



Illiberalism in Brazil: From Constitutional Authoritarianism to Bolsonaroism

EMILIO PELUSO NEDER MEYER

Abstract

This article provides an overview of the juridical discourse that acted as a basis for the historical development of Brazilian illiberalism. Without setting aside the question of an inner tension between liberal and illiberal theories of Brazilian constitutionalism, but focusing primarily on antiliberal and illiberal positions, this article presents the leading theories of Brazilian constitutional scholars. It shows that the seeds of illiberalism were planted under the flag of a specific type of authoritarian constitutionalism, which was developed under different constitutions, but which mainly refers to the 1937 Constitution. It discusses the theories of movements such as integralismo, the legal thought of authors such as Francisco José Oliveira Viana and Francisco Campos, and concepts such as national security. The article also explores, under the 1988 Constitution, the authoritarian reminiscences that favored the structuring and diffusion of the current Bolsonaroist illiberalism. Finally, it debates the chances for the endurance of illiberalism in Brazil and whether or not it could benefit from wider popular acceptance.

Keywords: Illiberalism, Brazil, constitutionalism, constitutional history, authoritarianism

Emilio Peluso Neder Meyer

Associate Professor of Constitutional Law, Federal University of Minas Gerais, Brazil
emiliopeluso@ufmg.br; emiliopeluso@gmail.com

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Illiberalism is not the same as authoritarianism. Illiberalism assumes that beyond competitive elections, there is a certain degree of liberties and constitutional institutions functioning inside a political regime.¹ Authoritarian regimes, however, can not only suspend elections or blatantly manipulate them, they can exercise power without proper constraints. Illiberalism, meanwhile, can grow in established democracies. Although Brazil still must deal with the sensitive legacy of the 1964–1985 military dictatorship, it is nonetheless a democracy that has been on its way towards consolidation—or at least it was until the presidency of Jair Bolsonaro. In this sense, one can see that liberal institutions can behave illiberally.

This article takes as its point of reference Laruelle’s conception of illiberalism as an ideology formed in the past two or three decades, which updates classically conservative terms, draws on far-right populist conceptions of politics, and points to how illiberalism criticizes liberal concepts such as institutions and minority rights.² Still, this article challenges such presuppositions for the Brazilian case, by attempting to show that the formation of illiberalism in this context depended on the historical development of authoritarianism within the Brazilian concept of constitutionalism. Moreover, the article focuses on how the manipulation of legal institutions and theories helped carve out the current space for illiberalism in Brazil.

In this sense, one can perceive that the “legal resentment” right-wing populists demonstrate against the rule of law appears in the Brazilian context in the form of a continuous necessity to subvert constitutional and legal devices.³ The authoritarian approach to law is a part of the Brazil’s historical constitutional legacy, and it manifests itself currently as a complete manipulation of legal institutions by politicians, legal scholars, and other actors. Although the current constitution does not have any explicitly illiberal provision,⁴ thereby allowing Landau to argue that there is not in fact any illiberal constitution to speak of, the nature of illiberal politics is subtler and more diffuse in the ways it undermines the principles of constitutionalism. Brazil’s constitutional evolution demonstrates that illiberalism is not a truly novel conception.

Methodologically, this article relies on a body of Brazilian constitutional theory literature that covers different periods of the twentieth century. Authors who clearly defended both illiberal and authoritarian devices in different moments of Brazil’s constitutional history show that there is a previous illiberal tradition that paved the way for current perspectives. In this sense, even the supporters of an authoritarian president such as Bolsonaro make their claims based on a previous paradigm. Without getting lost in the weeds of the whole historical development of the subject, this article covers the main historical elements that live on in the thought of these different authors and scholars. At the end of the article, a table that shows the different phases in which these scholars have defended their theories and even engaged in politics helps the reader to navigate the history of Brazilian constitutionalism.

It is important to separate authoritarianism and illiberalism to see how these sets of political, economic, and social practices evolve and how, particularly in Brazil, authoritarian constitutional traditions have paved the way for current illiberal practices. This article begins by debating the ideas of the most relevant jurists who have defended different forms of authoritarianism in Brazil throughout the formation of its constitutional tradition: authoritarian traditions appear as a first

1 András Sajó, Renáta Uitz, and Stephen Holmes, “Preface,” in *The Routledge Handbook of Illiberalism*, eds. András Sajó, Renáta Uitz, and Stephen Holmes (Abingdon: Routledge, 2022), xxiv.

2 Marlene Laruelle, “Illiberalism: A Conceptual Introduction,” *East European Politics* 38, no. 2 (April 2022), <https://www.illiberalism.org/illiberalism-conceptual-introduction/>.

3 Paul Blokker, “Populism and Illiberalism,” in *The Routledge Handbook of Illiberalism*, eds. András Sajó, Renáta Uitz, and Stephen Holmes (Abingdon: Routledge, 2022), 265.

4 David Landau, “The Myth of Illiberal Democratic Constitutions” in *The Routledge Handbook of Illiberalism*, eds. András Sajó, Renáta Uitz, and Stephen Holmes (Abingdon: Routledge, 2022), 425.

and also a more rudimentary form of government, whereas illiberalism depends on restricting democracy via a sophisticated abuse of law.

Authoritarian constitutionalism is described through the ideas of constitutional scholars who dominated the debate during the 1930s in Brazil during the first presidency of Getúlio Vargas, under what he then called the *Estado Novo* (new state), which was a form of corporatist dictatorship. Under the democratic regime that subsequently emerged, national security doctrine appears as an important counterpoint to call for democratization. The later military dictatorship of 1964–1985 also relied on the help of legal scholars who aimed at legitimizing outright autocracy. Even with the transition to democracy made possible by the 1988 Constitution, the conservative-authoritarian views of an important number of constitutional scholars still live on even today, fully 35 years later. Bolsonaro used both the discourses of opposition to traditional politics and anticorruption rhetoric to pave his way to power. He could also count on the help of a culture of illiberalism because of long-standing authoritarian conceptions of politics mixed with the readiness of jurists to assist in legitimizing his politics.

Authoritarianism as the Gateway to Illiberalism

The first Brazilian Constitution, enacted in 1824, provided for a fourth branch of government known as the “moderating power” (or, alternatively, “moderating branch”)⁵ which was placed in the hands of the monarch for managing crises between the three main branches. The moderating power was the institutionalization, albeit with distortions, of an idea originating with one of the founding fathers of modern political liberalism, the Swiss-French political philosopher Benjamin Constant.⁶ Such an institutional structure stimulated debates among those who saw the moderating power as a mere monarch’s prerogative. This was the view held by figures as the 19th-century scholar and politician Braz Florentino Henriques de Souza, along with others who advocated a broader perspective that could include the legislative General Assembly in managing that power, such as Prime Minister Zacarias de Góis e Vasconcellos.⁷ This first debate gives a glimpse of the constant tension between conservatism and liberalism that would persist throughout Brazilian constitutional history. The moderating power, in the way that it was applied under the 1824 Constitution, had an authoritarian conception that would be recovered throughout Brazilian constitutional history—even resurfacing in the 2020s to refer to a supposed right of the armed forces to resolve disputes between the three main branches of government.

Rosenfield argues that under the First Republic (1891–1930),⁸ when the 1891 Constitution was in force and liberal ideas prevailed among constitutional scholars, violations of election law paved the way to modern authoritarianism in Brazil. The successive political crises that engulfed Brazil during the 1910s and 1920s were controlled by decreeing states of emergency that were pragmatically defended

⁵ The Portuguese term, *poder moderador*, could be translated either way in this context, given that what in English are known as the three “branches” of government are called *poderes* (powers) in Portuguese and other romance languages. Since no identical concept of such a fourth branch exists in the English-speaking tradition, the translation remains in the eye of the beholder.

⁶ Benjamin Constant, *Political Writings*, trans. and ed. by Biancamaria Fontana (Cambridge, UK: Cambridge University Press, 1988); Helena Rosenblatt, “The History of Illiberalism,” in *The Routledge Handbook of Illiberalism*, eds. Andrés Sajó, Renáta Uitz, and Stephen Holmes (Abingdon: Routledge, 2022), 20, <https://doi.org/10.4324/9780367260569>.

⁷ Emílio Meyer, *Constitutional Erosion in Brazil* (Oxford: Hart Publishing, 2021), 158; Braz Souza, *Do Poder Moderador: Ensaio de Direito Constitucional* (Recife: Typographia Universal, 1864); Maria Repolês, *Quem Deve Ser o Guardião da Constituição? Do Poder Moderador ao Supremo Tribunal Federal* (Belo Horizonte: Mandamentos, 2018); Menelick Neto, *A Sanção no Procedimento Legislativo* (Belo Horizonte: Del Rey, 1992), 73.

⁸ Luís Rosenfield, *Revolução Conservadora: Genealogia do Constitucionalismo Autoritário Brasileiro (1930–1945)* (Porto Alegre: EdIPUCRS, 2021), 47.

by means of authoritarian readings of the Constitution that criticized liberal republicanism as advocated by authors such as Rui Barbosa and Pedro Lessa.⁹

Before the 1930s, authors such as Alberto Torres would defend not only the exercise of a moderating power under the First Republic, but that the state had a prominent role in the relationship between society and institutions.¹⁰ Torres influenced the debate on how to deal with the financial and political crisis of the 1920s, proposing sweeping reforms to the 1891 Constitution in a broad range (which would be adopted in 1926) and fighting what Oliveira Viana described as constitutional idealism.¹¹ Jurists who were more prone to support liberalism agreed upon the reforms, but without the depth of conviction argued by more conservative thinkers.¹² In the end, the constitutional reforms of 1926 led to the potential suspension of habeas corpus during crisis situations, the strengthening of the executive branch and the placing of severe restrictions on judicial review, a main theme that would last for the years to come.

One of the scholars debating at the time, the jurist and diplomat Francisco Cavalcanti Pontes de Miranda, who would be the Brazilian jurist most quoted by judges in 2019,¹³ mentioned that one of the problems that the reforms needed to address was the racial question: he referred to states that adopted extreme measures such as the castration of abnormal people. Brazil would suffer for sheltering the blind, imbeciles, and people who suffer from physical disease, in a clear eugenic position defended by Pontes de Miranda.¹⁴ Such was the mood of the debates that preceded the years of the first dictatorship.

