

## BOLSONARO'S BOTCHED COUP ATTEMPT EXPOSED POLITICAL FAULT LINES IN THE BRAZILIAN DEMOCRACY

*El intento de golpe abortado de Bolsonaro expuso las divisiones políticas en la democracia brasileña*

Ahead of Print

ISSN: 0718-090X

Revista de Ciencia Política

cienciapolitica.uc.cl



LUCAS M. NOVAES 

*Inspire Institute of Education and Research, São Paulo, Brazil*

DIEGO WERNECK ARGUELHES 

*Inspire Institute of Education and Research, São Paulo, Brazil*

### ABSTRACT

This paper analyzes the institutional legacy of the Bolsonaro government on Brazilian democracy, with effects on 2023 and beyond. Focusing on the rebalance of the power of the executive branch vis-a-vis other powers, we argue that Bolsonaro's botched coup attempt exposed the limitations of existing regime safeguards. First, the activation of the military brought the shadow of raw power to the political table. Second, the increased leverage Congress now exercises over the executive has ambiguous effects on its willingness to check authoritarian overreaches from the President. Finally, we consider how the conflict between the past President and the Supreme Court has made the court more politicized, potentially affecting its public standing and making it a more likely target for future attacks within the political system. We suggest that, while democracy has resisted, it is not immune to backsliding. We briefly discuss how this reshuffling will shape the scenario for Lula's presidency and the Worker's Party in the coming years.

**Keywords:** Worker's Party; Democratic Backsliding; Supreme Court; Executive-Legislative Relations; Armed Forces.

### RESUMEN

*Este artículo analiza el legado institucional del gobierno de Bolsonaro sobre la democracia brasileña, con efectos en 2023 y más allá. Enfocándose en el reequilibrio del poder del ejecutivo en relación con otros poderes, argumentamos que el fallido intento de golpe de Bolsonaro expuso las limitaciones de las salvaguardias del régimen existente. Primero, la activación de los militares trajo la sombra del poder bruto a la mesa política. Segundo, el mayor apalancamiento que el Congreso ahora ejerce sobre el ejecutivo tiene efectos ambiguos en su disposición para controlar los excesos autoritarios del Presidente. Finalmente, consideramos cómo el conflicto entre el expresidente y la Corte Suprema ha politizado más a la corte, afectando potencialmente su reputación pública y haciéndola un objetivo más probable para futuros ataques dentro del sistema político. Sugerimos que, aunque la democracia ha resistido, no es inmune a retrocesos. Discutimos brevemente cómo este reordenamiento dará forma al escenario para la presidencia de Lula y el Partido de los Trabajadores en los próximos años.*

**Palabras clave:** Partido de los Trabajadores; Retroceso Democrático; Corte Suprema; Relaciones Ejecutivo-Legislativo; Fuerzas Armadas.



All the contents of this electronic edition are distributed under the Creative Commons license of "Attribution-NonCommercial-ShareAlike 4.0 International" (CC-BY-SA). Any total or partial reproduction of the material must cite its origin.

## I. INTRODUCTION

Lula began his third presidency on January 1st, 2023 in a very different country from the one he presided over until 2010. While he was away from power, the relations across different state institutions shifted. The military left the barracks, Congress seized power away from the executive, and the Supreme Court became increasingly political - perhaps overtly so. Civil society changed, too. How voters mobilize or are mobilized, is now different. Right-wing interests are now entrenched in Brazilian politics, a shift evident in the many candidates who espouse conservative agendas at all levels of electoral competition. Alarmingly to Brazilian democracy, the demise of the duality between the Workers' Party on the left and the PSDB on the other side opened the gates to organized interests that see authoritarian ideas as permissible. Bolsonaro, Lula's predecessor's government, is the prime example of that lineage. Bolsonaro's term in office, exit, and legacy will reverberate for years.

Changes in recent years brought back the specter of democratic breakdown and we analyze the risks Brazilian democracy faced in this period of changing administrations, and how those risks still shape current politics. Using the handover of power from Bolsonaro to Lula to highlight recent changes, this article discusses how the political landscape transformed in the past few years, focusing on the reshuffling of power relations among Brazil's main constitutional actors. We do so with the benefit of hindsight. At the time we write, there is hardly a risk that Lula will be removed from power through non-constitutional means, and transgressions against democratic and electoral institutions committed by politicians in the past few years are under investigation. The Supreme Federal Court (*Supremo Tribunal Federal*, "STF") is intent on ensuring accountability for the January 8th attempted coup, and if it decides to incarcerate Bolsonaro, whose legal troubles we discuss, it is improbable that his supporters would react through unconstitutional means. If democracy is a regime in which parties lose elections (Przeworski 1991), then Brazil is a democracy. However, the fact that democracy prevailed does not mean that the country should receive high marks on regime stability. To conclude so is to select on the dependent variable. The completed transition and the upholding of electoral results obscure that democracy was threatened. Considering information revealed in judicial proceedings throughout 2023, we take as a fact that, in the months preceding the 2022 elections, the inner circle of Bolsonaro had concocted a plan to revert the result of the election by force and, although such a plan was never fully put into action, some dangerous steps were taken to advance it. Assuming that Bolsonaro and his allies are rational actors, they considered that this was a possible path to take and prevail. The 2023 handover of power revealed chinks in Brazil's democratic armor.

After more than 30 years of fair competition, then, some thought there were "other games in town", and considered turning the tables. This scenario - its implications and some factors leading to it - will have a lasting impact on Bra-

zilian politics for the years to come, beyond the fallout of the January 8th attempted coup. In this paper, we identify three elements that, although stemming at least in part from Bolsonaro's presidency or as reactions to his threats to democracy, might act as fault lines in Brazilian democratic stability in the future. These elements make Brazilian politics very different from the last time that Lula was in office.

First, Congress gained considerable power during the Bolsonaro presidency (Melo and Pereira 2024). While this rebalancing gives the legislative more autonomy from the executive, counterintuitively, the weakened presidency of Bolsonaro vis-a-vis Congress has ambiguous effects on the likelihood of a successful *autogolpe*. The higher bargaining hand against Bolsonaro means that in an eventual authoritarian power-sharing arrangement, Congress and its members could have been exceedingly compensated with resources and positions of power, making at least some Congress members more likely to be backsliding bystanders.

Second, the new role played by the STF. While the court was decisive in rallying around the democracy flag in an open battle with Bolsonaro, its new role makes it a more attractive target for future illiberal political leaders and movements. As it happened in Hungary and other countries that experienced democratic backsliding, would-be authoritarians would have to deal with such a powerful court either by capturing it (through appointments or court-packing) or bringing it into submission (see Dixon and Landau 2021). But the STF's engagement with politics in the last few years has arguably made the court more widely perceived as political - a perception that Lula's government might have so far strengthened, as we later discuss - and its decisions (even on fundamental rights) more polarizing. The more the court is seen as a political player, taking sides in the political struggle, the more it might become acceptable to further politicize it through appointments - perhaps even to remove judges from office.

Finally, inviting the military out of the barracks brought to the fore an actor who could make defying the electoral result possible. The eventual coalition of Bolsonaro and the security forces in a coup d'état would arguably be sufficient for subverting the regime. By placing high-ranking military officials in his inner circle, Bolsonaro entangled his fate with the armed forces. Despite only a fraction of all of the high-ranking officials of the forces being in government, the corporatist character of the military makes it unlikely that those outside would stand up against their own and punish those directly involved in a coup plot. Moreover, the military as a whole could benefit from a coup, as the armed forces would have an upper hand in the division of the tax revenues of an authoritarian government, eventually compensating the payoffs of military soft-liners with more tanks, guns, and pensions.

To be clear, our point is not that the three factors above - the new role of Congress, judges, and the military - had the same impact in making Bolsonaro and his allies consider the attractiveness or plausibility of attempting to

turn the tables given a potential electoral defeat. While the expansive military presence in government and politics did fuel far-right, illiberal aspirations, the STF has played (Zambrano et al, 2024) a key role in constraining the former president's authoritarian leanings - and, as we shall see, Congress did not lend institutional support to his most extreme actions against checks on his power (Melo and Pereira 2024). However, as 2023 illustrates, those expanded legislative and judicial constraints that were so critical to make Brazilian democracy resist have exposed fault lines in Brazilian democracy that - just like military presence politics - can affect the calculations of would-be authoritarian politicians in the future.

The article proceeds as follows. We first discuss the deceptively peaceful transition of power that starts the year we analyze in this article. Below the surface, we now know that political resentment and polarization permeate Brazilian citizens, enough to lead some of them to the country's capital, on January 8th, to rampage the headquarters of the government as security authorities, at first, turned a blind eye. Deeper still, 2023 has shown that Bolsonaro, his inner circle, and military leaders had aborted a plan to remain in power, by preventing Lula from taking office. We discuss why the military was potentially part of that would-be coalition, and why that has placed the democratic regime in jeopardy. We then turn to examine executive-legislative relations, how the balance between the two changed, why that affected the chances of a successful coup, and how it represents a less favorable equilibrium to Lula. In the following section, we discuss the judiciary, which has become a protagonist in the political arena. Finally, we discuss the first year of office of the Worker's Party, and how unresolved internal conflicts will permeate policy-making, especially in the economic arena. We then conclude with a brief assessment of the years to come.

## II. THE BACKUP PLAN

After leaving office, Bolsonaro still commands crowds to the streets but these supporters may not be able to vote for him again. A 2023 judicial decision bars him from running for office for the following eight years, and the other pending inquiries in civil and criminal cases will potentially turn into additional convictions and perhaps actually serving time in jail. Brazilian law empowers the electoral court system - atop which sits the *Tribunal Superior Eleitoral* ("TSE") - to declare ineligible candidates convicted of abusing economic, communicational, or political power.<sup>1</sup> While this power has been regularly deployed by electoral judges in the last decades in local elections, the TSE had never done so in the case of a presidential candidate. During and after the 2022 elections, the

<sup>1</sup> The TSE is composed of 7 judges, who rotate every 2 years: 3 elected by the Supreme Federal Court (STF) among its judges, 2 elected by the Superior Court of Justice (STJ), and 2 appointed by the President from a list of eligible lawyers assembled by the STF. The Constitution also states that the Chief Justice of the TSE will always be one of the STF judges.

Bolsonaro campaign was targeted by several lawsuits alleging several types of illegal electoral behavior, which in theory could lead to the nullification of his victory, in case he won. It was generally expected, however, that only a Bolsonaro defeat at the ballots would have made it politically possible for the TSE to declare him ineligible.

The first conviction came in June.<sup>2</sup> During the campaign the year before, Bolsonaro organized a meeting with top diplomats to share his unsubstantiated concerns over electoral integrity. He also implied that the TSE was trying to help Lula win the election. In a 5 to 2 decision in which the majority opinion included a long, detailed list of deliberate falsehoods uttered and promoted by Bolsonaro, the TSE declared him ineligible for 8 years based on his “abuse of political and communicational power”. The former president immediately appealed to STF<sup>3</sup>. As we elaborate below, this is just one of the many facets of the Court’s current centrality in Brazilian politics: its judges have on their hands not just the fate of policies, but also of specific politicians. This almost immediate judicial defeat shows that Bolsonaro had more than re-election itself at stake in the elections: losing meant having to deal with all impending judicial challenges accrued in office, many of which related to abusive measures taken to remain in power.

Since stepping down, Bolsonaro’s actions have expressed renewed concerns about his impending legal troubles.<sup>4</sup> He flew to Florida, US, a few days before Lula’s inauguration, to stay in the house of a retired Brazilian mixed martial arts fighter.<sup>5</sup> After an electoral campaign full of personal attacks against Lula and the electoral judges who supervised the election, flying away allowed Bolsonaro to avoid the traditional handling of the presidential banner during the inauguration. But it was also a gesture that Lula’s presidency was illegitimate to him.<sup>6</sup> In 2024, he camped for two days in the Hungarian embassy in Brasilia moments after having his passport temporarily suspended and investigations of the coup attempt progressed to detain some of his allies.<sup>7</sup>

<sup>2</sup> *Ação de Investigação Judicial Eleitoral (Aije) 0600814-85.2022.6.00.0000*, Tribunal Superior Eleitoral (2024). <https://consultaunificadapje.tse.jus.br/#/public/resultado/0600814-85.2022.6.00.0000>.

