

The Brazilian Presidential Election of 2022 and the Crisis in Brazilian Democracy



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The Brazilian election of 2022 was followed worldwide because Brazil was clearly an important country, and because of the contenders for president. Former president Luis Inácio Lula da Silva was making a comeback and led in the polls while incumbent president Jair Bolsonaro was seeking reelection feeling certain he would win. From today's perspective, they are the outstanding Brazilian political figures of their generation. Lula raised social democracy, strongly flavored with syndicalism, to a peak during his two terms as president from 2003 to 2010. Bolsonaro, though a marginal figure until his 2018 election as president, brought a hitherto unknown version of conservative governance and presidential leadership to Brazil. By the time of the election, both men carried with them fervent hopes of tens of millions of Brazilians. Votes cast for the two candidates in



the presidential runoff on October 30 were more than 120 million. The results gave Lula 50.9% of the votes and Bolsonaro 49.1%, the closest presidential election in Brazilian history.

Both Lula's and Bolsonaro's origins and preparation for the presidency differed greatly from previous presidents. Lula was born in the Brazilian northeast, perhaps the most impoverished area in Latin America, and certain details from his early life still have the power to shock. His first childhood home was a shack built over a beaten earth floor without running water or a bathroom. He later migrated with his family to São Paulo, making the thirteen day long trip in the back of a truck. In São Paulo, he received four years of formal education, followed by training as a skilled machinist operating a lathe. The work was dangerous, and he lost a finger working at a lathe. Lula rose to prominence as a charismatic labor leader commanding autoworkers striking against multinational motor vehicle companies in the late 1970s when Brazil was moving from military dictatorship to democracy. Striking autoworkers (there were several strikes) received ample news coverage inside and outside Brazil. Lula's manifest abilities as a leader had political consequences as middle and upper class collaborators joined him to establish the Workers Party in 1980. His trajectory was no longer linked to labor unions as part of a syndicalist state, but to political party competition with the goal of being elected president. Bolsonaro by contrast grew up in the interior of São Paulo, a product of small-town, lower middle-class life. He knew how to take advantage of educational opportunities as a child and adolescent and later graduated from the army military academy at Agulhas Negras. Bolsonaro learned, though, that he lacked the vocation of the

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professional soldier; he was unwilling to submit quietly to the hierarchical discipline of the army. He left the military with a rank of captain in 1988 and entered politics in Rio de Janeiro.

In the late 1970s, Lula was the newest Latin American political phenomenon to capture international attention as had Emiliano Zapata three generations before in Mexico, and Fidel Castro and Che Guevara a generation earlier in Cuba. For the United States government and a large swath of U.S. public opinion, Lula and his autoworkers had a definite advantage over Castro's guerrillas since they were not communists. In fact, they were strongly supported by Brazil's progressive Catholic Church, then receiving much attention for liberation theology activism in behalf of the poor. Lula's brother was a communist, and had tried to convince him to join the party to no avail. An upper-class woman, one of the historic founders of the Workers Party in 1980 who knew Lula very well, explained to me that he did not become a communist because "Lula was very Catholic." The social democracy of Lula and the Workers Party emphasized the message "Everyone knows we have a permanent commitment to the poor," a message I remember hearing Lula say with quiet conviction during a speech in Rio de Janeiro in 2010. His two terms as president from 2003 to 2010 were considered largely successful and won Lula international acclaim.

On January 1, 2023, Lula began his third term as president, this time over a deeply polarized Brazil. He was haunted by the strong popular support for Bolsonaro, admitting that Bolsonarismo had been "consolidated." As early as 2018, he foresaw a deadly struggle between his Workers Party and Bolsonaro. Lula's social democracy and activist state was pitted against Bolsonaro's newly minted, combative conservatism that strove to minimize the state and privatize state owned firms, and, to the extent possible, the whole economy. Lula nevertheless began his third term vigorously active.

