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Pontes de Miranda, a Jurist between Two Dictatorships (1937-1979)

Brazil lived through two dictatorships in the 20th century (1937–1945 and 1964–1985), and Pontes de Miranda was one of the most important Brazilian jurists of that period. Based on newspaper articles, documents, and the author's writings, this paper seeks to understand the relationship between jurists and dictatorships during those years. This paper proposes to reconstruct Pontes de Miranda's personal thoughts and relate them to each of the dictatorial period's political regime. The article also aims to help readers understand his opinions both during and after the end of those dictatorships.

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Pontes de Miranda, a Jurist between Two Dictatorships (1937-1979)

1 *“I have never been in favor of any breach of the Constitution, but the Constitution before us is a castle of windows broken by false leftists, by extreme leftists.”*

2 Pontes de Miranda, April 5, 1964

Introduction

3 How do jurists react to dictatorships? How do they respond to legal violations? How do they describe the end of dictatorships? These questions often puzzle legal historians¹. The times when legality is breached and then reestablished again, signal important periods for understanding jurists and their positions on the Rule of Law.

4 Brazil – a country that went through dictatorships (1937–1945 and 1967–1985) for most of the 20th century – can, unfortunately, act as an appropriate place to seek answers to such questions.

5 To that end, in this study, we have described the life of a well-known author among Brazilian jurists, Francisco Cavalcanti Pontes de Miranda. Pontes de Miranda, as he was popularly known, was born in 1892 and died in 1979. During his life, he was a judge, an ambassador, a lawyer, and an author of multiple books. Read and quoted in Law Schools to this day, Pontes de Miranda lived and worked during the country’s two dictatorships; but what was most valuable for our research was that he also wrote books and gave interviews during this period.

6 The author’s perspective was complex, and he played a major role in Brazil’s political and legal landscape. Taking this into account, in this paper, we have tried to reconstruct some of the author’s thoughts as expressed in his books and in fragments of various newspaper articles that we found during our research. While aware of the complexity and contradictions of an individual who had gone through two dictatorships, and one who had witnessed as well as influenced a large part of 20th-century Brazilian history, here we have tried to understand his ideas about democracy and Law during that era. We have, therefore, begun our study with the questions raised in the first paragraph, regarding the persona of Pontes de Miranda.

7 We believe that this study can aid in our comprehension of the role of jurists during dictatorial periods.

1 See: HERZOG, Tamar; DUVE, Thomas. *The Cambridge History of Latin American Law in Global Perspective* (Cambridge: Cambridge University Press, 2023).

- 8 Accused of plagiarism in a selection process for a teaching position at the State University of Rio de Janeiro² and described by Roscoe Pound in 1944 as “the outstanding man in Latin America”⁴, the narratives about Pontes de Miranda are plural and just as complex. In this text, inspired by Hespanha’s teachings, we have carefully listened to different sources and offered our critical analysis, wherever possible. This has involved comparing various narratives and data related to the facts. Influenced by the Portuguese author, our main methodological approach has been attempting to comprehend the diverse sources and narratives that shed light on the historical legal phenomenon and present a thought-provoking perspective on the researched subject³.
- 9 Pontes de Miranda, known for his significant works on private law, particularly his *Tratado de Direito Privado (Treatise on Civil Law)*, also made notable contributions to constitutional law. Despite the limited number of works that explore Pontes de Miranda’s role as a constitutionalist, his ideas have remained crucial for comprehending Brazilian constitutional history.⁴
- 10 On the history of the two dictatorships under study, he wrote about Brazil’s four constitutions before and during these authoritarian regimes (1934, 1937, 1946, and 1967). Throughout the country’s history, the tradition has been to draw up a new constitution with each change in its political regime. Thus, Brazil had “new” constitutions with its Independence, the beginning of the First Republic, and its end with the Estado Novo dictatorship, the beginning of democratization, the military dictatorship, and democratization – the last one in 1988.
- 11 This paper has extensively used Pontes de Miranda’s written works about these constitutions, as well as documents, letters, published interviews, and news articles. Famous in legal circles since the 1920s, the author was immediately interviewed after both *coups d’état* of 1937 and 1964. Hence, the gaze cast upon him has also been privileged: Pontes de Miranda was a jurist who was equally prominent in the courts as well as in the newspapers. He was constantly seen at lectures as well as at public and university events. At the end of his life, for example, Pontes de Miranda gave interviews to TV stations, which can be found on YouTube⁵.
- 12 For this research, we have compared his interviews, his texts, and media articles on his works, as well as the report by the Brazilian political police about the jurist. We also consulted the letters sent and received by Pontes de Miranda that are stored at the Centro Cultural da Justiça Federal

2 See: CABRAL, ANTONIO DO PASSO (2016): Alguns mitos do Processo (III): Pontes de Miranda e Haroldo Valladão em concurso para professor catedrático na Universidade do Rio de Janeiro 1936 e 1940. *Revista Brasileira de Direito Processual*, Belo Horizonte, Year 24, n. 96, p-11-47, Oct/Dec., 2016.

3 See: HESPANHA, ANTÓNIO MANUEL. *Cultura jurídica europeia: síntese de um milénio*. Coimbra: Almedina, 2019.

4 One of the few works on this subject is by Diego Nunes, who analyzes the academic freedom of Brazilian constitutionalists: NUNES, Diego. Academic freedom in the Brazilian constitutional history. *Historia constitucional*, n. 22, 2021, p. 791-809.

5 Available at: <https://www.youtube.com/watch?v=fmEy_gmSbvc>

do Estado do Rio de Janeiro (Cultural Center of the Federal Justice of Rio de Janeiro) as well as the letters from the author to Getúlio Vargas, which are stored at the Centro para Pesquisas e Documentação da História Contemporânea do Brasil (CPDOC) of the Fundação Getúlio Vargas, in the city of Rio de Janeiro. We have selected the letters that pertain to the political and legal context of this research.

13 Thus, this article's goal has been to understand how the author reacted to the 1937–1945 dictatorship and how he expressed himself when the dictatorship ended; and, subsequently, his reactions to the onset of the 1964 dictatorship and how he described its development.

14 The study has tried to avoid laudatory narratives and present a critical look at the thought process of an important Brazilian jurist, who has been variously called a “genius”, “the most profound jurist the Portuguese language has ever produced”, and has also been compared to Leonardo Da Vinci⁶.

15 Pontes de Miranda was a well-known name in the Brazilian press. A query about him on the Brazilian *Hemeroteca Nacional*⁷ will show thousands of results. Pontes de Miranda was the subject of news articles as a judge, a scholar, a jurist, and even when having lunch with friends⁸, or during his time as a lawyer of a samba school⁹. The many ways his name was cited were plural and came from the most varied moments of his life.

16 For the purpose of this paper, however, we have limited our research to four journals that were in circulation in Rio de Janeiro during his time: *Jornal do Commercio*, *Correio da Manhã*, *Diário de Notícias*, and *Jornal do Brasil*. We believe that this plurality of media sources has helped us to better understand the jurist. In this sense, we have selected information that we believe can aid the reader's comprehension of the political regimes through which the author lived and, in particular, of his relationships with power.

17 In the first part of this study, we have shown the author's excitement with the *Estado Novo* (New State) dictatorship, a regime that lasted from 1937 to 1945; and his disillusion about the violation of the Constitution on November 10, 1937. In the second part, we have described how the jurist talked about the *Estado Novo* dictatorship after its end. In the third part, we have presented Pontes de Miranda's expectations and disappointments with the military dictatorship that devastated Brazil between 1964 and 1985.

6 See: <https://www.youtube.com/watch?v=lnkplxT4HNU>.

7 Repository of the Brazilian National Library that publishes the Brazilian press of the 20th and 19th centuries.

8 *Jornal do Brasil*, November 18, 1971, p. 10.