<sup>3</sup> Recurso Extraordinário com Agravo (ARE) 1474354, Supremo Tribunal Federal, <https://portal.stf.jus.br/processos/detalhe.asp?incidente=6820240>.

<sup>4</sup> Back in 2021, Bolsonaro had told his supporters in a rally that there would be only three alternatives for him after 2022: reelection, death, or jail. See Millena Barbosa, “Bolsonaro diz que tem três alternativas de futuro: ‘Estar preso, ser morto ou a vitória’,” *G1*, August 28, 2021, <https://g1.globo.com/go/noticia/2021/08/28/bolsonaro-diz-durante-evento-em-igreja-que-tem-tres-alternativas-de-futuro-estar-preso-ser-morto-ou-a-vitoria.ghtml>.

<sup>5</sup> Gabriel Sabóia, “Bolsonaro chega aos EUA e se hospeda em casa de ex-lutador de MMA,” *O Globo*, December 31, 2022, <https://oglobo.globo.com/politica/noticia/2022/12/bolsonaro-chega-aos-estados-unidos-para-periodo-sabatico-apos-derrota-eleitoral.ghtml>.

<sup>6</sup> A few weeks before inauguration, the press reported that the leading officers of three forces were planning to hasten the change of their own posts, allegedly to avoid saluting the new president. See Juliana Braga, “Marinha também apoia antecipação de troca dos comandos, e Exército fica isolado,” *Folha de S. Paulo*, December 5, 2022, <https://www1.folha.uol.com.br/colunas/painel/2022/12/marinha-tambem-apoia-antecipacao-de-troca-dos-comandos-e-exercito-fica-isolado.shtml>.

<sup>7</sup> This fact would only later become known to the public: Jack Nicas et al., “Video: Bolsonaro, Facing Investigations, Hid at Hungarian Embassy,” *New York Times*, March 25, 2024, <https://www.nytimes>.

Lula's victory immediately sparked an outcry from a considerable fraction of Bolsonaro's supporters who were happy with their candidate's authoritarian aspirations. Polarization is now a palpable feature of current Brazilian politics, and many support Bolsonaro's disposition against the electoral process (Nunes and Traumann 2023). To some Brazilians, their belief that the electoral process is fraudulent cannot be dissociated from the fact that Bolsonaro's adversary is Lula. In this sense, current polarization in Brazilian society appears to be more affective than ideological. In this scenario, several Bolsonaro supporters chose a more aggressive approach to show how unacceptable a Lula presidency was to them. They flocked to the gates of military bases all over Brazil, and despite Bolsonaro being absent and largely silent, there they stayed for months. Encamping in improvised tents, they pledged the Armed Forces to take action and prevent Lula from taking office. That action was ineffective; Lula took office in a peaceful ceremony in Brasília.

One week after the inauguration, however, the *Praça dos Três Poderes* in Brasília witnessed another unprecedented event in Brazilian democracy. *Bolsonaristas* encamped in front of Brasília's military bases, plus several others bused from different states, stormed the capital's main buildings, ransacking them for hours. Mobs of people dressed in the yellow and green of the national flag – a staple in the *bolsonarista* wardrobe – or wearing t-shirts with Bolsonaro's face stormed the buildings of the three branches of government, severely vandalizing them.<sup>8</sup> After indecision and localized responses with small groups of security agents, a larger contingent of law enforcement personnel removed the mob from the buildings, arresting thousands of them. President Lula decreed a partial federal intervention in the district of Brasília, removing all public security matters from the hands of the governor, Ibaneis Rocha; at the same time, however, Lula's solicitor-general (*Advogado-Geral da União*, "AGU"), a senator, and the federal police petitioned to the STF asking for the adoption of a series of measures, including the detention of all public agents that contributed to the invasions. As we will see, this illustrates the new centrality of the STF in Brazilian politics in general and in dealing with attacks on democracy in particular.

The invasion revealed that some Brazilians were disillusioned by the democratic transfer of power. It also uncovered that the regional and federal governments were unprepared to deal with that kind of large mob. These revelations are disturbing, but not entirely surprising or new. The main development that the episode brings is to show the willingness of armed agents of the state to join attempts to overthrow the electoral result of a presidential election. Quickly after January 8th, the press reported that the federal district security force (which answers to the Brasília governor, Ibaneis Rocha, not to Lula) leadership con-

com/2024/03/25/world/americas/jair-bolsonaro-hungary-video.html.

<sup>8</sup> A couple of weeks before, there was an unsuccessful attempt to explode a bomb in the Brasília Airport. See Manoela Alcântara, "Há um ano, golpistas tentavam explodir bomba no Aeroporto de Brasília," *Metrópoles*, December 24, 2023, <https://www.metropoles.com/brasil/ha-um-ano-golpistas-tentavam-explodir-bomba-no-aeroporto-de-brasilia>.

sciously dismissed the threat of the authoritarian crowd growing violent. The decision to position only a small, relatively inexperienced contingent of riot control agents standing was intentional.<sup>9</sup> And if the leadership was purposefully neglectful, the agents on the streets were partly sympathetic to the mob. Many of those on the clock did their best not to get in the way of protesters. Some were even caught taking selfies with protesters, while others opened the way for the crowd to invade buildings.

The 8th of January in Brasilia represents a laboratory of how a widespread authoritarian movement could unfold. There existed a chance that law enforcement agencies elsewhere would side with the *bolsonaristas*. Some scholars and commentators dismissed the threat of a coup during the electoral campaign, noting that Brazilian horizontal institutions were fully capable of discouraging authoritarian reversals (see for example Melo and Pereira 2024). After the events on January 8th, these scholars argued that despite the audacity of protesters, they would have been unable to overthrow the democratic order. But what happens if other state police agencies join in while other gatherings take place? Security forces taking sides would not be something new. On election day, for example, the highway patrol (*Polícia Rodoviária*) placed roadblocks in areas where Lula enjoyed overwhelming voter support to prevent voters from reaching the polling station in time.<sup>10</sup> Moreover, even if the probability of support from military leaders was low, how low must it be for anyone to dismiss the threat altogether? We discuss the role of the military and how the closeness of high-ranking officials to Bolsonaro made this potential coup coalition more likely.

### III. THE EXECUTIVE AND THE MILITARY

With Bolsonaro, soldiers have left the barracks and returned into the center of Brazilian politics (Hunter and Vega 2022), both in high-profile cabinet positions and in thousands of posts in the federal bureaucracy (Schmidt 2022). Taking center stage allows them to influence policymaking towards the preference of the officials of all Armed forces, but is not without costs to them. By placing high-ranking officials in his government, not only did Bolsonaro revert a decades-long trend of having the political actors with tanks and rifles outside the decision-making arena, but he also interlinked his fate to the fate of the officials he employed and to a relevant degree, the Armed Forces in general. That forces

<sup>9</sup> Redação Terra, “Polícia Militar do DF utilizou agentes despreparados para conter atos em 8 de janeiro, segundo PGR,” *Terra*, August 19, 2023, <https://www.terra.com.br/noticias/brasil/politica/policia-militar-do-df-utilizou-agentes-despreparados-para-conter-atos-em-8-de-janeiro-segundo-pgr,-db6566a4043136d361673a8fa539f145wo085ebs.html&sa=D&source=docs&ust=1712060871685478&usg=AOvVaw2TliRlsc5SncBjJO8FWTaQ>.

<sup>10</sup> This has been acknowledged in a recent report by a regional electoral court: Karina Ferreira, “Justiça Eleitoral aponta indícios de que blitz da PRF interferiram no 2º turno das eleições,” *Estadão*, December 6, 2023, <https://www.estadao.com.br/politica/indicios-blitze-prf-atrasou-eleitores-2-turno-eleicoes-2022-justica-eleitoral-rn-pf-policia-federal-nprp/>.

them, as an interest with great corporatist values, to react and take sides in political events (Amorim Neto and Acacio 2022). In this section, we discuss how the return of the military matters to Lula's coming years in the presidency.

The proximity of the military and Bolsonaro changed strategies and the pay-offs in interfering with an electoral result. As a result, the coalition between the military and the sitting president reshaped the credibility of a coup threat. At the time of writing this article, it is clear that there was a prepared plan for a coup attempt involving part of the high brass of the military. In the fallout of the January 8th events, largely responding to petitions by the government and other political actors but also adopting some measures *moto proprio*, Judge Alexandre de Moraes took steps to hold accountable those responsible for letting the destruction unfold.<sup>11</sup> He placed the governor of the Federal District, Ibaneis Rocha, on full leave for 90 days (beyond the partial suspension included in the federal intervention decreed by Lula). He also ordered the arrest of Anderson Torres, the Minister of Justice under Bolsonaro who had been the head of the Federal District security for one week (he was not immediately arrested because he was vacationing with his family in Florida). Following a search warrant in Torres' house, investigators found a document that alluded to preparation for a coup attempt.<sup>12</sup>

More evidence surfaced from a separate case. In May, Moraes agreed on a Federal Police request to arrest Mauro Cid, an army colonel who served as President Bolsonaro's right-hand.<sup>13</sup> After three months in jail, Cid agreed on a plea bargain, surrendering his phone and agreeing to serve as a witness on several pending cases. Cid's phone messages would reveal that he was actively instigating military leaders to join the coup coalition, including other military personnel in Bolsonaro's cabinet. These messages show that some were onboard, as well as other generals outside the cabinet.<sup>14</sup>

Many generals would (anonymously) declare to the press they did not support an authoritarian takeover, and investigative journalists have found consistency in such positions since the beginning of the Bolsonaro government (Recondo and Weber 2023). However, history shows that unanimity is not necessary to have the military's backing in a coup. As the struggle between hardliners and softliners has shown in the transition to democracy (O'Donnell et al. 1986), dissenting views within the military do not translate into an open conflict. The armed forces value their unity (Geddes 1999).

<sup>11</sup> While most such measures were sooner or later approved by the full Court, almost all of them were initially adopted by Judge Moraes using individual powers at his disposal.

<sup>12</sup> For a more detailed summary of events, see Melo and Pereira (2024).

<sup>13</sup> While in the presidency, Bolsonaro received valuable gifts, particularly from the Arab states. According to law, most of such gifts belong to the office of the president, and not to whomever is occupying the presidential seat. Mauro Cid covertly tried to sell watches and jewelry Bolsonaro received, but the scheme was discovered.

<sup>14</sup> César Feitoza et al., "Mensagens mostram adesão de generais a plano de golpe para Bolsonaro, diz PF," *Folha de S. Paulo*, February 8, 2024, <https://www1.folha.uol.com.br/poder/2024/02/mensagens-mostram-adesao-de-generais-a-plano-de-golpe-diz-pf.shtml>.



The lack of unanimity in what direction the armed forces would take was unclear on the eve of the 1964 coup in Brazil and eventually, surprising to many observers at the time (Gaspari 2014), they placed their unity first and those supporting the removal of the civilian president had their way without firing a single artillery piece. The fact that there were dissonant generals does not mean that there would be any organized resistance within the military against a coup - perhaps even if, in principle, support for a coup did not have majority support in the armed forces. And since many military personnel were involved in the government and would be implicated in any action Bolsonaro would take, it is not farfetched to suppose that the military would not present a serious resistance to an authoritarian reversal if some leaders within its ranks made the first move.

