

# Bolsonaro and the Judiciary: Between Accommodation and Confrontation

Luciano Da Ros<sup>1</sup> (Federal University of Santa Catarina)  
Matthew M. Taylor (American University)

## Introduction

It has been difficult to keep up with the fast-evolving developments within Brazil's judiciary. From the “Mensalão” trial in the early 2010s to the massive “Lava Jato” investigations launched in 2014, a huge volume of noteworthy judicial decisions has accumulated over the past decade. The election of far-right maverick Jair Bolsonaro to the presidency in late 2018 increased the salience of court decisions, leading to unprecedented jousting between the executive and judicial branches that has added a new layer of complexity to Brazil's already thorny judicial politics.

This chapter reviews the most relevant trends affecting Brazil's judicial institutions during the Bolsonaro presidency, which has brought important changes to a judicial system that was already in turmoil before Bolsonaro took office. The task is difficult for a variety of reasons. First, Bolsonaro's presidency is not over, so in some ways it is a moving analytical target. Second, some of the most salient dynamics currently at work in Brazil's judiciary began to emerge earlier, during the presidency of Michel Temer (2016–2018), making it difficult to draw hard and fast lines. Third, given Brazil's vast judicial system, any review must contend with a wide gamut of judicial, legislative and administrative decisions that have influenced the dynamics of judicial politics.

In the pages ahead, we have sought to use a broad lens to capture these issues, hoping to not miss the forest for the trees. We have skipped over the minute details of recent events and instead present a broader perspective on the period, focusing on patterns of continuity and change in the interactions between the judicial branch and the elected branches since Bolsonaro's inauguration. Although much of our essay revolves around the Brazilian Supreme Court (Supremo Tribunal Federal, or STF), we also consider the lower courts and related institutions, such as the Federal Prosecutors' Office (Ministério Público Federal, MPF) and the Federal Police (Polícia Federal, PF).

We highlight two particular patterns in the relationship between the courts and the elected branches since the election of Jair Bolsonaro in late 2018: accommodation in anticorruption efforts and confrontation in constitutionalism. In the first section, we provide a few basic definitions to set the argument. The following sections discuss the patterns of accommodation in anti-corruption and confrontation in constitutionalism. The final section concludes by highlighting

---

1 Luciano Da Ros thanks the National Council for Scientific and Technological Development (CNPq) for the financial support

how the combination of these two patterns seems to have produced a qualitative transformation in the role played by legal actors and institutions within the political system over the last few years, altering not just its current performance, but also Brazilian democracy's future prospects.

### **Emerging Patterns of Judicial-Elected Branch Interaction under Bolsonaro**

This essay focuses specifically on two issue arenas: anticorruption and constitutionalism. Although this choice may appear somewhat arbitrary, it is not hard to see why these two issues are among the most relevant in contemporary Brazil. First, especially since the rise of the “Lava Jato” investigation, anticorruption has become a central theme in any discussion about the role played by judicial institutions in Brazil. Second, the election to the highest office of a former military officer who voices nostalgia for the most repressive years of Brazil's military regime and appears to have only passing commitment to democratic norms has highlighted the prominent role of the judicial system in establishing constitutional boundaries against illiberalism (Hunter and Power 2019; Meyer and Bustamante 2020).

Before we proceed, a few definitions are in order. *Anticorruption* refers to the accountability of political elites for alleged self-serving abuses in office. *Constitutionalism* refers to basic issues of separation of powers and the rule of law that define both the “soft” and the “hard” guardrails of liberal democracy (Levitsky and Ziblatt 2018). These issues may become intertwined as, for instance, when those accused of corruption by judicial authorities are subjected to violations of due process. But we find it analytically useful for the purposes of this essay to keep them separate, at least initially, because the two issue arenas have led to different patterns of interaction between the courts and the elected branches since Bolsonaro's inauguration in early 2019.

The two arenas involve both the president and other elected officials, on the one hand, and judicial institutions, on the other. The resulting politics are neither solely of the President's or the courts' making, but instead are products of an interplay that also involves the broader political and judicial systems. In order to comprehend these dynamics, we follow the arguments advanced by Kapiszewski (2013) in her comparative study of the interplay between the high courts and the elected branches in Brazil and Argentina, which suggested that the high court's relations with the elected branches in Brazil were marked by accommodation, while the Argentine court's relations were marked by confrontation. *Accommodation* occurs when the revealed preferences of most judicial and political actors are aligned, so that court rulings are largely supportive of, or at least find middle ground with, the administration's agenda, and political leaders largely comply with court rulings. In turn, *confrontation* is characterized by open disagreements between elected and judicial officials, expressed in the form of belligerent rhetoric and challenging decisions, often associated with interbranch conflict (Kapiszewski 2013, 49–50).

