of them were war veterans. For them Imperial Germany, having striven unsuccessfully for a place in the sun yet undefeated, evoked a sort of nostalgic reaction. They had no love lost for the Weimar Republic. Into the mood of this by now older generation the national reassertion accomplished by the Third Reich fitted perfectly, but they were not the timber for activists. It was, therefore, to the younger generation of *Volksdeutsche*, though they were nominally Brazilian nationals, that trained emissaries addressed themselves with an

enormous propaganda carried forward through the press, the book, the radio, the movie, the school, the *Verein*, and all instruments of emotional indoctrination which glowingly depicted the Third Reich as the paradise on earth. They were told that they were to inherit the Brazilian part of that earthly kingdom, and their prepossession against Latin maladministration—*Schlampererei*—was skillfully exploited. They listened readily to the siren songs of the missionaries from the Reich. Slowly and irresistibly pressure was brought to bear on the recalcitrants of the older generation. The boycott, a terrible weapon for those dependent on German goods for their livelihood; pressure upon the relatives at home; threats and blandishments; intimidation and persuasion did their work. The German sections swarmed with “tourists” or official propagandists disguised as teachers, lecturers, salesmen, journalists, scientific researchers, professional technicians. The German Embassy and the score of consulates, all of them heavily overstaffed for the legitimate tasks, were the centers of organization and propaganda, operating under the wide mantle of diplomatic immunity. German airlines and steamship companies, the branch offices of the large German business firms,⁶ the German hotels, pharmacies, retail stores, last but not least the breweries—all over South America the brown liquid is manufactured by Germans—were pressed into service. The Ibero-German Institute in Berlin assiduously fostered “research” in Brazil. Press, schools, and pulpits became hotbeds and outlets of Nazi propaganda.⁷ Nazi literature swamped the bookstores

⁶ One of the most notorious among the seemingly innocuous business firms was the *Südamerika*, a powerful finance corporation which served as one of the main conduit pipes for promoting subversive activities through financial subsidies. The firm was said to be closely connected with the Chief of Police Felinto Müller, long suspected as an Axis sympathizer. His dismissal by Vargas, on July 17, 1942, created a sensation inside and outside of Brazil.

⁷ E. E. Turner, *op. cit.*, p. 62, reports that one of the history textbooks

and flowed into the school libraries, as free gifts from the fatherland, and into the homes of the Germans.⁸ The most important role was played by the Nazified press.⁹ Anti-Nazi papers—there were at first some edited by courageous Catholic churchmen¹⁰—could not maintain themselves; they did not get advertisements. On the other hand, the Nazi press received free of charge the Transocean News Service and could always count on free collaboration by the staff of the diplomatic representation. It is said that many leading editorials were written in the embassy. To these papers written in German must be added dailies and weeklies written in Portuguese, such as *Meio Dia* and *Gazeta da Noticias* in Rio

for German schools in Brazil, printed in Germany and imported into Brazil, allocated 90 per cent of its pages to the Third Reich, 5 per cent to Brazil, and 5 per cent to the rest of the world.

⁸ A few figures, from Maack, *op. cit.*, pp. 9 ff., may be given here. Illustrating the typical situation in Rio Grande, they are reliable because the author wanted to brag with the cultural integration of the German element. In 1927 Rio Grande had 1,155 schools, attended by 46,000 children. In 1938 there were no less than 2,845 German schools in Rio Grande alone; only 20 among them taught Portuguese as one of the "foreign" languages of the curriculum. Most of them had Hitler portraits and proudly unfurled Nazi flags on national holidays (German holidays, to be sure). This writer was shown a Hitler portrait in which the artist had accomplished the stunt of making it look like the picture of Vargas; only when you approached it from a specific angle the portrait revealed the features of the Fuehrer. In 1937 Rio Grande prided herself of 320 German clubs (*Vereine*). In the same year in all Brazil there were 10 German dailies and 40 periodical magazines, not counting the numerous technical and professional monthlies. On the educational situation in southern Brazil (before the Brazilianization legislation of 1938) see Turner, *op. cit.*, p. 61.

⁹ The most important were the following: *Deutsch-Evangelische Blätter*, São Leopoldo (influential clerical organ of the Protestant church whose personnel was among the most rabid Nazi elements); *Deutsche Rio Zeitung*; *Deutsche Zeitung in São Paulo*; *Die Sierra-Post*, Ijuhy; *Der Urwaldbote*, Blumenau; *Der Kompass*, Curitiba; *Neue Deutsche Zeitung*, Porto Alegre. Turner, *op. cit.*, p. 67, reports that in 1941 about 80 per cent of the press was still pro-Nazi, including also the Portuguese papers which had to yield because of German economic domination of the region.

¹⁰ See E. E. Turner, *op. cit.*, pp. 65 ff. Archbishop Becker of Porto Alegre though of German origin, is an outstanding anti-Nazi.

de Janeiro and *A Platea* in São Paulo which, run by an exclusively Brazilian staff, were the recognized mouthpieces of the "native" Nazi movement in the service and under the auspices of the German Embassy. They are papers of wide circulation, of the most insidious "Boulevard" type and the genuine Brazilian replicas of the *Völkischer Beobachter*. Night after night the powerful German sender from Zeesen pours Nazified news in Portuguese into Brazil.

Probably the process of Nazification¹¹ had its ups and downs. It was slow and by no means uniformly successful. There were nasty rumors about Teuto-Brazilians who, lured back to the fatherland, had been badly treated and deprived of all their savings obtained from the sale of their good farms. But many young people were invited to visit, free of charge, the new Germany or be educated there, and they returned as rabid apostles of the Third Reich. Yet the foreign observer who has no access to objective evidence must be on his guard against overstating the case. However much progress Nazification of the German minority had made up to the establishment of the *Estado Novo*, there were evidently cleavages under the surface. On the basis of comparative experience with similar trends in other South American countries one may say that the majority of the older generation of Teuto-Brazilians failed to become completely converted in their hearts to the new gospel. Most of them had obtained naturalization lately because the disadvantages of being an alien had been increased by the new Brazilianization drive. In terms of the German nationality statute they were technically still German nationals. But they remained

¹¹ The best information on the subject is found in Pedro Motta Lima and José Barbosa Mello, *El Nazismo en el Brasil: Proceso del estado corporativo*, Buenos Aires, 1938 (in Spanish), which tries to uncover the ramifications of native Fascism and foreign-controlled Nazism into the government and the various social classes.

loyal to their new homeland and did not share the enthusiasm of their offspring for making over free Brazil into a colony of the Third Reich. While not willingly submitting to the new nationalization measures of the government which had begun long before the advent of the *Estado Novo*, they were equally unwilling or unable to oppose openly what they might disapprove of in their hearts. It was the younger generation, almost all Brazilian nationals by birth, who embraced the Nazi doctrines with fervor. A goodly number of them had even accepted, for some time, the tenets of Integralism as a substitute for the real thing. They were the activists who were caught in the cadres of the Nazi organization which by 1938 had spread out cobweblike over the entire territory. Of course, details are not obtainable; the Nazis are not in the habit of advertising the secrets of a military organization preparing for *Der Tag* in Brazil. But it is generally known that, prior to the ban on political associations and very likely even thereafter, there existed a well organized Nazi party, under the leadership of the *Landesführer* Hans Henning von Kossel. The latter was until January 1942 the "cultural attaché" of the German Embassy in Rio de Janeiro; formerly he had been an official of the German consulate in São Paulo; when expelled by the Brazilian government for subversive activities he had to be readmitted under the cloak of "diplomatic" immunity. The Germans in Brazil whisper his name with trepidation. He is—or until recently was—supported by the Fuehrers of the Nazi *Gau* of Rio Grande do Sul, Walter Horning and Hugo Miller, both equipped by the Nazi party at home with full powers as members of the Gestapo, but all of them supervised in turn by itinerant emissaries from Germany. If such details became known to a foreign visitor they cannot have remained hidden to the Brazilian authorities about whose lack

of vigilance no Communist ever complained. The Nazis drilled secretly and paraded in the open, they had caches of arms stored away and held in readiness to be used when the signal should be given by Berlin. In general the organization was patterned on the Nazi cell system in all other countries, with levies and subsidies, a Labor Front and a Gestapo. This militant group is perhaps not very strong numerically since only absolutely reliable men have been admitted, but it is guided by one strong central leadership and it capitalized on the easygoing and generally liberal climate of public life prevailing in Brazil even behind the authoritarian façade of the *Estado Novo*.

Prohibition of Political Activities of Foreigners

Until recently Brazil, like many other countries much closer to the source of danger, failed to take seriously an intrinsically explosive situation. It should not be overlooked that for a long time the German quest for *Lebensraum*, magically transforming itself into world domination, was shrewdly hidden behind Hitler's official policy of breaking "the shackles of the Versailles treaty" in which Brazil had no direct interest. Not only in Brazil was this writer amazed to observe the blind belief, of many otherwise realistic leaders, in the immunity of their own country to infection by the Nazi virus. Remembering the unquestionable loyalty of the German element in the past they refused for a long time to admit that the new emotional methods of a divided loyalty had brought about a fundamental change in the mental attitude of their citizens of foreign stock. The insidious effect of the Nazi technique was not recognized as such or, if it was recognized, its potential danger was discounted because influential men in the government and con-

siderable sections of the armed forces and the police were in sympathy with Fascist ideas—if not outright pro-Nazi.

But Vargas with his keen sense of political realities must have become apprehensive at an early date of a militant minority directed by the octopus beyond the sea and utilizing novel techniques of subversive emotionalism. Probably the action against the Integralists had implicated the German Embassy even more than it was rumored at that time. In April, 1938, he enacted a countermeasure ¹² which, unique in its kind, tried to meet the problem squarely by eliminating foreign interference in domestic politics.

Foreigners, whether permanent residents or temporarily admitted, are forbidden to exercise any political activity whatever and to interfere, directly or indirectly, with political matters in the country (Art. 1). They are especially forbidden (Art. 2): (1) to organize or to maintain associations, societies, clubs, or establishments of political nature even if they devote themselves exclusively to the propagation of political ideas of their country of origin among their compatriots. This applies equally to branch offices or subdivisions, to delegates, agents, or representatives of such groupments which are domiciled abroad or directed from abroad. The ban covers groups with or without visible connections with political parties abroad. (2) It is prohibited the exercise of pressure in order to obtain adhesion to the ideas and programs of foreign political parties, whether such adhesion be arrived at by the promise of advantages or by the threat of disadvantages. (3) The use and wearing of political symbols (standards, flags, uniforms, etc.) of foreign political parties are forbidden: only the officially recognized flag of foreign countries may be shown—seemingly a harm-

¹² D.L. no. 383 of Apr. 19, 1938, "prohibiting political activity of foreigners in Brazil" (DO of Apr. 19, 1938).

less exception dictated by international comity, but one which has been widely abused by Nazis all over South America because the official flag of the Third Reich, by sheer coincidence, happens to be also the flag of the Nazi party. (4) Parades, reviews, assemblies, and gatherings of any kind with the objective of stimulating allegiance to foreign political groups are forbidden. Also prohibited are (Art. 3) all techniques of propaganda for foreign political aims and associations, whether by press, speeches, interviews, lectures, radio, or otherwise. Permitted are, however, associations of foreigners of cultural, charitable, or similar nature or the celebration of national holidays or corresponding national commemorations. This was another loophole in the legislation because subsequently the Nazis camouflaged themselves as cultural organizations of seemingly harmless character, under such innocent and well-known designations as *Turnverein*, *Gesangverein*, *Frauenverein*, *Literarischer* or *Musikalischer Verein*. But such associations must not receive contributions and subventions from foreign governments, or from persons or entities domiciled abroad (Art. 3, no. 1). It did not need much ingenuity to evade this clause: any private German businessman in Brazil, at the request of the embassy, diverted some of his funds to this commendable purpose. Financial support to subversive groups is most difficult to trace and to prove.¹³ All the preceding restrictions apply also to schools and educational institutions whether maintained by Brazilians or foreigners (Art. 4). This provision is aimed at excluding evasion of the law through the intermediary of naturalized Brazilians. Permitted associations and

¹³ This writer learned from a former Minister President of one of the European countries which later was overrun by the Nazis that his government was unable to prove subsidies to the native Nazi movement coming from Germany, with one exception where a violation of customs duties for imported paper had led to the discovery.

schools need a license of the Ministry of Justice (Art. 6).¹⁴ Entities functioning in contravention of the law are liable to dissolution (Art. 7). Illegal meetings, speeches, and other forms of propaganda may be prevented, and if illegal activity is committed through the press the printing offices will be closed (Art. 8). The Minister of Justice exercises the control over all permitted foreign activities (Art. 9). Violators of the law are liable to expulsion (Art. 10) and penalties are meted out against managers, directors, associates, members, participants, and employees (Art. 11).

Granted that the act has many loopholes for evasion. But it has the merit of being modeled closely on the specific totalitarian practices of emotional propaganda which ordinarily are not covered by the penal law against rebellion or conspiracy. It is cleverly geared to the emotional technique of totalitarian infiltration in preparation of conquest by internal revolution. All depended on its application which in turn depended on political considerations as to whether strict enforcement would offend Germany or, as the case may be, Italy or other countries. Because the act did not contain a sufficient legal basis for prosecuting Brazilian citizens indulging in such subversive activity the regime included some of the provisions in the subsequent Public Order Act which was directed against foreigners and nationals alike.

Admission and Expulsion of Aliens

How did the Brazilian government prevent the admission of politically undesirable aliens and how does it rid the country of them? How does the government prevent the natural-

¹⁴ See D.L. no. 59 of Dec. 11, 1937 (*DO* of Dec. 15, 1937), and Decree of the Ministry of Justice no. 2,229 of Dec. 30, 1937 (*DO* of Jan. 4, 1938). Decree no. 3,016 of Aug. 24, 1938 (*Coll.*, 1938, vol. III, p. 311) contains specified provisions for obtaining the license.

ization of undesirable aliens even if they are not liable to expulsion and how can they be denaturalized in case of illegal political activity? Does the government possess legal methods for depriving Brazilian-born nationals of their nationality if they act in a manner detrimental to the general welfare of the state? These problems are of concern to any government today in a world in which international organizations exert themselves to wean away large sections of the population from their traditional allegiance to the existing social order and to win them for their own ideologies of an allegedly better political society. Within the frame of this study on the Vargas regime a cursory discussion of this aspect of the Defense of the State seems appropriate.

Entry of Aliens

An intelligent study of the immigration laws of the various countries in the period between the two World Wars might be of considerable interest for a better insight into the causes of the decay of international solidarity when narrow nationalism and inflated egotism destroyed the natural roots of the community of nations. To a later period the network of ingenious obstacles placed in the way of a free exchange of men and goods may well appear as unreasonable as the medieval limitations on free movement within a territory. Yet one may well question the rationale of the legislation intended to restrict immigration. Based predominantly on motives of narrow economic nationalism—instead of allowing the active elements of the surplus population to spread evenly over the available living space of the world—the measures taken failed to deal effectively with the missionary technique and the proselytic tendencies concomitant with the totalitarian revolutionary movements operating on a

transnational scale. If such a comprehensive study of the legislation for the control of immigration were undertaken, it would also reveal that even the most intricate system of immigration chicanery does not prevent the contamination of the best-protected country by international subversive ideas, which, carried by the ether waves and the other modern vehicles of cultural diffusion, leap over oceans and mountains and show little respect for immigration officers.

Immigration policies were reshaped by the Vargas regime in conformity with the new concepts of Brazilian nationalism in a series of new decrees of 1938 which are so complicated that even specialists are frequently in a quandary.¹⁵ The control of immigration, and of the foreigners after admission, is undertaken by the Council of Immigration and Colonization, while the supervision of agricultural immigration was transferred later to the National Council of Population (*Departamento Nacional de Povoamento*).¹⁶ All aliens to whom permanent residence is granted have to register with the authorities, in a similar way as in this country though with less efficacy because of the vastness of the land and the lack of efficient control by the local police.¹⁷ The following provisions of the elaborate Immigration Act of May 4, 1938—with ninety-three articles—are relevant to the

¹⁵ D.L. no. 406 of May 4, 1938 (*DO* of May 6, 1938), "on the entry of foreigners into the national territory," with modifications and amendments of D.L. no. 639 of Aug. 20, 1938 (*DO* of Aug. 22, 1938); D.L. no. 3,818 of Mar. 14, 1941 (*DO* of Mar. 17, 1939). Details are to be found in Decree no. 3,010 of Aug. 20, 1938 (*DO* of Aug. 22, 1938), which contains 286 articles; Art. 225 ff. deal with the newly established Council of Immigration and Colonization. See also D.L. no. 3,082 of Feb. 28, 1941 (which exempts American tourists from registration).

¹⁶ See Art. 2 of the D.L. no. 639 of Aug. 20, 1938.

¹⁷ See D.L. no. 3,424 of July 15, 1941 (*DO* of July 17, 1941) which extended the period for registration. D.L. no. 3,183 of Apr. 9, 1941 (*DO* of Apr. 14, 1941), created a Civil Police and Delegation for foreigners as a special controlling agency.

control of politically undesirable aliens seeking admission. Not to be admitted are persons "whose conduct is manifestly harmful to public order, national security, or the structure of national institutions" (Art. 1, no. VIII). This provision if applied as written would close the frontiers to known agents or propagators of political movements deemed detrimental to the interests of the state. However, by virtue of the totalitarian subversive techniques, this arrangement misses its mark since Nazi or Comintern agents usually do not advertise their subversive aims and may slip into the country under the disguise of innocent tourists or with the pretext of legitimate business. The existence of the prohibition has not prevented Nazi agents expelled from other countries from obtaining an asylum in Brazil, with the connivance of the chief of police of the Federal District and other similarly inclined officials of the immigration and police authorities.

The Problem of the "Tourist"

The law distinguishes between permanent immigrants and temporary visitors (tourists) whose stay is not to exceed six months.¹⁸ The latter category embraces tourists and visitors in general, travelers in transit, representatives of foreign commercial firms and those on business, artists, scientists, professors, men of letters, and people with missions of sport. But they may transform themselves into permanent immigrants if, after their arrival, they fulfill the conditions of such.

As to the "tourists" and other exempted categories of seemingly harmless visitors from abroad it is known that they have flooded Brazil in considerable numbers and many

¹⁸ D.L. of May 4, 1938, Art. 12, and D.L. of Aug. 20, 1938, Art. 1 (b).

of them have evaded police control, in spite of stringent provisions for control of foreigners during their stay.¹⁹ Not a few of the lower police officials are as accessible to bribes in Brazil as in some other South American countries. Individuals with secret political missions were provided by the Nazi authorities at home with the most immaculate travel documents. Gestapo agents were attached to respectable German business firms as employees. In order to prevent such abuses the government threatened with heavy penalties those who use for immigration or identification purposes false names or the names of others, or who circumvent the law by fraudulent devices or falsify travel documents.²⁰ Moreover, in Brazil with its long and unguarded land frontiers there are always opportunities for those who seek them, to slip over the border on the way in or out without having passed through the inspection of the immigration service. It is an open secret that Axis agents frequently cross over from or to Argentina, Uruguay, or Paraguay.

Misuse of Diplomatic Immunity

Nor does the Immigration act apply to diplomatic and consular agents of foreign governments (Art. 82).²¹ This exemption, in conjunction with the admission of "tourists," is obviously the main vehicle for introducing subversive activity into the country under the cover of legitimacy. All South American immigration laws are obsolete in that they were not fitted to deal with these two types of suspect foreign visitors.

¹⁹ See D.L. no. 406, Art. 20-26 (control measures); Art. 27-35 (register of identification).

²⁰ See D.L. no. 639, Art. 1(r), introducing a new Article 74 into the D.L. no. 406, and Decree no. 3,010 of Aug. 20, 1938, Art. 247.

²¹ On diplomatic passports, see Decree no. 3,010 of Aug. 20, 1938 (*DO* of Aug. 22, 1938), Art. 54-57.

The problem of the misuse of diplomatic immunity for political purposes of directing subversive activities of nationals and for interference with the politics of the land to which the diplomatic or consular officers are accredited is one of the most insidious features of the international revolution which has been in progress since the advent of modern missionary movements such as Bolshevism and National Socialism. As early as in the Conference of the American Republics signed at Habana on February 20, 1928, the contracting powers had agreed to see to it that "foreign diplomatic officers shall not participate in the domestic or foreign politics of the state in which they exercise their functions; that these must exercise their functions without coming into conflict with the laws of the country to which they are accredited; that they shall not claim immunities which are not essential to the fulfillment of their official duties." These principles were again enjoined on them in Resolution II of the Second Meeting of the Ministers of Foreign Affairs of the American Republics at Habana in July, 1940. But none of the American Republics, our own country not excluded, had seen fit to implement them by appropriate legislative or administrative action, although the misuse of diplomatic immunity by unscrupulous foreign governments had long been recognized as the cancer of international relations.

The Vargas regime has to its credit at least one energetic action on this score. After the abortive Integralist putsch of May, 1938, the government had obtained enough evidence to implicate the German minister, Doctor Karl Ritter in the uprising; Minister of Foreign Relations Aranha lost patience. When Herr Ritter was about to return from a visit to Germany he was declared *persona ingrata* and not per-

mitted to take up his duties again in Rio.²² But the personnel of the embassy in Rio and of all consulates in Brazil has been inordinately increased during recent years, wholly out of proportion to the dwindling trade relations since the blockade after the outbreak of the current war.²³ In 1941 the embassy had a staff of about one hundred and fifty persons and was by far the largest diplomatic mission in Brazil. It was only after the severance of diplomatic relations with the Axis powers agreed on at the Conference of the Foreign Ministers of the American Republics in Rio de Janeiro in January, 1942, that the directing center of Nazi subversive machinations against the internal order and security of the state was eliminated.²⁴

²² This writer is inclined to believe that Dr. Ritter, an old-time official of the German Foreign Office whose main activity before his appointment to the post in Rio had been in the field of international commercial treaties, had personally little to do with the plot. He was long known as not being in sympathy with the Nazi regime, and he may have been used by his subordinates—some of whom were in fact his superiors—as a convenient cover. The Nazis have the habit of making the heads of their diplomatic missions the scapegoats to take the rap in case something goes wrong, while the more important underlings continue their subversive work on the spot. However, from a remark in Fritz Thyssen's rather spurious book *I Paid Hitler* (New York, 1941), it may be assumed that even Ritter had begun to howl with the wolves.

²³ A characteristic story is told by E. E. Turner, *op. cit.*, p. 66: "The pastor of Novo Breslau (in Santa Catarina) was caught in subversive activities. The police ordered his arrest. On hearing this, the German Consulate in Florianopolis phoned him that he was hired as vice-consul. This gave him diplomatic immunity with which he successfully defied arrest."

²⁴ The grand total of Axis "diplomats" who were forced to leave Brazil after the severance of relations, amounted to about 800, among them 355 Germans, 273 Italians, and 164 Japanese. They had come into the country during recent years upon the most specious pretexts, as "scholars" studying the fauna and flora, the history of art and the geography, or as newspapermen—all accredited as diplomatic agents of the Third Reich. See *New York Times* of Mar. 4, 1942.

The Japanese Element

By way of an elastic general clause the government, through the National Council of Population, reserved for itself the right to limit or to suspend, for economic or social reasons, the entry of individuals of certain races or stock (*individuos de determinadas raças ou origens*) (Art. 2). This restriction seems directed—and probably is in its original intent—against immigrants of certain color of skin (black or yellow), and principally affects the Japanese. During the last three decades a considerable number of Japanese have settled in Brazil, mainly in rural districts, but also in some of the larger towns such as São Paulo where they take up the customary occupations of Japanese immigrants, such as small farmers, truck gardeners, retail merchants, and the like. A substantial portion of them are devoted to commercial fishing for which they use up-to-date motorized craft. The Japanese have a press of their own and in the elections of 1934 they even ran their own candidates for the parliament. The exact number of this foreign group is difficult to ascertain; it is said that the total number in all Brazil is about three hundred thousand of whom some two thirds live in the state of São Paulo.²⁵ The tolerant Brazilians, who themselves present all shades from African black to Luso-Brazilian tropical yellow-white, prior to Pearl Harbor had no objection to their unobtrusive and inconspicuous presence. As a matter of fact they were even quite well liked. Some alarmists see in the geographical distribution of their

²⁵ Immigration statistics reveal that 185,799 Japanese entered Brazil from 1904 through 1939. After 1938 the Immigration Council permitted the entry of only 3,000 Japanese annually. See *New York Times* of Apr. 7, 1942 (the figure of about 900,000 first and second generation Japanese is decidedly too high). On the problem of Japanese infiltration in general see John W. White, "The Japanese pincers in Brazil," *Sat. Evening Post*, June 27, 1942.

settlements a diabolic scheme for the impending conquest of the country. The Japanese are suspected to have occupied strategic positions along the rivers, in the neighborhood of harbors and industrial establishments. This writer was even shown a map—whether imaginary or based on factual information he was unable to tell—according to which a chain of Japanese settlements extends from the Peruvian and Bolivian borders through the wilderness of the Matto Grosso hinterland to the East coast, as the passageway of the Japanese invasion coming from the Pacific West coast. Strained as this interpretation may be it contains perhaps more than a grain of salt in the possible case of a military uprising of the Nazified German minority which could count on the active collaboration of the Japanese ally. Moreover, large tracts of land in the Amazon valley are leased to Japanese land corporations, evidently under the control of their government.

Subsequent to the severance of diplomatic relations between Brazil and Japan after the Conference in Rio de Janeiro the federal government and the local authorities took stern measures against the potential danger of the Japanese Trojan horse. Many nonnaturalized Japanese residents were arrested; as many as possible were placed under strict police surveillance; Japanese settlements on the coast and in the interior were garrisoned by troops; the fishing boats were prevented from serving as refuelling stations for Axis U-boats preying on shipping. Similar precautionary steps were taken against the Brazilian-born Japanese. The guarantees against discrimination contained in the constitution were removed by way of the constitutional amendment mentioned above.

Anti-Semitism in Brazil

But the clause directed against the immigration of individuals of certain races has been used in recent years ostensibly—though no official admission was ever forthcoming—for closing the borders to the Jews, who, as a result of their persecution in the countries under Hitler's heel or influence sought to obtain a refuge in Brazil. A full discussion of Jewish immigration and life in Brazil cannot be given here;²⁶ yet some summarizing comments, based on ample information gathered by this writer from Jewish and non-Jewish sources may not be beyond the scope of our study because it sheds additional light on the subtle and insidious techniques of Nazi propaganda.

Until very recently anti-Semitism was conspicuous by its absence in Brazil as in all other South American states. It is completely alien to Portuguese tradition and temperament. It is by no means accidental that in Portugal and in Brazil the Inquisition was very much less cruel and persevering than in the countries under the Spanish crown. From the beginning of the colonization Jews had participated in opening up the New World and their accomplishments had been rewarded by a high degree of respect and recognition. Inter-marriage with the Luso-Brazilian gentiles is not infrequent. As a rule the Jewish ancestry is not known and if so it is not treated as a matter of social discrimination or distinction. A good number of officials, academicians, and many members of the liberal professions are of Jewish stock. Nobody asks and nobody cares. Where Jewish-sounding names are still used, they pass for German; the great mass of the people were unaware of the existence of a Jewish

²⁶ The complete story of the Jews in Brazil is given by Isaac Z. Raitman, *Historia dos israelistas no Brasil*, São Paulo, 1937.

problem. The rather small clusters of orthodox Jews from eastern Europe in some of the largest cities who still cling to their traditional customs and garb are called "the Russians." A "grandmother" test among the old families would probably shock any fanatic devotee of the "Aryan" myth to the bones.

During the last two or three years this situation has been undergoing a slow change owing to increased immigration, after 1933, of Jews from Central Europe and to the concomitant anti-Semitic propaganda of the Nazis at home and in Brazil.²⁷ Exact figures of immigration are not available. But according to the most reliable estimates some forty thousand to forty-five thousand Jews reached Brazil before the frontiers were hermetically closed to them in 1941. The majority belong to the most enviable and desirable class of new blood any country may receive. About the best type of Jewish refugees has gone to Brazil, cultured, law-abiding, industrious men and women of good standing in their former countries who are eager to make good and to be of value to their new homeland. Among them are many highly qualified specialists in their respective fields, doctors, chemists, engineers, scholars, and men versed in international trade. A country like Brazil, deplorably handicapped by the scarcity of trained technicians, should have welcomed them with open arms. But the general laws against foreigners, not designed specifically to hurt the Jews, bar them from all learned professions, which under the impact of the Brazilianization drive are closed to all foreigners. Although the vast land still needs thousands of doctors, an accomplished surgeon or obstetrician has to go, in order to be admitted to

²⁷ Good information on the literary repercussions of this subject is found in Samuel Putnam, "Brazilian Culture Under Vargas," *Science and Society*, vol. VI, no. 1 (1942), p. 53.

practice, through all university courses again and even to pass the baccalaureate accorded at the end of the secondary schools. Only a few prominent doctors and lawyers were admitted to the faculties of the universities in Rio and São Paulo.²⁸

A considerable number of the immigrants were fortunate enough to rescue some funds from Hitler's rapacious hordes and could turn them to good account in establishing commercial business firms and industries which especially in São Paulo make themselves felt very favorably. On the whole the Jewish immigrants have become a most valuable addition to Brazil's intellectual and economic life. However, some of the newcomers were of the less attractive and desirable quality, or as one informant phrased it, "they are endowed with the characteristic lack of tact and the arrogance of Germans." Anti-Semites speak of Copacabana, the fashionable residential section of the foreigners and of the rich people in Rio, as "Ghetto"-cabana, decidedly a slanderous overstatement since the indelicate display of wealth is not confined to Jews but is even more indulged in by rich Brazilians and American visitors. But this serves as a convenient target for the Nazi-inspired and skillfully conducted campaign of certain newspapers and magazines. What is worse, the infection has begun to spread to some official quarters, among these, as this writer learned from unimpeachable sources, is Felinto Müller, the chief of the police of the Federal District. That Lourival Fontes, the influential director of the Department of Press and Propaganda is—or at least, was—similarly inclined, was openly rumored in Rio. Anti-Semitic obscurantism is conducted by leaflets and handbills, distributed in barber shops and *vendas*,

²⁸ See D.L. no. 3,297 of May 22, 1941 (*DO* of May 24, 1941), "on contracts of foreign professors."

the general store of the small town and the village, and propagated also by word of mouth. The middle classes are slowly made Jew-conscious, though the movement seems to have made little headway among the governing class and society. But it was strong enough—and perhaps the pressure of the German Embassy has added to it—to cause the passage of a decree law in March, 1941, which absolutely barred the further immigration except of the most wealthy Jews into Brazil.²⁹ Previously the Brazilian consuls had been unofficially instructed to investigate closely the racial antecedents of prospective immigrants and it was established that the police of the Federal District through which most of the immigrants have to pass had received appropriate information from the German police. Now all visas except those of nationals of the American republics are suspended. Foreigners are henceforward admitted only if they can prove that they are able to return to the country whose nationals they are—emigrating Jews are unable to do so—and that they are in possession of means. The amount to be verified is unofficially set at four hundred *contos* of *reis*—that is about twenty thousand dollars—a substantial sum when it has to be proved for every member of a family. These provisions are prohibitive in the majority of cases and the immigration of Jews into a country which could make good use of their skill for its own sake has virtually been stopped. It is to be hoped that the Vargas regime will in due course wipe off this blot on the Brazilian tradition of tolerance and humanitarian sympathy.

Expulsion of Foreigners

It may be doubted whether legal provisions, under present circumstances of government-inspired propaganda of sub-

²⁹ D.L. no. 3,818 of Mar. 14, 1941 (*DO* of Mar. 17, 1941).

versive activities, help much to prevent the entry or immigration of persons eventually harmful to the existing political order. As a rule a mischievous mission is found out only after its arrival. Moreover, many of those committed to subversive purposes are already on the national territory. Consequently, the provisions for expelling foreigners are in practice more important than those for barring them.

The Immigration Act of May, 1938, contained regulations for the expulsion of foreigners only on grounds which are not related to political activities;³⁰ the problem of expelling foreigners had been dealt with previously by scattered statutory provisions and in a special act for the expulsion of foreigners of April, 1938.³¹ In June, 1938, after the Integralist uprising had revealed ramifications within the German Embassy and German nationalistic societies, a measure consolidated the whole substantive law on the expulsion of foreigners.³² Any foreigner may be expelled if he plots against, or if his presence endangers in any way, the international personality of the state, public and social order, public tranquillity and morals, national economic life (Art. 1). Expulsion is threatened to a foreigner who—in addition to internationally reprehensible activities as white-slave traffickers, drug dealers, counterfeiters, beggars, and vagabonds—disturbs the free functioning of the professional associations (Art. 2, no. 1(1)); who is considered as an individual dangerous to the public order by the police of other countries or has been expelled from other countries (Art. 2, no. 1(h and i)). These provisions evidently aim at international criminals and at Communists. But the law permits expulsion also of a foreigner who offends against “the dignity of the

³⁰ D.L. no. 406, Art. 61 ff.

³¹ D.L. no. 383 of Apr. 18, 1938, Art. 10, and D.L. no. 392 of Apr. 27, 1938 (*DO* of May 4, 1938).

³² D.L. no. 479 of June 8, 1938 (*DO* of June 11, 1938).

land Brazil" (*dignidade da Patria*) (Art. 2, no. 1 (a)), a rubber clause which can be used against subversive elements as well as against critical observers who happen to measure the regime by democratic standards. The suspicion that the regime wanted to ward off reports considered as disparaging to its reputation by foreign journalists was confirmed by a new measure enacted in 1939.³³ Since it was considered as the Damocles sword hanging over the heads of all foreign correspondents its content may be rendered here verbatim: a foreigner may be expelled "if in the opinion of the president of the republic he has manifested thoughts (*sic!*) or practiced acts which imply disrespect of Brazil and its institutions." That even thought processes may be considered as a ground for expulsion is a novelty of a rather dubious character; it smacks of intimidating and discouraging all objective information which a thin-skinned Department of Press and Propaganda may deem prejudicial to the interests of the regime. It is one of the reasons why foreign visitors are advised by Brazilian friends to restrain their critical mood even in letters to foreign countries as they are likely to be subject to censorship.

If the statute on the expulsion of foreigners was intended to curb subversive activities of the German minority the edge was somewhat taken off by exempting from its application persons who have more than twenty-five years of legitimate residence in Brazil or have Brazilian-born children (Art. 3), thus making it rather unlikely that disloyal Germans of the older generation could be evicted. The president decides by way of administrative order on the expulsion through the Ministry of Justice, which acts on the initiative of the police. The courts can intervene only in the case of foreigners with a long residence, of those with

³³ D.L. no. 1,377 of June 27, 1939 (*DO* of June 29, 1939).

Brazilian children, and of those who claim Brazilian nationality (Art. 8, § 2).

The government used the powers of the act especially after the Integralist rebellion when a considerable number of Germans and also some Italians were given notice to leave. But they have been used more widely for expelling people suspected of Communist sympathies and they are available also against liberals whose observations and eventual writings were disliked by the propaganda authorities. No statistics on actual expulsion cases was obtainable. The most notorious incident which has come to this writer's knowledge is that of the famous French liberal lawyer Henri Torrès.³⁴

Loss of Nationality for Subversive Activities

The foregoing discussion has dealt only with foreigners who are considered harmful to the national interest. The

³⁴ On this case the following information was gathered in Brazil. Its exactness in all points cannot be vouched for. But these facts seem well established. Mr. Torrès had come to Brazil after the collapse of France and lectured at the Universities of Rio de Janeiro and São Paulo on professional subjects with sensational success. Owing to the importance of his personality he was granted permanent residence in the country. During the tension created by the *Bagé* incident (see *infra*, p. 277) in early 1941 he was suddenly arrested and kept for one night for interrogation by the police in Rio de Janeiro. On the next afternoon he was released by the Ministry of War, with many apologies. It seems that the pretext for his detention was a wire addressed in 1935 to the Brazilian government by the Association of Liberal Lawyers in Paris which protested against the anti-Communist action of that period. Torrès himself had no knowledge of this telegram, for which his signature as the president of the association had been used. However, the intrinsic reason for the action taken against him seems to have been the tug-of-war going on behind the scenes between Felinto Müller, Chief of the Federal Police in Rio de Janeiro, and the Ministry of Foreign Relations, which considered his presence as an intellectual asset for the country. Rumors played up the affair far beyond its real importance; such errors—if this was an error—may occur even in constitutionally ruled states. Mr. Torrès left Brazil shortly thereafter without any pressure from the authorities.

much graver problem is that of penalizing the illegal political activity of naturalized citizens and of born Brazilians by the loss of nationality. That this problem is one of the most delicate a state is confronted with may be seen from the fact that even in the United States, in the absence of appropriate legislative measures for depriving disloyal naturalized citizens of the privilege of naturalization, the authorities are compelled to resort in judicial proceedings to the strained supposition of illegal "mental reservations." Even more delicate is the problem of taking away citizenship from disloyal born citizens.³⁵

The Vargas regime has also reformed the law of nationality by a decree law of April, 1938, "on the Brazilian nationality."³⁶ Of the provisions relevant to the purpose of this study the following may be mentioned: naturalization is granted, in conformity with the constitution (Art. 115), through a presidential decree as a discretionary act of the state (Art. 6; 17). Conditions of naturalization are, among others (Art. 10), a ten-year continuous residence³⁷ and a knowledge of the Portuguese language. Ineligible are persons convicted of a crime against the existence, security, and integrity of the state and the structure of its institutions, and those "professing ideologies in conflict with the political and social institutions existing in the country." This pro-

³⁵ At the moment of this writing Congress is considering an amendment to Sec. 338(a) of the Nationality Act of 1940 (H.R. 6250) providing that the naturalization of a person shall be revokable if "his utterances, writings, actions, or course of conduct establishes that his political allegiance is to a foreign state or sovereignty." This provision applies only to naturalized and not to born citizens.

³⁶ D.L. no. 389 of Apr. 25, 1938 (*DO* of Apr. 25, 1938).

³⁷ The government, by way of discretionary decision, may shorten the period of residence for a number of categories, *e.g.* for foreigners with Brazilian-born children or a Brazilian wife or husband, or for children of a naturalized person who were born before he acquired nationality. As a matter of record relatively few of the new immigrants since 1933 seem to have been accorded such a favor.

vision would exclude professed or suspected totalitarians as well as—liberals and democrats. But as a rule a person seeking naturalization does not admit heretic philosophies.

A naturalized citizen loses his or her nationality by an act of revocation³⁸ if he exercises a political or social activity prejudicial to the national interest (Art. 2 (c) and 24). But it is very doubtful whether a born Brazilian can be deprived of his nationality even if he has been found guilty by the courts of treasonable activity against the state, let alone on the administrative suspicion of acts deemed harmful to the national security. Here again one encounters a residue of liberal ideology which does not allow the denaturalization of a citizen, perhaps with the same *raison d'être* which excludes extradition of a national to a foreign government. The dictatorial states do not hesitate to deprive even their born citizens of their nationality if they consider them enemies of the existing regime.³⁹ The legal texts are ambiguous,⁴⁰ but available evidence points to the conclusion that the Vargas regime does not denationalize any Brazilian-born citizens.

³⁸ Revocation is subject to due process of law. See the elaborate regulations in D.L. no. 1,317 of June 2, 1939 (*Coll.*, 1939, vol. IV, p. 222).

³⁹ See Karl Loewenstein, *Hitler's Germany*, p. 164.

⁴⁰ According to the constitution of 1937 (Art. 116) a Brazilian loses his nationality only (a) by acquisition of a foreign citizenship; (b) by accepting, without governmental authorization, a position in the service of another government; (c) if his *naturalization* (not citizenship, *nacionalidade*) is revoked for political or social activity prejudicial to the national interest. This clause is reproduced verbatim in Art. 2 of the D.L. no. 389, and it is restated in Art. 16 of the D.L. no. 431 of May 18, 1938: "*será cancelada a naturalização tácita ou voluntária.*" Evidently "tacit" or "voluntary" ("acquired nationality") cannot refer to born Brazilians; "tacit" implies, for instance, children of foreigners born on Brazilian soil.

CHAPTER IV
BRAZILIANIZATION OF THE FOREIGN
STOCK

The Program of Compulsory Assimilation

The last decade of South American history is characterized by the emergence of an intense desire for creating, among all inhabitants whether of "native" or of foreign stock, the consciousness of nationhood as the paramount value of social and political life. Keen patriotism has always distinguished the South Americans who had gained their independence from the Spanish and Portuguese crowns by glorious wars and bloody sacrifices. Even the people in those states whose territorial demarcation was purely accidental developed almost at once a violent nationalism in competition with their similarly constituted neighbors. In foreign relations nationalism in the South American states was second to none. But its implementation by an integrated consciousness of nationhood lagged behind. The reasons are too manifold to be fully discussed here. The cleavages between the social classes were too great to allow for a common feeling of nationhood. What did the masses care about the state which lorded over them? Elementary education did not pay much attention to emotionalizing the country they lived in. The middle classes are hard-boiled materialists and emulated the rich wherever they could in living up to the maxim of "*Enrichissez-vous*"; they made hay as long as the sun was shining. It was only in recent years that the gov-

ernments—authoritarian and democratic alike—discovered that in stimulating ardent nationalism they fortified their own position, and they were not slow to sail with the national wind. As a result “emotional” legislation which appeals to the instincts of the common man began to enter into the statute books. As a practical move for evoking national responses definite steps were taken to “nationalize” economic life, that is, to reserve in the economic sphere the exploitation of natural wealth and the lucrative professions to the nationals at the expense of the foreign element, both capital and brains. In this way, by discrimination against foreign property and profit, spiritual nationalism was translated into tangible benefits for the nationals proper.

