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Acoustic Surveillance in Brazil: The Car Wash Operation Panacousticon

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Acoustic Surveillance in Brazil: The Car Wash Operation Panacousticon

Abstract

In *Discipline and Punish*, Michel Foucault famously described Jeremy Bentham's panopticon as the emblematic representation of a shift in power from public and centralised punishment to diffuse and individualised surveillance. Within surveillance studies, Foucault's panopticon has become a dominant analytical framework. Although Foucault considers the panopticon as a matter of optics and visibility exclusively, Bentham was not oblivious to acoustics. For instance, in his panopticon plans, he considered including a network of "sound pipes." Compared to its visual counterpart, such a 'panacousticon' presents two distinctive traits. One trait is the *symmetry* between the inspector and inspected, as information could flow in both directions – 'toward the scene of discovery but also toward the listener' (Szendy 2017: 23). The other trait refers to *versatility*: the inspector can use the sound pipe for eavesdropping, monitoring, and as a channel for public addresses. In this article, I examine acoustic surveillance in Brazil within the context of the Car Wash Operation (*Operação Lava Jato*), the country's largest corruption investigation, launched in 2014. I argue that the Operation's success is directly related to its use of 'sound pipes' such as wiretaps, plea deals, and leaks. I start examining Brazil's legal mechanisms that prohibit (silence layers) or permit (auditory probes) state interference into people's private acoustic spheres. The second part of the article describes the Car Wash Operation was able to build and deploy its panacousticon.

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‘A whole kingdom, the great globe itself, will become a gymnasium, in which every man exercises himself before the eyes of every other man. Every gesture, every turn of limb or feature, in those whose motions have a visible influence on the general happiness, will be noticed and marked down.’

–Jeremy Bentham

Bentham’s Panacousticon

In his pursuit of the ideal design for implementing social order, British utilitarian Jeremy Bentham envisioned the panopticon: a circular building with a watchtower at its centre and equally sized cells along its circumference. From the centre, the inspectors would have easy visual access to all rooms; their room would have window blinds, allowing them to see without being seen. The divisions between the cells would stick out a few feet toward the centre of the building, preventing the prisoners (but also students, workers, and patients) from seeing each other. Those under surveillance should always feel themselves as if under inspection. The greater the chance of being under inspection, the stronger the feeling of being so. Additionally, such an ‘inspection principle’ applied not only to the prisoners but to all others; the inspectors should feel (as if) monitored by their

supervisors, and the supervisors by the general public. The publicity would expose inspectors and supervisors ‘to the censure of the law and of public opinion, or at any rate of public opinion, every instance of contravention’ (Bentham 1843b).

In *Discipline and Punish*, Michel Foucault famously described the panopticon as the emblematic representation of a shift in power from public and centralised punishment to diffuse and individualised surveillance. Within surveillance studies, Foucault’s panopticon has been a dominant analytical framework. Kevin Haggerty has compiled a list of panopticon subvariants that have proliferated since the 1990s. Those include the superpanopticon, electronic panopticon, post-panopticon, omnicon, ban-opticon, global panopticon, panspectron, pedagopticon, polyopticon, and synopticon (Haggerty 2006: 26). Haggerty urges us to ‘demolish’ the panopticon. For the author, in trying to make the panopticon fit into their analyses, scholars have “excluded or neglected a host of other key qualities and processes or surveillance that fall outside the panoptic framework” (ibid: 23). For instance, reality television shows involve a high level of public scrutiny as a pleasurable activity, thus challenging the panopticon’s associations of surveillance as social control (ibid: 28). Additionally, reality shows seem to invert the panoptical gaze: those higher up in the social hierarchy are monitored by a mass of observers.

The attempt to ‘detect panoptic attitudes in any number of surveillance arrangements’ can certainly lead to questionable results (Haggerty 2006: 25). Here I revisit the panopticon and emphasise yet another subvariant to highlight how Foucault’s panopticon has marginalised not only other analytical frameworks but also communication outside the visual terrain. Although Foucault considers the panopticon as a matter of optics and visibility exclusively, Bentham was not oblivious to acoustics. For instance, in his Panopticon plans, he considers including a network of sound pipes:

To save the troublesome exertion of voice that might otherwise be necessary, and to prevent one prisoner from knowing that the inspector was occupied by another prisoner at a distance, a small tin tube might

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reach from each cell to the inspector's lodge [...]. By means of this implement, the slightest whisper of the one might be heard by the other, especially if he had proper notice to apply his ear to the tube (Bentham 1995: 21).

Foucault explains in a footnote that Bentham eventually abandoned the idea of 'acoustic surveillance ... perhaps because he could not introduce into it the principle of dissymmetry and prevent the prisoners from hearing the inspector as well as the inspector hearing them' (Foucault 1995: 317). Perhaps. In any case, as Lauri Siisiäinen notes, 'Foucault is not really known [...] as a thinker of the "auditory-sonorous" at all' (Siisiäinen 2012: 3). For one, the sound pipes could allow the inspectors to eliminate spatial and temporal constraints and 'appear as if present everywhere at the same time' (Siisiäinen 2012: 58). Moreover, Peter Szendy (2017) notes that Bentham designed the sound pipes not for eavesdropping but for monitoring purposes. For Bentham, whereas eavesdropping involved prying into the prisoners' 'secret recesses of the heart' to detect an infraction, monitoring was meant to 'confine its attention to overt acts,' thus preventing the prisoners from planning an offence.

Siisiäinen and Szendy invite us to consider how Bentham's inspection principle operates within the auditory register. What is the acoustic version of the 'eye of the public' (Bentham 1843) – the ear of the public? Compared to its visual counterpart, the 'Panacousticon' (a term I borrow from Szendy) presents two distinctive traits. One trait is the *symmetry* between the inspector and inspected, as information can flow in both directions – 'toward the scene of discovery but also toward the listener' (Szendy 2017: 23). The other trait refers to *versatility*: the inspector can use the sound pipe for eavesdropping, monitoring, and as a channel for public addresses.