9 *Jornal do Brasil*, July 22, 1970, p. 10.

1. Pontes de Miranda and his excitement with the Estado Novo: a jurist describing the dictatorship during its years

- 18 On November 10, 1937, Getúlio Vargas¹⁰, the then president of Brazil, enacted the *Estado Novo* dictatorship, thus dissolving the National Congress, decreeing a new Constitution, and cancelling the mandates of state governors.
- 19 Vargas, who in 1930 had already overthrown President Washington Luís and, in 1934, had been indirectly elected president, subsequently tore up the 1934 Constitution to which he had pledged allegiance. The Brazilian *Estado Novo*, influenced by the European authoritarian movements of the period, enacted a series of legal norms, and a constitution that was published on the very day of the *coup* was given its name, the Constitution of November 10, 1937. Here it is worth remembering that part of the legal texts established by the *Estado Novo* dictatorship, such as the Brazilian Criminal Code (1940) and the Brazilian Criminal Procedure Code (1941), have been in force to this day.
- 20 Pontes de Miranda, the then judge of the Distrito Federal Court of Appeal and aged approximately 45, had already published a series of works and was the author of a well-known book on the 1934 Constitution of the United States of Brazil.
- 21 He had a close relationship with the dictator. On August 7, 1935, for example, he wrote to Getúlio Vargas putting his name forward for appointment as ambassador after “hearing from Your Excellency that you were considering my name for the post”. Writing from his home at Rua Prudente de Moraes, 536, in the city of Rio de Janeiro, the jurist said he was ready to go “to the post that is assigned”. At the end, the author of the letter says goodbye: “my devoted friend and lifelong admirer, Pontes de Miranda”.¹¹
- 22 On November 24, 1937, a few days after the enactment of the dictatorial Constitution of 1937, Pontes de Miranda published the article, “Sociological Perspective of the Constitution of 1937”¹² in *Correio da Manhã*. The text, which was marked as “Copyrighted by the National Propaganda Department”¹³, was captioned: “One could say that the Charter of 1937 is the first Charter of the Brazilian Revolution”.

10 Provisional president of Brazil between 1930 and 1934, elected president between 1934 and 1937, and dictator between 1937 and 1945. After being overthrown as a dictator, he was once again democratically elected president between 1951 and 1954 – when he committed suicide in the presidential palace by shooting himself.

11 PONTES DE MIRANDA (1935): Letter from Pontes de Miranda to Getúlio Vargas, August 5, 1935. Getúlio Vargas Papers Archive, CPDOC, Fundação Getúlio Vargas.

12 *Correio da Manhã*, November 24, 1937, p. 4.

13 A department created to disseminate information by the dictatorship and censor all content contrary to the government's interests.

- 23 In the text, the author criticized the allowance of multiple political currents adopted by the previous Constitution, in addition to presenting criticisms about its text. Pontes de Miranda argued that the 1934 Constituent Assembly made “multipartyism impossible in Brazil”. The author then asked: “How did the 1937 legislator behave in the face of crises?” Here it is important to remember that the 1937 legislator was the government that had decreed a constitution with a suspended Congress, and which had shut down the activities of all political parties in the country.
- 24 For the author, “...the 1937 Constitution reconciled the units that compose the Federation and the Common Homeland, the civilian and the military man...”. He continued, “The 1937 Constitution handed over the coordination of the representative bodies to the President of the Republic, making him responsible for the promotion and orientation of the legislative policy of national interest.”
- 25 In other words, Pontes believed that the Constitution enacted by the dictator granted him the coordination of the country. That is to say, it was accepted that the dictator could decree the power that he himself would wield.
- 27 Pontes de Miranda continued by saying that Brazil needed a New State, which should replace the old individualistic State. Thus, for him, the 1937 Charter was the “first Charter of the Brazilian Revolution, and its historical function transcends, perhaps, the vision of its contemporaries”. In this context, it is important to highlight that the author would repeat this statement, made in November 1938, several times in the following decades. Pontes de Miranda adhered to the idea of the *Estado Novo* dictatorship and believed in the revolutionary power of the regime and its Constitution. In this sense, he argued that it was up to everyone to “give life” to the articles of the 1937 Constitution “and that the movement of November 10” was headed towards “the development and full flowering of a new era for Brazil”.
- 28 Concluding, the author reasserted that everyone should serve the Constitutional Charter “enacted without resistance and with general applause”.
- 29 Published a few days after the *coup d’etat*, Pontes de Miranda’s interview was an ode to the *Estado Novo* dictatorship and to the Constitution enacted on November 10, 1937. The jurist’s excitement with the new movement was noticeable: a new Constitution, a new model of State, a new dictatorship.
- 30 On the twenty-sixth of the same month and year, *Jornal do Brasil* informed that, on the previous day, Pontes de Miranda had participated in the Department of Press and Propaganda’s *Hora do Brasil* radio program. During the broadcast, he gave a lecture explaining the November 10th Constitution. Here, we have highlighted the last sentence, as reproduced in the journal: “Let us hope that the faithful obedience of the 1937 Charter will build a more educated, more technical, more prosperous and, therefore, stronger Brazil”.¹⁴

14 *Jornal do Brasil*, November 26, 1937, p. 7.

- 31 In 1938, the following year, Pontes de Miranda offered technical commentary on the constitutional text¹⁵ and was honored by the dictator Getúlio Vargas on Soldier's Day¹⁶.
- 32 Also in 1938, Pontes de Miranda published his book, *Comentários à Constituição de 10 de novembro de 1937* (*A Commentary on the Constitution of November 10th, 1937*) through the publishing house, *Irmãos Pongetti*, from Rio de Janeiro¹⁷. The book was praised by Homero Pires, professor at the Bahia School of Law, who said the publication was “a valuable contribution to our legal culture”, and that “Mr. Pontes de Miranda emerges to doctrinally analyze and explain the instrument with which Mr. Getúlio Vargas and Mr. Francisco Campos established a different path for the Brazilian democracy”¹⁸.
- 33 In the book, repeating what he had said in his interview the previous year, Pontes de Miranda, in general, praised the Constitution's technique and defended it as the continuation of many of the precepts from previous constitutions. In the text, he even returned to the idea that the document was the first Charter of the Brazilian Revolution. For him, the Constitutional text did not exclude democracy, and in some respects (such as union activity), it was “less fascist than the 1934 Constitution”. The fascist elements in the 1937 text appeared “as a possibility of administrative structuring and as a program to be carried out”¹⁹.
- 34 It is to be noted that the fascist characteristics do not appear in Pontes de Miranda's text as a pejorative quality of the constitutional text but as an explanatory element. Hence, it was surprising to see that he had compared the Brazilian text to those of the German and Italian states of the time.
- 35 The author went on to express his belief that the plebiscite provided for in the text “gave a new face to the democratic institutions in Brazil.” Commenting only on the constitutional text, Pontes described its “benefits”: the notions of the Federal State, individual freedom, democracy, and the “social-democratic programmability”²⁰.

15 *Jornal do Commercio*, January 23, 1938, p. 4.

16 *Correio da Manhã*, August 26, 1938, p. 1.

17 PONTES DE MIRANDA, FRANCISCO CAVALCANTI. *Comentários à Constituição federal de 10 de novembro de 1937*. Rio de Janeiro, Irmãos Pongetti, 1938.

18 *Correio da Manhã*, June 20, 1938, p. 4.