In Brazil, as in a number of other South American states, the desire to create a homogeneous consciousness of nationhood as the basis of social and political life encountered an additional obstacle in the existence, in its midst, of large unassimilated minorities of foreign stock. The melting pot had failed to produce national consciousness and unity, partly because of the indifference of the governing classes, partly because the immigrants from the Old World came to Brazil in order to live and work in peace and not to find a new fatherland with the emotional satisfaction attendant on a change of political allegiance. When lately the inroads of the totalitarian infiltration from abroad began seriously to endanger national unity the melting pot was put on the fire and the fire was kindled by legislative and administrative measures destined to promote Brazilianization. The vast body of new enactments of such an “emotional” nature is intended to serve as an antidote, for the nationals and for the unassimilated aliens, to totalitarian ideologies and foreign indoctrination.

In pursuance of previous legislative restrictions the con-

stitution of 1937 (Art. 151) established a quota system for the number of immigrants from the various countries, similar to that of the United States. The Immigration Act of 1938 (Art. 14) ¹ fixes it at 2 per cent of the nationals of one country having entered Brazil between January 1, 1884, and December 31, 1933. Owing to defective statistics the practical application of this crude yardstick is arbitrary to the limit. Moreover, 80 per cent of the foreigners allowed to enter permanently must be agriculturists or technicians in rural industries (Art. 16). To avoid the undesirable preponderance of one foreign stock in one district or locality, no colony or agricultural center must be composed of one nationality alone (Art. 39). Brazil wants to forestall the creation of new homogeneous German, Italian, or Japanese settlements as they have existed in some states for a long time. The colonization authorities are instructed to take care that, in assigning lots to foreigners for colonization, or in the case of migration or transfer of foreigners, the social stratification of Brazil is not impaired. A minimum of 30 per cent in each locality must be Brazilians and the maximum quota for a single foreign stock is 25 per cent (Art. 40).

In its last sections the act contains an impressive program for accelerating the intellectual assimilation of the immigrants. All schools in rural areas must conduct instruction in Portuguese; they must be directed by born Brazilians: no foreign idiom must be taught to students below the age of fourteen; all books used in primary education must be written in Portuguese; the curriculum must contain adequate instruction in Brazilian history and geography.² In schools

¹ D.L. no 406 of May 4, 1938 (*DO* of May 6, 1938).

² See also Decree no. 3,010 of Aug. 20, 1938 (*DO* of Aug. 22, 1938), Art. 272, which gives specific instructions for handling this situation. Authorization and registration of foreign publications in rural districts is granted after consultation of the Council of Immigration and Coloniza-

for adult foreigners instruction in Brazilian civics is compulsory (Art. 85). All schools, public and private, must give a place of honor to the national flag on festive days and render adequate homage to it.³ Public and private schools in rural areas can be directed only by born Brazilians (Art. 41). No denomination in a foreign language can be attached to any center or colony, or to an establishment of business or industry or association (Art. 42). The days of *Blumenau* are over.⁴ Publication of any material in a foreign language is subject to previous authorization by and registration with the Ministry of Justice (Art. 87).⁵ Taken in conjunction all these regulations deal a heavy blow to the maintenance of a homogeneous culture among foreign entities in the midst of Brazil and tend to dissolve the ethnical identity of foreign minorities on the well-substantiated assumption that, with the disappearance of the foreign language, social and cultural absorption will be only a matter of time.

While these measures are directed mainly toward assimilation of new immigrants who in their vast majority settle in agricultural sections, another decree law on "the adaptation of Brazilian descendants of foreigners to the national milieu," of August, 1939,⁶ faces squarely the crucial problem of potential national disintegration, which is threatened by the unassimilated element of foreign stock already settled in the country. The political-military flavor of this im-

tion, which might find grounds for rejection because of "too vivid a cult of the foreign language, traditions and customs" in that specific area.

³ See also D.L. no. 1,202 of Apr. 8, 1939. Art. 53, single §.

⁴ Foreign names can no longer be used for railroad stations. See D.L. no. 3,599 of Sept. 6, 1941 (*DO* of Sept. 10, 1941). Recently the name of the German town of Novo Breslau was changed into Getulio Vargas. See Turner, "German Influence in South Brazil," p. 66.

⁵ See also Decree no. 3,010 of Aug. 20, 1938 (*DO* of Aug. 22, 1938), Art. 273.

⁶ D.L. no. 1,545 of Aug. 25, 1939 (*DO* of Aug. 28, 1939).

portant measure cannot be ignored. The melting pot is not only put on the fire of nationalism but the mixture is also heavily shaken up. The proper title for the statute would be "on the denationalization of aliens." It is the most militant measure undertaken by any state in South America in order to solve the minority problem by cultural compulsion. When compared with the futile efforts of the League of Nations and the postwar period to protect the ethnical identity of minorities it shows how remote has become the humanitarian dream of a polynational state in which the different elements harmoniously live together. The legislative and administrative steps taken can be appraised only against the background of the progress which rabid indoctrination of the German sections with Nazi ideologies had made. The act was a deliberate and—as will be seen, successful—countermove against the insidious attempts of the Third Reich to undermine national unity from within, as a preparation for internal revolution.

The act enjoins on all public authorities (Art. 1) the duty "to collaborate for the complete adaptation of the Brazilian citizens of foreign extraction to the Brazilian habitat, through education and the use of the national language, cultivation of Brazilian history, incorporation into patriotic groupments, and every means which can contribute to the formation of a common national conscience." Within their respective spheres of jurisdiction all authorities are called upon to participate in supervision and execution; namely, the Council of National Security (Art. 2; Art. 161 of the constitution) as the supreme authority for National Defense; the various ministries (Art. 5-7); the Council of Immigration and Colonization (Art. 8); and the federal Interventors of the states (Art. 9). While the Ministry of Justice is charged with general supervision and with the submission

of appropriate projects to the president in furtherance of the general policies involved (Art. 3), the Ministry of Education and Health takes care of the educational fulfillment of the assimilation program (Art. 4). Schools are to be established in regions with a preponderant foreign stock, and the staff must be appropriately trained for the purposes of national indoctrination. The sentiment of nationhood and the love for the fatherland are to be inculcated (Art. 14, single §). No school may be directed by foreigners, with the exception of those functioning with a special permit of the president. Such exemptions are still granted to a restricted number of American and British "Colleges" but no longer to any German, Italian, or other national schools. The program envisages subsidies to schools of Brazilian origin; libraries stocked with books of national interest; patriotic organizations devoted to physical education; promotion of national memorial days and organization of trips for the instillment of patriotism; meetings and conferences with patriotic features. The Ministry of Labor, Industry, and Commerce (Art. 5) takes charge of the observance of the statutory provisions for the proportion of Brazilians and foreigners in all economic enterprises (including agriculture). A role of special importance is assigned to the Ministry of War (Art. 6) in that the general staff is to do all in its power to subject the sons of foreigners to the assimilating influence of the military service. Some of these provisions are reminiscent of the corresponding efforts in Imperial Austria-Hungary. Recruits of foreign descent should if possible serve outside of the districts of their regular residence in order to separate them from their habitual surroundings. As a result German and Italian privates inducted into the army are sent to the north or west while Portuguese-speaking troops are garrisoned in German districts, under the tacit

assumption that the little god with the arrow will do his part in the Brazilianization of the foreign minorities. It is incumbent upon the Council of Immigration and Colonization (Art. 8) to prevent agglomeration of immigrants of the same foreign stock in one state or region, and to prevent the creation of large *latifundia* by foreigners and their agents. Brazilian families are to be resettled in predominantly foreign stock sections (Art. 18), in order to prevent the absorption of Brazilian-owned property by foreigners in colonial centers. Public officials who show themselves impervious to the aims and needs of Brazilianization—a frequent occurrence because of intermarriage, totalitarian sympathies or corruption—are to be removed.

A number of specific provisions implement the general outline of Brazilianization. Many of them cut deeply into the social aloofness of the foreign minorities. Premilitary training is compulsory in secondary schools (Art. 10). Physical education is emphasized⁷ as an important instrument for leveling down ethnical disparity in common physical exercises; in regions subject to denationalization instruction can be given by officers and noncommissioned officers of the army (Art. 12). Prohibited is the use of foreign idioms in transactions before the authorities—a rather embarrassing situation for a foreigner who has to deal with an authority, but mitigated by the proverbial amiability of the Brazilians—in the barracks, and in military service in general (Art. 15). This tries to break down the clannishness of soldiers coming from a foreign section. All religious services (sermons, funerals, baptisms) have to be conducted in Portuguese; in some sections the military commanders in charge of the denationalization drive have insisted even on the elim-

⁷ See Constitution, Art. 131, and D.L. no. 2,072 of Mar. 8, 1940 (*Coll.*, 1940, vol. I, p. 271), on the Brazilian Youth. See also *infra*, p. 305.

ination of German inscriptions on the tombstones. Another provision seems at first sight absurd. Without special permission of the president, which is granted only in the national interest or for convincing reasons of health, no minor below eighteen years is permitted to travel to foreign countries unless accompanied by his parents, or to remain abroad if the latter return to Brazil (Art. 13). This ended the widespread practice of Germans and Italians who used to send their children, on scholarships of the totalitarian governments, to schools in Germany or Italy from whence they would return as well-trained propagandists for the totalitarian ideologies. But this restriction prevents even some high functionaries from sending their children to American schools.⁸

Finally an additional decree law of 1940⁹ enlisted military requirements of National Defense for the denationalization drive. Land concessions, communications, and the establishment of industries in the frontier belt of 100 to 150 kilometers can be undertaken henceforward only by permission of the National Security Council. Only Brazilians can settle in these zones. The foreign element is strictly limited to 5 per cent in one locality and 25 per cent of a single nationality. Within a zone of thirty kilometers from the border, free land must be given to Brazilian-born army reservists. The purpose of this regulation when enforced is to create a strategically located bulwark of militarily trained Brazilians especially on the southern border where in case of rebellion a juncture with German insurgents from neighboring states may eventually be effected. History repeats itself even in minor details. It was the practice of Rome to settle veterans

⁸ See, however, the modifications introduced by D.L. no. 3,034 of Feb. 10, 1941 (*DO* of Feb. 12, 1941).

⁹ D.L. no. 1,968 of Jan. 17, 1940 (*Coll.*, 1940, vol. I, p. 20).

in the frontier districts to hold off the invasions of the barbarians.

The Effect of Brazilianization on the German Minority

These measures for imposing nationalization on an unassimilated minority have no parallel in any other South American state. Remembering the none too auspicious results of similar experiments of Italy in South Tyrol or of the new states in southeastern Europe one may well ask what the Vargas regime has accomplished¹⁰ to date. There are many answers to a perplexing question. But one is incontrovertible: the Germans in Brazil, well organized, closely knit together under the emotional impulses fostered by the Third Reich, have not revolted. The regime has succeeded in keeping them at bay. It is true that allegiance cannot be commanded by legislation. But legislation when backed up by the will to enforce it can at least guarantee public order and tranquillity. The Germans did not rise when, after the fall of France, a Nazi victory seemed inevitable, and totalitarian sympathizers in the government seemed to have won the upper hand. The Fifth Column did not move, the Trojan horse did not shed its warriors. That much has been accomplished.

Severe as the Brazilianization measures may appear on the statute book it should be remembered that the test of a law is not its legislative intention or phraseology but its enforcement and application. The crux of the repressive action against the anti-Brazilian machinations is that it began too late, at a time when the high-pressure tactics of the Nazis

¹⁰ See the most revealing material presented by E. E. Turner, "German Influence in South Brazil," pp. 57 ff. The author is—perhaps—overpessimistic in that he underrates the resolution of Vargas and the keymen of his government to keep this dissident German element under control.

to convert an unassimilated into a dissident minority had already largely succeeded. In this the Vargas regime shares the guilt of omission with all other Latin-American states which failed to act in time to avoid the complete alienation of their German-stock population from their country of residence. Moreover, effectiveness of Brazilianization measures depended ultimately on the energy of the central authorities and of the Interventor of the state where they were to be applied. Lateness and halfheartedness of the steps taken in the past may well be explained by considerations of internal expediency prevailing within the inner circle of the government in Rio, and by reasons of external pressure brought to bear on the regime. For some time Brazil was forced into the international bartering game which the Third Reich played with South America. Though business did not find it much to its advantage the most powerful customer was not to be offended. Until the entry of Russia into the war and for some time thereafter it seemed likely to the point of certainty that Germany would win the war. All the familiar features of the well-known international serial called "appeasement" were found also in Brazil. It appeared risky to Vargas to provoke the anger of the future Master of the World by stepping too hard on the toes of his vanguard in Brazil. Moreover, there are too many indications of totalitarian sympathies of some influential members of the government, particularly of the armed forces, not to reveal the tug-of-war between the Fascist and the democratic factions within the government. Finally, no government, however carefully its repressive measures against hostile emotionalism are drafted, is able to foresee the resourcefulness of the Nazis in taking advantage of the letter for circumventing the spirit of the law, even if one neglects the fact that some of the executing officials seemed only too willing to connive

at evasion and nonenforcement. One cannot expect the Interventor of Matto Grosso, one Doctor Müller (from Straubing, Bavaria), brother of the notorious police chief of the Federal District, to display particular eagerness in combating anti-Brazilian activities of this sort. One of the most sinister parts of the record is the handling of the German airlines, especially of the Condor line, nominally a Brazilian company but run by Germany. They were grounded only late in 1941 and the Italian LATI line, through which the Axis powers had carried on their espionage and propaganda work and received a good deal of invaluable war material such as quartz, mica, and diamonds, was forced to close down only a few days before the Rio de Janeiro Conference opened in January, 1942. From where the Axis airplanes obtained their gasoline and oil was an open secret in Brazil where everybody knew that only the foreign oil companies—that is, American or British controlled firms—could have supplied them, conscious of the adage "*pecunia non olet.*"¹¹ It may well be that the pilots of the German planes were Brazilian citizens as is prescribed by the law. At least to one observer some of them looked rather Teuto-Brazilian or more Teuto than Brazilian. Between themselves they talked a Portuguese which could easily be understood in Magdeburg.

Another dark chapter is the matter of the German press. For many years the press had been completely co-ordinated.

¹¹ W. S. Farish, in his testimony before the Truman Committee of the Senate, contended that the deliveries of the Standard Oil of Brazil to the Axis air lines were made with the knowledge and the consent of the American Embassy in Rio de Janeiro. Assistant Secretary of State A. A. Berle denied flatly this assertion. See *New York Times* of Apr. 1 and 2, 1942. It should be remembered that the Italian LATI line allegedly was permitted to operate, by virtue of an understanding between Britain and Germany, in return for the continued British service between Lisbon and Britain, without interference by the Luftwaffe.

Known to be under orders and directions of the diplomatic agencies, it was fed by the gratuitous official Transocean News Service which extolled all that occurred in the Hitler paradise and besmirched all that happened elsewhere, though it carefully avoided open criticism of the domestic policies of the regime. Since July, 1939, the German papers—and all other foreign language papers—have been under a death sentence. For a transitional period editions in foreign languages if accompanied by Portuguese translations were still permitted. Not until August 1, 1941, was the press compelled to publish their editions only in Portuguese. But few of the German papers closed down; frequently even without changing the editorial staff, they continued in Portuguese to fulminate against the enemies of the Third Reich and to indoctrinate their faithful readers with German propaganda. Particularly in the southern states the vast majority of the papers, even those run by loyal Brazilians, were anti-British and pro-Axis.

The wisdom of banning the foreign language press was much discussed in Brazil during 1941. It was argued that by forcing the German press into Portuguese more harm was done than before. None of the German readers would cancel the subscription of his paper. Practically all Teuto-Brazilians born in the country and many even of the older generation by now are fully conversant with the national idiom. Moreover, while formerly the propaganda poison had been restricted to the German element it was infused now also into the Brazilian masses, which heretofore had been more or less immune to the antidemocratic, anti-Semitic, anti-Yankee preachings of the German-controlled section of the press. Especially the rank and file of the army could now be made conscious of the German viewpoint on world affairs. What was needed but not enforced was less a change of the idiom

than a change of the editorial policy. And the brazenly pro-Nazi satellites of the metropolitan press continued lustily. Once more the measures taken in conformity with the letter of the law were halfhearted. On the other hand, the government, by suppressing the entire foreign language press, solved the difficult problem of technical control of such exotic languages as Arabic or Japanese with which the censorship officials and the police could not cope. These were driven out of business. Affected by the ban were about sixty foreign language papers, among them sixteen in German, fourteen in Italian, eight in Japanese, eleven Syrian ones in Arabic—the majority of them under German management and financed with German money—and several in Hungarian, the latter exuding a particularly venomous brand of Axis propaganda. The large majority of the Italian papers were at least not outspokenly pro-Fascist. Unfortunately also a number of English-written papers, such as the *Brazilian-American* and the *News* in Rio were hit by this order.¹² After the severance of diplomatic relations in January, 1942, the entire pro-Axis press was suppressed. Details are not available.

On the other hand, the relative effectiveness of the Brazilianization drive may be judged from the complaints of the Teuto-Brazilians themselves,¹³ who began to realize that the golden days of hitting below the belt with impunity were now over. Where the military commanders took over

¹² The government was inclined, for some time, to make exceptions in favor of languages spoken in the Americas (English, Spanish, and French). Why the American and the British Embassies did not help to save the *Brazilian-American*—a good Rio weekly with a small circulation whose owner and editor, an ardent democrat, was inclined to continue—is not known to this writer. He feels that such an opportunity for bringing the American viewpoint to the educated Brazilian public should not have been missed.

¹³ See Maack, "The Germans in South Brazil," pp. 19 ff.

the enforcement of the antialien legislation it began to hurt. With the exception of a few Catholic institutions all private German schools—reportedly numbering nineteen hundred—were closed down; in many schools the German language was relegated to the rank of a foreign idiom and is now taught only with the beginning of the fifth year; a large store of confiscated Hitler portraits and Swastika flags was accumulated. The nationalization drive was equally directed against the “cultural” societies. Many of their presidents were deposed and in their place reliable men appointed by the officers of the Nationalization Commissions. German inscriptions such as shop signs and street names disappeared from public life. In April, 1939, the 32nd battalion of riflemen, a crack unit composed exclusively of North Brazilians with no German affiliations, was transferred to Blumenau; in this district no lecture, sermon, public meeting, or ceremony in German was permitted by the military commander. Letters to and from Germany were censored, masses of imported and Brazilian printed German subversive literature were seized. Preachers who misused the pulpit were removed, officials dismissed; the school libraries were purged. Needless to say that the Nazified population cried “persecution” and indignantly “stood on their constitutional rights.” *Si duo faciunt idem non est idem*. It was even reported that some German immigrants found the “persecution” so unbearable that they left for the fatherland.

The Rio de Janeiro Conference and the Future of the German Dissidents

The turn in Brazilian foreign policy could not fail to be reflected by the attitude of the Brazilian government toward the German element. It goes without saying that

the Nazis inside of Brazil, under orders from Berlin, did all in their power to prevent Brazil from siding openly and officially with the United States. On December 30, 1941, a clash between the police and the militarily organized Nazis in Paraná was reported in which some people—evidently Germans or German-Brazilians—were killed. The severance of diplomatic and economic relations coincided with stern measures adopted against the danger of the German Trojan horse. Persons who openly favored the Axis or distributed Axis literature were arrested. Nazi activists were rounded up and “sports clubs” were closed down. By police order the speaking of German, Italian, and Japanese in public places was banned—a rather difficult assignment since in São Paulo with its large Italian population the Portuguese of the policeman on the beat is not very dissimilar from the dialect spoken in Sorrento and Torre Annunziata. The singing of Axis anthems and the display of the pictures of Axis rulers was also outlawed. All measures were taken to guarantee the maintenance of public order in the predominantly German sections as well as in Bahía, São Paulo, and the North. It was reported that the Nazis still entertained connections with the outlawed Integralist nuclei and alleged or real spies were caught by the score. An internment camp for suspected aliens was established on the lovely Ilha das Flores in Guanabara Bay on which Rio is located. Visitors know that whatever its hardships may be it is far preferable to Dachau or Buchenwalde. Citizens of Axis countries were forbidden to change their residence without police authorization; the licenses for bearing arms by foreigners were revoked.¹⁴

How effective such repressive measures are this writer is

¹⁴ See *New York Times* of Jan. 29 and 30, Mar. 27 and 31, and Apr. 22, 1942.

unable to tell. But he was only mildly surprised when he learned from press reports that out of a total of eight thousand and six hundred suspect Axis nationals, on whose activities the police in Rio de Janeiro had kept dossiers, not more than two hundred had been arrested between Pearl Harbor and the end of March, 1942.¹⁵ This seems to him an exceedingly modest figure of detentions. At any rate, on the basis of his own observations in Brazil and in the light of parallel experiences in other countries, where the Fifth Column had ample opportunity of entrenching itself in social life and building up a substructure of sympathizers in the host land, one thing is certain beyond doubt: the last word on the German minority in Brazil has not yet been spoken. There still remains in Brazil the most powerful spearhead of Hitlerite Germany on this continent, lying threateningly close to the strategical fulcrum of this hemisphere. The mass of the Teuto-Brazilians are not more loyal in their hearts than before. There is no love lost for the regime since it turned against the Nazis. Today the German population is subdued and sullen. Evidently they are biding their time. The militant Nazi organization has gone underground, but it continues to exist and to operate. Private information this writer has since been able to obtain, warrants the conclusion that vigilance and suspicion of the authorities is equaled if not surpassed by the elasticity with which the disloyal groups adjust themselves to the changed situation. The Nazi underground had greater obstacles to overcome in Austria, Czechoslovakia, and elsewhere and yet the movement ultimately triumphed. Local businessmen and resident intellectuals of German extraction, with unimpeachable citizenship pa-

¹⁵ See "*Current History*," vol. 2 (1942), p. 291. Perhaps the sudden dismissal of the Chief of the Federal Police, Felinto Müller, on July 17, 1942, by Vargas is not without bearing on this situation. His removal is decidedly good news for the Democracies.

pers, groomed long before for this very emergency, have taken over the work of the "cells" from the expelled diplomatic officials or the interned emissaries. As Brazilian nationals they are not liable to registration as enemy aliens, or to deliver up their short-wave sets—clandestine transmitters are still in operation—or to observe any of the restrictions applicable to suspected persons. Perhaps some among the older generation of Teuto-Brazilians are silently delighted that open Nazification methods have been halted. But Hitler or no Hitler, Germany is at war; old-fashioned patriotism makes them side with the fatherland. They do not kick against the pricks.

There is no doubt that the government means business and the Germans inside and outside of Brazil know it. Vargas is reported to have said that "if his *local* Germans make trouble he will eat them alive."¹⁶ This would be a big meal even for the digestive powers of a dictatorial stomach. At any rate the government will be able to keep down the lid on the simmering pot of the Brazilian Nazis. All observers agree that while the military establishment of the regime could not hope to hold the field against any of Europe's veteran armies it would be amply sufficient to deal effectively with an armed rebellion of the German minority in the South, or with any internal upheaval for that matter. Now, since Vargas has joined the United Nations, it is less likely than ever before that the Swastika will be unfolded in Brazil. Not likely, except in the case of a Nazi-Japanese insurrection conveniently timed with a totalitarian invasion of Brazil from near-by Africa.

¹⁶ See John Gunther, *Inside Latin Ameica*, p. 387, and Vargas's speech on Dec. 30, 1941.

The Italo-Brazilians

It may surprise one that so little has been said about the Italian element in Brazil. Amounting to between three and four millions or more if those of Italian affiliation are included,¹⁷ it surpasses numerically the German stock by far. For good reasons a distinction between the Italian and the German minority is in order. It is more than unlikely that the Italians as a unified group will ever rise against their new homeland. On the contrary, one may well expect that they will defend it against any attempt upon the country's integrity, and most of all against a German bid for power. As has been mentioned before, the Italians have been thoroughly assimilated and, as a rule, already the immigrants of the first generation become completely blended with the Brazilian environment. It is not too much to say that the overwhelming majority of the older generation and very likely most of the newer immigrants, if not anti-Fascist, are decidedly not actively pro-Fascist. They come from a lower and more malleable class of the population than most of the Germans; for them Brazil with its easy-going life, warm climate, and endless opportunities is the promised land if there ever was one. They are treated as equals and their folk virtues are fully appreciated. The upper layer has found easy access to the governing class and society. Moreover, they are permitted to hate the Germans and they make liberal use of it. They are as loyal to their new homeland as most of the Italian-Americans in this country. For them Brazilianization was welcome insofar as it brought them more educational opportunities. Here the melting pot has worked to universal satisfaction.

¹⁷ Italian mass immigration began about 1860. Between 1820 and 1935, 1,489,964 Italians were officially admitted; of these 935,540 settled in the state of São Paulo.

CHAPTER V

“ECONOMIC” NATIONALISM IN BRAZIL

In giving preference, in national economic life, to nationals over foreigners the Vargas regime follows the universal trend in contemporary Latin America designed to free the land from foreign economic control and, as far as possible, from foreign economic influence.¹ Recent expropriation measures taken by Mexico against American and British oil companies were closely watched in all countries because they served to test the Good Neighbor Policy. It was wise that we did not reply to internal legislation by showing the big stick. Brazil owes much to the foreigner. Foreign immigration, capital, enterprise, and work have immensely helped to develop the riches of the country. The foreigner taught the people how to run their industries, how to transform a feudalistic colonial society into a modern capitalistic economy. But nationalism knows no gratitude. Admired at first, the foreigner was resented in proportion to the rising confidence of the “natives” in being able to do themselves what they had learned from their foreign instructors. But it should be openly admitted that some of the foreign corporations misused their economic power for interfering with domestic policies. Nationalist propaganda sedulously applied the concept of the class struggle to the relations between foreign exploiters and national work. Economic na-

¹ On the general aspects of economic nationalism see Richard F. Behrendt, *Economic Nationalism in Latin America*, Albuquerque, 1941.

tionalism, slowly spreading after the first World War and in Brazil not inordinately stressed by a people of cosmopolitan leanings, burst into flames during and after the depression, which coincided with the advent of Vargas's "National Revolution." Today public opinion takes umbrage at foreign capitalism, of the British even more than of the Americans although the former had put Brazil economically on its feet by sweat and toil and risk no less than by pounds sterling.

The "Two Thirds" Law

The liberal constitution of 1891 knew of no discrimination between foreigners and nationals except that citizens only could exercise political rights. Very soon after Vargas had taken over in 1930 the by now famous Two Thirds Act (*Lei de Dois Terços*) was enacted as the basis of national policy in relation to foreign workers. It established a minimum quota of two thirds for national and a maximum quota for foreign labor employed in each enterprise.² Since the policy thus inaugurated satisfied the nationalistic instincts of the people—whether it promoted economic progress in a country still lacking trained technicians in many fields is a different question—it was brought up-to-date by the regime in 1939 through even more stringent restrictions on foreign participation in economic life.³ No industrial or economic enterprise having more than three employees may have more than one third foreign employees, nor may foreigners receive more than one third of the total payroll. Branch offices and agencies are under the same rules. The

² Decrees no. 19,482 of Dec. 12, 1930 (*Coll.*, 1930, vol. II, p. 82), and no. 20,291 of Aug. 12, 1931 (*Coll.*, 1931, vol. II, p. 649).

³ D.L. no. 1,843 of Dec. 7, 1939 (*Coll.*, 1939, vol. VIII, p. 299).

proportion of Brazilian to foreign labor is to be determined in each economic branch by the Ministry of Labor, Industry, and Commerce. Foreigners who reside in the country for more than ten years and have a Brazilian wife or Brazilian children are classified as nationals. Exceptions are granted only for convincing reasons. The rule applies also to foreign-owned enterprises. Special conditions are to be adjusted by the labor authorities. Under no condition is a Brazilian to receive less salary than a foreigner when he does the same work. Only if no expert Brazilian is available may the rule be disregarded, by permission of the labor authorities. Control is maintained by annually required triplicate lists of all employees stating their type of work, salary, and nationality. Heavy penalties guarantee enforcement.

The act does not deal and evidently cannot deal with a problem which has contributed its fair share, not only in Brazil, in creating bad feeling between foreign capital and rising nationalism. The problem in question is the much deplored practice of foreign corporations of reserving the leading positions to their own nationals, who frequently are summoned from the homeland even if equally capable Brazilians are available for the position. Much resentment exists because qualified nationals are barred from a station in economic life which corresponds to the value of their service. Realizing that intransigence in personnel policies will result in increased pressure of economic nationalism, some of the American and British corporations recently have mended their ways and are granting to qualified nationals access even to the upper rungs of the ladder.

Other Measures of Economic Nationalism

Under the constitution of the *Estado Novo* the term “nationalization (*nacionalização*)” is used programmatically for

proclaiming "Brazil for the Brazilians." It should be noted, however, that the word denotes only ownership of national resources by Brazilian nationals and that it does not imply public ownership.⁴ It is stipulated that the administration of the press as well as its political and intellectual orientation is a monopoly of born Brazilians (Art. 122, no. XV(g)). Utilization of mines, subsoil wealth, and water-power are on principle reserved to Brazilians or enterprises constituted of Brazilian shareholders (Art. 143). This rule is further elaborated in the new Mining Code of 1940.⁵ A great deal of excitement has arisen by reason of another provision of the constitution (Art. 145) which stipulates that "deposit banks and insurance companies may operate in Brazil only if their shareholders are Brazilians"; many of the important banking and insurance institutions in the country are owned and operated by foreign capital, American, British, Italian, German. Only in 1941 was the date of the execution of the death sentence fixed.⁶ After August 1, 1946, only Brazilians may be deposit bankers and the entire capital must be Brazilian owned; foreigners with Brazilian wives or husbands are considered as nationals. The decree

⁴ There seems to be a different interpretation of the term "nationalization" in Art. 144, which envisages "the progressive nationalization of mines, mineral deposits and waterfalls and other sources of power, as well as the industries considered as basic or essential to the economic and military defense of the Nation." Evidently, for military reasons, public ownership is here the ultimate aim.

⁵ D.L. no. 1,985 of Jan. 29, 1940 (*Coll.*, 1940, vol. I, p. 40). The code prohibits ownership and investment of capital by foreigners in the exploitation of subsoil wealth; even the industrial use of mining products is reserved to nationals (see Art. 49); the nationalistic obsession goes so far as to prescribe that if a Brazilian married to a foreigner owns property in common with the marriage partner, succession *inter vivos* and *mortis causa* is restricted to the Brazilian partner only (Art. 6, § 2). Much of this statute is practically unenforced and unenforcable.

⁶ D.L. no. 3,182 of Apr. 9, 1941 (*DO* of Apr. 14, 1941).

amounted to a complete elimination of foreign banking interests in Brazil and would have led to a dangerous financial situation if not to a complete breakdown of the entire credit system, since Brazil is notoriously weak in national capital. Under the pressure of foreign interests strongly supported by domestic business and industry the decree was repealed in October, 1941. It is not likely that “for the duration” a similar ill-advised effort to alienate foreign capital will be made.

It may be understandable that concessionaires of public enterprises (federal, state, municipal) should be Brazilians as to management or in the majority of administrative positions (Art. 146); or that the proprietors, operators, and commanders of nationally registered ships, and two thirds of their crews, should be Brazilian-born, and that, obviously for military reasons, pilotage is reserved to them (Art. 149). But that all liberal professions are to be accessible only to born or naturalized Brazilians and that no revalidation of diplomas obtained abroad is permissible for them (Art. 150) is an excess of shortsighted nationalism which, in the long run, cannot but operate against the interests of a country that needs trained specialists and technicians as badly as Brazil. The vast sources of available foreign talent which has become driftwood as a result of the world revolution since 1933 cannot be tapped while the Brazilian learned institutions are unable to cope with the rising demand for such high-class men.⁷ At the present time about one hundred and fifty civilian professions are closed to non-Brazilians. Presi-

⁷ A refinery fully equipped and constructed by the Standard Oil Company could not be put into operation because the government insisted on a Brazilian manager and the person proposed was so inadequately trained—with a short educational spree in the U.S.A.—that the company refused to expose its plant to mismanagement by one who was incompetent.

dent and officers of the labor syndicates (unions) must be born Brazilians.⁸

Finally another provision of the constitution referring to an important problem of denationalization for military defense reasons should be mentioned here (Art. 165). In "such industries as are located within the limits of a strip of territory, one hundred and fifty kilometers deep, along the frontiers, capital and workers must be predominantly of national origin." Such a measure would have stood Czechoslovakia in good stead with its belt of disloyal and Nazified Sudetens. In Brazil's endless miles of undeveloped wilderness frontiers it is a matter of precaution which, however, would acquire ominous importance if the term "along the frontiers" were to be applied also to the maritime border. In this case most of the important foreign-owned-and-run industrial enterprises would be under the Damocles sword of nationalization. But it may safely be expected that at least for the duration no steps will be undertaken which might endanger the cordial relations between Brazil and the democracies as its principal creditors. For the time being economic nationalism takes a back seat.

Government in Business

In practice the distinction between "property of Brazilian nationals" and "property of the Brazilian nation" is becoming somewhat obscured. The state has begun to go into business. The federal government and some municipalities own and operate meat-packing plants (*frigorificos*), for example, in the City of São Paulo and in Rio Grande do Sul. Railroads have been expropriated from private, mainly British, owners and are operated—rather badly at that—by

⁸ See D.L. no. 1,402 of July 5, 1939 (*Coll.*, 1939, vol. VI), p. 3).

the federal government.⁹ The government has taken over, for political reasons and by rather crude methods,¹⁰ two metropolitan dailies, *A Noite* in Rio de Janeiro and the leading paper of São Paulo, the *Estado de São Paulo*; in the latter city the influential *Jornal da Manhã* is indirectly controlled and managed by the state government. The “iron mountain” of Itabari in Minas Geraes, the world’s largest single iron ore deposit, is under exploitation by a Brazilian stock corporation, whose shares are owned partly by Brazilian capitalists as underwriters, and partly by the public, with a controlling margin owned by the federal government. Offers of both American and German interests—the latter had proposed to transfer to Brazil the entire Skoda plant and set it up with blast furnaces—were rejected. Vargas desires no repetition of what happened in the electrification industry in Brazil which was financed and is owned and run by British and Canadian capitalists. The states too followed the federal government into business. The state of São Paulo owns and operates the *Usina de Chambo e Prato* at Apiahy in southern São Paulo, a silver and lead mine. It should be emphasized, however, that the regime shows few if any traces of a trend toward state capitalism and collectivism. Its climate is still predominantly that of economic liberalism.¹¹

⁹ Sorocaba and Araraquarense lines in the state of São Paulo; the Nordeste do Brasil lines in the network of the São Paulo and Rio Grande rail; the most important is the Central do Brasil, covering the vital communication between Rio de Janeiro and São Paulo. This writer was jokingly warned by Brazilian friends not to use it and rather to walk; he disregarded the advice, but promptly the promised accident occurred.

¹⁰ See *infra*, pp. 263, 321.

¹¹ See *infra*, pp. 335 ff.

CHAPTER VI

THE TRIBUNAL OF NATIONAL SECURITY

All political offenses are adjudged by the Tribunal of National Security (*Tribunal de Segurança Nacional*). The *Segurança*—as the court is commonly called—is one of the most interesting and most discussed institutions of the Vargas regime and deserves special attention. Such observers as measure the quality of a regime by its observance or nonobservance of the rule of law and not by the efficiency of its administration, consider it as a Star Chamber Court, intended solely for the protection of the regime and liken it to the People's Court (*Volksgerichtshof*) of the Third Reich or the Special Tribunal for the Defense of the State in Fascist Italy.¹ We have few objective reports on the operation of the Star Chamber Courts of the Tudors and the Stuarts, or on the Revolutionary Tribunals of the French Revolution; and since those who have to deal with the blood tribunals in contemporary European dictatorships are either officials who do not talk or convicted men who can no longer talk, an unbiased description of what some people consider their Brazilian counterpart has at any rate the virtue of uniqueness. To anticipate the result: in no wise can the above comparison be sustained by the record; if it is maintained in spite of the record, it is an insulting act of deliberate calumny.

¹ On these see Karl Loewenstein and Arnold J. Zurcher resp. in James T. Shotwell, *Governments of Continental Europe*, New York, 1940, pp. 485, 721.

Jurisdiction of the Tribunal of National Security

The *Segurança* is not an innovation of the *Estado Novo* since it had been organized in connection with the Communist machinations, as a Military Court, in 1936 by a regular statute of the Parliament² to deal with (Art. 3) crimes against the external security of the state, particularly if committed with the support of or with the orientation toward foreign or international organization (meaning the Communists), with crimes against military institutions, and, in general, with all attempts directed, with subversive intent, against the political and social institutions of the country.³ The constitution of 1937 envisaged a Special Tribunal for the Defense of the State "as a permanent institution" (Articles 122, no. XVII; 141; 172). Subsequently, by an important act of December, 1937, the tribunal was completely reformed; political crimes are now no longer dealt with by the military courts but by a court of special jurisdiction as an ordinary court of the land.⁴

Under the adjudication of the court are the crimes against the existence, security, and integrity of the state and against the structure of its institutions.⁵ These may be lumped together under the general term of treason, sedition, and conspiracy. As political crimes under the competence of the court are considered also violations of economic life (*eco-*

² Law no. 244 of Sept. 11, 1936 (*DO* of Sept. 12, 1936).

³ See also the definitions of the Laws nos. 38 and 136 of Apr. 11 and Dec. 14, 1935 (*Coll.*, 1935, vol. IV, pp. 36, 273).

⁴ The basic act, D.L. no. 88 of Dec. 20, 1937 (*DO* of Dec. 24, 1937), was repeatedly modified and amended; the legislative situation is complicated by considerable overlapping of the different decree laws. See D.L. no. 474 of June 8, 1938 (*DO* of June 9, 1938), 1,261 of May 10, 1939 (*Coll.*, 1939, vol. IV, p. 152), 1,393 of June 29, 1939 (*DO* of July 1, 1939), and 2,188 of May 15, 1940 (*DO* of May 25, 1940).

⁵ See Art. 4 of D.L. no. 88, which is the apposite frame of reference.

nomia popular).⁶ But the catalogue has been vastly enlarged by subsequent legislation—so much so that no exhaustive enumeration can be given here.⁷ On the whole one may say that all political crimes—that is those which, generally speaking, affect the political existence of the state, the general welfare, the economic life—fall under the jurisdiction of the *Segurança*. In another sense it is also a measure of centralization in that no ordinary courts are permitted to deal with offenses involving political matters or motives.

Organization of the Court

The Tribunal of National Security is composed of six judges (Art. 2)⁸ of whom two are members of the civil magistracy (that is judges of the ordinary courts of the land), one is taken from the military courts, one is a high-ranking officer of the army and one of the navy, and one is a practicing lawyer of “exceptional juridical ability.” All members of the court are appointed by the president of the

⁶ See *supra*, pp. 151 ff.

⁷ The Standing Orders of the Court (*Regimento Interno*) of June 4, 1940, elaborated by the court itself and approved by the Ministry of Justice (*DO da Justiça* of June 19, 1940)—a complete and very carefully drafted code of procedure as applied by the court in 161 articles—enumerate, without being exhaustive, in Art. 14 the main statutory acts on which the jurisdiction is based. These explicitly mentioned are: (a) of the period preceding the *Estado Novo*, Laws nos. 38 and 136 of Mar. 4 and Dec. 14, 1935, and no. 244 of Sept. 11, 1936; (b) of the period since Nov. 10, 1937, D.L.s. nos. 37, on political parties, 383, on political activities of foreigners, 431 (Public Order Act), 869, on economic life, 1,687 of Oct. 17, 1939 (*DO* of Oct. 19, 1939), on the zones forbidden to aerial navigation, 1,888 of Dec. 15, 1939, Art. 17 (*DO* of Dec. 16, 1939), on the concession of loans and other benefices to agriculture,—no. 2,238 of May 28, 1940, Art. 65 (*DO* of May 30, 1940)—this provision deals with fraudulent activities in connection with the Chamber of Economic Readjustment.