In this article, I examine acoustic surveillance in Brazil within the context of the Car Wash Operation (*Operação Lava Jato*), the country's largest corruption investigation, launched in 2014. I argue that the Operation's success is directly related to its use of 'sound pipes' such as wiretaps, plea deals, and leaks. Before examining the Car Wash

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Operation panacousticon, I consider Brazil's legal mechanisms that prohibit (silence layers) or permit (auditory probes) state interference into people's private acoustic spheres.

Silence Layers and Auditory Probes

Throughout the 20th century, Brazil went through two long periods of authoritarianism. In 1930, Getúlio Vargas became President after leading a bloodless revolution against the country's political establishment. In 1937, after his military officials 'revealed' (using forged documents) communist plans to overthrow his government, Vargas orchestrated a coup to remain in power. He closed Congress, suspended personal rights, and ruled through decree-laws. The Vargas regime relied on surveillance, torture, and censorship. For instance, it tapped the telephones and opened the mail of everyone in the government.

After Vargas was ousted in 1945, the country experienced for the first time a full-fledged representative democracy with regular elections, separation of powers, individual rights, and right to postal privacy. In 1964, a military coup pulled the country back to authoritarianism, once again in the guise of an imminent 'communist threat.' In the next years, the military virtually controlled Congress, imposed press censorship, suspended habeas corpus, and imprisoned without a court order. The National Intelligence Service (*Serviço Nacional de Informação*) had thousands of infiltrated agents across the public administration to identify and 'neutralize' any opposition. Led by influential military officers (two would become President), the Intelligence Service was the regime's secretive ear; its agents tapped telephone poles without any judicial review.

In the 1980s, when the country returned to representative democracy, politicians, legal scholars, intellectuals, and union leaders organised public hearings to draft a new Constitution. In response to the abuses of the military regime, the 1988 Constitution (still in effect) set in place a series of instruments to protect the people against excessive state interference. The Constitution gave the Public Prosecutor's Office

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(*Ministério Público*) ‘functional and institutional autonomy’ to defend society and the rule of law at the federal and state levels. Functioning independently from the three government branches, the Public Prosecutor’s Office handles a wide range of criminal issues such as tax evasion, money laundering, and corruption. Public prosecutors have the authority to supervise police investigations and charge public officials.

This brief historical account suggests how Brazil has alternated between its autocratic and democratic impulses. At one moment, the state is an impenetrable black box that uses the law to give its agents free rein to act with no oversight; at another moment, it delegates to an entire institutional body with authority to investigate and prosecute any of its officers. Importantly, as much as those spearheading politico-administrative shifts tend to reject the previous *modus operandi*, they never succeed in extinguishing it completely. What we see then is a complex administrative meshwork pervaded by institutional tensions and anachronisms. For example, while the 1988 Constitution emerged in the aftermath of the dictatorship, the Civil Code and the Civil Procedure Code were updated in 2002 and 2015. The Criminal Code and Criminal Procedure Code date back to the Vargas era.¹

With a better sense of Brazil’s zigzagging and palimpsestic trajectory, we can continue our excursion into the Car Wash Panacousticon. The first step is to identify the silence (or secrecy) layers that prevent the state from intercepting, recording, storing, and disclosing a private conversation. Not surprisingly, the first layer comes from the Constitution. The document includes, under fundamental rights and guarantees, the ‘secrecy of correspondence, and telegraphic, data and telephonic communications ... except, in the latter case, by court order, in the situations and manner established by law for purposes of a criminal investigation or the fact-finding phase of a criminal prosecution’ (Art. 5: XII).

A second silence layer relates to the confidentiality of the police inquiry (*inquérito policial*). The police inquiry is a provisional, preparatory, and informative investigation for collecting evidence and identifying suspects. The inquiry can include searches, seizures,

preventive detentions, telephone interceptions, and bank secrecy lifts – all of which require judicial warrants. The police inquiry concludes with a report, where the police inspector decides whether to indict the suspect(s). The inspector sends the indictment to the public prosecutor, who can press charges or require the police to conduct further investigation. When the prosecutor presses charges, the Judge can accept them or not. At this point, the Judge will notify the defendant, as expected in an adversarial system. The 1988 Constitution was the first to admit the possibility for telephone interception, ‘in the situations and manner established by law.’ Law 9296/1996, Brazil’s first wiretapping law, includes a few additional silence layers. The wiretapping law requires judicial review, proof of probable cause, exhaustion of other investigative channels, and limited (but renewable) wiretapping duration. The law requires that any information related to the wiretaps be kept confidential as an attachment to the police inquiry or criminal charge. It is a crime to breach confidentiality without a court order or ‘with purposes not authorised by law.’ Any audio recordings not directly related to the investigation must be discarded.

Brazilian legal scholars tend to group acoustic surveillance into three categories: interception (*interceptação*), recording (*gravação*), and listening-in (*escuta*). During an interception, a third party listens to a conversation between interlocutors A and B without their knowledge. In a listening-in, a third party listens with the awareness of one of the interlocutors. In a recording, interlocutor A secretly records the conversation without interlocutor B’s knowledge). Scholars also distinguish between ‘telephone’ and ‘environmental’ interception/recording. While telephone interception has a specific law, the same is not true for the other three auditory probes. Without specific legislative parameters, these mechanisms have existed in a muddier legal territory. However, in the last ten years, the Supreme Court has admitted both telephone and environmental recordings as valid evidence.

The last silent layer, also from the 1988 Constitution, is known in Brazil as the ‘privileged forum’ (*foro privilegiado*). Another trace of the country’s palimpsestic legislation (it has been around at least

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since Brazil's first Constitution, in 1824), this layer establishes that certain public officers can only be tried in the higher courts. The 1988 Constitution extended the privilege to include leaders in the executive branch (the President, state governors, and city mayors), lawmakers, judges, and public prosecutors. Unlike most liberal democracies, in Brazil, more than fifty thousand public officers can only be tried for crimes in a higher court (until 1999, federal officers could keep their privileged forum even after their time in office).

