

UNIVERSITÀ DEGLI STUDI DI PADOVA

DEPARTMENT OF POLITICAL SCIENCE,
LAW, AND INTERNATIONAL STUDIES

**Master's degree in
Human Rights and Multi-level Governance**



**DEMOCRACY DECLINE AND THE CASE OF
BRAZIL**

Supervisor: Prof. SARA PENNICINO

Candidate: JULIA GALBIATI GARCIA

Matriculation No. : 2046756

A.Y. 2022/2023

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Introduction

Democracy as a form of government took a long time to become the standard system in the world. Recent developments have shown that in the contrary direction, it only takes a little time to be destroyed. Decline, erosion, or backslide, became the main forms of threat to democracy across Latin America and Eastern Europe. A liberal constitutional democracy system presumes a set of institutions to exist, creating limits and establishing checks and balances on government and governance. Elections and the idea of competition and participation in the selection of power is an essential aspect of democracy, transparency and accountability of those elected is part of the system's engine of self-function. Recent cases of countries that came to become democracies years ago are now facing an erosion in their quality of governance, what we call democracy decline.

Liberal democracy, which seeks to ensure liberty by the acknowledgment of diversity and pluralism is showing dysfunctional signs once tolerance to ambiguity is shrinking within society. Tolerance of opposition became an issue and elected incumbents can threaten democracy from within. Recent data has shown that democracy decline in some countries is a fact, and that there are fragilities within the system being exploited by authoritarian elected leaders. This is the case for Hungary, Venezuela, and Turkey. It seems to be quite a paradox when those who win elections and participate in democratic electoral competition are the ones carrying out the backslide. Previous threats to democracy were marked by coups and seizures of power by nonelected officials, now it is by elected ones. Institutions and laws designed to support democracy became instruments of these authoritarian leaders to facilitate the decline and demise of the system. Actions towards the weakening of the rule of law, dismantling of courts, limiting rights of the opposition and minorities, and violation of the freedom of the press, are all charges taken together to undermine intuitions of democratic governance.

With those considerations, the first research question dealt with in the first Chapter of this thesis is “how democratic decline can be identified?”. Following the extent of this question answers, the remaining Chapters will evolve around the second question, which is “how does it fit the current political scenario of Brazil into the issue of democracy decline?”. To achieve an answer the research method applied was case study, considering the consolidated academic take over democracy decline in Hungary, Poland, Venezuela, and Turkey, to then compare the elements of these examples to the case of Brazil. The research was qualitative, therefore involving the content

analysis and literary review of a democracy decline framework, in order to better understand the decline in Brazilian democracy, focusing on the time frame of Jair Bolsonaro's rise to power and presidency. In summary, we performed a literary review of what indicators the academia has used to discern the erosion of democracy in specific cases, to then argue on these indicators in the context of Brazil. The democracy decline framework we focused on when developing the cases is the one elaborated by Ginsburg and Huq in the work *How to Save a Constitutional Democracy*.

The present thesis consists of four parts. In the first part, we go on about democracy definition and decline data, to then do an analytical assessment of the multiple scholars' studies on what are the dominant modes by which democracy is threatened; identifying factors that are key in democracy decline studies. The second part focuses on Brazil's context and its democracy decline scenario, what are the relevant points in the country's recent developments that build on to the decline of democracy. This second part deals with the historical context of Brazil's previous Military Dictatorship, as well as with the high levels of polarization currently dividing Brazilian society. In the third part, entitled *Decline in Practice*, an array of cases is put forward seeking to better understand the framework of decline and be used as a comparison to the case of Brazil under Jair Bolsonaro's presidency. In this third part the assessment is divided into five elements as major indicators of democracy decline, formal constitutional amendments, elimination of institutional checks, centralizing and politicizing the executive power, shrinking of the public sphere, and lastly, elimination of political competition. The fourth and last part is about Bolsonaro's recent conviction by the electoral authorities, where we assess the court's decision on his abuse of power and attack on democracy, leading to a verdict of ineligibility for the next 8 years.

The focus on the case of Brazil and Bolsonaro is of relevance once it corroborates with the argument that democracy decline is a current trend in society. Electorate in Brazil choose to vote for a fresh-faces in politics, seeking new far-right incumbents, very similar to other country's scenarios, leading to autocrats holding the head of the executive branch office. The interest in this analysis came once it was initially perceived the closeness of Bolsonaro's policies and methods to what had been put forward by scholars over democratic backslide. Brazil's democracy faced a threat much distinct from its past when a military coup occurred, this time an aggressive and authoritarian President showed its lack of will to play by the rule of the democratic game.

The discussion of similarities and differences between the cases of decline helps put forward the topic of democracy decline and directs the attention toward policy-making and

political analyst's debate on the phenomenon. Democratic backslide still to be fully understood and this research goal was to advance one step more in gathering scholars understanding of it and relate it to the case of Brazil. As was said by Samuel Huntington, over time new forms of authoritarianism could emerge, in an era of information-dominated technology-based society the threats to democracy have changed. The use of disinformation to exacerbate polarization and the 'us versus them' divisions are a major issue posed by the wide reach of technology, in much beneficial to Bolsonaro, for example, who did capitalize on it. Democratic societies are constantly having to fight for the survival of their method of governance, the failed re-election of Jair Bolsonaro in Brazil demonstrates that it is possible to combat the democratic erosion. Countries such as Hungary, Poland, Venezuela, and Turkey, have already lost in comparison to Brazil. The United States, like Brazil, ousted Donald Trump and sustained the long commitment and tradition of liberal constitutional democracy, even if facing challenges to it on the way.

In conclusion, the present work will assess the challenges to democracy that come from within the system by means of its own institutions. A multidimensional investigation into factors that shape democracy decline in the last decade in some countries are used as a comparison to further understand the case of decline in Brazil. Democracy presumes political pluralism and due respect to checks and balances, preserving this system is essential in times of crisis where risks are put forward by authoritarian leaders.

Chapter I – Democracy Decline

Democracy and Liberal Constitutional Democracy

Democracy, the system of government that for long appeared to be the *only game in town* as its origins in Ancient greek *dēmokratia* which is the conjunction of *dēmos*: people and *kratos*: rule; is a form of government where ‘the people’ are the holders of the authority to delegate those that will rule. The political system of democracy existed in Greek city-states many centuries ago, the concept as we know it today is a result of a long political and social conflict that has constantly faced threats and has had to fight back to hold itself. The idea of democracy has been closely associated with simple elections, however, it is more than just elections that define democracy, there are other dimensions to it such as the idea of competition and participation, citing Joseph Schumpeter concept of democracy, it is said to be the “institutional arrangement for arriving at political decision in which individual acquire the power to decide by mean of a competitive struggle for the people’s vote”¹. The idea of transparency and accountability to the public is also something intrinsic to democracy, as a system that presumes the consent of the governed citizens, with an engine of self-correction and improvement to empower people toward an ideal, and as an engine, it is possible that when one part of the democratic system fails, others can be put to use with the intention of repairing the strengthens of a failed part, also with its capacity for self-correction, the system has more probability to offer stability and prosperity.² Accountability is also relevant for leadership and politicians to display that they are playing the democratic game pursuing the goals of the collective and of the majority, however, without an overweight burden on particular minorities and excessive deprivation of their political opponents.³

In this regard, the definition of democracy includes certain minimal requirements in view of scholars such as Robert Dahl, those being free and fair elections, empowered election officials, inclusive citizenship, and freedom of association and autonomy.⁴ In discussing elections, there is a necessity for viable competition, where the results are not limited and not only one entity will exercise power, because the existence of those aspects would be insufficient to demonstrate the

¹ Levinson, Sanford, et al. *Constitutional Democracy in Crisis?* 2018. p. 33.

² Freedom House Report. *The Global Expansion of Authoritarian Rule.* 2022. p. 3

³ Linz, Juan J. *The Breakdown of Democratic Regimes: Crisis, Breakdown and Reequilibration.* 1978. p. 19.

⁴ Levinson, Sanford, et al. *Constitutional Democracy in Crisis?* 2018. p. 34.

will of the people, and has said initially, the literal meaning of democracy is the peoples rule, without the assurance of these minimal requirements the people cannot exercise any ruling of their will. The will of the people obviously faces disagreements, and the existence of that is part of the democratic process of harmonious achievements, if there were a homogeneous society there would be no reason for the existence of democratic institutions that are intended to reach decisions.

Notably, the assessment of Juan J. Linz and Alfred Stepan made in 1996 is still relevant when speaking about democracy, in particular their consideration of what elements constitute a consolidated democracy. For them, there are three minimal conditions needed in order to talk about democracy, the existence of a state, the holding of free and fair elections, and rulers that govern democratically. Once these conditions are present the fulfillment of certain characteristics will grant the status of consolidated democracy, among these characteristics is the development of a free civil society; a relatively autonomous political society (political actors in competition for the legitimate right to exercise control over the state apparatus); political actors, government, and political apparatus subjected to a rule of law; and, a state bureaucracy usable by the new democratic government⁵. Another relevant consideration made by these authors is the need for a *rechtsstaat* which is a state of law something fundamental for citizens to be able to defend themselves against the State, a “continuous and routine way in which the elected government and the state administration are subjected to a network of laws, courts, semiautonomous review and control agencies”⁶. Thus, democracy is not only a regime but an interactive system, where each part has an impact on the others.