⁸ The following discussion, if no other decree law is quoted, refers to D.L. no. 88 of Dec. 20, 1937 (*DO* of Dec. 24, 1937).

republic. During tenure they cannot be dismissed—a very important safeguard of judicial independence—nor can their emoluments be reduced. The salaries are not inordinately high for Brazil.⁹ The president of the court is one of the civilian members and must be an associate justice, with the title of minister, of the Supreme Federal Tribunal, corresponding, as has been pointed out, to our Supreme Court.¹⁰ He remains a member of the latter court but is barred from participating in cases which have been adjudicated by the *Segurança*; this provision refers only to habeas corpus cases which eventually may come before the Supreme Federal Tribunal. Since the reform of 1937 the president is Minister Barros Barreto, an associate justice of the Supreme Federal Tribunal and a highly respected magistrate. Attached to the court are six *procuradores* as the representatives of the Public Ministry¹¹—that, is the prosecuting authority—in accordance with the French judicial organization which is followed all over South America. The court has its official seat in Rio de Janeiro (Art. 1) and functions for the entire territory. If necessary a member can be delegated to act as a judicial commissioner in one of the states outside Rio (Art. 7). This occurred in 1937 when members were dispatched to Rio Grande do Sul and do Norte, Pernambuco, and other states. The court is continuously in session throughout the year (Art. 24).

⁹ By D.L. no. 2,905 of Dec. 4, 1940 (*Coll.*, 1940, vol. VII, p. 343), they were raised from 4.8 to 5 *contos* of *reis* per month, that is, about \$250.

¹⁰ See D.L. no. 1,261 of May 10, 1939 (*Coll.*, 1939, vol. IV, p. 152) and no. 1,393 of June 29, 1939 (*DO* of July 1, 1939).

¹¹ See D.L. no. 2,188 of May 15, 1940 (*DO* of May 25, 1940).

Procedure of the Tribunal of National Security

The procedure of the *Segurança* is of special interest to all criminal lawyers who have felt that the procedure in their own country does not strike the happy medium between the requirements of protection for the accused and the needs of retribution by the state in the interest of the community. It is less the jurisdiction than the procedure of the Brazilian court that contains most of the objectionable features of the whole system of political justice. Without yielding to the temptation of presenting a full account, the following details of the situation must suffice.

The proceedings are divided into two sections or "instances," the first being under the control of one judge as a single referee. The president designates for each case the referee in conformity with the Standing Orders of the Court (Art. 1). This judge decides the case on the basis of the record and the evidence which he thinks fit to be taken (Art. 7). The session of the court is public. Against his decision (sentence, acquittal, or whatever the substantial judgment may be) appeal (*recurso en apelação*) may be taken, with suspensive effect, to the second instance, which is the plenary session of all six members of the tribunal; but the judge who has decided the case in the preceding instance is barred from hearing the case in the plenary session (Art. 8). Consequently only five judges participate in the plenary session. Since the president is not a reporter he takes part in all votes of the plenary session (Art. 12, § 3). The hearing is held in public, but the deliberation of the court is *in camera*; announcement of the sentence is, as a rule, again in public. Much of the proceedings (indictment, pleadings, defense, decision) is in writing. The written decision is published in the *Diario da Justiça* (Art. 12, § 5). The entire pro-

cedure is gratuitous and free of costs and stamps (Art. 26).

Although no recourse is permissible against so-called incidental or interlocutory decisions of the single referee, such questions are not precluded from being considered anew by the plenary session (Art. 8 and 9). But in all cases in which the first instance acquits, the case is reviewed, by appeal *ex officio*, by the plenary session (Art. 8, single §). In other words: if the indicted is convicted in the first instance he may or he may not appeal to the plenary court. If he is acquitted the plenary court must always deal a second time with the case. The judgment of the plenary session is final (Art. 10). But the Standing Orders of the *Segurança*, elaborated by the court itself on the basis of its experience in the past, introduced into the procedure, seemingly without a specific authorization by an apposite decree law, the institution of revision (*revisão*)¹² which in practice amounts to a third review though not to a full retrial of the individual case if the prerequisites of such a course are given. The Tribunal may reopen the case at any time if it is to the advantage of the convicted. No heavier or additional penalties may result from this review (Art. 120); lawyers trained under the Roman law are familiar with this situation as the prohibition of the *reformatio in peius* which, in European dictatorial states, has been thrown overboard long ago. The petition for revision must be based on grounds different from those originally adduced in the trial (Art. 109).¹³ It should be noted that the introduction of the revision on be-

¹² See *Regimento Interno* of June 6, 1940, Articles 108 ff.

¹³ Revision is granted (a) if the conviction was contrary to the text of the penal law or resulted from a wrong classification of the crime; (b) if the fact-finding was based on substantial violations of formalities; (c) if the conviction was declared by a judge suspect of partiality (*juiz suspeito*)—on this situation see Art. 60, or based on testimony which was found to be false; (d) if, after the conviction, incontrovertible proof of innocence is forthcoming.

half of the convicted is a mitigation of the original legal text and that the Standing Orders, even without being authorized to do so by a formal decree law, try hard to bring the practice of the court more in line with the customary requirements of the rule of law.

Objectionable Features of the Procedure

Yet in many respects the procedural arrangements of the *Segurança* are subject to grave objections from the viewpoint of a fair trial, the protection of the accused, and the establishment of objective truth as the basis for conviction. In political cases (Art. 4(a) and (b)) the judges decide by "free opinion" (*por livre convicção*). This means, in practice, that they have the right to take evidence as they see fit and to interpret it as they see fit, without being bound by any formalized rules or binding precedents which under the Roman law system do not exist anyway. This is reaffirmed in Article 16 according to which all declarations of the accused and testimony deposited on his behalf are treated by the court according to their intrinsic value and in conjunction "with other informative elements" of the trial. In addition, the indictment indicating specifically the crime of which the accused may be found guilty, can be changed, on the basis of these "informative elements" of the record, during the trial, and a different indictment, though based on substantially the same set of facts, may be substituted for the original charge. This technique, called *desclassificação* is disapproved of by all procedural systems which are faithful to the rule of law because it jeopardizes the defense of the accused. In practice the lawyer of the indicted person is informed of the change in specification of the offense under indictment and he may, if time permits,

adjust the defense to the new frame of reference. It should be noted, however, that neither the "exercise of free opinion" of the court nor the practice of "declassification" has the remotest resemblance to the abrogation of the maxim *nulla poena sine lege* which disgraces the administration of justice in European dictatorships¹⁴ because the court cannot invent new crimes; the judge is strictly obligated to adjudicate only those determined by a previously enacted law. Not even the Public Order Act of May, 1938, which was intended to forestall conspiracies against the state, was made retroactive. The Segurança is bound by the positive law. The president of the Tribunal of National Security, Minister Barros Barreto, assured this writer that such "declassifications" are relatively rare in the practice of the court and that if they occur the indicted person and his lawyer are at once informed. This writer remains unconvinced that no essential harm can be done to the accused if in the midst of the trial such a change of the basis of the indictment is sprung on him. Another objectionable feature is the power of the court (Art. 15) to dispense at its discretion with the personal appearance of the accused in the trial for reasons "of public order and security." In the practice of the court the indicted person is usually present in the first instance before the single referee, while as a rule he is not summoned in the second (plenary session) if he is represented by a lawyer. The absence of the accused during the trial by the plenary court involves no hardship for the accused since, as Minister Barros Barreto explained to this writer, the court, not being a Revolutionary Tribunal, considers *ex officio* all points in favor of the person on trial. The court is also completely free in handling the procedure including the decision on "preventive prison"

¹⁴ See Karl Loewenstein, *Hitler's Germany*, pp. 123 ff., and *idem*, "Law in the Third Reich," *Yale Law Journal*, vol. XLV (1936), pp. 791 ff.

(*prisão preventiva*) (Art. 15). Preventive prison, it was declared to this writer, has nothing to do with preventive custody as practiced in dictatorial states elsewhere; it is the ordinary confinement of a person under indictment, to be decreed by the investigating magistrate strictly on the basis of the general laws. Under the system following French law release on bail is an exception and not the rule. Judicial detention depends on the nature of the crime and the person involved. The very rules of the *Segurança* make it absolutely impossible for a person to be held for a considerable period without indictment or trial.

Trial by "Blitz"

That the *Segurança* is a summary court is evidenced by the most elaborate provisions intended to accelerate the proceedings. After the Integralist uprising of May, 1938, an even more stringent timetable for the trials was introduced by a new decree law which streamlined the procedure to the limits of a veritable Blitz.¹⁵ On receipt of the complaint or denunciation from the police, private individuals, or another authority, the president turns it over to the public prosecutor as representative of the Public Ministry (prosecuting attorney), and designates the single referee from among the judges of the court (Art. 2). The indictment has to be issued by the prosecutor within forty-eight hours (Art. 3). The designated judge summons, within twenty-four hours, the accused for preparing his defense or for retaining a lawyer or, if the accused does not appear, he names a defense counsel for him among the lawyers inscribed in the *barreau* of the capital; the defense counsel has another forty-eight hours for acquainting himself with the content

¹⁵ See D.L. no. 474 of June 8, 1938 (*DO* of June 9, 1938).

of the record (Art. 4). The citation is served in person on the accused or, if his abode is unknown, by public citation (*edital*) attached to the door of the court house (Art. 4, single §). Hereafter the date for the trial is set; it is to be held within three days (Art. 5). When the trial is opened, the accused if present is confronted with the indictment, testimony is taken, and hereafter the public prosecutor and the defense counsel have thirty minutes each for oral pleading of the case (Art. 6). If several accused have more than two defending lawyers the maximum time for all remains the same. Only two witnesses are admitted for each accused, and for the interrogation of each witness a maximum limit of fifteen minutes is reserved. Immediately upon closing the proceedings the judge delivers the judgment which hereafter is to be set down in writing, together with a résumé of the debates and the depository of the testimonies (Art. 7). In cases outside of the Federal District the ordinary judicial authorities act on request as commissioners for taking testimony, under observance of the provisions valid for *Segurança* trials, and send them in writing to the court (Art. 8). The judge may demand a rehearing of such witnesses; otherwise their testimony is considered as proved (Art. 9). The decision of the single referee may be appealed at once, by the defendant or by the public prosecutor, to the plenary session which takes place within five days (Art. 10). Simultaneously the president designates the reporter who must not be the judge who has sat over the trial in the first instance. In the plenary session the same abbreviated periods for pleading are assigned to public prosecutor and defense. If the accused has more than one lawyer the president designates the one who speaks for the defense unless the lawyers agree between themselves (Art. 11). Immediately after the oral pleadings are terminated the court is cleared for the de-

liberation *in camera*. In case of a tie the president's vote decides (Art. 11, §§ 1 and 2).

Several other features of the procedure operate against the person under indictment. By reversing the maxim, *In dubio pro reo*, his guilt is assumed; the proof of innocence is incumbent on him (Art. 20(5)).¹⁶ No exoneration is possible if he is found with arms in hand, or in the event of an armed insurrection, or with instruments or documents of the crime. (Art. 20(5)). A denunciation found insufficient and hence rejected by the public prosecutor may be reconsidered by the tribunal and may lead to trial (Art. 20(6)). Witnesses are summoned exclusively by the court; this corresponds to the system of criminal procedure habitual in continental Europe where the testimony may be offered by prosecutor or defendant, but the decision as to which kind of testimony is considered as relevant is left to the discretion of the court. Testimony may be taken in the absence of the accused and even only through reference to previous depositions in police interrogatories outside the court; no new hearing is mandatory (Art. 20(13), (14)). Additional testimony must be taken, however, if, in the opinion of the court, it is needed for further clarification (Art. 20(20)). But the fact remains that under these conditions the most questionable testimony may become the basis of the conviction without the accused being in a position to disprove it. The defense may ask formulated questions during the trial which are admitted by the court under the condition that they are relevant and not of "dilatatory or impertinent character" (Art. 20(15)).

Two additional points deserve special mention. The court wields a restraining control on the officials of whose irregular conduct or violation of duties it is informed in the course

¹⁶ The following quotations refer again to D.L. no. 88 of Dec. 20, 1937.

of its activities;¹⁷ it sees to it that a delinquent or corrupt official is subjected to disciplinary punishment or, if warranted by the case, that the public prosecutor issues an indictment against him. In this sense the court's functions are somewhat similar to those of the DASP¹⁸ in protecting the public against violation of official duties by functionaries. The other point, serving a similar purpose of protecting those illegally affected by public authorities, is the habeas corpus procedure.¹⁹ There is no need here to go into a detailed description of the institution of habeas corpus in Brazil.²⁰ The constitution of 1937 conceded to the Supreme Federal Tribunal the right to decide certain cases of *habeas corpus* petitions mainly when petitioner or coercer, tribunal, functionary, or authority are under its jurisdiction without other possibility of appeal (Art. 100, no. I(g)). The use of the remedy is strictly confined to matters involving in-

¹⁷ Art. 16 of the *Regimento Interno*. This power is not mentioned in any of the decree laws dealing with the *Segurança*.

¹⁸ See *supra*, p. 101.

¹⁹ See Art. 4, single §, of D.L. no. 88, and Articles 12(a), 122 ff. of the *Regimento Interno*.

²⁰ This has been done admirably by H. G. James, *The Constitutional System of Brazil*, pp. 114, 133-139 (up to 1922). His discussion does not cover the reform of the constitution of 1891 (Art. 72, § 22) by the amendment of 1926, which restricted the previously excessive use—or abuse—of habeas corpus for merely political matters such as the right to an office. Even after the reform of 1926 habeas corpus proceedings played a prominent role in the jurisdiction of the Supreme Federal Tribunal; of 2,997 cases decided in 1928, no fewer than 1,109 dealt with this remedy. The explanation lies perhaps in the frequent application of the state of siege during the republican period. On the reform of 1926 and the situation under the constitution of 1934 see Calmon, *Curso de direito, etc.*, pp. 267 ff., and Hambloch, *His Majesty the President*, pp. 91 ff. The constitution of 1934 distinguished between habeas corpus proper, granted for violation of individual and personal liberty, and the so-called *mandato de segurança*, granted in case of violation of a "certain and incontrovertible right." This institution is patterned less on the Anglo-Saxon writs of mandamus and quo warranto than on the Mexican precedent whose *recurso de amparo* is the model for the Brazilian "mandate of security."

dividual liberty and all political controversies are ruled out by the prohibition addressed to the Supreme Federal Tribunal (and all other courts) not to deal with "political questions proper."²¹ No authoritarian regime will tolerate judicial interference with *actes de gouvernement* in the widest sense. But for the protection of individual liberty the institution of habeas corpus is still in force and rather frequently resorted to in present-day Brazil. Even within the jurisdiction of the Segurança which adjudges political crimes, the remedy is not altogether window dressing. It exists in favor of a person "who suffers or finds himself threatened to suffer violence or coercion through illegality or abuse of power" (Art. 4, single §). The court acts on petition, which may be contained even in a telegram, by summary proceedings but grants sufficient opportunity to the person affected to present his case personally or through a representative.²² Cases involving habeas corpus are not infrequent in the practice of the Segurança. It seems also that the Supreme Federal Tribunal may be petitioned by way of *habeas corpus* against the Segurança itself.

General Evaluation of the Tribunal of National Security

Taken in its entirety the legislation on which the Tribunal of National Security is founded constitutes a deplorable deviation from the tradition of the rule of law of which Brazilians are justly proud. Even granted that the court, through its Standing Orders, has introduced some mitigations into the harshness of the statutes, from the viewpoint of a fair administration of justice they are still thoroughly bad. Their continued existence can be justified, if at all, only by

²¹ See *supra*, p. 113.

²² For details see *Regimento Interno*, Art. 122 ff.

the abnormal political conditions in the world. The rights of the accused are heavily curtailed. That an indicted person has to clear himself from presumed guilt is particularly odious if one remembers that even anonymous denunciations and unchecked police reports may lead to indictment.²³ By their excessive haste the proceedings themselves militate against thoroughness of investigation and full utilization of evidence. To an Anglo-Saxon lawyer the whole method of how evidence is taken and weighed appears most unpalatable. In rebuttal of these objections it is averred that the court is charged with the judicial repression of treasonable activities against the existence of the state and its social order, and that treason, in this period of its international instigation and encouragement, must be met by stern and summary justice. Moreover, treason cases are more a matter of facts than of conjecture, and guilt can be proved by facts which once established do not need minuteness of evidence. Be that as it may, the *Segurança* deals also with offenses against the economic life of the nation; among other things it is an anti-trust court. Such matters are factually very complicated and controversial even among experts. How can six judges, of whom at least two are not trained lawyers, decide them equitably within the narrow time limits granted for investigation and evidence?

But there are some massive entries on the other side of the ledger. First: the *Segurança* is an independent court. The judges are absolutely free from pressure by the government or the Ministry of Justice. Some of them, appointed in 1936 by the then Minister of Justice, the Paulista Liberal Vicente

²³ Art. 43 of the *Regimento Interno* tries to improve the situation by prescribing that complaints have to be duly signed, and that the identity of the complainant has to be clearly established; anonymous and frivolous complaints are thus to be eliminated. See Report (*Relatorio*) of the court for 1940, p. 5.

Ráo, are still in office. The court does not receive instructions from the government nor does it issue instructions to the political police or the prosecuting authority. The court is not an instrument of government arbitrariness. Second: the Tribunal of National Security is a special court with a special jurisdiction; it is also a summary court, but nonetheless it is an ordinary court under the law of the land and not an exceptional court, beyond and above the positive law. If its decisions are harsh it is because it has to apply a harsh law faithfully. A statute is, by and large, not what it purports to be on paper but what the judges in applying it make it do or not do. Third: innocent people may have been convicted, merely suspected people may have been found guilty. But the *Segurança* is not a blood court. Not a single death sentence has been passed since its inception although the laws permitted capital punishment. Under the Vargas regime no political murder through the courts has been committed. It is not in the Brazilian character to kill people for political reasons. Fourth: the Court and its judges are respected throughout the country. In economic matters which form today a majority of its cases, the *Segurança* even enjoys the reputation of being the guardian of the "little fellow" against unscrupulous exploitation. Even among the political opposition of the regime, much as they detest as a whole the illiberal institution and the authoritarian procedure, it is admitted that the court is neither vindictive nor arbitrary. No flagrant miscarriage of justice is laid at its door. No specific abuses are complained of. Full publicity is maintained. The daily press reports on all cases dealt with by the plenary session with names of persons indicted and names of the judges acting as reporters. To emphasize once more: those who liken the *Segurança* to the dreaded People's Court of the Nazis, of which the Germans speak only in shuddering

whisper, either do not know the record or, if they do, are guilty of deliberate distortion of facts.

Personal Impressions

This writer had the opportunity, through the courtesy of the Minister of Justice and the president of the *Segurança*, Minister Barros Barreto, to see the court in action and to acquaint himself with its operation as well as a foreigner who is not trained under the national law is able to do. The court adjudges in Rio de Janeiro in an unpretentious building located on the busy boulevard between *Praia Flamengo* and *Botafogo*. Two soldiers on horseback are on guard of honor in front of the building—otherwise no military display is visible. Behind the building a mildly bored platoon of soldiers with a machine gun are stationed. One may enter freely and stroll through corridors and rooms. The few officials are all civilians. The whole atmosphere is informal though not lacking in dignity. The president of the court appeared as a somewhat austere but well-meaning and very well-informed person. All lawyers in Brazil with whom this writer inquired about the court consider him a thoroughly competent and incorruptible jurist. The files are orderly kept and not much different from those of other criminal courts. There seems to be little secrecy about them. The smallish rooms in which the single judge of the first instance sits are adequately appointed and have space for some visitors, although as a rule outsiders show little curiosity in the sessions of the court. There was not that restrained excitement within the building or around the proceedings as is noticeable in the criminal courts of most “constitutional” countries. The single judge conducts himself correctly, avoiding condescendence and intimidation. The plenary

sessions are as a rule held twice a week with somewhat more ceremony, in a larger and more decorated room, some visitors or spectators attending. Publicity of the proceedings seems unimpaired. The lawyers appearing for absent defendants were treated by the court with respect and consideration. Whenever they overstepped the time accorded them for oral pleading, the court was generous if they spoke to the point and helped to clarify the case. Of the two military judges one was a colonel of the army, the other a captain of the navy. The civilian judges were in gown; all without exception are men of maturity, culture, professional ability, and long and distinguished judicial careers. The proceedings were conducted with seemingly integrated routine, without hurry and without delay. One of the cases dealt with in the presence of this writer, a rather complicated affair, was an infringement of *economia popular*. A large firm of building contractors in São Paulo had paid wages to their workers partly in cash and partly in scrip which could be exchanged for goods at the company stores. This situation, not unfamiliar in this country some decades ago, was complained of as illicit exploitation. Two lawyers acted for the defense, one of them a professor of criminal law of the University of Rio de Janeiro—all professors of law in South America are in practice because the remuneration paid by the state is only a token of prestige and not a living wage—the other a well-known lawyer from São Paulo. Both read their pleas from carefully drawn-up briefs which thereafter were taken to the dossier of the court. The two had between them only thirty minutes which they did not fully use. The briefs, disdaining oratory, were soberly and juridically to the point. The court listened with attention. Sustaining the first instance the indictment was dismissed mainly because no law prohibited the issuance of scrip.

Other cases were similarly dealt with on their merits without apparent political or economic bias. The military assessors shared equally in the work as *relatores* (reporters).

The foreign interloper was treated with utmost amiability and courteousness.²⁴ When interviewed, during several hours, the president answered all questions with complete frankness and knowledge of the law and of men. According to him the "streamlining" of the proceedings in the conduct both of the preliminary investigation and of the trial has not proved injurious to a fair administration of justice. Liberality is shown in the number of witnesses admitted, in considering the allegations of the defendant, in the participation of counsel for defense. Acquittals in the first instance are as a rule sustained by the plenary court. In the selection of *ex officio* lawyers for those not retaining their own lawyers, no political considerations are involved, the Bar Association being fully co-operative. Some lawyers are specializing in cases before the *Segurança*, but the court does not favor one and the same lawyer for too many cases. Some law offices in Rio, this writer was told, refuse to take cases before the court. *Causes célèbres* being rare, the court has become more and more an instrument of routine criminal justice. Treasonable activities on a large scale have not been handled since the termination of the cases arising from the Integralist uprising in 1938. Of the two sections of political extremism Communist activities are more frequent on the

²⁴ He waited at first for the opening of the session at the place reserved for the public. After the court had entered the President called on him, introduced him to the associate judges and to the audience, and invited him, to his considerable embarrassment, to sit with the judges on the raised dais in order to honor the American visitor and to enable him to follow the proceedings at close range. An interpreter sat next to him to explain all events he might not be able to grasp for himself. It is unlikely that such courtesy would be bestowed to a stranger in any court, say, of Germany, France, or the United States, let alone the stuffy British courts.

agenda of the court, but almost none on a large scale. Integralist activities are treated as equally obnoxious and were still coming up for trial in 1941; almost all involved illicit propaganda, but only a few cases dealt with illegal organization, which seems well under control of the police. Indictments for Nazi and Fascist machinations are infrequent; most of them concern the small fry and petty offenses such as insults to the flag, possession of arms without license, or utterances to the effect that "Hitler should take over the country," when they happen to be overheard. That so few cases of importance involving totalitarian activities are adjudged by the court may have its cause, as it has been rumored, in connivance of the police and some high quarters of the army. However, the president of the *Segurança* seems inclined to think that large-scale subversive organizations no longer exist. This writer had no title to contradict the official nor does he know whether a recrudescence of political cases occurred as a result of the repressive measures taken against the Axis sympathizers after the Conference of Rio de Janeiro.

Violations of the antitrust provisions and cases involving large foreign or national corporations for price fixing, etc., have not yet come to the cognizance of the court. Most cases coming up for trial under the *economia popular* have to do with petty offenders, swindlers, and exploiters of popular ignorance and superstition for fraudulent schemes. This writer has repeatedly noticed that the *Segurança* is used as a sort of a bogeyman by the "little fellow" against the economic sharks.

That preventive custody for political reasons is practiced was denied. All decisions on detention of persons under indictment are issued by the investigating magistrate and either confirmed or rescinded by the court. The court passes on all

petitions for release. An inordinately long period of preventive prison is precluded by the rapid procedure of the court. But this writer was informed that in trials before the ordinary criminal courts delay and lack of efficiency do frequently occur. That torture was applied in some political cases by subordinate organs of the police met with no flat denial by the president; officials guilty of illegal practices are punished and dismissed. In this connection the president showed himself well aware of the occasional practice of the third degree in this country. The foreign visitor had no title to disagree.

On the whole, this writer felt, under these administrators of the law political justice of the Vargas regime has lost much of its bite. A thoroughly bad law is applied with moderation and leads to reasonably equitable results.

Concluding Observations on the Activities of the Tribunal of National Security

The Tribunal of National Security, through its president, publishes annual reports on its activities which though not as revealing as one might desire—after all, the *Segurança* is the political court of an authoritarian regime—contain a good deal of valuable inside information and statistics.²⁵ The following facts appear from these doubtless correct accounts:

(1) From its installation in September, 1936, to December 31, 1940, the tribunal handled 1,538 cases involving 9,909 persons all told. This period covers the various Communist upheavals of 1936 and 1937 as well as the Integralist

²⁵ By now four such reports have been released, published as *Relatório dos trabalhos realizados*, Rio de Janeiro, Imprensa Nacional, 1938, 1939, 1940, 1941.

conspiracies of 1938 and the current repression of other illegal activities.

<i>Period</i>	<i>Cases</i>	<i>Indicted persons</i>
September, 1936—December 31, 1937	442	4,720
January 1, 1938—December 31, 1938	248	2,483
January 1, 1939—December 1, 1939	304	1,314
January 1, 1940—December 31, 1940	544	1,392
	<u>1,538</u>	<u>9,909</u>

These columns show a very considerable decrease of the number of indicted persons and, what is equally interesting, an absolute increase in the number of cases. This means that the big trials, with a large number of offenders involved—mass trials indicate large-scale internal commotion—have come to an end. Most of the cases involve one or two indicted persons, and consist of petty cases of violations of economic life or minor disturbances which did not affect public order seriously. This is all the more significant since the jurisdiction of the *Segurança* has been enlarged year by year. In 1940 violations of no less than eight major decree laws were assigned to the court. In other words, the nation has settled down; articulate and organized opposition to the regime has largely subsided. Moreover, in the last years the majority of the cases involved offenses against *economia popular*. In 1938 the Integralist cases boosted the figures coming from Rio (the Federal District), Rio Grande do Sul, and Rio Grande do Norte. In 1939 the number of cases against political extremists decreased considerably; only one big case (no. 994 of the court docket) with 119 persons indicted occurred concerning the reconstruction of Communist cells after the outbreak of the current war.²⁶ In 1940 no important political case came before the court, except the

²⁶ *Relatorio* of 1939, p. 4.

Elsa Fernandes affair in which Luiz Carlos Prestes was singled out for victimization.

(2) The number of appeals taken from the first instance to the plenary session is very much lower than the number of sentences. This means that not nearly all, in fact less than 50 per cent, of convictions were appealed; it should be remembered that in case of acquittal appeal is obligatory for the prosecuting attorney. This allows two different interpretations: either the convicted entertained no hope of faring better on appeal, or he accepted the sentence because it was mild or because he was proved to be guilty. This writer was informed that in case of acquittal below it the plenary court rarely condemns; in case of conviction by the first instance reduction of sentence by the plenary court is as frequent as confirmation. *Reformatio in peius* seems to be an exception. About one third of the complaints were dismissed in the first instance without being brought to trial.

(3) The first case of revision occurred on June 21, 1939. In 1940 the number of revisions had risen to thirty-four cases with 123 convictions involved, which demonstrates the increasing willingness of the court to reopen cases. The number of *habeas corpus* cases reached sixty-eight in 1940, with eighty-nine petitioners.²⁷ Meritorious of note is the speed of the proceedings. In 1940 not a single appeal was pending at the end of the year. All appeals were decided within one week after the judgment of the first instance.²⁸ By the end of 1939 and 1940 the court had completely cleared its docket.

(4) A final word may be added concerning the territorial origin of the cases coming before the Segurança. The state which contributed most cases was São Paulo, evidently not

²⁷ *Relatorio* of 1940, p. 6.

²⁸ *Relatorio* of 1939, p. 5.

only because it is the second most populous one of the Union but also economically the most important and more urbanized in social stratification than the rest of the country. This factor increases the number of cases dealing with *economia popular* and the Communist cases which flourish in the metropolitan area of the largest industrial city of the land. The Federal District is second by a small margin, followed by the states of Rio Grande do Norte and Rio de Janeiro. The southern states of Rio Grande do Sul, Paraná, and Santa Catarina with most of the recalcitrant Germans, are far down in the list, another indication that either the repressive laws are very effective indeed or that the Germans are past masters in carrying on anti-Brazilian activities without openly violating the laws. Which of the two interpretations is correct it is difficult to decide. Almost at the bottom of the list is Minas Geraes, which enjoys the enviable reputation of being the most orderly and law-abiding state of the union.

In summing up one cannot but admit that about fifteen hundred cases with about ten thousand persons involved, in a total population of not far from the fifty million mark, is not a bad record for a period of over four years which included at least one large-scale political uprising. If one deducts from the grand total the number of offenses against *economia popular* the statistics of the very court which is in charge of repressing political opposition testifies to the stability of the regime and its almost unchallenged acceptance by the people.

PART FOUR

PUBLIC OPINION MANAGEMENT AND THE
DYNAMICS OF SOCIAL LIFE UNDER
VARGAS

CHAPTER I

ORGANIZATION AND INSTRUMENTALITIES OF PUBLIC OPINION MANAGEMENT

Since the inception of the *Estado Novo* in 1937 the normal channels for articulation of public opinion have been choked. Electoral methods for expressing political attitudes were abolished. Likewise political parties and organizations were outlawed. Having, thus, blocked all self-regulating outlets of political dynamics the regime was compelled to resort to manipulating public opinion in order to prevent more irrational manifestations prejudicial to its political aims. In pursuance of these policies none of the cultural expressions of public opinion, insofar as they are communicable through press and radio, theater, arts, films, and education, could remain wholly unaffected. As a matter of record, control of, or at least attempted influence on, public opinion and social dynamics is an essential and indispensable function of an authoritarian government, even if it is used merely for guidance and not for outright indoctrination and inoculation. Effectiveness and intensity of public opinion management depend on many factors, on particular circumstances and situations in a specific country, as well as on the standard of political education and interest of the population, on the general climate of political mores, and on the tradition and temper of the intellectuals who lead and determine public opinion.

The Department of Press and Propaganda (DIP)

Already in 1934, a few days before the formal promulgation of the constitution, a special Propaganda Department had been created as an agency attached to and controlled by the Ministry of Justice.¹ Without being specifically authorized by the constitution or the laws but over longer periods operating under the protective coloration of the state of siege, the department's main activities consisted in exercising censorship and helping to restrain political opposition to the government. It met with much dissatisfaction and complaints because of arbitrariness and lack of a precise legal basis. But after the *coup d'état* of 1937 it continued to function as an agency of the Ministry of Justice without outward change in organization. Only two years later, after the outbreak of the war, the present Department of Press and Propaganda (*Departamento de Imprensa e Propaganda*), generally known as DIP, was created as a separate branch of the central administration.² To all intents and purposes the DIP was to be and is a full-fledged Ministry of Propaganda, patterned at least in its aspirations on Doctor Joseph Goebbels's well-known model institution for similar dispensation of intellectual charity. It is organizationally subordinated directly to the president of the republic (Art. 1) and thus no longer under the auspices of the Ministry of Justice, a fact which has not promoted cordial relations between Francisco Campos and the new director of the DIP,

¹ Decree no. 24,651 of July 10, 1934 (*DO* of July 14, 1934).

² D.L. no. 1,915 of Dec. 27, 1939 (*DO* of Dec. 29, 1939). See also the supplementary *Regolamento* by Decree no. 5,077 of Dec. 29, 1939 (*Coll.*, 1939, vol. VII, pp. 590 ff.). Walter R. Sharp, "Methods of Opinion Control in Present-Day Brazil," *Public Opinion Quarterly*, vol. 5 (1941), pp. 3 ff., gives an intelligent description of the DIP, interspersed, however, with some rather oblique statements on general political conditions under the regime.

Doctor Lourival Fontes. In terms of the law the functions of the DIP are as follows (Art. 2): centralization, co-ordination—this term is reminiscent of the ominous word used for the German *Gleichschaltung*—orientation and supervision of national propaganda in both its internal and external application; a permanent service of information for all public authorities and private entities; censorship of theater, cinema; of recreational and sportive functions of all kinds; of radio, political, and social literature and of the press; stimulation of national film production, including special financial favors to national “educational” films; furtherance of close connections with the press and the public powers in order to familiarize the press with “the facts of national interest”; collaboration with the foreign press in order to avoid the leakage of foreign press reports detrimental to the credit and culture of Brazil; organization of intellectual and cultural exchange between national and foreign writers, journalists and artists, including translations of Brazilian writers; supervision and control of domestic and foreign tourism; stimulation of a “genuine Brazilian national culture”; prohibition of the entry, into Brazil, of foreign publications harmful to national interests, and, within Brazil, of all kinds of publications harmful to the credit, the institutions, or the morale of the country; organization of patriotic manifestations, popular celebrations, and educational programs in the cultural field such as concerts; lectures; exhibitions for demonstrating governmental activities; touristic undertakings; organization and guidance of official government radio programs; and last but, as will be seen, not least assignment of—imported paper (*papel*) to enterprises of the press which “have demonstrated, to the satisfaction of the DIP, the effectiveness and public utility of the journals and periodicals under their administration and direction.”

Perhaps the reader has been bored by this enumeration—as a matter of fact the list fills no less than sixteen paragraphs of the decree and has been reproduced here in a much abbreviated form; but he may be reminded that he encounters here a unique specimen of authoritarian candor for which he will look in vain among the grimly taciturn proclamations of dictatorial regimes which confine themselves to an all-inclusive command and leave the details to the imagination of the officials. Here nothing is left to imagination and the program in its disarming naïvete is as integrated and pretentious an illustration of “emotional” legislation as can be found anywhere.

For its fulfillment the DIP is organized in six sections (Art. 3). These sections are: propaganda (*divulgação*);³ radio; cinema and theater; tourism; press; auxiliary services such as communications, financial management, and libraries for films, records and books. The general director of the DIP is freely chosen and appointed by the president of the republic (Art. 5); so are the directors of the sections (Art. 6). The general director reports directly to the president and not through the cabinet; although Vargas is well-trained in administrative tasks the novel activities of scientific propaganda may be less accessible to his intellectual grasp, and thus it is said that Lourival Fontes has more of a free hand than the other, departmentalized, ministers. The higher functionaries of the DIP are relatively well paid. The DIP has an official budget of close to a million dollars, but evidently additional sources of income exist which are not disclosed. In Rio de Janeiro alone a staff of some five hundred persons are on the payroll, their selection having been, at least during the first years, purely “accidental,” that is, ob-

³ Sharp, *op. cit.*, p. 6, translates the term rather freely with “civic education”; it implies, however, all aspects and methods of national propaganda.

tained through good connections or "authoritarian" zeal; many officials simultaneously hold jobs in other offices. Application of civil service rules if planned would probably not work. The DIP runs a radio station of its own in Rio de Janeiro; a number of the states also have their own stations. Otherwise radio in Brazil is privately owned and supported by commercialized programs.⁴

All propaganda and censorship activities are centralized by the DIP in Rio. It took over the functions of censorship and supervision of public entertainments heretofore exercised by the civil police of the Federal District (Art. 14) as well as those formerly performed by other governmental agencies (Art. 15, 16, 19). Occasional friction with some of them still occurs. Executive agencies were established in all states and the local authorities are bound to co-operate if required (Art. 17). The branches in the capitals of the states follow political directives emanating from the central office, but they exercise a good deal of discretion in the execution of the policies prescribed by Rio.

The DIP may well appear, on the basis of these sweeping powers, as the most potent political instrument of the regime, next to the armed forces, and its position is best likened to a full-fledged Ministry of Propaganda which if necessary dictates to the Interventors and even the ministers. The offices are in the former parliament building, the *Palacio Tiradentes*, erected in the bombastic shallowness of bad French classicism and named after the great revolutionary hero of the eighteenth century who after his abortive insurrection was sentenced to death and duly hanged and quartered into the bargain. The subtle irony of Rio's topography decrees that the street on which this versatile building is located bears the fitting name of *Rua Misericordia*. Quick-witted Cariocans, who know their national history as they should, draw

⁴ Information and statistical data are found in *Brazil 1938*, pp. 389 ff.

indiscreet parallels between their foremost national martyr and present-day public opinion. The Tiradentes Palace is the lion's den for the master mind of Brazilian public opinion management, Doctor Lourival Fontes,⁵ whom Vargas put in charge of propaganda, censorship, instillation of patriotism, and in short of the whole list of activities for galvanizing the regime. About his qualification for this most important task there can be little doubt. He is a typical Latin-American intellectual, originally trained as a lawyer, but factually his bent for letters and journalism is the cause of his meteor-like career. Formerly he was director of Tourism. He is what one may call a dynamic personality, resourceful, hard-working, imaginative, but also as was well substantiated to this writer, by no means altogether averse to the subtle art of intrigue. He is described as a man of burning ambition and, at least until the turn of Brazilian foreign politics around the middle of 1941, he was suspected of totalitarian sympathies. That upon his marriage he was congratulated by Herr Goebbels in an effusive telegram was perhaps due to an error in political judgment of his German colleague.

For the sake of fairness it should be remembered that the very function of a director of public opinion management must either provoke authoritarian leanings even though they do not exist from the start, or enhance them where they existed already. A democratic censor is something similar to the square of the circle. Perhaps it is safe to say that many of the complaints one hears in Brazil about the operation of the DIP emanate, upon close investigation, from the negative reactions of an intelligent people which is exposed, after generations of complete freedom of public and private expression, to a system of restraints whose potentially salutary effects the person affected is usually unable or unwilling to

⁵ John Gunther, *Inside Latin America*, p. 401, gives him a favorable write-up with which many of this writer's Brazilian informants would take issue.

concede. One is unduly inclined to identify the institution with those who run it. Be that as it may, once more Saul had become Paul, and after Pearl Harbor Dr. Fontes's attitude toward the United Nations, in line with the official policies of the Vargas government, was outwardly at least not marred by pro-Axis ambiguity. Though doubts persisted as to whether his conversion to the democratic cause was as genuine as it purported to be, the news of the all-powerful man's dismissal by Vargas, on July 17, 1942, hit the country like a bombshell. He was succeeded in office by a military man, Major Jose Coelho dos Reis, heretofore unknown in public life. The real background of Lourival Fontes's ouster from the Palacio Tiradentes will constitute one of the most sensational "inside" stories of the Vargas regime.

This writer failed to be received by Dr. Fontes, in spite of introductions from influential men in government offices. He met him only socially when close questioning was out of order. But like others this writer also was showered with propaganda literature from the well-stocked shelves of the Palacio Tiradentes whose entire atmosphere reminded him rather unpleasantly of a similar experience in the early years of Fascism in Italy. The place bristled with arrogant young intellectuals of scanty information beyond their officially indoctrinated answers. When asked about the *raison d'être* of some concrete measure they were evidently ill at ease. On the other hand, this writer found a decidedly more cordial reception at the State Department of Press and Propaganda in São Paulo. It is headed by a man of letters of considerable dialectic ability, culture, and wit, and a liberal *malgré lui*. One could not help feeling that the branch office in São Paulo did its work with the tongue in the cheek and the officials were not at all impervious to the many humorous aspects of censorship and propaganda in so solidly liberal a place as São Paulo.

The Press Code

Of all functions of the DIP that which affects most the life of all citizens is the control of the press. There is no dearth of legislation on this subject.⁶ An elaborate Law on the Press was published in 1934.⁷ The constitution of 1934, promulgated only a few days later, restated in general terms the principles of the freedom of thought and its free manifestation (Art. 72, no. 12).⁸ The act belongs to what may be called the "disciplined" laws on the subject of the press. While still adhering with sincerity to the tenets of freedom of public expression it restrained at the same time abuses and excesses made possible by a too liberal interpretation. Brakes are applied to the press and all printed publications in the interests of public policy. Reasonable efforts are made for the maintenance of journalistic decency without manifestly regimenting or muzzling public opinion. Censorship, in normal time, is prohibited (Art. 1, single §). Suspension of press organs is restricted to a number of definitely determined cases of violations of the laws (Art. 7-25); notable among them is punishment of the publication of false material or even of true facts if it is done with the intention of provoking social unrest or disturbance of public order (Art. 11). Also forbidden are the false imputation of facts which the law qualifies as a crime (Art. 13), and allegations of vice or defects which might expose a person to public hatred or contempt (Art. 14). The penalty is doubled if such acts incriminate the president, the chief or sovereign of a

⁶ The material is widely scattered, much of it contained in decree laws dealing with the Defense of the State. A convenient collection of the more important provisions is *Decretos que regulamentam a Imprensa e Profissão do Jornalista*, published in Jan., 1939, by the Press Association of Paraná, Curitiba (Paraná).

⁷ Decree no. 24,776 of July 14, 1934 (*Coll.*, 1934, vol. II, pt. 2, p. 1,171).

⁸ See Calmon, *Curso de direito, etc.*, pp. 248 ff.

foreign power, or its diplomatic agents (Art. 15). If libelous or calumnious acts are committed in the oblique form of "it is said" or "it is learned," etc., the paper must assume responsibility for such hearsay news (Art. 17). The law prescribes, in accordance with established tradition, criminal responsibility of authors, editors, managers, publishers, vendors, and distributors (Art. 26 ff.) and compulsory "rectification" (*droit de réponse*) in case of defamation through the press (Art. 35 ff.).