Despite our reliance on Kapiszewski's arguments, we diverge slightly from her approach in two ways. First, while she ascribes patterns of accommodation and confrontation to each national high court as a whole, we find that the same Brazilian judicial system actually shows two distinct patterns: accommodation in anticorruption issues and confrontation in constitutional issues.<sup>2</sup> Second, whereas Kapiszewski describes these patterns as relatively stable, we find that

---

2 The issue at hand did not vary significantly for Kapiszewski, who focused solely on cases analyzing economic policy issues.

they fluctuate significantly over time, perhaps because much of Brazilian politics, including judicial politics, has been in uneasy flux for most of the turbulent past decade.

Accommodation in anticorruption in Brazil emerged as the political system gradually reached a consensus to shut down “Lava Jato”, as well as to roll back other corruption investigations and restrain accountability agencies. This broad consensus included Bolsonaro, most parties in Congress, most justices on the STF, and key personnel within the MPF and the PF. Confrontation in constitutionalism has been seen in various decisions – especially those taken by the STF – that challenge Bolsonaro’s most extreme and illiberal moves, as well as those of many of his core supporters in far-right social movements, a vocal group of legislators who were elected in 2018, and relevant portions of the armed forces, all of whom have been extremely active in threatening the Court.

### **Accommodation in Anticorruption**

It is hard to disentangle the presidency of Jair Bolsonaro from the rise of corruption on the public agenda in the years leading up to his election in 2018 (Rennó 2020; Nicolau 2020). The “Lava Jato” investigation, possibly “the largest corruption scandal ever to beset a democratic nation” (Fisman and Golden 2017, 13), significantly increased the public salience of anticorruption. Launched in March 2014 in the southern city of Curitiba as a federal investigation into money laundering and corruption at Petrobras, Brazil’s vast state-controlled oil company, “Lava Jato” expanded in subsequent years to various segments of the Brazilian state and economy, targeting a multitude of once untouchable political and economic elites. As it proceeded, “Lava Jato” became intertwined with a complex and interlocking set of crises, including a deep economic recession, massive street protests, political gridlock and polarization, and a controversial presidential impeachment.<sup>3</sup>

“Lava Jato” helped to obliterate much of the electorate’s trust in the once-dominant parties PT, PSDB and MDB (Duque and Smith 2019; Fuks et al. 2021). One consequence, unintentional as it may have been, was the election of Bolsonaro. For decades considered an eccentric and peripheral far-right member of Congress, Bolsonaro’s victory was made possible in part because “Lava Jato” helped to clear alternate candidates from the field. Ironically, however, the election of Bolsonaro was also a major turning point that would eventually lead to the definitive demise of “Lava Jato”. By February 2021, all of the “Lava Jato” task forces within the MPF had been closed down at the behest of Prosecutor General Augusto Aras, who was hand-picked by Bolsonaro to lead the prosecutorial body against the vocal opposition of much of the MPF’s rank-and-file (Kerche 2021).

The shutting down of the task forces, however, was only the final chapter of a much longer and convoluted process that began even before Bolsonaro’s election. In fact, the political backlash against the investigation began to take shape during the presidency of Michel Temer (2016–2018), who came to office as a result of Dilma Rousseff’s impeachment on fiscal grounds unrelated to corruption. This pushback against “Lava Jato” intensified over the course of the Temer presidency and became more effective after Bolsonaro’s inauguration. By 2019, the inves-

---

3 This section draws on Chapter 5 of Da Ros and Taylor (2022).

tigation was no longer the sacred cow it once had been, and increasingly credible allegations of abuse and bias paved the way for the President, Congress and STF to curtail “Lava Jato”, as well as various other anticorruption initiatives.