With those considerations in mind, there is a misperception of democracy when affirming that it only requires the regular performance of elections and a majority, also a misappropriation of the word democracy as for example the Democratic People’s Republic of Korea (North Korea) that would not be classified as a democracy, however, it indicates otherwise by its name. In a world where flaws are constant, it is not expected of real-world democracies to be perfect, but it is expected certain standards to comply with in order to appease by democracy and a more just society.

In this sense, in trying to avoid misperceptions of the development of democracy as we know it today, it is important to discuss the waves of democratization and how they brought us to

⁵ Linz, Juan, and Alfred Stepan. “Toward Consolidated Democracies”. *Journal of Democracy*. 1996. p. 16

⁶ Linz, Juan, and Alfred Stepan. “Toward Consolidated Democracies”. *Journal of Democracy*. 1996. p. 18

the current scenario. The idea of waves first presented by Samuel P. Huntington in 1991 discuss as the first wave of democratization is identified in the period of the 1920s “with the widening of suffrage”⁷ later in 1926 there were about 29 democracies, the second wave would happen with the end of World War Two and reach its peak in 1962 with 36 countries being governed democratically, and the third wave came with the collapse of the Soviet Union mid-1970s and new states classified as democracies⁸. Following the study of Huntington, along with the waves of democratization there was also reverse waves with periods in between where there was a decline in democratization. These reverse waves would be between the first and the second, around 1929 with the rise of Fascism and Communism in Europe, but with the end of World War Two there was the beginning of the second wave of democratization, and further, in the late 1950s a second reverse wave that ended along with the end of the Cold War. Following such timelines on the waves of democracy in the world, Huntington made certain predictions of another possible reverse wave, that I would argue is currently taking place in history. Even if the argument of Huntington is set many years ago, there is a connection with the current scholarly study on the decline of democracy.

Before starting to assess the decline of democracy nowadays and its complexity, it is necessary to further explore the term ‘liberal constitutional democracy’, since considering the work of Huq and Ginsburg, when talking about the decline of democracy, is with that interpretation that the present thesis will work with. In their words, the use of this term “highlights the role of law in constructing and underpinning democratic competition”⁹, contrary to some scholars that reduce democracy to mere elections, they seek to go beyond, giving attention to the quality of elections and the elements of the legal framework that involves the process. Such attention is important because when assessing the decline of democracy is possible to see countries that experience a certain decline but even so continue to hold elections regularly.

Liberal constitutional democracy considers the institutions – laws, the form of governance, stable structures, and official practices – that underpin democratic functioning. Huq and Ginsburg, by focusing on institutions, develop an analysis of how institutional design/change can cooperate with democracy or go along with democratic backsliding, which will be further discussed. For now, the focus on institutional arrangements is to elaborate on the requirements presumed by

⁷ Huntington, Samuel. “Democracy’s Third Wave”. 1991. p. 12

⁸ Gates, Scott, et al. "Democratic Waves? Global Patterns of Democratization, 1800–2000." 2007. p. 2

⁹ Ginsburg, Tom. and Huq, Aziz Z. *How to Save a Constitutional Democracy*. 2018. p. 3.

liberal constitutional democracy, which are free and fair elections, liberal rights of speech and association, and rule of law – including here stability, predictability, and publicity of a legal regime.¹⁰ Each of them is associated with a world, *liberal* (right to speech and association, both associated with the functioning of the democratic practice) *constitutional* (level of integrity of legal institutions and the law) *democracy* (democratic electoral system), and the presence of these requirements altogether is what grants such status.

To clarify, elections are an intrinsic part of democracy, it presumes free and fair elections with the possibility of transferring power, but this is not mainly what the present thesis will mean when using the terminology *democracy*, it will entail the above classification of *liberal constitutional democracy*. Back to the elements of this classification, the presence of rights of the first generation such as the right of speech, assembly, and association, are ‘liberal’ rights that allow fair political competition, free ability to organize and offer proposals, without intimidation, also intervening with the state responsibility to assure such individual rights before the own state. For the existence of these rights, it is presumed the existence of the actors, political parties and civil society, that allow for multiparty competition with different perceptions and goals, an essential part of democracy. The liberal rights to speech and association are prevention against an anticompetitive attitude, they ensure the right to speak of both sides and give ground for political competition, in the words of Ginsburg and Huq:

[...] liberal rights to speech and association matter to democracy’s definition because meaningful electoral contestation is hard to imagine when individual citizens are prohibited from expressing views challenging the policies and claims of those in power, or from cooperation to form political and civic associations.¹¹

As discussed, the word *liberal* in the context is a commitment to “basic values like freedom of speech, the separation of power, or the protection of individual rights”¹², not resembling the use of liberal as especially used in the United States to indicate a person’s political views, supporting or not liberal ideals or conservative ones, right or left wing, Democrats and Republicans. It also includes freedom of the press and of association of all citizens, such as religious and ethnic minorities.

¹⁰ Ginsburg, Tom. and Huq, Aziz Z. *How to Save a Constitutional Democracy*. 2018. p. 9.

¹¹ Ginsburg, Tom. and Huq, Aziz Z. *How to Save a Constitutional Democracy*. 2018. p. 12.

¹² Mounk, Yascha. *The People vs. Democracy: why our freedom is in danger and how to save it*. 2018. p. 23.

On the element of *rule of law*, it is necessary for meaningful elections the existence of a bureaucratic apparatus capable of enforcing and complying with neutral rules, and institutions that will resolve disputes on the conduction of elections. Again, another element that ensures meaningful electoral competition and secures the country's robust electoral democracy, avoiding an unreliable electoral process that could compromise the will of the people. The rule of law is relevant to democracy and also to guarantee accountability of rulers to those ruled, with institutions that prevent *human fervor*¹³ of being partial, corrupt, or absolute, and cause a detrimental impact on society¹⁴. The scheme, or as said before the engine, implies the existence of checks and balances that can prevent political parties from gathering too much power, intending to have the interest of different groups heard, not only the majority but also minorities that can in an uneven environment not be attended to, that is why the will of the people needs mediation.

As a result of the conjunction of these elements together there is the possibility of a robust democratic equilibrium, also taking into consideration that on one hand, the government is performing the decision-making process and on the other hand the rule of law on the policymakers being subjected to the laws and judicial review of the legislation. That is a fair equilibrium in constitutional democracy and alongside this unique mix of individual rights and popular rule has for long characterized governments in Western Europe and North America¹⁵. However, the problem arises when one of the elements or all of them face trembling times, and that is when the decay of democracy becomes an issue and a worrying scenario for those that value democracy and its institutions.

Is Democracy on Decline?

Huntington's article "Democracy Third Wave" from 1991, where he presented his arguments for the *waves of democratization*, already foresaw the possibility of more reverse waves in the coming years, three decades ago. According to him, the first reverse wave had its marks in

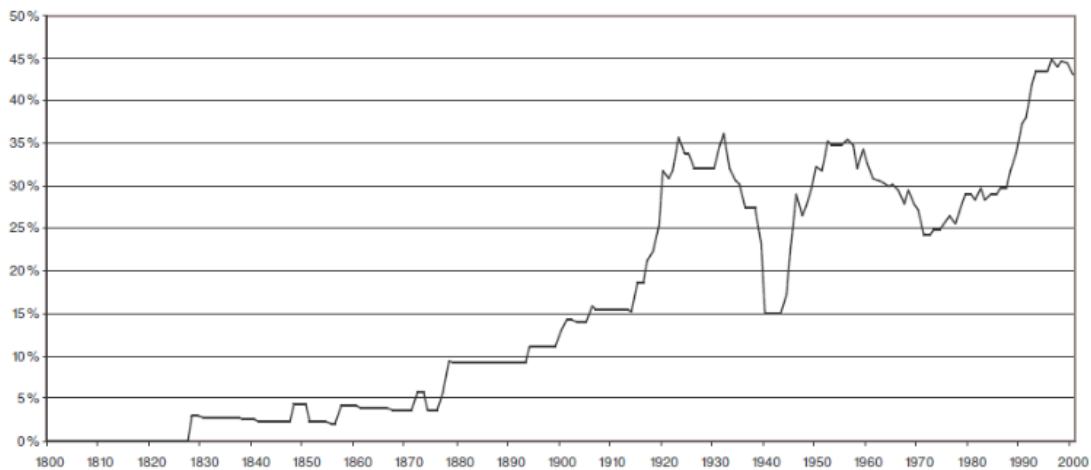
¹³ *Human fervor*, considering the work of Viktoria Kaina, can be two-sided, operating as a driving force to the progress and prosperity of humans, but also has a dark side of tyranny and despotism, cruelty, hatred, ruthlessness, and dogmatism. In her words, liberal democracy is a way of limiting absolute power and restraining human passions by means of checks and balances.

¹⁴ Kaina, V. "Can liberal democracy survive our fervor? Signs and origins of dysfunctional democracy". 2022. p. 201.

¹⁵ Mounk, Yascha. *The People vs. Democracy: why our freedom is in danger and how to save it*. 2018. p. 15.