Moreover, during the Bolsonaro government, one key event involving an active duty general arguably decreased the cost of political misbehavior of military officers in the future. General Eduardo Pazuello joined the Bolsonaro government as Minister of Health during the pandemic, with disastrous results.<sup>15</sup> Brazilian law forbids active military personnel from publicly engaging in political-partisan activities without previous authorization. However, in May 2021, Pazuello appeared at a political rally on Bolsonaro's side, drawing criticism even from the then Vice-President, Hamilton Mourao, a retired general. In the following month, the Army announced that it found no disciplinary violation, dismissing all proceedings on Pazuello - a decision criticized by former Ministers of Defense as encouraging breaches of hierarchy and politicization in the military.<sup>16</sup> If military leaders wanted to prevent further politicization and growing public perceptions of the armed forces as sympathetic to Bolsonaro, that was a missed opportunity.

The military is still politically mobilized. Some retired generals, including former vice-president and now senator Hamilton Mourão, keep attacking the incumbent and issuing threats following the arrest of officials.<sup>17</sup> The investigations of January 8th and the coup plot implicate many officials, attaching their predicament to Bolsonaro's. The military also gained prominence and financial resources, and they, as an interest group, will be protective of these gains. Lula will have little room to maneuver. The choices are to confront the military, making public condemnations about their role in Bolsonaro's cabinet, pursuing an agenda to reduce their budget and career privileges - or to accommodate, maintaining the gains the armed forces captured during the last years. There are few strategic gains in the former, and Lula has revealed that he is pursuing

<sup>15</sup> See Marcelo Roubiceck, "A gestão de Pazuello no Ministério da Saúde em 4 eixos," *Nexo*, March 15, 2021, <https://www.nexojornal.com.br/expresso/2021/03/15/a-gestao-de-pazuello-no-ministerio-da-saude-em-4-eixos>.

<sup>16</sup> Felipe Souza, "Decisão sobre Pazuello estimula indisciplina e ameaça democracia, dizem ex-ministros da Defesa," *BBC News Brasil*, June 3, 2021, <https://www.bbc.com/portuguese/brasil-57353182>.

<sup>17</sup> UOL, "Mourão diz que Forças Armadas não podem se omitir após operação da PF," *UOL*, February 8, 2024, <https://noticias.uol.com.br/politica/ultimas-noticias/2024/02/08/mourao-diz-que-forcas-armadas-nao-podem-se-omitir-apos-operacao-da-pf.htm>.

the latter, prohibiting his government cabinet from condemning the 1964 coup in its 60th anniversary.<sup>18</sup>

#### IV. FEWER CARROTS IN THE EXECUTIVE BASKET

In this section, we will discuss the Brazilian Congress, how it changed during Bolsonaro, and how these changes influenced Lula's first year in office and will affect the years to come. The combination of an empowered Congress and a weakened presidency disturbed the so-called *coalitional presidentialism* (Abranches 2018), an arrangement that has mediated executive-legislative relations for the first two decades of democracy (Limongi and Figueiredo 1998). Because presidents have never, and likely never will command a majority of Congress in the fragmented Brazilian party system, they either create a majority coalition or risk being deadlocked (Mainwaring 1999; Ames 2002). With strong presidential powers, robust federalism, and a hyper-fragmented party system, the political system operated against the odds of gridlock. Crucially, presidents have the power to set the legislative agenda and execute budgetary amendment payments by making good use of the powers of distributing resources, cabinet positions, and state-owned enterprises to cooperating party leaders and other potential partners.

The equilibrium was stable, but not immutable. It shifted dramatically when Eduardo Cunha presided over the House in the Car Wash scandal, keeping the Dilma government hostage with impending impeachment proceedings, which he eventually decided to put on the floor (Limongi 2023).<sup>19</sup> Congress, by impeaching the second president in twenty-five years made it clear to any president that removing presidents should be viewed as a lingering threat.

The latent threat of impeachment will affect the strategy of presidents to come. Unsurprisingly, the same sword of Damocles was held above Bolsonaro by Arthur Lira.<sup>20</sup> Bolsonaro, a president without strong partisan backing, responded by granting the Speaker the initiative to control and initiate budgetary disbursements. Although these new practices, usually referred to as the "Secret Budget" in the Brazilian press, do not necessarily upend all the authority presidents have over the budget and elicit support from legislators, they certainly diminished the presidential ability to move ahead with their agenda. The House Speaker can now better coordinate the legislators and better position the

<sup>18</sup> Folha de S. Paulo. "Ministério cancela ato sobre 60 anos do golpe militar após decisão de Lula," Folha de S. Paulo, March, 12, 2024.

<sup>19</sup> Even before impeachment proceedings, Cunha had successfully promoted the approval of a constitutional amendment adjusting the age of retirement of STF judges (from 70 to 75), which deprived Rousseff of the opportunity to fill two vacancies in the court (even if she had not been impeached). Those two vacancies would end up being filled five years later by Bolsonaro, as judges Celso de Mello and Marco Aurélio reached the new retirement age.

<sup>20</sup> Bolsonaro inviting the military to the heart of his government could be interpreted as an insurance against the risk of impeachment (Amorim Neto and Acácio 2022).

legislative at the negotiating table where the main currency is the discretionary allocation of resources. This is a new reality that Lula will have to navigate, too.

### **Legislative preferences, checks-and-balances, and democratic commitment**

Congress demonstrated this improved bargaining position on topics critical to Bolsonaro's most extreme plans. At different moments, key legislators and the Speakers of both houses signaled that they were not willing to promote the president's radical discourse against institutions. Neither the House nor the Senate lent institutional support to attacks on the Supreme Court, the Electoral Courts, and their respective judges. In 2021, the Senate's President, Rodrigo Pacheco, summarily dismissed a petition by Bolsonaro asking for the impeachment of a Supreme Court judge, Luis Roberto Barroso. The House's President, Artur Lira, did not include in the House's agenda a deliberation on several aspects of Daniel Silveira's detention and ultimate conviction by the Supreme Court. Silveira, an extreme *Bolsonarista* Representative from the state of Rio de Janeiro, made threats to individual Supreme Court judges in a series of videos. While the Constitution grants to the House a series of powers to shield its members from judicial measures (including the full suspension of an ongoing criminal lawsuit, by a majority vote), such powers were never used. Lira avoided turning the conflict between an individual representative and the STF into an institutional battle, and Silveira (who was ultimately convicted and arrested on January 2023, despite an executive pardon by Bolsonaro that emboldened him to attempt run for office in 2022) was left to his own devices. Lira was also one of the first public authorities to contact Lula to congratulate him for his victory, as soon as the results were out, thus removing his support for the *bolsonarista* discourse of electoral fraud.<sup>21</sup>

The impositions of legislative preferences over the executive's indicates that Congress could bar any attempt of *autogolpe*. Successful coups depend on the support or acquiescence of political elites (Svolik 2012), and Congress in democracies hosts many such elites who would, at least in theory, oppose or foil authoritarian overtures. Congress members have connections to civil society organizations; they have incentives to defend democracy. Preventing backsliding is a game of coordination, and although the members of Congress have many conflicting interests, its members can agree on the goal of sustaining liberal democracy, checking and punishing leaders who are not willing to accept the rules of the game (Melo and Pereira 2024). But to do that, Congress must unequivocally prefer democracy over whatever Bolsonaro was planning to achieve by meddling with the electoral result.

<sup>21</sup> Both Lira and Pacheco were reelected as presidents of the House and the Senate, respectively, for the 2024-2025 term.

Congress demonstrated being comfortable with Bolsonaro in several opportunities, refraining from censoring him in some critical episodes. One clear indication of this lack of interest in punishing him occurred during the pandemic when Bolsonaro was dissuading the public from masking and, later, from vaccinating. Congress did not censor him (Campello 2022). Two consecutive House speakers decided not to initiate impeachment proceedings. Congress never began even deliberating on pending impeachment charges against Bolsonaro. As he radicalized his discourse against judicial institutions and the voting system, Bolsonaro was nonetheless able to build an effective “legislative shield” (Perez-Linan 2009) against impeachment, even if lacking a workable majority to pass his legislative agenda. Bolsonaro was free to promote extremism and disinformation in his discourse, even if he could not adopt institutional measures to curb judicial checks on his powers (Arguelhes, 2022b).<sup>22</sup> Congress and its speaker never pushed for Bolsonaro’s removal because they were in a winning position - and could have plausibly remained so after an *autogolpe*.

Political elites in the legislative might have an interest in allowing a weak authoritarian leader to persevere. Particularly, when their connections to civil society connections are fragile and when the majority of legislators do not cultivate programmatic linkages with voters. In place of programmatic commitment, these politicians operate complex clientelistic machines that run on state resources, and the distribution of such resources is often employed by authoritarian leaders to prevent their removal (Blaydes 2010; Lust-Oskar 2004). Bolsonaro planned to continue in the presidency, not to interfere in other elections. Indeed, in a comical twist, according to his party’s report casting doubt on the electoral process, the alleged frauds would have taken place only in the second round elections, not in the first, which allocated legislative offices.<sup>23</sup>

It is natural to assume that politicians not in the coup coalition, who have a stake in how elections transpire and have made extensive career investments in how to win elections, would try to repel an authoritarian reversal or *autogolpe*. These political elites are the receptacles of the liberal value of democracy (Mainwaring and Perez-Liñan 2013). But part of them has also a lot to gain in a reversal. Having more resources means more chances of re-election for lawmakers, and resources to them were abundant while Bolsonaro was in power. With more resources and through the distribution of pork and patronage, deputies can reach out to more municipal allies and brokers, who will procure a bloc of votes for them (Novaes 2018). A continued Bolsonaro government, even if extended by undemocratic means, could mean the continuation of control over state resources. To avoid removal and prosecution, Bolsonaro would have even more incentives to please legislators.

<sup>22</sup> Which is not to say that he did not find some other mechanisms to bypass said checks in implementing policies connected to his extremist discourse. See Vieira, Glezer, and Barbosa 2023.

<sup>23</sup> Carla Araújo et al, “PL diz que relatório golpista só visa 2º turno para evitar ‘grande tumulto’, *UOL*, November 23, 2022, <https://noticias.uol.com.br/politica/ultimas-noticias/2022/11/23/valdemar-presidente-pl-pronunciamento-eleicao.htm>.

One instance demonstrates how quickly Congress can let go of rules, however central for the elections, when doing so benefits its members. A few months after the first round of elections, the so-called “Kamikaze Amendment” of July 2022<sup>24</sup> allowed the increase in spending for welfare policies during the electoral year, which is forbidden by electoral laws. The fact that this was done with Congressional approval through a constitutional amendment made it harder for critics to call for judicial intervention.<sup>25</sup> Consistently with its tradition of judicial caution before when the two branches are working together, the STF has declined to issue a preliminary injunction and has yet to rule on this case.<sup>26</sup> The Amendment has thus remained valid not just through the elections but for the Lula government in 2023 as well.<sup>27</sup> While the amendment put fiscal balance in jeopardy and gave Bolsonaro an edge to swing voters right before that critical election, it showed that Lira was eager to help Bolsonaro get reelected.

Authoritarian leaders need the support or acquiescence of political elites in Congress to push forward with their agenda. But why would the elites risk siding with an authoritarian leader in the first place? After all, granting extra-constitutional powers to a leader could lead these leaders to later abuse their position, rescinding power-sharing agreements, and expropriating elites from power and resources. Without assurances that they will continue flourishing, the elites would not allow an authoritarian reversal. Fortunately for dictators and elites, institutional arrangements can give credibility to power-sharing agreements (Gandhi and Przeworski 2007, Boix and Svobik 2013, Brancati 2014). Authoritarian regimes of different types often allow for electoral competition, political parties, Congress, and many other institutions that formally, and predictably, delineate how power is divided in a closed polity. These institutions do not fully prevent usurpers from taking power away from past allies, but they make such moves more costly (Meng, Paine, and Powell 2023). Following other authoritarian leaders in the past and from other countries, Bolsonaro could allow for as many such power-sharing institutions that would make a

<sup>24</sup> Constitutional amendment n.123/2022, also known as “Goodies Amendment” (*PEC das Bondades*).