Shortly after Bolsonaro’s election, he invited the most prominent of the judges involved in “Lava Jato”, Sérgio Moro, to become Justice Minister. This move was a double win for Bolsonaro, who was able to make good on the anticorruption rhetoric he had employed during his campaign, even while he simultaneously placed under his control the relentless judge who had terrified the Brazilian political elite for several years by removing him from the courts. If it was a double win for Bolsonaro, it was a double loss for “Lava Jato”, in that Moro’s nomination gave credence to allegations of bias in the investigation, while his removal from the court helped to slow down the progress of cases in Curitiba.

Unsurprisingly, Moro’s record as Justice Minister paled in comparison to his record as judge, and he would accomplish far less with Bolsonaro and Congress than he had achieved from the bench. During his sixteen months in office, Moro suffered numerous legislative defeats, many of which came as a consequence of Bolsonaro’s implicit opposition to his proposed reforms. Not only did the reform proposals fail to prosper; in several cases, they were actually replaced by counter-reforms that significantly weakened anticorruption efforts. New laws were approved that established abuse of authority provisions that could be used to cow law enforcement; introduced the *juiz de garantias* (literally, “judge of guarantees”) to oversee criminal cases, theoretically as a way to better protect defendants’ rights; and removed from Moro’s ministerial purview the financial intelligence unit COAF (Conselho de Controle de Atividades Financeiras), among others. In turn, as corruption scandals erupted within the President’s inner circle, Bolsonaro doubled down to protect his cronies, and he began a series of moves to push the once popular judge out of his cabinet. Ultimately, Moro resigned from office in April 2020, accusing the President of interfering with the Federal Police in cases involving Bolsonaro’s close acquaintances (Da Ros and Taylor 2021).

With hindsight, one might say that Sérgio Moro was a victim of phagocytosis: He was caught and absorbed by the political system, digested and then excreted, allowing the old forces that “Lava Jato” had sought to curb to regain the upper hand. Moro’s departure permitted an alliance to emerge between the Bolsonaro administration and the *Centrão*, the large group of transactional political parties that has historically been associated with patronage in Brazil. Predictably, as this alliance took root, the backlash to anticorruption intensified: A new law was approved to broaden the scope of the crime of *denúncia caluniosa* (roughly, “libelous charges”) as a way to curb prosecutions, and there are various bills proceeding in Congress that narrow the reach of laws on administrative improbity, money laundering, and electoral governance. Bolsonaro, in turn, established firm control over the Federal Police, including by changing the Director General more often than any president since the country’s re-democratization in 1985. Similar processes took place simultaneously in other anticorruption agencies, such as COAF and the Internal Revenue Service. One consequence, not at all coincidental, has been a dramatic decline in both investigations and arrests for corruption.

The backlash to anticorruption was not limited solely to the executive and legislative branches. Within the judiciary itself, a similar retrenchment was also underway, making it clear that

the reaction to the massive anticorruption drive represented by “Lava Jato” was a much broader process of accommodation between the courts and the political system. As the investigations slowed down, the STF issued various decisions that helped to further water down “Lava Jato” and the anticorruption agenda more broadly within the courts. Again, even though STF rulings in this direction started before the election of Bolsonaro (e.g., in June 2018, the STF declared most instances of coercive questioning unconstitutional), they intensified greatly once he took office.

The list of decisions that set back anticorruption efforts is lengthy, but four of the most prominent offer a sense of the overall pattern. In March 2019, the STF decided that money laundering cases related to campaign finance would no longer fall under the jurisdiction of the specialized federal anti-money laundering courts, and would henceforth be transferred to the much weaker electoral courts. In July 2019, the STF’s chief justice temporarily suspended more than 700 criminal investigations nationwide that relied on data from the financial intelligence unit COAF in response to a request from the President’s sons, Senator Flávio Bolsonaro, who was under investigation after a COAF report revealed suspicious transactions between him and a former aide. Although this decision was annulled by the STF later that year, the Court then defined new burdensome protocols on how data by COAF and other agencies could be shared in criminal investigations. In November 2019, the STF ruled that criminal defendants could only be jailed after all appeals had been exhausted in all applicable courts, reversing a decision taken only three years earlier that had allowed jailing after conviction on appeal (Rodrigues and Arantes 2020). Finally, between March and June 2021, the STF not only removed the jurisdiction of an important parcel of “Lava Jato’s” cases from Curitiba, but also declared that Moro had been biased in his decision to convict former President Lula, ensuring that these cases will have to restart from scratch in other courts.