He made his first foreign trip on January 23 to Buenos Aires for the meeting of the Community of Latin American and Caribbean States (CELAC). CELAC brought together delegations from thirty countries comprised of political voices from both the left and right. Lula delivered a keynote address on the importance of CELAC countries becoming a consequential region in an emerging multipolar world. While Lula recommended tilting towards Europe rather than Asia, particularly China, Uruguay's center-right president Lacalle Pou disagreed and argued that Uruguay needed to "open to the world." Though Uruguay was a member of the Mercosur trade bloc alongside Brazil, Argentina, Paraguay, and seven other associated states, Pou ignored the bloc's rules and signed commercial agreements with China and New Zealand. Lula also joined with Argentine president Luis Fernandez in arguing that it was the left that defended democracy. Pou dissented, stating that "it's not necessary to be a leftist to defend democracy," adding that not everyone present "at the table" had democratic values, a thinly veiled reference to Cuba. Pou believed that CELAC could not be a "club of ideologues." The next day Lula travelled to Uruguay, where Pou welcomed him by commenting, "I've always thought that Brazil, because of its size, ought to be generous with neighbors such as Uruguay." In both Buenos Aires and Montevideo, Lula unexpectedly revived grievances from Brazil's recent political history. He attacked former vice president Michel Temer and the Brazilian congress for carrying out the *golpe de estado* that removed his handpicked successor president Dilma Rousseff in 2016 and made Temer president for nearly two years. According to Lula, the presidencies of Temer and Bolsonaro destroyed all the advances Brazil achieved during the thirteen years of Workers Party governance, leaving Brazil in dire straits today, economically and socially. Late in the afternoon in Montevideo, Lula met with Pepe Mujica, an old friend, ex-guerrilla, and former president of Uruguay. Mujica pointedly asked, "What is this mess you got yourself into?"

As the first months of Lula's presidency draw to a close, there is a continuing crisis in Brazilian democracy that recalls some features of previous periods (1922-1930, 1961-1964), where several years of disruptive political acts culminated in the overthrow of a regime. Brazil has had seven constitutions since 1824, six of them since the establishment of the Republic in 1889. Nevertheless, the current crisis has three features not seen before. The first is an activist Federal Supreme Court (STF) that extends to the Superior Electoral Tribunal (TSE), the two tribunals together playing an important role during the October general and runoff elections. The second and third features follow a suggestion of Ademar Borges, an authority constitutional law, who notes that democracies can have combative and militant characteristics. Brazil's combative democracy features Lula, Bolsonaro, and STF minister Alexandre de Moraes as protagonists, each of whose combativeness increases public controversy. Militant democracy was exemplified by large daily pro-Bolsonaro protestors who began gathering at military and government buildings with the announcement of Lula's victory. After protestors invaded government buildings at the Plaza of the Three Powers in Brasília on January 8, the army and federal police dissolved these mass protests. The invasion served as a green light to the Lula administration to end the protests.

JUDICIAL ACTIVISM

Today's judicial activism has, to some extent, grown out of an academic argument that members of the executive and legislative branches mean well, but

are largely controlled by outside pressure groups and cannot defend the interests of electors or do what they promised voters. The congress especially had faltered in recent years in writing good legislation and not investigating the pernicious influence of pressure groups. Using the Constitution, Brazil's carefully elaborated codes of law, and the constitutional power of the judicial branch to investigate, the Federal Supreme Court (STF) sees itself rectifying illegalities and omissions

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of the legislative and executive branches. This plunge into activism was not part of the writing of the 1988 Constitution, nor had it ever been part of the STF's history. Minister Alexandre de Moraes, who joined the court in 2019, has emerged as an outsized exponent of activism. A fellow minister labeled Moraes the court's "sheriff," while the Workers' Cause Party, whose assets he froze, scathingly referred to the bald justice as a "skinhead in a toga," the toga being the signature vestment of STF

ministers. Moraes's supporters find him well prepared and courageous. Investigative journalist Glen Greenwald of WikiLeaks fame, a twenty year resident in Brazil, notes the power deployed by Moraes and the danger it represents to civil liberties: "I find it dangerous that a judge may have so much power to initiate accusations, and afterwards to declare the accused guilty without a trial or being given notice."

STF activism and Alexandre de Moraes' leadership has grown for several reasons. First were concerns over the safety of the court and its ministers in politically polarized Brazil. As with each federal branch of government located in Brasília, the STF produced its own safety protocol. The STF

originally limited this safety protocol to include only its own modernist Supreme Court building and immediate surrounding environs. However, social media platforms allowing free-for-all discussion and an abundance of “fake” news caused the STF to include internet posts as a threat to its safety. In 2021, federal deputy Daniel Silveira posted a video on social media with violent verbal attacks against members of the STF. On the recommendation of Prosecutor General of the Republic (PGR) Augusto Aras, Moraes arrested, convicted, and sentenced Silveira for crimes against the democratic rule of law, and stripped him of his congressional mandate. His parliamentary immunity offered no protection. It did not extend to freedom of speech on social media. Silveira would never have been prosecuted had he limited his inflammatory speech to the Chamber of Deputies. In making a video and putting it on the internet, he was judged as endangering the STF and its ministers. The day after conviction, President Bolsonaro combatively pardoned Silveira, which opponents immediately decried as *golpismo*, or an attempt to seize power.