As might be expected the constitution of 1937, while still paying a perfunctory lip service to the freedom of thought, took the decisive step toward transforming a free press into "a public function of the state." This is the authoritarian reverse of the freedom of the press in nineteenth-century liberalism. Freedom of expression is granted (Art. 122, no. XVI) only "within the conditions and the limits fixed by law." The constitution lays down that this law may prescribe (a) censorship of all manifestations of public opinion; (b) measures to prevent manifestations contrary to public morality and decency; (c) measures destined "to protect the public interest, the well-being of the people, and the security of the state." The press is to be an instrument of government. Consequently, in addition to the traditional claim of the injured individual to a rectification of libelous statements by the press which has published it, the government can impose publication of governmental communications which no paper may refuse to print. Criminal responsibility for violation of the press law is even more strictly enforced than before. The entire plant of a journal serves as a guarantee for eventual damages and for fines payable for violations. For this guarantee may be substituted a cash deposit to be fixed annually "in accordance with the importance of the paper"; financial pressure is thus added as another in-

genious instrumentality of co-ordination. As in Germany and Italy—and recently also followed by Vichy-France—shareholding companies and juristic persons may not be owners of enterprises of publicity.

Since in Brazilian constitutional jurisprudence the validity of rules of law which confer powers, or establish guarantees, is not dependent on special executory legislation,⁹ no special law was needed for rendering immediately applicable these provisions of the constitution. Yet simultaneously with the creation of the DIP at the end of 1939 a new Press Code was promulgated¹⁰ which dwarfs even the stringent provisions of the constitution in making on paper the profession of a journalist or editor in present-day Brazil as thankless and precarious a task as in any European dictatorship. It is a comfort to know, however, that in practice things are taken in a much easier stride in Brazil.

A detailed account of the voluminous act of one hundred and thirty-seven articles cannot be given here. Much of it belongs to the substance matter of the Defense of the State. The press serves “for the enlightenment of public opinion” in the interests of “national reconstruction and resurrection” (Art. 1). Regulation, supervision, and control include all devices by which public opinion may be molded and directed, such as cinema (Art. 14–52); radio (Art. 86–94); theater and public entertainment (Art. 53–85); it affects all persons connected with the diffusion of cultural values, the printing and publishing business as well as artists and writers. It prescribes advance approval of all programs publicly pre-

⁹ Decision of Supreme Federal Tribunal of Aug. 14, 1918 (*DO* of Jan. 14, 1919). This was a most controversial problem under the German Weimar constitution. See G. Anschütz, *Die Verfassung des deutschen Reichs*, 4th ed., Berlin, 1933, pp. 514 ff.

¹⁰ D.L. no. 1,949 of Dec. 20, 1939 (*DO* of Dec. 30, 1939, Supplement, p. 39; see also *Coll.*, 1939, vol. VIII, p. 489).

sented of whatever form (Art. 95-109). All journalists must be registered. All press organs must be registered.

The modern technique of subversive conspiracy implies that many of its activities are carried on through the medium of the printing press. Persons connected with publicity are of course exposed to penalties for violation of such laws as deal with the Defense of the State proper.¹¹ To these the Press Act of 1939 adds a number of new offenses (Art. 123-135) which reveal a remarkable insight into the methods of Fifth Columnists—although during the period of neutrality the term “Fifth Column” may not be used in public by any organ of publicity or over the radio. Punishable is the publication of false notices and notices harmful to the country, its authorities and institutions (Art. 11). Punishable are acts if they divulge military secrets, or state secrets, or affect internal tranquillity, or are prejudicial to national interests; if they disturb the harmonious relations with foreign nations—an ambiguous clause because in practice maintenance of strict neutrality benefited the Axis; if they provoke discredit, disrespect of or animosity to public authorities—another rubber clause which protects the regime against unwelcome criticism; if they tend to diminish the prestige or dignity of Brazil internally or externally, or affect its military power, culture, economic life, or tradition. More specifically directed against un-Brazilian propaganda are penalties for acts, committed through the media of publicity, which imply political propaganda for “foreign ide-

¹¹ Only a few can be mentioned here; most of them have been referred to already in the section on that subject. See D.L. no. 38 of Apr. 4, 1935, defining crimes against public and social order (*Coll.*, 1935, vol. IV, p. 36), Art. 25, 28, 42; D.L. no. 136 of Dec. 14, 1935 (*Coll.*, 1935, vol. IV, p. 273), Art. 5-9, 14; D.L. no. 383 of Apr. 18, 1938 on political activities of foreigners in Brazil (*DO* of Apr. 19, 1938), Art. 1, 2; D.L. no. 406 of May 5, 1938 (*Coll.*, 1938, vol. II, p. 92), Art. 86, 87; Decree no. 3,010 of Aug. 20, 1938 (*DO* of Aug. 22, 1938), Art. 272.

ologies in conflict with the national spirit"; provoke disobedience to the law or eulogize criminal acts—a provision aiming at the hero worship and martyrology habitually practiced by totalitarians; if persons accept material compensation in order to combat national interests or the laws of the country; if they partake directly or indirectly in a campaign prejudicial to or dissolvent of national unity. These latter provisions are the closest approach known to this writer to tackling the most difficult problem of modern subversive propaganda, namely the elimination of foreign financial support for the press opposing the existing political and social order.¹² Even though it is prohibited for foreigners by law and constitution to own, direct or to "orientate" a national paper, the indigenous Fifth Column found outlets for carrying on totalitarian propaganda and propaganda for the totalitarians, through papers which are owned and run by citizens in sympathy with foreign ideologies. If such a paper is prevented, by the law, from accepting financial subsidies stemming from foreign sources, a citizen can always serve as the middleman or go-between, or the pecuniary support can come camouflaged as legitimate commercial advertising. Evidently the problem is not easily accessible to a legislative solution unless one adopts, under stiff penalties, a system of public accounting for all sources of income of the press, if possible through enlisting the help of other men of the newspaper profession itself. Before January, 1942, the regime seemed to have little interest in such a solution. Consequently, the provisions of the press law against the Fifth

¹² Minister Campos showed much concern about how to deal with surreptitious foreign influences on a seemingly legitimate press. He was interested in foreign legislative efforts to that effect, such as the draft of the French press law of 1936-37 (see Karl Loewenstein, *Contrôle législatif de l'extrémisme politique dans les démocraties Européennes*, Paris, 1939, pp. 88 ff.).

Column of national sympathizers remained largely ineffective.

Administrative Penalties

For obvious reasons in an authoritarian regime the cases of open violation of the provisions aimed at protecting the existing political order are rare. The individual journalist or the individual editor carefully avoids giving expression to nonconformist opinion because, in addition to being hauled before the *Segurança*, he certainly will lose his job. If and when opposition is manifested it is done on the basis of the general editorial policy of a paper. Retaliation, therefore, must be directed against the newspaper enterprise as a whole and not alone against the individual who violates the law. Accordingly the Press Code operates under the assumption of collective responsibility and collective retribution. Administrative penalties for infringements, meted out against the offending paper as a whole are (Art. 135): admonition (*advertência*); advance censorship over a limited period; final interdict of publication; deposition of director; temporary exclusion from the exercise of the journalistic profession; withdrawal of favors and exemptions.

With the exception of the last all the other penalties are self-explanatory. In spite of its practically unlimited resources in wood, Brazil is dependent on foreign markets for the importation of paper—formerly coming mostly from Finland, since the outbreak of the war from Canada—and on newsprint, before the war brought in from England, U.S.A., and Central Europe. Putting a stopper on the import of foreign newsprint was, prior to the severance of diplomatic and economic relations, one of the most effective methods all over South America for cutting off Nazi propa-

ganda through a sympathizing native press. All imports of paper and newsprint into Brazil are dependent on a license of the Ministry of Justice. In addition, considerable rebates on custom duties are granted.¹³ Denial of the license and withdrawal of tariff facilities and reductions would sooner or later drive any enterprise of publicity out of business.¹⁴ The Damocles sword hanging over the heads of the Brazilian press is forged of paper, but its weight is nonetheless crushing. It has an ironical tinge that it is the need for paper which makes the press toe the line. Other favors to be withdrawn from papers which fail to see the light include rebates in railroad freight, and railfare reductions for the staff.¹⁵

The National Press Council

The infliction of administrative penalties, leading, as the case might be, to the elimination of the guilty paper from circulation or to the exclusion of a guilty journalist from the profession, is not at the disposal of the DIP. Only simple warnings and advance censorship may be declared by the DIP, the latter rarely if ever being resorted to because it involves uncomfortably more work for the officials who after all are easygoing Brazilians. For graver breaches of what the DIP considers as the political code of the press, the action of the National Press Council is invoked.¹⁶

The director general of the DIP is the ex officio chairman

¹³ See already Decree no. 22,537 of Mar. 15, 1933 (*Coll.*, 1933, vol. I, p. 515).

¹⁴ See D.L. no. 300 of Feb. 24, 1938 (*DO* of Mar. 5, 1938). Art. 3, 11, 12, 37-47, 65-69, 104 contain the most minute regulations for delivery, consumption, and control of paper needed and used.

¹⁵ Decree no. 23,665 of Dec. 27, 1933 (*DO* of Jan. 2, 1934), Art. 8-16; no. 3,590 of Jan. 11, 1939 (*DO* of Jan. 13, 1939), Art. 7-10, 17, 22, 24-26, 28, 31-33.

¹⁶ For the following discussion, see W. R. Sharp, *op. cit.*, pp. 12 ff.

of the council. Of the members three are appointed by the president of the republic, three are elected by the associates of the National Association of Publishers and by the professional Syndicate of Journalists.¹⁷ The former is composed of all proprietors of publicity enterprises, publishers, and leading newspapermen, under the chairmanship of influential Doctor Herbert Moses, owner of *O Globo* in Rio de Janeiro. The Journalists' Union is the professional organization to which each journalist must belong. The National Press Council is thus the governing body of a quasi-corporative entity in which the entire newspaper business is organized, a professionally irreproachable group of highly respected men who by their standing in the profession give ample guarantees that the police powers they wield are not used arbitrarily. It is this group that decides on the suspension or closing down of papers.

The Position of the Journalists

All journalists who desire to enjoy the benefits of the profession must seek entry into the register of journalists.¹⁸ The parallel to the ominously famous German Editors Act (*Schriftleitergesetz*)¹⁹ is superficial and misleading; the professional organization of the men belonging to the newspaper business is rather of a social character than a device of regimentation and compulsion. Registration with the regional labor authorities is mandatory for all journalists or "intellectual workers" whose function extends from the gathering of information to the writing of articles and the

¹⁷ Press Code, Art. 3.

¹⁸ The legislative texts lack precision. References to the organization and the register of the journalists are found in D.L.s. nos. 910 of Nov. 30, 1938 (*Coll.*, 1938, vol. IV, p. 179), 1,262 of May 10, 1939 (*Coll.*, 1939, vol. IV, p. 152), and 1,341 of June 12, 1939 (*DO* of June 14, 1939). Citations in the text refer to D.L. no. 910.

¹⁹ See K. Loewenstein, *op. cit.*, p. 200.

composing of information notices, and those who take charge of the editing of the organs of publicity (Art. 1). Registration is dependent (Art. 12) on the proof of Brazilian nationality and the possession of the professional identity card (*carteira profissional*); nobody is admitted who has been convicted of or is under indictment for crimes against national security. Journalists who work for publications in a foreign language²⁰ must be Brazilian citizens. Ineligible are Brazilian journalists whose services are paid by foreign countries or who are on the payroll of enterprises with a majority of foreign stockholders (Art. 12, paragraphs 2 and 3). To foreign journalists working for the Brazilian press two years are granted for obtaining naturalization. Foreign journalists employed by foreign papers are registered without the requirement of nationality. The general rules for the statutory limitation of working hours and for the protection of labor are also extended to the newspaper profession. The normal duration of work for all "intellectual workers"—with some specified exceptions such as superior officers (editors in chief, etc.) is fixed at five hours per day and, with the consent of the employee, at seven hours (Art. 3 and 4). Newspapermen admit that the journalistic millennium of a full-paid five-hour day has not yet arrived under the *Estado Novo*, the law to the contrary notwithstanding. To obtain the membership card is a mere formality. Beyond the provisions of the law no control whatever of political reliability is exercised. Nor do newspapers or magazines indulge in much checking on the membership of their contributors. Yet on the whole the "guild" has contributed to raising the standards of professional ethics and responsibility.

²⁰ These provisions refer to the situation existing prior to the suppression of the foreign language press which came into force in August 1939 (see *supra*, p. 198). The actual practice hereafter as pertaining to the position of foreign journalists and Brazilian journalists working for foreign publications could not be verified by this writer.

CHAPTER II

SOCIAL DYNAMICS OF PUBLIC OPINION IN PRACTICE

Public opinion management in an authoritarian regime has two aspects which are interspaced and at times even dovetailing. One is the effort to hold down, at least to some extent, adverse public opinion and destructive criticism. The other one is the desire and need to fill the intellectual gap left by the elimination of manifested opposition, by instilling patriotic consciousness which at the same time helps to fortify the position of the regime. Emotional values are utilized for creating a bond of unity between the people and the government. We turn first to the efforts of public opinion management to check adverse currents.

To describe the laws of a country on the basis of the statute book is one thing. To appraise the authorities' enforcement of them and the people's reaction to them is another. Very much, indeed all, depends on the viewpoint of the observer. To the incurable liberal doctrinaire for whom freedom of public opinion in all its manifestations is an intangible absolute, such restrictions as exist may appear so grave that to him the Vargas regime is an unbearable tyranny. But in a world at war when liberal democracy is transforming itself into a more "disciplined" and necessarily more "authoritarian" political order, the irreconcilable liberal has become rather rare. On the other hand, to men who have lived under the totalitarian dictatorships in Europe or who know something about them, the climate of public life

in Brazil may appear free to an extent unknown in Europe for many years. An American will find fault with many of the laws and with a number of practices in executing them, but he will refrain from wholesale condemnation and even admit that, considering Brazil's special conditions, an indispensable modicum of constraint is acceptable, provided it does not amount to regimentation and arbitrariness. As a matter of fact public opinion management is handled with a rather light hand and a good deal of generosity.

As will be seen in the course of the discussion authoritarian institutions fit badly into the Brazilian intellectual habitat. The Brazilians cordially dislike uniformity and regimentation. The DIP and public opinion management are in practice only half as bad as they seem on paper. If one rubs off the thin veneer of authoritarian intentions one finds always the thoroughly liberal tradition even among the officials of the regime.

Another point deserves mention here. Since January, 1942, Brazil has joined the camp of the United Nations and severed diplomatic and economic relations with the Axis. At long last Vargas has decided to cast Brazil's lot with the United Nations. The field days of more or less unchecked totalitarian propaganda, the restraint imposed by the Fascist wing of the government on expressions of democratic solidarity, all the devious ways of promoting, under the cover of strict neutrality, the aims of the totalitarians, are by now matters of the past. The material for the following attempt at describing social dynamics of public opinion was gathered before Brazil had come to the crossroads of international politics. But even so, the observations presented, defective as they necessarily are, will prove helpful to an understanding of the regime which now has become our most important South American partner in the fight for a free world.

(1) *Public Opinion Management and Domestic Politics**The Situation of Organized Political Opposition*

No longer do organized political parties exist. Brazil is a nonparty state not only in terms of the law but in reality as well. Stern laws and their strict enforcement by police and prosecuting magistrates have succeeded in destroying even nuclei or skeleton organizations of all former political parties. The constitutional parties of the period preceding the *Estado Novo*, the Liberals or the "Constitutionalists" in São Paulo, have ceased to exist. Their organizations needed no "smashing"; they just dissolved. It should be remembered that parties never had existed in Brazil on a nation-wide scale. They were rather instruments of election campaigns than integrated political machines. Small groups of intellectuals formerly drawn together by identical political aspirations may still come together; but if they meet they meet as friends and not as political partisans. This writer has found not the slightest traces of the survival of the former political parties. What opposition from these quarters may still exist is inarticulate, unconstructive, and sterile.

Moreover, Vargas succeeded as has no other contemporary autocracy in winning over the former opposition and in reconciling its leaders to the new state of things. No wholesale purges of public officials occurred, for which the regime had given itself a legal basis by the constitutional amendment of May, 1938. Vargas showed an admirable skill and political wisdom in absorbing the opponents into the regime, not by intimidating or by bribing, but by according them due recognition of their individual value and by enlisting their collaboration. A considerable number of members of the former opposition parties accepted leading positions in the federal or the state governments. Where non-

conformists can not be induced to make their peace with the regime they are left in peace by the regime, and go unmolested about their civilian occupations. Paul Fernandes, the great liberal parliamentarian in Rio, and Vicente Ráo, former Minister of Justice and Paulista liberal, are two illustrations among many. Former members of the legislative bodies still add the title of ex-senator or ex-deputy to their names, another indication that no new set of political values has been introduced. No promises of good behavior or proofs of political reliability were demanded or given. The situation is similar, though on a smaller scale, to that under Napoleon I when he attracted many of the exiled Royalists or sulking Republicans to his court and the service of his regime. On the other hand, intransigent nonconformists in official positions were retired or dismissed, among them also a small number of university professors—mainly of the Law Schools.¹

¹ Of the many illustrations of the attitude of the regime toward former political opponents, only two may be mentioned here. Doctor Pedro Calmon, one of the leading constitutional lawyers and, in addition, a brilliant man of letters and member of the Brazilian Academy, was prominent in the parliamentary opposition in the Constituent Assembly of 1934. After the *coup d'état* of 1937 he went abroad. On his return he took up his functions as Professor of Law and practicing attorney-at-law. Shortly thereafter the Minister of Education offered him the deanship of the Law School of the University of Rio de Janeiro, without any promises exacted or assurances given. The case of Professor Waldemar Martins Ferreira is not without humorous overtones. Ferreira, one of the most distinguished authorities on civil (commercial) law in South America, and an unreconstructed Paulista Liberal, was repeatedly under arrest, labeled as a Communist, but proved impervious to both pressure and blandishments. Finally, in 1939, on the basis of Art. 177 of the constitution, he was dismissed from his chair at the University of São Paulo, by decree of the Minister of Education, signed by Vargas. This decree is prominently displayed in facsimile on the flyleaf of the second volume of his monumental *Tradado de direito mercantil Brasileiro*, Rio de Janeiro, 1939. In any other dictatorship such an action, easily interpreted by the government as a slap in the face, would have landed him in a concentration camp; not so in Vargas's Brazil. Ferreira is wholly free to exercise his profession as practicing lawyer and even travels abroad as he pleases.

After the *coup d'état* of 1937 a number of opposition leaders went into temporary exile abroad, mostly to Buenos Aires and Montevideo. A comfortable courtesy of the neighboring governments, on a reciprocal basis, grants political asylum. Most of them returned at an early date because vindictiveness is neither in the Brazilian nor in Vargas's character. This writer was told that not more than a handful of those still in exile would be unwelcome if they returned. The former governor of São Paulo, and candidate of the *União Democrática* in the presidential campaign of 1937, de Salles Oliveira, is among them; Salgado might return if he wished.

Political extremists of the right and of the left are outlawed and the regime has not lessened its zeal in ferreting them out. Communism is still considered as public enemy number One. The ruling class, of which Vargas is a product as well as the protector, is property-minded to such an extent that not even a dictatorship could make a dent in the private capitalistic structure, the vast social legislation to the contrary notwithstanding.² Unmitigated, the profit motive still dominates economic life and those at the controls. Moreover, Brazil is a devoutly Catholic country, in spite—or because—of the separation of Church and State,³ the clergy being politically neutral and reticent. The agricultural masses are too illiterate, the proletariat is far from class-consciousness. This restrains the spread of Communism for a long time to come. All these factors contribute to the aversion of the Brazilian people to Communism; curiously enough this attitude goes well with the unstinted admiration the bourgeois classes and the masses entertain for the heroic stand of

² See *infra*, pp. 341 ff.

³ On the position of the Catholic Church in Brazil see the Royal Institute of International Affairs Report, *The Republics of South America*, p. 254.

the Red Army against the Nazi steamroller. This does not, of course, imply that the Communist organization no longer exists; the Communist movement has gone underground. From time to time the formation of cells or other activities are tried by the *Segurança*. But as an organized opposition it has ceased to constitute even a remote danger.

It is not very dissimilar with the Integralists. The movement and its ideas may well still have its sympathizers; even under the police repression one could occasionally come across some Integralist literature, crudely printed handbills or leaflets and the like; there are reasons to believe that among the armed forces and some classes of intellectuals Fascist or Integralist leanings are not wholly extinguished. It is said that among the agrarian masses the promises of the Integralist millennium still have believers. But the organization has been completely broken up. The prefects of the municipalities are advised to keep a watchful eye on those known to be Integralist sympathizers. Immediately after the severance of diplomatic relations with the Axis the police suddenly found some remnants of the Greenshirts, and a number of Integralist sympathizers or activists were rounded up. Vargas's decision to side with the United Nations must have come as a severe shock to this group. But as long as the totalitarian menace has not been defeated, the Brazilian branch, even if it has gone into hiding for the time being, will not forego hopes of a comeback. It would be folly and a most dangerous self-deception to assume that, as long as the Fascist International is not utterly routed and its headquarters destroyed to its foundations, the local affiliations in all countries—our own not excepted—will abandon their belief in the ultimate triumph of the counter-revolution against 1789 they have set in motion. Even if the democracies win it will take generations before the word "Fascism" has

become as merely a historical connotation as the designation "Jacobin" is to us. To be more concrete: The Nazification of South America has been halted for the time being; it is not yet averted definitively. There are Quislings in all South American countries. In Brazil the test will come if and when the Nazis try their hand at an invasion of Brazil from Africa.

Political Prisoners and Political Police

There is a good deal of whispering talk about the political prisoners held in concentration camps on the "islands" of Fernando de Noronha ⁴ and Ilha Grande and in other penal colonies. Precise information on this subject was unobtainable, for obvious reasons. But perhaps this can be said with some degree of certainty: considering the gentle character of the Brazilians and the conciliatory policies of the regime toward the political opposition it is very unlikely that the number of persons confined to the islands is substantial. Estimates differed from as low as a few hundreds to as high as several thousands. In view of the statistics of the cases dealt with by the *Segurança* the truth is probably much closer to the minimum than to the maximum figure. It was asserted by high-ranking officials whose opinions otherwise carried conviction with this writer that all persons transferred to the islands were convicted without exception in a regular trial by the *Segurança*. The criminal law permits the sending of convicted criminals to agricultural penal colonies. Preventive or "protective" custody was categorically ruled out. The treatment of political prisoners has nothing

⁴ The island, about two hundred and fifty miles from the coast of Pernambuco on the route to Africa, was lately made into a base of considerable strategic importance. Whether the penal colony has been removed is not known. The presence of enemies of the state on the island would be imprudent.

in common with the fate of the victims of despotism in German concentration camps or in the scarcely less inhuman Italian counterpart, the *isole*. But a penal colony is neither a recreational center nor a spa. On the background of what this writer has observed of Brazilian administration of justice, it is well-nigh impossible that a wholesale suspension of the habeas corpus function of the *Segurança* and the Supreme Federal Tribunal could have taken place. On the other hand it is proved that for some time in the past the police and the prosecuting authorities have more or less arbitrarily dubbed political opponents as Communists and arrested them on this charge. The Latin Americans have a fiendish propensity for pinning conspirational activities on persons officially disliked; they share this unpleasant habit with other nations reputed in the past for their respect for equitable justice. But this writer knows of not a single case in which a person was convicted by the *Segurança* for Communist activities unless the charges were proved to the satisfaction of the court.

But do all persons accused of hostility to the regime reach the relative safety of judicial action? It is unlikely that all the stories served to the foreign visitor, of police arbitrariness, illegal imprisonment, ill-treatment of political suspects, lawless acts against persons and property of political opponents alleged or real, are altogether without foundation. By its very nature the police is not an angelic mission and a police beyond public control must overreach itself even if the government and the courts are eager and willing to abide by the laws. The political police in Brazil styles itself innocuously enough "Division of Political and Social Order," revealing thereby that its main activity is aimed at suppressing adverse, and infusing "homogeneous" opinions. Without a good measure of violence and illegality nothing on this score

can be accomplished by any police and the Vargas regime is no exception to that rule. Without being convinced as he was told by otherwise reliable informants that people just disappeared and were no longer heard of, this writer knows of too many intimate details of the political police, at least during the earlier more restless years of the regime, to give full faith and credit to the indignant denial of official personalities when cautiously approached on this subject. No Napoleon ever could exist without his Fouché and even those on the highest rung of the ladder may be afraid of the instrument they have created for their own preservation since it may be used or turn against them.

The Press and Domestic Politics

Misleading as it were to contend that the press is free, one learns with a good deal of surprise—remembering the harsh legislation—that constraint or regimented uniformity is little in evidence. Adverse criticism of governmental policies or of the leading men of federal and state authorities in the press is nowhere practiced because it would not be countenanced. The press exercises “self-discipline”; that is, without visible strain or exertion it conforms to the government policies and, as a rule, toes the line. Naturally a good deal of eulogism is ubiquitous. It is measured or turgid according to the tradition of the paper and the journalistic bent of the editorial staff. But reckless abandon to adulation is rare and, considering the marked sense of humor of the common man and the satirical vein of the intellectuals, it would perhaps defeat its purpose. On the whole the Brazilian press is on a remarkably high level. Even in the provincial towns such as Belo Horizonte, Santos, Belem, Recife, and Bahía, papers of a surprising width of cultural interests are found,

particularly in the fields of economics and of literature—an ingrained tradition among the Brazilians and one that extends also to the lower and even the illiterate classes, which love poetry. The amount of space devoted to the courts and to the public administration even in the smaller towns is surprising. Those who read the paper want to know what is going on in their public bodies. Some of the metropolitan papers, such as the slightly pontifical *Jornal do Commercio*, Brazil's most respected organ of public opinion, the excellently directed *Correio de Manhã* in Rio de Janeiro and, before its "co-ordination," *O Estado de São Paulo*, do not easily wax enthusiastic about the regime; editorial support of the government is given in a matter-of-fact fashion. On the other hand, the government-owned or -controlled papers, *A Noite* in Rio de Janeiro and *O Estado de São Paulo* in the city of São Paulo, do more than their required assignment in sycophantic praise of the achievements of the regime. The numerous anniversary days—each dictatorial regime develops a patriotic calendar with ephemeral saints of its own—such as Getulio's birthday (April 10th) or the inauguration of the *Estado Novo* (November 10th) are celebrated by almost all papers in extensive reviews of the accomplishments and in the most glowing terms. After all, the regime has something to be proud of, even in the opinion of the unreformed Liberals.

Suspension of newspapers for a brief period and even for good has occurred, but the power has been used very sparingly and mainly for reasons of nonconformity to the line of foreign policy prescribed by the government. *Meio Dia*, a Nazi-controlled "boulevard" paper in Rio, bad enough but not so bad by a long shot as *El Pampero* in Buenos Aires, was suspended in 1940 for a few days for attacks on the

President of the United States. Other cases, probably not all, have come to the knowledge of this writer.⁵

The most sensational one, dictated by the requirements of foreign policy, was the closing down, for a short while, of the *Carioca* by the army in connection with the *Bagé* case.⁶ Eurico Doutra, the Minister of War, and Góes Monteiro, the chief of staff, resented the independent editorial policy of the paper, which favored Britain while at that time the army maneuvered against London. However, the most serious case of governmental interference with the revised version of the freedom of the press was the chain of events leading, in 1940, to the change in ownership and management of the most respected paper of São Paulo, *O Estado de São Paulo*, a daily of international reputation.⁷ Under the editorship of the able Doctor Julio de Mesquita (Fho.) the paper had demonstrated its hostility to the regime even after 1937 by complete editorial neutrality: it abstained from blame and praise. The editor, forced by the government to resign in 1939, went into exile, but the staff continued his policy. Finally, in March, 1940, the police of the Interventor of São Paulo seized offices and plant, and installed an editorial staff controlled by the government whose official mouthpiece the paper has since become. According to rumor also an expropriation of the owners was

⁵ See the permanent suspension of the *Voz de Diamantina*, a small-town paper in Minas Geraes, because of violation of Art. 131(i) and (j) of the Press law (published in *DO* of Oct. 15, 1940, p. 19,544). W. R. Sharp, "Methods of Opinion Control, etc.," p. 14, mentions another case referring to the *Diario de Mambá*, of Nictheroy, the capital of the state of Rio de Janeiro.

⁶ See *infra*, p. 277.

⁷ Some important details of the case were unobtainable by this writer. See Paulo Duarte, "Bad Neighbor Vargas," *Nation*, Sept. 27, 1941, p. 273; the author is a Brazilian journalist living in this country who writes with visible bias.

decreed, but it was evidently camouflaged by the provision that joint stock corporations cannot own press organs. In a similar high-handed manner the Rio de Janeiro paper *A Noite* was taken over by the federal government.⁸ Lately, few if any administrative actions were taken against the press, except the suppression of the Axis-inspired press in connection with the change in foreign policy after the Rio de Janeiro Conference in January, 1942. Occasional warnings by the DIP over the telephone or friendly suggestions are always heeded. The editors need no instructions by the DIP on what to write and what to forget. Policies are not following a fixed line of a "world outlook" or "philosophy." The regime has none and the papers need not reflect one. This writer knows of no case of detention or exclusion of an individual journalist for political reasons. Reports that the permit to write has been withdrawn by canceling the registration as professional journalist could not be verified beyond doubt; but they may be correct.

Circulation of foreign books—whether archdemocratic or violently totalitarian—encounters no restrictions in Brazil; the more important publications of the anti-Nazi literature are sold in cheap translations as were Fascist and German books. But the regime keeps a wary eye on Brazilian literature of allegedly subversive nature. The Italian model is followed in that no preventive censorship is exercised. The publisher risks seizure of the entire edition if a publication is considered by the DIP prejudicial to the interests of the regime. The most effective censor is the pocketbook. Nonetheless, cases of subsequent confiscation have occurred, such as *As bases de separatismo* by the well-known Brazilian writer Alyrio Wanderley. The book was banned, the author

⁸ On this most notorious case of unbridled arbitrariness, see *infra*, pp. 321 ff.

indicted by the *Segurança*, and convicted.⁹ Another recent case of notoriety was that of Monteiro Lobato, an author on economics, who had been in the forefront of the fight against the foreign petroleum companies. In a private letter addressed to the president of the republic he denounced and criticized the supposedly proforeigners policy of the National Council of Petroleum. But the *Segurança* acquitted him in both instances.¹⁰ Other petty cases of government repression are bandied freely without being ascertainable. One of them concerns a typesetter who was sent to prison for having made a typographical error in an address by Vargas; such errors can be rather damaging.

Yet public opinion is by no means devoid of outlets for reasonable criticism. Although the press cannot attack government policies openly, the intelligent newspaper reader is offered ample opportunity for exercising the art of reading between the lines, an attitude typical for periods of governmental repression.¹¹ The Brazilian press and the public

⁹ The book contained violent attacks on the army and the concept of Brazilian "nationhood" which the *procurador* of the *Segurança* described as "Communitic." The indictment was based on Art. 11 and 33 of the D.L. no. 38 of Apr. 4, 1935 (see *O Radical*, Apr. 2, 1941).

¹⁰ The police raided his office in São Paulo and discovered documents allegedly incriminating him of mismanagement of a petroleum company of which he was the principal administrator. At first they tried to pin on him a violation of the *economia popular*; but the indictment was based on D.L. no. 431 of May 18, 1937, Art. 3, no. 25 (disrespect to public authorities) because he had used "impertinent language evidently intended to injure the reputation of public powers," and because he was connected with foreign elements (see *Correio de Manhã*, Mar. 5, 1941). S. Putnam, "Brazilian Culture Under Vargas," *Science and Society*, vol. VI, no. 1 (1942), p. 51, gives a different version of the case, based on a report to the Fourth American Writers Congress (a Communist-influenced group), according to which Lobato was sentenced to six months' imprisonment. If this report is correct, all the papers in Rio de Janeiro at the time of the trial were in error.

¹¹ On this subject see Leo Strauss, "Persecution and the Art of Writing," *Social Research*, vol. VIII (1941), pp. 488 ff.

have developed this technique to a considerable degree which the sharp-witted Latin American intelligence thoroughly enjoys. The situation is similar to that of the *Frankfurter Zeitung* in the early days of the Third Reich. Today the apparent boldness which this once famous liberal paper occasionally displays is a deliberate trick of Dr. Goebbels for fooling foreign interpretation. Indirect criticism is reflected in the manner of presenting the news as well as in the tenuous style of some editorials. Of course it is restricted to a relatively small group of readers who know what is going on and make their own deductions from the official facts. Public opinion even in countries with a higher standard of literacy than Brazil is molded by a small section of the intelligentsia only; the masses accept their leadership. Moreover, the press in Brazil is surprisingly free in criticizing municipal and even state affairs of a local, nonpolitical, nature. Administrative scandals are readily exposed without interference from the government, partly because of a grapevine service which operates in all Latin countries with so much precision and swiftness that the government, in repressing exposure of public graft or official misconduct, would only magnify the evil.¹²

Other Attitudes of Public Opinion Toward the Regime.

To a very large extent public opinion in all southern countries with much social life going on outdoors forms itself through oral attitudes and operates most effectively through word of mouth. One is struck by the complete absence of restraint in personal contacts with the people when public

¹² During this writer's stay in Brazil a sizable scandal in connection with the granting of diplomas for dentists and other professions was vented freely in the press. Public indignation forced a thorough housecleaning of the board in charge of applications.

affairs are involved. People speak as they please and criticize the government to their hearts' delight. There is no looking over the shoulder or whispering behind the hand because the neighbor at the next table may be a spy. Perhaps the only name one may not mention publicly is that of the Communist leader Luiz Carlos Prestes. But even in such uninhibited private discussions Vargas personally is rarely subjected to critique. Never did this writer hear any hints of personal dishonesty of the leading men of the regime such as are common in Italy and Germany. When Vargas is called an opportunist who does not follow fixed lines of policy or an "ideology" one might as well consider this as much a compliment as the reverse.

From the mosaic of individual observations there results the definite and sharply focused impression that the solid front of intangibles which constitutes public opinion makes outright regimentation or indoctrination of the public mind impossible in Brazil. For an individualistic nation authoritarian constraint has its natural limits, whatever the statute book may prescribe. The people—and here the masses and the bourgeois classes are to be taken as a unit—are intrinsically liberal; their social habits are thoroughly democratic. Public opinion finds many ways for expressing its sympathy with the democratic way of life even if the official policy does not countenance the praise of democratic ideals. Certainly the papers do not lecture editorially on democracy; but equally absent is government-inspired defamation of democratic processes abroad. The natural sense of international tact forestalls unsympathetic comparisons between the authoritarian paradise and the democratic wasteland as is customary in European dictatorships. Regarding this, an interesting sidelight is shed by a discussion conducted in the press as to whether, under the changed conditions of the

Estado Novo, Tiradentes, Brazil's officially recognized "protomartyr," who was hanged after an unsuccessful revolution against the Portuguese crown, still deserves national veneration. It may be gratifying to know that he remains on the national pedestal. But even if the press had cast a verdict against him, it would have meant nothing to the national tradition. Fortunately the regime has no blood martyrs of its own.

There are no subjects of general information or interest which are withheld from public discussion because they might evoke, in the judgment of the DIP, "dangerous thoughts." The offerings of the press, even in the smaller towns, are culturally so diversified that the American visitor sometimes is inclined to make rather unfavorable comparisons with the press of much larger cities at home. Democratic ideals and techniques are freely referred to in lectures and public addresses, in the presence of government officials and even by them, as this writer had ample opportunity to observe. He attended a lecture at the University of Rio de Janeiro in which the speaker dwelt at length and with enthusiasm on democracy in ancient Greece. The students swallowed it hook, line, and sinker and seemed to like it. On another occasion Abraham Lincoln, who is known in Brazil through his friendship with Dom Pedro, came in for a full share of praise in a public lecture delivered by a prominent man of letters before high officials of the government and the army. The public gave much applause to the brilliant performance. In a small rural town in Minas Geraes this writer listened to a most moving speech to his "subjects" by the local prefect—who himself was appointed by Vargas and a loyal servant of the regime—who extolled the values of democracy. When Minister of Education Capanema gave an official address at the Municipal Theatre of São Paulo the

public, including the society and the whole set of state dignitaries, remained ice-cold until he mentioned the word "democracy." Without a chance to explain what he meant he was interrupted by a roaring ovation.

Typical of the Brazilian way of interlarding commanded patriotism with humor was the anniversary (fortieth birthday and three years in office) of the Interventor of São Paulo, Dr. Adhemar de Barros, in April, 1941. A huge celebration was staged in São Paulo with due pomp and circumstance. Receptions, public addresses, speeches from the balcony, and homage of the loving people to the beloved man followed one another in close succession. Monster parades through the streets were commandeered; with schools and professional associations, with banners of the troops and athletic clubs they were colorful enough. To say that the crowds were enthusiastic would be a mild exaggeration. An exhibition demonstrating the progress of the state under the great man, though arranged with taste and the national sense for the decorative, was so poor that the visitors were more amused than impressed; the permanent Industrial Fair in Belo Horizonte is much better. Statistical graphs were as flattering as they were misleading. But everybody chuckled because it was an open secret for the population and perhaps also for the hero victim, that it was to be the Interventor's swan song. Things were made pleasant for him to the last. He had done no harm. A few months later Vargas removed him and he was replaced by the able Minister of Agriculture Fernando Costa.

In judging how deep the values of the *Estado Novo* have penetrated into the Brazilian people one should never forget that the masses by nature and habits are as democratic as anywhere else in Latin America, and that the national tradition had evolved a liberal and democratic climate—paternal-

istic trends of social life notwithstanding to the contrary—which even the worst authoritarian excesses of the statute book are wholly incapable of overcoming.

Carnival and Politics

The Press Code prescribes (Art. 73) that the carnival societies must submit to the DIP in advance a description, design, and title of the *carros*, the famous floats of caricaturistic or satirical nature which figure in the world-famous carnival processions in Rio de Janeiro and in other cities. The quick-witted Brazilians employ this traditional medium for poking harmless or bitter fun at the authorities, as an important outlet for popular criticism which the regime could not fail to take under the wings of protective censorship. For the sociologist and the political scientist the carnival in Brazil—a Mardi Gras extended over four days round the clock—is perhaps more revealing than a pile of law books. The Church in Catholic countries wisely permits a discharge for the sins of the flesh in worldly pleasures before the weeks of atonement begin. The carnival, especially in Rio de Janeiro, is imbued with almost medieval splendor and baroque exuberance. Numerous carnival societies in all layers of the population are in the habit of spending their wit and imagination on such public manifestations of secular enjoyment. Huge processions of horse-drawn or by now motorized floats are staged in the streets embodying allegorical and symbolic scenes and similar impersonations. The float-parades in Rio, held under the moon of the tropical night—unless it rains—each year in February, equal in opulence even their famous counterparts in Cologne or Munich or on the French Riviera which this writer has witnessed. The lower classes emulate society in original arrangements and

present to the crowds in the streets—spectators and participants at the same time—well-studied dances and songs. The Negro tribes descend from their hillside dwellings—the *morros*, where they live in appalling misery in huts of tin cans and hovels of mud—and perform their ceremonial dances (*sambas*) after midnight on the Praça Onze. The weird picture, blended of African traditions and ecclesiastical ritual, impresses on the masses of onlookers the sinister fervor and the dazzling effulgence of other ages and continents. Even the poorest save from their pittance in order to celebrate once a year in fitting carnival garb. The display of these wild and at the same time naturally artistic shows and frenzied choreographic performances has still the charm of the unsophisticated and spontaneous although the municipalities, for a number of years past, have taken charge of the program and support it by financial subsidies to individual groups and by prizes for a competition in which originality of plan or design and skill of execution win. For four entire days official life in Rio and elsewhere is at a complete standstill. From the early morning to late in the night delirious throngs fill the streets, dance to the tune of popular songs, written for the day and recited in unison by the masses. Politics and domestic sorrows are forgotten by young and old, by rich and poor; an irresistible gaiety pervades the town and all are united in the common enjoyment of the freedom of the street. During these days the sale of intoxicating drinks, with the exception of a light, very light beer and the champagne in the expensive night clubs, is forbidden. One does not hear a licentious word or see an indecent gesture or a relaxation of the ingrained dignity and self-control of the people. Everybody conducts himself with natural gracefulness.

Unforgettable as these impressions of the carnival in Rio

were, the much vaunted political inferences of the parade of *carros* in February, 1941, were a disappointment to at least one observer. Political wit was keyed to a minor tune since the police—everywhere present in great numbers—and the DIP had succeeded in curbing criticism of the regime in the disguise of pictorial satire. Political allusions were decidedly tame. A number of floats in the procession pleaded too loudly for the achievements of the regime and portrayed too effusively the virtues of a newly awakened nationalism. The crowd received them coolly and even sarcastically. Political caricature was conspicuous by its absence. The heavy hand of the regime and its censors was clearly seen behind the officially permitted and stimulated adulations of the *Estado Novo*. Evidently goose-stepping is not the appropriate motion for the hilarious God Momus.