These final court decisions coincided with the Prosecutor General’s decision to close down all “Lava Jato” task forces, dealing a final one-two punch to the once unstoppable investigation. Seven years into the spectacular “Lava Jato”, which once offered the promise of ridding Brazilian politics of deeply embedded grand corruption, it looked as though the case was going to “end up in pizza,” as Brazilians say when allegations of impropriety by public officials lead nowhere. The accommodation between the courts and the elected branches in anticorruption, however, was only possible because it benefitted a wide swathe of the political system, ranging from the President’s own sons to his rival, former President Lula, as well as the Centrão parties that are so often the linchpin of executive-legislative relations.

This is not to say that all of the pushback against “Lava Jato” was unreasonable, or that justices and judges were necessarily in bed with their corrupt peers in the executive and legislative branches. Indeed, many court rulings and laws that were passed in response to “Lava Jato” are not, on the face of it, unreasonable: Many simply aim to reduce the abuse of power and better protect defendants’ rights. Yet their net effect was to significantly curtail the autonomy and capacity of legal accountability agencies and reset much anticorruption policy. Corruption investigations are still taking place, and even “Lava Jato” cases are still being heard in the courts, but the overall direction of recent court decisions has greatly extended the time horizons of most

political actors, who no longer need to fear imminent jailtime, as they once would have in the heyday of “Lava Jato”.

Declining oversight and investigation went hand in hand with a series of new scandals within the Bolsonaro administration. Coinciding with the administration’s gradual approximation to the Centrão, these scandals are exemplified by the “secret budget” scandal of early 2021, in which the Ministries of Regional Development, Defense, Agriculture and Justice disbursed funds to allied politicians through a series of opaque procedures that violated long-established budgetary rules. Further, as the Health Ministry began to negotiate much-delayed contracts to acquire Covid-19 vaccines, it too became accused of corruption, with numerous allegations of overpricing involving both military officers and Centrão appointees within the Ministry.

### **Confrontation in Constitutionalism**

Illiberal ideologies and institutional instability had been on the rise in Brazil before the Bolsonaro presidency. Demonstrators have been calling for “military intervention” in street protests at least since 2013, and with increasing stridency beginning in 2015 (Tatagiba and Galvão 2019). In 2017, General Hamilton Mourão, later Bolsonaro’s vice-president, said in a speech in which he claimed to represent the prevailing sentiment within the Army High Command that, “either the institutions solve the political problem [of corruption], by action of the judiciary, [...] or [...] we [the military] will have to impose this” (Valente 2017). A year later, Army Commander Eduardo Villas-Bôas posted a veiled threat against the STF on social media, just as the Court was about to hear a *habeas corpus* petition from former President Lula, saying that the army shared with “all good citizens” (*cidadãos de bem*) the “repudiation of impunity.” In a tight 6-5 vote, the Court decided against Lula, meaning that he remained in jail and was prevented from running in the 2018 elections from which Bolsonaro eventually emerged victorious (Gugliano and Monteiro 2021).

Bolsonaro’s unprecedentedly combative relationship with the courts has to be understood within this increasingly contentious context. His words and deeds as president, however, set him apart from any of his predecessors since the late 1960s, the most repressive years of military rule, when the STF was packed with loyalists of the new regime and purged of its most independent members. Bolsonaro’s antagonistic posture was already apparent before he took office. His populist rhetoric placing “the people” he claims to represent against an overly “corrupt elite,” regularly cited the STF as part and parcel of that same corrupt elite. In June 2018, for example, he called for an increase in the number of STF justices from 11 to 21 as a way to place more “impartial” (*isentos*) members on the court, since its decisions have “embarrassed all of us these last years” (Felício 2018; Valente 2018). During the campaign, his son Eduardo Bolsonaro famously said that “if one wanted to close down the STF,” all that was needed was to “send a corporal and a soldier” (Vazquez and Graner 2018).

Once elected, Bolsonaro and his associates doubled down on these long-held positions. The President attended numerous street demonstrations in which protestors asked for military intervention, which would include closing down the STF, removing its justices, and shutting down Congress. On one of these occasions, in Brasília in April 2020, Bolsonaro rode a horse at the head of the protestors and later flew over the crowd in a military helicopter, alongside Defense

Minister Fernando Azevedo (Resende et al. 2020). In a cabinet meeting in April 2020, a recording of which later became public, the Education Minister, Abraham Weintraub was heard saying, “I myself [would] put all these bums in jail, starting with the STF” (Lindner et al. 2020).