Moraes chose to take charge of cases of persons arrested for the January 8 invasion of government buildings in the Plaza of the Three Powers, during which the door of his own office was torn off its hinges. They numbered 1,459 people. He assumed the responsibility of deciding whether to hold them in preventive custody or to release them, redefining the rules of the custody hearing in the process.

Custody hearings are a new feature of Brazilian due process. Introduced in 2015, custody hearings are required in the Federal District (DF). Arrested individuals have the right to a lawyer (public defenders are also available), while a public prosecutor is present to represent the state. All are questioned by a judge to determine whether the individual should continue to be held or released. If mistreated, an investigation is ordered. Custody hearings are an advance over the long established system of arrest where the only record was a written

statement by a member of the state government civil police. Moraes put federal police and state civil police of the DF to work around the clock, completing forms that became the basis for decisions. He insisted on custody hearings, but denied judges the power to hold or release individuals, which he would decide, surely a troubling innovation in applying this newly acquired citizen right. Some were released, but with restrictions such as curfews or the requirement to wear electronic anklets. A larger number were held in preventive detention, so called because the purpose is to prevent the individual from committing more crimes or destroying evidence. Their ordeal was not over, since precautionary measures and preventive detention can lead to long periods of confinement or semi-confinement. Preventive detention is the most common form of lengthy imprisonment in Brazil, and much more likely to occur than a sentence following a speedy criminal trial, a relatively rare event. Former Rio de Janeiro governor Sergio Cabral recently emerged from five years of preventive detention. Though charged with a long list of corruption related crimes, he never went to trial.

Alexandre de Moraes has acted in a number of ways his critics find arbitrary and unconstitutional. For example, he also imposed prior restraint censorship on written, televised, radio, and social media platforms in order to remove what he judged as fake news and uses of defamatory language. He treated violations of prior restraint as breaking the democratic rule of law. Defamatory language during the election and presidential debates had included calling Lula a thief (*ladrão*), and Bolsonaro genocidal (*genocida*), a feature of partisan name calling alluding to crimes for which neither candidate had been convicted. Lula had been convicted of money laundering, but the STF annulled the verdict because of due process violations, and it was now against the democratic rule of law to call Lula *ladrão*. Censorship imposed during the general and runoff elections was

originally intended only for that period, but has continued after Lula's government has been sworn in, and nobody knows when it will end. Moraes also refused to accept formal complaints questioning the outcome of the presidential election after he declared Lula the winner. Liberal party president Valdemar Costa Neto acceded to Bolsonaro's request to ask Alexandre de Moraes as president of the Superior Electoral Tribunal to review presidential runoff election results after technical studies revealed the electronic voting booths were vulnerable to sophisticated attacks by hackers, and pointed to cyber anomalies in casting and counting votes. Moraes dismissed the request as a temerity undeserving of standing, and fined the Liberal Party 4.5 million dollars for bringing it forward. This recalled an earlier case of recorded radio messages that were allowed on air shortly before the runoff election. Bolsonaro's team of experts monitoring his messages noted they were not always aired while those for Lula were. Bolsonaro complained to Moraes, who gave him an evening to develop a study. While Bolsonaro dozed nearby, his team worked through the night and produced the study. Presenting it to Moraes, the minister declared the election over, would not consider the report he had asked for, and wanted to know where Bolsonaro's group received the money for the study.

Critics of Alexandre de Moraes have no trouble citing what they believe are several arbitrary, unconstitutional acts, especially during and after the 2022 election and the assault on the Plaza of the Three Powers. Still, what he and the STF would do in the future remains uncertain. For example, how long would prior restraint censorship continue?

What was Lula's view of the judiciary in late January? After replacing several leaders in the federal police and federal highway police, Lula concluded that the executive, legislative, and military branches of government would now be able to fulfill their duties. He omitted any reference to the judicial branch fulfilling its duties.