<sup>25</sup> A constitutional amendment trumps over ordinary electoral statutes, and it can also create exceptions to constitutional rules (including the rule that limits changes to electoral rules in the election year). In Brazilian constitutional law, the Supreme Court could only declare an amendment unconstitutional if it was approved without following constitutional procedures, if it “tends to abolish” one of the “eternity clauses” (*cláusulas pétreas*) of the constitution. Those clauses, listed on Article 60, par. 4<sup>o</sup>, include the republican form of government, the federation, the separation of powers, fundamental rights, and the “direct, secret, universal and periodic suffrage” (art. 60, par. 4<sup>o</sup>, IV). Opposition parties and civil society organizations petitioned to the Supreme Court to suspend the amendment, claiming it threatened democracy and the free exercise of the right to vote.

<sup>26</sup> *Ação Direta de Inconstitucionalidade 7212*, Supremo Tribunal Federal, <https://portal.stf.jus.br/processos/detalhe.asp?incidente=6446436>.

<sup>27</sup> At the time of writing, only two judges have cast votes on the pending ruling, both upholding the “Kamikaze Amendment” - the case reporter, judge André Mendonça, who had been appointed by Bolsonaro the previous year, and judge Alexandre de Moraes, Bolsonaro’s main antagonist in the Court. The fact that both of them voted to uphold the amendment illustrates how the STF’s stance towards specific laws can be shaped by Executive-Legislative relations.

pivotal share of legislators at least indifferent from permitting a democratic breakdown or not.<sup>28</sup>

As history has shown, political elites in Brazil have reassessed their loyalties in the face of authoritarian reversals. After the military removed the president in 1964, many politicians flocked to the dictatorship side (Novaes and Tuñon 2024). When in 1965 the military dictatorship established a two-party system with a regime party and an opposition party, most politicians decided to join the regime party. Critically, politicians who were before the coup in left-wing parties also sided with the dictatorship, rupturing any chance of organizing civil society resistance from above. Part of the reason for this bandwagoning is that politicians in Brazil depend on state resources to mobilize voters. Without access to cabinet positions, budget amendments, and the ability to appoint political allies to the bureaucracy, non-programmatic politicians would lose their means to elicit brokers, reciprocate local allies, and disperse resources within clientelistic networks. The risk of being cut out, a risk that is higher in regimes with dictators, gave them incentives to let go of the defense of democracy and join the side of the dictatorship.

Our point in this section is not that legislators' dominant strategy would be to side with Bolsonaro in the event of an *autogolpe*. Times have changed, in Brazil and abroad, and such calculations would deal with internal and international constraints that are very different from 1964. We only contend that Congress is an unreliable guardrail. From a comparative perspective, common institutional arrangements allow political elites to prosper in authoritarian regimes. Historically, many members of the Brazilian Congress have sided with dictators while having thriving careers. Despite Bolsonaro's support base in Congress being small, it is far from obvious that Congress would try to block an overt attempt from him to remain in power.<sup>29</sup> Part of the reason for this congressional drift is that elected legislators enjoyed a time of plenty during Bolsonaro's years. Notoriously, none benefited more than the Lira, who managed to send record sums to his home state, which likely helped him gain thousands of votes for his successful re-election.<sup>30</sup>

<sup>28</sup> There is a large set of possible arrangements, which depend on variables such as leader popularity, coercive powers, group coordination, among others. While the military dictatorship in Brazil allowed Congress to remain open for most of its rule, Vargas in the 1930s did not, which attest how power-sharing shifts in authoritarian regimes of the same country. Bolsonaro, relatively weak in comparison to Congress, would have to let go much of his power to keep Congress content with the regime transition.

<sup>29</sup> Congress also includes ideological allies of the president. The Evangelical caucus, firmly to the right (Araújo 2022), and the presence of openly Bolsonaroistas legislators also make the success of a coup more likely as many such legislators would be aligned with or part of the Bolsonaro coalition.

<sup>30</sup> Tácio Lorran, "Lira dobra votos em cidades beneficiadas por ele com orçamento secreto, *Metrópoles*, October 26, 2022, <https://www.metropoles.com/brasil/eleicoes-2022/lira-dobra-votos-em-cidades-beneficiadas-por-ele-com-orcamento-secreto>.

## V. ONE PRESIDENT, ELEVEN JUDGES

Among the many factors why the country's politics is markedly different from Lula's previous government, we find the judiciary. The 1988 constitution strengthened judicial independence, endowing the courts with "administrative and budgetary autonomy", and granted the Supreme Court expanded powers of constitutional review, which could be easily triggered by opposition parties and several different social and institutional actors. These new mechanisms were increasingly seized by the opposition during the Collor and Cardoso governments, and by Lula's first term (2003-2006) the political process in Brazil was increasingly judicialized (Arantes 1997; Taylor 2008) and the STF was gradually expanding the scope of its powers (Vieira 2008). Moreover, the court has immense criminal jurisdiction, with the authority to authorize investigations and prosecutions, as well as to decide over criminal cases involving all deputies, senators, and members of the presidential cabinet.

During the 1990s, the STF was cautious and constrained when intervening in the policy-making process (Brinks 2011), although its judges did exercise influence in some high-profile constitutional issues and shaped reforms and policies on the margins (Kapiszewski 2011). The Court began to intervene more actively in the political process during Lula's first government.<sup>31</sup> Still, for Lula's first two terms in office, although the Court was an increasingly relevant player, it was not the focus of the government's (or the public's) attention.

Lula's successor from the PT, Dilma Rousseff (2011-2016), saw the beginning of a different era, with criminal jurisdiction - beyond constitutional review - becoming increasingly central. The Court would convict an elected politician for the first time in 2010, and the *Mensalão* corruption scandal judgment (2012-2013) would be the point of no return (Michener and Pereira 2016; Arantes 2018).<sup>32</sup> Since then, controversies involving criminal appeals and lawsuits stemming from another scandal, the *Car Wash Operation*, further morphed the STF's political role and internal dynamics (Vieira 2021; Prado and Machado 2021; Da Ros and Taylor 2022). In 2015, an injunction had suspended a Senator involved in ongoing criminal investigations - an unprecedented move, that launched reinterpretations of congressional immunities and prerogatives with lasting impacts in the STF's caselaw.<sup>33</sup> Over the years, dozens of members of Congress, high-profile party leaders, and members of the executive cabinet were investi-

<sup>31</sup> In 2005, for example, the court for the first time ordered Congress to accept a requirement, presented by the opposition, to initiate a congressional investigative committee to investigate gambling (*CPI dos Bingos*). In 2006 the Court struck down an electoral reform bill that would have forced small parties to join larger ones if they did not win enough legislative seats.

<sup>32</sup> While the scandal broke out in 2005 and the STF accepted to hear the criminal case in 2007 (during Lula's first and second terms in office, respectively), the court would only hear oral arguments and begin trying the defendants in August 2012 (during Dilma's first term in office).

<sup>33</sup> Consider, for example, that the 2015 decision was cited as a key precedent in the 2021 suspension from office of the far-right *Bolsonarista* deputy Daniel Silveira, which we previously mentioned.

gated or prosecuted before the court, turning this originally latent power into an active, loaded gun that the judges could credibly wield against politicians.

If constitutional review gave the court influence over policies (a process that was already visible to “Lula 1”), criminal jurisdiction provided it with great power over politicians (something not yet visible to “Lula 2”). But it also reshaped the court’s internal dynamics, exposing often bitter conflicts between its judges. In constitutional review cases, the STF has largely decided unanimously in the last couple of decades (Mariano Silva 2018), but the high profile criminal jurisdiction cases have been more divisive, controversial, and unstable. The court’s decisions regarding the *Car Wash Operation* were often taken by slight majorities, with extreme press coverage and intense public pressure on the judges (sometimes from their court colleagues). This was true both between 2015 and 2018, in the heyday of *Car Wash*, when the STF was overall supportive of the investigations and decisions from the lower courts, and since 2019, after which a new majority formed to reverse gears not just on the Operation but, more generally, on the promotion of anti-corruption and accountability by prosecutors and judges.<sup>34</sup> Indeed, this is true of both the 2018 denial of Lula’s *habeas corpus*, which ultimately kept him from participating in the elections and the 2021 annulments of all of his convictions in criminal lawsuits. The current court is perceived as using even its criminal jurisdiction with an eye on the political context and the implications of its decisions. “Lula 3” knows all this from personal experience: between 2018 and 2021, the STF went from keeping him in jail to completely clearing his record.

By the end of his previous tenure in office, Lula had already shown the capacity to engage in dialogue with the Supreme Court, having developed a good relationship even with judges appointed by the Cardoso administration, such as Gilmar Mendes (Recondo and Weber 2019). This capacity alone would have made “Lula 3”’s relationship with the STF very different from Bolsonaro’s - whose disastrous handling of the pandemic, constant attacks on judges, dissemination of disinformation, and extremist discourse helped to make him frequently defeated in the court (Vieira et al 2023; Oliveira and Madeira 2021; Couto 2023). But Lula 3 has also updated his approach to the courts - one more in tune with contemporary dynamics, and that has already been visible in 2023: the government treats the court as a political institution, in a scenario when appointments to the STF mean shaping outcomes on criminal and electoral cases that might deliver personal accountability to politicians.

Lula’s first eight appointments to the STF in his first eight years in office were ideologically diverse, and only a couple had direct personal connections with the president. Against this backdrop, “Lula 3” appointments have been markedly more “personal”: Cristiano Zanin (appointed March 2023) was Lula’s law-

<sup>34</sup> Taylor and Da Ros (2022) usefully describe the Bolsonaro era as one in which the STF went from *confrontation* to *accommodation* in anti-corruption issues, and from *accommodation* to *confrontation* in matters involving the basic structures of constitutional government.



yer for the *Car Wash* lawsuits, and Flavio Dino (appointed November 2023) was his Minister of Justice. While both have very different profiles (Zanin a private lawyer, Dino a former state governor, deputy, and senator who had previously been a career judge), they undeniably show “Lula 3” keeping appointments to the STF much closer to his chest. The politicization of STF picks seems to be increasingly central for presidents, even when it potentially comes at the expense of ideology or partisan ties.<sup>35</sup>

This is a new pattern in Brazilian judicial politics, rather than something specific about Lula 3. If *Mensalão* was not enough to change presidential strategies to appointments, the upheavals in the *Car Wash* arc seem to have completed the process. In contrast with Rousseff’s (2011-2016) appointments, Lula’s picks are so far more similar to Temer’s (who appointed his own Minister of Justice, Alexandre de Moraes) and Bolsonaro’s (who appointed Nunes Marques, who had close ties with the Bolsonaro family and inner circle (Recondo and Weber 2023), and Andre Mendonça, who as a Minister of Justice and Solicitor-General was tried and tested by Bolsonaro for several years).<sup>36</sup> Unsurprisingly, the two Bolsonaro appointees have so far adopted milder positions than the other judges on cases involving attacks on democracy. Nunes Marques, who was in the TSE last year, voted against making Bolsonaro ineligible.