In the 1930s, Brazilian politics was in a state of agitation: a revolution did not recognize the election of Júlio Prestes to the presidency and supported Getúlio Vargas in seizing power in 1930. The 1891 Constitution was simply revoked by Decree 19,398 of 1930, issued by a provisional government led by Vargas.

In 1932, one of the bloodiest civil conflicts in Brazil pressed Vargas to organize the Constituent Assembly of 1933–1934, which led to the republican 1934 Constitution.¹⁵ The constituent assembly enacted the 1934 Constitution in a process that counted on representatives of particular classes that evoked the corporatist proposals. Also, social rights appeared in the 1934 Constitution in line with the 1919 Weimar Constitution. As in Germany, however, the social and liberal democratic path would be interrupted. In 1935, a fabricated Communist plan to seize power gave Vargas the pretext he needed to mete out harsh political repression. Vargas finally led a

9 See Rui Barbosa, *Obras Completas* (São Paulo: Hunter Books, 2016); Pedro Lessa, *Do Poder Judiciário: Direito Constitucional Brasileiro* (Rio de Janeiro: Livraria Francisco Alves, 1915).

10 See Alberto Torres, *O Problema Nacional Brasileiro: Introdução a um Programma de Organização Nacional* (Rio de Janeiro: Ed. Nacional, 1938).

11 See Francisco José Oliveira Viana, *O Idealismo da Constituição* (Rio de Janeiro: Terra do Sol, 1927).

12 Rosenfield, *Revolução Conservadora*, 107.

13 Luiz Vianna, Maria Carvalho and Marcelo Burgos, *Quem Somos: A Magistratura que Queremos* (Rio de Janeiro: Associação dos Magistrados Brasileiros, 2018), 109.

14 See Pontes de Miranda, "Preliminares para a Revisão Constitucional," in *À Margem da História da República*, ed. Vicente Cardoso (Brasília: Editora da Universidade de Brasília, 1981), 1–10; see also Rosenfield, *Revolução Conservadora*, 128.

15 It should be noted that Hans Kelsen, one of the most important philosophers and jurists of the 20th century, issued a very pragmatic opinion on who had the power to convene the constituent assembly at the time: the leaders of the 1930 revolution that commanded the provisional government. Kelsen had been invited by *Política: Revista de Direito Público, Legislação Social e Economia*, a Brazilian scientific journal, to provide an opinion on the constitutional process that led to the 1934 Constitution. This fact indicates that Brazilian legal scholars, at that time, already had connections with foreign jurists who had an impact on very different legal systems throughout the world. See Gustavo Siqueira, "O Parecer de Kelsen sobre a Constituinte Brasileira de 1933–1934," *Revista Direito & Práxis* 6, no. 11 (November 2015): 354–355; Andityas Matos, " 'Um Governo Revolucionário Possui os Poderes que Quer Possuir': A Teoria Pura do Direito Enquanto Teoria da Violência Diante da Assembleia Nacional Constituinte Brasileira de 1933/34", *Revista da Faculdade de Direito da UFMG*, no. 64 (2014): 67–69, <https://doi.org/10.12818/p.0304-2340.2014v64p49>.

coup d'état of his own and imposed the new Constitution of 1937, written by one of the leading authoritarian constitutional scholars of the time, Francisco Campos, who saw the constituent power as being connected to the aforementioned 1930 revolution and to the aim of modernizing the country.¹⁶ Campos argued that the 1937 imposed Constitution guaranteed rights while at the same time it preserved the nation—he followed the traditional antiliberal recipe of criticizing any kind of preference for individual rights as running counter to the interest of the nation.¹⁷ In that sense, his brand of antiliberalism is closer to being a kind of authoritarianism, rather than a sophisticated version of illiberalism.

The government of President Getúlio Vargas and the Estado Novo (1930–1945) testified to the prevalence of jurists of a strong authoritarian or antiliberal profile who criticized the traditional way of interpreting the Brazilian constitutional order. Consider that one of the features of antiliberal scholars such as Oliveira Viana, Butler Maciel, and Francisco Campos was to assume a position of constant criticism of the judicial branch, only to later turn around and argue that courts' expanded powers would not be a problem as long as their members were appointed by the illiberal governments they supported.¹⁸ These were the first authors to systematize and aid in shaping the public debate in Brazil in favor of a type of authoritarian constitutionalism—that is, they clearly recognized that democracy should be reformed in favor of effective forms of government that, in the end, would also need to follow the rules of a constitution. This article deepens the research into the main ideas of these Brazilian constitutional scholars in legitimizing Vargas' regime in the 1930s.

Authoritarian Constitutionalism in Brazil

For the purposes of this article I assume, with Frankenberg,¹⁹ that authoritarian constitutionalism presupposes an array of diverse phenomena: (a) an authoritarian political framework that relies on an intermingling of autocratic and democratic devices; (b) a personification of the public good as property by those in power (as seen in preferential treatment for family members and cronies, with severe consequences for the concentration of economic power); (c) a system in which participation is transformed into complicity; and (d) a cult of immediacy as an excuse to curtail debate and avoid deliberations in the course of governance.

In this sense, authoritarianism in its pure form can dispense with constitutionalism altogether, while authoritarian constitutionalism presumes that a constitution is an essential part of public administration and, in an openly declared authoritarian government, subject to manipulation. Anti-liberalism brings together a series of different worldviews that blatantly criticize liberal institutions; illiberalism, in turn, is cynical in not dispensing entirely with liberal institutions, but rather constantly manipulating them.

One of the leading figures of Brazilian authoritarian constitutionalism was Oliveira Viana, the author of *Instituições Políticas Brasileiras* (Brazilian Political Institutions).²⁰ He, along with other Brazilian jurists of his time, was a severe critic of the transplantation of political ideas from the United States and Europe to Brazil: such a migration would be done in prejudice to the creation of an actual "sentiment

¹⁶ Rosenfield, *Revolução Conservadora*, 155.

¹⁷ Stephen Holmes, "The Antiliberal Idea," in *The Routledge Handbook of Illiberalism*, eds. András Sajó, Renáta Uitz, and Stephen Holmes (Abingdon: Routledge, 2022), 3, <https://doi.org/10.4324/9780367260569>.

¹⁸ See Francisco José Oliveira Viana, *Problemas de Política Objetiva* (São Paulo: Companhia Editorial de São Paulo, 1947); Rosenfield, *Revolução Conservadora*, 71.

¹⁹ Günther Frankenberg, "Authoritarian Constitutionalism: Coming to Terms with Modernity's Dreams and Demons," Goethe-Universität Frankfurt am Main Faculty of Law Research Paper no. 3/2018, 11, publikationen.uni-frankfurt.de/files/45807/18_03_RPS.pdf.

²⁰ Francisco José Oliveira Viana, *Instituições Políticas Brasileiras* (Brasília: Conselho Editorial do Senado Federal, 1999).

of the nation.²¹ The factor that would prevent the total breakdown of political order before the beginning of the 20th century had been the already mentioned moderating power of the monarch under the 1824 Constitution. After the collapse of that constitution in 1889, the political unity of the people would depend on the regime of a dictatorship, as long as the sentiment of the nation was absent from Brazilian political practices.

The need for changes in the political culture of the Brazilian people could depend not on liberal tools, but instead on authoritarian devices, including constitutional documents.²² Oliveira Viana recognized, through an analysis of the Soviet experience, that top-down pressure from the state alone would not be enough. Fascist Italy and Nazi Germany, however, had also shown that society cannot simply be ignored by those in power.²³ But, considering the “reality” of the Brazilian people (which Viana depicts as the *povo-massa*, or the mass of the people), it would be necessary to rely on institutions that could protect them against the arbitrary action of the traditional elitist power holders.²⁴

The 1930s saw the consolidation of a debate between liberal-democrat jurists and authoritarians of different stripes that would result in victory for latter, with the Estado Novo following the 1937 coup. While the liberalism of the 1891 Constitution was defended by some Brazilian constitutional scholars, truly fascist proposals were also put forth by other influential Brazilian jurists. Miguel Reale, the University of São Paulo legal philosopher, for instance, inspired by the Italian politician and jurist Alfredo Rocco (one of the main scholars of corporatism), held that people should be seen as the means to the state’s social ends.²⁵ The 1937 Constitution, drafted by Francisco Campos, kept with the issues garnering attention at the time, such as social and economic rights, but did it so by controlling unions and mass participation. Campos believed that Hitler was able to extract from the confusion of the streets the essence of politics for maintaining power over the nation.²⁶

A vocal critic of liberalism, Campos argued for the existence of a mass mood (*clima das massas*), in which a growing tension would emerge between liberal methods of democracy and irrational processes of political integration.²⁷ For him, the political crises of liberalism went to the very heart of democracy and called for the intervention of totalitarianism, not the other way around. Campos saw the 1930s as setting the stage for a general “libertine climate.”²⁸ In the face of the supposedly critical situation that Brazil was confronting in those times, it would be the duty of a statesman (that is, Getúlio Vargas) to take extraordinary measures, such as the 1937 coup.²⁹

In such a general justification of Vargas’ policies, it is no surprise that Campos would see, in 1937, the continuity of the revolution that started in 1930: in other words, the so-called revolution of 1930 was the basis for unilaterally imposing a dictatorial constitution in 1937. And, of course, he saw no problem later on in also calling the coup of 1964 a revolution, and in writing what came to be called Institutional Act no. 1, which was an attempt to legitimize the break with democratic rule. Limiting discussion to issues like universal suffrage, constitutional guarantees, and public liberties would be seen as adequate for the 19th century, but was already an outdated

21 Maria Repolês, *Quem Deve Ser o Guardião da Constituição? Do Poder Moderador ao Supremo Tribunal Federal* (Belo Horizonte: Mandamentos, 2018), 77.

22 Oliveira Viana, *Instituições Políticas Brasileiras*, 448.

23 Oliveira Viana, 460.

24 Oliveira Viana, 98.

25 Rosenfield, *Revolução Conservadora*, 181.

26 Rosenfield, 195.

27 Francisco Campos, *O Estado Nacional: Sua Estrutura, Seu Conteúdo Ideológico* (Brasília: Conselho Editorial do Senado Federal, [1935] 2001), 28.