COMBATIVE DEMOCRACY

That combativeness is a prominent feature of contemporary democracy in Brazil can be blamed or credited to Lula, Bolsonaro, and Moraes. Each contributes something to the mix. Commentators have noted a spirit of *revanche*, a desire for revenge, in Lula missing from his earlier political life. In 2017, Lula was convicted of money laundering, though the condemnation was annulled in 2021. For Lula, both the conviction leading to incarceration and its subsequent overturning appeared to be humiliating tricks, or *artimanhas*, played on him, and responsible to some extent for a petulance often present in speeches

and interviews. The assault on the Plaza of the Three Powers remains an unfinished and vexing issue for Lula, with hundreds of people still detained. Lula is at his worst when talking about whom to blame, discussing the connivances of those responsible for protecting the area, the participation of the military in the assault, and insisting he does not want a CPMI (congressional investigation) because it would bring "confusion," prompting opponents to believe he hopes to avoid discovery of information damaging to his administration, in power since January 1. Lula's administration now pursues a policy of charging detained people with committing crimes of *lesa*

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pátria, meaning injuring or offending the nation, a lesser offense in the penal code than terrorism or treason, treason being Brazil's only capital punishment crime. In 2022, for example, Jair Bolsonaro was charged with the crime of *lesa pátria* for questioning the integrity of upcoming national elections thereby bringing the reputation of Brazil into disrepute at home and abroad.

There remains a question of whether Lula can control an impulse to lash out against political opponents, at times in profanity laced language. In politically polarized Brazil, Lula's leadership will continue to be strongly contested. As president, he has the power to issue provisional measures (MPs) that become law if approved by Congress within 120 days, but his MPs remain unapproved. Many federal appointments still need to be made, and the pace of filling them is slow by Brazilian standards. A series of gaffes marked Lula's presidential campaign in 2022, and his presidency in 2023. In 2022, candidate Lula called Bolsonaro ignorant for doubting the efficacy of COVID-19 vaccines, suggesting the cause was growing up a country bumpkin in the interior of São Paulo. In 2023, President Lula was so unwise as to declare slavery a misfortune (*desgraça*) that "caused a good thing...miscegenation, the mixture of indigenous, blacks and Europeans permitting that beautiful people might be born here." He was immediately condemned for saying anything good was caused by slavery.

Minister Alexandre de Moraes is an apparently imperturbable combatant in polarized Brazil. Strongly supported by nine of eleven colleagues on the court – a support that grew during controversies over fake news, free speech, and the 2022 election turmoil that seemed to presage a coup – he stands out as a fierce defender of the democratic rule of law as he defines it, even when he is seen as coming close to breaking the law himself. A memorable example of imperturbability was Moraes noting before an audience the large number of individuals

arrested in the United States for the January 6, 2021 riot at the Capitol. He laughed and mused: "We have a lot of people to arrest here to keep up with those numbers." Despite criticism at home and abroad, Moraes, ensconced in the judiciary, proceeds calmly with a sense of security and certainty unavailable to either Lula or Bolsonaro.

For Jair Bolsonaro, combativeness seems a way of life. In 1986, as a low ranking army officer, he published a one page article in VEJA, a large circulation weekly news magazine, stating that reports of expulsion of dozens of cadets from the Agulhas Negras military academy for homosexual acts, use of drugs, and supposed lack of vocation for a military career was the result of low salaries that were destroying the officers of the Brazilian army. The article cost him fifteen days of detention. A year later he was quoted in VEJA that if salary increases remained below 60%, there would be bombs exploded in bathrooms of certain military installations, but in a way that prevented anyone being harmed. For this he was tried and convicted by a lower military court, but later absolved by the Supreme Military Tribunal. In 1988, feeling unable to earn enough as a soldier to support his family, Bolsonaro left the army with the rank of captain and entered politics, immediately winning an election for Rio de Janeiro city councilman. Beginning in 1990, he was elected a federal deputy six consecutive times. By late 2017, he was on the cover of VEJA identified as "The Bolsonaro Threat." "With extremist ideas and an insulting discourse," he was said to be the choice of thirty million Brazilians, enough for second place in presidential polls. In 2018, Jair Bolsonaro, the combative federal deputy, defeated Workers Party candidate Fernando Haddad in the presidential election.

Bolsonaro's victory ended over a quarter century of social democratic government. In its place, Brazil now had a government with policies and a tone often starkly at odds with social democracy. Opponents of Bolsonaro saw many qualities in the