The Foreign Journalist

The foreign journalist who desires to inform his employer and his public with fairness and speed about domestic events under the Vargas regime is confronted by a difficult and rather thankless task. The regime is very eager to make a good impression abroad by showing the fair and by hiding the seamy side. Tourism plays an important role in the national budget. This explains why the DIP is so sensitive to even reasonable and honest criticism. The author of this book, for example, who claims for himself an unbiased approach to the achievements and shortcomings of contemporary Brazil, is not at all sure that the vigilant DIP, provost of public opinion management, will allow the Brazilians to read what they are not permitted to write themselves. The foreign correspondent lives in Brazil under the Damocles sword of various provisions which threaten him with expul-

sion or worse for any reports, however true, which the DIP may consider detrimental to the prestige of the regime. He is aware that he may be expelled "when, in the opinion of the president of the republic, the foreigner has manifested thoughts or practiced acts which denote disrespect for Brazil and its institutions."¹³ It is true that in the past reporting on Brazil has not always been to the point, and chance travelers are frequently more after sensations than after facts. The legitimate reporter is hedged in by numerous restrictions. He must be registered with the DIP; otherwise his cables are not forwarded. A copy of the report has to be filed with the DIP and occasionally even the cable office dabbles with censorship by delaying cables or demanding explanations. Foreign mail outgoing and possibly also incoming is under unofficial (that is, not admitted) censorship. Copies are sometimes retained for filing purposes. The reports for the London *Times* were routed to reach London through the United States because they were opened when sent directly. When in 1940 the correspondent of the *New York Times* filed his then sensational report on Campos's tergiversations and capers about Fascism under the *Estado Novo*, the dispatch had to be sent from Buenos Aires by a reporter outside of Vargas's jurisdiction. Thus far, however, no foreign journalist has been expelled from Brazil.¹⁴ This writer was warned not to keep any written notes and at least, if such notes could not be dispensed with, not to give the sources of his information by name. But in fairness it should be said that the ranking officials of the Ministry of Foreign Relations and of the Ministry of Justice and equally so those of the state governments did all in their power to let him tap all information he desired; although it could not be hidden from

¹³ See D.L. no. 1,377 of June 27, 1939 (*DO* of June 29, 1939).

¹⁴ Same information also in W. R. Sharp, *op. cit.*, p. 13.

them that he was constantly raising a corner of the official curtain and prying behind the scene. It is scarcely likely that in any other country, let alone the full-fledged dictatorships of Europe, a foreign political sleuth would have been given so much smiling encouragement.

(2) *Public Opinion Management and Foreign Politics*

The Conflict Within the Government

At the outset it should be emphasized that the following attempt to understand the conflicting currents of Brazilian foreign policy during recent years reflects only the situation as it existed prior to the Rio de Janeiro Conference in January, 1942, in which Brazil joined the United Nations as a non-belligerent. Before this happened, to the foreign observer the attitude of the regime toward the Axis and the democracies appears inconsistent and erratic. But an appraisal of trends in the past may be of some use for interpreting them in the future. The key to the situation is that from the beginning of the second World War the Brazilian people as a whole favored the democracies while the government, officially proclaiming neutrality, used and interpreted that ambiguous term frequently in favor of the Axis. The Brazilians are a particularly nonmilitary and nonmilitant nation. Their past history has been relatively free from the scourge of war even though Brazil was the only South American state which declared war on Germany in 1917. Whatever the personal predilections of Vargas may have been in the past, one cannot fail to conclude that the affinity in methods of government that exists among all authoritarian and dictatorial states drew him more to the side of the Axis than to that of the liberal democracies. It is certain beyond doubt that the lead-

ing generals, most of all the chief of staff Góes Monteiro, even if they personally were not Fascist-minded, were deeply impressed by the German successes in defeating France and in overrunning the Balkans. Naturally enough there exists a class or professional sympathy between the military technicians in all countries; in Brazil this attitude was enhanced by invitations in recent years of high-ranking officers to Germany and the arrival of the German military mission under General Niefenführ. After its enforced withdrawal from Argentina the German officers comfortably settled in Brazil and, according to well-substantiated information, became the directing center of Nazi propaganda and activity in South America, under the benevolent protection of the totalitarians in the Brazilian army. Last but not least the virus of appeasement infected Brazil also. To be polite to the dictators seemed common sense.

The details of this tug-of-war within the governing group of Brazil are known only to a few in the inner circle and will not become public for a long time to come. But, piecing together scraps of what appears to him reliable information, this writer is of the opinion that until the spring of 1941 the issue was in suspense. Two groups within the government were at loggerheads. One, led by the army generals, sympathized openly with the Axis and, believing in the inevitable victory of the Third Reich, tried to line up Brazil with the future master of Europe. The other group consisted of men of democratic convictions and hopes who felt little sympathy with Brazil's principal creditor, Britain, but were reluctant to antagonize the United States. They were under the leadership of the Minister of Foreign Relations, Oswaldo Aranha, who as the former ambassador of his country in Washington is a staunch friend of our country. Vargas himself for a long time held the precarious balance between the

two wings and tried to prevent either one from gaining full control until he had made up his mind to which side to turn. As a consummate opportunist he is not bound by any ideological motives or scruples. His supreme aim is to be on the winning side of this war. As long as no visible obstacle to a sweeping German victory existed he refused to bet on the Democracies. But he equally resisted all efforts to be pushed into a war against them as long as their defeat was not beyond reasonable doubt. Many of the otherwise mysterious oscillations of the official neutrality policy of the regime can be explained only by the behind-the-scene rope-pulling between the two groups and Vargas's own hesitation to commit his country definitely to one side of the belligerents or the other.

The Policy of Neutrality

After the outbreak of the war Brazil declared officially its neutrality in the conflict; subsequently it implemented this stand by the appropriate internal legislation wholly in conformity with the requirements of international law.¹⁵ On more than one occasion, however, the government permitted an anti-Allied interpretation and application of neutrality. Acts committed by the Axis and those committed by the democracies were weighed by different measures. Almost all

¹⁵ In view of the changed situation since the entry of Brazil as a non-belligerent on the side of the United Nations, a detailed survey of these provisions can be dispensed with here. The material is presented in a collection by the Ministry of Foreign Relations *Regras gerais de neutralidade*, Imprensa Nacional, Rio de Janeiro, 1941. The main decree laws are the following: no. 1,561 of Sept. 2, 1939 ("approving the rules of neutrality in case of war between foreign non-American powers"), 2,360 of July 3, 1940 (dealing with merchant vessels of belligerents), 2,983 and 2,986 of Jan. 25 and 27, 1941 ("on the internment of belligerents"), 2,947 of Jan. 15, 1941 (forbidding the use of radiotelegraphic communication by belligerent ships in Brazilian waters).

cases which reached the stage of publicity have had to do with ships. The most notorious among them is the *Bagé* case.¹⁶ After the outbreak of the war the British blockade prevented the *Bagé* from reaching Brazil from Lisbon with a large cargo of arms bought in Germany. The army leaders aroused public opinion to a high pitch of indignation, but among other papers the strongly pro-Ally editorial staffs of the influential *Correio da Manhã* and *Carioca* took sides for Britain and indirectly against the army. It was openly rumored at that time that the army generals put pressure on Vargas to declare war on Great Britain and that he was threatened with an army coup unless he complied. The editorial in the *Correio de Manhã*, from the pen of Azevedo de Soares, one of the most brilliant journalists, was even said to have been inspired by Vargas himself who wanted to mobilize public opinion against the rabidly pro-Axis generals. The infuriated army leaders closed down the *Carioca* for two days while Vargas and Aranha prevented at the last minute a similar action against the *Correio da Manhã*.¹⁷ Another occasion of fanning controlled public opinion to a white heat occurred when in the winter of 1941 the British boarded a Brazilian boat outside the territorial waters and took off a number of Axis nationals. Under government prodding some of the intransigent papers again demanded even a declaration of war against Britain. Contrariwise, when the Axis violated Brazilian interests, the horns of bellicosity were strangely muted. In April, 1941, the *Taubate* was shelled by German planes in the port of Alexandria in Egypt. The DIP at first had permitted publication of the incident in headlines but at once the affair was played down

¹⁶ See John Gunther, *Inside Latin America*, p. 384.

¹⁷ The war material has reached Brazil, in the meantime, via the U.S.A.

and the papers were not even permitted by the DIP to mention it. Only weeks later the settlement of the case was published in a few lines on the inside pages.¹⁸

But the most flagrant case of open violation of the neutrality in favor of the Axis was the *Windhoek* case in April, 1941. The steamer, of the German East African (Woermann) Line, was one of the boats which reached safety in Brazilian waters at the outbreak of hostilities. When she prepared to run the blockade—from where she was to obtain the fuel was one of the many mysteries of Brazilian internal politics of that period—the Anglo-American Oil Company, acting as assignee of the Prudential Insurance Company, also a British firm, attached her by libel through the ordinary court in Santos. The court, in accordance with Brazilian private international and admiralty law, granted the injunction. The Court of Appeals in São Paulo sustained the court below. While the claim itself was still pending in Santos the government issued a decree law which forbade for the duration of the war all judicial proceedings between belligerents concerning property situated in Brazil.¹⁹ A more partial application of neutrality in favor of Germany cannot easily be found. Whether the Foreign Office was consulted is not known.²⁰ On the other hand, later in the year in another neutrality case the government did not hesitate to interpret the law against the Nazis.²¹

¹⁸ That riots occurred in São Paulo during which the mob stoned the German consulate was of course suppressed in the press, but the grapevine service was reliable as usual. Incidentally, the Nazis failed to pay the indemnity promised for the loss of life and property.

¹⁹ D.L. no. 3,101 of Apr. 10, 1941 (*DO* of Apr. 15, 1941).

²⁰ After the severance of relations with Germany the *Windhoek* was made unseaworthy by the crew, which was brought to trial before the Tribunal of National Security, the first case of sabotage in Brazilian history. See *New York Times* of Feb. 27, 1942, p. 7.

²¹ Art. 3 of D.L. no. 2,983 of Jan. 25, 1941, provided that fugitive prisoners of war were free when they arrived on Brazilian territory. Two

Public Opinion and the War

Such oscillations in the application of the official neutrality could not fail to be reflected in the press and public opinion in general. Since the outbreak of the war internal policies of the regime were more and more overshadowed by the soul-rending questions: Where does Brazil stand in this conflict? What will Vargas ultimately do? These were the main topics of any political discussion during recent years. The people, nurtured by rumors, allusions, indiscretions, followed the tug-of-war behind the official neutrality policy of the government with tense attention and deep apprehension. On the whole it should be reiterated that the overwhelming mass of the common people and the majority of the bourgeois classes are pro-Ally and antitotalitarian. The Brazilian, by tradition tolerant and by temperament kindly, abhors Nazi methods; the adamant discipline of the Germans, much as it is admired, is even more feared and generally rejected as not suitable for the Brazilian milieu. As a thoroughly individualistic people they detest violence and regimentation. The fate of the conquered territories under the Nazi heel is no secret to the people and evokes universal and passionate hatred. Particularly the way in which France was treated after the armistice made the deepest impression. It should not be forgotten that French culture is the greatest intellectual influence on the formation of Brazilian social life. Paris is the dream city for Brazilian society. French is the second language of the educated. The fall of France was a national mourning day all over South America and perhaps felt deepest in Brazil.

officers of the *Graf Spee*, having reached Brazil from Argentina under breach of their word of honor, were arrested when they embarked from Porto Alegre for Germany. It may be that the men were technically not prisoners of war since they had been interned in neutral Argentina.

It is easily understandable, therefore, that in the realm of foreign policy, public opinion management was a much more difficult task, and that here the DIP, under instructions of the government, had to exercise a great deal more guidance and regimentation than in domestic policies where public opinion toes the line without much outward pressure. The vast majority of the press and almost all papers of influence were and are prodemocratic. They do not hide their sympathies, and they reflect them in the headlines and the arrangement of information, in the value attached to the various news agencies, and also to some extent in restrained comment on the editorial page. Yet, while outright attacks on the dictators were not permitted, a good deal of indulgence was shown when the known pro-Nazi papers such as *Meio Dia* in Rio de Janeiro and *A Platea* in São Paulo missed no journalistic trick to vilify the democracies and the democratic leaders, let alone the German language papers which exhibited with impunity the complete set of rude journalistic manners copied from the Axis book. Once or twice *Meio Dia* was banned for a few days because of particularly outrageous stabs at the President of the United States or Churchill. Of the movies, another important instrument for molding public opinion, a few in Rio and in São Paulo and of course the majority in the German settlements in the south showed Axis films and newsreels which the LATI service—stopped only in January, 1942—imported from abroad. Manifestations of political sympathy in the movies were forbidden, mostly by municipal ordinances of the police, but—a typical illustration of the Brazilian sense of humor—laughter is considered as a “spontaneous outburst of temper” and, since “not controllable by reason,” is not to be suppressed. The Brazilian public uses this physiological phenomenon widely and effectively. Under the instructions of

the DIP the phrase "Fifth Column" could not be mentioned publicly by press, radio, or cinema, yet though officially ignored the problem was the most discussed political topic. On the other hand the bookstores, of which there is a surprising number and variety in Brazil, are fully stocked with the anti-Nazi literature of foreign authors in Portuguese translations and find a ready market. Rauschnig and Otto Strasser are as much in evidence as the nonpolitical books by exiled German writers such as Thomas Mann and Stefan Zweig, the latter, until his premature death, a welcome addition to Brazilian cultural life. Incidentally, if fewer translations of, and books on, Freud were in circulation, the South Americans in general would perhaps not be worse off than they are with the rampant introspection craze which has captivated the half-educated; and in Brazil, as elsewhere, a major proportion of the reading public is only half-educated. Native contributions to the subject of resistance to the totalitarian danger, however, are not altogether discouraged and a brilliantly written realistic novel depicting the undermining of sound national feeling by the Nazi indoctrination in Rio Grande do Sul attracted wide and deserved attention.²² German literature was found almost exclusively in the several German-owned bookstores in São Paulo while other booksellers as a rule did not carry it. In the German districts in the south, where the Nazi-inspired German books had a wide circulation, the military commanders, in their own subtle way of doing things, saw to it that the Nazi literature disappeared.

The Turning of the Tide

In the long run no government, however powerful its methods of compulsion may be, can defy public opinion. No

²² Vianna Moog, *Um Rio imita o Rheno*, Porto Alegre, 1939.

pressure from above—and at no time was it very insistent—could make the Brazilian people pro-Nazi, pro-Fascist, or prototalitarian. By the middle of 1941 the political pendulum of Brazil's foreign orientation began visibly to swing toward the United Nations. The low water mark of Brazil's solidarity with the democracies was reached before and after Dunkirk. That the ebb stayed so long was mainly due to the hesitant attitude of the United States toward the war. The isolationists in this country had their counterparts in every single South American state. Although there is no way to analyze Vargas's mind accurately, it seems that the turn of the tide came with the adoption of lend-lease in the United States. The overwhelmingly strong sentiment of the bourgeois classes and the masses for the cause of democracy, constantly breaking through commandeered neutrality, could no longer be ignored by the government. After long hesitation Vargas brought himself to veer definitely toward the democracies. There were several reasons, among which his admiration for the United States—sincere as it may be—need not be the most persuasive. But two more compelling motives may ultimately have been decisive. Vargas has his ear too close to the ground to be unaware of the temper of public opinion which was far ahead of the official policy of the government. The Good Neighbor Policy had begun to bear fruits. The masses almost worship President Roosevelt, who is to them the democratic Saint George destined to deliver them from the totalitarian dragon. The Brazilian people refused to be tied to the German juggernaut. Moreover, Vargas is too much of a realist to ignore the fact that Brazil under German control would no longer be Vargas's Brazil. In the event of a German victory a Teuto-Brazilian *Gauleiter* would take his place. In spite of all the pinpricks delivered during the period of appeasement to the democracies

and particularly to Britain, the trend of Brazilian foreign policy even before Pearl Harbor was unmistakable. One of the most skillful fence-sitters and tight-rope walkers of this period has found it wise to climb down and take sides.²³ Thus the stand of Brazil for hemisphere solidarity against the Axis, which in its case means hemisphere defense by the United States, at the Rio de Janeiro Conference²⁴ did not come as a complete surprise to those who had seen the straws in the wind. At long last Aranha won over Góes Monteiro. That Brazil joined the United States is to a large extent Aranha's merit. It is reported that Góes Monteiro, a few hours before the break with the Axis was decided on, addressed a warning letter to Vargas to the effect that the Brazilian army would not be able to resist a German invasion and, at the same time, to cope with a synchronized German rebellion in the south. The answer came from the people in no uncertain terms. The riots against German business firms in Rio de Janeiro in March, 1942, were not staged by the government.

²³ This writer flatters himself, perhaps unduly, on having contributed in small part to the recent change of front of the Brazilian government. Several months after he had left Brazil he met in the interior of Peru a leading Brazilian industrialist. As a guest on Brazilian soil he had refrained from commenting, in the presence of Brazilians, on their foreign policy. Now, in a neutral country, he felt free from the conventional restraint imposed upon him by hospitality, and he did his best to explain to his companion that the ambiguous neutrality policy of the regime ran the risk of alienating forever the sympathies of the democracies while it would not win for Vargas the friendship of Hitler. Contrariwise, if Britain and the United States should be the winners, it would do him no good to hoist a democratic flag with the pretense that he had always been a good democrat. Too many scores had to be settled. The Brazilian, who is one of Vargas's close friends and advisers, promised that on the first occasion after his return to Rio he would inform the president of this interpretation of the Brazilian dilemma by a well-intentioned foreigner.

²⁴ For a clever analysis of the background of the Rio de Janeiro Conference see Eric Sevareid, "Where Do We Go from Rio?" *Saturday Evening Post*, Mar. 28, 1942.

As a spontaneous outbreak of a pent-up indignation against the leading partner of the Axis whose provocative behavior had insulted their national pride, they revealed the true mood of the masses. The race for the soul of the Brazilian people had been lost by the totalitarians long before. Whatever the future may bring, since January 28, 1942, the regime has committed itself and the Brazilian nation to the victory of the United Nations. It is safe to say that in taking this momentous step, Vargas has reached the highest peak of popularity since the inception of his career as the leader of his people.

CHAPTER III

THE MOBILIZATION OF PATRIOTISM

No authoritarian regime is satisfied merely to repress adverse criticism. Such a negative attitude would not fill the lacuna left in the mind of the people by public opinion rendered inarticulate. Efforts are made, therefore, to instil into the masses the values of newly awakened nationhood, the active consciousness of being, and the pride in being, Brazilians. Everywhere in South America during the last decade similar emotional responses have been evoked in the people through mobilizing all media of cultural expression for patriotic exaltation. Such an emotional infusion serves as an antidote against potential infiltrations of totalitarian ideology; to inculcate national self-respect is considered as the most effective immunization to foreign ideals which may threaten national independence. In addition evocation of national feeling is good advertising for the regime because it is the regime that takes the credit for all national achievements.

The legal basis for this ambitious program of cultural nationalization and of emotionalization of national values is provided for in the legislation which has been described above. The execution is entrusted to the DIP, together with the educational and to not a small extent to the military authorities. The Ministry of Education and Health and the Ministry of War as well as the corresponding agencies in the states are enlisted for the promotion of cultural nationalism.

For these purposes the DIP operates through the Division

of Cultural and Civic Propaganda (*divulgação*). It uses the printed word, pictorialization (posters and folders), movies, radio, theater, and music; but it tries to achieve its ends also through emphasis on the national symbols, patriotic festivals, ceremonies, and pageantry. Naturally the ultimate effectiveness depends on the receptivity of the population and the latter again is largely correlative to the level of general education. Illiteracy is still appallingly high although the elementary school system is decidedly on the upgrade.¹ Consequently the nonliterary media of emotional propaganda are particularly serviceable.

The Vargas Cult

Most conspicuous in the drive for making the people emotionally responsive to the regime is the pictorialization of Vargas himself. His portrait, prominently displayed in shops, offices, hotels, railroad stations, and all places generally accessible to the public—though rarely in private homes—shows the president in a rather complimentary pose as the chief of state, in formal dress and with a sash, expressing stern if benevolent paternalism and thus personifying both the forceful leader and the good father of his people. In reality he is rather small of stature and with his glasses and a very well-sculptured forehead he looks more like a lawyer—which he is—than like the man on horseback whom he is supposed to impersonate. But he is portrayed as a civilian and not as a military man. As a symbol for the authoritarian state the picture and its exhibition may have their merits, but the effectiveness may be doubted. Vargas shows himself

¹ See the remarks by Baily W. Diffie, "Brazilian Educational Trends, *News Bulletin of the Institute of International Education*, vol. 16, no. 6 (March, 1942), pp. 5 ff.

in public ceremonies only if he must, disinclined to seek the limelight. He disdains the customary manifestations of dictatorial condescension such as baby-kissing and dog-petting. Vargas has little in common with his bombastic glorification-hungry colleagues in Europe. The DIP, knowing its skeptical people, wisely abstains from making the president the laughingstock of the sophisticated middle classes. The emotional success of the pictorialization is at best modest. The pictures found their way also into the offices of many of the foreign corporations; they were brought "with the compliments of the DIP" and were hung on the wall as a matter of courtesy.

Radio

The radio has become the most efficacious method for stimulating patriotic emotions. It offers a patriotic hour for children in the morning, beginning and ending with the national anthem and presenting suitable Brazilian subjects. Opinions about its attractiveness and serviceability are divided. In the evening after dinner the "Brazilian hour" (*hora do Brasil*) is carried by all stations and brings speeches, sketches, playlets, musicales, or general news of patriotic tinge. The offerings are popular and generally well received. Radio in Brazil is still a sort of novelty and people like to listen. Since patriotic propaganda is neither too extensive nor too obtrusive people do not turn off as they do in European dictatorships. The programs of all stations are supervised by the DIP.² Censorship is *ex post facto* and action is taken only when official listening posts take exception or when complaints from private sources are received. Warnings to avoid deviations from the prescribed political line in future

² See W. R. Sharp, "Methods of Opinion Control, etc.," pp. 8-9.

went out to pro-Axis and to pro-Allied stations. The selection of the radio news is fairly objective; the emphasis shifts, however, according to the prevailing tendencies of interpretation by the government. The press, which maintains its own sources of information, is as a rule better informed than the official radio news. Although receiving sets in private hands are far less common than in this country they are found even in the remote towns. Moreover, in many of the smaller communities loudspeakers in public places carry the news and other programs to all who want to listen and, unfortunately, also to those who do not. Wildcat senders of the totalitarians existed during the whole period; some could not be found, some were left unmolested by sympathizing local authorities. A powerful short-wave transmitter was operated by the German Embassy in Rio de Janeiro; the government knew about it but evidently felt that it was covered by diplomatic immunity. As a whole radio propaganda for emotionalizing politics is lacking intensity and volume and thus its results are quantitatively and qualitatively unimpressive.

Film

If possible even more modest are efforts to use the film as a vehicle for national emotionalization. The film is the easiest to control and to supervise.³ All films are subject to advance censorship. The public presentation must bear the fiat of the film division of the DIP. If this authority would exercise a veto against some American films of bad taste and artistic mediocrity it would render a genuine service to Brazil and the Good Neighbor Policy. Many films which our back-

³ See W. R. Sharp, *op. cit.*, p. 10.

woodsmen would not tolerate are dumped on the South American market. How much editing is done on films admitted is beyond the knowledge of this writer. But during the period of official neutrality the notorious anti-Nazi films, such as *The Confessions of a Nazi Spy*, *Escape*, or Chaplin's *Great Dictator* could not be shown in Brazil.⁴ Incidentally, the latter was banned in all South American states except Uruguay. On the other hand, the German-controlled movies were permitted to show German and Italian newsreels and the propaganda film *Victory in the West*. Like all other South Americans the Brazilians are ardent movie fans and spend relatively much money on it. The government encourages a "national" film production⁵ for which ideal conditions exist in terms of climate, light, human and especially female material among the cast. In spite of government competition for the best films, subsidies for producers and script writers, the success so far has been anything but spectacular, partly because of lack of equipment and training. Evidently only a rich nation can afford its own film industry. Of course, newsreels with Vargas opening an exhibition or Vargas visiting a hospital or Vargas inspecting a new road are invariably presented but arouse little or no enthusiasm among the public. The monopoly of the American film, formerly dented only slightly by excellent French films, seems as un-

⁴ *The Confessions of a Nazi Spy* was released in May, 1942. The public, no longer restrained by the requirements of neutrality, booed the actors playing Nazi characters and cheered lustily allusions to democracy and freedom from tyranny. See *New York Times*, May 5, 1942, p. 3.

⁵ The educational aspects of the film are in charge of the National Institute of Educational Cinema, founded in 1936 and officially in operation as a federal institution by Decree no. 378 of Jan. 13, 1937, under the direction of the Ministry of Education. The producers who are financially subsidized have to follow certain educational principles such as intelligibility, logic of narrative, detailed presentation. These films are not obtrusively nationalistic.

breakable as that of the American car. Perhaps after Orson Welles's recent arrival for shooting genuine Brazilian pictures things will happen otherwise.

The Arts and Letters

How much the media of artistic and literary creation have been used for the promotion of *Brasilianness* and how close these efforts have come to the ambitious goal of making nationhood a living reality no foreigner is able to judge. All he can do is to assemble vignettes of some necessarily peripheral observations which may indicate the trend in a general way.⁶

Soon after the inauguration of the *Estado Novo* the National Book Institute for the furtherance of national literature was created.⁷ Its functions are to bring out a monumental Brazilian Encyclopaedia and the Dictionary of National Language, in addition to publications of rare editions, the establishment of library facilities, and the general promotion of literary interest. In this last field its activities were not conspicuous, evidently because the genius of literary creation does not obey authoritarian commands. But the government undertook a reform of lexicographical nature by commissioning the Professor of Portuguese Antenor Nascotes to compose and to prepare a new simplified and unified national orthography as established by co-operation

⁶ On the influence of politics on literature since 1930, see Rosário Fusco, *Política e letras*, Rio de Janeiro, 1940; see also the survey of Brazilian literature in *Brazil 1938*, pp. 375 ff., and Samuel Putnam, "Brazilian Culture Under Vargas," *Science and Society*, vol. VI, no. 1 (1942), pp. 34 ff., a well documented and very interesting report on letters and art in present-day Brazil, vitiated, however, by the one-sided Marxist interpretation of the author, to whom the Vargas regime is nothing but an apparatus for repression in the interests of the alleged "finance capital."

⁷ D.L. no. 93 of Dec. 21, 1937 (*DO* of Dec. 27, 1937).

between the Brazilian and Portuguese Academies which henceforward will be mandatory for all publications within Brazil.⁸ Opinions as to the value of the reform were divided, scholars and editorial columns protesting against the scheme; but an authoritarian government can do many things which in a democracy would be deadlocked by conflicting viewpoints. Books and monographs on events and men of importance in the national history are much in evidence. The two great national writers—great in terms of Brazilian literary history—Machado de Assis,⁹ a novelist of French nineteenth-century realism with a local hue, and Euclides da Cunha, whose *Os sertões* is generally considered as the Brazilian classic in sociological analysis, are much played up in public discussions. This writer surmises that there is not much chance, however, of dislodging the firmly entrenched cosmopolitan and psychological novel of the French. Euclides da Cunha's heavy and involved style will never become popular. National romancers and essayists such as Gilberto Freyre and Oliveira Vianna are not nationalists. Gilberto Freyre's novel *Casa grande e senzala* (*Manor and Slave Hut*) is perhaps the greatest piece of modern imaginative writing in Brazil. More recently the realistic novel with local social tendencies has attracted much attention; Aluizio Azevedo's *O cortiço* is a good illustration (*cortiço* is the name for the slums in São Paulo City).

That the government is earnestly desirous of instilling patriotism into the nation and of eradicating influences deemed detrimental to *Brasiliandade* was demonstrated by the fundamental reform of the school textbooks. Youth during its most impressionable years of intellectual incubation cannot

⁸ D.L. no. 262 of Feb. 23, 1938 (*DO* of Feb. 28, 1938).

⁹ See D.L. no. 1,085 of Jan. 13, 1939 (*DO* of Feb. 2, 1939), on the commemoration of the centenary of Machado de Assis.

be left outside state tutelage. The instrument for carrying patriotic indoctrination into the educational processes was created through the National Commission for Textbooks, established in connection with the Ministry of Education.¹⁰ After January 1, 1940, only textbooks approved by the Ministry of Education may be adopted by any school (Art. 3). Not even textbooks published by public authorities—meaning those of the states—are exempted from the licensing system. The National Commission decides on adoption and rejection and recommends also the translation of foreign textbooks. No less than ten political reasons are adduced for which a textbook may be rejected (Art. 20), while only five technical or scientific grounds—for example, objections from the viewpoint of pedagogy—are enumerated (Art. 21). Inadmissible are textbooks containing offenses against the unity, independence, and national honor of Brazil; ideological propaganda against the political regime accepted in Brazil, which implies in practice a ban against both eulogy of democracy¹¹ and of totalitarianism; offenses against the chief of state, army and navy, and other authorities of the state; disrespect of national tradition, national heroes, and important figures; “pessimism or doubt as to the future power of the Brazilian race”; behind this point lurks an inferiority complex which education must ferret out; the inspiration of inferiority or superiority of one section of the country against others—so that Paulista or Mineiro pride can no longer be played up as a means for creating separatist sentiment; hatred against or disrespect of other nations; incitement to class struggle; creation of religious

¹⁰ D.L. no. 1,006 of Dec. 30, 1938 (*Coll.*, 1938, vol. IV, p. 350). See also D.L. no. 1,417 of July 13, 1939 (*Coll.*, 1939, vol. VI, p. 19), and D.L. no. 3,580 of Sept. 3, 1941 (*DO* of Sept. 5, 1941).

¹¹ On anti-democratic streaks in Brazilian textbooks see S. Putnam, *op. cit.*, p. 47.

differences or disregard of religion; destruction of religious sentiment; offense to the family or denial of the inseparability of the marital bond; in these last provisions the subtle hand of Cardinal Leme and the Catholic Church is visible. But the final provision of this code of national honor to be observed by textbooks is also characteristic for the Brazilian spirit: books are not tolerated which "deny the necessity or question the utility of individual efforts of the human personality"—an educational inculcation scarcely to be found in a European totalitarian system. After the deadline, only authorized—that is, "prepared"—textbooks are to be used in the classes of elementary and secondary schools. The regulation does not affect freedom of teaching and learning in the universities, and it is also comforting to know that the law explicitly permits the use of other books for the private information of the instructor.

The textbooks on national history and geography in the elementary schools—two subjects much emphasized in the educational program of the government—seem, insofar as this writer can judge from observations in the federal district and in some of the larger towns of the states, poorly printed and illustrated, at least when compared with similar instruction material in this country or in Europe. Brazilians say that in primary education considerable progress has been achieved, but they do not ascribe it to the efforts of the regime; it would have come anyway. It may be added here that the entire teaching personnel of public schools is entered into a professional register under the supervision of the Ministry of Labor and that the labor conditions of all private schools are under the supervision of the labor authorities.¹²

If the number of books in a country is an indicator of its culture, Brazil does not rank particularly high. The well-

¹² See D.L. no. 2,028 of Feb. 22, 1940 (*Coll.*, 1940, vol. I, p. 104).

appointed town library which one finds in so many American villages is conspicuous by its absence, even in relatively large settlements. The National Library in Rio de Janeiro, containing collections of value particularly in the fields of history and literature, is badly organized and operates less efficiently than a provincial library in Europe. The monumental skyscraper of the Municipal Library in São Paulo was not yet opened. If the service and the librarian technique should be as good as the exterior, scientific research in Brazil will decidedly be easier than it has been in the past.

Music

The Brazilians have an old musical tradition, founded by the Jesuits, and are a musical people, fond of singing, and endowed with a folkloristic inventiveness of no mean creative imagination. The people possess an innate sense of rhythm, a quick and firm though balanced motion, a heritage from the African strain in their blood, coupled with a fine sense of the melodious, which is the Lusitanian part of their music. The carnival songs of which there are many dozens are sung and whistled all over the country. Everywhere are remarkably good military and municipal bands. Even a Brazilian National Orchestra was founded some years ago, supposedly with only Brazilian nationals as members, although the conductor and the concert master were foreigners. It was not a success because of lack of interest of the public and resultant financial difficulties. A performance of Beethoven's Ninth Symphony in Rio de Janeiro was given before a half-empty house. Modern Brazilian music with a definite national inspiration is beginning to win a place for itself. Heitor Villa-Lobos, Francisco Mignone, and Walter Burle-Marx—the last mentioned a half Brazilian

—are internationally known representatives. Carlos Gomes, the veristic imitator of Verdi, is not much played nowadays.¹³ The well-appointed though small discotheks (libraries of gramophone records) allow the foreigner to acquaint himself with the fascinating folk music of the Brazilian people. Naturally all these things appeal only to a relatively small group of the middle class and do not much affect the masses.

The National Theater Service undertakes the promotion of national interests on the stage.¹⁴ It seems to be of very limited importance. Brazil has a rich literature but little prominence is given to the stage, whose production is strongly influenced by France.

Universities

Among the universities those of São Paulo, Rio de Janeiro—the only national university, organized in 1937—and San Salvador (Bahía) have the best reputation. Academic instruction, patterned mainly on the French model which holds a monopoly over all South America, has not been touched by the regime. Brazilian scholarship in all fields which have no immediate bearing on politics is as active as before. The president (*rector*) of the university is nominated by the government (Interventor) of the state for a limited term (three years in São Paulo), but the rector of the university of Rio de Janeiro is appointed by the president of the republic; the office was never elective. The by-laws are subject to approval by the Ministry of Education.¹⁵ The

¹³ The Brazilian-Italian musical society of Campinas transformed itself, under the nationalization laws, into a Carlos Gomez Society.

¹⁴ D.L. no. 92 of Dec. 21, 1937 (*DO* of Dec. 27, 1937).

¹⁵ See, for instance, "constitution" (by-laws) of the University of Porto Alegre in Decree no. 6,627 of Dec. 19, 1940 (*DO* of Dec. 21, 1940).

customary procedures for admission of the lower ranks of the faculties and for the appointment of the full professors (*catedráticos*) are unchanged. The latter are appointed by the Interventor on the basis of an academic competition (*concurso*) which excludes favoritism and guarantees academic autonomy. Even full professors are so badly paid that they are compelled to exercise another civilian profession (such as practicing lawyer or physician, engineer, or teacher at a secondary school), evidently without much harm to professional standards. The social prestige connected with a chair compensates for the scanty remuneration.

On the whole the regime carefully refrains from interfering with the academic personnel or the curriculum, which has not the slightest traces of totalitarian indoctrination or political streamlining. A small number of obstinately non-conformist professors were removed; four among them were of the University of São Paulo; pensions were paid in all cases. It is left to the tact of the individual instructor to draw the line between the demands of objective scholarship and the needs of the prevailing political situation. The reaction of the students is considered as the only test of political conformity. It should be noted, however, that the university students all over South America are the most progressive and democratically minded single group of the entire population, very different from the academic youth in Italy and Germany, which was almost the first to embrace the tenets of totalitarian indoctrination with fanatical fervor. As a whole the universities have well succeeded in maintaining, together with autonomy and intellectual independence, the standard of nonpolitical academic freedom.

Two cases, however, which indicate government pressure for political reasons came to the knowledge of this writer,

which does not imply that there were not more. The government discontinued the services of a professor of political science with an American education, under a temporary appointment in São Paulo, allegedly because some of the students took exception to the severe criticism of Brazilian institutions. The other case is that of Doctor Miguel Reale. A sociologist of tolerably good reputation in his field, he had won the difficult *concurso* for the chair of Legal Philosophy in the Law School of São Paulo by a majority of three to two. But the congregation of the full professors, which proposes the appointment to the Interventor, rejected him without a single dissenting vote partly because he had not qualified, by his writings, for that particular chair, partly because as a former leading Integralist and ardent supporter of Fascist ideologies¹⁶ he seemed ill-fitted to join the predominantly antitotalitarian and prodemocratic Law School in São Paulo, still the bulwark of liberalism. Both the government of São Paulo and, as was rumored, Vargas himself exerted pressure to obtain his final nomination.¹⁷ The case was a *cause célèbre* in São Paulo and testifies to the firm adherence of the leading intellectuals to their traditional liberties.

Tourism and National Patrimony

Tourism may be described as the science and practice of travel for information and cultural enrichment. Next to its importance for the national budget it can be used also as a stimulant for national consciousness. This is not the oppor-

¹⁶ See his book *O Estado Novo, Liberalismo, Fascismo, Integralismo*, São Paulo, 1935.

¹⁷ After the severance of diplomatic relations with the Axis, Reale was called to fill a high administrative position in São Paulo. Of interest for the whole subject is D.L. no. 3,298 of May 2, 1941 (*DO* of May 24, 1941).

tunity to analyze the positive and the negative implications of tourism for the national mind, a subject which political science has unduly neglected. In the early days Fascism in Italy spurned the foreign visitors who came to Italy to fill their souls with the external values of a past belonging to all mankind; the rabid nationalists wanted the Italians to be more than the custodians of paintings, antiques, and ruins; yet they fleeced the foreign tourists lustily. Nazi Germany realized from the start the advertising value of opening the country to foreign tourists as a means of indoctrinating them by indirection. For a more naïve population like the common man in Brazil the discovery of the beauties of his country by the foreign tourist may well become an instrumentality for vitalizing pride in the national patrimony; patronage of the foreigner is reflected in increased estimation by those who own the national riches of nature and culture.

The emotional value of tourism is recognized in present-day Brazil, but the development of a rationalized tourist industry is at best in its infancy. This writer has seen a good number of the regions in the Americas and in Europe famous for culture and landscape or both; but he does not hesitate to say that Brazil possesses all the ingredients and prerequisites for developing her natural assets into one of the foremost tourist countries in the world. Those who travel to Brazil in order to satisfy their intellectual curiosity and to gather information—which are the main benefits derived from seeing how other people live—will be highly rewarded. To the mere sightseer Brazil offers a number of attractions which have scarcely a parallel in the Americas. Many abler pens have tried in vain to depict the breath-taking loveliness of the bay of Brazil's capital, Rio de Janeiro. A recently published book brought together the descriptions and impressions of some of the most eloquent world travelers in Rio,

but the newcomer will soon find for himself that Rio's charm defies description. The city, or rather the cluster of cities, follows the irregular course of a whole system of bays harmoniously linked together by strips of land so narrow that the city has had to meander into the deep-cut valleys of the coast and to climb up the sides of the rugged mountains. Everything is bizarre in this miracle of nature and human ingenuity: the contour of the shore lines, the silhouette of the many-shaped mountains, among which the Pão d'Asucar (Sugar Loaf) and the Corcovado (Hunchback), crowned by a majestic statue of Christ the Redeemer, are the most famous and offer enchanting views over land and sea and the stone belts of the city. It is Genoa and San Francisco, Paris and the Dolomites woven into one unforgettable texture of light, color, and variety of form.

In the man-made loveliness of churches and fountains, parks and mansions of the Brazilian aristocracy of birth and wealth Rio still bears the stamp of past centuries. But the city itself, under a hectic building activity, is rapidly transforming itself into a supermodern metropolis. Skyscrapers reach higher than the towers of the tallest churches. The square blocks of modern apartment houses fit surprisingly well into the graceful sweep of the gleaming beaches with their long lines of white sand. Straight columns of Imperial palms duplicate the vertical surge of the streamlined structures. Old and modern Rio is bedded into the luxuriously green vegetation of the tropics. One is always surprised to notice how many shades of green there are under the light of the southern sun.