For some, by limiting legal cases involving officers in key positions to a higher, more independent court, this right protects key government positions from intense lawfare. As legal scholar Tourinho Filho (2012) explains, the privileged forum prevents 'the subversion of the hierarchy,' protecting trial courts against eventual pressures. For others, however, the privileged forum allows corrupt officials to evade punishment. According to Supreme Court Justice Luiz Roberto Barroso, the privileged forum 'encourages jurisdictional fraud ... when we rule, the person resigns; and when the trial advances, he runs for office and changes his jurisdiction. The system was made not to work.'²

Another way the privileged forum leads to impunity is by overburdening the higher courts. In addition to constitutional issues, the Supreme Court must decide any criminal case involving the President, Vice-President, State Ministers, Senators, and Federal Deputies. Whereas the U.S. Supreme Court and the German Federal Constitutional Court each receive between six and eight thousand cases per year (of which 1-2% are accepted), in 2018, Brazil's Supreme Court received around 101,500 new cases and issued 126,700 sentences.³

In sum the list of silence layers includes the right to privacy, the police inquiry confidentiality, the wiretapping law, and the privileged forum. The purpose and merit of those silence layers remains a highly contentious matter, and (as I show below) a common source of institutional tensions. Some defend these layers as crucial mechanisms for preventive abuse of power from state actors. From their perspective, breaching those silence layers would steer the country back to authoritarianism and state of surveillance.

However, those of a more Benthamian inclination argue that those layers are misused – that is, to ensure the country’s economic and political elite can continue to rob away from public scrutiny. For this group, ‘silence’ implies an inefficient Panacousticon. Only with fully functional auditory probes can the state agents make the ear of the public aware of the illicit acts hidden behind the silence layers. The Car Wash Operation is perhaps the most emblematic example of the Benthamian ideology in Brazil’s recent history.

The Car Wash Operation

In 2013, federal police in Brazil launched an investigation into key black-market financial dealers. They believed one of those dealers, Carlos Habib Chater (who had been convicted earlier), used his currency exchange store and gas station in Brasilia (Brazil’s capital) to launder money. After wiretapping his phone lines, the police learned that Chater was working for a dealer known as ‘Cousin.’ Throughout the investigation, the police inspectors confirmed that Chater’s store was part of a money-laundering scheme. In a nod to Chater’s gas station, the police dubbed the investigation ‘Car Wash’ (*Lava Jato*).⁴

After weeks of wiretapping and transcription, a police inspector noticed that at one point in the conversation, Chater used ‘Beto’ instead of ‘Cousin’, a hint the person could be Alberto Youssef. Years earlier, Youssef had coordinated a billionaire tax-evasion scheme involving the State Bank of Paraná. In a book about the investigation (later turned into a Netflix series), journalist Vladimir Netto recounts the moment the investigators established that the Cousin was, in fact, Yousseff. The police inspectors

ran to the listening room and turned up the volume to hear better. Igor Romário de Paula [one of the investigators] had been a flight controller and knew Youssef’s voice since his days as a pilot when he crossed the skies of Paraná [a state in Southern Brazil] with smuggled goods. It was him. The voice was his, [de Paula] was certain. ... The agents could hardly believe ... they were about to catch Youssef (Netto 2016: 58-59).

Youssef had been found guilty for his involvement in the tax-evasion

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scandal and agreed to cooperate with the investigations in exchange for a more lenient sentence. The investigators requested the authorisation of Judge Sérgio Moro, who had decided over Youssef's plea deal, to launch a new investigation into Youssef. During that investigation, they found that Youssef had purchased a Range Rover Evoque for the former Director of Supplies at Petrobras, Brazil's semi-public oil and gas giant.

In March 2014, after months collecting information about Chater, Youssef, and other dealers, the Car Wash Operation went public, with dozens of searches and seizures, coercive questioning (compulsory appearance in front of the authorities), preventive detentions, and temporary detentions. From the city of Curitiba (capital of Paraná), Judge Moro and a task force of federal police inspectors and public prosecutors unveiled an extensive and complex bribery scheme. The prosecutors explained that the scheme involved administrative, economic, financial, and political clusters:

1. Administrative Cluster: Petrobras directors approved contracts with a group of construction companies in exchange for bribes.
2. Economic Cluster: the construction companies, acting as a cartel, coordinated their bids to overcharge contracts with Petrobras, using the inflated sum for bribes.
3. Financial Cluster: 'distributors' (such as Youssef) washed the bribes for a fee, often using shell corporations in Brazil or foreign tax havens.
4. Political Cluster: politicians from the main parties in the ruling coalition (Workers' Party, Progressive Party, and Brazilian Democratic Movement Party) nominated Petrobras directors in various sectors. Those directors then forwarded the bribes received from the companies to those politicians, who used the money for political campaigns or personal use.

In its first three years (2014-2017), the Car Wash Operation amassed impressive results: roughly forty 'phases,' 730 search warrants, 300 police inquiries, 330 wiretap authorisations, 57 criminal charges against 260 people, 125 convictions of 90 individuals, and BR\$ 10 billion recuperated via plea deals. The country never saw so many

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public officials, CEOs from large companies, and black-market dealers investigated, charged, convicted, and jailed. Judge Moro and the federal prosecutors coordinating the Car Wash task force, Deltan Dallagnol and Carlos Fernando dos Santos Lima, became folk heroes. The Public Prosecutor's Office and the federal police, both of which had expanded thanks to generous governmental funding, now represented the hope for accountability and a new era of governance in Brazil.

At the same time, the corruption scandal had dire economic ramifications. Petrobras's market value was reduced by half, and the civil construction sector (10 per cent of Brazil's GDP) shrank 21 per cent.⁵ Brazil experienced one of its worst economic recessions. For the first time in more than a hundred years, Brazil experienced an economic slowdown; its economy shrank more than three per cent for two consecutive years (2015 and 2016).⁶ The unemployment rate climbed from 6.8 per cent in 2014 to 12 per cent% (or 12.3 million people) in 2016.^{7,8}

The political crisis was even more severe and affected other countries in Latin America.⁹ The politicians investigated included (sitting and former) presidents of the Republic, presidents of the Chamber of Deputies and the Senate, state governors, and party leaders. For the first time since re-democratisation (1985), a sitting senator was arrested, a sitting president was charged, and an ex-president was convicted. The Car Wash Operation investigated five of Brazil's seven presidents to hold office between 1985 to 2018. In 2017, in response to the Car Wash scandal, Congress passed several laws to regulate the funding of political campaigns.