Moreover, the Lula government has largely supported the Supreme Court’s expansive role in investigating and holding accountable those responsible for the January 8th attempted coup. During the Bolsonaro era, the court’s criminal powers were a central factor in constraining online dissemination of disinformation against electoral and judicial institutions by the Bolsonaro camp, and those powers - which were already considerable - experienced further expansion as the STF gave itself unprecedented power to initiate investigations in all cases involving attacks on its judges (Arguelhes 2022a). Lula’s Minister of Justice, Flavio Dino (appointed to the STF in late 2023), was a vocal and consistent supporter of the STF’s expanded criminal outreach. There was reason to expect that, after the Bolsonaro era, the STF would backtrack in its expansive use of criminal jurisdiction. That this was not the case reflects not only the lasting impact of the January 8th attempted coup, which kept threats on democracy on the main national agenda, but also Lula 3’s approach to dealing with this new court. The STF’s criminal jurisdiction, so dangerous for politicians in the recent

<sup>35</sup> Consider the case of Judge Cristiano Zanin, who attracted criticism from sectors of the left (and praise from evangelical and right-wing politicians in Congress) for adopting positions perceived as more conservative on the ongoing decriminalization of marijuana case (see, e.g. Isabella Alonso Panha, “Votos de Zanin no STF são alvo de críticas de aliados de Lula e agradam a opositores do governo,” *Estadão*, August 26, 2023, <https://www.estadao.com.br/politica/votos-de-zanin-agradam-parlamentares-evangelicos-que-dizem-que-ministro-cumprer-expectativas-nprp/>).

<sup>36</sup> Bolsonaro made no effort to conceal his personal connection with his appointees. He said more than once he would only appoint judges with whom he had “drunk *tubaína*” - *tubaína* is a cheap sugary soft drink, used in this context to indicate an informal and close relationship of trust with the appointee (see Ingrid Soares and Renato Souza, “Bolsonaro confirma indicação de Kassio Nunes para o Supremo,” *Correio Brasileiro*, October 1, 2020, <https://www.correiobrasiliense.com.br/politica/2020/10/4879413-bolsonaro-confirma-indicacao-de-kassio-nunes-para-o-stf.html>).

past, can now be useful for presidents, depending on their specific goals and on their capacity to stay on the court's good side - two variables that clearly distinguish Lula 3 from Bolsonaro.

### Executive-Court relations: judges as problem-solvers

When it comes to holding the *golpistas* accountable, then, Lula 3 has so far been comfortable in letting the STF take the lead. More generally, in 2023, STF judges were central players in all matters regarding threats to democracy. This happened with the government's blessing. In February 2023, as Congress was debating new regulations on platform responsibility for disinformation, Judge Moraes issued an injunction asking social media and platforms to remove content some tech companies had promoted against the bill being debated by legislators.<sup>37</sup> Moraes's injunction arguably bypassed Congress in adopting the same new measures that were being discussed in the bill (such as the obligation to present a report on measures adopted to "mitigate the harm" caused by disinformation content); Lula's Minister of Justice, Flavio Dino, publicly defended the decision.<sup>38</sup>

On the other hand, at least in some aspects, court-executive relations have returned to normal patterns. Except for the Bolsonaro era, the STF has always been more of a problem solver than a troublemaker for incumbents; moreover, while having a court majority helps, past presidents have sometimes been helped by individual judicial decisions. Even before Lula took office, after his election in October, this long-standing dynamic was already visible again, as two decisions from the very last weeks of the Bolsonaro government illustrate. For example, in December 2022, Judge Gilmar Mendes issued an injunction authorizing, in the 2023 budget, expenditures with cash transfer social programs outside existing legal limits - something that was crucial for the incoming Lula government.<sup>39</sup> In the same week, the court imposed limits on the budgetary practices known as the "Secret Budget", thus strengthening the future incumbent bargaining position vis-a-vis Congress.<sup>40</sup>

The STF is a court in which individual judges wield great decision-making and agenda-setting powers, which had been crucial in shaping politics and pol-

<sup>37</sup> See Márcio Falcão, "Moraes abre inquérito para investigar diretores do Google e Telegram por 'campanha abusiva contra PL das Fake News'," May 12, 2023, <https://g1.globo.com/politica/noticia/2023/05/12/moraes-abre-inquerito-para-investigar-diretores-do-google-e-telegram.ghtml>.

<sup>38</sup> See UOL, "'Passo importante', diz Dino após decisão de Moraes contra o Telegram," UOL, May 10, 2023, <https://noticias.uol.com.br/politica/ultimas-noticias/2023/05/10/flavio-dino-alexandre-de-moraes-telegram.htm>.

<sup>39</sup> Eduardo Piovesan, "Ministro do STF decide que Bolsa Família poderá ficar fora do teto de gastos," *Câmara dos Deputados*, December 19, 2022, <https://www.camara.leg.br/noticias/930317-ministro-do-stf-decide-que-bolsa-familia-podera-ficar-fora-do-teto-de-gastos/>.

<sup>40</sup> STF Notícias, "STF julga orçamento secreto inconstitucional," STF Notícias, December 19, 2022, <https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=499330&ori=1>. Melo (2023), however, argues that these judicial victories had unintended negative effects for Lula, since Congress eventually reacted by expanding their budgetary prerogatives.

icy in the 2010s (Arguelhes and Ribeiro 2018). Individual case reporters can issue injunctions to suspend statutes and decisions of the other branches of government, while also deciding when their colleagues will collectively decide on these individual rulings; moreover, each judge can ask for a judgment to be suspended, which in practice meant an individual power over the court's agenda (Arguelhes and Hartmann 2017). This makes a single appointment to the STF much more valuable to politicians than their vote within collective decisions since one committed, allied judge can be enough to indefinitely postpone unfavorable rulings or issue a useful injunction.<sup>41</sup> In resisting Bolsonaro's attacks, from the pandemic on, the court was able to present a somewhat more unified front (Recondo and Weber, 2023); moreover, at the end of the Bolsonaro government, the court changed its internal rules of procedure to limit individual agenda-setting powers, requiring judges to immediately let their colleagues rule on their injunctions, and removing the possibility of suspending judgments for more than 90 days.<sup>42</sup>

Even so, individual STF judges are still very powerful - and very useful for incumbents. In January 2023, Judge Lewandowski issued an individual injunction suspending a statute that would prevent Lula from appointing high-ranking PT politicians to state companies (a prohibition adopted in 2015, against the backdrop of the *Car Wash* revelations regarding the state-run oil company Petrobrás)<sup>43</sup>. Consider also the case of Judge Toffoli, who, on September 2023, answering to a petition by Lula's defense lawyers, single-handedly voided all evidence obtained from plea bargain agreements struck between prosecutors and executives from the building giant Odebrecht, which was at the center of the *Car Wash* scandal. In that decision, Judge Toffoli made a point of remarking that Lula's conviction was "one of the greatest judicial mistakes in the history of the country".<sup>44</sup> Last December, Toffoli also authorized investigative proceed-

<sup>41</sup> Consider, for example, that, in 2021, when Judge Nunes Marques was still the single Bolsonaro appointee on the Court, he individually (i) suspended all social distancing rules preventing in-person religious gatherings during the pandemic - a few days before Easter celebrations -, and (ii) suspended an ongoing judgment on presidential decrees making it easier to buy firearms (the Court would only resume the judgment the following year). See, respectively, Matheus Teixeira, "Decisão de Kassio sobre cultos incomoda ministros do STF, que preveem reversão em plenário," *Folha de S. Paulo*, April 4, 2021, <https://www1.folha.uol.com.br/equlibrioesaude/2021/04/decisao-de-kassio-sobre-cultos-incomoda-ministros-do-stf-que-preveem-reversao-em-plenario.shtml>, and Mariana Muniz, "Indicado por Bolsonaro, Nunes Marques trava há nove meses ação sobre decreto de armas, que deram salto no período," *O Globo*, June 17, 2022, <https://oglobo.globo.com/politica/noticia/2022/06/indicado-por-bolsonaro-nunes-marques-trava-ha-nove-meses-acao-sobre-decreto-de-armas-que-deram-salto-no-periodo.ghtml>.

<sup>42</sup> In the next section, we will discuss recent attempts by Congress to limit individual powers within the STF.

<sup>43</sup> See Manoel Ventura, "Lewandowski suspende trechos da Lei das Estatais que restringe indicações de políticos em empresas públicas," *O Globo*, March 16, 2023, <https://oglobo.globo.com/economia/noticia/2023/03/lewandowski-suspende-trechos-da-lei-das-estatais-que-restringe-indicacoes-de-politicos-em-empresas-publicas.ghtml>. While Judge Lewandowski's judicial decision was partially overruled by the full court on May 2024, a court majority refrained from voiding the appointments made by Lula under Lewandowski's authorization - a powerful illustration of the power that individual STF judges have to create a political and legal *fait accompli*, even if they lack a majority in the court.

<sup>44</sup> Anna Satie, "Toffoli anula provas e diz que prisão de Lula foi erro histórico," *UOL*, September 6, 2018, <https://noticias.uol.com.br/politica/ultimas-noticias/2023/09/06/toffoli-anula-provas-e-diz-que-prisao-de-lula-foi-erro-historico.htm?cmpid=copiaecola>.

ings against Sergio Moro on alleged criminal behavior in the making of plea bargain agreements in the *Car Wash* cases.<sup>45</sup>

These last two cases also show how individual judges have become political actors and power brokers in their own right. Throughout the year, the press has reported several meetings and conversations between Lula or members of his government with potential judicial “power brokers” throughout the year - not just with the Chief Justice, who represents the institution in official matters, but with individual judges who are willing to act as interlocutors and facilitators, within and outside the court.<sup>46</sup> Support from individual STF judges has been a relevant factor for many presidential appointments, including the Attorney-General.<sup>47</sup> Judge Lewandowski was reported to have discussed with Lula his preferred names to be appointed for his vacancy; he did not prevail, but, months after leaving the court, Lewandowski would be appointed as Lula’s Minister of Justice, early in 2024.<sup>48</sup> More generally, there are reports of individual STF judges lobbying for their preferred appointments to the other high courts or federal courts of appeals.<sup>49</sup> And, confirming that the STF is open to dialogue beyond partisan or ideological lines, such meetings have included not just Cristiano Zanin (appointed by President Lula on June 2023), but also Gilmar Mendes (appointed by President Cardoso in 2002) and Alexandre de Moraes (appointed by President Temer in 2017) - both with historical ties with parties and political leaders opposed to the PT.<sup>50</sup> It should be noted that judges Mendes and Toffoli had been in dialogue with President Bolsonaro throughout his government.<sup>51</sup> While a good executive-judicial relationship is not a substi-

<sup>45</sup> Catarina Scortecchi and José Marques, “Toffoli abre inquérito contra Moro por suspeita de fraude em delação,” *Folha de S. Paulo*, January 15, 2024, <https://www1.folha.uol.com.br/poder/2024/01/toffoli-abre-inquerito-contra-moro-por-suspeita-de-fraude-em-delacao.shtml>.

<sup>46</sup> See, e.g., Mateus Maia, “Lula janta com Gilmar, Moraes e Zanin depois de PEC do Senado,” *Poder 360*, November 24, 2023, <https://www.poder360.com.br/governo/lula-janta-com-gilmar-moraes-e-zanin-depois-de-pec-do-senado/>; Thais Arbex, “Lula diz a ministros do STF que Gonet será novo PGR, mas decisão para a Corte depende de ‘acerto com Senado’,” *CNN Brasil*, November 24, 2023, <https://www.cnnbrasil.com.br/politica/lula-diz-a-ministros-do-stf-que-gonet-sera-novo-pgr-mas-decisao-para-a-corte-depende-de-acerto-com-senado/>; Alice Cravo, “Em gesto de aproximação, Lula liga para Nunes Marques e avisa sobre nomeação a tribunal de juiz apoiado pelo ministro,” *O Globo*, November 15, 2023, <https://oglobo.globo.com/politica/noticia/2023/11/15/em-gesto-de-aproximacao-lula-liga-para-nunes-marques-e-avisa-sobre-nomeacao-a-tribunal-de-juiz-apoiado-pelo-ministro.ghtml>.

<sup>47</sup> Renato Machado and Matheus Teixeira, “Lula indica Paulo Gonet à PGR em vitória de Moraes e Gilmar e derrota do PT,” *Folha de S. Paulo*, November 27, 2023, <https://www1.folha.uol.com.br/poder/2023/11/lula-indica-paulo-gonet-a-pgr-em-vitoria-de-moraes-e-gilmar-e-derrota-do-pt.shtml>.