1922 with Mussolini in Italy, and later Nazi Germany of Hitler, with power established with fascist dictators; and, a second reverse wave in the period of 1960-1975 with military coups in many Latin American countries, including Turkey, Nigeria, Greece, and Pakistan.¹⁶ The following figure can represent very well the moment of these reverse waves, but also the positive number when in the period of positive democratization waves:

Table 1.
Percentage of Democratic Countries, 1800 - 2000



Source: Democratic Waves? Global Patterns of Democratization, 1800–2000.

By the time the Second World War ended, around 12 established constitutional democracies were in place and there was an increase in that number following the end of the Cold War, the following period around the 1980s was a good momentum for democracies, with 66 of 193 United Nations member states being classified as such, with much later in 2003 that number doubling to 121^{17 18}. However, since mid-2000 the levels of democracy started to decline and a trend of the global democratic recession took place, according to *Freedom House*¹⁹, over the past 17 years there has been a consecutive decline in global freedom that has led to the present threat to democracy²⁰. The latest report published by Freedom House assessing freedom in the world

¹⁶ Huntington, Samuel. "Democracy's Third Wave". 1970. p. 17-18.

¹⁷ Loughlin, Martin. "The Contemporary Crisis of Constitutional Democracy." 2019. p. 436.

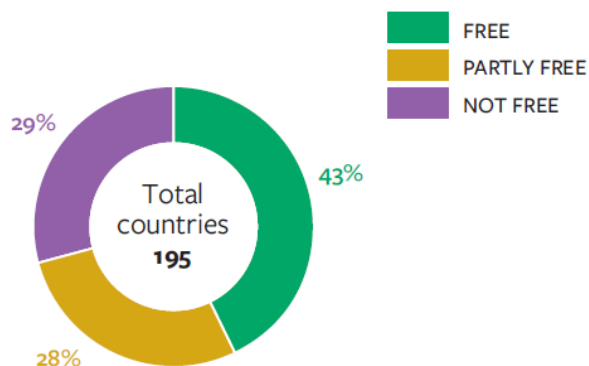
¹⁸ Carothers, T. and Press, B. "Understanding and Responding to Global Democratic Backsliding". 2022. p. 4.

¹⁹ Freedom House is a non-profit research institute/think tank, founded in 1941, that conducts research on democracy, political freedom, and human rights.

²⁰ Freedom House Report. "Freedom in the World 2023: Marking 50 Years in the Struggle for Democracy". p. 2.

concluded that in 2023 we have about 43% of the countries classified as free, 28% as partially free, and 29% as not free, as we can see in the chart below on the global status of freedom by country:

Table 2. Global Status by Country 2023.



Source: Freedom in the World 2023 - Marking 50 Years in the Struggle for Democracy

The methodology of Freedom House in the elaboration of their 2023 report on freedom in the world considered 195 countries and assumes “that freedom for all people is best achieved in liberal democratic societies”²¹. Therefore, a not-free situation is presumably spotted in a non-democratic country, and the classification of not free/democratic country comes from a scoring process where indicators of political rights and civil liberties are combined to determine the status of the country. The status of partly free might be given to a country that holds democratic elections and basic political competition, however liberal democracies presume also respect for the rule of law and other civil liberties, therefore, there is the classification of ‘electoral democracy’ by Freedom House which is given to countries that attend a minimum standard for civil liberties and political rights yet are distinguished from ‘liberal democracy’²².

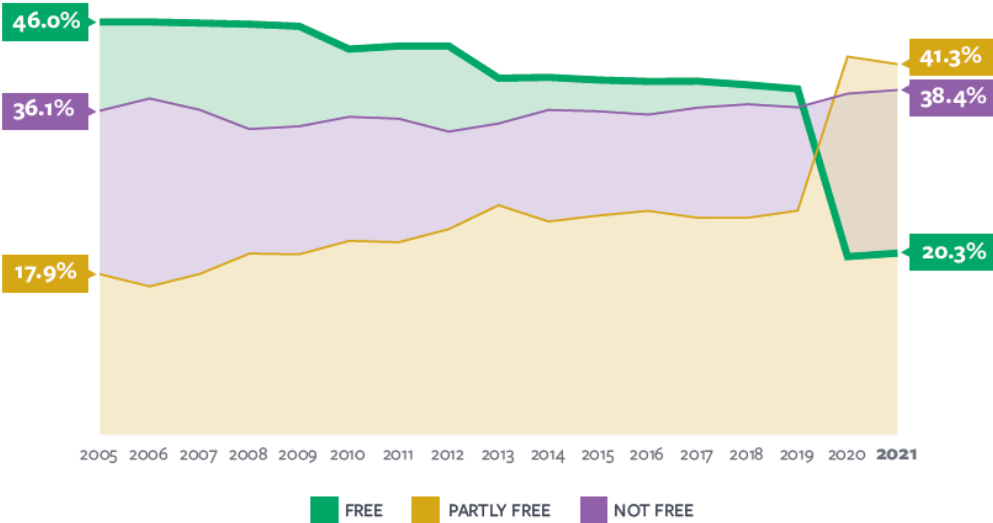
Continuing, reports from Freedom House from 2022 presented an interesting data chart with regard to the status of freedom considering the global population in the last decade. The data chart shows that since 2005 freedom has declined significantly until 2021. The data from 2005 to 2021 shows that in 2005 46% of the world's population lived in a free world, which presumes democratic standards, by 2021 that number fell to 20.3%, with 38.4% and 41.3% of the world

²¹ Freedom House Report. “Freedom in the World 2023: Methodology Questions”. p. 1.

²² Freedom House Report. “Freedom in the World 2023: Methodology Questions”. p. 2.

population living in not free or partly free societies, respectively, according to the chart extracted from the mentioned 2022 report:

Table 3. Global Status by Population 2022.

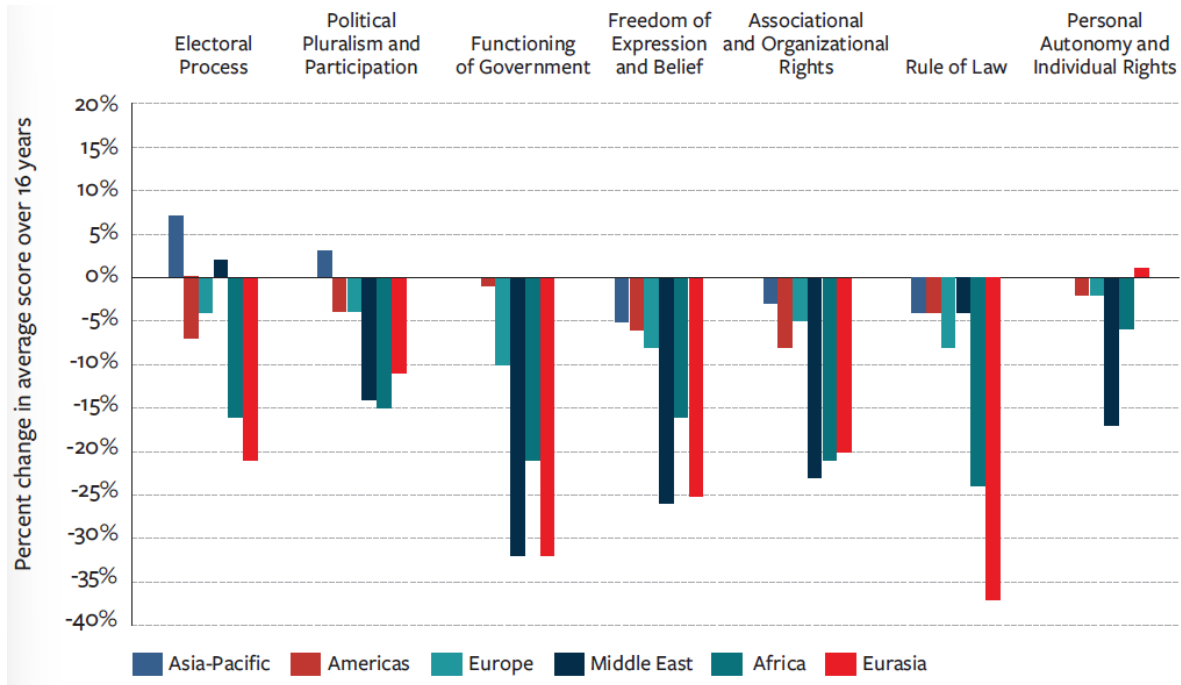


Source: *Freedom in the World 2022 - The Global Expansion of Authoritarian Rule*

The data above demonstrates that the further we entered into the 21st century, the less free people became, this is an apparent setback of the developments that had happened in the previous years, especially when compared with the beginning of the new millennium when “almost every state seeking to legitimate its rule in the eyes of its citizens and the world felt obliged to adopt a written constitution incorporating a separation of powers, a commitment to the rule of law, the protection of individual rights, and the holding of free and fair elections”²³. A very different environment is perceived now, with autocracies gaining power and democracies facing trembling moments, with harm being posed from within the existing system by undermining the rule of law, perverting elections, discriminating and mistreatment of migrants, and attacking media freedom. These characteristics mentioned are pillars of freedom in existing democracies and by conducting an analysis across all regions in the last 16 years on those pillars, the Freedom House report from 2022 was able to access a decline in all of them as shown below:

²³ Loughlin, Martin. “The Contemporary Crisis of Constitutional Democracy”. 2019. p. 436

Table 4.