One could draw on multiple factors to explain how the Car Wash Operation morphed from a small investigation into black-market dealers into what the U.S. Department of Justice described as 'the largest foreign bribery case in history.'¹⁰ My goal in this article, far from comprehensive, focuses on the premise that the Operation thrived thanks to its handling of auditory probes. By stretching and amplifying those probes, it seems the investigators assembled a Panacousticon powerful enough to worm into robust silence layers.

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Two additional auditory probes took part in the Car Wash Operation Panacousticon. One is Law 12850/2013, a plea bargain law against organised crime.¹¹ Together with a new anti-bribery policy focused on corporate crime, the plea bargain bill gained traction in Congress (after years in limbo) in the wake of the massive anti-corruption public demonstrations of June 2013.¹² Known in Brazil as ‘awarded collaboration’ (*colaboração premiada*), Law 12850 stipulates the criminal investigation methods, the means for obtaining evidence, the related criminal offences, and the criminal trial procedure to be applied to such organisations.¹³ At any stage of the prosecution, the law allows various methods for obtaining evidence, including environmental recording (of ‘acoustic or optical’ signals), interception of telephone and computer communications, and lifting of bank, financial, and fiscal confidentiality.

To be awarded a plea agreement, the person must cooperate voluntarily with the investigation or criminal prosecution and provide, for instance, the identification of other participants in the organisation and their offences, the disclosure of the hierarchical structure and task division within the criminal organisation, and the full or partial recovery of the diverted assets. The Judge may grant judicial pardon, reduce the sentence by up to two-thirds, or replace the custodial sentence with one of restrictive rights. The leniency is determined by “the personality of the informant, the nature, circumstances, graveness, and social repercussion of the criminal action, and the efficiency of the information.”

The agreement between the collaborator, her attorney, prosecutor, and police investigator includes a description in general terms of the criminal activities described by the collaborator and the conditions set by the police inspector and prosecutor for the plea deal to be valid. During the negotiations, the collaborator has the right to have her name and personal information preserved and not have her photos, videos, and audio recordings exposed in the press without previous consent. The agreement is confidential and should not be annexed (or even mentioned) in the police inquiry. The police agent or prosecutor

must submit the plea agreement for judicial review. The Judge can either accept, partially accept or refuse to approve the deal (if it does not meet legal requisites). After the judicial approval, the collaborator (accompanied by her attorney) can then narrate the offences in more detail and provide supporting documents; the plea deal might require the police to collect further evidence (for example, wiretaps). With the evidence collected, the prosecutor presses charges; once the Judge receives them, the plea deal loses its confidentiality.

The other auditory probe relates to the disclosure of confidential information through media channels. On the one hand, Edward Snowden's NSA files (2013), the Panama Papers (leaked by an anonymous source in 2016), and similar 'leaktivist' acts have been lauded as an essential remedy against the lack of accountability in governments and corporations. On the other hand, leaks from ongoing criminal investigations or legal proceedings can undermine the due process principle. Leaks are effective because they blur the distinction between 'raw data' and the more 'journalistically curated disclosure of previously hidden information' (Damgaard 2018: 44).

Since its early stages, the Car Wash Operation has been known for disclosing information about ongoing police inquiries, plea bargains, temporary or preventive detentions, and criminal charges. The disclosures included small-scale leaks, large data dumps, and judicial confidentiality lifts. Members of the Car Wash Operation task force in Curitiba have been vocal about the importance of publicity in high-stake criminal probes – they created a website with updated information about the Operation and organised press conferences to discuss new developments. In a 2017 interview, prosecutor Deltan Dellagnol explained that it would have been impossible to investigate without media exposure.¹⁴ In the same interview, prosecutor Carlos Fernando dos Santos asserted that 'a public agent has less right to privacy than an ordinary citizen, not more.'

Federal judge Sergio Moro has also defended publicity as a central component in criminal investigations involving influential people. In a 2004 article, he argued that public support had been crucial for

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the success of Italy's Mani Pulite investigation, to which the Judge likes to compare the Car Wash Operation. According to Moro, the Mani Pulite probe's publicity allowed the judges to work without political interference. As he puts it, 'Although there is no suggestion that any of the prosecutors involved in the investigation deliberately fed the press with information, the leaks served a useful purpose. The constant flow of revelations kept public interest high and party leaders on the defensive' (Moro 2004: 59). For Moro, although they might be controversial, leaks are often necessary to 'break into pacts of silence' (ibid: 57).

The leak was a crucial ingredient in the Car Wash Operation. Mads Bjelke Damgaard (2018) identified eleven significant leaks in the 2014-2017 period. As the author explains, 'media leaks about corruption provide political actors with opportunities for shifting political allegiances, and leaks also provide the conditions for a range of exceptional judicial interventions into politics and even conditions for political interference in accountability processes' (Damgaard 2018: 73). As a piece of information disclosed despite and because the existence of silence layers, the leak 'is likely assumed to contain more truthful representations of reality than denunciations and allegations presented without the restraints imposed by criminal charges and pending sentences' (Damgaard 2018: 51). Unlike the investigators leaking documents anonymously, the journalists who disseminate this material are protected by the Constitution's freedom of expression clause.

The disclosure of audio recordings has some additional advantages from the perspective of the Car Wash investigators. As 'raw evidence' (recordings of telephone or in-person conversations) rather than witness accounts (testimonies or plea bargains), audio leaks 'can be interpreted in many ways, allowing for speculation and extrapolation' (Damgaard 2018: 51). With state leaders, the discrepancy between the formality of official and rehearsed speeches and the informality of private conversations (which usually include slang, swearing, fragmented thinking, vague references, and name-calling) amplifies the sense of 'rawness.' Such is the 'eavesdropping effect': the filtered nature of a

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private conversation implies that its content is more truthful than a more polished public address.