<sup>48</sup> See Kelly Hekally, “Indicação de Lewandowski ao STF já foi apresentada a Lula pelo ministro,” *Correio Braziliense*, January 26, 2023, <https://www.correio braziliense.com.br/politica/2023/01/5069128-indicacao-de-lewandowski-ao-stf-ja-foi-apresentada-a-lula-pelo-ministro.html>.

<sup>49</sup> Carolina Brígido, “Ministros de Lula, do STF e do TCU disputam vagas do TRF-1 para aliados”, *UOL*, 04 April 2023, <https://noticias.uol.com.br/colunas/carolina-brigido/2023/04/04/ministros-do-stf-do-tpcu-e-do-governo-disputam-vagas-do-trf1-para-aliados.htm>.

<sup>50</sup> Carolina Brígido and Carla Araújo, “Com PEC aprovada, Lula se reúne com ministros do STF para tratar de crise,” *UOL*, November 24, 2023, <https://noticias.uol.com.br/colunas/carolina-brigido/2023/11/24/com-pec-aprovada-lula-se-reune-com-ministros-do-stf-para-tratar-de-crise.htm>.

<sup>51</sup> Matheus Teixeira, “Gilmar e Toffoli fazem acenos a Lula após atuarem como interlocutores de Bolsonaro no STF,” *Folha de S. Paulo*, October 15, 2023, <https://www1.folha.uol.com.br/poder/2023/10/gilmar-e-toffoli-fazem-acenos-a-lula-apos-atuarem-como-interlocutores-de-bolsonaro-no-stf.shtml>. For detailed description of several such episodes, see also Recondo and Weber, *O Tribunal*.

tute for a working legislative coalition, it can be highly beneficial for both judges and presidents.

### **Court-Congress relations: judges as troublemakers?**

The current dynamics between the STF and Congress have not yet been fully captured by the broader scenario of *coalitional presidentialism*. As the Chamber of Representatives and the Senate prepared to elect their respective presidents in February 2023, the January 8th attempted coup loomed large in Congress. But “judicial overreach” was also a central topic of debate between legislators campaigning and voting for those leadership positions.<sup>52</sup> Lira, who had been a close ally of Bolsonaro, downplayed the tensions between the Chamber and the STF; Pacheco, on the other hand, while not adopting the most radical anti-court discourses present in Congress, listed reforming the Court among his priorities (defending changes such as establishing fixed terms of office, restricting access to constitutional review by small parties, and limiting individual powers in the STF).

The centrality of the “judicial overreach” agenda in Congress is partially a result of Bolsonaro’s attempt to turn the electoral process into something like a national plebiscite on the STF. But it also reflects older developments where legislators witness the court consolidating itself in its multiple roles of criminal adjudicator, policy-maker and occasional legislator, and arbiter of internal conflicts in Congress. Indeed, dissatisfaction with the Supreme Court brought together politicians with different perspectives. Evangelicals and other conservatives are dissatisfied with the STF’s progressive engagement with issues such as same-sex marriage (decided in 2011), abortion, and the decriminalization of marijuana for personal use (cases on those two issues were then pending in the court’s docket) *Bolsonaristas* dissatisfied at the many defeats suffered at the Court’s hands during the Bolsonaro government largely endorse the former president’s attacks on the STF and TSE judges. Finally, other legislators are displeased with the Court’s curbing of congressional prerogatives, such as immunity from prosecution for the opinions they express in their official capacities, and its increasing intervention in what they considered to be internal Congressional affairs.

In this scenario, proposals to reform the STF have gained unprecedented traction. In 2023, the Senate began to deliberate and eventually approved Constitutional Amendment Proposal n8/2021 (“PEC 8”), which would mostly eliminate individual decision-making and agenda-setting powers within the Court.

<sup>52</sup> Edson Sardinha, “Fim da reeleição, STF e Reforma Administrativa vão opor Lira e Pacheco em 2024,” *Congresso em Foco*, January 2, 2024, <https://congressoemfoco.uol.com.br/area/congresso-nacional/fim-da-reeleicao-stf-e-reforma-administrativa-vaooopor-lira-e-pacheco-em-2024/>; Bianca Gomes, “Crítico do ‘ativismo judicial’, Rogério Marinho tem Bolsonaro como cabo eleitoral na disputa pelo Senado,” *O Globo*, February 1, 2023, <https://oglobo.globo.com/politica/noticia/2023/02/critico-do-ativismo-judicial-rogerio-marinho-tem-bolsonaro-como-cabo-eleitoral-na-disputa-pelo-senado.ghtml>.

In response to the Senate's decision, several STF judges - including Judge Moraes, who became the most visible public face of judicial resistance to Bolsonaro - harshly criticized the amendment in the press and in a public session of the Court's plenary, calling the PEC "dictatorial" and linking it with "democratic backsliding".<sup>53</sup> At the same time, according to the press, the Court's most politically inclined members were in dialogue with Artur Lira to stop PEC 8 on its tracks in the Chamber. Despite criticisms from right-wing legislators, Lira so far managed to prevent further deliberations on the proposal.

Court-Congress relations in Brazil have now taken a life of their own, without the president's direct involvement. Lula's government did not take a clear stance on several Supreme Court-legislative confrontations. In the case of the amendment proposal to limit individual powers within the STF, for example, the government let senators from the coalition free to vote, even though the Court was reportedly expecting the president to take the judicial side<sup>54</sup>. However, those interactions matter for the government, since the disputed territory involves issues that are very consequential for the political system, such as the investigation and prosecution of specific politicians, the internal rules of Congress in deciding on the budget, or electoral politics. As an example of the latter, consider a case on decriminalization of abortion that has been awaiting judgment since before the Bolsonaro government.<sup>55</sup> It was generally understood that the former case reporter, Judge Rosa Weber, avoided clearing the case for inclusion in the court's agenda in a political climate where it would fuel conservative attacks on an already targeted STF. Just before retiring, in September 2023, Judge Weber initiated the judgment on abortion by issuing her individual opinion. The new Chief Justice, however, Judge Barroso, immediately suspended deliberation on the case. Judge Barroso has always been one of the staunchest defenders of the decriminalization of abortion on the Court, and has issued a decision on an individual case in this regard years ago<sup>56</sup>. Still, Barroso has publicly said the Court will not resume the abortion judgment soon.<sup>57</sup>

This can be interpreted as a deliberate attempt by the Court to avoid confrontation with Congress - or at least to pick its fights. Moreover, judicial caution

<sup>53</sup> Constança Rezende, "STF reage a PEC do Senado com falas de Barroso, Gilmar e Moraes que citam ditadura e retrocesso," *Folha de S. Paulo*, November 23, 2023, <https://www1.folha.uol.com.br/poder/2023/11/barroso-reage-a-aprovacao-de-pec-que-interfere-no-stf-e-fala-em-retrocesso-democratico.shtml>.

<sup>54</sup> Mayara da Paz, "Governo libera bancada em votação de PEC que limita decisões individuais do STF", *CNN*, November 21, 2023, <https://www.cnnbrasil.com.br/politica/governo-libera-bancada-em-votacao-de-pec-que-limita-decisoes-individuais-do-stf/>; Thais Arbex e Leo Cury, "Após aval de base governista à PEC no Senado, Lula se reúne com ministros do STF", *CNN*, November 24, 2023, <https://www.cnnbrasil.com.br/politica/apos-aval-de-base-governista-a-pec-no-senado-lula-se-reune-com-ministros-do-stf/>

<sup>55</sup> *Arguição de Descumprimento de Preceito Fundamental (ADPF) 442*, Supremo Tribunal Federal, <https://portal.stf.jus.br/processos/detalhe.asp?incidente=5144865>.

<sup>56</sup> *Habeas Corpus* 124306, Supremo Tribunal Federal (2016), <https://portal.stf.jus.br/processos/detalhe.asp?incidente=4637878>.

<sup>57</sup> See, e.g., G1 and GloboNews, "Barroso diz que STF não julgará descriminalização do aborto; ação sobre drogas pode entrar na pauta," *G1*, February 21, 2024, <https://g1.globo.com/politica/noticia/2024/02/21/barroso-diz-que-stf-nao-julgara-descriminalizacao-do-aborto-acao-sobre-drogas-pode-entrar-na-pauta.ghtml>.

on this and related topics is politically useful for the government, which has no interest in making “cultural wars” issues central to the national agenda. Opposition politicians and evangelicals in particular could publicly associate a judicial decision on abortion or drug decriminalization with the government, even though the two judges appointed to the Court by Lula in 2023 have been known not to have pro-choice stances on abortion.<sup>58</sup> More recently, Lula has reportedly criticized the Court’s advances on abortion and drug decriminalization.<sup>59</sup> This illustrates how, for the president, the Court can be both a political problem-solver (perhaps limiting or even bypassing Congress, as we saw in the *Lei das Estatais* case) and a political troublemaker (by issuing decisions on “culture war” issues that spark mobilization from the right, and that, in a polarized political climate, are easily associated with a government seen as progressive). This duality is expected to remain a key feature of judicial politics in Brazil for the foreseeable future.

## VI. THE WORKERS’ PARTY IN GOVERNMENT, AGAIN

After years of economic stagnation and successive corruption scandals, Brazil has grown considerably polarized and is now much less warm to Lula than in his previous terms. While he left office in 2010 with an almost 90% approval rate,<sup>60</sup> the politician who resurfaced after 19 months in prison was far from being acclaimed by the public. Although he was the only viable opponent against the incumbent, and Bolsonaro used the government machine to boost social programs on the eve of the 2022 election (Tanscheit and Barbosa 2023), Lula’s popularity was not what it was before. After one year in office, the new president’s approval rate was below fifty percent.

In this section, we briefly discuss the Workers’ Party in government. Lula’s party is another institution that changed considerably in the last decade (Barros 2022). It is a party trying to regain footing after years of battling corruption scandals, an impeached president, and a jailed leader. Following a formidable expansion in Brazilian territory, placing 638 mayors in 2012, it managed to elect only 183 in 2020, not a single one in a state capital. It gained 88 seats in the lower chamber and 11 in the Senate in 2010, but in 2022 those numbers reduced to 69 and 8 respectively. Meanwhile, parties on the right have gained momentum (Hunter and Power 2023).

<sup>58</sup> Mariana Schreiber, “Flávio Dino no STF: indicado de Lula é contra legalização do aborto e visto como ‘mão pesada’,” *BBC News Brasil*, November 27, 2023, <https://www.bbc.com/portuguese/articles/cx018k98jdjo>.

<sup>59</sup> Fábio Zanini, “Lula critica a ministros do STF ênfase na pauta de costumes da corte,” *Folha de S. Paulo*, March 13, 2024, <https://www1.folha.uol.com.br/colunas/painel/2024/03/lula-critica-a-ministros-do-stf-ênfase-na-pauta-de-costumes-da-corte.shtml>.

<sup>60</sup> See Robson Bonin, “Popularidade de Lula bate recorde e chega a 87%, diz Ibope,” *G1*, December 16, 2010, <https://g1.globo.com/politica/noticia/2010/12/popularidade-de-lula-bate-recorde-e-chega-87-diz-ibope.html>.

The recent electoral performance of the party indicates that it might need to adapt once again. The past successes of the Worker's Party are directly attributable to its unparalleled internal organization, network of activists, and linkages with civil society. Contrary to many labor-based parties that failed to adapt in the wake of dwindling unionization, debt crises, and macroeconomic orthodoxy (Roberts 2014), the Worker's Party managed to programmatically move to the center of the ideological spectrum (Amaral, Ribeiro 2014, Hunter 2010), achieving a decade-long string of electoral successes. But this dominance has been dwindling. The attempt to establish party outposts in places where the party was not present in its first decades has been fragile (Dunning and Novaes 2020; Alves and Hunter 2018). Notably, while there is little evidence that Lula's appeal can be separated from the Worker's Party, the party has made no clear movement for Lula's inevitable retirement, and leadership turnover is a fundamental factor in party adaptation and survivability (Levitsky 2003). While an asset today, Lula's unparalleled ability to cultivate votes poses a question to a party without a clear successor to the aging politician. While Lula's successes helped the party ranks grow (Samuels and Zucco 2014), it is risky for the party to not actively prepare for its continuation when the most pivotal Brazilian politician since the democratization retires.