19 *Ibidem*, p. 165. Louis Rosenfield, p. 748, describes the author's conviction in not believing in parliamentary democracy and betting on the corporatist proposal in texts from 1933, see: ROSENFIEDL, LUIS, ABREU, LUCIANO ARONNE. *Conservadorismo, autoritarismo e legitimação político do Estado Novo: notas sobre os “Comentários à Constituição de 1937” de Pontes de Miranda*. *Novos Estudos Jurídicos*. v. 24, n. 3, pp. 736–756, Sep/Dec., 2019. As for the idea of state jurisdiction over fundamental rights in Pontes de Miranda's thinking, I suggest: DINIZ, MÁRCIO AUGUSTO DE VASCONCELOS. *Absentes, adsunt: Pontes de Miranda, Hans Kelsen e os debates sobre a jurisdição constitucional na Assembleia Constituinte de 1933-1934*. *Direito & Justiça*, v. 40, n. 1, pp. 46–64, Jan/Jun., 2014.

20 *Ibidem*, p. 181 and p. 14.

- 36 Further, during the *Estado Novo*, Pontes de Miranda praised the Brazilian dictatorial regime in various instances, from the *coup* that established it to the Constitution decreed on November 10, 1937. In the texts consulted for this research, there was no firm criticism of it²¹. Undoubtedly, it can be said that Pontes de Miranda adhered to the State dictatorship's ideology.
- 37 Then a judge of the Distrito Federal Court of Appeal, Pontes de Miranda was appointed by Getúlio Vargas as the Brazilian ambassador to Colombia in November 1939²², and took office from December of that year, thus withdrawing from the Brazilian judiciary²³. On January 2, 1940, Pontes de Miranda went to Catete Palace to exchange the New Year's greetings along with other authorities²⁴, and subsequently left for a trip to another South American country²⁵.
- 38 In 1941, Pontes de Miranda was appointed as Brazil's representative at the International Labor Office, which was then meeting in Canada²⁶, as well as at the International Labor Conference²⁷.
- 39 On September 17, 1941, from New York, Pontes de Miranda wrote to Getúlio Vargas and described "the terrible atmosphere against Your Excellency's government in the American newspapers". Pontes also stated that he had been able to "alter articles that had been more or less announced and even withdraw some" because he happily had some friends. On his way to Canada, Pontes said goodbye "as a soldier who respects the voice of command" and added that he was "obliged to watch over the good name of Brazil".²⁸
- 40 Still in the American city, on October 3, 1941, in correspondence described as secret at the time, Pontes described the Americans' criticism of the Brazilian *Estado Novo* and informed Vargas of his contacts in the country. At the end, the Brazilian signed: "Goodbye, my boss (...) Your friend, Pontes de Miranda"²⁹.

21 On page 16, Pontes de Miranda uses the term, "coup of 1937", and on page 19, "coup of November 10th"; these expressions are rarely repeated in the text, but they are descriptive, void of criticism. In this sense, Rosenfield also understands that: "his view on the Estado Novo coup and on the legitimacy of its enacted Charter is more obscure and nuanced", *Ibidem*, p. 745.

22 *Jornal do Brasil*, November 5, 1939, p. 1.

23 *Jornal do Brasil*, December 7, 1939, p. 11.

24 *Diário de Notícias* January 3, 1940, p. 4.

25 *Correio da Manhã*, January 3, 1940, p. 2. On January 4, 1940, the same newspaper reported the appointment of a judge to replace Pontes de Miranda.

26 *Diário de Notícias*, September 12, 1941, p. 3–4.

27 *Correio da Manhã*, September 27, 1941, p. 3.

28 PONTES DE MIRANDA (1941): Letter from Pontes de Miranda to Getúlio Vargas, September 17, 1941. Getúlio Vargas Papers Archive, CPDOC, Fundação Getúlio Vargas.

29 PONTES DE MIRANDA (1941): Letter from Pontes de Miranda to Getúlio Vargas, October 3, 1941. Getúlio Vargas Papers Archive, CPDOC, Fundação Getúlio Vargas.

41 Pontes de Miranda's correspondence from New York to Getúlio Vargas was especially intense between 1941 and 1942. The former was always trying to update the president on news and, in particular, positioning himself as Getúlio Vargas' "soldier" and "friend".

2. A jurist describing the dictatorship after the dictatorship: Pontes de Miranda and his criticism of the 1937 Constitution

42 The dictatorship of *Estado Novo* came to an end in 1945, following the overthrow of its dictator, Getúlio Vargas.

43 His fall was followed by elections for the Executive and Legislative branches, which would be restored after their suspension during the entire dictatorship. The elected parliament was tasked with drafting a new Constitution for Brazil. The Constitution of the United States of Brazil was promulgated on September 18, 1946, by the parliament, which then cumulated the role of a constituent national assembly.

44 On the same day, "at the very end of his ability to legislate, the President of the Republic decided to personally address Dr. Pontes de Miranda", in the words of *Correio da Manhã*.³⁰ The newspaper questioned Decree n. 9, 876, from the same day, which transferred Pontes de Miranda definitively to the cadres of Brazilian diplomacy, naming him a career diplomat. According to the Constitution of the Vargas dictatorship, President Eurico Gaspar Dutra³¹, who took office on January 31, 1946, could legislate by decree until the approval of the new Constitution in September of the same year.

45 By decree, Pontes de Miranda was no longer just an ambassador, an unstable position with the possibility of dismissal at the government's discretion but had become a staff diplomat of the Ministry of Foreign Affairs³². This was the criticism presented by the newspaper, *Correio da Manhã*, which mocked the situation in that day's edition: "Whoever has a godfather does not die a pagan! A decree-law settled the life of this illustrious devotee of the Law"³³.

46 In 1947, Pontes de Miranda, now almost 55 years old, wrote his book, *Comentários à Constituição de 1946 (A Commentary on the 1946 Constitution)*. Published in Rio de Janeiro by Henrique Cahen, the book helps one understand the author's thoughts on the dictatorship and the Constitution of 1937 shortly after the state of exception period. On a general note, it is important to emphasize that he reproduced several excerpts from his 1938 book. In this sense, it is not

30 *Correio da Manhã*, September 19, 1946, p. 4.

31 Democratically elected president, whose mandate lasted from 1946 to 1951.

32 Available at: <https://www2.camara.leg.br/legin/fed/declei/1940-1949/decreto-lei-9876-16-setembro-1946-457375-publicacaooriginal-1-pe.html>

33 *Correio da Manhã*, September 19, 1946, p. 4. Pontes de Miranda was present at the 85th birthday of the former president, according to the *Jornal do Brasil* edition from May 19, 1970, p. 4.

possible to determine if Pontes de Miranda maintained the same ideas or simply repeated his previous ideas. There are several repeated paragraphs – something that is also noted in his 1967 book. Therefore, here we have tried to find his ideas within the ambiguities and contradictions that the author and the text presented.

47 In the preface, Pontes de Miranda set out to make an exposition with the “maximum loyalty” possible, not writing “personal commentary”, but a “logical and technical development” of the Constitution³⁴. It is interesting to note that the same sentence exists in the preface of the book that commented on the 1937 Constitution³⁵.

48 Despite being a book that intended to comment on the 1946 constitutional text, one can see a series of references to the 1937 Constitution throughout the work.

49 As soon as the author stated in his preface that “we all know that the 1937 Constitution has not been complied with”, an idea was born that Pontes de Miranda and other Brazilian authors would repeat many times over: the thesis that the 1937 Constitution had not existed or had not been applied, that it only had a formal existence. This thesis is false and has already been discredited by recent research³⁶ that prove that this Constitution was widely used by Brazilian Courts, including the country’s constitutional court, the *Supremo Tribunal Federal*. Furthermore, the elections that followed the *Estado Novo* dictatorship were organized according to the 1937 Constitution, with Pontes de Miranda’s appointment as a diplomat being based on this very text.