Congress has seen similar escalation. Legislators elected to the PSL (Partido Social Liberal; the right-wing party as whose presidential candidate Bolsonaro ran) in 2018, professing the same ethos as the President, have been particularly vehement. The President’s son, Congressman Eduardo Bolsonaro, noted in September 2020 that it was not a question of “whether” but instead “when” “a moment of rupture” would take place (Istoé 2020). Congressman Daniel Silveira used social media to post a video praising the military dictatorship’s decree (Institutional Act 5) that suspended three justices in 1968, and then threatened members of the current court (Pontes 2021). In some cases, the increasing pressure on the STF has been more than just rhetorical. The pace of impeachment requests filed against STF justices in Congress has exploded: Impeachment petitions skyrocketed from a total of 6 between 1988 and 2014, to 33 between 2015 and 2018, and then to 52 between 2019 and 2021 (Bogéa and Da Ros 2021). A number of legislators have also called for a congressional committee of inquiry to investigate STF justices (“CPI Lava Toga”) (Passarelli 2019).

Yet, as these tensions rose, the STF did not give in quietly. Rather, as Bolsonaro and his allies raised tensions with the STF, the Court gave them precisely the conflict they seemed to desire (Marona and Magalhães 2021). Part of the STF response was self-protection: It rejected impeachment proceedings against its own members; jailed Congressman Silveira for violations of national security law after he posted his video threatening the STF; and launched its own inquiry into “fake news” after social media attacks on justices, in the process implicating two of the President’s sons and a variety of other Bolsonaro supporters (Netto 2021). The STF also did little to avoid new conflicts with the Bolsonaro administration. The Court has been particularly active in the pandemic response, deciding against executive measures limiting data transparency in 2020, ordering the Senate to launch a special congressional investigation in 2021, and siding with state governors against the federal government numerous times (Madeira and Oliveira 2021).

In tit-for-tat style, every time the Court responded, Bolsonaro and his acolytes ratcheted up the pressure. In May 2020, possibly responding to the STF’s blocking one of his nominees for the Federal Police, Bolsonaro led a demonstration against the high court (Machado and Fabrini 2020). Bolsonaro declared, “[...] we want the true independence of the three branches of government [...] we won’t accept more interference, our patience has been exhausted. We will take this country forward” (G1 2020a, n. p.). Two weeks later, Justice Alexandre de Moraes opened investigations of cabinet members after bombastic recordings of a cabinet meeting were released in which, as noted above, various cabinet members were heard voicing antidemocratic sentiments. The day before the recordings’ release, Bolsonaro’s Minister of Institutional Security, an army general, put out a public statement calling for judicial restraint, warning of “institutional instability,” and seeming to threaten an “auto-golpe” (*Brasil Wire* 2020, n. p.). The next day, Bolsonaro angrily exclaimed to a crowd, “It’s over, dammit!” and “there need to be limits” (G1 2020b, n. p.). In June 2020, as the STF announced an investigation into “fake news,” far-right protestors wearing masks and carrying torches protested the “criminals on the court,” shooting

fireworks at the Court building in a simulation of how they planned to “bombard” the high court (*Folha de S. Paulo* 2020). New videos emerged threatening individual justices, leading to a new round of arrests and investigations into extremists.

There is not enough space to catalog each of these attacks and counter-attacks in detail. Suffice it to say that with every new judicial decision that set back the President’s interests, a new threat emerged from Bolsonaro, his cabinet, his supporters or members of his coalition in Congress. It is not always possible to identify the triggers for each of these outbursts, but several themes became the central bones of contention: The STF’s investigation into “fake news” released by the Bolsonaro campaign and its supporters in the run-up to the 2018 election (Della Coletta 2021); online attacks against the STF and individual justices throughout 2019 and 2020; the Bolsonaro camp’s increasingly strident discrediting of the electoral system and their demand for an “auditable, printed ballot,” which led to sharp rebukes from the STF and the electoral courts (Mazui 2021); and STF investigations into Bolsonaro, including inquiries into whether he interfered with the Federal Police in the episode that led to Justice Minister Moro’s resignation (Macedo 2021b), engaged in malfeasance in the Covaxin scandal, and participated in the dissemination of “fake news” (Falcão and Vivas 2021). The repertoire of Bolsonaro responses included online rants by his supporters, public statements by his ministers and generals (Brant 2021), public statements by the President threatening STF justices (Behnke 2021), accusations against STF justices (including accusations that one justice was a defender of pedophilia) (Turrollo Jr. and Lellis 2021), leadership of public protests targeting the court, police investigations into individual justices (Macedo 2021a), and even a military march scheduled for the day before Congress voted on a bill that would introduce the “auditable, printed ballot” (Schuch 2021).