The tourist who ventures into the interior of Brazil will discover to his delight that the state of Minaes Geraes is the treasure house of sublime architectural and decorative art dating from the seventeenth and eighteenth centuries. Gold

was found here in abundance and it is still mined underground and washed from the rivers by a picturesque tribe of gold washers. Gold was used for the embellishment of the exquisite baroque and rococo churches in Ouro Preto, declared in 1935 a National Monument, in Mariana, Sabará, Congonhas do Campo, São João d'el Rey, Tiradentes, and many other places easily reached by plane and with some difficulty by rail or car. In artistic gracefulness and opulence of interior decoration they equal not a few similar architectural gems found in Austria or Bavaria. Ouro Preto possesses a score of noble churches perched on steep hills and studding like jewels the mountain-ringed valley. The visitor who is fortunate enough to behold, during the Easter week, the church processions in the Brazilian Rome as they wind for hours up and down the narrow streets in their colorful costumes and ecclesiastic paraphernalia, will not easily forget the spectacle. In Aleijadinho, the mysterious sculptor-architect who created his masterpieces at the time of Mozart and the French Revolution, one encounters a great imaginative artist of striking originality. His open staircase in front of a church in Congonhas do Campo, flanked by the individualized statues of the twelve Minor Prophets, stamps him as the outstanding individual artist on this continent. His work is wholly unknown outside of Brazil. But the street urchins in Ouro Preto who were able to identify from snapshots or pictures all church façades of their home town testify to the fact that foreign admiration evokes pride in the national patrimony.¹⁸

¹⁸ On the art in Minas Geraes, see Anibal Mattos, *Monumentos históricos, artísticos e religiosos de Minas Geraes*, Belo Horizonte, 1935; Heitor Pedrosa, *O Aleijadinho*, São Paulo, 1940. See also Robert C. Smith, Jr., "The Colonial Architecture of Minas Geraes in Brazil," *The Art Bulletin*, vol. 21 (June, 1939), pp. 110 ff.; *idem*, "Minas Geraes no desenvolvimento da arquitetura religiosa colonial," in *Boletim do Centro de*

The more pragmatically inclined tourist will find different impressions in São Paulo, city and state, where he may visit the huge coffee plantations from which stem much of the country's wealth. The city of São Paulo, Brazil's economic dynamo, spreads out and grows almost visibly on a high plateau with a healthy and stimulating climate. The visitor will find the business capital of Brazil perhaps the most European of all American great cities and at the same time of a fascinating local flavor, with stately public buildings, modernistic business palaces, model markets, waterworks, and all signs of an intense urban development. The interior of the state is rich in spas with mineral waters, reminiscent of old Austria. Since this study does not pretend to be a Baedeker of Brazil, further detailed references may be omitted. Suffice it to say that many other attractions wholly unknown abroad await the tourist who ventures up north to the clerical splendor of San Salvador (Bahía) with so many churches that the people may worship a different saint every single day of the year; to the monuments of the past in Recife and Olinda; to the Amazon River, the mightiest stream of the world, and thousands of miles of waterway through jungle; to the art treasures of Belém and Maranhão, and to the Iguassú falls which dwarf Niagara. But they are difficult to reach for the tourist who seeks more than the playground of Rio with its casinos, night clubs, and the famous human flesh market of the Lapa district.

The National Museums in Rio de Janeiro were disappointing to this writer; the Pinacoteca is sadly provincial. The rich exhibits of the Natural Science Museum are so poorly

Estudos históricos, vol. II, no. 3 (July-Sept., 1937), pp. 3 ff. Valuable background material in Preston E. James, "Belo Horizonte and Ouro Preto," *Papers of the Michigan Academy of Science, Arts and Letters*, vol. 18 (1932), pp. 239 ff. On the role of the Jesuits in Brazil, see Serafino Leite, *Historia da Companhia de Jesus no Brasil*, 2 vols., Lisbon, 1939.

arranged that one is reminded of one of the princely curiosity cabinets of the seventeenth century. On the other hand a small natural science exhibit in Campinas, organized by a German-Brazilian, is exemplary of its kind. The Historical City Museum in Ouro Preto suffers from the fact that for a long time unscrupulous dealers and thievish foreigners could deplete upon the treasures of the churches. Sabará, in the center of the gold-mining industry in Minas Geraes, plans a "Museum of the Gold" which for the present is only an empty colonial mansion with a custodian. Still in the stage of a warehouse for ecclesiastical art is the museum in Mariana. The Museum of the Imperial Court in Juiz de Fora, owned, organized, and maintained by a former courtesan of the Imperial family, is an affectionate token of the strength of the Imperial tradition. A strong emotional appeal surround the Ypiranga Museum on the hill near São Paulo where Independence was declared. Built in the grand style of French museology of the nineteenth century it is evidently the center of patriotic edification for schools and other visiting groups. An Imperial Museum, housed by the Imperial Palace of Dom Pedro in Petropolis, is in the process of organization. One finds everywhere in churches and private homes examples of the excellent furniture of former centuries in which the Brazilian craftsmen, using the precious woods of the land, excelled.

A sort of civic competition is encouraged by the governments of the states; the smaller towns spend some money and effort on local museums and similar cultural centers.¹⁹ Very

¹⁹ Already in 1936 forty-eight museums existed in twenty-four Brazilian municipalities (out of 1,479). The Ministry of Education plans six official museums: The Gold Museum in Sabará in Minas Geraes; the Santos-Dumont Museum in Palmira, Minas Geraes (at present the recollections of the famous flyer and inventor are in the Ipiranga Museum near São Paulo); the *Inconfidente* Museum in Ouro Preto, dedicated to the memory of the first unsuccessful effort of independence; the Imperial

much depends of course on the educational zeal and the cultural initiative of the local authorities. It is gratifying to witness the pioneer work which the young and energetic prefect of Congonhas do Campo performed in his historical district, ably supported by a Swiss mining engineer in the town who has done more for civism than a score of bureaucrats. The Society of the Friends of Congonhas do Campo, consisting of small tradesmen and petty burghers, is a touching proof of what a man conscious of the patrimony in his charge may accomplish.

The DIP is not equal to the task of making Brazil the tourist country it deserves to be. Advertising the playgrounds of Rio or the business opportunities of São Paulo is not enough. An inventory of the art treasures is being made, but it should be done by a centralized effort and by experts of whom Brazil has too few. No guidebooks in Portuguese or in any foreign language exist.²⁰ Even the tourist who is desirous of acquainting himself with Brazilian history and culture will find it difficult to obtain competent information. Communications are inadequate although much is done for road building. Hotel accommodation except in the larger

Museum in Petropolis, already under way; the Missions Museum in Rio Grande do Sul, to serve as a documentary center of the Jesuit missions; finally the National Museum of Molds which contains casts of the works of art in the provinces and which when completed will allow the long delayed systematic exploration of Brazilian architecture and sculpture.

²⁰ The National Department of Coffee in Rio de Janeiro distributes a handsome volume of good photographs, with scanty information, under the title *Brasil 1940*. Of some help for the average tourist, though intended as a reference book for the commercial traveler, is the *Annual South American Handbook*, edited by Howell Davies (London, 17th ed., 1940), if the user of the book accepts the tacit assumption that the Lord speaks English with an Oxford accent even in Brazil. It is gratifying for future travelers that, with the co-operation of the Co-ordinator of Inter-American Affairs, Duell, Sloan and Pearce plan to publish in the fall of 1942 *The New World Guides to the Latin American Republics*, edited by Earl Parker Hanson.

places is often more romantic than comfortable. Moreover, little effort is in evidence to bring Brazil's precious patrimony home to the people who own them. Brazilians do not yet seem to realize that they could become the Italy of the Western Hemisphere.

Sports and Youth: Physical Education

The official policy of the regime stresses physical education of the population through the promotion of sports and a state-controlled youth movement. The organizational frame for centralized supervision is the reorganized National Department of Health²¹ to which shortly thereafter a separate National Council of Sports was added.²² Official furtherance of sports is a common feature in all authoritarian states, partly because sports make for healthier people and hence for better soldiers, partly because of the erroneous assumption that devotion to athletics deflects the people from criticizing their government. Italian successes at the Olympics in 1928, equaled by the demonstration of Nazi prowess in 1936, are generally ascribed to the disciplined enthusiasm of youth under dictatorial stimulation. Athletics play an important role in São Paulo where a more vigorous climate and the enthusiasm of the large Italian stock are the supporting elements. Elsewhere in Brazil athletics and sports do not—or do not yet—figure as prominently as in some other South American countries such as Uruguay and Argentina, the citadels of football. The foreign observer cannot fail to notice the apparent lack of physical fitness in the population. This may be due to the tropical climate which

²¹ D.L. no. 3,171 of Apr. 2, 1941 (*DO* of Apr. 4, 1941).

²² D.L. no. 3,199 of Apr. 14, 1941 (*DO* of Apr. 16, 1941). See also D.L. no. 3,617 of Sept. 15, 1941 (*DO* of Sept. 17, 1941), on the organization of sports in the universities.

militates against strenuous physical exertion, to the social habits and the influence of the Catholic Church, and, last but not least, to the deplorably insufficient diet of the poorer classes, which live mainly on *arroz e feijão*—rice and beans, with some fruits—the staple food of the Brazilian masses. The soldiers one sees are frequently a short-winded, undernourished lot with a conspicuous lack of brawniness and military bearing; the Brazilians never were a very militant nation.

Be that as it may the regime believes strongly in the value of physical education for the young people. At first tentative and abortive steps were taken to pattern the training of the youth along the lines of state-controlled militarization as in European dictatorships. But the Brazilian Youth Organization (*Juventude Brasileira*), as now in operation, is something rather different.²³ In charge is one of the ubiquitous National Boards, called the Supreme Board of Brazilian Youth Education, consisting of the president of the republic, the ministers of education, war and navy, and with coordinating offices in each state. Under its tutelage, the young people of both sexes between the ages of eleven and eighteen are subjected to a mild form of physical exercises which are practically obligatory for all. The army has a good deal to say about the arrangement and objectives of the training since frequently, particularly in the rural districts, noncommissioned officers are in charge. Reliable informants describe the organization as a sort of desirable and unobjectionable *puericultura* of a nonpartisan and nonpolitical though strongly patriotic character. Education is to be civic, moral, and physical. Civic education, according to Art. 2, “aims at the formation of a patriotic conscience. It must create, in the mind of the children and of the young

²³ See D.L. no. 2,072 of Mar. 8, 1940 (*Coll.*, 1940, vol. I, p. 271).

people, the feeling that on each citizen rests a particle of the responsibility for the security and the aggrandizement of the fatherland and that everybody must dedicate himself to the service with the highest effort and devotion." The rallying points for the civic education of the Brazilian Youth are the so-called civic centers to be established in each of the cities, not very dissimilar, though on a minor scale, to our YMCA centers. Specific uniforms and distinctions are provided for the members of the Youth Organization (Art. 29). The youth groups are much in evidence in public parades but the movement has to compete, and not always successfully, with organizations of youth managed and supervised by Catholic institutions. To say that the Brazilian youth movement is a spectacular success and that it is carried by full popular acclaim would be an overstatement. The Brazilians dislike regimentation and are suspicious of militarism, proud as they may be of their army and what military glory—fortunately little for them—their past history records. The young people take patriotic inculcation offered by the youth training in their stride without being especially enthusiastic about it. It may be added that the policy of physical education for infusing patriotic consciousness into the masses is universal in South America of today and that other constitutionally "democratic" states go much farther in this matter than Brazil.

National Symbolism

Modern dictatorships have taught us the eminent value of symbolism for the emotionalization of national politics.²⁴

²⁴ See Karl Loewenstein, "The Influence of Symbols on Politics," in R. V. Peel and J. S. Roucek, *Introduction to Politics*, New York, 1941, pp. 62 ff.

Democracies are slow in mobilizing these compelling mental "short cuts" for inculcating into the masses their own social values. Vargas's Brazil, benefiting from accomplishments and failures of other political systems, did not hesitate to enlist symbolic processes and forms for its political ends. National holidays—in addition to the many Catholic holidays faithfully observed, and the annual standstill of normal life in the happy mood of the carnival—are numerous, commemorating important dates or events in the history of the regime such as November 10, the "Day of the Revolution";²⁵ April 10, Vargas's birthday, and the "Day of the Municipality" destined to instil civic affection for the place of one's home;²⁶ *Dia de Bandeira* (Flag Day); *Dia de Patria* (Fatherland Day), and others. The singing of the national anthem—taking precedence in rank and dignity over all other manifestations of patriotic homage—is obligatory in all educational institutions.²⁷ The hymn is played on all festive and patriotic occasions but, less ubiquitous than in some South American states, it has not yet been desecrated by routine and excessive use. As in other authoritarian states the regime bestows official distinction on citizens worthy of national recognition. Persons who "enrich the national patrimony" are inscribed in a Book of Merit²⁸ and receive an official diploma signed by no less a person than the president of the republic himself. A five-member committee, appointed by the president, casts the decision. It is obvious that enemies of the regime, or overcritical persons, are not eligible for this honor. This writer, for example, entertains little

²⁵ D.L. no. 830 of Nov. 4, 1938 (*DO* of Nov. 7, 1938).

²⁶ D.L. no. 840 of Nov. 9, 1938 (*DO* of Nov. 12, 1938).

²⁷ Law no. 259 of Oct. 1, 1936 (*DO* of Oct. 14, 1936).

²⁸ D.L. no. 1,706 of Oct. 27, 1939 (*Coll.*, 1939, vol. VIII, p. 48). For the detailed regulations see Decree no. 5,244 of Feb. 2, 1940 (*Coll.*, 1940, vol. II, p. 147).

hope of being so honored. Moreover it is humanly possible that a person inscribed into the Book of Merit may turn into an enemy or malevolent critic. Hence it is explicitly stated that antipatriotic activities result in cancellation of the record in the roll of honor. The decree fails to state whether in such a deplorable event the diploma with Vargas's signature has to be returned. Brazil, though a republic, continues the tradition of bestowing state decorations on the worthy.²⁹

One finds a plethora of patriotic exhortations in various laws and emotional "riders" attached to provisions where one would scarcely expect them. But even without aiming at completeness of information the subject has been covered adequately enough to allow for a few general conclusions. The Brazilians are intensely and even fiercely patriotic, but there is little discernible of that penetrative nationalism and aggressive emotionalism which is so evident in European totalitarian regimes. It is well-nigh impossible to gauge accurately how deeply the emotional propaganda for the new state has affected the masses and particularly the people in the immense rural areas. Cynics are remindful of the fact that most of the laws on the statute book are good only for the asphalt of the Avenida Rio Branco in Rio. Public opinion management during a few years—and for that matter performed with a good deal of half-hearted amateurishness and superficial opportunism—could not awaken a people just about rubbing its eyes from centuries of colonial slumber to an acute sense of nationhood. The slogan of the regime, *Brasil é rico mas não se sabe*—"Brazil is rich but does not know it"—is true to the letter. Nowhere does one encounter that artificially inflated national emotionalism which less mature nations seem to need for self-persuasion, self-

²⁹ The highest decoration is the Order of the Southern Cross (*Cruzeiro do Sul*). See D.L. no. 1,424 of July 17, 1939 (*Coll.*, 1939, vol. VI, p. 21).

confidence, and self-discipline. And yet underneath the seemingly balanced and well-tempered Brazilian surface is hidden a psychological layer of unadmitted inferiority which is outwardly reflected by their admiring what the foreigner accomplishes and belittling what is performed at home. If it is true that the Brazilians harbor aspirations of being a Great Power, confidence in their future fortunately has not yet translated itself into that blatant aggressiveness one encounters among other "awakened" nations. Brazil is still one of the least antialien-minded countries in South America. Perhaps the seemingly ingrained traits of gentle self-irony and tolerance are merely signs of that subconscious feeling of inferiority, which the Vargas regime has not been able to surmount. But such speculations are beyond the pale of this study even if they were supported by a better knowledge of all things Brazilian than this writer claims to possess.

The Imperial Tradition

In conclusion, a few words on the Imperial tradition in present-day Brazil may be added here. Even the casual visitor to Rio, Petropolis, or São Paulo is struck by its strength. To be more precise, the Imperial tradition radiates from the unique personality of Dom Pedro, the philosopher-king who was called the only democrat of his time on the South American continent. The regime strives to obliterate from the popular mind the period of the liberal republic in the interregnum between 1891 and 1930. The liberal era is depicted as filled with corruption, national frustration, federal disunity, civic partisan strife, selfish politics. All this is said to be alien to Brazilian tradition, and happily overcome by the *Estado Novo*, clean, purposive, centralized and united,

nonpartisan and authoritarian. But all the same elements of a good society were said to have distinguished the Imperial period and consequently the Vargas regime considers itself, rightly or wrongly, as the true and legitimate successor of the centralized and united Empire. One may contest this assertion in that the Empire was constitutional and liberal while the Vargas regime is extraconstitutional and authoritarian. One may even add that constitutional government, except for intermittent periods under the state of siege, had never been suspended from 1889 to 1930. Vargas's *régime personnel* is the first of its kind in the history of Brazil, and this gives to Brazil the unique distinction of never before having resorted to the common form of personalist government in South America, namely *caudilhismo*.

Interest in the cultural, legal, and political aspects of the Imperial period is more than of a purely antiquarian character. As a matter of fact the persistence of the rule of law in present-day Brazil, even under the pressure of an authoritarian regime which in terms of the constitution is factually without constitutional limitations, may well be ascribed to the deep-rooted tradition created under the constitutional monarchy of the Empire. Much as the regime frowns at nostalgic conclusions drawn from the liberal past it feels safe not to hinder and even to encourage the happy reminiscences of the Imperial period. The fiftieth anniversary of the abolition of slavery by Princess Isabella, "*la augusta signatária de la Lei Áurea*" (the august signer of the Golden Law) was commemorated officially by appropriate ceremonies.³⁰ The new Imperial Museum in Petropolis, planned as a demonstration of the dignified culture with which the late mon-

³⁰ See D.L. no. 427 of May 13, 1938 (*Coll.*, 1939, vol. II, p. 142). See also the observations on the attitude of the regime to the slave-emancipation by S. Putnam, *op. cit.*, pp. 45-46.

arch surrounded his bourgeois reign, is indicative of the trend. Rio de Janeiro itself and its neighborhood are lasting records of Dom Pedro, since many of the parks and squares, palaces and railroad stations—at that time symbols of civic achievement—stem from his wisdom and farsightedness. In trying to reconstruct the atmosphere of the period—and one is always tempted to do so—one is strongly reminded of old Austria, of idyllic Austria of the Hapsburgs in the nineteenth century under Francis Joseph; although the bigoted and austere Kaiser and the freethinker and liberal Braganza had temperamentally and personally little in common except the length of their reigns. Even today Petropolis has the flavor of an Austrian spa, perhaps like Ischl or Baden near Vienna. The easygoing, self-ironical, highly bureaucratized and otherwise tolerant way of life which characterizes Brazil still today, the streamlining efforts of the regime notwithstanding, is certainly the lingering note of the period under the scepter of the enlightened monarch. No other South American land has preserved this pre-World War atmosphere of *Gemüt*—an untranslatable term denoting things of the mind and the soul as well as those of the senses. In Peru also the Spanish past has its bearing on the present; but it is often formidable, depressing, stern. In Colombia and Venezuela the achievements of the Spanish crown and the colonial administration are viewed with scantily veiled suspicion and even aversion. In Argentina, Chile, Uruguay, they are forgotten and do not even form the background of modern life. It may well be that in Brazil the familiar climate of Catholicism, less affected by anticlericalism than elsewhere in South America, adds to the touch of the “Austrian” which no responsive foreigner can fail to notice.

Strong as this memory of the monarchical past is, it should be well understood that its influence on present-day Brazil

is predominantly cultural and only remotely political. There is no monarchist party and no monarchist movement. A small group of rightist Catholics who seem to be in favor of restoration is disowned by the official policies of the Church and the cardinal. Those who may still remember the days of the Empire are too old to be of any influence. There is not even a pretender in the formal meaning of the word. In terms of the succession law of European royalty the grandson of Princess Isabella, Dom Pedro de Orlans e Braganza, is formally the heir to the throne; one daughter of the other branch of the Brazilian Braganzas is married to the French pretender, the Count of Paris.³¹ The Imperial family accepted the demotion with good grace and strictly abstained from active participation in politics. After the Integralist putsch of 1938 Dom João de Orlans e Braganza, brother of the pretender, was for a short while under arrest. He had been wounded, under indeterminable circumstances, in the attack on the Guanabara Palace. He was soon released. It is more than unlikely that the Braganzas have connections with the Integralists, who at no time have shown monarchist leanings. The Imperial family has a modest estate in Petropo-

³¹ Dom Pedro II's daughter, Princess Isabella, was married to Gaston, Comte d'Eu, a scion of the Orléans line of the *Maison de France*. She died in 1921 in Château d'Eu in Brittany, leaving two sons, Pedro (Pierre) and Luiz (Louis). Having married the Austrian (Czech) Countess Dobrientz, Pedro renounced the throne in 1908 in favor of his brother Luiz and his descendants. After Luiz's death in 1920 his oldest son Pedro (born 1909) is the successor to the throne and the formal Pretender. He married in 1937 Princess Maria of Bavaria. A daughter of his uncle Pedro, Princess Isabella, married in 1931 the French Pretender Henri Robert Comte de Paris. The Imperial house of Orléans and Braganza is thus related to most of the royal families of Europe, to the Bourbons in France and Spain, the Wittelsbachs in Bavaria, and more remotely to the Hapsburgs. The mother of Dom Pedro II was a Hapsburg archduchess, and the female members of the Imperial house are still blessed with a mitigated version of the famous "Hapsburg lip."

lis and is socially well-respected and generally liked.³² They live as private citizens, and their activities as those of the pretender and the Imperial family are as a rule not recorded in the press. But the government gave publicity to the dispatch of a Brazilian man-of-war to France for bringing the family papers of the Braganzas home from Château d'Eu.

The eventuality of a monarchical restoration in Brazil, perhaps if Vargas, having fulfilled what he considers his mission, should voluntarily step down—nobody expects that he will be removed by force—is smilingly dismissed as a figment of imagination never to come true. A monarchical movement needs money and supporters who hope to obtain personal benefits therefrom. Neither money nor office seekers exist. The Imperial family is poor. It derives a small revenue from the sale of all property formerly belonging to the vast Imperial *fazenda* in Petropolis, granted as a compensation for Isabella's estate which was expropriated by the republic. It may just be sufficient for the maintenance of a modest bourgeois living standard for the Imperial family. Nor does a social group exist which would favor restoration. It is a most significant sociological phenomenon that the relatively small roster of governing families, from which by way of a system of quasi-oligarchic co-optation political leaders and high public functionaries are selected, is the same under the Empire, the liberal Republic, and the authoritarian regime. The Nabucos, Melo Francos, Aranhas, are the sons of the leaders in the preceding periods. But the selective processes of the regime are not deliberately narrowed or restricted; Vargas himself is an outsider. On the other

³² Through an amusing coincidence this writer met some members of the Imperial family in Uruguay. They impressed him as pleasant and well educated though not strikingly brilliant people. But royalty should not be brilliant.

hand, the National Revolution has not "thrown up" a new elite. Nor have many foreign-stock elements succeeded in obtaining access to the governing class of Luso-Brazilians, although they are found as officials and have gained recognition in the society by virtue of wealth or business success. This governing and ruling class has no need for monarchism; but since it does not fear it the attitude is one of benevolence and social consideration toward the Imperial family. For the masses, monarchy is little more than an echo of the past.

Political prophecies in the midst of a world revolution are futile. But after this war a revival of monarchy in European countries where both democracy and dictatorship have been tried and found wanting is perhaps less imaginative than it may seem. If Germany or parts of Germany, Austria, the Balkans, and even France, whose pretender is a close relative to the Brazilian Imperial house, may test the age-old institution of kingship again, the problem of the constitutional monarchy may come into sharper focus also in Brazil. Stranger things have happened.

PART FIVE

THE BALANCE SHEET OF THE REGIME

CHAPTER I

THE ENTRIES ON THE DEBIT SIDE

To attempt an evaluation of achievements and failures of a political system in which the observer does not partake personally is obviously a task as pretentious as it is difficult. The intangibles of any society, namely the happiness of the people living in it, cannot be measured accurately. In full awareness of the, at best, tentative and peripheral character of such an appraisal it is now in order to present the balance sheet of the *Estado Novo*. The political audit of the Vargas regime will start with the entries on the debit side of the ledger.

Absence of Constitutional Security

No specific stress will be laid here on the crucial fact, namely, that the new order is allegedly based on a written constitution which in practice has never become effective. Of the two constitutions woven into the texture of one instrument of government the more elaborate one does not exist except on paper. Actually in operation are only the provisions which are styled "transitional," namely those which perpetuate indefinitely the "state of emergency" and which empower the president to rule and to govern by decree. As long as the constitution is not affirmed by the plebiscite, the parliamentary institutions are merely villages of Potemkin. From the viewpoint of internal constitutional law the regime is only *de facto*. The very existence of the

regime is thus fundamentally in conflict with the principles of what may be called the "common law" of modern constitutionalism, that is, that the government must be predicated on the manifested adhesion of the citizens to the established authority. But this is evidently a political fact conditioned by political circumstances of power; as such they are beyond the pale of legal argumentation. It would be an attitude of irrelevant formalism if a dictatorship were condemned only because it is a dictatorship even though the results of the authoritarian control were beneficial to the people.

But the Vargas regime cannot be given a clean bill of health. During the almost five years of its existence the government has done a number of bad things; some of them are thoroughly bad. They are bad because they violate the principles of the rule of law by which the regime has obligated itself to be constitutionally bound. *Justitia fundamentum regnorum*. Most of these occurrences are hushed up and precise information was unobtainable, even by tapping opposition sources. But some of them are reflected in the statute book; others may have occurred of which no public record is available.

The first objection concerns the futility of judicial review and the blow dealt, by overruling court decisions by subsequent and retroactive decree, to the position and prestige of the judicial power.¹ If the government had felt that judicial action hampers public policy, the proper method would have been either to amend the constitution, as had been done repeatedly when it seemed opportune, or to modify the existing legislation, which could be done easily by simple decree. But the Ministry of Justice preferred the clumsy method of directly canceling inconvenient court

¹ See *supra*, pp. 114 ff.

decisions. Even if a loss for the Treasury had resulted from the observance of the positive law it would have been fully compensated for by avoiding the attendant degradation of judicial prestige and power.

Of the laws intended to defend the state many provisions do not live up to the Brazilian tradition of due process under the rule of law. Even granted that they are dictated by political necessities they should have been reformed once the acute danger of internal revolution had passed and external involvement was remote. This criticism refers mainly to the procedure of the Tribunal of National Security. As in all authoritarian countries where the people are deprived of the powerful protection, by untrammelled public opinion and public exposure of illegal acts, probably more cases of arbitrary infringement of liberty and property have occurred than are known to this writer. In spite of the continued operation of the habeas corpus, guarantees of individual rights may be much more precarious in present-day Brazil than constitutional usage in democratic countries would be willing to sanction. And it should be remembered that habeas corpus does not lie against the president of the republic and the Interventors, and that under the "state of emergency," perpetuated by the constitution (Art. 186), the most incisive restrictions of personal liberty are permissible; such as detention, exile in other parts of the country, compulsory domicile, censorship of correspondence and all means of communication, suspension of the right of assembly, and searches and seizures without warrant (Art. 168). In practice any dressed-up police action may lead a person into judicial preliminary investigation. But in fairness it should be repeated here as was explained above ² that the judges of the *Segurança* did not abuse their powers and

² See *supra*, pp. 224 ff.

that, on the whole, no irreparable harm seems to have been done to the principles of equitable administration of justice. On the other hand it may be conceded that most if not all acts for the Defense of the State would have been introduced at the latest with the entry of Brazil into the war as non-belligerent and thus Brazil was legislatively better prepared for the fatal hour than other states, the United States not excepted.

The "co-ordination" of the *Estado de São Paulo*³ can be explained though not justified by qualifying it as a political act undertaken by the regime for the purpose of eliminating a thorn in the flesh of public opinion control. But the incidental aspects of compulsion and illegality amount to a flagrant violation of the proclaimed principles of the sanctity of private property. The case did much to destroy confidence in the continued operation of the rule of law.

Similarly, the *Windhoek* case⁴ and other acts dictated by a partisan interpretation of the official neutrality policy may be explained though not excused by political considerations. The temporary benefit which the government may have derived from arresting the course of ordinary justice in favor of Germany was not worth the loss of prestige suffered by the regime when the public realized that even private rights were subordinated to political ends.

Arbitrary Confiscation

No considerations of foreign politics, however, are involved in other and graver cases of arbitrary infringements of the rule of law in which rapacity and greed, undiluted

³ See *supra*, p. 263.

⁴ See *supra*, p. 278.

even by motives of public policy, of individuals or groups in or shielded by the government were seemingly the inspiration. Uninitiated people sometimes say that the law is a dry and unimaginative occupation. But here it happened that the statute book rises—or falls—to the level of a mystery novel or a thriller. Changes, by dictatorial regimes, in the common or civil law of the land are rare. The body of substantive law corresponds so much to the ingrained way of life of the people that incisions into it must be undertaken with utmost caution; otherwise disturbances of social habits would ensue, which usually change only slowly and imperceptibly. Not even the Third Reich has altered much of the civil law except under the artificial impact of the racial or eugenic policies of Nazism. All the more surprising to this writer was the discovery of a decree law, which, seemingly without any sociological motivation, implied a quaint deviation from the traditionally recognized principles of succession *mortis causa* of the French civil code. Exploration of this astounding piece of legislation brought to light the so-called deLeuze case, of which in view of the reluctance of all informants to discuss it, only a skeleton report can be given here.

Paul deLeuze was a French (or Levantine) Jew of unsavory reputation who, through successful and as it was said unscrupulous speculations, had accumulated a vast fortune. In Brazil it included industrial enterprises, railroad interests, and the metropolitan daily *A Noite* in Rio de Janeiro. While under indictment for violation of the *economia popular* he was put through the third degree during the police investigation. His death is said to have been either "suicide" or the result of an overdose of a drug. Without any justification on the basis of the existing laws and for what appeared to the

public naked arbitrariness, the government confiscated his entire property.⁵ Indemnity to be paid to the estate of the deceased owner of *A Noite* for the completely modern plant was fixed, on the basis of a farcical government inventory, at fifty-three *contos* of *reis* (somewhat less than three thousand dollars).⁶

Perhaps the illegal background of the case would have remained in the dark, although many people knew well enough how *A Noite* was made over into a government-owned and -controlled paper. But by a queer twist of events the government was compelled to expose the stark illegality of the measure to the public. DeLeuze had died intestate. His only surviving relative was a nephew in France who claimed, by invoking the civil courts, his title to the estate as the legal heir. The estate was said to have amounted to one million *contos* of *reis* (about fifty million dollars). The

⁵ The regular expropriation statutes were inapplicable and evidently never invoked. Expropriation, with adequate compensation, under the power of eminent domain of the state and for public welfare, existed in Brazil for a generation. See Law no. 4,956 of Sept. 9, 1903 (*Coll.*, 1903, vol. II, p. 614), and Art. 590, § 2, no. III of the Civil Code (in its former version). These provisions were streamlined by the regime in D.L. no. 1,283 of May 18, 1939 (*Coll.*, 1939, vol. IV, p. 164), "on the procedure of expropriation"; see also D.L. no. 3,365 of June 21, 1941 (*DO* of July 18, 1941), recently again supplemented by D.L. no. 4,152 of Mar. 6, 1942 (*DO* of Mar. 9, 1942), "on the expropriation for public expediency." The executive power, in exercising the sovereign right of expropriation, may but need not adduce reasons for the expropriation action. The declaration that it is in the interest of public policy is sufficient. The judicial power is not entitled to inquire into the necessity or usefulness of the expropriation measures. These provisions, stretching the concepts of public expediency far beyond the necessities of eminent domain proper, may easily be used for political purposes.

⁶ It could not be verified that deLeuze was a business competitor of one of the leading captains of industry in São Paulo for whom a prominent member of the regime had formerly acted as lawyer. All informants agree that deLeuze was a "rotten egg," and that it would have been relatively easy to strip this capitalistic buccaneer of his ill-gotten gains through the normal processes of the penal law.

government did not want this fortune to fall to a foreigner, nor could civil justice be denied to a French subject. Consequently the Ministry of Justice resorted to the statute book and declared the entire estate in escheat to the state.⁷ But since, in terms of Brazilian jurisprudence, the confiscation of the property could not be performed by an act which was exclusively aimed at or coined for an individual case or person, the ingenious idea was hatched to disinherit under specified conditions *all* nephews. The estate of a person who dies *ab intestato*, having been a widower or a bachelor, and not leaving surviving ascendants, descendants, or brothers or sisters who are known, becomes what is known in Roman law a *hereditas jacens* (Art. 1). Unless such estate has not been claimed by the heirs within six months after the demise, the estate is declared vacant (*jacens*) (Art. 2) and is in escheat to the Union of Brazil (Art. 3, no. II). The decree is declared retroactive and applies to all cases pending at the date of promulgation. Thus all the provisions of this outwardly general law were made to fit the conditions of the individual case. It constitutes a rare specimen of administrative cynicism in flouting the principles of the rule of law.⁸

Seemingly in connection with the deLeuze affair is the appropriation or "incorporation," by the Union, of certain lines of the Brazilian railroad system in the southern states⁹ (São Paulo-Rio Grande network). The real background of this transaction could not be ascertained. It was averred that the army demanded the lines for strategic reasons. But others

⁷ D.L. no. 1,907 of Dec. 26, 1939 (*Coll.*, 1939, vol. VIII, p. 409), "on the *hereditas jacens*."

⁸ The real beneficiaries of the measure were the lawyers because people rushed to make their last wills. As explained above, the decree law did not apply to estates governed by testaments.

⁹ See D.L. no. 2,073 of Mar. 8, 1940 (*Coll.*, 1940, vol. I, p. 275), and D.L. no. 2,436 of July 22, 1940 (*DO* of July 23, 1940).

asserted that foreign ownership of industrial property was used as a pretext for camouflaging individual interests in which some men close to the government had a stake. Some points of the long preamble of the first of these decree laws justifying the government's action are illustrative of the policies: the enterprise is foreign in its origin and lives on foreign credit. The road is always in deficit and the government must cover the interest. The heavy indebtedness of the lines to the government for money advanced amounts to three million sterling. The government could not come to an understanding with the holders of the debentures, who are to a large extent speculators having acquired them at a low price to the detriment of the national economy. The debentures are too high (about 150 *milreis* [\$7.50]) in relation to their actual value. The shares have never been paid by the underwriters. Other financial irregularities have occurred. But since it is essential for the national interest to maintain and discharge the activities of these enterprises they must be taken over by agents of the public power. Consequently, the entire assets of the railroad lines and all their dependencies—such as the paper *A Noite*, the publishing firm *Rio Editorial* (evidently a holding company), and the real estate owned by the lines in Paraná and Santa Catarina, together with all affiliated enterprises and organizations—are “incorporated” into the patrimony of the Union. The charter of the road is revoked, claims for default of interest are excluded. The sum of 48,300 *contos* (about \$2,400,000) is to be deposited with the Bank of Brazil for indemnity to the holders of debentures.¹⁰ Confiscated was also the property belonging to the group of the southern rail-

¹⁰ This latter provision is not clarified. Did the holders of the 322,182 debentures actually receive the value of 150 *milreis* for each of them? The government had complained that the value was artificially inflated.

roads in the port of Rio de Janeiro.¹¹ All acts of the former administrators were considered as of bad faith and subject to civil and criminal sanctions as provided for in the laws (Art. 2). Holders of titles and claims against the company had to register them with the government administrator (superintendent) within one month under penalty of sequestration (Art. 3). No arrangement was made for legitimate creditors and debtors. The assets and values are said to have belonged in part to American banks. As mentioned above, the exact details of the case could not be verified by this writer.

The Split Personality of the Regime: Legality v. Arbitrariness

Most of the cases mentioned have one peculiar feature in common, namely, that in one way or other they have been referred to in the statute book. This procedure is so much in conflict with the practice in other authoritarian states that one is confronted by a puzzle. In European dictatorships the government, having committed an arbitrary act does not care to advertise it *urbi et orbi* by a specific frame of reference in the statute book. They use blanket powers granted them by enabling acts or similar sweeping delegations of powers; how they use them is a matter of adminis-

¹¹ See D.L. no. 2,966 of Jan. 21, 1941 (*DO* of Jan. 23, 1941), "incorporating into the patrimony of the Union of Brazil the existing assets of the Brazilian Railroad Company and the Port of Rio Company respectively." The grounds given for the compulsory transfer were that the corporation was constituted in the U.S.A. and involved "national interests"; that the corporation was in delay with payments due to its creditors; that the corporation had a fictitious and irregular character because it served as hiding place and depository of funds illegally withdrawn from the Brazilian Railroad Company; that the movement of funds was directed against the national interests of Brazil.

trative discretion which needs no justification in terms of explicit rules or provisions. The people, except those directly affected, do not even know what is going on. Here, however, all the acts committed were placed on the statute book over the signature of Campos. Why did he have the strange and almost exhibitionist urge of publicly confessing every deviation by the state from the code of normal behavior? It cannot be presumed that the lawyer in him prevailed so much over the psychologist that he believed an intrinsically arbitrary act could legalize itself by being disguised as a formal legislative enactment. With the exception of the *Windhoek* and the *Estado do São Paulo* cases there were, at least on the surface, no political implications. The measures were motivated by financial considerations—and some of those not even of particular magnitude—or served outright predatory objectives.

Legalism, a confirmed and conventional attitude of the Brazilian political mind, may be a contributory cause. But it does not explain fully the situation. Perhaps one is closer to the truth in assuming that the regime does *not want to be arbitrary or to act illegally*. It is seriously bent on maintaining the rule of law that is the equal and equitable treatment of all under identical circumstances. It does not want to place itself *hors de loi*. Individual discrimination, if it occurs, is neither planned nor habitual. But occasionally the government drifts into the no man's land of illegality and arbitrariness. If and when such individual cases have happened they are covered up—unsuccessfully for the expert—by the statute book. What befalls the regime—repeatedly though not frequently—is, as one keen informant described it, “*illégalité inorganique*,” that is, incidental, unintentional illegality which *ex post facto* has to be adjusted by a formal act.

Obviously it is here that one penetrates into the sociologi-

cal core of the regime. Authoritarian governments have a split personality. One half, which pertains to the routine of daily life, scrupulously adheres to the normalcy of the rule of law in the sense implied before. The other half is bound to act arbitrarily or illegally, under certain circumstances of political expediency called public policy. If such a situation arises the authoritarian government, in order to reach its political aim, cuts through the normalcy and sets it aside. It depends on the frequency and intensity of such conflicts between the "Normative" and the "Prerogative" State,¹² between normalcy and political expediency, whether a particular state is predominantly arbitrary or predominantly legal. In the last analysis the exercise of authoritarian government is a matter of self-restraint, and self-restraint in turn is a result of two factors—namely, the mental structure and the social heritage of the men in power, and the resistance of the people they have to overcome. The fundamental difference between the authoritarian and the constitutional state lies in the fact that in the latter the government under no circumstances—whatever politically compelling reasons it may adduce—is permitted by public opinion to act arbitrarily, that is beyond the pale of general rules determined before the action occurs.

The Vargas regime has committed acts which, from the viewpoint of democratic constitutionalism, are objectionable enough. It cannot be denied that collectively and individually they discredit it and blemish the record. But even the most hardened opponents of the regime have to admit that such violations of the rule of law as have occurred are neither numerous nor do they affect a large number of in-

¹² See, on the analogous situation in the Third Reich, Ernst Fraenkel, *The Dual State: A Contribution to the Theory of Dictatorship*, New York, 1941.

dividuals. They are incidentals of any authoritarian government but they are not sufficient in quantity and quality to stamp the regime as a whole as arbitrary. They do not touch the common man in his daily doings; his life goes on as before. One need only compare this situation with the complete transformation of daily life under European dictatorships in order to obtain a proper perspective of evaluation. Fascist governments are fundamentally arbitrary and illegal. In this sense Brazil under Vargas is not a Fascist state.

CHAPTER II

WHAT THE REGIME HAS DONE FOR BRAZIL

The bad marks chalked up against the regime are based largely on tangible and demonstrable evidence. But when it comes to assessing the benefits a government has bestowed on its people, no gadget has yet been invented to measure them accurately or even approximately. Much of what has been accomplished to the satisfaction of the majority of the people—and how could that be established beyond reasonable doubt?—may be attributable rather to auspicious circumstances than to the deliberate policies of the government. Redress of grievances of long standing, reform, progress, credited to the government by its eulogists, would have come anyway, so the opponents will contend. Judged on the basis of outward appearances alone all South American states have immensely advanced during the last decade. Uruguay—much poorer and smaller than Brazil—has reached a decidedly higher level of general civilization and comfort. Perhaps the specific form of government under which a nation happens to live is less important for achieving progress than our incessant efforts for functionally improving government may suggest. Until the outbreak of the second World War the totalitarian states of Germany and Russia were in a process of complete and rapid transformation; but one who had occasion to observe the scarcely less vast modernization of fundamentally democratic countries like Switzerland and Holland would not be inclined to

ascribe the advance to the peculiar political organization. Perhaps the climate of a period—whether progressive or stationary—transcends the peculiar form of government. Usually a people is stimulated by the law of imitation or the urge of emulation to rise to the civilizatory level arrived at elsewhere. A government may retard or accelerate the advance, but in the end there is no conclusive evidence that authoritarian governments are better promoters of progress although they have fewer restraints in removing obstacles. At any rate they are more capable of advertising what they have accomplished or are out to accomplish.

Change of Profile

Perhaps one way to evaluate the impact of the Vargas regime on the Brazilian people is the dialectic process; that is, to compare the general profile of the country as it presents itself now, with what it was before the regime took over. All observers—those actuated by hostility to the Vargas government no less than its supporters—are unanimously agreed that Brazil since 1930 has made tremendous strides forward. Shedding its nineteenth-century attire the country became modernized—as some old-timers say ruefully—beyond recognition. Under the onslaught of pick and shovel much of the “Austrian” charm has fallen a victim of streamlining. Rio’s delightful feudal mansions and aristocratic gardens are rapidly giving way to pretentious skyscrapers and hypermodern apartment houses. The old-world atmosphere of the streets and squares will be lost in a few years. Regulations for the protection of artistically valuable national patrimony exist, but they are no match for the soaring prices of real estate. Downtown Rio will soon be as dully monumentalized as the business districts of our newer cities. São Paulo,

busily sacrificing old quarters for wide new boulevards, vast park developments, and bold bridges swinging over the asphalt canyons, is in the throes of a large-scale transformation, outdoing Chicago. The building boom in Brazil, more often than not on a brittle financial basis, spreads to the remote sections of the land. To many it appears as a heavy mortgage on a high-living standard which is not attainable in the near future. Town planning has become almost an obsession. But judged by Belo Horizonte, which succeeded Ouro Preto in 1891 as the capital of Minas Geraes, the Brazilians know the business of modernizing their cities. It was planned on the blueprint to the last stone and the last tree before the first stone was set and the first tree was planted. It is one of the most fortunate examples of rational urbanization.