The party's internal conflicts are no longer kept to party conventions and internal fora but result in open clashes between its members and cabinet members in the press. These conflicts are particularly salient in economic policy. It is early to characterize how close Lula's government will be to his first term in 2002, characterized by macroeconomic orthodoxy and fiscal restraint, or to his last and Dilma's, where the promotion of national champions, state-led investments, and countercyclical spending proved to be harbingers of a long period of economic hardship, aggravated by the cascading political scandals. So far, it seems to be a mix of the two – and the tension between the two camps seems to illustrate the contradictions and dilemmas the Workers' Party faces. Although Lula is ambivalent regarding pursuing an agenda that puts macroeconomic stability ahead of economic growth and full employment,<sup>61</sup> the Workers' Party leadership prefers the latter (Schipani 2022). Although the party is no stranger to open disputes, this one, in particular, will resolve in the programmatic direction the party will take going forward, as well as the political future of potential successors to Lula.

The first year ended with positive economic outcomes, and the return of a left-wing presidency did not result in economic doom. According to a few short-term economic indicators, the economy showed signs of a rebound after several years of stagnation and after COVID-19. The Brazilian currency appreciated slightly against the dollar, the stock market reached new heights, and the economy is bound to grow 2.9% in 2023, the third consecutive year of growth. Unemployment fell to 7.8% in December of that year, the lowest level since 2014.

<sup>61</sup> A dilemma which might not be empirically true, but organizes the macroeconomic debate in Brazil.



Inflation subsided in 2023, but the government and the Central Bank clashed frequently. In 2021, Congress granted the Bank full autonomy to set interest rates, a power that has made sectors on the left dissatisfied and proved to be consequential. While the Central Bank exercised caution in reducing the rate, arguing in its meeting notes that there were risks of accelerating inflation, the government and *petistas* close to Lula frequently demanded more rapid action. They disagreed, claiming that inflation was under control and that the Central Bank was being overzealous and punishing the economy when deciding not to cut rates. They were also suspicious of the Bank's president, who was appointed during Bolsonaro's government and appeared to sympathize with the former president. Tensions escalated when cabinet members close to Lula asked for his removal. Eventually, by the end of the year, the Central Bank started to cut rates. Inflation by the end of the year was within the predetermined monetary policy goal, stabilizing at 4.62%. Surprisingly, Fernando Haddad, the finance minister, stepped up as a mediator in the confrontation between the two camps. Haddad, who lost to Bolsonaro in 2018 but still is one of the most likely successors to Lula in a future presidential campaign, in his first year as the head of the ministry, gained praise from the financial sector and leaders of the industry and appears to be the main supporter of macroeconomic stability in the government.

Among *petistas*, however, Haddad is far from being a unanimity. Other cabinet members have openly criticized him over the press.<sup>62</sup> Part of the animosity is due to Haddad's goal of reining in government spending and removing bailouts implemented during COVID-19 – a measure he believes is necessary to reign in the deficit. Groups within the government and Lula himself seem to be responding to pressure from interest groups and sectors contemplating tax rebates during the last years, while Haddad is poised to balance government debt. Lula, who holds the authority over all government and party members, is still ambivalent, showing support for Haddad at one time, and in others acting out of his way to keep some of the rebates active. However, Haddad got a big win as Congress passed a reform to modernize the notoriously complex Brazilian tax system. This process will take years to take full effect and is likely to cause changes in Congress due to the pressure of some groups who want ad hoc changes for their benefit.

The clash between *petistas* and the Central Bank and the internal struggles of Haddad illustrate that the Workers' Party and the Brazilian left have many disagreements over macroeconomic policy. Lula in 2023 is similar to his past self when dealing with the industrial sector. He has kept Petrobras as a priority in industrial policy, suggesting that it should reacquire the refineries that were once privatized, a type of pressure that pierces the company's governance. Lula

<sup>62</sup> Alice Cravo and Victoria Abel, "Governo tenta reduzir ruídos entre Haddad e Rui Costa após fala de Lula sobre déficit," *O Globo*, October 30, 2023, <https://oglobo.globo.com/politica/noticia/2023/10/30/governo-tenta-reduzir-ruideos-entre-haddad-e-rui-costa-apos-fala-de-lula-sobre-deficit.ghtml>.

has also been keen to please the auto industry, implementing a short but expensive policy to subsidize the purchase of new automobiles. At the same time, he has sponsored new regulations and tariffs for electric cars. Those actions could be placed back in Lula's previous governments, suggesting that the lack of leadership change implies a lack of policy innovation.

## VII. CONCLUSION

The incorporation of the military back into politics has made the transmission of power unpredictable for the first time in the recent democratic era in Brazil. The coalition of the authoritarian right and the military would likely make for an unstable regime, but we have few analytical tools to assess how a takeover would withstand the domestic and international backlash if Bolsonaro had been able to move further ahead with his coup plans. Sure, the coalition would likely grow with groups that have grown consistently *antipetista*, such as evangelical leaders, the rural sector, and state police agents. Moreover, a relatively small, but loud group of *bolsonaristas* with enough organization to pack the streets would provide unconditional popular support. But from the institutional standpoint, whether an authoritarian reversal would be sustained over time or not does not matter. What matters is, that a democratically elected president had the motive and means to devise and try to implement a plan.

The acute moment the Brazilian democracy endured seems to be over. However, could the country face a similar crisis in the future? Particularly, do Brazilian institutions have enough safeguards to prevent any illiberal leader from disturbing the waters and elevating the prospect of backsliding from unlikely to possible? The most clearly missing guardrail in Brazilian democracy is one preventing the military from encroaching on politics (Amorim Neto and Acácio 2022). Rules that prevent active duty personnel from running for office should be strengthened, while the presence of the military in cabinets and government should be further regulated, if not altogether prohibited.

Considering that parties as institutions are fundamental to democracy, we will have to wait and see if they have the ability to hold the line in the future. Some recently approved electoral reforms, in particular the end of coalitions for legislative races, likely will reduce party fragmentation (Melo and Pereira 2024). Another development in party competition is increased polarization, which will not dissipate soon (Nunes and Traumann 2023). In itself, the demarcation of right-left camps could help discipline politicians into sticking to a political platform after the election and, thus, help citizens make informed decisions on election day. However, polarization could also lead politicians to mobilize voters with populist promises and illiberal actions. Considering the marked *antipetista* cleavage we observe today, more candidates could find it advantageous to mobilize voters by saying that Lula (and other *petistas*) are unacceptable as representatives. To do so would be to negate the left as a legitimate adversary,

creating a dangerous precedent. Since Bolsonaro is unlikely to be on the ballot again, this illiberal mobilization will depend on who picks up the right-wing rallying flag. Those who voted for Bolsonaro might welcome less strident options, but, since there is no party organization on the right that could fend off more extremist candidates, there is room for a different authoritarian-leaning candidate in 2026.

While the Supreme Court's leading role in dealing with threats to democracy can be an asset in holding non-democratic actors accountable, its expansive presence and ever-growing reach in criminal matters present their own challenges. First, it is unclear how long the current executive-judicial honeymoon will last when it comes to criminal jurisdiction. In 2023, the STF has managed to issue convictions on hundreds of cases of January 8th invaders, mostly on the court's "Virtual Plenary" - a platform in which judges upload their votes within a one-week timeframe, and on which they do not interact to deliberate.<sup>63</sup> But it is expected that, as the STF moves up in the chain of the organized coup attempt and has to convict higher-level military officers and politicians, the court's criminal jurisdiction might create divergent incentives between judges bent on accountability and a government that needs to balance its relationship with a conservative Congress and the armed forces. This dynamic is expected to make the STF's leading role in promoting accountability for threats to democracy increasingly politically controversial between political elites.

Second, a polarized polity affects the court's legitimacy, making it both a more valuable and less costly target for future leaders with illiberal plans. Indeed, the STF's high profile has arguably come at a high price. Recent surveys indicate that public perception of the court might have become polarized, in tune with the rest of national politics. According to one such national survey, in January 2023, right after the invasions, nearly 44% of respondents said they did not trust the Court, and 45% said they trusted it; one year later, in the same survey, these figures were 50,9% (don't trust) and 42,3% (trust).<sup>64</sup> Another survey in September 2023 showed an increase in the % of respondents who did not trust the court.<sup>65</sup> While such ratings on the STF should be read with caution, considering their connections with countless upheavals and specific episodes in Brazilian politics, there are several indicators of an increasingly politicized

<sup>63</sup> By March 2024, the court had convicted over 140 defendants in connection with the attempted coup, almost all of which by means of the "Virtual Plenary". See the STF's press release "Atos antidemocráticos: Mais 14 réus são condenados pelo STF", March 19, 2024., <https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=529776&ori=1>

<sup>64</sup> Carolina Ingizza, "50,9% afirmam não confiar nos ministros do STF e 42,3% dizem confiar, aponta pesquisa", *JOTA*, February 15, 2024, <https://www.jota.info/stf/do-supremo/509-afirmam-nao-conviar-nos-ministros-do-stf-e-423-dizem-conviar-aponta-pesquisa-15022024>. The survey results, including the comparison between 2023 and 2024, can be found at: <https://slack-files.com/T0A5W4YA0-F06K6EZ4T25-b44bfe6a59>.

<sup>65</sup> Nicolas Iory, "Partidos, Congresso, igrejas, STF: o quanto o brasileiro confia nessas e em outras instituições?," *O Globo*, September 13, 2023, <https://oglobo.globo.com/blogs/pulso/post/2023/09/partidos-congresso-igrejas-stf-o-quanto-o-brasileiro-confia-nessas-e-em-outras-instituicoes.ghtml>.

perception of the court.<sup>66</sup> In the next few years, the Court will need to consider its legitimacy as it faces the delicate task of balancing its democracy-protecting role, which will make it inevitable to deal with powerful right-wing actors in politics, in the military, and in civil society, and the need to protect fundamental rights of minorities in an increasingly conservative society and Congress.

## REFERENCES

- Abranches, Sérgio. *Presidencialismo de coalizão. Raízes e evolução do modelo político brasileiro*. São Paulo: Companhia das Letras (2018).
- Alves, Jorge Antonio. "Transformation or substitution? The Workers' Party and the right in Northeast Brazil." *Journal of Politics in Latin America* 10, no. 1 (2018): 99-132.
- Ames, Barry. *The deadlock of democracy in Brazil*. University of Michigan Press, 2002.
- Amorim Neto, Octavio, and Igor Acácio. "De volta ao centro da arena: Causas e consequências do papel político dos militares sob Bolsonaro." *Journal of Democracy em português* 9, no. 2 (2020): 1-29.
- Arantes, Rogério. *Judiciário e Política no Brasil*. Sumaré/Educ, 1997.
- Arantes, Rogério. "Mensalão, um Crime sem Autor?." *In Justiça no Brasil: Às Margens da Democracia*, edited by Marjorie Corrêa Marona and Andrés Del Río, 338-389. Belo Horizonte: Arraes, 2018. pp..
- Araújo, Victor. "Pentecostalismo e antipetismo nas eleições presidenciais brasileiras." *Latin American Research Review* 57, no. 3 (2022): 517-535.
- Arguelhes, Diego Werneck. "Public Opinion, Criminal Procedures, and Legislative Shields: How Supreme Court Judges Have Checked President Jair Bolsonaro in Brazil", *Georgetown Journal of International Affairs*, April 25 (2022a). Available at: <https://gjia.georgetown.edu/2022/04/25/public-opinion-criminal-procedures-and-legislative-shields-how-supreme-court-judges-have-checked-president-jair-bolsonaro-in-brazil/>
- Arguelhes, Diego Werneck. "Weak, but (very) Dangerous: The Bolsonaro Paradox." *Verf-Blog*, 22 July (2022b) <https://verfassungsblog.de/weak-but-very-dangerous/>, DOI: 10.17176/20220723-061622-0.
- Arguelhes, Diego Werneck, and Ivar A. Hartmann. "Timing Control without Docket Control: How Individual Justices Shape the Brazilian Supreme Court's Agenda." *Journal of Law and Courts* 5, no. 1 (2017): 105-40. <https://doi.org/10.1086/690195>.
- Arguelhes, Diego Werneck, and Leandro Molhano Ribeiro. "'The Court, It Is I'? Individual Judicial Powers in the Brazilian Supreme Court and Their Implications for Constitutional Theory." *Global Constitutionalism* 7, no. 2 (2018): 236-62. <https://doi.org/10.1017/S2045381718000072>.
- Barros, Celso Rocha. *PT, uma história*. Companhia das Letras, 2022.
- Blaydes, Lisa. *Elections and distributive politics in Mubarak's Egypt*. Cambridge University Press, 2010.
- Boix, Carles, and Milan W. Svobik. "The foundations of limited authoritarian government: Institutions, commitment, and power-sharing in dictatorships." *the Journal of Politics* 75, no. 2 (2013): 300-316.