The President’s antagonistic stance toward the STF is perhaps best understood through the lens of the broader political calculations of a populist. Attacking the Court is a relatively cheap way to build support among a parcel of the population, while building the President’s bonds with his “people.” The court’s support was seemingly not essential to the Bolsonaro reform agenda, unlike that of Congress, nor electorally very relevant, unlike that of state and local governments. Also, not only is the judiciary the weakest branch in most countries, lacking authority and a clear means of enforcing compliance with decisions, but the Brazilian courts – and particularly the high court – are semi-dysfunctional, with huge caseloads, slow processing times, and highly unstable decision-making. In other words, the judiciary offered a ripe target, without much institutional legitimacy to resort to or public goodwill to fall back upon. It serves as a useful foil, allowing the President to engage in symbolic expressions of leadership, to change the public agenda when needed, and to keep his base riled up.

Critically, when the STF responded to Bolsonaro’s threats, it often provided credence to the allegation that the Court was stepping out of bounds. On more than one occasion, STF decisions that contradicted the President emerged from questionable proceedings, such as the STF’s initiation of inquiries without any request from a plaintiff, and its decision to allow several cases to proceed without receiving a formal petition from the Prosecutor General, sidestepping the formal legal process (Teixeira 2021). Ironically, the same STF that had been so protective of due process in anticorruption cases failed to follow the same principle in constitutional matters.

Confrontation between the STF and Bolsonaro has been a largely unpredictable game of chicken. There is no clear equilibrium outcome, and given the weakness of the courts, conflict resolution often falls on third parties, such as Congress. The STF appears to have understood that it is largely powerless against the President, and that the only way to protect itself is by empowering other actors that may be better equipped to confront him, such as state governors, Lula, and congressional committees of inquiry. This self-protection has led the STF into a number of contortions and tacit alliances that would have been unthinkable a few years ago. These are the costs of confrontation, but inaction was never a real option for the Court.

## **Conclusion**

The patterns of accommodation in anticorruption and confrontation in constitutionalism did not begin with Bolsonaro, but they have deepened over the course of his presidency. The result has been a regression to older patterns of interaction: Judicial accommodation of executive and legislative preferences in anticorruption returns Brazil to a status quo reminiscent of the 1990s or early 2000s, while confrontation with the executive branch on constitutional matters takes us back even further, to patterns reminiscent of the early years of the military regime.

Both academics and the media have focused much attention on this second, dramatic confrontation over constitutional issues. Yet, focusing solely on constitutional issues ignores the broader consequences of the court's interactions with the elected branches. The high court's accommodation of the elected branches in anticorruption is a classic case of picking battles: Rather than further antagonize the executive branch, and for fear of losing much-needed support in the legislative branch, the STF has slowly come around to accommodating the elected branches' lenient position on anticorruption. The STF from 2012 (the "Mensalão" trial) to 2016 (the peak of the "Lava Jato" investigations) was broadly supportive of lower courts' anticorruption efforts and adopted postures that were hugely unpopular with political elites. But by the time of Bolsonaro's election, these postures were looking much less tenable, and the Court adopted an entirely accommodationist position on anticorruption matters by 2021, in part because of the impossible position it faced in its constitutional confrontations with the executive branch.

Judicial politics creates strange bedfellows and even stranger judicial contortions. The game of institutional self-protection has given STF decision-making a strong strategic bent, seemingly aimed at building support among opponents of the executive branch. The Court appears to have realized that it cannot survive on its own, and the only way to protect itself is by empowering others to deal with Bolsonaro: Giving powers to governors to fight the pandemic, ensuring that the Senate minority has the power to investigate the government's pandemic management, and giving the legislative elite near *carte blanche* to reset the anticorruption agenda and return the country to its pre-"Lava Jato" status quo. The court's leniency on anticorruption has the added benefit – from the court's perspective – of helping the one politician who seems most likely to beat Bolsonaro in the 2022 election, former President Lula.