50 This thesis would be repeated by the author for decades, consolidating itself as common sense for numerous Brazilian jurists, up until the latest research on the topic. This shows, on the other hand, the power of Pontes de Miranda’s argument from a seat of authority and how his statements were, for a long period, uncritically accepted in Brazil.

51 Returning to the 1947 book, Pontes de Miranda presented in it an ambiguous relationship with the previous Constitution. At the same time, he believed there were benefits provided by the Constitution that were enacted by the dictatorship: “The 1937 Constitution reconciled the constituent units of the Federation and the Common Homeland, the civilian and the military man” and “handed over the coordination of the representative bodies to the President of the Republic, making him responsible for the promotion and orientation of the legislative policy of

34 PONTES DE MIRANDA, FRANCISCO CAVALCANTI. *Comentários à Constituição de 1946*. Rio de Janeiro, Cahen Editor, 1947, p. 9.

35 PONTES DE MIRANDA, FRANCISCO CAVALCANTI. *Comentários à Constituição federal de 10 de novembro de 1937*. Rio de Janeiro, Irmãos Pongetti, 1938, p. 13.

36 SIQUEIRA, GUSTAVO SILVEIRA; CUNDARI, GUILHERME; MARQUES, FRANCISCA MARIA. A “Constituição esquecida”: o tratamento histórico da Constituição de 1937 nos livros de direito constitucional. *Revista Argumentum*, v. 21, n. 2, pp. 531–559, May/Aug., 2020.

national interest”³⁷, that is, he repeated his 1938 text³⁸. At other times, he asserted that “only the dictatorial framework prevailed”³⁹ and that the “1937 Constitution sought to provide a solution to the problems” between the three branches of government in Brazil, “but the fascist mentality prevailed in the text and its interpretation”⁴⁰.

52 In a book with repetitions from his 1938 book, Pontes de Miranda expressed this double meaning: he believed in the benefits of the constitutional text enacted by the dictatorship but also argued that the regime violated the very text it had created. In this context, the easiest way out was to resort to the thesis that the Constitution had not been complied with. Thus, the author did not need to make a deeper argument about the relationship between the constitution and the dictatorship, he just blamed its failure on the non-application of the text, as he would do other times throughout his works. In this sense, at the end of the dictatorship, he repeated: “The 1937 Constitution could have been the first Charter of the Brazilian Revolution. Its historical function would then transcend the vision of its contemporaries.”⁴¹

53 At no time, however, was the author’s criticism directed at the dictator Getúlio Vargas. At no time was his criticism vehement about the suspension of the Congress, the torture, and the dictatorial violence that occurred in the country between 1937 and 1945. Apparently, Pontes de Miranda’s resentment was not having seen the application of the Constitution of the *Estado Novo* dictatorship.

54 It is interesting to note that the author repeated his praises for the 1937 text throughout his 1947 book, highlighting a series of articles that he had already focused on in his 1938 book. In other words, the 1937 Constitution was always top on Pontes de Miranda’s mind, carrying an element of comparison with the new Constitution. His 1947 book was described by Pontes de Miranda as “technical” and “logical”, in the same way he had described his 1938 book. However, after reading it, one can perceive the author’s resentment in relation to the country’s constitutional past.

37 PONTES DE MIRANDA, Francisco Cavalcanti. Comentários à Constituição de 1946. Rio de Janeiro, Cahen Editor, 1947, p. 20–21.

38 PONTES DE MIRANDA FRANCISCO CAVALCANTI. Comentários à Constituição federal de 10 de novembro de 1937. Rio de Janeiro, Irmãos Pongetti, 1938, p. 24.

39 PONTES DE MIRANDA, FRANCISCO CAVALCANTI. Comentários à Constituição de 1946. Rio de Janeiro, Cahen Editor, 1947, p. 142.

40 Ibidem, p. 167.

41 Ibidem, p. 22.

- 55 Ironically, another of these repetitions in Pontes de Miranda's work would be cited by several constitutionalists in Brazil: "But... the 1937 Constitution was undermined, soon after, by their own authors. It was not applied; it was not respected – almost all of it not even existed."⁴²
- 56 Also, part of this irony is the fact that Pontes de Miranda called the legislator in 1937 and 1938 the dictator responsible for undermining and disrespecting the enacted text. As we have demonstrated below, the author never stopped sustaining this ambiguous description of the 1937 text. Decades later, we see that Pontes de Miranda would maintain, in one way or another, a coherence in admiring the text and criticizing the supposed "non-compliance" with the 1937 Constitution.
- 57 As a matter of fact, Pontes de Miranda and Getúlio Vargas seem to have been close to the point of *Diário de Notícias* calling them cousins⁴³, with the two men also meeting for birthday greetings in 1952⁴⁴.
- 58 In 1957, when the president of Brazil was Juscelino Kubitschek de Oliveira, a four-year-old child was kidnapped in Rio de Janeiro. News of the crime appeared in the country's newspapers and on radio stations⁴⁵. A few days after the incident, Pontes de Miranda was interviewed by *Correio da Manhã*, when he claimed that: "we need to adopt forced labor and the death penalty", and "we need a dictatorship to enforce the law"⁴⁶. Pontes de Miranda's claims in the newspaper were strong and were questioned by other jurists in the same news article.
- 59 The defence of the dictatorship, carried out expressly this time, would be a common occurrence throughout his career. He would voice himself on the subject many times, and on many of these occasions, he would be contradictory. In one way or another, we believe that the contradiction existed in the author's own mind, and which perhaps went through changes over time.
- 60 In 1960, Pontes de Miranda criticized the dictatorship in the Dominican Republic and stated that the "Brazilian people are a liberal people and fundamentally democratic"⁴⁷. On the other hand, on September 6, 1961, when Brazil was discussing the replacement of the presidential

42 PONTES DE MIRANDA, Francisco Cavalcanti. *Comentários à Constituição de 1946*. Rio de Janeiro, Cahen Editor, 1947, p. 23.

43 *Diário de Notícias*, August 18, 1950, p. 3.

44 *Jornal do Comércio*, May 6, 1952.

45 OLIVEIRA, WANESSA MONTEIRO CANELLAS DE OLIVEIRA. *Memória, subjetividade e afeto nos bastidores do Rádio*. Mestrado em Memória Social. Universidade Federal do Estado do Rio de Janeiro, 2008.

46 *Correio da Manhã*, November 17, 1957, p. 1 and 16.

47 *Diário de Notícias*, July 9, 1960, p. 2.

system with a parliamentary system, the author said that he considered the “presidential system a dictatorial regime disguised as a democracy”⁴⁸.

61 We have not delved into a discussion on the potential ideas of democracy and dictatorship in Pontes de Miranda's work, as that has already been presented by other authors⁴⁹. However, what is important to emphasize is that the author's viewpoints, perceptions, opinions, and concepts had evolved over time, as illustrated in this paper.

62 In 1962, during the government of President João Goulart, a politician linked to the labor movements and considered left-wing, Pontes de Miranda defended the maintenance of the 1946 Constitution at any cost, stating that: “If the 1946 Constitution is overthrown, this will constitute a *coup d'état*”, and “what most interests Brazil today is its tradition of love for the Law and constitutional stability”⁵⁰.

3. Pontes de Miranda and the military dictatorship: hopes and disappointments

63 Brazil's history tells the sad story of another dictatorship in the 20th century. On April 1, 1964, the military overthrew the elected president and installed a long-lasting and violent dictatorship.

64 A few days after the military *coup* that overthrew the democratically elected government, Pontes de Miranda, now aged 72, gave an interview to *Jornal do Brasil*, one of the main newspapers in the country. The interview was published on Sunday, April 5, 1964, with the title: “Pontes de Miranda says that the Armed Forces violated the Constitution to save it”⁵¹. In other words, the military *coup* caused the author to completely change his understanding of the Constitution.