Moreover, as (allegedly) the residue of a criminal act, the audio leaks inform *and* structure how people interpret the event. Within Brazil's more traditional media channels, the audio recordings helped frame the Operation as a political scandal. Widely circulated in the press (transcribed, quoted, and enacted through the reporters' voices), the audio leak became the attraction in each new phase of the criminal probe – itself a drama pervaded by moral conflict, human interest, and suspense. Within social media channels, soundbites extracted from the audio leaks provided quotes that went viral (often with humorous effect) on Twitter and Facebook, and galvanised dissent.

The Panacousticon in Action

In the previous section, we saw how the Car Wash Operation championed Bentham's publicity ideal. For Moro, Dellagnol, dos Santos, and others, the case would never have reached the country's corrupt elite without public opinion. Additionally, Car Wash Operation supporters insisted that the investigation's unprecedented scale and depth required an unorthodox reading of the law. For Moro and the Car Wash task force, that meant navigating Brazil's palimpsestic legal territory and institutional tensions strategically. On the one hand, the broad disapproval of 'outdated' silence layers such as the privileged forum made such layers vulnerable to the Operation's auditory probes. On the other hand, new instruments such as the awarded collaboration law gave Moro and the investigators additional ammunition.

Following its Benthamian tenets, the Car Wash Panacousticon attempted to establish a point of contact between the secretive 'criminal' voice and the public's virtuous ear. The Operation both informed and formed an 'audience' (from Latin *audientia*, or assembly of listeners) through a series of 'hearings' that preceded the court trials. Below, I present three instances of the Car Wash Operation Panacousticon in action.

A The Lula Tapes (March 2016)

The Lula tapes are the most controversial wiretaps related to the Operation. In March 2016, judge Moro authorised the investigators to wiretap the phone lines associated with former President (2003-2010) Luiz Inácio Lula da Silva – at least 37 phone lines were wiretapped. A few weeks before that authorisation, the police had searched Lula's house. They also brought him for coercive questioning, in a highly televised event framed as the long-awaited encounter between Moro and Lula, the famous leader and founder of the leftist Workers' Party. The Car Wash prosecutors suspected construction companies involved in the Petrobras scheme had bribed Lula with real estate assets.

In October 2014, Dilma Rousseff, also from the Workers' Party and Lula's former Chief of Staff, was re-elected after a tight runoff against Aécio Neves from centre-right Brazilian Social Democratic Party. However, due to the Car Wash scandal and the country's economic crisis, Rousseff's popularity started to decline. Around that time, an anonymous source leaked a list of politicians the General Prosecutor intended to investigate (the document was a request the prosecutor had sent to the Supreme Court). Claiming the Rousseff administration had leaked the material, the President of the Senate and the President of the Chamber of Deputies (both included in the report) retaliated by halting Rousseff's economic policies in both houses. In December 2015, arguing that the continuous leaks were an attempt by the Rousseff administration to stain his credibility, President of the Chamber of Deputies Eduardo Cunha fired back by accepting an impeachment request against Rousseff. Submitted months earlier, the request accused Rousseff of illegally covering governmental expenses.

By early 2016, as the Car Wash Operation advanced, and Brazilians listing corruption as the top problem in the country (above public health for the first time), Rousseff's approval rate reached single digits.¹⁵ At that point, the government hinted Lula (still relatively popular) could join the administration to help Rousseff recompose her political base in Congress. On March 16, the Rousseff administration issued a statement confirming Lula would be appointed Chief of Staff.

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The appointment, however, was frustrated. On that same day, Moro authorised the Public Prosecutor's Office to lift Lula's wiretaps' confidentiality – nearly fifty audio recordings. The disclosure of the tapes fell like a bomb, generating immediate legal and political shockwaves. In the conversations with his allies, Lula complains about Moro's attempt to make his coercive questioning a 'firework display,' and confesses being shocked at what he calls the 'Republic of Curitiba' – 'because of a lower-court judge, anything can happen in this country,' he vents (O Globo 2016).

What made Moro's decision to publicise the wiretaps remarkable was the number of silence layers breached: intimate chats with no relevance to the investigation, conversations between a client and his lawyer, and exchanges involving people with the privileged forum such as the President of Brazil. Moreover, the last wiretap (the one transcribed below) took place after Moro had already ordered the police and the telephone company to stop wiretapping.

To justify this unprecedented decision, Moro argued that 'democracy in a free society requires the governed to know what those in the government do, even when they seek to act behind the shadows.' Moro also explained he 'had not noticed' that the last wiretap was outside the time frame included in his wiretap authorisation, and continued to justify his decision. For Moro, 'not even the President has absolute privilege in protecting her communications, captured incidentally only. The well-known precedent of the U.S. Supreme Court in *United States v. Nixon* (1974), is an example to be followed' (Moro 2016: 1).

The most controversial conversation was that last wiretap — a brief exchange between Lula and President Rousseff:

Rousseff: Hello.

Lula: Hello.

Rousseff: Lula, let me tell you something.

Lula: Tell me, my dear.

Rousseff: It's this, I am sending 'Bessias' [a Chief of Staff official] with the papers, so that we have them, just in case of necessity, that

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is the appointment letter, OK?

Lula: Uh-huh. OK, OK.

Rousseff: That's all, wait there, he is heading there.

Lula: OK, I'm here. I'll wait.

Rousseff: OK?

Lula: OK.

Rousseff: Bye.

Lula: Bye, dear (O Globo 2016)

The Rousseff administration explained that in the exchange, the President wanted Lula to have the document if he could not attend his appointment ceremony in Brasilia. But for Moro and the Car Wash investigators, that exchange was proof that Lula was desperate to take his case out of Moro's jurisdiction: Rousseff's remark to use the letter 'in case of necessity' meant that Lula could demonstrate he had privileged forum in the event of an unexpected police raid.