Source: *Freedom in the World 2022 - The Global Expansion of Authoritarian Rule*

The subcategories of rights and freedoms mentioned above are linked to the democratic pillars, we can see that they are declining, consequently, democracy is also declining, which is the current scenario of all regions in the world. Some regions are in a more troubled situation than others, such as the Middle East, Africa, and Eurasia, however, even regions with more aged and established democracies are facing setbacks, as is the case of Europe. We see democracies facing harm from within when politicians are ready to by means of the own institutions that brought them to power try to shatter elements of democracy, as is the case of Donald Trump in the United States of America and of Jair Bolsonaro in Brazil, both that questioned elections outcomes once they resulted in their loss, and both that lead to riots in the major governing building in USA-2021 and Brazil-2023. Only in 2021, we can mention Russia and the regime of President Vladimir Putin imprisoning opposition leader Aleksey Navalny and preventing competition to take place as true democracy would, the same action of preventing the opposition to become a candidate happened in Nicaragua in the same year²⁴.

²⁴ Freedom House Report “Freedom in the World 2022: The Global Expansion of Authoritarian Rule”. p. 4.

The current situation of democracy in the world makes us question whether democracy is going forward as a governing system or if its suffering decline, first taking into consideration some rough data from the Economist Intelligence Unit (EIU) and their 2022 Democracy Index, we can assess that almost half of the world's population live in a democracy of some sort (45.3%), taking from this number, only 8% reside in a full democracy, something that before, around 2015 was 8.9% and in 2022 the number is 36.9% of the world population living under authoritarian rule²⁵. The Nordic countries are the ones that dominate the top democratic countries, taking five of the top six spots, followed by Western Europe countries. But considering the whole situation in the past years we saw countries going from full democracies to flawed democracies, as is the case of the United States of America, which since its downgrading in 2016 has not recovered yet, according to the EIU. Following their data, there was a trend in going forward in the score of democracy across regions of the world around the 2000s, but in mid-2010 a small decrease started to occur in the overall score that classifies a country as democratic level, something that continued slightly on the next years, and now a stage of stagnation according to their reports.²⁶

The data analyzed from the EIU 2022 Democracy Index shows that even regions where it was believed that democracy was strong and stable suffered some alterations. The assessment of the Democracy Index takes into account variables such as electoral process and pluralism, functioning of government, political participation, political culture, and civil liberties. By considering those variants it achieved a score that classifies the country as either full democracy, flawed democracy, hybrid regime, or authoritarian. With the intention of delimitating the research to focus on the countries where factual decline can be perceived the next part of the data presented will address first some regional data for comparison of how the average of a region is not representing very well the situation of some specific countries there included.²⁷

On the declining trend, data gathered by the "Global State of Democracy Indices" (GSoD Indices)²⁸, which is developed by the International Institute for Democracy and Electoral

²⁵ "Democracy Index 2022: Frontline democracy and the battle for Ukraine". Economist Intelligence Unit. EIU.com. Retrieved 09 March 2023. p. 5

²⁶ "Democracy Index 2022: Frontline democracy and the battle for Ukraine". Economist Intelligence Unit. EIU.com. Retrieved 09 March 2023.

²⁷ "Democracy Index 2022: Frontline democracy and the battle for Ukraine". Economist Intelligence Unit. EIU.com. Retrieved 09 March 2023.

²⁸ The Global State of Democracy Indices measures democratic trends at country, region and global level across a broad range of different attributes of democracy in the period 1975-2021.

Assistance (IDEA), gives more clarity to the matter. First, an exposition of GSoD Indices methodology is necessary, which follows the analysis of five attributes of democracy – each of them contains sub-attributes and indicators. The following table was elaborated focusing on the attributes and sub-attributes of democracy of the GSoD Indices:

Table 5.

Attribute	Sub-attributes
Representative Government	Clean elections; inclusive suffrage; free political parties; elected government.
Fundamental Rights	Access to justice; civil liberties: social rights and equality.
Checks on Government	Effective parliament; judicial independence; media integrity.
Impartial Administration	Absence of corruption; predictable enforcement.
Participatory Engagement	Civil society participation; electoral participation; direct democracy; sub-national elections.

Source: <https://www.idea.int/gsod-indices/>

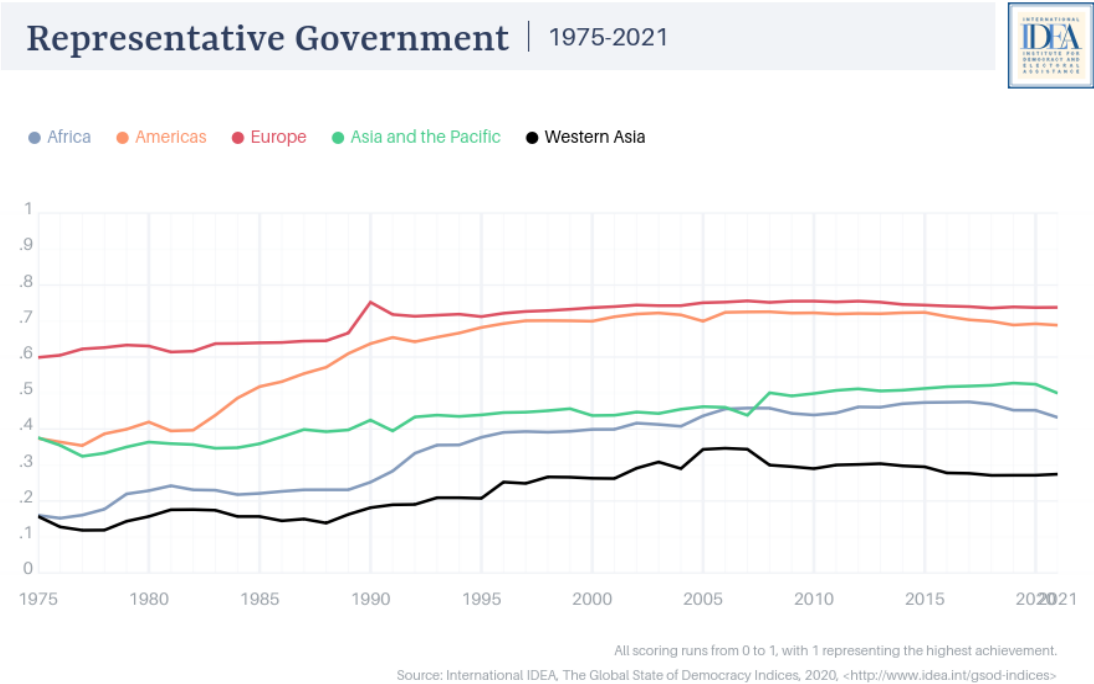
According to the GSoD Indices methodology and classification, for a state to be ranked as a democracy, the attribute of Representative Government, which is a fundamental concept of democracy, must score at least 0.35, in the case of lower than that, it can be classified as an authoritarian regime. Another analysis is democracy's performance, also considering the score from the Representative Government attribute, 0.7 or above means a high-performing democracy,

[...] The GSoD indices consist of attribute and sub-attribute scores per country per year for the period 1975–2021. All scoring runs from 0 to 1, with 0 representing the lowest achievement in the whole sample and 1 the highest. <https://www.idea.int/gsod-indices/about>

0.4 or above is a mid-range, and less than 0.4 a weak/low-performing democracy. The scoring system elaborate by the GSoD also include the analysis of democratic *backsliding*. When the countries suffer a net decline of at least 0.1 points on the average score of the attribute Checks on Government and Civil Liberties indicator over the period of five years means the existence of *backsliding*, with the severity of the democratic *backsliding* being moderate when the score is lower than 0.15 and severe when above 0.15. With those considerations made on the GSoD Indices data and score, we can better access the current scenario that is happening in some countries and regions.