65 As was made clear by the title, and the text too, Pontes stated that the military “violated a constitutional principle to save the integrity of the [1946] Constitution”. For the jurist, it would be up to Congress to “point out” the crimes of the deposed president. Pontes de Miranda believed that, after the president's deposition, the “rhythm of public life” and the “constitutional order” would be restored. Asked about the removal from office and arrest of the governor of Pernambuco, a state where he had spent part of his life, Pontes said that the removal was legal and constitutional, with only the arrest being illegal.

66 Despite having been a defender of the 1937 Constitution, Pontes de Miranda insisted on finding alleged culprits so that he could once again defend breaking the country's Constitution: “I have

48 *Jornal do Commercio*, September 6, 1961, p. 3.

49 See: LIMONGI, Dante Braz. *O projeto político de Pontes de Miranda: Estado e democracia na obra de Pontes de Miranda*. Rio de Janeiro: Renovar, 1998.

50 *Correio da Manhã*, May 10, 1962, p. 1.

51 *Jornal do Brasil*, April 5, 1964, p. 16.

never been in favor of any breach of the Constitution, but the Constitution before us is a castle of windows broken by false leftists, by extreme leftists”.

67 That is to say, once again in Brazil’s history, the jurist defended constitutional breach under a supposed fragility of the Constitution and a perceived threat of “internal enemies”. The same “supposed communist threat” that many saw in 1937 was hovering in the memory of those who supported yet another *coup* in the country.

68 On the matter of the president and vice-president chosen by the dictatorial government, Pontes said: “These two men will be able to do in little more than a year what others couldn’t in 30 and pull out the roots of evil that these 30 years have sown”.

69 In other words, Pontes de Miranda seemed to dream of a return to the *Estado Novo* regime, almost 30 years after that *coup*. By concluding the interview with the above sentence, Pontes de Miranda seemed to foresee a Brazil that even the *Estado Novo* dictatorship failed to implement.

70 A day earlier, Ponte de Miranda had made contradictory statements to two newspapers. In an interview to *Jornal do Comércio*, he said that the country was not experiencing a full dictatorship and criticized the people who said so; while he called the “Institutional Act” – an unprecedented legal act, invented by military coup plotters to change the Constitution without the parliament’s participation – an aberration⁵².

71 On April 10, 1964, on the other hand, Pontes de Miranda defended the constitutionality of the indirect election of the dictator Castelo Branco by the National Congress⁵³. In October of the same year, however, he changed his position in *Diário de Notícias* and called the Institutional Act a “monstrosity”, also saying that the dictator Castelo Branco “would have a much worse end” than the deposed president João Goulart⁵⁴. But the news, on October 8, was denied by Pontes. In a letter sent directly to the dictator Castelo Branco, Pontes de Miranda said that he had never given such an interview and had never spoken to anyone about it. The author stated that the purpose of the letter was simply to avoid intrigue and said goodbye: “I am, Excellency, your admirer”⁵⁵.

72 In November of 1964, Pontes de Miranda said he was “in tune with the hard-line” – a group that defended the hardening of the military dictatorship – and stated that “instead” of the Institutional Act, the “revolutionaries” should demand that “the Congress impeach João Goulart”

52 *Jornal do Comércio*, October 4, 1964, p. 3.

53 *Jornal do Brasil*, April 10, 1964, p. 3.

54 *Diário de Notícias*, October 4, 1964, p. 3. Castelo Branco, the first dictator of the Brazilian military dictatorship, died in a plane crash in 1967, a few months after leaving the government. João Goulart, the president deposed by the dictatorship, died in Argentina, where he lived in exile, a victim of a heart attack on December 6, 1976.

55 PONTES DE MIRANDA (1964): Letter from Pontes de Miranda to Castelo Branco, October 8, 1964. Pontes de Miranda Papers Archive, Centro Cultural, Justiça Federal do Estado do Rio de Janeiro.

and elect a President “who would clean up the country while following the Constitution and the laws”⁵⁶. Apparently, his main criticism of the regime was his disapproval of the legal institute invented by the dictatorship, the Institutional Act. According to the author, the Institutional Act had “buried a Revolution that could have done a lot of good to this country”⁵⁷.

73 In June 1966, Pontes de Miranda stated that he had been invited, in January 1964, to participate in the movement “that would become victorious in March” and that it had not fulfilled the promises of “impeachment of President João Goulart, closure of the National Congress and immediate convening of a National Constituent Assembly”⁵⁸. At the time, Pontes de Miranda was part of a movement of lawyers who wanted to understand the draft constitution the government was secretly working on⁵⁹ and was coordinating a commission of lawyers to prepare an alternative subproject⁶⁰.

74 According to *Jornal do Brasil*, on a visit to the south of the country in October of that year, Pontes de Miranda stated that the “only remedy now is to wait for the *gaúcho*”⁶¹ who was elected President of the Republic since only *gaúchos* can get the country out of this situation”. The author continued: “If a Minas Gerais native like a common Milton Campos were elected, he would sell everything he had and move out of the country”⁶². He once again put his hopes on a dictator: the *gaúcho* Costa e Silva⁶³ would take office as chief of the Executive Branch on March 15, 1967.

75 Costa e Silva, who had been exchanging letters with Pontes de Miranda since as far back as July 1964, wrote to the author in December 1967 to thank him for sending the book, *Comentários à Constituição de 1967*.⁶⁴

76 On December 14, 1966, in the main hall of the University of São Paulo’s Law School, Pontes de Miranda received the title of “Honorary Professor”. The session was opened by Alfredo Buzaid and the title was granted by Canuto Mendes de Almeida. In his speech, Pontes de Miranda

56 *Jornal do Brasil*, November 24, 1964, p. 3.

57 *Jornal do Brasil*, December 2, 1964, p. 3.

58 *Jornal do Brasil*, June 25, 1966, p. 1.

59 *Jornal do Brasil*, August 23, 1966, p. 4.

60 *Jornal do Brasil*, September 8, 1966, p. 4.

61 A person from the state of Rio Grande do Sul.

62 *Jornal do Brasil*, October 14, 1966, p. 2.

63 Dictator of Brazil between 1967 and 1969.

64 COSTA E SILVA (1967): Letter from Costa e Silva to Pontes de Miranda, December 4, 1967. Pontes de Miranda Papers Archive, Centro Cultural, Justiça Federal do Estado do Rio de Janeiro.

thanked Professors Alfredo Buzaid and Gama e Silva, two jurists who would provide ample legal support to the military dictatorship⁶⁵.

77 In just over three years, contrary to what it had claimed in 1964, the dictatorship had changed its mind and begun to officially proclaim that the country needed a new Constitution.

78 The 1967 Constitution was enacted by the Institutional Act No. 4. The Institutional Act had greater force than the constitutional text and functioned in such a way that major constitutional changes were theoretically made without altering the Constitution's text. In practice, however, the dictatorship built a system of false legality before reaching the point of suspending the National Congress, which would come sometime later. It is worth remembering that it was through the Institutional Acts that the death penalty, the end of the multi-party system, censorship, and the suspension of *habeas corpus* were instituted in the country.

79 The dictator Castelo Branco summoned the National Congress for an extraordinary meeting, from December 12, 1966, to January 24, 1967, for discussing, voting, and promulgating the draft constitution presented by the President of the Republic. The call was made during the traditional period of parliamentary holidays in Brazil.

80 The process of approving the Constitution was unique: the President of the Senate had to appoint a mixed commission (of deputies and senators) that, in 72 hours, was to issue an opinion on the draft constitution. Only 72 hours. This opinion would then be voted on within four days by the National Congress and, after its approval, it would return to the commission, who would make eventual amendments. These amendments had to be submitted to a committee opinion prior to a vote by the full Congress.