28 Campos, *O Estado Nacional*, 31.

29 Campos, 40.

approach by the 1930s. If, on one hand, the state had expanded its activities in the 20th century, the legislative branch, on the other hand, would not be up to the task of taking on such new functions, with the legislators being obliged to delegate their powers.³⁰ And if the new order was characterized by its approach to matters such as social rights, the question of creating a new and more robust form of state power should be the primary concern of a constitution.

In terms of economics, taking some of its cues from Fascist Italy, corporatism would give substance to an authoritarian conception of democracy in which technical representation could serve as a substitute for political representation. It is interesting that Campos argued that liberalism could lead to Communism through the government takeover of economic life: although the idea of *Homo economicus* would be important several decades later as a critique of authoritarianism in the form of neoliberalism,³¹ the confusing writings of Campos formed the basis for a general criticism of congressional representation, in the Schmittian sense.³²

It is interesting that authoritarian constitutionalism would also present itself as an alternative to the Brazilian version of fascism, known as *integralismo* (integralism). Brazilian integralism was founded in the 1920s by a self-declared admirer of Italian Fascism, Plínio Salgado, and was based on the principle of authority, on religious grounds, and on the importance of family and the homeland.³³ Integralists would wear a green uniform, which led to their being known as “green shirts.” One of integralism’s main intellectual leaders was the aforementioned Miguel Reale, who would become a very influential legal philosopher and one of the main authors of the current Brazilian Civil Code of 2002. Reale argued that the nation was an ethical, political, economic, and cultural body; that nationalism was the backbone of integralism; that liberalism would not be able to capture the essence of the people’s aspirations that define democracy; that political parties would be unneeded in Brazil; and that families and corporations would be among the most important elements of democracy.³⁴

Integralists were clearly anti-Communist and they supported the 1937 coup. However, in 1938, they unsuccessfully conspired to overthrow Vargas, and the integralist leaders were forced to leave the country. In the 21st century, elements reminiscent of the group would be recycled through organizations such as the Frente Integralista Brasileira (Brazilian Integralist Front), with some of its members being elected to positions on city councils. The movement was important for the radicalization of political discourse, especially in the 2018 elections.

The 1937 Constitution conferred upon the president a series of different functions, centralizing Brazilian politics to restrict the powers of states in the federation. It allowed the president to issue legislation by decree in the face of the dissolution of Congress throughout the remainder of Vargas’ dictatorship, from 1937 until 1945. Restrictions on political rights and civil liberties prevailed. The scholar Almir de Andrade explicitly qualified Brazilian democracy of the time as substantially antiliberal.³⁵ The legislation that was issued by President Vargas would remain on the books even to the present day: the Criminal Code, the Criminal Procedure

30 Campos, *O Estado Nacional*, 55.

31 Wendy Brown, *In the Ruins of Neoliberalism: The Rise of Antidemocratic Politics in the West* (New York: Columbia University Press, 2019).

32 In the 1920s, the Nazi political theorist Carl Schmitt became one of the most vocal critics of representative democracy, pointing out several of its deficiencies: a government of amateurs, cause for a prolonged crisis, the banality of parliamentary debates, the misuse of immunities, the daily order of business, and so on. Carl Schmitt, *The Crisis of Parliamentary Democracy* (Cambridge, Mass.: MIT Press, [1923] 1988), 19.

33 Leandro Gonçalves and Odilon Caldeira Neto, *O Fascismo em Camisas Verdes: Do Integralismo ao Neointegralismo* (São Paulo: FGV Editora, 2020); Leandro Gonçalves and Odilon Caldeira Neto, *Fascism in Brazil: From Integralism to Bolsonaroism* (Abingdon: Routledge, 2022).

34 Miguel Reale, *Obras Políticas: Tomo III* (Brasília: Editora Universidade de Brasília, 1983), 16.

35 Rosenfield, *Revolução Conservadora*, 283.

Code, and part of the body of labor law have all survived different political regimes. In this sense, although the 1937 Constitution created a state with weak levels of institutionalism, the same cannot be concluded of Vargas' decree laws. One of the reasons for the success of these bodies of Vargas-era legislation can be linked to the extensive and profound literature produced by jurists who were close to the regime: their technical abilities helped forge long-lasting rules.³⁶ Concerning the judicial branch under the 1937 Constitutional structure, there was also severe criticism by these authoritarian scholars for it being an oligarchy and an extension of the former moderating power of the 1824 Constitution.

Interestingly, Campos created a way of preventing courts and judges from becoming a problem for Estado Novo projects. Without eradicating the courts' judicial or constitutional review function, the 1937 Constitution provided that a judicial ruling that invalidated a statute could be declared without effect if, in the view of the president, it was in accordance with the common good and if Congress agreed so by a vote of a two-thirds majority in both chambers. Congress, however, remained closed for the entirety of Vargas' regime. Campos used to say that judicial review was a unique prerogative of American constitutionalism, created by jurists who belonged to the past and intending to impede or moderate popular demands.³⁷ In his view, judicial review would be reminiscent of the monarchical moderating power that would cloud democratic movements. One must recognize that Campos had a genial way of using the constitutional and democratic vocabulary against its very purposes, in ways comparable to present-day elected heads of state's deployment of autocratic legalism.³⁸

Santos synthesizes the Brazilian anti-liberal constitutionalism of the 1930s as a form of general criticism of liberal politics and institutions, of the personification of decision-making sovereignty made concrete, of mass mobilisation through irrational arguments by a populist leader, and of the bureaucratization of legislation.³⁹ One of the underexplored factors is the fact that the Brazilian people have, to a certain extent, supported authoritarian measures throughout Brazil's constitutional history. In the 1930s, the outbreak of the Second World War and the way in which *Varguismo* was able to meet socio-economic demands explain, in part, the acceptance of Vargas' regime. Nonetheless, jurists such as Oliveira Viana and Almir de Andrade were conscious of the explanatory power of social psychology with respect to Brazilian authoritarianism.⁴⁰ This is a special consideration for aiming at defining the historical path for Bolsonaro winning the majority of the presidential vote decades later. Long before that, however, there is the need to understand why Brazil returned to being a democracy and why, yet again, democracy would be interrupted.

From what has been stated so far, one can see that elements such as the ever present discussion of a moderating power and the growing involvement of the armed forces in politics, the general line of criticism of liberal democracy's efficacy endured beyond the end of the Estado Novo government. As the next section will show, political crisis still seems to depend on institutions that should be far removed from politics, resulting in less democratization than would otherwise be expected.

Democracy's Return

The end of the Second World War brought with it a general feeling in the developed world of rejection towards autocratic forms of government. In addition to the gradual

36 Rosenfield, *Revolução Conservadora*, 293.

37 Campos, *O Estado Nacional*, 102.

38 Kim Lane Scheppelle, "Autocratic Legalism," *University of Chicago Law Review* 85, no. 2 (March 2018), 548, <https://doi.org/10.5771/0506-7286-2022-4-528>.

39 Rogério Dultra dos Santos, "Francisco Campos e os fundamentos do constitucionalismo antiliberal no Brasil," *Dados* 50, no. 2 (September 2007): 281–323, <https://doi.org/10.1590/s0011-52582007000200003>.

40 Rosenfield, *Revolução Conservadora*, 273.

decline in the military's support for Vargas in the mid-1940s, one must consider the fact that there was partial support for him to stay in power through the movement called *queremismo*: the workers' movement shouted on the streets that they *wanted* (the verb *querer*, in Portuguese) Vargas to continue in power. The movement did not prevail, and power was seized from Vargas following another coup. The election of his former minister of war, a member of the military rather than a civilian, demonstrates that the imbrication of authoritarianism and the militarization of politics would not quickly disappear.

Another democratic constituent assembly led to the 1946 Constitution, a document that also protected social and economic rights at the same time that it aimed at dismantling authoritarianism. Its provision, however, for the separate elections of president and vice president, produced a state of constant political crisis and the need for political accommodation in the so-called Brazilian coalitional presidential system, a form of government that depended heavily on agreements between both the supporters and opponents of the president—a feature that would return in the 1988 Constitution.⁴¹ The Cold War demanded that Brazilian presidents (Gaspar Dutra, 1946–1951; Getúlio Vargas, again, in 1951–1954; Juscelino Kubitschek, 1956–1961; Jânio Quadros, 1961; João Goulart, 1961–1964) take sides in the conflict, and pressures from the military, the United States government, the Catholic Church, and Brazilian elites created pressures that ultimately led to a coup in 1964.

Throughout the 20th century in Brazil, an extremely important theory of the 1930s was used to curb political opposition in general, and leftist and Communist parties in particular: the doctrine of national security. The first National Security Act (Act 38 of 1935)⁴² started with a provision aimed at the protection of 1934 Constitution against attempts to change the form of government by violent means. Throughout the Act, however, provisions for the protection of democracy were mixed with others that criminalized, for instance, the incitement of hatred among social classes. This same dubious feature permeated all other national security acts until the repeal of the National Security Act of 1983 (Act 7.170) by Act 14.197 of 2021,⁴³ known as the act for the protection against crimes perpetrated against the Constitutional Democratic State (*Estado Democrático de Direito*).

The doctrine of national security was a consolidation of the diverse arguments for the protection of the state against the foreign and, moreover, domestic enemies of the nation. The doctrine had an important influence in the Higher Academy of War (Escola Superior de Guerra), a military think tank that was created during the 1940s and is still active. One of the national security doctrine's leading scholars, Mário Pessoa, argued, alluding to former US Secretary of Defense Robert McNamara, that collective security was a military strategy in a world half-free and half-totalitarian.⁴⁴ His main target was not foreign threats to national security, as already mentioned, but the internal conflict in the form of revolutionary war by Communist forces. The armed forces should be politicized to fight that type of threat. The national security doctrine animated public security measures in Brazil (this type of reading

41 Sérgio Abranches, *Presidencialismo de Coalizão: Raízes e Evolução do Modelo Político Brasileiro* (São Paulo: Companhia das Letras, 2018); Thomas Bustamante and Emilio Peluso Neder Meyer, "Legislative Resistance to Illiberalism in a System of Coalitional Presidentialism: Will It Work in Brazil?" *Theory and Practice of Legislation*, (2021): 1–21, <https://doi.org/10.1080/20508840.2021.1942370>.