This is a high-stakes game, with unforeseeable consequences for Brazilian democracy. Constitutional confrontation, on the one hand, aims to preserve the separation of powers and the independence of the judiciary. Yet, on the other, this confrontation and the strategic pursuit of judicial allies, including through an accommodationist stance on anticorruption, undermines

the court's unique claim to impartiality, contributing to the inconstancy of judicial decisions and threatening the long-term legitimacy of judicial decision-making.

## References

- Behnke, Emily. 2021. "A hora dele vai chegar, diz Bolsonaro sobre Alexandre de Moraes." *Poder 360*, August 5.
- Bogéa, Daniel, and Luciano Da Ros. 2021. "Impeaching Constitutional Judges? The Brazilian Case between Rhetoric and Retaliation." Paper presented at the 25th World Congress of the International Political Science Association.
- Brant, Danielle. 2021. "Comissão da Câmara convoca Braga Netto para explicar suposta ameaça às eleições." *Folha de S. Paulo*, August 3.
- Brasil Wire*. 2020. "General Heleno warns of 'Unpredictable Consequences', his supporters threaten 'Civil War.'" May 24.
- Da Ros, Luciano, and Matthew M. Taylor. 2021. "Accountability na Era Bolsonaro: continuidades e mudanças." In *Governo Bolsonaro: retrocesso democrático e degradação política*, edited by Leonardo Avritzer, Fábio Kerche and Marjorie Marona, 187–203. Belo Horizonte: Autêntica.
- Da Ros, Luciano, and Matthew M. Taylor. 2022. *Brazilian Politics on Trial: Corruption and Reforms under Democracy*. Boulder: Lynne Rienner Publishers.
- Della Coletta, Ricardo. 2021. "Bolsonaro acusa inquérito de Moraes de ilegal e ameaça jogar 'com as armas do outro lado' em 'antídoto fora da Constituição.'" *Folha de S. Paulo*, August 4.
- Duque, Débora, and Amy Erica Smith. 2019. "The Establishment Upside Down: A Year of Change in Brazil." *Revista de Ciencia Política* 39, no. 2: 165–189.
- Falcão, Márcio, and Fernanda Vivas. 2021. "Moraes inclui Bolsonaro em inquérito das fake news por ataques às urnas eletrônicas." *G1*, August 4.
- Felício, César. 2018. "Bolsonaro quer ampliar composição do Supremo de 11 para 21 ministros." *Valor*, July 1.
- Fisman, Ray and Miriam A. Golden. 2017. *Corruption: What Everyone Needs to Know*. Oxford: Oxford University Press.
- Folha de S. Paulo*. 2020. "Armed Extreme Right-Wing Pro-Bolsonaro Group Protests in Front of Supreme Court with Torches and Masks." June 1.
- Fuks, Mario, Ednaldo A. Ribeiro and Julian Borba. 2021. "From antipetismo to Generalized Antipartisanship: The Impact of Rejection of Political Parties on the 2018 Vote for Bolsonaro." *Brazilian Political Science Review* 15, no. 1: 1–28.
- G1*. 2020a. "Bolsonaro volta a apoiar ato antidemocrático contra o STF e o Congresso, em Brasília." May 3.
- G1*. 2020b. "Acabou, porra!, diz Bolsonaro sobre ordem do STF para operação policial contra aliados." May 28.
- Gugliano, Monica and Tânia Monteiro. 2021. "O general, o tuíte e a promessa." *Piauí*, March 12.
- Hunter, Wendy and Timothy J. Power. 2019. "Bolsonaro and Brazil's Illiberal Backlash." *Journal of Democracy* 30, no. 1: 62–82.
- Istoé*. 2020. "Eduardo Bolsonaro diz que fala sobre 'ruptura' é 'cogitação futura e incerta.'" September 25.
- Kapiszewski, Diana. 2013. "Economic governance on trial: High Courts and Elected Leaders in Argentina and Brazil." *Latin American Politics & Society* 55, no. 4: 47–73.
- Kerche, Fábio. 2021. "Bolsonaro, o MPF e o equilibrista-geral da República." In *Governo Bolsonaro: retrocesso democrático e degradação política*, edited by Leonardo Avritzer, Fábio Kerche and Marjorie Marona, 187–203. Belo Horizonte: Autêntica.
- Levitsky, Steven, and Daniel Ziblatt. 2018. *How Democracies Die*. New York: Crown.