81 The 1967 Constitution of the Federative Republic of Brazil was enacted on January 24, 1967. For the less attentive reader, we highlight that, in just over 45 days, the dictatorship had "approved" the new draft Constitution.

82 Pontes de Miranda, who had been part of the Bar Association's commission and intended to get to know the project in advance and participate in the preparation of a subproject proposal, watched the dictatorship suddenly approve a new constitutional text. Hence, his indignation with this development can be seen in the newspapers⁶⁶ and the book he published that same year.

83 In 1967, Pontes de Miranda brought out his book, *Comentários à Constituição de 1967* (*Commentary on the 1967 Constitution*), in São Paulo's *Revista dos Tribunais*. In a matter of about three years, the author had completely changed his perception of the military dictatorship and began to make direct criticisms of it.

65 EDITOR, O. Outorgado o título de professor honorário ao Dr. Francisco Cavalcanti Pontes de Miranda. *Revista da Faculdade de Direito, Universidade de São Paulo*, v. 62, n. 2, p. 381–392, 1966.

66 *Jornal do Brasil*, December 11, 1966, p. 4.

- 84 According to him, in the 1967 Constitution “there [was] more subservience than a revolution”, the text did not “advance to the future”, and the “so-called 1964 revolution”, as the military named the movement that had deposed the elected president, was “just a *coup*”.
- 85 Proceeding with his criticisms, Pontes de Miranda stated that the “Institutional Act of 1964 was a big mistake in Brazil’s history which had led to other mistakes”. According to him, this Act, carried out by the pro-dictatorship movement, resulted in a series of legal acts that stained the national legal history.
- 86 In his 1967 book, Pontes repeated excerpts from his 1946 and 1938 books and took up a distant – but apparently never forgotten – theme: the 1937 Constitution. At almost 75 years, Pontes de Miranda was keen to insist on the thesis, after 30 years and two other constitutions, that the 1937 Constitution had not been enforced and that it “could have been the first Charter of the Brazilian Revolution”.
- 87 It is worth remembering here that written records of jurists criticizing the military dictatorship that ruled Brazil from 1964 to 1985 are rare. The main criticisms came from political texts and the illegal press since the official press was censored by the dictatorship. It was surprising to find a vehement criticism of the military dictatorship right in the middle of it by Pontes de Miranda.
- 88 Returning to the 1967 book: the text showed the author’s disillusionment with the military dictatorship. If he had had hopes that, in one year, 30 years’ worth of progress could take place, in less than three years, all his illusions regarding the regime had collapsed. If he had had hopes of starring in the elaboration of a draft to the dictatorship’s Constitution, this dream had also been shattered.
- 89 In 1968, Pontes de Miranda called the Institutional Acts “damned” and criticized the 1967 constitutional text, as well as the previous ones.⁶⁷
- 90 On October 17, 1969, the military dictatorship approved a Constitutional Amendment containing only two articles: the first gave a new wording to several articles of the 1967 Constitution and the second simply dated the measures into force to October 30th of the same year. In other words, a simple amendment changed several important articles of the text.
- 91 The dictatorship once again showed its violence and agility in changing the constitutional text. In just a few days, a lot had been transformed. However, in truth, the constitutional text was just an array of empty words for a regime based on illegality, corruption, torture, and crimes.

67 *Jornal do Brasil*, March 17, 1968, p. 24.

92 It was in this context that Pontes de Miranda published the second edition of his *Comentários à Constituição de 1967*, now updated with Amendment No. 1 of 1969⁶⁸. Here, the author republished previous reviews and included new ones. We have highlighted some of them in this paper:

93 *“We are not interested here in what happened in Brazil between April 1, 1964, and March 15, 1967. What matters to us is that the National Congress resisted, in the last few hours, against dictatorship proposals of the German or Italian type before the end of the Second World War, but without their nationalism”*⁶⁹ (emphasis in the original).

94 Pontes de Miranda, now in a different manner, compared the Brazilian dictatorship with Nazism and the fascism of the Second World War; adding, in highlight, that the Brazilian dictatorship did not even have the nationalism that those two supposedly defended. As he did in 1967, the author presented a direct criticism of the military dictatorship. He insisted that “fascism and Nazism are over, but their ideas remain” and that “there are interests from the great powers for some democracies to exist and others to not have their creation completed”⁷⁰.

95 Additionally, according to him, with the “*coup*”, “they didn’t manage to close the National Congress: they solely distorted it, solely put pressure on it, solely vilified it and allowed electoral choices to give rise to the continuation of the dictatorship”⁷¹. Then, as a critic of the regime, Pontes de Miranda also defended that “in 1968, Brazil suffered another *coup*”. This statement was repeated several times throughout the text. In December 1968, the military dictatorship decreed the Institutional Act No. 5, enabling the recess of the National Congress, the suspension of the *habeas corpus* recourse, the possibility of confiscation of assets and compulsory retirement, as well as the suspension of various guarantees and rights of Brazilian citizens.

96 It is interesting to note that Pontes de Miranda’s commentary on the military dictatorship was found amid various technical and legal commentary. That is, the text was intended to be a technical work of interpretation and analysis of the Constitution and, among this commentary, there were several criticisms from the author.

97 It was not a book written just to criticize the military dictatorship, however, but a work that revealed the author’s desire to expressly criticize the regime. In 1969, at around 77 years of age,

68 PONTES DE MIRANDA, FRANCISCO CAVALCANTI. *Comentários à Constituição de 1967 com a Emenda nº 1 de 1969*. Tomo I. 2º ed. Rio de Janeiro: Editora dos Tribunais, 1969.

69 PONTES DE MIRANDA, Francisco Cavalcanti. *Comentários à Constituição de 1967 com a Emenda nº 1 de 1969*. Tomo I. 2º ed. Rio de Janeiro: Editora dos Tribunais, 1969, p. 167.

70 Ibidem, p. 168.

71 Ibidem, p. 209.

Pontes de Miranda did not mince words to pick apart the regime that, in his opinion, was similar to Nazism and fascism.

- 98 His ideas of “mutilated Congress” by the dictatorship followed the same logic. In several parts of the book, Pontes de Miranda narrated the restrictions, pressures, and impeachments that the dictatorship promoted in Congress, while addressing how the Legislative Power was pressured, as highlighted by Limongi⁷².
- 99 It was in this book, in 1969, especially in volume IV, that Pontes de Miranda criticized the 1937 dictatorship, accusing it, for example, of “strangling the Congress” and saying that its “elements were still alive”, having turned into a “greater sin in 1964”.
- 100 Here, we have not included all the passages in this book where the jurist criticized the military dictatorship. Surely, both in 1967 and 1969, he was a critic of the system. His criticisms were expressed and mixed with legal commentary in his texts. In the same way, he criticized the 1937 dictatorship and reiterated what he had already written at earlier instances: that the regime could have been the first Brazilian revolution if the 1937 constitutional text had been applied.
- 101 But Pontes de Miranda’s relationship with the 1964 dictatorship was not simple. While he called himself a “friend” of “the closest kind” to the Military Dictatorship’s Minister of Justice, Alfredo Buzaid, Pontes de Miranda severely criticized⁷³ the Decree No. 1077 of 1970, which instituted censorship in Brazil⁷⁴. Several times, and at different instances, the jurist criticized the censorship being encouraged in the country, even as he received tributes from the Chamber of Deputies on his birthday⁷⁵.
- 102 On April 22, 1969, Pontes de Miranda wrote a letter to dictator Costa e Silva, criticizing the drafting of a new Code of Civil Procedure. In the letter, he stated that the new code would “shatter the country's legal tradition with mediocrity”. He also criticized “the false jurists of Brazil”, whom he referred to as the “greatest enemies of our progress”, adding that “they study nothing, write nothing; they want to copy laws, or make them without techniques”. Pontes de Miranda spoke out against what he called the “Italianization” of Brazilian law and defended the Procedural Code of 1939.⁷⁶

72 LIMONGI, DANTE BRAZ. O projeto político de Pontes de Miranda: Estado e democracia na obra de Pontes de Miranda. Rio de Janeiro: Renovar, 1998, p. 136.