The first attribute to be discussed is Representative Government with the time period from 1975 to 2021. Considering Table 6 that will follow, we can see the trend of growth in the attribute with the going forward of years, and a very light decline in some regions such as the Americas, Africa, and Asia/Pacific, other regions as Europe and Western Asia the lines seems to have declined following stagnation:

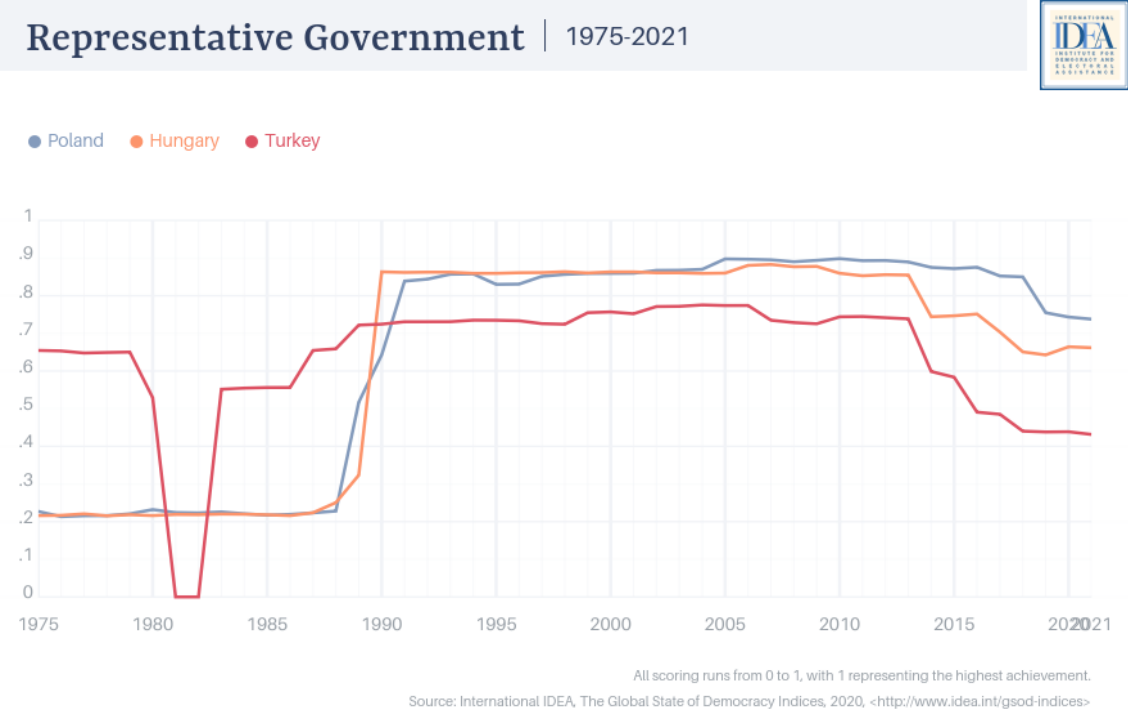
Table 6.



It is important to remember that the data from the regions will consider the average score of each country included in that region. For example, Europe, one of the regions with more states

being considered democracies and with a long tradition of the system, does not seem to have suffered with significant impact on the decline, with the latest peak in 2010 scoring 0.76 and from then on scoring 0.74. This score not only means democracy, but high-performance democracies in place in the European continent, however, if we look closely at some of the countries in the continent that will be further discussed in this thesis, we can perceive the decline:

Table 7.



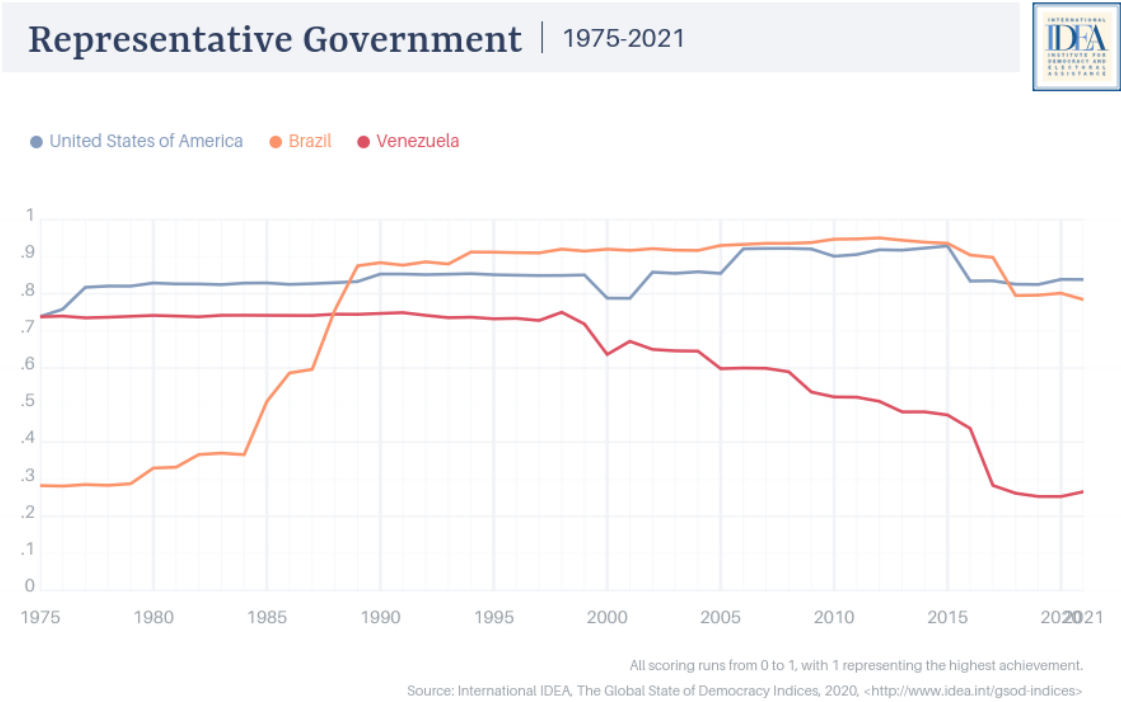
The data on Hungary and Poland, both from Central Europe, encountered in 1990 the first major change in going from one classification to the other and becoming democratic states, which would be the result of ending the Cold War and ending the Soviet dominance over many states. First, Hungary with a score of 0.86 in 1990, following a peak of 0.88 from 2007 until 2009, but from then on there has only been a decline in Representative Government in the country, scoring its lowest 0.64 in 2019 and now more recently in 2021 0.66. The numbers on Hungary suggest that even if still considered a democracy, its performance has declined, from being high-performance to mid-range democracy, all in a period of 10 years. Second, Poland with the same prospect, but with distinct scores, its latest peak in 2010 scoring 0.9 and then declining to reach its lowest latest

in 2021 with 0.66. The same applies to Poland, going from being a high-performance to a mid-range democracy, also following the same period of growth in indices of Representative Government for then decline.

With regards to Turkey, the data shows a similar pattern since the 1990s, and like Hungary, since 2013 there was a constant decline in the number of Representative Governments. The data shows that there was a peak in the attribute in 2006 with 0.77, with a slow decline till 2013 when reached 0.74 to then on a rapid and significant decline with the lowest score of 0.43 in 2021, also downgrading from a high-performance to a mid-range democracy.

Going for a different region, the American, we have some of the states that will also be further discussed in more detail: Brazil, the United States of America, and Venezuela. The lines here follow different consequences in history, with minor impacts resulting from the end of the Cold War as it was the case of Hungary and Poland, perceived in Table 7. Also, here, more discrepancies from one country to the other, not following similar scores and some experiencing decline much before the others as in the case of Venezuela shown in the table below:

Table 8.



First, we start by analyzing the data from the United States of America, one of the oldest democracies in place. The peak was reached in 2015 with a score of 0.93, and a recent lowest in 2001 with 0.79, meaning that even on its lowest periods in the past it has stood as a high-performance democracy. However, more recently, since its peak in 2015, it has only declined to drop to 0.83 in 2017, 0.82 in 2019, and going for 0.84 in 2021. Many authors that were included in this thesis would refer to the United States as one of the most stable democracies in place, so taking this affirmation into account and considering the data on Representative Government in the state of such record has suffered with decline, then the trend is indeed serious and cause of concern.

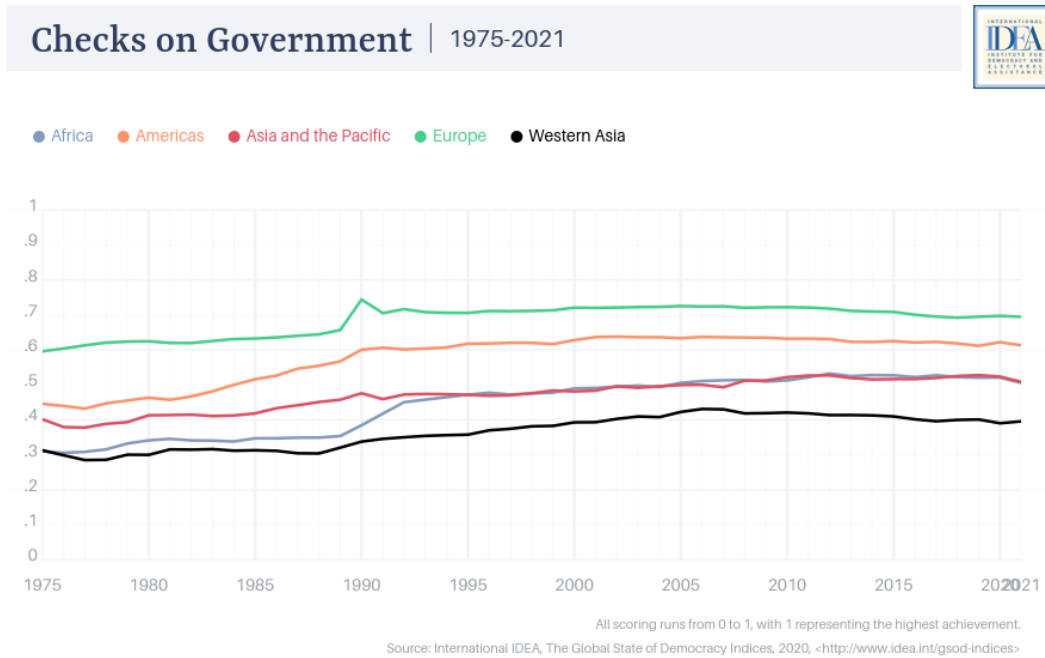
The second analysis falls on Brazil, with great prospects after the end of the Military Dictatorship in the country, the score of Representative Government was only growing without setbacks until the first 'hit' and from then on was only a constant – and at first slow – decline. The peak was in 2010-2012 with a score of 0.95, and then a slow decrease until a recent lowest of 0.78. In approximately 10 years the declining trend can really be perceived in the attribute discussed. One similarity between Brazil and the United States of America that are opposing to one similarity between Hungary and Poland is that these two countries from the American continent are still classified as high-performing democracies even with the experience of decline, while Hungary and Poland went from high-performing to mid-range.