- Lindner, Julia et al. 2020. “Weintraub afirma: botava na cadeia esses vagabundos todos, começando pelo STF.” *Estado de S. Paulo*, May 22.
- Macedo, Fausto. 2021a. “STF vê retaliação, e PGR deve defender arquivamento de pedido para investigar Toffoli.” *Estadão*, May 12.
- Macedo, Fausto. 2021b. “Alexandre manda PF retomar inquérito Moro x Bolsonaro.” *Estadão*, July 30.
- Machado, Renato, and Fábio Fabrini. 2020. “Ato antidemocrático com Bolsonaro teve ajuda de assessors e ex-auxiliares de políticos.” *Folha de S. Paulo*, May 6.
- Madeira, Lígia M., and Vanessa E. Oliveira. 2021. “Freios e contrapesos: o STF no enfrentamento à Covid-19.” *Jota*, July 3.
- Marona, Marjorie, and Lucas Magalhães. 2021. “Guerra e paz? O Supremo Tribunal Federal nos dois primeiros anos do governo Bolsonaro.” In *Governo Bolsonaro: retrocesso democrático e degradação política*, edited by Leonardo Avritzer, Fábio Kerche and Marjorie Marona, 121–134. Belo Horizonte: Autêntica.
- Mazui, Guilherme. 2021. “Após derrota do voto impresso, Bolsonaro volta a criticar TSE e diz, sem prova, que eleição de 2022 não será confiável.” *G1*, August 11.
- Meyer, Emílio P. N., and Thomas Bustamante. 2020. “Judicial Responses to Bolsonaroism: The Leading Role of the Supreme Court.” *VerfBlog*, June 16.
- Netto, Paulo Roberto. 2021. “Moraes arquiva inquérito dos atos contra o Congresso e abre nova investigação.” *Poder 360*, July 1.
- Nicolau, Jairo. 2020. *O Brasil dobrou à direita: uma radiografia da eleição de Bolsonaro em 2018*. Rio de Janeiro: Zahar.
- Passarelli, Vincícius. 2019. “CPI da Lava Toga: o que é e qual seu objetivo?” *Estado de S. Paulo*, September 13.
- Pontes, Felipe. 2021. “Com ordem de Moraes, PF prende em flagrante deputado Daniel Silveira.” *Agência Brasil*, February 17.
- Rennó, Lúcio. 2020. “The Bolsonaro Voter: Issue Positions and Vote Choice in the 2018 Brazilian Presidential Elections.” *Latin American Politics and Society* 62, no. 4: 1–23.
- Resende, Thiago et al. 2020. “Bolsonaro usa helicóptero e anda a cavalo para prestigiar ato na Esplanada contra STF e Congresso.” *Folha de S. Paulo*, May 31.
- Rodrigues, Fabiana A., and Rogério B. Arantes. 2020. “O Supremo Tribunal Federal e a Presunção de Inocência: Ativismo, Contexto e Estratégia.” *Revista de Estudos Institucionais* 6, no. 1: 21–54.
- Schuch, Matheus. 2021. “Bolsonaro ordena desfile de blindados às vésperas de análise do voto impresso.” *Valor Econômico*, August 9.
- Tatagiba, Luciana and Andreia Galvão. 2019. “Os protestos no Brasil em tempos de crise.” *Opinião Pública* 25, no. 1: 63–96.
- Teixeira, Matheus. 2021. “Supremo atropela PGR e adota medidas controversas para enfrentar bolsonarismo.” *Folha de S. Paulo*, July 11.
- Turollo Jr., Reynaldo, and Leonardo Lellis. 2021. “Escalada de ataques de Bolsonaro ao STF provoca reação inedita na Corte.” *Revista Veja*, July 16.
- Valente, Rubens. 2017. “General fala em intervenção se Justiça não agir contra corrupção.” *Folha de S. Paulo*, September 17.
- Valente, Rubens. 2018. “Tal como o filho, Bolsonaro atacou Supremo na pré-campanha eleitoral.” *Folha de S. Paulo*, October 24.
- Vazquez, Rafael, and Fabio Graner. 2018. “Para fechar o STF basta um soldado e um cabo, diz Eduardo Bolsonaro.” *Valor*, October 21.