Economic Factors

Such outward changes, striking as they are, may mean very little. They may not even be symptomatic. Moreover, to credit them exclusively to the regime is probably more than unfair to the past. Nor can economic progress in general since 1930 be ascribed to the policies of the Vargas regime alone. Similarly, as the technical capacity of the Hitler machine is indebted to a large extent to the groundwork laid by the republic which overhauled Germany's industrial equipment, in many respects the Vargas regime has harvested what had been sown economically by the liberal era. Industrialization¹ was bound to come to a country

¹ Authentic information is available in the publications of one of Brazil's foremost industrialists who is an economist in his own right, Dr. Roberto Simonsen. See his *Brazil's Economic Evolution*, São Paulo (Escola Livre de Sociologia e Política), 1939, and *Crises, Finances and Industry*, São Paulo, 1930-31. Preston E. James, "Industrial Development in São Paulo State," *Economic Geography*, vol. XI, no. 3 (July, 1935), pp. 258 ff. Excellent information material is found also in the *Relatorios* of the Fed-

which scarcely one generation ago had begun to emerge from semifeudalism grounded in agriculture and slave work, once it had become conscious of the riches of its land and the abundance in subsoil wealth and minerals. Vargas rode into power on the crest of the depression wave of 1929-1930 which had depleted the purchasing and consuming power of Brazil's European market. Nonetheless imports of finished goods soared in inordinate proportion as compared with the export of raw materials. Brazil was compelled to bridge the gap in its balance of trade by increasing the purchasing power of the masses at home as well as by building up its own industrial capacity. Here lie the intrinsic reasons for the rapid industrialization of a heretofore mainly agricultural economy. Factories were created mainly in São Paulo, in the Federal District and in Rio Grande do Sul for manufacturing consumption goods otherwise imported from Europe. With British trade declining and the American imports restricted to capital goods and high-class specialties, Brazil's economy became for some time hooked to that of Nazi Germany. Since Hitler's economists twisted the bartering noose around his neck at will, the Brazilian merchant and businessman was none too happy about the rapidly rising figures of exports to and imports from Germany.

The second push forward to a better integrated economic equilibrium between agriculture and industry came with the second World War when European trade was sharply reduced by the British blockade and the lack of shipping room. We in the United States began to realize that the Good Neighbor Policy is reciprocal. Brazil turned to the United States for goods no longer obtainable from Europe, with

eração das Industrias do Estado de São Paulo, 1938, 1939, 1940. Official statistical material is offered by the publication *Brazil 1938* of the Serviço Grafico do Instituto Brasileiro de Geografia e Estatística, Rio de Janeiro, 1939.

some reluctance because American business methods are less elastic than those of the German, Italian, Czech, and Swiss manufacturer and less adapted to the individualized tastes of the Brazilian bourgeois classes. By 1941 the United States had forged ahead to the first place (about 60 per cent) of Brazilian imports and exports. Simultaneously the industrialization drive was intensified, this time, however, with more Brazilian than foreign capital, and it began to extend also to the production of capital goods. During 1941 the establishment of a steel industry on a vast scale got under way, centered on the largest single high-grade iron ore deposit in the world, the Itabari "mountain" in Minas Geraes.² However, for some time the economical operation of blast furnaces will be impeded by difficulties in communications—the "mountain" is in the midst of a wilderness—by the lack of good coal in the vicinity and in Brazil in general, and also by the scarcity of trained technicians. Modernization of the railroad line to the port of Victoria is under way. The regime gave much prominence to the efforts to create a national metallurgical industry, financed largely by Brazilian capital, with American help in machinery and technical experience.

Whatever may be the merits of the Vargas government in promoting national economic life—and at times the policies adopted amounted to a rough handling of the foreign creditors—the facts and figures imply that Brazil has moved into the position of the ranking economic power south of the Rio Grande and that it is about to pass Argentina, in the past South America's recognized political and economic leader. In the last decade Brazilian mineral production has increased

² See Preston E. James, "Itabari Iron," *Quarterly Journal of Inter-American Relations*, vol. I, no. 2 (Apr., 1939), p. 37. P. Monbeig, "A Industria metallurgica no Estado de Minas Geraes," *Geografia*, vol. II (1936), pp. 22 ff.

at least eight times even without considering the potentialities of the Itabari development. The industrial capacity has tripled, the textile output has risen threefold. The value of industrial production surpasses that of agriculture by 20 per cent and thus another predominantly agrarian country is being converted into an industrialized economy. Agriculture—although at present not more than 3 per cent of the arable land is cultivated—gives the world's largest supply of coffee, the second largest crop of cocoa, the third largest crop of corn; Brazil is fifth in cotton and in sugar, seventh in meat, and ninth in rice; and all this, if one believes the experts, is only the beginning. For a protracted war Brazilian mineral and agricultural resources may become invaluable to the United Nations; while these same riches, in addition to Brazil's strategical position, might tempt the Axis to invasion and conquest.

The Attitude of the Various Social Classes toward the Regime

A detailed description of the economic situation under the regime is beyond the scope of this study. The preceding remarks—based rather upon a field observation than upon the strength of statistics (government-made statistics anyway)—are to serve only as the background for attempting to present this writer's impression as to how the various social classes react toward the regime. After all, it is the attitude of the people who live under a political society, their contentedness or dissatisfaction, which establishes the record and, in the long run, decides the fate of a government. No objective device to measure the happiness of the people exists. What conclusions are submitted here are at best reasoned generalizations.

The regime has pursued successfully two seemingly conflicting or overlapping policies. One is the vigorous encouragement of national capitalization and the promotion of national enterprises, unfettered by state regimentation. The other is the fortunate co-ordination of the free play of private capitalism, with a progressive paternalism in social policies for the benefit of the laboring classes. To present these achievements in a nutshell: the economically most important groups, capital and labor, are, on the whole, satisfied with the existing social and political order; they are not desirous of any fundamental change. This is no mean accomplishment of a government in this period of violent social transformation.

The Regime and the Wealthy: The Businessman and the Entrepreneur

During its first years the Vargas regime was inclined to steer a more anticapitalistic course; but soon the wise policy was adopted of leaving business alone and not harassing it with nationalization or collectivization schemes. The hands-off attitude contributed to reconciling the economically most potent state of São Paulo³ to the regime more than might have been expected after the bitterness left by the defeat of 1932. Vargas himself is said to understand little of economics and personally he is not committed to any specific economic doctrine. What the well-oiled editorials of some papers write about a "directed economy" is ideological window dressing. The businessman can work in peace.

³ Within the borders of São Paulo more than 40 per cent of Brazil's industrial production is concentrated. The federal revenue coming from the state amounts to almost 50 per cent. The Antarctica Brewery in São Paulo, formerly German-owned but now thoroughly "nationalized," pays more taxes than each one of fifteen states. See Simonsen, *Brazil's Economic Evolution*, pp. 63 ff.

The government does what capital and business—not altogether identical because of wealth derived from landed property—want it to do, provided the policies do not run counter to that other prominent trend of the regime, solicitude for the laboring masses. In spite of much speculation about eventual “nationalization” relatively little large-scale experimentation in government ownership of national resources or their utilization by the government has materialized to date. There is also much less talk about “corporativism” than is habitual in other authoritarian states which use “corporative” ideologies as soporifics for the discarded political rights of the people. The manifold boards, councils, committees, commissions⁴ can scarcely be considered as significant demonstrations of an incipient corporative trend in economic life; their functions are mainly advisory and only to a small extent regulatory. The Brazilians are realists who do not believe in the mirage of state capitalism camouflaged as corporativism. Brazil under Vargas is one of the few lands remaining on the globe where a genuinely liberal climate of economic life prevails. The profit margin in both industrial and agricultural production is relatively large, partly because of the still very cheap living conditions, partly because of the deterioration of the currency which began with the National Revolution and showed no sign of abatement until very recently.⁵ Businessmen like to complain about the costs of the social services, which amount to about

⁴ See *supra*, pp. 82 ff.

⁵ Economists might find the correct explanation of the currency slump, which is contradictory to the fact that the gold reserves of the Bank of Brazil are on a slow though steady increase. The Bank of Brazil has a gold purchasing monopoly; gold is bought from the mines at a fixed price which is somewhat lower than the world market price. The largest gold mine—Ouro Velho in Minas Geraes—is British-owned; the others are in Brazilian hands. Their profits are small but regular. On the role of the gold mining in Brazil's economic development, see Preston E. James, *Latin America*, pp. 403 ff., 440 ff. This writer, through the courtesy

10 per cent of the annual employees wage sheet.⁶ But evidently they are bearable because of the profits in exports derived from the currency depreciation and because of the slowly rising purchasing power of the masses of consumers at home. The other complaint frequently ventilated in no uncertain terms refers to the appalling amount of bureaucratization and government control—"fiscalization"—through which a greedy state squeezes money from various and sundry victims.⁷ But the Administrative State whose advent in Brazil is so loudly heralded sails in the wake of an inflation in government personnel. The hordes of technically superfluous petty officials are a sort of substitute for the lacking government party; the more people the government keeps on its pay roll the more have a stake in the perpetuation of the existing political and social order.

Traditionally, the wealthy class of Brazil derives its income from agricultural sources. There are still huge *latifundia*, not unlike semifeudal duchies in size and administration; particularly in the less opened spaces of the vast country the owner of the *fazenda* is a political as well as a social and economic power. But the coffee and cotton aristocracy invested their profits in industry, and the men successful in business—the Crespi, Mattarazzo, Guinle, Simonsen—control today large tracts of land managed on a rationalized basis like industrial enterprises. The old landed nobility and the new aristocracy of entrepreneurs have merged. In spite of the battering which landed wealth took in a predomi-

of the Guimarães family, was able to see the gold mine of Minas de Pasagem in operation.

⁶ See Simonsen, *op. cit.*, p. 58.

⁷ As an illustration may be cited the report of the manager of a big hotel to this writer that the Ministry of Agriculture demanded from him an itemized statement of all the food he had used up during the past year. Even with an elaborate system of bookkeeping this could not be done *ex post facto*.

nantly one-crop economy, the landowners still form a disproportionately large group in the governing class; and they see to it that the regime abstains from taxing away the foundations of their power as has happened in Britain. They are part and parcel of the regime; Vargas has nothing to fear from them.

By economic liberalism prevailing within, Brazil benefits also foreign capital. But foreign business is not favored by the government. Under the nationalization drive its position has become more and more precarious. Economic nationalism under the slogan "Brazil for the Brazilians" is very popular among all classes. But for the time being it is tempered by political expediency because Brazil still needs foreign capital and foreign technical experience. The resentment is directed mainly against British capital—unjustified as these complaints about British economic dominance are, because the British helped greatly to develop the country and, on the whole, did not draw inordinately high returns from their enterprise and investment. Today it is American capital which flows freely into Brazil in the form of official and private loans. The interdependence of Brazilian and American economic interests will prevent, at least as long as we are copartners against the Axis, an intensification of the nationalization efforts. Had war not come, the restriction of foreign economic activity might, in the end, not be distinguishable from outright expropriation.

The Regime and the Masses: Labor and Farmer

The Urgency of Social Reform

As a rule it is none too difficult for an authoritarian regime to find support among the well-to-do classes by protecting

their vested property rights. Mussolini, Franco, and even Hitler in his early years of rule are cases in point. A much more arduous task is that of winning the sympathy of the nameless masses of the toilers in the workshops and on the farms. For this reason all modern dictators enter the stage as the friends of the forgotten man, as the protector of the underdog. Perhaps the most striking feature of present-day Brazil—and one that is universally admitted—is that Vargas personally and the regime in general are extremely popular among the laboring masses. Vargas has won the soul of the common man. Himself stemming politically from the liberal left and not belonging to the old ruling class, he succeeded in squaring the circle by keeping the wealthy in good humor and improving the lot of the poor. He accomplished this task not by *circenses* alone; the Brazilians are too realistic and he is far from being a spectacular showman. He offered them *panis*. Already in the early thirties a vast program of social reform was inaugurated; it was carried on, without the impediments of a bourgeois-minded parliament, after the inception of the *Estado Novo*. Responsible observers doubt whether Brazil, having scarcely emerged from a semifeudal economy, is ripe for the advanced social services which are uniformly superimposed upon an unevenly developed economic structure. The labor standards proclaimed by the regime are decidedly too high for the actual social level of the laboring masses. For the time being the garment of social paternalism is much too wide for the undersized body economic. Frequently, progressive social policies and economic liberalism seem incongruous. Be that as it may Vargas, by anticipating a situation in which private capitalism would have to yield to increasing pressure from the masses, took the wind out of the sails of a potential Communist movement and forestalled an eventual social revolution.

The trend toward social—or, some observers say, socialistic—reform is in line with what one observer⁸ aptly describes as “an easy receptivity on the part of law students who represent the majority of the governing class of the country, for all modern laws observed in more advanced world centers.” One may add that such an ambitious eclecticism, emanating from the reform-minded ministerial bureaucracy, is discernible also in other fields of governmental activities, with a resultant cleavage between the professed aims of official policy and their inadequate realization in daily life. Any casual visitor who, strolling away from the marble hotels, casinos, glittering show windows and race-courses, chances into the appalling quarters of the poor on the hills in Rio de Janeiro or into the slums of São Paulo, will encounter such misery that not even the tropical sun can romanticize it for him, let alone for the people who have to live in tin-can shacks and mud hovels. Living conditions in the interior are so primitive that the foreigner, with the glamor of the sophisticated residential sections of the big cities on the seashore still before his eyes, is prone to saddle the governing class of the present no less than of the past regimes with the gross neglect of the masses of a fine and decent people. In the rural districts⁹ shoes are commonly not available for the families of the agricultural laborer; clothes are of the cheapest cotton; dirt floors in the roughly made houses, nonexistent sanitary commodities, the scantiest and poorest furniture (if it is more than some pots and pans, wooden dishes, and a few pieces of miserable bedding), demonstrate that the most advanced social legislation, enacted in the faraway capital by well-meaning officials, is

⁸ Simonsen, *op. cit.*, p. 58.

⁹ A good sociological description of rural Brazil is found in Antonio Carneiro Leão, *Sociedade rural*, Rio de Janeiro, 1939. See also Oliveira Vianna, *Populações meridionaes do Brasil*, São Paulo, 1938.

utterly unable to raise the living standard of the poor. Brazil is about to embark on a drugstore civilization. What is needed, however, is one which is firmly grounded in the little red schoolhouse.

Labor Legislation

A detailed and critical analysis of the labor legislation cannot be submitted here.¹⁰ Nor can the summary which follows be implemented by personal observations on the actual effectiveness of the enactments in practice.

Before 1930 the laboring masses in Brazil had been serfs rather than free agents in a land which less than a generation ago had formally abandoned economic feudalism based on slavery. Immediately after the revolution of 1930 the Ministry of Labor was established.¹¹ The constitution of 1937, much more advanced in social thought than that elaborated by the bourgeois Constituent Assembly three years earlier, contains most of the social blueprints for the welfare of the masses which were in favor during the period between the two World Wars. The student of comparative public law cannot fail to notice the close resemblance of the section on the Economic Order (Art. 135-155) to the parallel provisions of the defunct Weimar constitution, which, inciden-

¹⁰ See Waldemar Falcão, *O Ministério do Trabalho: Realização integral do Governo Getúlio Vargas*, Rio de Janeiro (DIP), 1941. The author was the Minister of Labor until Dec. 29, 1941. It should be noted that Brazilian jurisprudence, under the impact of the social achievements of the *Estado Novo*, suddenly branched out into the field of social law. See, for instance, J. Cezarião, *Direito Social Brasileiro*, Rio de Janeiro, 1940; Albertino Moreira, *Direito Social*, São Paulo, 1940; Paulino Jacques, *Direito Novo*, São Paulo, 1940. A Congress on Social Law held in São Paulo in 1941 was conducted on an impressively high level and found full support by the Catholic hierarchy, which is in sympathy with the social aims of the government.

¹¹ Decree no. 19,433 of Nov. 26, 1930 (*Coll.*, 1930, vol. II, p. 40).

tally, in spite of its hapless career, is the direct linear ancestor of a progeny of similarly intended constitutions.

Labor Syndicates

The main provisions implemented by subsequent decree legislation are the following: Labor as a class has no political rights. Strikes and lockouts are forbidden (Art. 139) as "antisocial, harmful to labor and capital, and incompatible with the supreme interests of national production." However, the constitution provides (Art. 138) that "professional and syndical organization is free." But this generous statement is belied at once by the reservation that only such syndicates as are legally recognized by the state are considered to be the legal representatives of workers and employers who participate in a particular branch of production. Only those so designated can defend their rights before the state and the other professional associations; bargain collectively, with binding force on all their associates; levy contributions; exercise toward the members the functions assigned to such syndicates by the state. The system is closely patterned on the Italian precedent of state-regulated and state-controlled unions.¹² In accordance with these principles special decree laws regulate the organization of capital and labor.¹³ Recognition is granted, by the Ministry of Labor, on the condition—among others—that the syndicate include two thirds of the employers of the established enterprises, in a particular district, of a certain branch of

¹² See Arnold J. Zucher, in James T. Shotwell, *Governments of Continental Europe*, pp. 677 ff.

¹³ See D.L. no. 1,402 of July 5, 1939 (*Coll.*, 1939, vol. VI, p. 3), "regulating association in syndicates," and supplementary D.L.s. nos. 2,377 of July 8 and 2,381 of July 9, 1940 (*Coll.*, 1940, vol. V, pp. 19, 23); compare also the older D.L. no. 19,770 of Mar. 19, 1931 (*Coll.*, 1931, vol. I, p. 283) and no. 24,694 of July 12, 1934 (*Coll.*, 1934, vol. IV, pt. 2, p. 838).

business or production, or one third of the respective employees. The main functions of the syndicates are: to collaborate with the government for the furtherance of occupational solidarity; to promote the interests of the professions by creating co-operative and credit organizations; to maintain welfare institutions such as hospitals, schools, legal aid; to promote conciliation in labor disputes. The prerogatives of the syndicates are: to collaborate and to consult with the government in matters of occupational interest; to elaborate and sign collective contracts of work; to maintain employment agencies; to represent in general the syndicates before judicial and administrative authorities; to elect the officers of the syndicate. Dues are mandatory for all members employed in the same occupation; employers deduct membership fees from the pay checks.

As far as could be ascertained the syndical organization of capital and labor is still in an early stage of development. At present labor syndicates for some branches of employment—but not nearly for all—are formed on a local basis only; few regional federations of syndicates obtain. Nor has the National Economic Council, much advertised in the constitution of 1937 (Art. 57-63), been set on foot.¹⁴ The establishment of syndicates seems to be more advanced on the side of the employers than of the workers. The government is not overeager to encourage or to accelerate the process of syndicalization which might render the laboring masses more class-conscious and also constitute an organizational frame of radicalism. Least desirable is organization of the

¹⁴ It appears to be planned as somewhat similar to the Italian Chamber of Corporations; one-half of its members is to be elected by the workers' syndicates, one-half by the employers' groups, while the President of the Republic is empowered to "designate" three members for each of the five sections into which the Council is to be subdivided. The entire arrangement is kept in terms so vague that they clearly reveal the experimental character of the whole institution.

agrarian workers. Much of the syndical legislation is still on paper. Organized labor, therefore, is at present politically not important.¹⁵

The system as planned and what little of it has been realized is governed by strict and uncompromising paternalism and leaves no room for a future development of an independent labor movement. Spokesmen of the regime assert that labor does not need political representation and self-determination because the state takes full care of legitimate labor interests. One may well argue that, in the long run, authoritarian tutelage will dry out the natural blood circulation of labor as an autonomous factor of economic life. On the other hand, serious labor troubles have not occurred under the regime. The relations between management and labor are described as satisfactory. In labor disputes foreign-owned corporations occasionally complain of the prolabor bias of the labor authorities, another compelling reason why the regime is popular with the masses.

Minimum Wages

The masses care very little about unionization and collective labor rights. The essential fact is that for the last few

¹⁵ Some figures may illustrate the situation as it existed by the end of 1940; they are taken from Waldemar Falcão, *op. cit.*, pp. 12 ff., and may be considered as authentic.

	<i>Number of syndicates</i>	<i>Number of members</i>
Employees	1,149	351,574
Employers	999	24,423
Liberal professions	123	10,252
Others	83	2,895
	<u>2,354</u>	<u>389,144</u>

On the higher regional level of organization existed 22 "federations" and 12 "unions" of management and labor respectively. Only the employers were affiliated on a nation-wide basis in the National Confederation of Industry. No corresponding organization for labor has been formed. With

years they have a little—a very little—more money and that social services are convincing testimony of the solicitude of the regime for them. The principal benefit bestowed on working classes is the establishment of a minimum wage standard (*salario minimo*) governing the remuneration to be paid by the employers to their employees. The minimum wage had been enacted already by the parliament in 1937;¹⁶ it was restated in the constitution of 1937 (Art. 137(h)) and subsequently implemented by decree legislation.¹⁷ It is to satisfy the needs of the employees for food, housing, clothing, hygiene, and transportation. This last item is one of the serious difficulties in the crammed metropolitan areas of Rio and São Paulo; many employees have to spend daily between three and five hours on incredibly overcrowded trains, buses, trolleys. Subways are planned but have not yet been begun. Transportation is very cheap but the long hours wasted on the way to and from work sap the strength of the worker.¹⁸ The minimum wage is determined in each state by special commissions¹⁹ under the control of the Ministry

the millions of working people, evidently only a relatively small fraction of them found their way into associations and syndicates.

¹⁶ Law no. 185 of Jan. 14, 1936 (*DO* of Jan. 21, 1936).

¹⁷ D.L. no. 399 of Apr. 30, 1938 (*DO* of May 4, 1938).

¹⁸ The *sabado Ingles*—no work on Saturday afternoon—is generally observed. Some of the foreign corporations close all Saturday in order to save their employees the chore of traveling to the office for only a few hours. In order to alleviate the hardship of the workers in going home for lunch—this explains, together with the climate, the long lunch hours from 12 to 3—the federal government made mandatory the establishment of restaurants in plants and enterprises having more than five hundred workers (D.L. no. 1,238 of May 2, 1939 [*Coll.*, 1939, vol. IV, p. 138]). To date the law has been enforced mainly against the foreign corporations in São Paulo, such as General Motors, Goodyear, Telephone Company, and “Light and Power” in Rio.

¹⁹ The technical details of these commissions which undertook the enormous work of collecting the statistical data for the establishment of the minimum wages in all territorial districts of Brazil, are found in D.L. no. 399 of April 30, 1938 (*DO* of May 4, 1938). The final tabulation is

of Labor. The scales are graduated according to the general living costs in each state and again within each state adjusted to those prevailing in certain areas (large cities—the most expensive—smaller towns, rural districts, etc.). In almost every single case the fixing of the rate was a most intricate problem and gave rise to bitter controversies between the representatives of labor and of management on the various commissions. The latter resisted to the utmost a regulation which was to become a serious drain on the profit margin, whereas labor could refer with justification to the constantly rising living costs, especially of the staple food of rice and beans, the invariable fare of the majority of the lower classes. The government, however, insisted on securing at least a modicum of a living wage for the workers. Yet to the foreigner it is a miracle how people can live on it. At present the rate is generally between 160\$000 and 240\$000 (\$8 and \$12) a month, the latter amount prevailing in the Federal District; in São Paulo it is generally 200\$000.²⁰ Inadequate as this minimum wage is, it is more than the average wage earner had before and the working man appreciates it deeply as one of the most tangible gifts of the regime. Normally a family can subsist on such wages only by enduring the poorest of food and by seeking some sort of employment also for the children. Numerous employees have two jobs. Although the purchasing power of the masses is slowly rising the living standard of the common people is still very low. The cleavage between the wealthy and the poor is wider

contained in D.L. no. 2,162 of May 1, 1940 (*Coll.*, 1940, vol. III, p. 77), which constitutes practically a *Carta di Lavoro* for the Brazilian worker and was duly celebrated by a mass demonstration in Rio on the day of its introduction.

²⁰ It should be noted that in the high-class hotels in Rio or São Paulo the daily rate for board and lodging is between 80\$000 and 100\$000—that is, about four to five dollars; in middle-class hotels it is between 25\$000 and 40\$000—that is, about \$1.25 to \$2.00.

than in countries with less natural riches though with a more evenly developed economy. Evasion of the "minimum" law by the employers, at least in the larger towns and in enterprises with a considerable number of employees, is not possible owing to the severe control. But if a small employer cannot afford the rate he just fires the employee. The law is not applicable to rural areas. But the soil is so rich, the harvests so plentiful, that in this happy land nobody starves. Nor is the scourge of unemployment known under economic conditions resembling in many ways the frontier age in the United States.

The crucial defect in the economic life of the Brazilian masses remains in the low level of alimentation and sanitation. It must be admitted that much has been achieved in the battle against yellow fever, once devastating Rio de Janeiro, which has been fought successfully by the Oswaldo Cruz Institute with the help of the Rockefeller Foundation. More recently also malaria and the widespread venereal diseases are the objectives of educational campaigns and health drives. The most terrible scourge, however, of the masses is tuberculosis which accounts to a large extent for the high rate of mortality in Brazil. Only when the nourishment of the majority of the population has been improved—which, in turn, is dependent on an increased purchasing power of the mass of the consumers—will the earthly paradise which is Brazil be inhabited by a more healthful people. The foreigner is frequently struck by the sickly and emaciated appearance of the common people.²¹

²¹ See Josué de Castro, *A alimentação Brasileira a luz de geografia humana*, Porto Alegre, 1937, and numerous articles in the *Boletim do Ministerio do Trabalho, Industria e Commercio*, 1937, quoted by S. Putnam, "The Vargas Dictatorship in Brazil," *Science and Society*, vol. 5 (1941), p. 102, note 20.

Social Services

The regime successfully inaugurated the policy of improving and modernizing labor conditions in general. Of the long list of such advanced reform measures only the following may be mentioned here briefly: ²² annual paid vacations of one to two weeks; assistance to pregnant women (leave of absence with half the wages for six weeks before and after confinement); insurance of employees against accidents during working hours to be paid by the employers; ²³ prohibition of dismissal of employees without indemnity except for just cause, supervised by the authorities instituted for the administration of Labor Justice. The indemnity is calculated according to the length of employment, that is, one month's salary for each completed year of service. To dismiss employees with more than ten years of service is almost impossible and has to be fully justified before the supervising authorities.²⁴ Since in Brazil small and middle-sized enterprises are the rule—many of the undertakings are still in the hands of the family which founded them—and since large anonymous corporations are the exception, the provision is less burdensome than may appear at first sight. A good deal of feudal paternalism still survives; it corresponds to the Brazilian traits of tolerance and neighborly affection. Between employers and workers there remains still much of the benevolent relationship of master and servant, and submissiveness is as alien to the employee as overbearance is to the employer. All are permeated by an inimita-

²² See R. Simonsen, *op. cit.*, pp. 56 ff.

²³ Workmen compensation had existed since 1919; the new regulation is found in Decree no. 24,637 of July 10, 1934 (*Coll.*, 1934, vol. IV, pt. 1, p. 614).

²⁴ The principle was introduced by an act of Congress in 1935; see Law no. 62 of June 5, 1935 (*Coll.*, 1935, vol. IV, p. 164).

ble sense of human dignity. Industrial working hours are fixed at forty-eight maximum weekly; for additional hours, overtime has to be paid. Higher wages (10 to 25 per cent more) and better working conditions apply to industries classified by the Ministry of Labor as unhealthful.²⁵ Child labor is permitted only for the ages between fourteen and eighteen.²⁶ The employers are bound to promote elementary education of illiterate children of their employees.²⁷ Retirement and pensions for overaged and for disabled workers are provided for.²⁸ All workers with the exception of those in agriculture and in domestic service must be members of

²⁵ The basic regulation is contained now in D.L. no. 2,308 of June 13, 1940 (*Coll.*, 1940, vol. III, p. 330).

²⁶ See the older Decrees nos. 21,417A and 22,042 of May 7, Nov. 3, 1932 (*Coll.*, 1932, vol. II, p. 289, and vol. V, p. 10). The latest is D.L. no. 3,616 of Sept. 13, 1941 (*DO* of Sept. 16 and 22, 1941), "on the protection of the work of children and minors."

²⁷ See D.L. no. 1,238 of May 1, 1939 (*Coll.*, 1939, vol. IV, p. 138), and *Regolamento* by Decree no. 6,029 of July 26, 1940 (*Coll.*, 1940, vol. VI, pt. 1, p. 334).

²⁸ The details of this vast substance matter of social security cannot be discussed here; see W. Falcão, *op. cit.*, pp. 28 ff. The system developed haphazardly and evidently without planning, but is now well integrated. It is by no means an invention of the Vargas regime since social insurance for individual categories of employees had existed already under the Republic. After 1930, one by one, social security institutes were created for the public utilities under state control—the merchant marine, banks, commerce, the workers in coffee storehouses, and others; State functionaries were included by D.L. no. 288 of Feb. 28, 1938 (*Coll.*, 1938, vol. I, p. 194). An act of Congress (Law no. 367 of Dec. 31, 1936 [*Coll.*, 1936, vol. IV, pt. 1, p. 1141]) extended social security generally to industrial labor. The entire legislation was consolidated by D.L. no. 627 of Aug. 18, 1938 (*Coll.*, 1938, vol. III, p. 154), and D.L. no. 1,129 of Mar. 2, 1939 (*Coll.*, 1939, vol. II, p. 88). The number of those benefiting from social security, and the amount of contributions and capital of the various *Caixas*, is impressive. By the end of 1940 there existed in all Brazil 97 different Institutes of Retirement and Pensions. In 1939 the number of insured members was 1,835,916; by that time 26,727 had been in receipt of retirement payments and 53,917 in receipt of old-age pensions. On Jan. 1, 1940, a net surplus of receipts over payments to insured persons amounted to almost 400,000 *contos* of *reis*, that is about twenty million dollars. This figure is remarkable for a country relatively poor in capital.

the Retirement and Pensions Institutes to which they contribute 3 to 5 per cent of their wages; the same amount is paid by the employer and in certain cases the federal government grants subsidies. Such institutes exist at present for various—not yet all—professions such as banking, trade, transportation, insurance, industry, and government functionaries. As a rule they are administered regionally, under state directorates appointed by the Minister of Labor and under observance of standards laid down by the federal government. In addition an increasing number of larger enterprises, especially the public utilities, have local *Caixas de aposentadorias e pensões*, that is, old-age insurance and retirement funds supported by the company and under general government supervision. Efforts to improve the housing conditions of the laboring masses have thus far been largely ineffective because the rapacious profit making in real estate by the vested landlord rights could not yet be eliminated; the slum quarters of Rio, São Paulo (*cortiço*), or Recife (*macambo*), are among the most revolting evidences of human neglect anywhere. Although the Interventors devote some efforts to this problem, the fact that the exploitation of the poor has not been remedied is one of the glaring sins of omission of the regime. But those who know the tenement slums of the East Side in New York, or in Chicago may perhaps be reluctant to accuse. Recently some of the industrial corporations have begun to build houses for their workers with better sanitary conditions and reasonable rents. On the whole private capitalism has not shirked its duties toward its employees, and the foreign corporations are setting a good example. Nevertheless the living standards of labor are still deplorably low.

Social legislation is supervised and enforced by the Ministry of Labor, under the leadership, until the end of 1941, of

an exceptionally able and progressive man, Doctor Walde-
mar Falcão, a former professor of law.²⁹ For the purposes
of centralized administration one inspectorate, under the
National Department of Labor, serves in each of the twenty
states and one in the Federal District, with an efficient staff
of its own inspectors, called *fiscaes*. But a good deal of over-
lapping and duplicating exists owing to the state Depart-
ments of Labor, which in many respects demonstrate the
advantages of decentralized administration on a regional or
even local basis. It is generally admitted that the social serv-
ices are well handled, by capable and socially inclined of-
ficials. The employers collaborate because they realize that
in the long run contented workers work better and more
than socially oppressed men. The situation varies in each
state considerably and becomes less satisfactory in remote
sections where the enforcement of social legislation is much
dependent on the good will and the social insight of employ-
ers and officials.

Labor Justice

Finally, the government created an elaborate system of
Labor Justice,³⁰ which, however, was not fully organized

²⁹ He was replaced, on Dec. 30, 1941, by Marcondes Filho, scion of an old Paulista family and one of the prominent lawyers of his state, with a distinguished career as parliamentarian, public official, practicing attorney, and legal writer.

³⁰ D.L. no. 1,237 of May 2, 1939 (*DO* of May 8, 1939). Efforts to compensate for the outlawed strikes and lockouts by a system of Labor Justice date from 1932 when, by Decree no. 21,396 of May 12, 1932 (*Coll.*, 1932, vol. II, p. 260), the first (municipal) Mixed Commissions of Conciliation were introduced. Decree no. 22,132 of Nov. 25, 1932 (*Coll.*, 1932, vol. V, p. 265), provided a single instance only for the decision of individual labor controversies. The final regulation is D.L. no. 1,237 of May 2, 1939 (*DO* of May 8, 1939), with modifications of D.L. no. 2,851 of Dec. 10, 1940 (*Coll.*, 1940, vol. VII, p. 266).

until the spring of 1941 when, with appropriate celebrations, it was inaugurated as the crowning piece of Brazilian social reform. It establishes labor courts under professional judges (*juntas de conciliação e julgamento*) in all districts where they are needed. The local boards are appointed by the Ministry of Labor from among representatives of both employers and employees; where available and convenient, officials of the syndicates are enlisted for this function. A hierarchical system of superior labor courts is installed. For the purpose the territory is divided into eight regions.³¹ As the apex of the Labor Justice pyramid, the *Conselho Nacional de Trabalho* functions as the Supreme Labor Court. In exceptional cases the Minister of Labor with his legal advisers (*procuradores*) has the last word. The details of this act of one hundred and ten articles deserve a closer study than can be undertaken here. Suffice it to state that, by virtue of this act, Brazil possesses a full-fledged system of labor justice, separated from the ordinary courts, for all disputes of individual and collective nature which involve labor and employment, and that the agencies of the state, no less than private persons, are bound by its decisions. At the same time the labor courts serve as a check on administrative discretion and place the entire system of labor relations on the basis of the established principles of the rule of law. For a reasoned evaluation of how the system operates in practice the available material is not yet sufficient.

Farm Legislation

For the completion of this perfunctory survey of what the regime tries to do for the various working classes, some

³¹ Evidently the drafters of the act were aware of the corresponding legislation in Republican and National Socialist Germany, where likewise

final remarks on the farm legislation may be added here. In spite of the rising value of the industrial production, present-day Brazil is still a predominantly agricultural country when one considers the numbers of persons employed. A rapidly increasing population of at present between forty-eight and fifty million people has to be fed. Brazil's, in reality, unlimited agricultural resources are only partly developed. The soil grows practically everything.³² There is an abundance of tropical products such as bananas, citrus fruits, mamona, and pineapples, coffee, cocoa, tea, as well as of sugar, rice, cotton, tobacco, in addition to vegetables, potatoes, and wheat. Wheat, formerly largely imported from Argentina, is now cultivated on a large scale in the southern states with temperate climate and recently also in São Paulo. Even a very drinkable wine is produced for which one is indebted to the German and Italian settlers in the south; it is somewhat similar to light types of Moselle or Alsatian wines. Much effort is devoted to developing better agricultural methods through scientific research in agricultural biochemistry. The federal Ministry of Agriculture shares the credit with numerous state institutions. The National Coffee Institute, with its model research institution in Campinas in the state of São Paulo, and the Institute of Vegetable Biology in the Botanical Garden in Rio enjoy deservedly international reputations. All visitors to Brazil know the famous snake farm in Butantan near São Paulo which distributes antitoxin serum free of charge to all municipalities and thus has reduced death from snake bite to a minimum. The reforestation services of the government (*horta florestal*), some

the jurisdictional districts of the labor authorities (Trustees of Labor) do not coincide with the traditional territorial subdivision.

³² See *Brazil 1938*, pp. 91-191.

of whose officials were trained in Germany, do excellent work.

Co-operatives are still in the process of development because agricultural education is necessarily slow and spotty.³³ The process of subdividing the *latifundia* has been accelerated since 1930 but is far from being actually effective. Perhaps this is less regrettable than it may be elsewhere because the educational prerequisites for independent peasants on middle-sized farms are lacking, and without vast financial subsidies of the state no large-scale land reform could be undertaken. However, considerable efforts are made in the field of internal colonization; all colonial centers, mainly established on former state land, are now under the supervision of the Ministry of Agriculture,³⁴ thus eliminating the exploitation of the settlers by unscrupulous land speculators. Tax exemptions are granted to newly developed farms and to small agricultural holdings.³⁵ As in all underdeveloped agrarian areas the crucial problem is that of agricultural credit. Although an older act³⁶ had reduced the interest rates for agricultural mortgages and loans to 8 per cent, the Bank of Brazil is sharply criticized because it still charges between 10 and 12 per cent for crop financing. It is perhaps fair to say that in the matter of agrarian reform the improvements by the Vargas regime are least spectacular and that much, very much, remains to be done before agricultural development catches up with industrial progress. The situation is intimately related to the little red schoolhouse. With-

³³ See D.L. no. 581 of Aug. 1, 1938 (*Coll.*, 1938, vol. III, p. 68), which prescribes registration of all existing co-operatives. In 1940 there were some 900 with about 125,000 members, a relatively low figure.

³⁴ D.L. no. 2,009 of Feb. 9, 1940 (*Coll.*, 1940, vol. I, p. 73).

³⁵ See constitution of 1937 Art. 23 no. I(d) which allows exceptions for the small producer from the sales and transfer taxes levied by the states.

³⁶ D.L. no. 22,626 of Apr. 7, 1933 (*Coll.*, 1933, vol. II, p. 19).

out extensive education of the rural masses no lasting progress can be achieved. And the sophisticated lawyers in the central offices of the ministries seem environmentally less interested in agrarian than industrial problems.

The Family

Another important aspect of social reform is the tutelage over the family assumed by the state in the constitution (Art. 124-129). Here the regime touches a cord to which every Brazilian will readily respond. The family always has been and still is the very core of the social life of the community and not even the advanced urbanization of the educated classes could in any way affect this impregnable tradition. As a means of preserving the fountainhead of national strength the government provided protection of maternity and children on a federal basis.³⁷ The National Department of Children was organized in affiliation with the Minister of Education. The Brazilian Youth Organization took charge of the civic and physical education of youth in the interest of *puericultura*.³⁸ Finally, in 1941, a comprehensive act "organizing the protection of the family"³⁹ gave more concrete directions to the general program and made it workable by financial support. In addition to some modifications of the rather rigid and conservative civil code on domestic relations the act envisages numerous legal, financial, and social favors and benefits for the poor and indigent families such as loans by public institutions of social character (economic savings banks and pension institutes) and for indigent couples desiring to marry (Art. 8-11). State aid encouraging

³⁷ See D.L. no. 2,024 of Feb. 17, 1940 (*Coll.*, 1940, vol. I, p. 98).

³⁸ See Art. 131 of the Constitution and *supra*, pp. 304 ff.

³⁹ D.L. no. 3,200 of Apr. 19, 1941 (*DO* of Apr. 19, 1941).

early marriage was inaugurated first in Republican Germany and taken over by most authoritarian states. Further provided for are loans to married couples with children (Art. 12) and to destitute families with numerous progeny (Art. 30); improvement of the legal and social status of illegitimate children (Art. 13-16); educational benefits for families with many children (Art. 24, 25); every recreational or sportive association which enjoys public assistance is obligated to admit, at the rate of one to twenty of its members, a child from a penniless family with many children free of charge (Art. 31). The act as a whole is a bold cut into the conventional prejudices of social relations, with the intent to grant official support and social recognition to all deserving young people. If properly executed the act is a genuine piece of social democracy and will help to loosen up the unpliant system of social stratification.

Those Who Are Discontented

A generalizing statement on the adhesion of the people to the regime is at best hazardous. Yet presumptuous as it may be on the part of a foreigner whose personal knowledge and powers of observation are necessarily limited, he cannot but come to the conclusion that the bulk of the people are in favor of the regime. Perhaps by way of a modification one may say that obviously no class as a whole is basically averse to it. Most of all the common people feel little if any political pressure. They live on as before, their personal life is affected by the government only in that they have a little more money to earn and to spend, that somewhat better opportunities for educating their children exist, that they partake of tangible social advances. That Brazil under Vargas does not live up to the postulate of govern-

ment by the people does not cause them deep grief. During the liberal era his participation in politics through the polls and otherwise, meager as it was, did not help much the man in the street personally. Now he is told to keep out of politics and he does not seem to miss them. Support of the regime is wholly unemotional; its existence, achievements, and failures are accepted as a matter of fact and with a good deal of common sense. There is no state mysticism as in Germany or in the early days of Fascism in Italy. Nor can it be said that, considering the general climate of optimism which prevails anyway in Brazil, the regime has noticeably galvanized mind and soul of its people. Fanaticism does not go well with Brazilian irony and tolerance. To sum up: the regime rests on a broad, a very broad basis of popular acceptance, perhaps as broad as in most democracies where the opposition is bitter against the group in power for the sake of opposition. Brazil under Vargas is indeed Vargas's Brazil.