42 See Lei no. 38, de 4 de abril de 1935, Câmara dos Deputados website, <https://www2.camara.leg.br/legin/fed/lei/1930-1939/lei-38-4-abril-1935-397878-republicacao-77367-pl.html>.

43 See the Brazilian presidential website, Presidência da República, Casa Civil, Subchefia para Assuntos Jurídicos: http://www.planalto.gov.br/ccivil_03/leis/l7170.htm, and http://www.planalto.gov.br/ccivil_03/Atos2019-2022/2021/Lei/L14197.htm#art4.

44 Mário Pessoa, *O Direito da Segurança Nacional* (Rio de Janeiro: Biblioteca do Exército; Revista dos Tribunais, 1971), 99.

was not reformed under the 1988 Constitution),⁴⁵ but mainly, it acted as part of the legitimization the arguments in support of the 1964–1985 dictatorship.

Dictatorship, Not Illiberalism

The 1964 coup, as already mentioned, had a judicial façade in the form of the so-called Institutional Acts. Campos wrote the preamble of Institutional Act 1 of 1964 using constitutional law language to support his aims.⁴⁶ The coup was described as a revolution. This revolution made use of a constituent power, its most radical and expressive form of self-legitimation. The revolution could shape norms without any preconditions and the leaders of such a revolution would be the commanders of the armed forces.

The revolution would need to be institutionalized in the form of the act Campos was helping to draft. One of the aims of the revolution was to contain the Bolshevik wave: to do so, contradictorily, the so-called revolution kept the 1946 Constitution alive and conceded that Congress could carry on its work. With the help of another jurist, Carlos Medeiros e Silva, Francisco Campos created a legal document, not provided for in the 1946 Constitution, to set the agenda of the regime.⁴⁷

The coup was supported by different sectors of the Brazilian elite, including the Brazilian Bar Association (*Ordem dos Advogados do Brasil: OAB*). An effective form of propaganda raised against the specter of Communism, as personified by the deposed President João Goulart, helped support the coup. Soon enough, however, several jurists would come to see that they had made a huge mistake and needed to start opposing the dictatorship.

Firstly, the Supreme Court did not control the first steps of the authoritarian regime; but the Court became important in ruling on writs of habeas corpus to free students and governors, a move that would lead the regime to draft Institutional Act 2 of 1966, by which it packed the Supreme Court and compromised judicial independence.⁴⁸ Again, one can see that the tensions between illiberalism and anti-liberalism were present in different stages of Brazil's constitutional history. For the purposes of this article, however, it is important to highlight the role of jurists who blatantly supported illiberal and anti-liberal positions in order to provide a patina of legitimacy to them.

Alfredo Buzaid, for instance, collaborated on the drafting of one of the most antiliberal legal documents in Brazilian history, Institutional Act 5 of 1968,⁴⁹ as well as Decree Law 1.077 of 1970, which regulated official censorship.⁵⁰ He was a former integralist, a law professor at the University of São Paulo (USP), a minister of justice, and was appointed to the Supreme Court by the dictatorship. For Buzaid, what he also saw as

45 See Kees Koonings, "Political Orientations and Factionalism in the Brazilian Armed Forces, 1964–85," in *The Soldier and the State in South America*, ed. Patrício Silva (Hampshire: Palgrave Macmillan, 2001), 131; Maria Pia Guerra, *Polícia e Ditadura: A Arquitetura Institucional da Segurança Pública de 1964 a 1988* (Brasília: Ministério da Justiça e Cidadania, 2016).

46 See the Brazilian presidential website, Presidência da República, Casa Civil, Subchefia para Assuntos Jurídicos: http://www.planalto.gov.br/ccivil_03/ait/ait-01-64.htm.

47 Danilo Lima, "Legalidade e Autoritarismo: O Papel dos Juristas na Consolidação da Ditadura Militar de 1964," (PhD diss., Universidade do Vale do Rio dos Sinos, 2018), 96; Marcos Napolitano, *1964: História do Regime Militar Brasileiro* (São Paulo: Contexto, 2014), 80.

48 See the Brazilian presidential website: http://www.planalto.gov.br/ccivil_03/ait/ait-02-65.htm.

49 See the Brazilian presidential website: http://www.planalto.gov.br/ccivil_03/ait/ait-05-68.htm.

50 The decree law was a form of legislation issued by the president under a state of emergency. It was first provided for in the 1937 Constitution and had a prominent role at that time since Congress was dissolved throughout Vargas' first presidency, when he effectively ruled as a dictator. It was also widely utilized during the 1964–1985 military dictatorship. The 1988 Constitution replaced the decree law with provisional measures, which have similar features but also greater controls.

a revolution (the 1964 military coup) had the objective of reducing politics to a mere technocratic activity, as a direct outgrowth of his integralist past.⁵¹

Hely Lopes Meirelles, who was Public Security Secretary for the state of São Paulo when the dictatorship organized the political repression campaign known as Operation Bandeirante, was a well-known administrative lawyer. One of his books has even stood the test of time as a major point of reference even after democracy was restored, being continually reprinted even after his death.⁵² In 1976, quoting a manual from the Higher Academy of War, he argued that development and national security should guide the constitution and statutory legislation against the antagonism of their opponents and the excesses of individual rights.⁵³ His rhetoric evokes Francisco Campos writings and shows the ties of these scholars to the central organs of the military regime.

Manoel Gonçalves Ferreira Filho, also a long-time professor at the University of São Paulo and someone who held positions in the São Paulo state government during the military dictatorship of 1964–1985, published a book in which he argued for a concept of a democracy only in feasible terms.⁵⁴ In the same tone of his predecessors from the 1930s, he criticized general elections for the presidency and the system of political parties in Brazil. He also qualified the 1964 coup as a revolution.⁵⁵

Several other law professors contributed directly to the military dictatorship of 1964–1985 and paved the way for the formation of a judicial elite with a conservative profile: Themístocles Cavalcanti,⁵⁶ Clóvis Ramalhete,⁵⁷ and others.⁵⁸ The report of the National Truth Commission, dedicated to investigating the human rights violations that occurred during the military dictatorship, even has a specific chapter dedicated to the role of the judicial branch in both controlling, but also coping with, the repressive apparatus.⁵⁹ The findings give plausibility to the argument made by Anthony W. Pereira that, compared to other Latin American countries, Brazil had a more legalized system of repression, mainly using military courts to prosecute and incarcerate the dictatorial regime's opponents.⁶⁰

The strength and endurance of these different ways of conceiving of political systems in Brazil created a burden that spanned several generations. They were always counterbalanced by civil society movements (such as the one that called for an amnesty only for political opponents during the 1964–1985 dictatorship) as well as the role of lawyers and the Brazilian Bar Association (which supported the coup but changed sides few years later) both in and out of court. As with any part of the public sphere, there was not a monolithic approach to interpreting the two dictatorial

51 Danilo Lima, "Legalidade e Autoritarismo: O Papel dos Juristas na Consolidação da Ditadura Militar de 1964" (PhD dissertation, Universidade do Vale do Rio dos Sinos, 2018), 96; Marcos Napolitano, *1964: História do Regime Militar Brasileiro* (São Paulo: Contexto, 2014), 184. See also Alfredo Buzaid, *Rumos Políticos da Revolução Brasileira* (Brasília: Ministério da Justiça, 1970).

52 Hely Lopes Meirelles, *Direito Administrativo Brasileiro*, 44th edition (São Paulo and Salvador: Malheiros e Juspodivm, 2019).

53 Hely Lopes Meirelles, "O Poder de Polícia, o Desenvolvimento e a Segurança Nacional," *Revista de Direito Administrativo*, no. 125 (1976): 13.

54 Manoel Gonçalves Ferreira Filho, *A Democracia Possível* (São Paulo: Saraiva, 1979).

55 See Manoel Gonçalves Ferreira Filho, *O Poder Constituinte* (São Paulo: Saraiva, 1985).

56 Themístocles Cavalcanti, "Introdução à Análise da Constituição de 1967: O Esquema Político da Constituição," in *Coleção Constituições Brasileiras, vol. VI: 1967*, 3rd edition (Brasília: Senado Federal, 2012).

57 Clóvis Ramalhete, "Revolução Como Fonte do Direito: Apontamentos de Teoria Jurídica das Revoluções," *Revista de Informação Legislativa*, vol. 11, no. 42 (April, 1974): 99–114.

58 Danilo Lima, *Legalidade e Autoritarismo: O Papel dos Juristas na Consolidação da Ditadura Militar de 1964*, PhD Thesis (São Leopoldo: Universidade do Vale do Rio dos Sinos, 2018).

59 Comissão Nacional da Verdade, *Relatório Final*, ch. 17, "O judiciário na ditadura" (Brasília: CNV, 2014), <http://cnv.memoriasreveladas.gov.br/images/documentos/Capitulo17/Capitulo%2017.pdf>.

60 Anthony W. Pereira, *Political (In)Justice: Authoritarianism and the Rule of Law in Brazil, Chile, and Argentina* (Pittsburgh: University of Pittsburgh Press, 2005).

eras—and besides, the democratic interludes gave Brazilian constitutionalism a nuanced character. By the time the constituent assembly of 1987–1988 was called, the era of antiliberal jurists had passed, and many of them had to concede to the new democratic 1988 Constitution. Nonetheless, the tension between liberalism and antiliberalism was still in place and it left space for interpretations that would not align with the democratic features of the 1988 Constitution. Consider, for instance, that it was the political pressure from Supreme Court justices in dictatorial times that prevented the creation of a distinct constitutional court—with new members and above the Federal Supreme Court—by the new constitution.⁶¹ Pontes de Miranda, who died in 1979, and Hely Lopes Meirelles, who died in 1990, are still among the scholars whom judges cite the most.⁶²

The 1988 Constitution and the Rise of Illiberalism

The 1988 Constitution has a clear democratic backbone and it paved the way for the stabilization of institutions and the prevention of coups in Brazil, even in light of the frustrated coup attempt on January 8, 2023. Although Brazilian institutions needed to deal with two impeachment processes that led two presidents to leave office (Fernando Collor, in 1992, by resignation; and Dilma Rousseff, in 2016, through a politically debatable conviction), it seems that, at least for now, constitutional institutions have been able to avoid a rupture.⁶³ However, the rise of Pres. Jair Bolsonaro to power has demonstrated that both authoritarianism and antiliberalism are no strangers to the Brazilian political present. Moreover, they can mutate into illiberalism and create both political and juridical supports for a self-declared authoritarian president.