On March 17, while Lula attended his Chief of Staff appointment ceremony, opposition leaders filed an injunction urging the Supreme Court to block the appointment as unconstitutional. Supreme Court Justice Gilmar Mendes accepted the complaint and suspended the appointment, which he described as a 'Constitutional fraud' that failed to demonstrate morality and impersonality. For Justice Mendes, Rousseff's acknowledgment that the conversation occurred was an 'extrajudicial confession,' making discussions about the wiretap's legality a secondary matter.

But just a few days later, Justice Teori Zavascki, in charge of the Car Wash Operation cases in the Supreme Court, accepted the Attorney General's claim that: Judge Moro had infringed both the privileged forum and the 1996 Wiretap laws. He also violated a pre-established agreement between his Federal Court and the Supreme Court. In the first year of the investigation, when the corruption scandal started to reach politicians, Zavascki had authorised Moro to continue deciding cases as long as they did not involve people with privileged forum. With the "Lula-Rousseff" wiretap and (even worse) its disclosure, Moro had broken that agreement and overstepped his authority. Zavascki required Moro to send the investigations related to Lula to the Supreme Court,

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re-established the confidentiality of the audio recordings, and annulled the validity of the last wiretap.

However, by that point, the wiretaps had been played on repeat across media channels. On the same day Moro disclosed them, Brazilians organised public demonstrations in at least nineteen states to protest against Lula's appointment.¹⁶ The wiretap controversy gave Rousseff's impeachment proceedings more widespread support. Right after the wiretaps became public, the Chamber of Deputies elected a commission to analyse the impeachment request. A month later, the Chamber of Deputies scheduled the plenary vote. Another highly televised event, the voting showed opposition lawmakers commemorating Rousseff's ousting by waving "bye, dear" (*tchau querida*) signs – a reference to the Lula tapes. The same signs also showed up during the Senate voting, when Rousseff was removed from office. In May 2016, her Vice-President, Michel Temer, became the new President of Brazil.

B The Machado Tapes (May 2016)

An experienced politician, Temer presented himself as a conciliatory figure and pledged to bring the country back on track by enacting a series of austerity measures such as pension and labour reforms. His sizeable centrist party, the Brazilian Democratic Movement Party (PMDB), was often perceived as an opportunistic group whose main priority was to remain in power. For those in Rousseff's corner, Temer was responsible for covertly planning a parliamentary coup to oust her. For those in the Car Wash Operation's corner, he was a corrupt politician like many in his party.

Already in the first weeks of his presidency, as Temer was appointing his cabinet, leaked audio recordings jeopardised his leadership. The recordings were made by Sérgio Machado, a PMDB politician and President of Transperito (the Petrobras subsidiary in charge of oil and gas transportation) from 2003 until 2014. Machado stepped down from Transperito after having his name involved in the Car Wash Operation. The prosecutors suspected Machado was the main link between the

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Petrobras scandal and the PMDB leadership.

After months negotiating a plea deal with the Prosecutor General and fearing new developments in the investigation could compromise his chances of closing the deal, Machado agreed to provide more robust evidence of the PMDB's involvement in the Car Wash scheme. Between February and March 2016, he recorded (both on the phone and in-person) private conversations with three PMDB bosses. Shortly after closing the plea deal, the audio recordings were leaked to the press.

In the first audio leaked, recorded a few weeks before Rousseff's impeachment voting in the Chamber of Deputies, Machado and Senator Romero Jucá discuss the crisis caused by the Car Wash Operation. In the recording, both agree that the best way, in Jucá's words, to 'stop the bleeding' would be to replace Rousseff with Temer. Immediately after the leak, Jucá stepped down as Temer's Minister of Planning (a position he held for merely twelve days). The expression 'stop the bleeding' went viral on social media and was widely used by Rousseff's and the Car Wash Operation's supporters as evidence of corruption inside the PMDB. In the second audio, also recorded before the impeachment voting, the President of the Senate, Renan Calheiros, says he could negotiate a 'transition' for Rousseff with the Supreme Court Justices. Calheiros also talks about changing the 2013 Awarded Collaboration Law to prevent those in prison from negotiating plea deals.

Justice Zavascki approved Machado's plea deal after the press had already released the audio leaks. Shortly after, the Justice lifted the confidentiality of the audio recordings. The Supreme Court denied a request from Machado's family to re-establish the lift. As Chief Justice Ricardo Lewandowski explained, 'With the widest dissemination of these plea bargains, the media's selective disclosure is avoided, and everyone is treated equally.'

The Batista Tapes (May 2017)

One year after the Machado tapes, another explosive audio recording emerged in the media. In May 2017, the press revealed that Joesley

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Even more spectacularly, in exchange for having criminal charges against him dropped, Batista agreed to collaborate with the police in a ‘controlled action,’ recording videos of Temer’s right-hand man collecting the bribes.

In the 40-minute audio recording of his meeting with Temer, we hear Batista asking for a new communication channel to the President, as the Car Wash Operation had disrupted his previous contacts. Temer suggests a politician he considers ‘utterly trustworthy’ – that politician would be filmed in the ‘controlled action’ receiving a suitcase full of cash. In the recording, Batista says he had managed to dodge various criminal probes with bribes given to police inspectors, prosecutors, and judges. At one point in the audio recorded it seems Temer green-lights Batista to pay a monthly allowance to the former President of the Chamber of Deputies Eduardo Cunha in exchange for his silence. In May 2016, Cunha (who had accepted Rousseff’s impeachment request) was removed from office by the Supreme Court for his involvement in the Car Wash scandal and awaited in prison for Moro’s sentence. The General Prosecutor’s Office transcribed that exchange roughly as follows:

Batista: I’m alright with Eduardo.

Temer: You have to maintain that, OK?

Batista: Every month ...

Temer: ... Yeah ... (O Globo 2017)

One day after the press mentioned Batista’s recordings, the Supreme Court Justice approved Batista’s plea deal and lifted the audio’s confidentiality. The Prosecutor General charged Temer for corruption and obstructing justice, making him the first Brazilian president to face criminal charges while in office. Following the audio recording disclosure, Brazil’s stock market crashed, the Brazilian real (BR\$) had one of its most significant falls in a decade, lawmakers changed their alliances in Congress, and street demonstrations called for Temer’s impeachment.