<sup>66</sup> For example, in a national survey conducted in 2021, researchers found that 49% of respondents agreed that "STF judges are just like any other politicians" (Oliveira et al, 2021). Moreover, in the 2024 edition of the survey mentioned in footnote 66, supra, around 90% of the Bolsonaro 2022 voters interviewed answered they did not trust the court - and the exact reverse was true for Lula 2022 voters. A similar result was found in the 2023 edition of the same survey.

- Brancati, Dawn. "Democratic authoritarianism: Origins and effects." *Annual Review of Political Science* 17 (2014): 313-326.
- Brinks, Daniel. "Faithful servants of the regime." In *Courts in Latin America*, organized by Gretchen Helmke and Julio Ríos-Figueroa, 128-153. Cambridge: Cambridge University Press, 2011.
- Campello, Daniela. "When Incompetence Meets Bad Luck: Bolsonaro's Third Year in the Brazilian Presidency." *Revista de Ciencia Política* 42, no. 2 (2022).
- Couto, Cláudio Gonçalves. "O Brasil de Bolsonaro: uma democracia sob estresse". *Cadernos Gestão Pública e Cidadania* 28 (2023): e89859. <https://doi.org/10.12660/cgpc.v28.89859>.
- Dixon, Rosalind and David Landau. *Abusive Constitutional Borrowing*. Oxford University Press, 2021.
- Dunning, Thad and Lucas M Novaes. "Brokering Inclusion". In *The Inclusionary Turn in Latin American Democracies*, edited by Diana Kapiszewski, Steven Levitsky and Deborah J Yashar, 219-53. Cambridge University Press, 2020.
- Gandhi, Jennifer, and Adam Przeworski. "Authoritarian institutions and the survival of autocrats." *Comparative political studies* 40, no. 11 (2007): 1279-1301.
- Gaspari, Elio. *A ditadura envergonhada: as ilusões armadas*. Vol. 1. Editora Intrínseca, 2014.
- Geddes, Barbara. "What do we know about democratization after twenty years?". *Annual Review of Political Science* 2, no. 1 (1999): 115-144.
- Hunter, Wendy. *The Transformation of the Workers' Party in Brazil, 1989-2009*. Cambridge University Press, 2010.
- Hunter, Wendy, and Timothy J. Power. "Lula's Second Act." *Journal of Democracy* 34, no. 1 (2023): 126-140.
- Hunter, Wendy, and Diego Vega. "Populism and the military: symbiosis and tension in Bolsonaro's Brazil." *Democratization* 29, no. 2 (2022): 337-359.
- Kapiszewski, Diana. "Power broker, policy maker, or rights protector? The Brazilian Supremo Tribunal Federal in transition", In *Courts in Latin America*, organized by Gretchen Helmke and Julio Ríos-Figueroa, 128-153. Cambridge: Cambridge University Press, 2011.
- Levitsky, Steven. *Transforming labor-based parties in Latin America: Argentine Peronism in comparative perspective*. Cambridge University Press, 2003.
- Limongi, Fernando. *Operação impeachment: Dilma Rousseff e o Brasil da Lava Jato*. São Paulo: Todavia, 2023.
- Limongi, Fernando, and Argelina Figueiredo. "Bases institucionais do presidencialismo de coalizão." *Lua Nova: revista de cultura e política* (1998): 81-106.
- Lust-Okar, Ellen. "Divided they rule: The management and manipulation of political opposition." *Comparative politics* (2004): 159-179.
- Mainwaring, Scott. *Rethinking party systems in the third wave of democratization: the case of Brazil*. Stanford University Press, 1999.
- Mainwaring, Scott, and Aníbal Pérez-Liñán. *Democracies and dictatorships in Latin America: emergence, survival, and fall*. Cambridge University Press, 2013.
- Melo, Marcus André, and Carlos Pereira. "Why Didn't Brazilian Democracy Die?." *Latin American Politics and Society* (2024): 1-27.
- Melo, Marcus André, and André Régis Carvalho. "A tropical game of thrones: court-executive relations from Bolsonaro to Lula", in Richard Bourne (ed.), *Brazil after Bolsonaro: the comeback of Lula*. Routledge, 2023.
- Meng, Anne, Jack Paine, and Robert Powell. "Authoritarian power sharing: Concepts, mechanisms, and strategies." *Annual Review of Political Science* 26 (2023): 153-173.
- Michener, Gregory, and Carlos Pereira. "A Great Leap Forward for Democracy and the Rule of Law? Brazil's Mensalão Trial." *Journal of Latin American Studies* 48, no. 3 (2016): 477-507. <http://www.jstor.org/stable/26168236>.
- Novaes, Lucas M. "Disloyal brokers and weak parties." *American Journal of Political Science* 62, no. 1 (2018): 84-98.

- Novaes, Lucas M. and Guadalupe Tuñón. "The autocracy bandwagon: legacy politicians and authoritarian consolidation". *Working paper*.
- Nunes, Felipe and Thomas Traumann. *Biografia do Abismo*. Harper Collins, 2023.
- O'Donnell, Guillermo, Philippe C. Schmitter, and Laurence Whitehead, eds. *Transitions from authoritarian rule: Comparative perspectives*. Vol. 3. JHU Press, 1986.
- Oliveira, Vanessa Elias de, and Lígia Mori Madeira. "Judicialização Da Política No Enfrentamento À Covid-19: Um Novo Padrão Decisório Do STF?". *Revista Brasileira De Ciência Política* 35 (2021): e247055. <https://doi.org/10.1590/0103-3352.2021.35.247055>.
- Perez-Linan, Aníbal. *Presidential Impeachment and the New Political Instability in Latin America*. Cambridge University Press, 2007.
- Prado, Mariana Mota and Marta R. de Assis Machado. "Using Criminal Law to Fight Corruption: The Potential, Risks, and Limitations of Operation Car Wash (Lava Jato)." *The American Journal of Comparative Law* 69, no. 4 (2021): 834–879. <https://doi.org/10.1093/ajcl/avac008>.
- Przeworski, Adam. *Democracy and the market: Political and economic reforms in Eastern Europe and Latin America*. Cambridge University Press, 1991.
- Recondo, Felipe and Luiz Weber. *Os Onze: O STF, seus bastidores e suas crises*. Companhia das Letras, 2019.
- Recondo, Felipe and Luiz Weber. *O tribunal: Como o Supremo se uniu ante a ameaça autoritária*. Companhia das Letras, 2023.
- Ribeiro, Pedro Floriano. "An amphibian party? Organisational change and adaptation in the Brazilian Workers' Party, 1980–2012." *Journal of Latin American Studies* 46, no. 1 (2014): 87–119.
- Roberts, Kenneth M. *Changing Course in Latin America*. Cambridge University Press, 2014.
- Schmidt, Flávia de Holanda. "Presença de militares em cargos e funções comissionadas do Executivo federal." Nota Técnica nº 58, Diest, Ipea, September 2022, <https://repositorio.ipea.gov.br/handle/11058/11211>.
- Schipani, Andrés. "Left Behind: Labor Unions and Redistributive Policy under the Brazilian Workers' Party." *Comparative Politics* 54, no. 3 (2022): 405–428.
- Silva, Jeferson Mariano. "Mapping Brazil's Supreme Court: Ministers' Positions in the Constitutional Jurisdiction (2012–2017)." *Novos Estudos CEBRAP* 37, no. 1 (2018): 35–54. <http://dx.doi.org/10.25091/S01013300201800010001>.
- Samuels, David, and Cesar Zucco Jr. "Lulismo, petismo, and the future of Brazilian politics." *Journal of Politics in Latin America* 6, no. 3 (2014): 129–158.
- Svolik, Milan W. *The politics of authoritarian rule*. Cambridge University Press, 2012.
- Tanscheit, Talita, and Pedro Barbosa. "A Battle of Two Presidents: Lula Vs. Bolsonaro in the Brazilian Elections of 2022." *Revista de Ciência Política* 43, no. 2 (2023).
- Taylor, Matthew M.. *Judging Policy: Courts and Policy Reform in Democratic Brazil*. Stanford University Press, 2008.
- Taylor, Matthew M. and Luciano Da Ros. *Brazilian Politics on Trial: Corruption and Reform under Democracy*. Lynne Rienner Publishers, 2022.
- Vieira, Oscar Vilhena. "Clash of powers: Did Operation Car Wash trigger a constitutional crisis in Brazil?" *University of Toronto Law Journal* 71 (2021): 174–209. <http://dx.doi.org/10.3138/utlj-2021-0063>.
- Vieira, Oscar Vilhena. "Supremocracy". *Revista Direito GV* 4, no. 2 (July 2008): 441–63. <https://doi.org/10.1590/S1808-24322008000200005>.
- Vieira, Oscar Vilhena, Rubens Glezer and Ana Laura Pereira Barbosa. "Supremocracy and Autocratic Infralegalism: The Behavior of the Brazilian Supreme Court during Bolsonaro's Government." *Novos Estudos CEBRAP* 41, no. 3 (2022): 591–605. <http://dx.doi.org/10.25091/501013300202200030008>
- Zambrano, Diego, Ludmilla Martins da Silva, Rolando Garcia Miron, and Santiago Rodriguez. "How Latin America's Judges Are Defending Democracy". *Journal of Democracy* 35, no. 1 (January 2024): 118–133.

**Received:** April 3, 2024.

**Accepted:** May 29, 2024.

**Lucas Novaes:** Lucas M. Novaes is an Associate Professor at Insper - Institute of Education and Research, São Paulo, Brazil. He investigates political representation in the developing world. He is also a non-resident research associate of the Center on the Politics of Development, Berkeley, and an associate with the Governance and Local Development Institute at the University of Gothenburg. His work has been published in the American Journal of Political Science, American Political Science Review, British Journal of Political Science, and Comparative Political Studies, among other outlets. Before joining Insper, he received a PhD in Political Science from the University of California, Berkeley. E-mail: lucasmn2@insper.edu.br

**Diego Werneck Arguelhes:** Diego Werneck Arguelhes is an Associate Professor at Insper - Institute of Education and Research, São Paulo, Brazil, and a Senior Researcher at the Brazilian Center for International Relations (CEBRI). He specializes in constitutional law and judicial politics. His work has been published in the Journal of Law and Courts, Global Constitutionalism, and the Journal of Empirical Legal Studies, among others, and he is the author of *O Supremo: Entre o Direito e a Política* (2023). He holds LL.M. and J.S.D. degrees from the Yale Law School (USA). E-mail: diegowa@insper.edu.br