73 *Jornal do Brasil*, February 13, 1970, p. 7.

74 Available at: https://www.planalto.gov.br/ccivil_03/decreto-lei/1965-1988/del1077.htm

75 *Correio da Manhã*, April 21, 1970, p. 11. In the same sense, *Jornal do Commercio*, September 18, 1970, p. 10. The newspaper stated that Pontes de Miranda was the “greatest jurist of our time, in the whole world”.

76 PONTES DE MIRANDA (1969): Letter from Pontes de Miranda to Costa e Silva April 22, 1969. Pontes de Miranda Papers Archive, Centro Cultural, Justiça Federal do Estado do Rio de Janeiro.

- 103 In December 1969 – when the Institutional Acts had reached 17 in number and had decreed the legality of banishment, the death penalty, and the suspension of *habeas corpus* – *Jornal do Brasil* published a long article on Pontes de Miranda. He was then described as “the most lucid expression of the Law”. The full-page article, which carried a large photograph of the author, traced the profile of the lawyer as a Christian, a humanist, and a defender of the Law⁷⁷.
- 104 In 1971, the Federal University of Rio de Janeiro awarded the jurist the title of “professor *honoris causa*”⁷⁸. The same institution, in 1972, had awarded the title of doctor *honoris causa* to the dictator Emilio Garrastazu Medici⁷⁹ – a title which was annulled in 2015 by a University Council decision.
- 105 Upon completing 80 years, in 1972, Pontes de Miranda received various tributes from across the country. Courts, professional associations, and jurists gathered to salute the author. *Jornal do Brasil*, on April 24, 1972, acclaimed the author with a two-page report, describing him as “one of the greatest jurists of all time” and quoting one of his sentences: “For Pontes de Miranda, the secret of his longevity lies in his love for Brazil and in the certainty of having always slept with a clear conscience”.⁸⁰ In October of the same year, the jurist received the Military Justice’s Grand Cross insignia⁸¹.
- 106 At the V Brazilian Lawyers Conference, which took place between the 11th and 16th of August 1974, in Rio de Janeiro, the military dictatorship’s political police mapped out all the lawyers who gave speeches. Pontes de Miranda, who would die five years later, was then described as an enemy of the regime for having “jokingly” criticized the Military Junta, the press censorship, and Institutional Act No. 5, as well as for “having sympathy for elements linked to communism”⁸².
- 107 “I never betrayed my conscience”. That was how *Jornal do Brasil* announced a long article on the life of Pontes de Miranda in May 1975. At the age of 83, the author spoke about his life, his writings, and his work routine⁸³.

77 *Jornal do Brasil*, December 1, 1969, p. 30.

78 Available at: https://consuni.ufrj.br/images/Titulos/PROF_HONORIS_CAUSA-DIVDADOS_31-03-2023.pdf, The news was published by *Correio da Manhã* on June 23, 1971, p. 8.

79 Dictator of Brazil between 1969 and 1974.

80 *Jornal do Brasil*, April 24, 1972, p. 18–19.

81 *Jornal do Brasil*, October 3, 1972, p. 4. The award was created by the Superior Military Court (STM) and intended to honor people for their services to the Brazilian Military Justice System.

82 BRASIL, Serviço Nacional de Informação, Agência Central, Informação (Information) nº 0636/19/AC/1974, Relatório (Report) da V Conferência da Ordem dos Advogados do Brasil, 1974.

83 *Jornal do Brasil*, May 17, 1975, p. 10.

- 108 In 1977, once again, Pontes de Miranda changed his tone about the dictatorship and its legal constructions. On the front page of the newspaper, accompanied by a printed photograph, the article stated that “both in the 1967 Constitution and Amendment No. 1 there were correct measures and reprehensible measures”. As for censorship, he stated: “What matters most is that the offense is punished, rather than leaving the examination of what is going to be published to the mercy of bureaucrats”. About the country, living at the height of the military dictatorship, he defended that “Brazil is progressing, and the Brazilian people are working”⁸⁴.
- 109 During this period, Pontes de Miranda was running, along with Rachel de Queiroz, for the Brazilian Academy of Letters. It was the first time that a woman ran for a chair at the academy, one of the country’s oldest academic institutions.
- 110 Raquel de Queiroz was elected on August 4, 1977, by 23 votes against 15 for Pontes de Miranda⁸⁵. The author, who had already lost an election at the Brazilian Academy of Letters in 1926, reacted to his defeat by saying: “You can ask me if it was a woman who won. And I will answer: no, it was the government who won.”⁸⁶
- 111 On March 13, 1978, Pontes de Miranda once again criticized the dictatorship and Institutional Act No. 5, stating that: “not even in the time of Getúlio Vargas was the dictatorship as authentic as it is now”⁸⁷. The same criticism was made the following month when he affirmed that Institutional Act No. 5 was “a crime against the Brazilian cultural heritage” and that not even “Getúlio Vargas, who was not an authentic dictator, did that”. At that moment in history, according to him, the Brazilian people were “living in a political climate of true dictatorship”.
- 112 During this period, Pontes de Miranda was part of a Brazilian Bar Association commission that called for the end of the “state exception laws”⁸⁸ and tried to constitutionalize the country⁸⁹. In addition, in April 1978, his name was mentioned again for a new election at the Brazilian Academy of Letters⁹⁰. This election was constantly brought up by the press that year.

84 *Jornal do Brasil*, April 30, 1977, p. 1.

85 *Jornal do Brasil*, August 5, 1977, p. 1.

86 *Jornal do Brasil*, August 5, 1977, p. 23. Raquel de Queiroz was an important Brazilian writer. Author of several important books for the national literary tradition, she had her works translated and published in several countries. In 1978, she had already won several literature prizes, including the Jabuti, the most important literary contest in Brazil. To know more about Queiroz's relationship with the military dictatorship, access the site: <https://ims.com.br/por-dentro-acervos/rachel-e-o-golpe/>

87 *Jornal do Brasil*, March 13, 1978, p. 2.

88 *Jornal do Brasil*, May 8, 1978, p. 4.

89 *Jornal do Brasil*, May 9, 1978, p. 8.

90 *Jornal do Brasil*, April 27, 1979, p. 3.