According to the *Washington Post*, ‘the future of Latin America’s biggest country may rest on what was allegedly caught on this hidden

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recording device.¹⁷ The device became the focus of a large controversy on potential interruptions in the audio. After learning the recording could have been edited, Temer counterattacked: ‘This covert recording was manipulated and altered, clearly with shady intentions ... [and was] included in the police inquiry without proper inspection’ (Temer 2017). For Temer (and likely most people following the scandal), the matter was purely technical; either someone had tampered with the audio, or the recording was intact. Instead, an array of possibilities emerged.

Newspapers and TV channels invited various audio experts to analyse the recording. For some, the audio was intact, others claimed it had at least fourteen edited points, and others found more than fifty interruptions. Temer’s audio expert found six interruption points in the controversial 17-second exchange (‘I’m alright with Eduardo...’) alone. The federal police insisted that the audio showed a ‘logical’ and ‘coherent’ conversation and that the interruptions were caused by the recording device, designed to stop recording in quiet moments to save up memory space and battery life. Requested by the Supreme Court, the federal police further inspected the device and the audio recording. In a report submitted weeks after the leaks emerged, the police found dozens of interruptions and unintelligible points. They also transcribed the 17-second exchange taking into account the discontinuities in the audio:

Batista: I’m alright with Eduardo.

Temer: Very good.

(Discontinuity #74)

Batista: ... and ...

Temer: You have to maintain that, OK?

(Discontinuity #75)

Batista: ... oooo ...

Temer: (unintelligible)

(Discontinuity #76)

(noise from moving the recording device)

Batista: (unintelligible) Every month...

Temer: Eduardo as well, right?

Batista: As well.

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Temer: Yeah...

Having a better grip over Congress than Rousseff, Temer managed to avoid an impeachment trial and remained in office until his term ended. A June 2018 survey showed he was the most unpopular President in Brazil's history, with three per cent of approval (Datafolha 2018). In 2019, after he had already left office and lost his privileged forum (thus moving his legal case to a trial court), Temer was acquitted from the obstruction of justice charge. According to the Judge, 'monosyllabic and disconnected statements, recorded in a conversation with numerous interruptions, cannot support the arguments in the complaint' (Reis Bastos 2019). By that point, the country had a new president – a new president who would explore the tensions in Brazil's palimpsestic structure and bolster the country's authoritarian impulses.

Conclusion

From identifying Youssef as the 'Cousin' to hearing in Rousseff's 'in case of necessity' or Temer's 'you have to maintain that' indisputable evidence of something illicit, this article showed the role of acoustics in Brazil's largest corruption investigation. The Car Wash Operation flourished through the notion that it could provide a seamless canal between criminal voice and public ear. The investigators and judges pushing the investigation contrasted the audibility of the canal with the suspicious silence layers. As Damgaard puts it, 'the threat of a leak works like a spectral Panopticon – always looming, always monitoring, but to an unknowable extent' (Damgaard 2018: 76). Rather than a closed system, the interaction between voice, canal, and ear operated as an extendable feedback loop (see Fig. 1).

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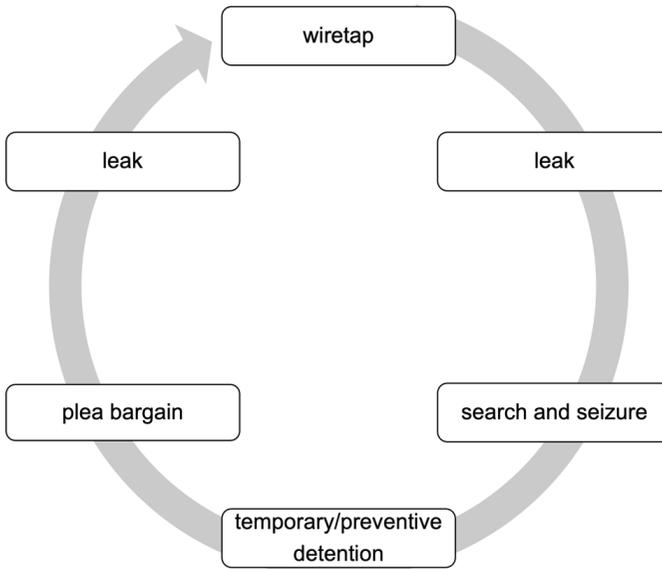


Figure 1 caption: The Car Wash Panacousticon’s feedback loop”

The use of auditory probes to advance the idea of a seamless canal suggests how the Car Wash investigators used the acoustic signal’s fluidity to their advantage, one of the points of the Panacousticon’s distinctive traits. For the investigators, the audio captured through auditory probes proved decisive because it amalgamated three entities in one: a tool for mapping crime networks during the police inquiry, a piece of evidence in the legal proceedings, and a ‘raw’ and highly adaptable material that goes viral and dramatises the Operation.

Justice Gilmar Mendes (the same who blocked Lula’s appointment years earlier) argued the Supreme Court could decide to use the leaks as legal evidence to review Moro’s sentences. In 2019, the Car Wash Operation took a turn. A group of hackers infiltrated the cell phones used by Moro, Dellagnol, and other Car Wash investigators and extracted

a massive trove of data. The data included text and audio messages exchanged via Telegram in 2015 and 2016 (an instant messaging application created in Russia). The data ended up in journalist Glenn Greenwald's hands, who had been involved with Edward Snowden's leaks and now directed the news website *The Intercept*. Following the Car Wash Operation's own *modus operandi*, in June 2019, *The Intercept* started to reveal the leaks in highly anticipated segments (twenty-four as of May 2020).¹⁸ The leaks revealed, among other things, Moro providing inside information to the prosecutors, directing the investigation, and coordinating with Dellagnol a concerted response to attacks the Operation suffered on the media. As Greenwald puts it, the leaks 'depict a task force of prosecutors seemingly intent on exploiting its legal powers for blatantly political ends, led by its goal of preventing a return to power of the Workers' Party generally, and Lula specifically.'¹⁹ Justice Gilmar Mendes (the same who blocked Lula's appointment years earlier) argued the Supreme Court could decide to use the leaks as legal evidence to review Moro's sentences.