Beyond the perpetuation of old theories justifying the declaration of martial law, constitutional lawyers still positioned themselves in ways that tried to legitimize the authoritarian past. Celso Ribeiro Bastos, an influential constitutional scholar who died in 2003, still defined what happened in 1964 as a revolution, not a coup.⁶⁴ Ives Gandra da Silva Martins was an important scholar in establishing the regulations for Brazilian judicial review of legislation as exercised by the Supreme Court. His writings from 1977, 1984, and 1987 offer a glimpse of his style of conservatism.⁶⁵ In 1977, he argued that there was an erosion of traditional values, an excess of liberty, a growing drug addiction problem, and the devaluation of sex's designation as a marital institution.⁶⁶ For the 1988 Constitution to come to into full effect he argued, in 1987, that a parliamentary system would be best.

In 2002, in an article for the *Revista da Escola Superior de Guerra* (Journal of the Higher Academy of War), Martins contended that it had become no longer “politically correct” to defend the traditional family, but rather the “deformed” same-sex family supported by media outlets.⁶⁷ These were (and are) important ideas to support the type of illiberalism that Bolsonaro would use to win in the two rounds

61 Emilio Meyer, “Judges and Courts Destabilizing Constitutionalism: The Brazilian Judiciary Branch’s Political and Authoritarian Character,” *German Law Journal* 19, no. 4 (2018), 756, <https://doi.org/10.1017/s2071832200022860>.

62 Luiz Vianna, Maria Carvalho, and Marcelo Burgos, *Quem Somos: A Magistratura que Queremos* (Rio de Janeiro: Associação dos Magistrados Brasileiros, 2018), 109.

63 President Lula relied on a constitutional device, providing for federal intervention in the government of the Federal District, to halt the violent acts of January 8, 2023, and get control over the situation of the coup that was being attempted. Also, by dismissing the commander of the army, he was able to demonstrate at least a partial submission of the military to the civilian presidential authority.

64 Celso Bastos, *Curso de Direito Constitucional* (São Paulo: Malheiros, 1998), 132.

65 See Ives Gandra da Silva Martins, *O Estado de Direito e o Direito do Estado: Outros Escritos* (São Paulo: Lex Editora, 2006).

66 Ives Gandra da Silva Martins, *O Estado de Direito e o Direito do Estado: Outros Escritos* (São Paulo: Lex Editora, 2006), 56.

67 Ives Gandra da Silva Martins, “O Complicado Mundo Atual,” *Revista da Escola Superior de Guerra*, n. 41, 2002, 304, <https://doi.org/10.47240/revistadaesg.voi41.386>.

of 2018 presidential elections. In 2021, Martins would constantly be referred to as one of the constitutional lawyers who saw in the provision of Article 142 of the 1988 Constitution a permission for the armed forces to directly intervene in a conflict in the form of a “moderating power” (or “moderating branch”) acting as an arbiter among the three other branches of government, at the same time that Bolsonaro took to the streets to threaten both Congress and the Supreme Court.⁶⁸

These are some of the most traditional scholars, who have influenced many lawyers and attorneys in Brazil. But they were not the only ones to exercise wide influence after 1988. Relying on the most democratic structure of all Brazilian constitutional texts, constitutional law scholars started to support different interpretative methodologies.

Maintaining the tension between liberalism and illiberalism, while also deepening socio-economic perspectives on the basis of the 1988 Constitution, several scholars would continuously push, both academically and in terms of advocacy, for a constitutional democratic state (*Estado Democrático de Direito*) in terms of the rule of law.⁶⁹ So, there are plenty of reasons to read Brazilian constitutional history in a democratic light, and to only focus on the authoritarian perspective is, in itself, an exclusionary exercise. Still, one needs to understand why, in 2018, most Brazilian voters chose Bolsonaro, and why he kept on maintaining considerable support despite failing to win re-election.

In terms of the factors favoring Brazilian illiberalism, one of the most striking is the public’s disenchantment with politics. Using public resources for private gain via patronage, clientelist relationships in politics that perpetuate the dominance of more powerful partners over weaker ones persist and remain part of the political landscape in Brazil.⁷⁰ Especially in a country marked by severe inequality, it is difficult to eliminate relationships that have endured for centuries. This does not mean, however, that politics in Brazil are forever doomed, yet this is the kind of thinking

68 Ives Gandra da Silva Martins, “Ives Gandra: Minha interpretação do artigo 142 da Constituição Federal,” Consultor Jurídico (website), August 27, 2021, <https://www.conjur.com.br/2021-ago-27/ives-gandra-minha-interpretacao-artigo-142-constituicao>.

The official English translation of the preamble to Article 142 of the 1988 Constitution, which can be found on the Brazilian Senate’s website (https://www2.senado.leg.br/bdsf/bitstream/handle/id/243334/Constitution_2013.pdf), reads as follows:

“The Armed Forces, comprised of the Navy, the Army and Air Force, are permanent and regular national institutions, organized on the basis of hierarchy and discipline, under the supreme authority of the President of the Republic, and are intended for the defense of the Country, for the guarantee of the constitutional powers, and, on the initiative of any of these, of law and order.” Cf. Portuguese original: “Art. 142. As Forças Armadas, constituídas pela Marinha, pelo Exército e pela Aeronáutica, são instituições nacionais permanentes e regulares, organizadas com base na hierarquia e na disciplina, sob a autoridade suprema do presidente da República, e destinam-se à defesa da Pátria, à garantia dos poderes constitucionais e, por iniciativa de qualquer destes, da lei e da ordem.”

See: <https://normas.leg.br/?urn=urn:lex:br:federal:constituicao:1988-10-05:1988>.

69 See Paulo Bonavides, *Teoria Constitucional da Democracia Participativa: Por Um Direito Constitucional de Luta e Resistência, por Uma Nova Hermenêutica, por Uma Repolitização da Legitimidade* (São Paulo: Malheiros, 2001, 77–78). The author argued, in 1999, that there were alternative forms for destroying a constitution using institutional and neoliberal means instead of a violent coup.

See also Menelick Neto, “Racionalização do Ordenamento Jurídico e Democracia,” *Revista Brasileira de Estudos Políticos*, no. 88 (2001): 81–108. This author persistently defended the constitutional order established in 1988 and was always aware that the manipulation of the concept of the people can lead to exclusion.

See also Marcelo Cattoni, *Poder Constituinte e Patriotismo Constitucional* (Belo Horizonte: Mandamentos, 2006). This author defended an understanding of judicial review in Brazil that gave equal weight to the preservation of fundamental rights and to legislative procedure.

See also Lênio Streck, *Hermenêutica Jurídica e(m) Crise: Uma Exploração Hermenêutica da Construção do Direito* (Porto Alegre: Livraria do Advogado, 1999). This author published several books defending hermeneutical methodologies congenial to the enforcement of the 1988 Constitution.

See also José Afonso da Silva, *Curso de Direito Constitucional*, 16th ed. (São Paulo: Malheiros, 1999). This author was one of the most influential scholars during the 1987–1988 debates and helped forge a democratic constitutional system.

70 Scott Mainwaring, *Rethinking Party Systems in the Third Wave of Democratization: The Case of Brazil* (Stanford: Stanford University Press, 1999), 179.

that illiberals and antiberals want the electorate to believe in.⁷¹ Tons of pages of political science, law, and sociology have been written to denounce clientelism and corruption as the unique problems of politicians, thereby demonizing the state and, consequently, politics itself.

In this sense, when authoritarian constitutionalists like Francisco Campos or Oliveira Viana declared the bankruptcy of representative democracy in the 1930s due to its inefficiency, corruption, or the ineptitude of those meant to represent the people, they probably knew they were not pointing to anything new under the sun, nor offering a truly effective remedy to Brazilian political problems. The military dictatorship of 1964–1985, for example, is now seen as the cradle of corruption inside big companies that won government procurement contracts.⁷² President Fernando Collor de Mello was impeached for, among other things, being involved with a former electoral campaign treasurer who would have mobilized resources to favor the president and for lying about it—although Collor was elected as an outsider running as a would-be a graft hunter.⁷³ During President Fernando Henrique Cardoso's first term, there were accusations that the approval of the constitutional amendment allowing him to run for a second term relied on the payment of congressmen.⁷⁴ Against this background, when the era of the Workers' Party's (Partido dos Trabalhadores: PT) governments began, one important step inside the Ministry of Justice was to strengthen the Federal Police. It was back in the 2000s that huge police operations were covered by the media, and it seemed that a turning point would have been reached.

The Politics of Operation Car Wash

One aspect of Brazilian illiberalism's leading theorists was that several of them were engaged both in academia and in political activity. The leading figures of what came to be known as Operation Car Wash also shared this same background.

Throughout its existence, the Workers' Party has been known for campaigning for ethics in politics as part of its electoral platform. However, during President Luiz Inácio Lula da Silva's first term (and as this author and others have pointed out in another article), one of the biggest scandals of the democratic era took place: the so-called *Mensalão* (Portuguese for "big allowance") was ruled on by the Federal Supreme Court, widely commented and broadcasted by media outlets, and resulted in the sentencing of 40 people who had been found guilty in a massive vote-buying scheme in the federal legislature.⁷⁵ But more was to come. In 2014, then-Federal Judge Sérgio Moro and his colleague, the federal prosecutor Deltan Dallagnol, led the large Operation Car Wash investigation into corruption scandals, beginning with the huge Brazilian state oil company, Petrobras. These financial crimes involved a vast amount of public spending, and the country had just faced a major political crisis, with public protests in 2013, such that the leading players in the scandals were none other than the leading figures of the Workers' Party.