The third country data extracted from the American region is Venezuela, the situation, as will be later discussed, could be considered the worst in the continent by far, going from a score of 0.75 in 1998 to a constant decline and scoring nowadays in 2021 only 0.27, meaning that the country went from high-performance democracy to authoritarian regime, changing completely the classification, with a declining trend much different from not only its neighbor states in the Americas but also with Hungary and Poland, that at the time that Venezuela started to experience decline, all the other countries were experiencing growing indices in Representative Government. Consequently, even if arguing for the trend of decline, it is relevant to assess that it has happened in different ways and for different reasons in each country.

Another attribute of democracy used to demonstrate decline is Checks on Government, we can analyze the trend of decline in the time period goes from 1975 to 2021 and takes into account the regions of the globe and the trend with respect to this attribute that considers effective parliament, judicial independence and media integrity. As mentioned previously, this attribute will be essential to assess the *backslide* of democracy and its level, the following table exemplifies the

global perspective including all the regions, and the slight decline on the scale can be perceived (once again remembering this data considered the average of the countries in the region):

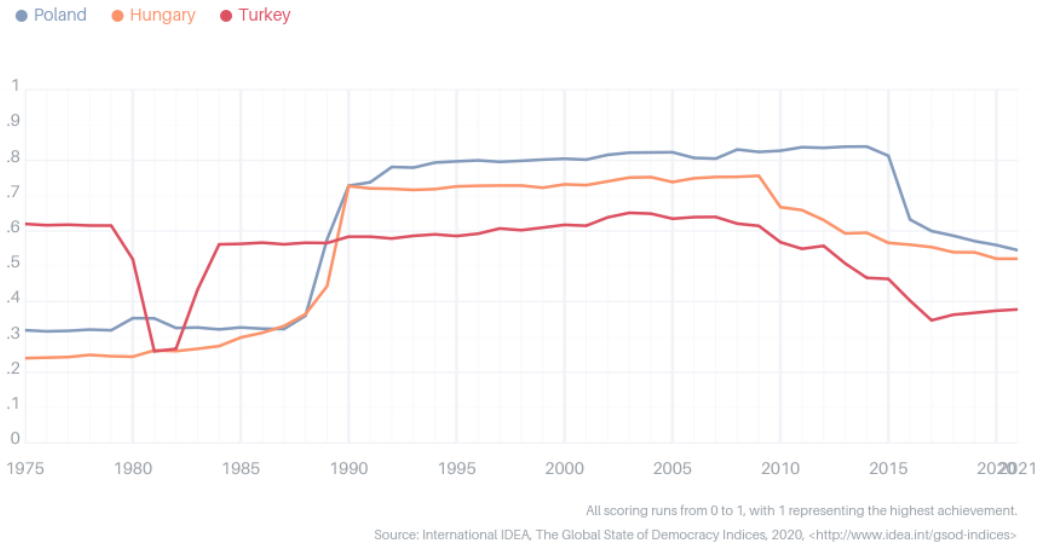
Table 9.



The table above shows that for Europe, the Americas, and Asia/Pacific in 1990 the indicator of Checks on Government had a sudden moment of increase, coinciding with the end of the Cold War and a trend in democratization among states. More specifically, Europe in 1990 was with a score of 0.74 overall and from then on declined slowly, with some stagnation in mid-2000, reaching a score of 0.69 in 2021. As for the Americas, the same patterns of rising Checks on Government after 1990, but in this region, the rise continued for a few more years starting to decline around 2010 and reached by the year 2021 a score of 0.61. The graphic below zoom-in to better analyze it:

Table 10.

Checks on Government | 1975-2021

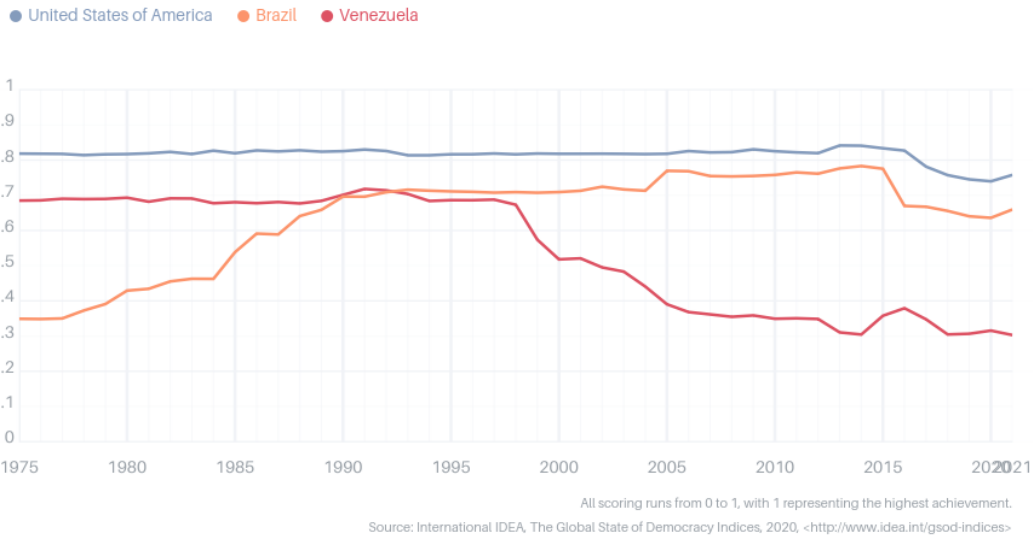


The data for Poland shows a peak from 2011-2014 with a score of 0.84, and from that peak on only declined to reach a current low of 0.55 in 2021. Matching the data with the methodology of GSoD Indices, the decline above 0.15 points in five years in the attribute of Checks on Government means a severe democratic *backslide* happening in the country. Poland went from 0.84 in 2014 to 0.57 in 2019, dropping 0.27 in the period of five years. The case of Hungary follows the same pattern, with a score of 0.76 in 2009 and in a time frame of five years dropping to 0.59 in 2014, a drop of 0.16 points, also demonstrating a severe democratic *backslide*, with a later score of 0.52 in 2021. Turning to Turkey we again perceive a similar pattern of decline over the last decade, going from 0.51 in 2013 to 0.36 in 2018, reaching a better score in 2021 with 0.38, but even so a drop of 0.15 that does represent a moderate *backslide*.

Switching regions and analyzing the data on Brazil, the United States of America, and Venezuela, we can perceive a significant drop in the Checks on the Government, especially following 2015 for Brazil and 2017 for the United States, different from Venezuela that started to drop appallingly after 1998, as shown in the table below:

Table 11.

Checks on Government | 1975-2021

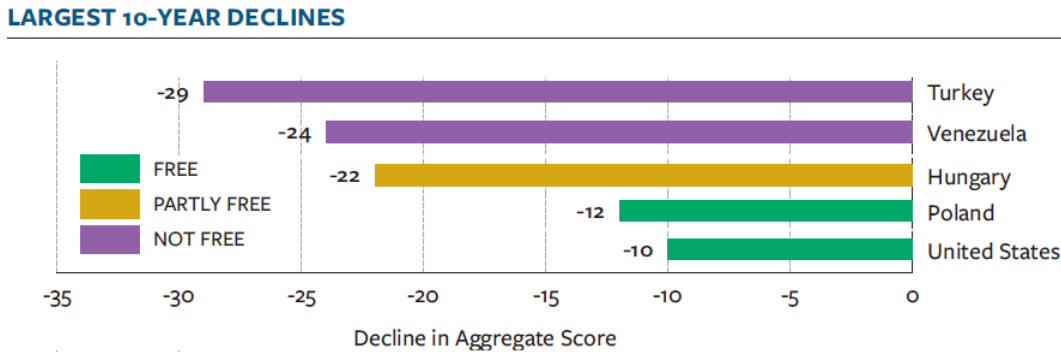


First Brazil, after the end of the Military Dictatorship in 1985 the country started to increase in Checks on Governments, going from 0.43 in 1980 when under military rule to 0.70 in 1991, with only a positive trend until 2015 when achieve a score of 0.78 and dropped to 0.64 in 2020 demonstrating a moderate democratic *backslide* happening with a drop of 0.14 points. The second case is the United States, with a score of 0.84 in 2014 to in five years a score of 0.75 in 2019, a drop of 0.09 which according to the methodology would not enter the classification of democratic *backslide*, but still scored its lowest in 2020 with 0.74, data that do demonstrate a decline in their democratic attribute that considers effective parliament, judicial independence, and media integrity. As for the third country from the Americas considered here, Venezuela experience a severe democratic *backsliding* from 1998 to 2003 when went from 0.67 to 0.48, a drop of 0.19 points, and continuing with a declining trend reaching 0.30 in 2021.