The acoustic signal's symmetry and versatility, which make the Panacousticon a powerful but unstable apparatus, had reached the Car Wash Operation. As Szendy reminds us, 'In relation to ... sound, there is no stable or stabilised point of listening fixed in a panacoustic edifice, there are only moving strata, only the sand in which we sink into the depths—even if it is true that the illusion of a Panacousticon is always ready to reemerge' (Szendy 2017:50).

The Car Wash Panacousticon confirms surveillance studies scholars' concerns about the limitation of the panoptical framework. The investigation entailed neither the offender's moral improvement (as Bentham envisioned for the panopticon) nor the exercise of power 'in a silent, impersonal, and almost automatic manner' (Valverde 2017: 61). Instead, as the Comaroffs have noted in their analysis of policing in South Africa, the Car Wash's acoustic spectacle (propagated in the name of 'accountability') suggests the continuing importance of theatrics, melodrama, and centralised punishment in law enforcement practices – in which police and public construct each other across 'the

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thin blue line that underscores the fragility of order and gives focus to popular preoccupations with the threat of social meltdown' (Comaroff and Comaroff 2004: 823). The path of the Car Wash Panacousticon embodies Brazil's deep-seated ambiguity towards state power and represents a framework through which Brazilians hear a state incapable of ensuring order.

Endnotes

1. Brazil is historically related to the civil law tradition, where codified laws have precedence over previous judicial decisions.
2. "Foro privilegiado é um desastre para o país", diz Barroso' Terra 31 March 2016 <https://www.terra.com.br/noticias/brasil/politica/lava-jato/foro-privilegiado-e-um-desastre-para-o-pais-diz-barroso,d995f0474387a747bff0fcb6148c0c8buwjmalxv.html>
3. Supremo Tribunal Federal 'Relatório de Atividades STF 2018' <http://www.stf.jus.br/arquivo/cms/centralDoCidadaoAcessoInformacaoGestaoEstrategica/anexo/RelatorioAtividadesSTF2018.pdf>
4. For a description of the Car Wash Operation, see Damgaard 2018.
5. 'Construção encolhe 21% durante a crise e volta ao patamar de 2009' Folha de São Paulo 10 September 2017 <https://www1.folha.uol.com.br/mercado/2017/09/1917134-construcao-encolhe-21-durante-a-crise-e-volta-ao-patamar-de-2009.shtml>
6. Lima M S 2016 'Brazil's Budget Deficit Swells to Record as Economy Shrinks' Bloomberg 31 March 2016 <https://www.bloomberg.com/news/articles/2016-03-30/brazil-posts-largest-budget-deficit-for-february-ever?sref=cklp7m0E>
7. 'Brazil's jobless rate ends 2016 at 12 percent with 12.3 million unemployed' Reuters 1 February 2017
8. <https://www.reuters.com/article/us-brazil-economy-employment-idUSKBN15F1LE>
9. Biller D 2016 'Brazil's Unemployment Jumps in 2015, Adding to Rousseff's Woes' Bloomberg 16 March 2016 <https://www.bloomberg.com/news/articles/2016-03-15/brazil-s-unemployment-jumps-in-2015-adding-to-rousseff-s-woes?sref=cklp7m0E>

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10. Sitting or former Presidents from Argentina, Peru, Panama, Venezuela, and El Salvador were accused of participating in similar bribery schemes with Brazilian companies, particularly Odebrecht, Latin America's largest construction company. At least six former Latin American Presidents would be arrested.
11. United States Department of Justice 'Odebrecht and Braskem Plead Guilty and Agree to Pay at Least \$3.5 Billion in Global Penalties to Resolve Largest Foreign Bribery Case in History' 21 December 2016 <https://www.justice.gov/opa/pr/odebrecht-and-braskem-plead-guilty-and-agree-pay-least-35-billion-global-penalties-resolve>
12. The law defines organized crime as 'an association of four or more persons structurally organized and characterized by a division of labor, albeit informally, for the purpose of obtaining, directly or indirectly, an advantage of any kind through the practice of criminal offenses whose maximum penalties exceed four years or which are transnational in character.'
13. Law 12846/2013, also known as "Clean Company Act."
14. Although similar laws had existed in Brazil (for example Laws 8072/1990, 1143/2006, and 12529/2011), those did not detail the procedures for evidence collection, leaving the plea deal open to legal dispute.
15. Albuquerque A L 'Sem exposição, é impossível avançar contra poderosos, afirma Dallagnol' *Folha de São Paulo* 24 November 2017 <https://www1.folha.uol.com.br/poder/2017/11/1937812-sem-exposicao-e-impossivel-avancar-contr-poderosos-afirma-dallagnol.shtml>
16. Datafolha 'Corrupção lidera pela primeira vez pauta de problemas do país' <http://datafolha.folha.uol.com.br/opiniaopublica/2015/11/1712972-corrupcao-lidera-pela-primeira-vez-pauta-de-problemas-do-pais.shtml>
17. G1 'Manifestações contra governo são registradas pelo país nesta quarta' <http://g1.globo.com/politica/noticia/2016/03/manifestacoes-contr-governo-sao-registradas-pelo-pais-nesta-quarta.html>
18. Simms S 'Secret recordings may be Brazilian democracy's best hope — but also a growing problem' *Washington Post* 26 May 2017 <https://www.washingtonpost.com/news/worldviews/wp/2017/05/26/secret-recordings-may-be-brazilian-democracys-best-hope/>
19. 'Secret Brazil Archive' *The Intercept* <https://theintercept.com/series/secret-brazil-archive/>

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20. Greenwald G and Pougy V, 'Exclusive: Brazil's Top Prosecutors Who Indicted Lula Schemed in Secret Messages to Prevent His Party From Winning 2018 Election' *The Intercept* 10 June 2019 <https://theintercept.com/2019/06/09/brazil-car-wash-prosecutors-workers-party-lula/>

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