Of course, crimes were committed and, for the most part, the operation was able to show how financing electoral campaigns in Brazil involved dirty money. Nonetheless, the investigation backfired when leaked messages showed the accusations and judgements were combined between the different institutional actors, including Moro and Dallagnol. Judge Moro also helped Jair Bolsonaro get elected when he leaked to

71 Jessé Souza, *A Tólice da Inteligência Brasileira* (São Paulo: Casa da Palavra, 2015).

72 See Pedro Campos, *Estranhas Catedrais: As Empreiteiras Brasileiras e a Ditadura Civil-Militar, 1964-1988* (Rio de Janeiro: Eduff, 2014).

73 Rafael Mafei, *Como Remover um Presidente: Teoria, História e Prática do Impeachment No Brasil* (São Paulo: Zahar, 2021), 125.

74 "Entrevista: FHC afirma que coloca suas 'mãos no fogo' pela lisura da votação," *Folha de S. Paulo*, September 2, 1997, <https://www1.folha.uol.com.br/fsp/brasil/fco20905.htm>.

75 Rafael Mafei, Thomas Bustamante, and Emilio Meyer, "From Antiestablishmentarianism to Bolsonaroism in Brazil," in *The Routledge Handbook of Illiberalism*, eds. Andrés Sajó, Renáta Uitz, and Stephen Holmes (Abingdon: Routledge, 2022), 779, <https://doi.org/10.53483/xcb3551>.

the press, right before the final round of the 2018 elections, a plea-bargain agreement involving a former Workers' Party minister faced with corruption accusations, only to then dismiss the agreement as useless in the criminal proceedings. The leak had a clear electoral purpose.⁷⁶ Moro became Bolsonaro's Minister of Justice, resigned, saw the guilty verdict he had issued and that sent former President Lula to prison being nullified by the Supreme Court,⁷⁷ and, in 2022, tried to run for the presidency.

Sérgio Moro and Deltan Dallagnol (who also abandoned the Office of the Federal Public Prosecutor to become a politician) both studied at the Federal University of Paraná, with Moro going on to become a professor there. As at any public university in Brazil, they would have received both technical and theoretical training in their legal education. The profile of public careers in Brazil today, however, privileges technical knowledge, requiring that job applicants taking exams for civil service positions demonstrate in-depth knowledge of diverse areas of law, a huge amount of statutory legislation, and the main Brazilian courts' case law. Although some such exams require a certain knowledge of jurisprudence and legal philosophy, it seems to be hard to evaluate the comparative mastery of these disciplines among thousands of job candidates and to constantly reassess judges and prosecutors in office using continuing education.

Operation Car Wash was terminated by the Prosecutor General Augusto Aras, the leading figure of the Office of the Public Prosecutor appointed by President Bolsonaro.⁷⁸ But the operation generated the particular effect of amplifying the discourse against politics. As Federal Judge Fabiana Rodrigues described it, the operation produced efficiency in fighting corruption, speeding up the collection of evidence and the criminal prosecutions, as well as improving the financial analysis of international agreements.⁷⁹ Such effectiveness came at a high cost, involving self-promotion by agents involved in the operation and the administration of the timing of the judicial acts so they could count on greater visibility in the media. Using pre-trial detention and plea-bargain agreements while counting on newspapers and television shows to publicize the progression of the operation, prosecutors and judges tried a high number of defendants, with 174 of them being convicted. Cornered by the newspaper headlines, the Supreme Court reviewed its case law on rights to due process and jurisdictional competences between 2016 and 2019 to empower Operation Car Wash agents.

Operation Car Wash had its own political support. The Brazilian Association of Magistrates (Associação dos Magistrados Brasileiros: AMB) supported Moro when a group of lawyers filed an administrative complaint against him in the Brazilian National Judicial Council, back in 2016.⁸⁰ When Moro leaked to the press phone conversations between former President Lula and then-President Dilma Rousseff, the Association of Brazilian Federal Judges (Associação dos Juizes Federais do Brasil: AJUFE) also published a note in his support.⁸¹ Neither association had any role in the judicial proceedings they were defending, having no jurisdiction over them. In 2019, when he was already a Minister of Justice, AJUFE again supported Moro in the face

⁷⁶ The Intercept Brasil, "As Mensagens Secretas da Lava Jato," <https://theintercept.com/series/mensagens-lava-jato/>.

⁷⁷ Thomas Bustamante and Emilio Meyer, "Operation Car Wash on Trial," *Verfassungsblog*, March 10, 2021, <https://verfassungsblog.de/operation-car-wash-on-trial/>.

⁷⁸ Ricardo Britto and Gram Slattery, "After Seven Years, Brazil Shuts Down Car Wash Anti-Corruption Squad," *Reuters*, February 3, 2021, <https://www.reuters.com/article/us-brazil-corruption-idUSKBN2A4068>.

⁷⁹ Fabiana Rodrigues, *Lava Jato: Aprendizado Institucional e Ação Estratégica na Justiça* (São Paulo: Editora WMF Martins Fontes, 2020), 259.

⁸⁰ Matheus Leitão, "Juizes fazem campanha na internet em apoio a Sérgio Moro," *G1 (Globo)*, March 10, 2016, <https://g1.globo.com/politica/blog/matheus-leitao/post/juizes-fazem-campanha-na-internet-em-apoio-sergio-moro.html>.

⁸¹ AJUFE, "Nota Pública em Apoio ao Juiz Federal Sérgio Moro," *Correio Braziliense*, Blog do Servidor, March 17, 2016, <http://blogs.correio braziliense.com.br/servidor/ajufe-nota-publica-em-apoio-ao-juiz-federal-sergio-moro/>.

of his conversations with prosecutors that were leaked.⁸² When the Supreme Court overturned Lula's conviction, AJUFE publicly defended Operation Car Wash.⁸³ Even Supreme Court Justice Roberto Barroso supported the operation in the past, despite knowing that, in the future, cases relating to it might come before him.⁸⁴

If one adds Operation Car Wash to the 2016 politically debatable impeachment of President Dilma Rousseff, the result becomes the general anti-PT (anti-Workers' Party) sentiment that propelled the anti-establishment and anti-politics electoral campaign of Jair Bolsonaro to the presidency.⁸⁵

Voting for Bolsonaro

Still, we need further arguments to understand how people in general, and jurists in particular, came to lend their support to the election and subsequent administration of Jair Bolsonaro. As Stenner already has shown, any society contains at least a certain minimum percentage of people with authoritarian profiles, or authoritarian predispositions.⁸⁶ Add to this a normative threat such as a political or economic crisis—such as those that have been going on continually in Brazil—and other voters join the authoritarian ones in any undemocratic project. The case of the so-called model citizen who opposes LGBT rights, criticizes the role of universities, adopts evangelicalism as a religion, defends family and property, serves as a collection of a very heterogenous group in support of Bolsonaro.⁸⁷ In this sense, to argue that Bolsonaroism is set on a solid theoretical basis is to forget that what the movement did was to create a bricolage, a kaleidoscope of political positions.⁸⁸ Bolsonaroism does not have a coherent scheme of ideas. Furthermore, there is no proper definition of the good that should be pursued by Bolsonaroists, although blind obedience to the populist leader is required.⁸⁹ No substantive or communitarian bonds link the different backgrounds of supporters of Bolsonaro, except the atomistic and individualist concept of liberty.⁹⁰

Although President Bolsonaro claimed to have the writer Olavo de Carvalho as a guru and even paid tribute to him when he died of COVID-19, the fact is that he was only able to indicate some members for Bolsonaro's government, without offering a theoretical basis for a political direction.⁹¹ Carvalho's worldview was, in fact, the condensation of the armed forces' worldview on the threats of "cultural Marxism."⁹² In a document from 1989, they expressed their concern that the left would use the theories developed by the 20th-century Italian Marxist writer Antonio Gramsci

82 "Juizes Federais Assinam Moção de Apoio a Sérgio Moro," Migalhas (website), June 26, 2019, <https://www.migalhas.com.br/quentes/305142/juizes-federais-assinam-mocao-de-apoio-a-sergio-moro>.

83 AJUFE, "Presidente da Ajufe se Manifesta sobre Decisão do STF que Declarou que Moro foi Parcial ao Condenar Ex-Presidente Lula," AJUFE website, March 24, 2021, <https://www.ajufe.org.br/imprensa/noticias/15383-presidente-da-ajufe-se-manifesta-sobre-decisao-do-stf-que-declarou-que-moro-foi-parcial-ao-condenar-ex-presidente-lula>.

84 Thomas Bustamante, Emilio Meyer, and Evanilda Godoi, "Luís Roberto Barroso's Theory of Constitutional Adjudication: A Philosophical Reply," *American Journal of Comparative Law*, forthcoming.

85 Rafael Mafei, Thomas Bustamante, and Emilio Meyer, "From Antiestablishmentarianism to Bolsonaroism in Brazil," in *The Routledge Handbook of Illiberalism*, eds. Andrés Sajó, Renáta Uitz, and Stephen Holmes (Abingdon: Routledge, 2022), 780, <https://doi.org/10.53483/xclx3551>.

86 Karen Stenner, *The Authoritarian Dynamic* (Cambridge, UK: Cambridge University Press, 2005).

87 Mafei, Bustamante, and Meyer, "From Antiestablishmentarianism to Bolsonaroism in Brazil," 781.

88 Isabela Kalil, "Crise política, esquerdas e bolsonarismo," *Revista ADUSP* (2020), 16–18.

89 Thomas Bustamante and Conrado Mendes, "Freedom without Responsibility: The Promise of Bolsonaro's COVID-19 Denial," *Jus Cogens* vol. 3 no.2, (2021), 184, <https://doi.org/10.1007/s42439-021-00043-4>.

90 Bustamante and Mendes, "Freedom without Responsibility," 198.

91 Federico Finchelstein and Odilon Caldeira Neto, "El destino final del gurú de Bolsonaro," *Clarín*, January 31, 2021, https://www.clarin.com/opinion/destino-final-guru-bolsonaro_o_xho5R7ocBy.html.