Continuing on the selection of countries of analysis (Hungary, Poland, Turkey, Brazil, Venezuela, United States), the *Freedom in the World 2023* report from Freedom House included a chart where it demonstrates the dramatic decline in ranking of freedom in all regions of the world in the last 10 years. The chart was extracted and edited to comprehend the countries we focus on, however, Brazil was not present in the data, meaning that so far, in 2023, has not been included in

the largest decline of freedom in the world, different from the other countries subject of our studies, as we see below:

Table 12.



Source: *Freedom in the World 2023 - Marking 50 Years in the Struggle for Democracy*

In conclusion, all the data presented shows declining in the attributes of democracy, and not only, we considered the attributes of GSoD Indices present in Table 5, but also the pillars of freedom listed by *Freedom House* and data from the EIU 2022 Democracy Index, all of these indicators relate with one another and corroborate with the affirmation that democracy is indeed in decline. The decline can be of a slight margin of difference, but as it was thought to be democracy the *only game in town* it is clearly not the case anymore, and also when analyzing the data of the overall regions it does seem that it is not a major cause of concern, but when addressing the individual case of some countries more specifically it is possible to have an accurate perception of the threatening scenario where decline is not only an imminent situation but is the trend for quite a few years.

On an overall consideration of the data and trends between countries, both Hungary and Poland are countries with similar backgrounds and are facing the same situation. The end of the Cold War led to the dissolution of the Soviet Union and the emergence of new states with high levels of democracy, a result of the democratization wave, however, these political institutions were created in a state of international systemic shocks²⁹, consequently “new states eventually encounter economic or security problems and soon backslide towards autocracy. Indeed, the

²⁹ Gates, Scott, et al. "Democratic Waves? Global Patterns of Democratization, 1800–2000." 2007. p. 12

pattern amongst newly independent states is one of instability”³⁰. This argument is not a certainty but an understanding of the existing vulnerability surrounding unconsolidated democracies, and quite a few time ago Huntington foresaw the possibility of reverse waves of democratization where a shift to authoritarianism could trigger snowballing and as he mentions the “reintegration of authoritarianism in Russia or the Soviet Union would have unsettling effects on democratization in other Soviet republics” mentioning possibilities involving Poland and Hungary.

When discussing the reverse waves of democratization, Huntington analyzed some factors that contributed to the first and second reverse waves, those factors in much are similar to the ones we face today, among them the weakness of democratic values and social/political polarization, both of which can be perceived in the cases of the United States and Brazil. According to him, democratic regimes' capacity to function productively could be jeopardized by structural problems³¹, as for example the failure to deliver justice, security, welfare, prosperity, equity, and domestic order, could consequently undermine the legitimacy of democratic governments. He refers to elected leaders that once in power by means of the electoral system proceeded with undermining the system from within, showing a lack of commitment to democratic values and practices. Such consideration in much fascinates me once flaws in the current system not only relate to the ones previously experienced but also were anticipated as possible future threats to democracy.

Having set those reflections on the democratic reversion waves by Huntington and data concerning the decline of democracy happening in recent years, the next topic on discussion of the thesis is conceptualizing this decline, or as will be more often denominated *democracy backslide* or *democratic decay*, and the framework of its occurrence.

Interpretation and Identification of Democracy Decline Concepts

The decline in democracy in recent years has led scholars from political science and international relations field to analyze the trend from a diverse set of angles, and it became a central subject of study with the evident issues democracy started to face in the United States of America and Europe (Hungary and Poland). Consequently, when researching the phenomenon of

³⁰ Gates, Scott, et al. "Democratic Waves? Global Patterns of Democratization, 1800–2000." 2007. p. 12

³¹ Huntington, Samuel. "Democracy's Third Wave". 1970. p. 19

democratic decay an expanding set of terminologies will appear, but even with many distinctive terminologies it is possible to see a resemblance among them, they all address threats to democracy in a way, by means of the executive, a wider political array, or even by public attitude and society at large. Consequently, inspired by the work of Tom Gerald Daly entitled *Democratic Decay: Conceptualizing and Emerging Research Field*, where he addresses the many terms used to refer to this degradation of democratic rules, such as democratic backsliding, democratic erosion, democratic decay, abusive constitutionalism, constitutional rot, constitutional retrogression, and autocratic legalism. The present thesis will seek to further analyze these concepts, their classifications and framework, and how they contribute to the identification of the phenomenon. This is because the broad range of terms used has shown that scholars are working on similar issues in parallel, consequently, many new concepts were elaborated but they all hold a certain duplication and synonym to one another, therefore, according to the author previously mentioned, there is a need in translating these concepts into one, “fully canvassing the conceptual terrain before coining new terms”³². With that in mind, first, we will present some of the most compelling terms across academics, to then based on such terminologies address cases where democracy encountered a certain level of erosion, considering the data previously presented.

3.1. Democratic Backsliding Framework

The change from a democratic form of government to an authoritarian or undemocratic government during the first reverse democratic waves occurred by coup d'état – an abrupt change in the regime – as is the example of Haiti 1991, Mali 2012, Thailand 2006 and 2014. This is not the case, in our understanding, of backsliding, which consists on the regression from democratic rule by an “incremental erosion of democratic institutions, rules and norms that results from the actions of duly elected governments, typically driven by an autocratic leader”³³. With these considerations, we perceive that democracy breakdown by means of a coup into an authoritarian regime is not a threat that comes from inside the constitutional process. Where elected officials, such as presidents, legislators, political elite, and prime ministers; undermining institutional checks and liberal democracy. Backsliding, as put by Haggard and Kaufman can come from political

³² Daly, Tom Gerald. “Democratic Decay: Conceptualising an Emerging Research Field”. 2019. p. 33.

³³ Haggard, S., & Kaufman, R. *Backsliding: Democratic Regress in the Contemporary World*. 2021. p. 7

strategies and tactics not only from executive leaders but also from the legislative and judicial branches of the government, coming together to erode four pillars of democracy. The pillars are free and fair elections, protection of basic political rights and liberties, horizontal checks of the executive, and the rule of law. They relate to the previous discussion on the characteristics of liberal constitutional democracy, and therefore the classification of these two authors correlates with the discussion put forward by Ginsburg and Huq, and their own classification of democratic erosion, as we will analyze.

The pillars represent the core of democracy, an assault on free and fair elections damages the relationships of accountability and the integrity of the electoral process that brings to power those that are chosen by the people, consequently, the pillar on the protection of basic rights such as the media, when suffering vilified adversities can lead to disinformation and mislead voters, connected with the first pillar it interferes with the integrity of the election. On those arguments the protection of media is crucial component, it entails the protection of fundamental rights of speech, civil society organization, and opposition. The third pillar, horizontal checks of the executive, has the idea of a self-limiting government and the separation of powers, because once backsliding occurs the executive branch of government gains control of the other branches, by appointing loyalists to take positions of key importance. It also has a connection with the fourth pillar, rule of law, because this generates a damaging submission of those in government roles not only to checks but also to the rule of law.

When these elements are undermined, it is labeled as democratic erosion, which according to Ginsburg and Huq is the most common form of democratic backsliding. But first, before entering the discussion on the aspects of democratic erosion, we present the two distinct pathways in which threats to democracy are posed, according to these two authors in their work *How to Save a Constitutional Democracy*. The pathways depend on the speed of the results, a rapid and outright turn away from democracy is characterized as *authoritarian collapse*, and on the other way around; a slow but substantial unraveling of the democratic values such as the rule of law and liberal rights, is denominated as *democratic erosion*. The speed of the events is relevant because will entail which legal and institutional tools will be used to undermine democracy and change the governing system. The fast course, authoritarian collapse, takes, for example, the rapid collapse of Weimar Germany in a time period of a month, changing the regime not only to authoritarian but also fascist in character, a case of complete and rapid collapse of constitutional foundations. This case however

is not the focus of the present thesis, which has its central discussion on the slow course of events that are characterized as *democratic erosion*, where the pillars of democracy degrade gradually without collapsing. Here is important to mention that for Huq and Ginsburg the focus is on three institutional characteristics that were introduced in the first part of this Chapter that represented liberal constitutional democracy. Those being, quality of elections, speech and association rights, and the rule of law; they tend not to discuss the horizontal checks like does Haggard and Kaufman as a separate pillar. However, since the last duo of academics have based much of their work of the first two, we included the latest perspective to ours, once it is a more complete perception.

Back to *democratic erosion*, one of its most relevant aspects is the occurrence by piecemeal approach, where incremental changes to legal regime and institutions derogate democratic baseline, and these quantitative effects precipitate a qualitative change in the classification of the regime.³⁴ This aspect of democratic erosion will also be explored when discussing the context of Venezuela, Poland and Hungary. These cases, as will be seen, are clear cases of erosion in the view of Ginsburg and Huq, existing also a classification of hybrid cases where the instances and extent of erosion in the institutional premises of democracy are more complicated to determine, as would be the case of Turkey.

When referring to *democratic erosion*, the events can take different forms and have more than one endpoint, with a diverse ray of trajectories that include distinct triggering events and counter-reactions across countries. Two relevant factors to the consumption of democracy from within and contributing to backsliding are seen in the ideological dynamic of the democratic system that allows for *charismatic populism* to take up space, also with *partisan degradation*. While both charismatic populism and partisan degradation represent a systematic dysfunction that results in democratic erosion, they are two distinct routes. The first has its emphasis on an individual leader, and the second on a “partisan or ideological position that emerges as a matter of party-level competition”. The two styles dismantle the rule of democracy for political gains, not explicitly ending with it by ceasing elections.