one-time army captain they disliked, even abhorred. He was an unwelcome militarist. His administration had retired generals and active duty military occupying important government positions. Opponents either feared or insisted he would revive some version of authoritarian rule, though Bolsonaro stated again and again that he governed within the boundaries of the Constitution, and never took away anyone's freedom. Completely unacceptable to the left were Bolsonaro's views on gender and LGBTQ issues. Damaraes Alves, his minister of Human Rights and the Family, said boys should wear blue and girls pink. Bolsonaro himself had notoriously made homophobic statements. Was Bolsonaro a racist? He was against quotas based on race, claiming they divided people, a common argument and enough for his opponents to label him a racist. Addressing a largely white audience in Rio de Janeiro as a federal deputy, he accused descendants of fugitive slave communities (*quilombolas*) who had the constitutional right to apply for grants of land and government financial support of *engordando*, or getting fat and taking it easy, an insult Bolsonaro also applied to well-paid labor union officials. After visiting a *quilombola* community, he joked that no adult male weighed less than 250 pounds, using not the standard word for body weight *quilos* but *arrobas* instead, a term that recalled the weighing of sugar bags on Brazil's slave labor plantations. He added being so overweight must have made difficult the siring of children. These remarks got a laugh, but were also deemed disrespectful and racist by a judge who levied a heavy fine on the federal deputy. Bolsonaro has been a determined opponent of further demarcations of Amazon rainforest lands for Indigenous groups and *quilombolas*, even though

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they continue to have a constitutional right to apply for them. During the 2018 presidential campaign, he went so far as to say that if elected president he would not demarcate an additional centimeter of land. In defending his rainforest policies, Bolsonaro has been at his most combative.

Bolsonaro's combativeness put him in direct conflict with Alexandre de Moraes in the run up to the 2022 election. Neither Bolsonaro nor Moraes yield in arguments when they believe they are right. Buoyed by large enthusiastic turnouts wherever he went, Bolsonaro was convinced he would win the election even if the Superior Electoral Court and the voting machines were against him. He seemed stunned upon losing by a small margin and withdrew for three days into silence. Though he did not concede defeat, he did end his aggressive questioning of electronic voting security in the final weeks of 2022. He recommended to his followers that they had a constitutional right to peaceful protest, but also directed his chief domestic advisor Senator Ciro

Nogueira to initiate work on the transition of power with Vice President elect Geraldo Alckmin. Bolsonaro himself would have a cordial meeting with Alckmin as part of the transition. Bolsonaro was an uncertain defeated candidate as Brazil moved toward Lula's inauguration, even as the disputed presidential election continued in play when anti-Lula militants appeared throughout Brazil protesting in front of military installations.

MILITANT DEMOCRACY

The combativeness of Jair Bolsonaro might be in abeyance, but others still fight his battles. Beginning

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on October 31 and continuing to January 9, hundreds of thousands of people gathered daily at military installations throughout Brazil protesting the results of the presidential election in open disagreement with Alexandre de Moraes and the Superior Electoral Court that declared Lula the winner. The cause of Jair Bolsonaro, and even more the sense of his followers that they had been deprived of constitutional rights such as freedom of speech, added another chapter to the history of political militancy in Brazil.

Right and left leaning militant groups can flourish in times of democracy. Militancy by definition is a full time endeavor, involves sacrifice, and may be dangerous for militants. At the same time, people's commitment to stop everything else in order to militate for a cause is widely admired. The classic example was the Brazilian Communist Party of the twentieth century. The Communist Party, or *partidão*, (the political party with a vanguard of militants) featured a cultural elite best exemplified by novelist Jorge Amado and architect Oscar Niemeyer. Their longtime leader was legendary captain Luis Carlos Prestes (1889-1990), who led a column of rebellious soldiers, including fifty women combatants, on a march through Brazil's interior from 1924 to 1927. During the march, Prestes came face to face with the depths of Brazilian poverty and concluded that the only thing he could do was join the Communist Party.

Partisan militants supporting Bolsonaro strongly believed in their cause during the closing months of 2022 and opening months of 2023. Throughout November, December and into the first days of January in Rio de Janeiro, militants could be found in front of the Military Command of the East next to the central railroad and bus station. Most were mature middle and upper middle class men and women. Militants dressed in yellow and green with the Brazilian flag prominently displayed on their clothing. A leader with a microphone could be heard calling "SOS [Save Our Soul]" and the

protesters answered with "Armed Forces." Another call and response was "All power," answered with "comes from the people," a statement in the first article of the 1988 Constitution. The largest single group of militants encamped in front of the army General Command in Brasília. They set up tents, had eateries, chemical toilets, and places to bathe. A pregnant woman even gave birth to a boy named João. Militants mixed with soldiers and their families, and were an indispensable presence in Brasília doing much to make the arrival of dozens of busloads of protestors to the January 8 mass protest possible. Though the militants were labeled "Bolsonaristas" by the media, they did not bring placards of Bolsonaro or release large inflated figures of him called *pixulecos*. Instead, they focused on issues – their rights as citizen protesters and calls for the end of censorship. Their future is uncertain, but it's unlikely they will waver in their convictions, meaning half the voting population in Brazil will continue strongly against Lula and his government, and believes the worst about both.