92 Bruno Lupion, "Militares Não Mudaram Modo de Pensar Depois da Ditadura," *Deutsche Welle*, June 4, 2020, <https://www.dw.com/pt-br/militares-nao-mudaram-modo-de-pensar-depois-da-ditadura/a-53679430>.

to brainwash people and start another revolution.⁹³ This frenzy appeared in the polemicist Olavo de Carvalho's writings and would be repeated by Bolsonaro.⁹⁴

To use the 20th-century liberal philosopher John Rawls' terms, maybe the only clue as far as a single, comprehensive doctrine adopted and imposed by Bolsonaroism is related to pragmatic ends and opportunism. In fact, opportunism appears as an important feature of illiberalism, as Smilova envisages it.⁹⁵ Goals are calculated by reason of their economic means, as long as they generate wealth for the members of a given community. Such an approach explains why Bolsonaro has been able to maintain his support (even following his electoral defeat), even though he constantly changes his opinions in the face of accusations against his sons, changes in the economy, or erratic behavior towards the elites who support him. Consider, for example, that he presented himself as a corruption fighter in the 2018 presidential campaign, only to find himself and one of his sons, Flávio, being accused of organizing a kickback scheme in which they would agree to hire cronies as their publicly-paid assistants and in exchange informally demand a cut of their public salaries to be paid to the Bolsonaros each month when the two were serving in Congress.⁹⁶

Bolsonaro has been affiliated with eight different political parties over the course of his career and enrolled in a party whose leader was even arrested in the past for bribery. He criticized the whole political establishment, only to then adhere to one of worst examples of pork barrel politics of the worst parties in Brazil, to avoid impeachment proceedings.⁹⁷ He defended the protection of national interests against foreign competition throughout his career as a federal deputy, but started to support the privatization of Petrobras, Brazil's giant state-owned oil company, when gas prices were skyrocketing in 2022, the year of the presidential elections.⁹⁸ He relied on the support of several of the most senior members of the armed forces, but fired the commanders of the Army, the Navy, and the Air Force when they resisted giving him political support for his covid-19 policies.⁹⁹ All in all, opportunism seems to be the backbone of Bolsonaro's policies.

Bustamante and Mendes add that there is also a feature of Bolsonaro's supporters in their copying of his transgressive behavior based on the idea that, as an ordinary man who reached the presidency, he must authentically preserve his basic behaviors.¹⁰⁰ Additionally, Bolsonaro eschews any kind of responsibility, reproducing from the bully pulpit of his office all the authoritarian values that many of the Brazilian citizens who support him share.

93 Lucas Pedretti, "Os Ecos do ORVIL em 2021, O Livro Secreto da Ditadura," Pública (website), August 30, 2021, <https://apublica.org/2021/08/os-ecos-do-orvil-em-2021-o-livro-secreto-da-ditadura/>.

94 Olavo de Carvalho, "Do Marxismo Cultural," *O Globo*, June 8, 2002, <https://olavodecarvalho.org/do-marxismo-cultural/>.

95 Ruzha Smilova, "The Ideational Core of Democratic Illiberalism," in *The Routledge Handbook of Illiberalism*, eds. Andrés Sajó, Renáta Uitz and Stephen Holmes (Abingdon: Routledge, 2022), 177, <https://doi.org/10.53483/xcx3551>.

96 Al Jazeera, "Brazil's Bolsonaro Faces More Corruption Accusations," *Al Jazeera*, July 5, 2021, <https://www.aljazeera.com/news/2021/7/5/brazils-bolsonaro-faces-corruption-accusations>.

97 Celso Barro, "Bolsonaro Não Salvou a Democracia," *Folha de S. Paulo*, August 1, 2021, <https://www1.folha.uol.com.br/colunas/celso-rocha-de-barros/2021/08/bolcentrao-nao-salvou-a-democracia.shtml>.

98 Ricardo Colletta, "Bolsonaro Defende Revisão de Política de Preços para Conter Alta dos Combustíveis," *Folha de S. Paulo*, March 7, 2022, <https://www1.folha.uol.com.br/mercado/2022/03/bolsonaro-defende-revisao-de-politica-precos-para-conter-alta-dos-combustiveis.shtml>.

99 Igor Gielow, Vinicius Sassine, and Gustavo Uribe, "Atrito com Bolsonaro Derruba Comandantes das Forças Armadas, na Maior Crise Militar desde 1977," *Folha de S. Paulo*, March 30, 2021, <https://www1.folha.uol.com.br/poder/2021/03/comandantes-das-forcas-armadas-pedem-demissao-em-protesto-contra-bolsonaro.shtml>.

100 Bustamante and Mendes, "Freedom without Responsibility," 185.

Legitimizing Bolsonaro

Besides the continuing support of prosecutors and judges for Operation Car Wash, which cleared the way for the rise of Bolsonaro, there were jurists who openly embraced the president's proposals.

In 2018, during the presidential elections, women from all over Brazil launched the campaign *#EleNÃO* (not him), which held demonstrations in more than 114 cities and alerted the electorate to the perils of Bolsonaro's election.¹⁰¹ Against this movement, conservative jurists launched a *#EleSim* (yes, him) slogan. They argued that a major institutional effort against corruption had been undertaken in the recent past, and that they were supporting a project that should be bounded by the constitution and by tolerant and peaceful coexistence (words that would be difficult to find in Bolsonaro's speeches). The signatories of the petition included Ives Gandra da Silva Martins and other well-known jurists in Brazil, such as Luis Guilherme Marinoni, Daniel Mitidiero, and Teresa Arruda Alvim, among others.¹⁰²

Support for Bolsonaro's administration also came from Evangelical jurists. The National Association of Evangelical Jurists (Associação Nacional de Juristas Evangélicos: ANAJURE) was created in 2012 with the help of Bolsonaro's Minister of Women, Family, and Human Rights, Damares Alves.¹⁰³ Alves is known for her controversial statements, such as that use of the TikTok platform is associated with higher rates of pregnancy among adolescents.¹⁰⁴ ANAJURE supported Bolsonaro in his endeavor to nominate an Evangelical jurist to the Supreme Court—which finally happened with the nomination of Justice André Mendonça.¹⁰⁵ The association has been very active in Congress and in lawsuits brought before the Supreme Court.¹⁰⁶ It also supported Sérgio Moro when he was Bolsonaro's justice minister, especially in his harsh crime-fighting package, a bill that included, for instance, a license for policemen to kill when in the line of duty if they feared for their lives or in hot pursuit of criminal perpetrators.

Another line of support to Bolsonaro came from Brazilian prosecutors. The Pro-Society Prosecutors (Ministério Público Pró-Sociedade: MP) united prosecutors from all over the country—in an informal gathering of prosecutors and without the federal or state office's seal—who argued that capitalism is a plain fact and conservatism is part of any society (they quote the British conservative philosopher Roger Scruton on

101 Amanda Rossi, Julia Carneiro, and Juliana Gragnani, “#EleNÃO: A Manifestação Histórica Liderada por Mulheres no Brasil Vista por Quatro Ângulos,” *BBC News Brasil*, September 30, 2018, <https://www.bbc.com/portuguese/brasil-45700013>.

102 “Advogados e Professores Assinam Manifesto por Bolsonaro,” Migalhas (website), October 17, 2018, <https://www.migalhas.com.br/quentes/289344/advogados-e-professores-assinam-manifesto-por-bolsonaro>.

103 Associação Nacional de Juristas Evangélicos website, <https://anajure.org.br>. See also Carolina Zanatta, “Associação de Juristas Evangélicos Fundada por Damares Alves Amplia Lobby no Governo,” Pública (website), June 12, 2019, <https://apublica.org/2019/06/associacao-de-juristas-evangelicos-fundada-por-damares-alves-amplia-lobby-no-governo/>.

104 Melissa Duarte, “Damares Relaciona Gravidez na Adolescência ao TikTok,” *O Globo*, January 2, 2022, <https://oglobo.globo.com/brasil/direitos-humanos/damares-relaciona-gravidez-na-adolescencia-ao-tiktok-25376786>.

105 ANAJURE, “Nota Pública em Resposta à Manifestação que Postula a Rejeição da Indicação do Dr. André Mendonça ao STF,” ANAJURE website, July 20, 2021, <https://anajure.org.br/nota-publica-em-resposta-a-manifestacao-que-postula-a-rejeicao-da-indicacao-do-dr-andre-mendonca-ao-stf/>.

106 Carolina Zanatta, “Associação de Juristas Evangélicos Fundada por Damares Alves Amplia Lobby no Governo,” Pública (website), June 12, 2019, <https://apublica.org/2019/06/associacao-de-juristas-evangelicos-fundada-por-damares-alves-amplia-lobby-no-governo/>.

their website).¹⁰⁷ They criticised “globalism,” much in the sense of how Bolsonaro’s then-Foreign Minister Ernesto Araújo did, alleging that Communism, cronyism, and Gramscian Marxism came to replace the traditional values of society in the 1960s.¹⁰⁸

Prosecutors also argued in favor of parents’ rights concerning the education of their children. Concerning their functions, the role of prosecutors should be, above all, to protect victims’ rights and they should avoid what they refer to as “thugolatri” (*bandidolatria*). One of the members of the Pro-Society Prosecutors described the coronavirus as a “Chinavirus.”¹⁰⁹ Several of its members insisted that mayors throughout Brazil needed to offer the public the so-called “early treatment” for COVID-19—the mixture of hydroxychloroquine, ivermectin, and other medicines without scientific basis that Bolsonaro was irresponsibly recommending to the population.¹¹⁰ Additionally, a federal prosecutor who is part of the group argues on social media that the “worldwide left” is responsible for pedophilia.¹¹¹ Even a request for Bolsonaro to declare a state of emergency in reason of the pandemic was made by the association, with fierce criticism by others prosecutors’ associations throughout the country.¹¹²

Beyond indirect or electoral support for Bolsonaro, other jurists have volunteered their time to advance Bolsonarism. André Mendonça has held, successively, the offices of attorney general and minister of justice. In the latter role, he harassed Bolsonaro’s critics using the now revoked National Security Act.¹¹³ His fidelity was rewarded in the form of a nomination to the Supreme Court. José Levi do Amaral, a constitutional law professor at the University of São Paulo and a career member of the Office of the Solicitor General, also served as attorney general.