Yet there is ample evidence of dissatisfaction, of unspecified grumbling as well as of very definite complaints. There is no use denying that a political malaise is widespread among many intellectuals and in the bourgeois layers. Exception is taken to specific measures of the regime and to its atmosphere in general. Such complaints when vented by businessmen refer to the overbureaucratization and to certain economic policies; others rail against nepotism, current inefficiency, and venality of government personnel. Discontent is most outspoken in São Paulo, traditional stronghold of liberal constitutionalism, but it is encountered also in Minas Geraes and notably in the south. In general the popularity of the regime decreases in proportion to the distance from the capital. Dissatisfaction with general political conditions is latent even among otherwise loyal officials and members of the governing class. In fact most of them are at

heart liberal and democratic. An authoritarian regime which disdains rigid regimentation of public opinion leaves room for dialectics. The terms "disciplined democracy" and "Administrative State" so much in use by official propaganda, are a dialectic camouflage of the profoundly liberal current underneath. The nostalgic desire for the return to genuinely democratic forms of government persists. This applies to internal as well as to foreign policy. Deeply affected by the fall of France, the intellectuals and the bourgeoisie were unswervingly faithful to the cause of the Democracies, even in the dark days of one-sided neutrality in 1940 and 1941 when the pro-Axis wing of the government strove hard to line up Brazil with the Axis.

What the liberals complain of is that they cannot partake in their government except on conditions set by the regime. They resent the self-ordained infallibility of the governing group whose shortcomings are a public secret. They object to being barred from their legitimate share in the responsibility if not in the spoils. To many independent minds even a benevolent dictatorship is a *capitis diminutio*, undignified for a country so proud of its unbroken tradition of constitutionalism in the past. As one informant, a prominent man in the service of the regime and thoroughly loyal to it, phrased it neatly, "We have won order and tranquillity but we have lost liberty." Few are those who, by changing the sequence of values in this phrase, prefer the former to the latter. What weighs heavily on the minds of the responsible people is the unpredictability of a political order not firmly grounded in the rule of law. The oblique notion of the "interest of the state" as interpreted by an irresponsible bureaucracy casts its dark shadow over the entire realm of the "Administrative State." For a liberal lawyer—and Brazil is sociologically a lawyer's land as our civilization is typified

by the businessman—the manner in which the regime deals with the courts and molds the law in accordance with political expediency is frankly exasperating. All this does not imply hostility let alone active opposition to the regime. But it contributes to the climate of political uneasiness which one cannot fail to encounter once the thin veneer of “All quiet on the internal front” has been rubbed off. Perhaps Oswaldo Aranha—himself a *ci-devant* liberal and a genuine democrat—gave an apt estimate of the situation to this writer when he declared that nations today are confronted by the choice between liberty and equality, and that the regime has chosen equality. Equality the regime has successfully striven to achieve. Among the Brazilians personality and human values count for more than money or social distinction, and the regime has given a chance of collaboration to everybody who is willing to do so. To a foreigner this sounds rather cryptic considering that Brazil is after all still an oligarchy though one rooted in a solidly democratic foundation. The gist of it is that the dictatorship cannot obliterate liberal tradition. In view of a future world order it is comforting to know that a nation which in the past has enjoyed liberal constitutionalism will not easily forget it.

The Plebiscite Again

It is surprising how much people speak of the plebiscite as envisaged by the constitution (Art. 187). On its occurrence and outcome hinges the normalization of the present paradoxical situation of two constitutions packed into one document. For four years and more the government has failed to keep its promise; the people know that Vargas has absolutely no intention of holding the plebiscite in the near or distant future, and certainly not while Brazil is close to or

at war. Its inclusion in the constitution was meant as a perfunctory bow to the plebiscitary basis of all authoritarian government; it was a sort of bait dangled before the eyes of political nominalists who insist on taking democracy literally.

On this subject Minister Campos was frank to the point of bluntness toward this writer. He considers the plebiscite merely as a decorative ingredient without any practical significance. He did not conceal his knowledge of contemporary applications: plebiscites are won by those who manipulate them. As a shrewd psychologist he added that rarely are the people duped but that those who manipulate it are easily induced to believe in the truth of the procedure once they see before them the figures in black and white. What he added in this connection about the intellectual honesty of one or the other of contemporary dictators—outside of Brazil—was so uncomplimentary that it must remain this writer's secret.

However, for many responsible people the plebiscite is much more than an empty promise dictated by opportunism. It has become a sort of democratic charm to which the liberals cling although they know well enough that the regime would win it by a vast majority if it had been held in the past or were held now, even if, in preparation of the popular vote, the freedom of public opinion were fully restored. In São Paulo the demand for elections is almost universal among the intellectuals and surprisingly enough it is also voiced by common people. Though well aware that the government would win them hands down they claim them as at least a token payment of democracy, a symbol of political freedom. Possible figures of the outcome are imaginary and vary when quoted. They would be lowest in São Paulo, but still substantial enough for a convincing victory

of the government. If elections were held for a new Constituent Assembly or the parliament as provided for by the constitution, a government-sponsored party or the government-supported candidates would without fail obtain the majority. Without exception all informants, opposition or not, are agreed on this point. But at least, it is argued, a number of independent men would gain seats and thus have an opportunity to bring the grievances against abuses of the regime before the nation. There is no doubt that if held now, after the alliance with the United Nations, the plebiscite would result in an overwhelming vote of confidence for Vargas, without the need of manipulating the procedure or doctoring the figures. Those who demand the plebiscite are exactly those who are the most ardent supporters of the cause of the United Nations.

However, it may well be that the ghost of the plebiscite which hovers over outwardly placid political life today as a remnant of the past will spring into life one day after the war if Brazil has picked the right winner. It may prove its usefulness as the stamp of legitimacy on what has existed only as a factual situation in the past. It will constitute the grand Act of Indemnity for the regime which legalizes itself to its people and to the outside world. Moreover, the plebiscite may well become the prerequisite for obtaining the membership card in the coming club of the democratic nations. If Brazil under Vargas's leadership should be on the winning side in this war the Brazilian people would give him enthusiastically that endorsement by plebiscite which he wants. On the other hand, should the Axis invade Brazil—with a well-timed rebellion of the Germans in the south—no manipulated plebiscite would help him. In his place a *Gauleiter* from among his most disloyal Teuto-Brazilian subjects would head the Brazilian puppet government. Var-

gas is safe if the democracies win the war. The totalitarians would not let him stay on even as their satellite. And to believe that the proud man would accept the position of an Axis bootlicker is an insult to him. The die was cast at the Rio de Janeiro Conference.

CHAPTER III

GETULIO VARGAS

Portrait of a Leader

It may sound a truism, but (the greatest asset of the regime is Getulio Vargas himself.) The decisive impression the foreign visitor gains in Brazil is how unequivocally well-disposed the Brazilians in all layers of the population are toward the man who Atlaslike carries the regime on his shoulders. As in most South American states, (the dictatorship is personalistic in character.) In that, it is altogether different from the European totalitarian pattern. (No government party protects it, no coercive ideology supports it.) (The regime rests on no visible props, except the army; it is based on the popularity of one man alone.)

(It is true that the armed forces helped him into the saddle. Nor could he hold power without their continued support.) Brazil is a Latin-American state in which *pronunciamentos* and military juntas flourish. (He did all in his power to keep the army and navy leaders in good humor, by increased salaries for the officers and men, by heaping prestige on the military establishment,) and by acceding to the political influence it was able to exact. Much more than in other South American states the Brazilian army is a separate caste, not dissimilar to the position of the military in France. It is a sort of professional nobility which jealously guards its privileged position and does not easily brook interference even by the powerful head of the government. Frequently

enough the generals took matters into their own hands, at times forcing his hand. But after what probably was the most difficult task of his career, Vargas overcame the political ascendancy of the armed forces. When he appointed, in January, 1941, a civilian, J. P. Salgado Filho, to head the newly established Ministry of Air, it was the symbol of the victory of civilian government over the military caste. But the armed forces are anything but democratic. They are certainly ardent patriots—at least many of them; but military success holds an understandable spell for them and military successes of the Axis close to Brazil might well spell Vargas's doom. When, at the Rio de Janeiro Conference, he cast Brazil's lot with the United Nations, it was a leap in the dark. Nobody can foretell what the hidden totalitarians among the generals will do in case of a successful landing of the Axis on Brazilian soil; it is perhaps better not to harbor too many illusions about the loyalty of some of the Brazilian leaders to the cause of democracy, who may pay lip service now but do not feel the beat of the heart for it.

(On Vargas's personal vocation as a leader not a single dissenting voice can be heard.¹) Knowing Latin-American habits one need not make much of the fact that everybody calls him by his first name. The members of the opposition no less than the horde on the bandwagon praise his quickly grasping intelligence, his common sense in evaluating realities, his administrative ability—he is a hard working bureaucrat with extremely methodical organizing habits. (They admire his silent tenacity, his devotion to and knowledge of administrative technique; for these are rare qualities among modern statesmen, and in no wise conform to the melodramatic pattern of the present-day dictator) It was the great

¹ John Gunther's description of the man Vargas (*Inside Latin America*, pp. 350 ff.) is little more than brilliant journalism.

Swiss prophet of the coming cataclysm, Jakob Burckhardt,² who predicted two generations ago the age of the "*simplificateurs terribles*." Vargas is not one of them: his formulas are no emotional simplification and he realizes that visionary speculation never can supplant the honest devotion to administrative routine. (That he is the shrewdest of politicians, with a Machiavellian touch,) goes without saying. It is the heritage of his Latin descent and environment. (His favorite technique consists in quietly letting conflicting opinions come to a deadlock and then solving it by an unchallengeable decision.) (He is an opportunist, equally remote from preconceived doctrinairism and from nebulous political ideologies. The regime has no theory except that of eclectic realism.) This explains sufficiently why some interviewers—with whom this writer does not agree—call him enigmatic; an opportunist does not readily commit himself.)

Vargas does not evoke strong emotional responses in his people.³ He has little mystical appeal or "*charisma*." He has given ample proof of cold-blooded personal courage. But Vargas and the Brazilian people do not lend themselves to heroworship. Vargas is neither a vegetarian mystic with voices nor a cynical *braggadocio* with vices; he is a bourgeois person with bourgeois tastes and some very human failings which are no secret to many people. (The personalist dictatorship in South America has few if any irrational ingredients. As is customary in authoritarian states he has been made an object of lionization by the official propaganda. It

² Jakob Burckhardt, *Weltgeschichtliche Betrachtungen*, vol. VII of the "Collected Works," Basel (1929-1933). Unfortunately, these "Reflexions on World History," a most incisive analysis of the roots of the crisis of our days, written in the sixties of the last century, has not yet been translated into English.

³ This writer met a very personable young lady of considerable charm and intellectual accomplishments who carried his picture as a talisman, but she assured him that this had purely personal reasons.

is not known whether he enjoys it much; at least he does not show it and it evidently has not gone to his head. But adulation has its definite limits. He refrains from posing as a superman. For the man on horseback he has scarcely the stature. He knows the intellectual irony of his Brazilians and especially the sharp tongues of the *Cariocans* too well to allow the propaganda machine to play up his personality into something mystical or heroic. He knows that ridicule has killed many a man.

(Vargas's living habits are inoffensive and conform to bourgeois standards. He is a good father of his family; he likes horseback riding and golf, he is fanatically devoted to everything which has to do with airplanes. He has no spectacular literary or artistic tastes, which is fortunate for the intellectual life of Brazil. Of his cultural propensities nothing is known from which the inference can be drawn that they are at best average. He has a sense of humor—a rare quality among dictators—and he knows a good joke when he hears it, even one which victimizes him. He shares intellectual irony with his people.)

There is another point which those knowing the atmosphere in European dictatorships cannot fail to notice. Perhaps it is too much to say that (Vargas has no personal enemies.) No man at the helm of the state can avoid making enemies. But there are not many who either fear or hate him. (It is inconceivable that he should evoke that devouring hatred and that abject fear which European dictators instil into opponents or into their subjects.) (Many times he has shown his tolerance and a complete absence of political vindictiveness.) His popularity today—as he has sided with public opinion against the Axis and with the United Nations—is perhaps greater than at any time in his career. This is no mean achievement for a man who has wielded power for more

than a decade with practically no constitutional limitations.) For once power has not corrupted a man.)

With reference to Napoleon it has been said ⁴ that the essential qualities of the great statesman are idealism and moderation. Vargas certainly has moderation, but he seems devoid of idealism. If idealism is equivalent to vision some concepts of the future of his country may underlie the rank opportunism of his conduct of government. However later historians may judge him as a statesman, one thing can already be stated with certainty after more than ten years of uncontested rule: in the history of Brazil he can claim a rank next to Dom Pedro. No higher praise can be bestowed on a Brazilian.

The Problem of Succession

In Brazil as in all other countries which are operated as dictatorships, the problem of succession is crucial and as yet unsolved. Although Vargas shows no signs of a relaxation of powers—and he leads a healthy and well-regulated life—the length of his term in office makes it intelligible that some people should discuss methods and personalities for a successor. For the duration of the war it is more than unlikely that he will step down voluntarily; but the vicissitudes of the war may lead to his enforced disappearance from the political stage by pressure from outside. Unless this happens he will designate, in accordance with South American practice, his successor. Rumor has it that a plan is afoot according to which the Interventors would elect the next president of the republic, as the Interventors themselves would be elected by the prefects. To this scheme little credence can be

⁴ Karl Loewenstein, "Opposition and Public Opinion Under the Dictatorship of Napoleon the First," *Social Research*, vol. IV (1937), p. 472.

given. If, for reasons of internal or external politics, Vargas should see fit to make such a gesture toward mitigation of authoritarian control he might as well revive the procedures for a constitutional election of the head of the state by the people or by an electoral college. All this is in the realm of speculation. Most people seem inclined to consider Oswaldo Aranha as the proper man to fill his place and even his shoes. This depends altogether on the progress and outcome of the war and Brazil's role in it. Aranha is an unusually cultured man and one with leadership qualities and vision; but he is so much committed to the victory of the democratic cause that he would be as acceptable to the mass of the people as he would be unbearable in the case of a totalitarian turn of Brazilian politics. To whomever the heritage may fall his is no easy task. But it is another indication of the basic soundness of the Vargas regime that his disappearance from the political scene would not necessarily provoke a revolution. There is no need for eliminating, by force, a government party entrenched in the spoils. Perhaps then would be the proper moment for a "legalization" of the regime. But it could as well go on without fundamental changes.

CONCLUSION: SUMMING UP

A Discourse on Political Terminology: Is Brazil a Fascist State?

The reader has a right to expect that he be given a key for a synoptical understanding of the political and social panorama unfolded for him in the preceding pages. It may be convenient to do so within the frame of comparative political science, which is a method for understanding other states and governments than one's own. This is not an altogether academic problem. Since January, 1942, Brazil has become an ally of the United Nations and of the United States in their fight for survival against the forces of mechanized mysticism. We are entitled to know what kind of man is standing next to us behind the same rampart.

Obviously Brazil under Vargas defies the customary classification on legal or political lines. It is much easier to say what Brazil is not. Certainly it is not a parliamentary democracy since the promised parliamentary institutions, deficient as they may have been, have not been called into being. It is not government by the people. To call Brazil a "disciplined" democracy as the official spokesmen of the regime like to do is little more than a play on words. A democracy may well exercise self-discipline; but the absence of rationalized processes for expressing and ascertaining the will of the people strips the term of its accepted meaning. Yet the undercurrent of public opinion, restricted as its legitimate outlets may be, is strong enough to impose itself on the regime. Moreover, although the forming of policies is within the dis-

cretion of the men at the controls, public opinion, through irregular channels, is able to penetrate into the policy-forming power proper.

(Technically Brazil is a full-fledged dictatorship; the rules of law governing the political society are not agreed upon by the people but superimposed by the government from above.) If an apposite counterpart to the term "democratic" is in order, the regime must be spoken of as "authoritarian." But it is neither totalitarian nor "semitotalitarian"—if there is such a thing as a total which is only half of the total. It is imperative to clarify these loosely and indiscriminately used terms. ("Authoritarian" refers to the form of government, to the type and technique of the policy-forming power. "Totalitarian," on the other hand, refers to a way of life, to social factors. It implies that the sphere of private life of the individual citizen or subject is subordinated to the public policies of the state to the point of obliteration.) (A totalitarian state is always an authoritarian state; totalitarian control of private life can be accomplished only by way of authoritarian command.) But an authoritarian state need not be totalitarian. (Brazil is a case in point.) (Nothing is further removed from the truth than the supposition that social life in Brazil under Vargas is totalitarian in the precise sense of sacrificing the private sphere of the individual to the Leviathan of the state.) (Private life, private law, family, business, recreation, and cultural activities remain unaffected by the regime under the condition that they do not obstruct public policies.) (What influence the state may exercise on such manifestations of private life touches the surface only. If there is anything which is commonly shared by the Brazilian people it is their ingrained aversion to all forms of totalitarian intrusion upon their privacy.)

Abroad, the regime is frequently referred to as "Fascist."

Again an equivocal term needs precision. (A Fascist state is both authoritarian in form of government and totalitarian in form of state control of private life.) Fascism is one kind of totalitarian rule, Bolshevism another. (A Fascist state usually possesses a Fascist party through which the government controls public and private life.) Brazil has none. Public administration is carried out by officials who are admitted to service regardless of their political conviction, except those who are overtly inimical to the regime. A Fascist state forsakes equality before the law in the interest of deliberate and arbitrary discrimination against classes, groups, and individuals. Nothing of that sort exists in Brazil. (The strongly equalitarian sense of the people would not abide by it.) In a Fascist state the heretofore governing class is usually replaced by a new class or layer of the population which exercises political power without being restrained by, and in deliberate defiance of, traditional values. By this token Brazil is not a Fascist state. Under Vargas about the same social class as before is in political control.)

The question whether the *Estado Novo* is a Fascist state turns up frequently in intelligent discussions. Campos's writings and occasionally (Vargas's speeches have shown a definite Fascist hue. Most of the time, however, the supposition is ridiculed good-naturedly. Granted that the regime enacted various laws such as for the Defense of the State and for other purposes which are "Fascist" in that they expose many activities of the citizen to the stern retribution of the state. Some of these laws—the preceding discussion left no doubt on this point—are bad because they invite arbitrariness. (But Fascist laws on the statute book alone do not make a state Fascist in its entirety.) Otherwise, this country during the War between the States, in the last war, and also in the current war, might well be characterized as "Fascist"

if such a term had existed in the time of Lincoln's and Wilson's constitutional dictatorship. The test of the law is its application. Government and courts in Brazil apply sparingly such "Fascist" laws as exist; the possible range of arbitrariness is strictly limited to activities considered either as subversive or flagrantly in conflict with public policies. In all other contacts of public power with the daily life the rule of law on the whole is maintained although the range of "judicialization" of controversies of political flavor has been narrowed. Insofar as arbitrariness of the authorities is permissible in terms of the positive law it is held in check by the tolerant and liberal temper of the Brazilian people of which the governing group cannot but partake.

On the other hand, if ever Brazil were to be converted into a genuinely Fascist state—for example, by a puppet government under Axis control—not a jot would have to be changed of the existing legislation, nor anything added to the statute book. But if such an event should occur the statute book would anyway be at the mercy of the totalitarians in control.

(Sociologically Brazil under Vargas presents the picture so familiar in South American republics of a ruling oligarchy.) A numerically small, thoroughly bourgeois, and highly qualified governing class runs the country politically, economically, culturally. But this situation lacks exclusiveness. Talent is admitted wherever it is found. The monopoly of the governing families is traditional rather than deliberately planned and it is mitigated by the common sentiment of social equality. Moreover, the oligarchy shares with the mass of the people the belief in the democratic values of social life.

Reduced to its simplest terms the analysis amounts to this:

(the Vargas regime is neither democratic nor a "disciplined" democracy; it is neither totalitarian nor Fascist; it is an authoritarian dictatorship for which French constitutional theory has coined the apt term of *régime personnel*. Yet it is one which exercises its theoretically unlimited powers with the moderation demanded by the liberal-democratic habitat of the Brazilian nation.)

But all these speculative exercises in political nominalism may perhaps be beside the point. What matters alone is whether this form of government and technique of social control suits the Brazilian people. To all appearances it does. With near unanimity the people say that it is just what they need in a period of violent social and political change which rocks the foundations of every single state on the globe. It was Rousseau who said that democracy is a form of government suitable only for the gods. Others believe that enlightened despotism is the ideal form of government if only an enlightened despot could be found. Twelve years of rule may not be much before the forum of history. But it is sufficient to allow an appraisal of a government by us, the contemporaries. (Vargas has succeeded in steering between the devil of totalitarianism, with all it implies, and the deep sea of disintegration through party disunity, which seems the danger attendant on modern mass democracy.) Without the artificial stimulus of mass emotionalism, Brazil under Vargas entered a process of national consolidation, hopeful of the time when it will take the place among the nations commensurable to its vast resources and potentialities.

The United States and Brazil

After many shifts in policy, which at times raised substantial doubts as to where the regime would turn ultimately,

Vargas has ranged his country with the United States in the fight against totalitarian world domination. After Pearl Harbor and in the ensuing dark hours of the democratic peoples this step needed courage, vision, and confidence. It matters little at this juncture whether the new policy was undertaken out of genuine sympathy with the cause of a free world, or—which perhaps is more likely and in no wise reprehensible—for reasons of self-interest. But friendship between the United States of America and those of Brazil is traditional. It is perhaps not more than a historical curiosity but one well worth mentioning here that as early as in 1834, under the Regency, a bill was submitted to the Chamber of Deputies purporting to establish a Federal Union between the United States and Brazil. Ahead of its time by several generations, it was lost.¹ The philosopher-king Dom Pedro was the friend and admirer of Abraham Lincoln. Brazil was the only South American state which declared war on Germany during the last World War. Vargas and the men of the governing group are no sentimentalists. They are well aware that if the Axis wins, Brazil will become a German—or at best a German-Italian colony. Without our military assistance Brazil has not a fighting chance to stave off conquest and enslavement by a Hitlerized Europe. Natal and the Brazilian “bulge” is the Achilles heel not only of Brazil but of the entire Western world. Dakar is the dagger di-

¹ From the text of this quaint document may be quoted here (from P. A. Martin, “Federalism in Brazil,” p. 372):

“Art. 1. Brazil and the United States will be federated for the purpose of mutually defending themselves against foreign pretensions and will aid each other in the development of the internal wealth of both nations.

“Art. 3. Each one of the nations shall be represented in the national assembly of the other.

“Art. 4. The products of each nation shall be received in the other in the same manner as its own, free from all imposts.”

rected against the heart of hemisphere solidarity. For Germany, scornfully excluded by a victorious Japan from the bounty in the East, Brazil with its untapped and unlimited treasures will become the most tempting prize. What the Vargas regime may lack in genuine devotion to the cause of democracy is amply compensated for by the well-substantiated fear that if the Axis wins, a German *Gauleiter* will rule in the Palacio Guanabara. This Vargas knows well.

On the other hand, the United States needs Brazil's friendship and co-operation no less and even more so than the Brazilians need our protection in war and assistance in peace. Economically and strategically Brazil is the key state of South America. No longer is Argentina the leader. Hemisphere solidarity, one of the emptiest terms in the past, suddenly has become a two-way passage. The patronizing sting is taken out of the Monroe Doctrine. The survival of free institutions on this side of the Atlantic and the coprosperity zone of the Western world in the future can be built only on the bedrock foundation of equal copartnership. The zero hour for the crucial test of the Monroe Doctrine and of its complement, hemisphere solidarity, is drawing near. Our political alliance with Brazil categorically demands that the internal structure and government of the leading South American state is no longer a matter of indifference to the United States. We allied ourselves, overcoming our prejudices, out of dire necessity with the archtotalitarian Soviet Republic and we are willing to forget, for the sake of the common cause, what has separated our and their way of life. It will raise our confidence in the Brazilian partner and in the final outcome of the war if we know that our most valuable ally to the south is closer, much closer, to our way of life than to that of the totalitarians. If this study, undertaken

with a deep sense of responsibility, should contribute its share to a better understanding of the two nations this writer's labor is fully rewarded.

The End

INDEX

- Acre (territory of), 10 n. 10
 Alcantara Machado, 86
 Aleijadinho, 300
 Aliens, 138, 150, 155 ff., 187 ff., 205 ff.
 assimilation, 187 ff.
 associations, 167
 economic discrimination against,
 205 ff., 338
 entry, 169 ff.
 expulsion, 181 ff.
 press, 162 ff.
 propaganda and ideology, 167
 registration, 191
 schools, 168, 189 f., 192, 200
 See also Brazilianization, Defense
 of the State, German element,
 Italian element, Japanese ele-
 ment, Nationalization
- Alves, Rodrigues, 15
 Amaral Peixoto, Elmenido, 61 n. 5
 Amazonas (State of), 74
 Americo Almeida, Jose de, 35
 Anti-Semitism, 33, 178 ff.
 Aranha, Oswaldo, 37, 73, 78, 174,
 275, 359, 368
 Army. *See* Military establishment
 Arts and letters, 290 ff.
 Austria, 99, 123, 192, 201, 300, 311
 Authoritarian government, 121, 146,
 237, 325 ff., 330, 360, 370 ff.
 Azevedo, Aluizio, 291
- Bagé* (vessel), 263, 277
 Bahía (San Salvador), 261, 295, 300
 Bar, 111 ff., 218 ff.
 Barbosa, Ruy, 9, 15, 113 n. 8
 Barros, Adhemar de, 64, 78, 269
 Barros Bareto, Frederico de, 219,
 227
 Belo Horizonte, 261, 331
- Blumenau, 157, 200
 Braganza dynasty, 312 f. *See also*
 Empire, Monarchy
 Brazilianization, 187 ff. *See also*
 Aliens, Patriotism
 Burckhardt, Jakob, 365
 Bureaucracy, 64, 65 n. 9, 69 ff., 73,
 81, 85, 337, 340, 357. *See also*
 Officials
 Burle-Marx, Walter, 294
- Calmon, Pedro, 24, 256 n. 1
 Campinas, 353
 Campos, Francisco, 37, 46, 59 n. 1,
 61 n. 5, 68, 75, 78, 81, 87, 88, 89,
 90, 112, 113, 116 f., 120, 122 ff.,
 128 f., 238, 248 n. 12, 273, 326,
 360, 371. *See also* Ministry of
 Justice
 Capanema, Gustavo, 78, 268
 Cardoso de Mello Netto, 36
 Carnival, 270 ff.
 Carvalho Mourão, 118
 Catholicism, 56, 105, 127 f., 200, 257,
 270, 293, 305, 311 f., 341 n. 10
 Caudilhismo, 4, 15, 373
 Censorship, 183, 238, 239, 241, 244,
 250, 272 f., 287. *See also* Public
 opinion
 Citizenship and naturalization, 160,
 184 ff.
 Civil service, 96 ff. *See also* Officials
 Classes (social), 335 ff.
 businessmen, 335 ff.
 farmers, 352 ff.
 labor, 338 ff.
 landowners, 337 f.
 Coellio dos Reis, Jose, 243
 Communism, 28, 30 ff., 148, 182, 184,
 231, 232, 257 f., 339

- Comte, Auguste, 106
 Conference of Rio de Janeiro, 78,
 94, 137, 175, 200 ff., 264, 283, 361,
 364
 Congonhas do Campo, 300, 303
 Constitution, 1824-34, 5 ff.; 1891,
 9 ff., 13, 23; 1934, 20 ff.; 1937,
 46 ff., 50 ff., 96, 122 f., 317 ff.,
 341 f.
 Administrative Department, 62 ff.,
 84
 amendment, 28, 47, 56, 90 ff.
 cabinet and ministers, 54, 77 ff.,
 109
 individual liberties, 50, 55, 95, 245,
 319
 judicial review, 10, 18, 114 ff., 318
 legislation, 49, 81 f., 84 ff.
 legislative, 52 f.
 plebiscite, 46 f., 53, 317, 359 ff.
 political questions, 113 ff.
 president, under constitution of
 1934, 22; under constitution of
 1937, 47 ff., 53 ff., 71, 76 ff., 90 ff.,
 95, 101, 107, 112 ff., 214, 238,
 239, 295, 307
 Corporativism, 22, 32, 53, 127, 336
 Costa, Fernando, 78, 269
 Council of Immigration and Coloni-
 zation, 171, 191, 193
 Courts, 106 ff.
 habeas corpus, 109, 223 f., 223
 n. 20, 309
 judicial review, 10, 18, 114 ff., 318
 jury, 110 f.
 political questions, 113 ff.
 Supreme Federal Tribunals, 10,
 23, 108 ff., 114 ff., 215, 223 n. 20
 Tribunal of National Security, 29,
 110, 143, 151, 153, 212 ff., 249,
 258, 259, 264, 319
See also Constitution, Defense of
 the State
- Dakar, 374
 Decentralization, 4, 6, 71, 351. *See*
also Constitution, Federalism,
 States
- Defense of the State, 133 ff., 147 ff.,
 155 ff., 184 ff., 212 ff., 319
 press restrictions, 246
 prohibition of political activities
 of foreigners, 166 ff.
 Public Order Act, 147 ff.
 security of economic life, 151 ff.,
 230
See also Aliens, Courts (Tribunal
 of National Security)
- DeLeuze, Paul, 321 f.
Departamento do Servico Público,
 101 ff., 223
 Department of Press and Propa-
 ganda, 183, 238 ff., 254, 264,
 268, 272 f., 277, 280, 285, 287,
 303. *See also* Political opposi-
 tion, Press, Public opinion
- Diplomatic immunity, 162, 165, 168,
 173 ff., 198, 287
- Doutra, Eurico, 36, 263
- Economia popular* (violations of),
 151 ff.
- Economic factors, 331 ff.
- Education, 150, 292, 295, 304 ff. *See*
also Universities, Youth
- Eire, constitution of 1937, 55 n. 4,
 123
- Emotional legislation, 134 ff., 187 ff.
- Empire, 4 ff., 158, 309 ff. *See also*
 Imperial tradition, Monarchy,
 Pedro II
- Espinola, Eduardo, 118
Estado do São Paulo, 263, 319
- Euclides da Cunha, 159, 291
- Executive boards, 82 ff.
- Expropriation, 94, 320 ff., 322 n. 5
- Falangism, 125
- Falcão, Waldemar, 78, 341 n. 10, 351
- Family, 355 f.
- Federal District, 10 n. 10, 53, 90,
 107, 234, 332, 346, 351
- Federalism, 6, 8, 9, 13, 22, 25,
 50 ff., 59 ff., 70 ff., 109. *See also*
 Constitution, Decentralization,
 States

- Fernandez, Elsa, 31 n. 21, 233
 Fernandez, Paul, 256
 Fernando do Noronha, 259
 Fifth Column, 136, 155 ff., 176, 195, 201 ff., 247. *See also* Aliens, German element, Nazi activities
- Film, 239, 246, 280, 288 f.
 Flores da Cunha, J. A., 36
 Fontes, Lourival, 180, 239, 240, 242 f., 272
 France, influences and parallels, 7, 15, 21 n. 6, 26 n. 10, 28 n. 18, 48, 88, 97, 99, 108, 111, 113 n. 8, 146 n. 12, 148, 215, 220, 241, 246, 256, 279, 289, 291, 295, 321, 363
 Freud, Siegmund, 280
 Freyre, Gilberto, 291
- German element, 156 ff., 192, 194, 195 ff., 360. *See also* Aliens, Fifth Column, Nazi activities
 Germany, influences and parallels, 11, 17, 24, 26, 56, 60, 61, 65 f., 74 f., 87, 88 n. 19, 89, 92, 97, 101, 104, 114, 122, 126, 127, 134, 142, 144 ff., 153 n. 21, 212, 246, 260, 266, 267, 296, 298, 304, 321, 327 n. 12, 331, 332, 339, 341, 352 n. 32, 353, 354, 356, 357
 Góes Monteiro, Pedro Aurelio de, 36, 78, 139, 143, 274, 283
 Gold, 299 f., 336 n. 5
 Gomes, Carlos, 295
- Habeas corpus. *See* Courts
- Imperial tradition, 309 ff. *See also* Empire, Monarchy, Pedro II
 Integralism, 29, 32 ff., 36, 38, 90, 134, 141 ff., 165, 167, 182, 184, 201, 220, 258 f., 312
 Interventor, 11, 18, 22, 51 ff., 59 ff., 84, 100, 107, 140 n. 7, 191, 196, 241, 295, 296, 319, 350, 367. *See also* States
- Isabella, 9, 310, 312 f.
 Itabari, 211, 333
- Italian element, 157, 159, 160 n. 5, 192, 194, 199
 Italy, influences and parallels, 53, 82, 87, 122, 123, 126, 195, 201, 204, 212, 241, 246, 264, 267, 296, 298, 304, 339, 342, 343 n. 14, 353, 357
- Japanese element, 175 n. 24, 176 ff., 199
 João VI, 5
 Journalists, 251 f., 272 ff. *See also* Press, Public opinion
 Judicial review. *See* Courts
 Juiz de Fora, 302
- Kelsen, Hans, 106
 Koseritz, Karl von, 158
 Kossel, Hans Henning von, 165
- Labor, 57, 110, 206 ff., 209, 252, 338 ff.
 labor justice, 351 ff.
 legislation, 341 ff.
 minimum wage, 344 ff.
 social services, 348 ff.
 syndicates, 342 ff.
- Legal codes, 86 ff., 321 f., 355
 Leitão da Cunha, Vasco T., 129
 Lobato, Monteiro, 264
- Macedo Soares, Jose Carlos de, 37
 Machado de Assis, 291
Macumba, 128
 Magalhães, Agamemnon, 78
 Mann, Thomas, 280
 Marcondes Filho, A., 78, 351 n. 23
 Mariana, 300
 Marques dos Reis, 37
 Martins, Pedro Baptista, 88
 Martins Ferreira, Waldemar, 256 n. 1
 Mesquita Filho, Julio de, 263
 Mignone, Francisco, 294
 Military establishment, 15, 35, 78, 103, 110, 139, 146, 149, 153, 167, 192, 193, 194, 196, 198, 199, 203, 210, 258, 274 ff., 363 ff.

- Minas Geraes (state of), 14, 63, 72,
 91 n. 25, 97, 268, 299 ff., 331,
 357
 Minas de Pasagem, 336 n. 5
 Ministry of Justice, 63, 67, 81, 84,
 86, 140, 169, 183, 190, 191, 238,
 250, 318, 322. *See also* Campos
 Ministry of Labor, 78, 207, 292,
 341 ff., 349
 Monarchy, 5 ff., 312 ff. *See also* Em-
 pire, Pedro II
 Moses, Herbert, 251
 Müller, Felinto, 61 n. 5, 162 n. 6, 180,
 184 n. 34, 202 n. 15
 Müller (-Straubing), 197
 Municipalities, 18, 62, 67, 68 ff., 93,
 271
 Music, 294 ff.
- Napoleon I, 4, 89, 367
 Nascentes, Antenor, 290
 National Defense Board, 83
 National Press Council, 250 f.
 National Security Council, 139 f.
 Nationalization, 57, 103, 188, 205 ff.,
 336, 338. *See also* Aliens, Brazil-
 ianization
 Nazi activities, 34, 94, 136 ff., 142,
 147, 155 ff., 191, 197, 230, 281,
 289. *See also* Aliens, Fifth Col-
 umn, German element
 Neutrality, 276 ff.
 Neves (penitentiary of), 91 n. 25
 Niedenführ, Günther, 275
- Officials, 92, 96 ff., 149, 150, 153, 193,
 222, 337. *See also* Bureaucracy
 Oliveira, Perceval de, 108 n. 2
 Oliveira Vianna, F. I., 291
 Ouro Preto, 300, 302
 Ouro Velho, 336 n. 5
- Paper, 239, 249
 Paraná (state of), 156, 160 n. 5, 201,
 234
 Patriotism, 253, 285 ff., 307 ff. *See*
 also Brazilianization, Political
 symbolism
- Pedro I, 5
 Pedro II, 6 ff., 14, 156, 268, 302,
 309 ff., 367, 374. *See also* Em-
 pire, Monarchy
 Penna, Affonso, 15
 Pereira de Souza, Washington Luiz,
 17
 Pernambuco (state of), 28, 215
 Petropolis, 8, 302, 310
 Pimentel, Brandão, M. de, 37
 Plebiscite. *See* Constitution (1937)
 Political crimes, 213 ff., 369
 Political ideology, 121 ff.
 Political opposition, 19, 93, 232,
 255 ff., 259 ff., 356 ff.
 Political parties, 8, 16 ff., 29 ff.,
 142 ff., 144 ff., 255 ff.
 Political police, 259 f.
 Political questions, 113 f.
 Political symbolism, 71 f., 145, 167,
 190, 306 ff.
- Portugal, influences and parallels, 3,
 4, 27, 123, 146 n. 12, 156, 178,
 291
 Prefect, 68 ff., 100, 258, 367. *See also*
 Municipalities
 Press, 149, 163, 169, 176, 197, 211, 239,
 244 ff., 261 ff. *See also* Censor-
 ship, Department of Press
 and Propaganda, Paper, Public
 opinion
 Prestes, Carlos Luiz, 30 f., 267
 Prestes de Albuquerque, Julio, 16
 Public opinion, 237 ff., 253 ff., 266 ff.,
 274 ff., 279 ff. *See also* Censor-
 ship, Department of Press and
 Propaganda, Press
- Radio, 150, 239, 241, 246, 287 ff.
 Railroads, 210 f., 323 ff.
 Ráo, Vicente, 225, 256
 Rauschnig, Hermann, 280
 Reale, Miguel, 296
 Revolution of 1930, 16
 Revolution of 1937, 34 ff.
 Rio Branco, Visconde, 15
 Rio de Janeiro (city of), 180, 227,

- 241, 270 ff., 294, 298 ff., 301, 330,
340, 345, 353
Rio Grande do Sul (state of), 17,
63, 156, 160 n. 5, 163 n. 8, 165,
210, 234, 280, 332
Ritter, Karl, 174, 175 n. 22
Rousseau, Jean Jacques, 373
- Sabará, 300, 302
Salazar, Antonio, 123
Sales, Apolonio, 78
Salgado, Plinio, 32 f., 36, 141 ff., 257
Salgado Filho, J. P., 364
Salles Oliveira, Armando de, 35, 36,
257
San Salvador. *See* Bahía
Santa Catarina (state of), 156, 160
n. 5, 234
São João d'el Rey, 300
São Paulo, city of, 157, 176, 210, 294,
301, 330, 340, 345, 360; state of,
14, 19, 63, 66 ff., 69, 72, 74, 97,
204 n. 17, 211, 233, 241, 269, 301
Silva Telles, Goffredo T. de, 64, 66
Simonsen, Roberto, 331 n. 1, 337,
340 n. 8
Socio-economic program and pro-
visions, 56, 329 ff.
Souça Costa, Arturo de, 78
Sports, 304 ff.
State of emergency and of siege, 11,
29, 46 f., 319
States, 9 ff., 50 ff., 59 ff., 70 ff., 93 f.,
107, 241, 292, 304, 332, 335 ff.,
351, 357. *See also* Constitution,
Decentralization, Federalism,
Interventor
Strasser, Otto, 280
Supreme Federal Tribunal. *See*
Courts
- Taubate* (vessel), 95, 277
Theater, 239, 246, 295
Tiradentes, 241, 268
Torrès, Henry, 184
Tourism, 239, 297 ff.
Tourists, 162, 172 ff.
Totalitarian state, 121, 370 ff.
Tribunal of National Security. *See*
Courts
- United States of America, influ-
ences and parallels, 6, 8, 9 ff.,
73, 82, 101, 109, 113, 115, 116
n. 13, 119 n. 18, 148 n. 16, 153,
185, 189, 204, 225, 268, 288, 320,
332 f., 338, 347, 350, 371, 373 ff.
Universities, 103, 295 ff.
- Valladares, Benedetto de, 60, 64, 65
n. 9
Valverde, Belmiro, 143
Vargas, Alzira, 61 n. 5, 143
Vargas, Getulio, 16 ff., 19 ff., 26 ff.,
35 ff., 54, 59, 76 ff., 78 ff., 89, 93,
112, 125, 127, 141 ff., 146, 167,
196, 203, 211, 239, 255, 258, 267,
269, 274, 275, 277, 282, 286 ff.,
289, 297, 313, 332, 335, 338, 339,
357, 359, 363 ff., 371, 373
Villa-Lobos, Heitor, 294
- Wanderley, Alyrio, 264
Windhock (vessel), 278, 319
- Youth, 304 ff., 355
Ypiranga, 5, 302
- Zweig, Stefan, 280