- 113 In August 1978, Pontes de Miranda gave another interview to *Jornal do Brasil*. Here, he stated that: “those responsible for the Revolution’s mistakes were the Ministers of Justice and not the Presidents”, that he looked at the “country’s future with optimism” and that “he trusted the sincerity of President Geisel⁹¹”. Additionally, he stated that he was “a friend” of Costa e Silva and that he and his wife had hosted dinners for the President at his home: “...he was not a dictatorial man at all. For this reason, I affirm that he did not sign Institutional Act No. 5. It was Minister Gama e Silva who dealt with it.”⁹²
- 114 A quick look at the document shows that this statement is not true. The dictator Costa e Silva was the first person to sign the Institutional Act No. 5. Once again, Pontes de Miranda changed his tone regarding the military dictatorship. Now, he pointed to his closeness to the dictators and contradicted what he himself had said about Costa e Silva earlier.
- 115 Pontes de Miranda was elected to the Brazilian Academy of Letters on March 8, 1979. He beat writer Dinah Silveira de Queiroz by 20 votes against 16⁹³. With the scholar’s death, Queiroz won the election a few years later and became the second woman to be appointed to the Brazilian Academy of Letters.
- 116 Taking office on March 15, 1979, Pontes de Miranda was received by Miguel Reale, a jurist who supported the military dictatorship⁹⁴. This is how he began his inaugural speech: “I have never, in my entire life, applied for any position or function, here or abroad. The ones I exercised in the Judiciary and in the Ministry of Foreign Affairs, from which I am retired, were exceptionally assigned to me, without competition and without my request.”⁹⁵ Elected on his third attempt, the author would occupy the seat for less than a year.
- 117 Pontes de Miranda died of a heart attack on December 22, 1979, at his home. His death was announced on the front page of *Jornal do Brasil*⁹⁶. On January 6, 1980, the same newspaper paid homage to the author, publishing his last interview in an article that occupied an entire page of the Sunday issue.⁹⁷

91 Dictator of Brazil between 1974 and 1979.

92 *Jornal do Brasil*, August 3, 1978, p. 2.

93 *Jornal do Brasil*, March 9, 1979, p. 1.

94 See: SEELAENDER, AIRTON. *Juristas e ditaduras: uma leitura brasileira*. In: FONSECA, RICARDO. SEELAENDER, AIRTON. *História do Direito em perspectivas: do antigo regime à modernidade*. Curitiba: Juruá, 2009.

95 Available at: <https://www.academia.org.br/academicos/pontes-de-miranda/discurso-de-posse>. See also the criticism presented on: CABRAL, ANTONIO DO PASSO. *Alguns mitos do Processo (III): Pontes de Miranda e Haroldo Valladão em concurso para professor catedrático na Universidade do Rio de Janeiro 1936 e 1940*. *Revista Brasileira de Direito Processual*, Belo Horizonte, Year 24, n. 96, pp. 11-47, Out/Dec., 2016.

96 *Jornal do Brasil*, December 23, 1979, p. 1.

97 *Jornal do Brasil*, January 6, 1980, p. 3.

118 On April 7, 1981, at the inauguration of Dinah Silveira de Queiroz, Pontes de Miranda was not mentioned by the academic Raimundo Magalhães Pinto. A controversial author, Pinto had broken a tradition of the institution, because he was “a noble enemy” of Pontes de Miranda, according to *Jornal do Brasil*. Also according to the newspaper, Pinto had stated that he would stop attending the Brazilian Academy of Letters owing to Pontes de Miranda’s election, describing him as the “biggest liar in Brazil, as well as a terrible writer”⁹⁸.

119 Well known as an author of Civil Law and Civil Procedure, Pontes de Miranda is still little known and studied as an author of constitutional law in Brazil. Having been a witness and a jurist who got to experience the legal system of the two Brazilian dictatorships of the 20th century firsthand, and as a defender of the 1937 Constitution for decades, Pontes de Miranda did not live to see the end of the military dictatorship in the 1980s.

120 In 1981, still during the military dictatorship, the Brazilian Bar Association and the Institute of Lawyers from Rio Grande do Sul held the “Pontes de Miranda Congress”. The event “aimed at drawing up a proposal for a Constitution for Brazil, as collaboration and incentive to the convening of the National Constituent Assembly”, indispensable “to conquest the plenitude of the Rule of Law”. The first article of the democratic Constitution proposal defended that: “Sovereignty resides in the people, who are the source of all power. The powers inherent to sovereignty are exercised by elected representatives or by public consultation.”

Final Words

121 There were few jurists in Brazil who witnessed and wrote about the two Brazilian dictatorships of the 20th century. The writings and speeches of Pontes de Miranda are an excellent resource to identify the relationship between jurists and dictatorships at various moments in Brazilian history.

122 What we see here is that the relationship between them is not constant. Despite presenting themselves as – and the case of Pontes de Miranda illustrates this well – always excited about the beginning of dictatorial governments, the jurists’ relationship with them can change with time.

123 The present paper has attempted to illustrate this relationship. In the first days of the two Brazilian dictatorships, Pontes de Miranda presented himself as one of their main defenders. In both cases, in 1937 and again in 1964, the author was excited, even in the face of flagrant constitutional violations. However, this initial excitement led to, in the case of Pontes de Miranda, two different reactions: the sadness of not seeing the 1937 Constitution being fully applied – a desire that he maintained for most of his life – and the disappointment with the course of the 1964 military dictatorship as well as the 1967 Constitution.

98 *Jornal do Brasil*, July 23, 1980, p. 3.

- 124 Thus, this research has tried to show that the relationship between jurists and dictatorships is non-linear and complex: there is adherence, there is hope, but there is also disappointment. In other words, taking the example of Pontes de Miranda, we can say that jurists are the first to support dictatorships, even when they involve breaches of legal paradigms or constitutional violations. However, these same jurists react differently as such dictatorships progress, sometimes complaining that they were not diligent enough, and sometimes denouncing them to be, if anything, hardly more than *coups*.
- 125 We do not believe that Pontes de Miranda was an authoritarian or was adaptable to the regime. Instead, we believe that the author had a channel of contact with the dictators, he was an important jurist during the period, but he did not lead any great legal monuments. Pontes de Miranda was not Minister of Justice, he did not write a constitution, he did not coordinate any major legislative process. In other words, he was not a jurist at the service of the dictatorship, like many others. He praised both dictatorships; but only from the Vargas dictatorship did he receive a position, which was also not of the highest rank in the country.
- 126 In other words, Pontes de Miranda was a jurist who had an ambiguous relationship with the regimes. He criticized their laws and, at other times, was not exempt from heaping praise on the dictators. He was a jurist who circulated within power circles, but was never the leader of any regime. Maybe that was why criticism was possible, maybe that was why criticism existed – for the available data does not allow us to conclude our study with indisputable proof.
- 127 We did not see an authoritarian conception of Law in his work. From the analysis of his books, even when he praised the Constitution of the *Estado Novo*, our impression was that of an author defending the ideas of democracy. At this point in our research, it was not possible to perceive a relationship between Pontes de Miranda's technical perspective and authoritarian forms of state, even though there was always praise for the dictatorial government of Getúlio Vargas, his personal friend.
- 128 On the other hand, in his interviews and letters, Pontes de Miranda showed himself to be a person who sympathized with dictators, a fact he never made a point of hiding. Close to the dictators, he was critical and praising of their dictatorships. All of these contradictory labels are possible, but on their own none of them conclusively explains the jurist's position. Pontes de Miranda fluctuated in his opinions and displayed contradictions that are possible in every human being. As he was never the main jurist of any regime, he left the impression of being free to criticize, especially since he was credited as a famous jurist who circled among the upper echelons of power so as not to suffer reprisals.
- 129 The works of Pontes de Miranda were particularly difficult to understand. In many instances, the author repeated the same statements across several books. For instance, information and paragraphs from the 1938 text were repeated in his 1947 and 1967 books. To the reader, he appears to have maintained the same thoughts and opinions across different historical moments.

A comprehensive examination of his works, however, indicates how ambiguous and contradictory he was – which is not surprising, considering the volume and longevity of his works.

130 In many ways, by using Pontes de Miranda as an example, our research pointed out that jurists did not present themselves as initial critics of dictatorships, as one would imagine, especially in the case of Brazil. With his example, our study indicated that jurists were the first to join dictatorial regimes and that they carried with them the dictatorships' ideas and contradictions for most of their careers.

131 The understanding of the involvement of jurists in dictatorships is crucial for a country's democratic history. Portraying them as complex, contradictory, and evolving allows for a critical examination of a nation's legal past as well as of the various individuals involved in it.