Augusto Aras was nominated to be prosecutor general and has been widely criticized for his failure to hold President Bolsonaro accountable. Once a very autonomous and effective position, the prosecutor general has become the clearest case of institutional capture under the Bolsonaro administration. Consider that a study and report concerning the lawsuits on the constitutional review at the Supreme Court under the Bolsonaro administration has shown that the prosecutor general filed only 1.74% of the proceedings.¹¹⁴ This means that, in a government not committed to the

107 See Ministério Público Pró-Sociedade website: <https://www.mpprosociedade.com.br>. At the time of this writing, the Pro-Society Prosecutors website has been suspended, probably due to an investigation by the National Council on Prosecutors into undue usage of the name of the institution. See João Filho, “Como Atua o MP Pró-Sociedade, Grupo Que Usa o Aparato do Estado em Defesa da Ideologia Bolsonarista,” *The Intercept Brasil* (website), November 1, 2020, <https://theintercept.com/2020/11/01/como-atua-o-mp-pro-sociedade-grupo-que-usa-o-aparato-do-estado-em-defesa-da-ideologia-bolsonarista/>; Hyndara Freitas, “CNMP Vai Avaliar Uso do Termo ‘Ministério Público’ por Entidades de Direito Privado,” *Jota* (website), June 24, 2020, <https://www.jota.info/coberturas-especiais/liberdade-expressao/cnmp-vai-avaliar-uso-do-termo-ministerio-publico-por-entidades-de-direito-privado-24062020>.

108 Ernesto Araújo, Palestra do Ministro Ernesto Araújo no Seminário da FUNAG sobre Globalismo, Brazilian Foreign Ministry website, June 10, 2019, <https://www.gov.br/funag/pt-br/centrais-de-conteudo/politica-externa-brasileira/palestra-do-ministro-ernesto-araujo-no-seminario-da-funag-sobre-globalismo>.

109 Filho, “Como Atua o MP Pró-Sociedade.”

110 Emilio Meyer and Thomas Bustamante, “A Portrait of Bolsonaro’s Crimes against Humanity,” *Verfassungsblog*, November 5, 2021, <https://verfassungsblog.de/a-portrait-of-bolsonaros-crimes-against-humanity/>.

111 Filho, “Como Atua o MP Pró-Sociedade.”

112 Associação Paranaense do Ministério Público, “Associações do Ministério Público São Contrárias à Representação da Entidade MP Pró-Sociedade que Postula a Decretação de Estado de Defesa,” March 17, 2021, <https://www.apmppr.org.br/noticias/associacoes-do-ministerio-publico-sao-contrarias-a-representacao-da-entidade-mp-pro-sociedade-que-postula-a-decretacao-de-estado-de-defesa-3159>.

113 Ulisses Reis and Emilio Meyer, “Undemocratic Legislation to Undermine Freedom of Speech in Brazil,” *I-Connect Blog*, February 3, 2021, <http://www.i-connectblog.com/2021/02/undemocratic-legislation-to-undermine-freedom-of-speech-in-brazil/>.

114 Eloísa Machado and Luiza Ferraro, “PGR e AGU se Alinham na Defesa de Atos de Bolsonaro, Aponta Estudo Sobre Ações Movidas no Supremo,” *Folha de S. Paulo*, August 19, 2021, <https://www1.folha.uol.com.br/poder/2021/08/pgre-agu-se-alinham-na-defesa-de-atos-de-bolsonaro-aponta-estudo-sobre-acoes-movidas-no-supremo.shtml>.

rule of law, the number of prosecutions was quite low. Concerning 287 lawsuits, the prosecution service only gave its opinion in 148 proceedings, most of the time delaying manifestations: this shows a lack of oversight procedures. Considering that the Office of the Solicitor General is the institution responsible for defending the federal government, it is no surprise that the prosecutor general had the same opinion in 85.71% on the merits of the cases. Even with thousands of documents and other evidence found by the congressional committee that investigated Bolsonaro for his policies on the COVID-19 pandemic, showing that herd immunity was a general policy that led to over 600,000 deaths, the prosecutor general has done nothing at the time of this writing. On the contrary, in another lawsuit relating to the pandemic, the office expressed doubts about the efficacy of mask wearing to prevent infections.¹¹⁵

Conclusions

As in any constitutional jurisdiction, the Brazilian political system is pressed by the tensions between constitutionalism and democracy on one side, and liberalism, antiliberalism, and illiberalism, on the other side. As described in this article, the complete removal of authoritarian or illiberal dispositions and practices is an impossible task to accomplish, especially in an extremely unequal society historically marked by slavery and colonialism. This does not mean that Brazil is doomed to authoritarianism: through different phases in its constitutional history and, especially, more recently, political stabilization through constitutional democracy was partially reached. However, pressed by constant political and economic crises from at least 2013 onward, these authoritarian predispositions blossomed in a way capable of carrying a self-declared far-right authoritarian candidate all the way to the presidency. With him came a wave of support from people who felt left behind by mainstream public policies, coupled with amplified accusations of corruption and fake Communism, echoing the type of criticism authoritarian constitutionalists made in the past. This revival and reinvention in the very different setting of an Information Age society helped gather support and maintain it, even in face of a pandemic badly fought.

However, if illiberalism was structured and legally legitimized by several scholars in today's Brazil, it has not yet reached the point of no return in politics. The administration's poor performance in the face of the pandemic and the political incompetence of President Bolsonaro prevented him from expanding his popularity. This scenario helped institutions to mount political and juridical responses, in Congress and in the Supreme Court, that opposed his most authoritarian objectives. Incapable of gaining wider support while following the path of illiberalism, it seems that Bolsonarism has big challenges facing its political future in Brazil—even if it will not, in the near term, disappear as a political force. The results of the 2022 elections showed that Bolsonarism is still capable of electing several conservative deputies and senators, meaning that it will be, for the time being, a strong political force, even without Jair Bolsonaro being re-elected president.

115 Márcio Falcão and Fernanda Vivas, "Parecer da PGR que Minimizou Não Uso de Máscara por Bolsonaro Gera Perplexidade, diz Rosa Weber," *G1 (Globo)*, October 1, 2021, <https://g1.globo.com/politica/noticia/2021/10/01/parecer-da-pgr-que-minimizou-nao-uso-de-mascara-por-bolsonaro-gera-perplexidade-diz-rosa-weber.ghtml>.

TABLE 1. List of Brazilian liberal and illiberal scholars mentioned in the article

Scholars and jurists	Main period(s) of publication and activity	Government positions held	Academic positions held	Main publications
Braz Florentino (1825–1870)	Brazilian Empire (1824–1870)	Governor of Maranhão province	Recife School of Law Professor	<i>Do Poder Moderador</i> (1864)
Góis e Vasconcelos (1815–1877)	Brazilian Empire (1824–1870)	Governor of 3 provinces, Deputy and 3-time Minister (Navy, Justice, and Economy)	Recife School of Law Professor	<i>Da Natureza e Limite do Poder Moderador</i> (1860)
Rui Barbosa (1849–1923)	Brazilian Empire (1824–1870), 1st Republic (1891–1930)	Finance Minister, Senator, Deputy, Representative at the Hague Peace Conference (1907)	N/A	<i>Os Atos Inconstitucionais do Congresso e do Executivo ante a Justiça Federal</i> (1893)
Pedro Lessa (1859–1921)	1st Republic (1891–1930)	State Secretary, Supreme Court Justice	São Paulo School of Law Professor	<i>Do Poder Judiciário</i> (1915)
Alberto Torres (1865–1917)	1st Republic (1891–1930)	Governor of Rio de Janeiro state, Minister of Justice, Supreme Court Justice	N/A	<i>O Problema Nacional Brasileiro</i> (1938)
Oliveira Viana (1883–1951)	1st Republic (1891–1930), Vargas dictatorship (1937–1945)	Union Audit Court Minister	Rio de Janeiro State School of Law	<i>Instituições Políticas Brasileiras</i> (1949)
Pontes de Miranda (1892–1979)	Vargas dictatorship (1937–1945), 1946–1964, Military dictatorship (1964 until Miranda's death)	Judge, diplomat	None (professor <i>honoris causa</i> in several institutions)	<i>Comentários à Constituição de 1967</i> (1970)
Francisco Campos (1891–1968)	Vargas dictatorship (1937–1945), Military dictatorship (1964–1985)	State and Federal Deputy, State Secretary, Education Minister, Justice Minister	Professor: Minas Gerais School of Law; National School of Law	<i>O Estado Nacional</i> (1940)
Almir de Andrade (1911–1991)	Vargas dictatorship (1937–1945)	National Agency Director, Vice-Chief of Staff	Rio de Janeiro School of Law	<i>Diretrizes da Nova Política do Brasil</i> (1943)
Miguel Reale (1910–2006)	Vargas dictatorship (1937–1945), 1946–1964, Military dictatorship (1964–1985), 1988 Constitution until Reale's death	São Paulo Justice Secretary, reviewer of the 1967 military-imposed Constitution	São Paulo University School of Law Professor	<i>Obras Políticas</i> (1983)
Alfredo Buzaid (1914–1991)	Military dictatorship (1964–1985)	Minister of Justice, Supreme Court Justice	São Paulo University School of Law Professor	<i>Humanismo Político</i> (1973)
Hely Lopes Meirelles (1917–1990)	Military dictatorship (1964–1985)	Judge, São Paulo Public Security State Secretary	São Carlos Engineering School	<i>Direito Administrativo Brasileiro</i> (1982)
Manoel Gonçalves Ferreira Filho (1934–)	Military dictatorship (1964–1985), 1988 Constitution onwards	São Paulo Vice-Governor; São Paulo State Secretary of Justice	São Paulo University School of Law Professor	<i>O Poder Constituinte</i> (1985)
Celso Ribeiro Bastos (1938–2003)	1988 Constitution onwards	N/A	São Paulo University School of Law Professor	<i>Curso de Direito Constitucional</i> (1999)
Ives Gandra da Silva Martins (1935–)	Military dictatorship (1964–1985), 1988 Constitution onwards	N/A	Mackenzie Presbyterian University Professor	<i>O Estado de Direito e o Direito do Estado</i> (2006)
Sérgio Moro (1972–)	1988 Constitution onwards	Federal judge, Minister of Justice	Federal University of Paraná School of Law Professor	"Considerações Sobre a Operação Mani Puliti" (2004)