Charismatic populism challenges democracy due to populism instances and tactics holding a certain level of anti-pluralism aspect once the will of the leader alone represents the people, such definition is offered by Jan-Werner Müller³⁵, which sees populism not as a matter of policy

³⁴ Ginsburg, Tom. and Huq, Aziz Z. *How to Save a Constitutional Democracy*. 2018. p. 45.

³⁵ Ginsburg, Tom. and Huq, Aziz Z. *How to Save a Constitutional Democracy*. 2018. p. 78.

preferences but as a guiding assumption about how democracy should work and how a leader should relate to the people. Populism can be a paradox, it exploits dilemmas from democracy once it voices ignored demands of some extremes; however, the issue for erosion rests when populism is centered on one charismatic leader, that speaks his beliefs as licensed to speak for the people, and by that demonizing his political foes and insulting legal and electoral accountability. Once the leader “has a unique ability to intuit the people’s desires, then there is no need for any other institutions to help articulate or represent the people, or to stand in the way”, following a logic that “populists will adopt tactics that place pressure upon the election framework and undermine its free and fair character”³⁶, this because the populist leader would be above ordinary law, consequently allowing them to violate informal or legal norms, not responding to democratic accountability.

The democratic erosion by means of partisan degradation is when the competitiveness of the party system is undermined, such deterioration of political competition affects the foundation of democracy, which is free and fair elections and many attributes related to representativeness. Partisan degradation can occur in two ways, according to Ginsburg and Huq, first by a decline of an already established and competitive system of political parties, leaving space for populist leaders to seize the government. The second way does not need a populist fervor, but for one party to win convincingly and invulnerable to the rotation of government and comes to disregard the rules of the democratic game. With regards to this second way, it is necessary to mention the relevance of competition for democracy, also the equilibrium between the existing parties in office and seeking to achieve office, the rotation of power is not possible if there is no opposition and competition. The consequence of partisan degradation is the derogation of one of the prerequisites of liberal constitutional democracy, discusses in the first topic of the chapter, and such derogation might be done using elements of the state for a party to entrench itself further and avoid political competition, as well as favored policy ends for itself. A party, once in power and by means of state apparatus, can extend its control over media, using licensing techniques, and can also restrict particular kinds of organizations or demonstrations, all actions done by partisan advantage.

However, even with such distinctions in the process and pathway of *democratic erosion* either by charismatic populism or partisan degradation, there is a common method that those in power will often use to undermine democracy, following a certain playbook of five specific legal

³⁶ Ginsburg, Tom. and Huq, Aziz Z. *How to Save a Constitutional Democracy*. 2018. p. 81.

and institutional mechanisms. The mechanisms, according to Ginsburg and Huq, are *the use of constitutional amendments to alter basic governance arrangements; the elimination of checks that operate between different branches; the centralization and politicization of executive powers as exercised through the bureaucracy; the contraction of distortion of a shared public sphere in which liberal rights of speech and association can be exercised; the elimination or suppression of effective partisan political competition and the related prospects of rotation out of elected office.*³⁷

These mechanisms, when observed in practical scenarios, can overlap, but for clarification, we discuss them separately. The first mechanism, *formal constitutional amendment*, would be classified as democratic erosion occurring by the use of constitutional amendment as for example tilting the playing field of the democracy's game, using amendments to take political advantage or/and marginalizing political opposition. The second mechanism is *elimination of institutional checks*, focusing on the aspect that democracy relies on checks on the government to avoid that even with tensions of competition, people's voices are still heard, interests and concerns expressed, along with the constant check on the measures taken by those in power, that allows for the system to work perfectly. For example, the role of courts in the matter of institutional checks is extremely important to issue judicial intervention preventing partisan degradation, even to undo effects that have already been materialized, this is because courts have an institutional capacity to check the democratic process and avoid erosion. The role of the courts is especially in the early stages of erosion, at this point the appointment of judges is not yet corrupted and occupied by partisan loyalists, something that is expected in later stages, also in early times it is expected of judges not yet corrupted to have more determination in fighting anti-democratic acts of the government, making, therefore, the courts' intrinsic participants and guardians of democracy itself. It is relevant to highlight that the integrity of elections is connected with the existence of institutional checks, therefore integrity and accountability of election-monitoring institutions are of paramount importance to avoid backsliding and democratic erosion.

With regards to the third mechanism, *centralizing and politicizing the executive power*, the executive branch can be a driving force in the unraveling of democracy, as is the case for Hungary, Poland, and Venezuela; mostly because the executive can act as a leader to the movement of corroding democratic aspects, even if the very method of placing themselves on power positions was through fair elections from the democratic process. The executive branch of government is

³⁷ Ginsburg, Tom. and Huq, Aziz Z. *How to Save a Constitutional Democracy*. 2018. p. 72-73

responsible for enforcing the laws passed by the legislative, it holds major responsibilities for national politics, therefore if in its practices the executive power seeks the unraveling of democratic institutions and succeeds in dismantling internal safeguards intended for the executive branch ensuring democratic rule, it will fit into a case of *democratic erosion*. The above-mentioned mechanism also entails the role of the bureaucracy, which, once captured by leaders that seek to bend and corrode democratic qualities, it clashes with the system once they might allocate – on the basis of political connections and favors – those that will occupy bureaucratic positions. Therefore, an attack on the autonomy of the bureaucratic institutions is relevant for democratic erosion. Contrary to that, the bureaucratic machinery that is not partisan and not fully staffed with one party, is more inclined to be committed to the rule of law and value the norms of the institutions, hindering practices that seek to consolidate power with one side of the government and avoiding a possible dismantlement of democracy.

Shrinking the public sphere, the fourth mechanism takes central articulation on the ‘public sphere’, which is referred to as the “institutionalized arena of discursive interactions in which citizens deliberate about common affairs”³⁸. In more simplistic words, the public sphere is the gathering of citizens to exchange opinions regarding public issues, where there is space for debate and deliberation, leading to eventually shaping public opinion, consequently very much inherent in the idea of a participatory approach to democracy. In the case of democratic erosion, there will be a conscious deterioration and shirking of the epistemic element of the public sphere and consequently of the deliberative element.³⁹ Consequently, elections can become dysfunctional when reasonable information flow and communication among electors are not happening and when the behavior towards politicians in office is based on emotional affiliation instead of judgment about their efficacy. A concrete example of that set by Ginsburg and Huq is when the government, due to issues of public security, purposes a measure that will target minorities; however, it does not fully disclose this to the minorities in question and employs divisive language to bolster political support, leading the own people that are included in this minority group to vote in favor of such a measure by using epistemic shortcoming such as limiting accountability and charging public discourse with identity politics. In this context, it is relevant to discuss that the public sphere not only comprehends the media and news, but also private associations such as

³⁸ Ginsburg, Tom. and Huq, Aziz Z. *How to Save a Constitutional Democracy*. 2018. p.107.

³⁹ Ginsburg, Tom. and Huq, Aziz Z. *How to Save a Constitutional Democracy*. 2018. p.107

clubs, non-profit organizations, religious institutions, etc, those that can play a role in mobilization, accountability, and deliberation of those connected to.

The last mechanism identified by Ginsburg and Huq is the *elimination of political competition*. First, the existence of alteration in power and meaningful opposition is an essential aspect of the well-functioning of democracy, therefore the existence of partisan degradation makes possible the disappearance of such aspects, difficulting political competition and thus democracy. The employment of tactics such as barring candidates and electoral observers or harassing and pressuring voters are taken with the intent of frauding elections, something common in backsliding scenarios. Politics should not extend to other areas of government, the institutions should be politically neutral with the intention of elections truly representing the wishes of the masses, not a distorted or blinded perception. By means of democratic constitutional methods, anti-democratic achievements a carefully reviewed by those in power in order not to lose powers, and elimination of political competition is very high on the list of priorities in that aspect, making competition limited by manipulating electoral institutions to ensure it.

Now that these mechanisms have been presented individually, it is possible to perceive their correlation and how they interwind, especially with regard to the legislative power. Once in a scenario of democratic backsliding, the elimination of oversight will be intended as a way to allow political corruption and abuse of power by the executive, which later by controlling the legislative, can stage the weakening of horizontal checks, as well as constitutional and ordinary legislative reforms deliberated in order to give even more power to the executive. This can represent a collapse in the division of powers, once the brakes on the centralization of executive power in hampered, and their powers are expanded to the judiciary and legislative.

Considering how the mechanism can correlate, we see that the elimination of institutional checks and balances represents a significant default on oversight and horizontal accountability of liberal democracy, consequently impacting the constraints of the executive power, possibly leading to misuse of the bureaucracy enabling them to use resources of the state machinery to target political enemies and persecute civil society. This is a connection of one mechanism to others such as the elimination of political competition and centralizing the power with the executive, also giving room for corruption, that feeds from a lack of legislative oversight and leverage from its position to make use of regulatory authority and tax laws to build on alliances with *crony capitalists*. In the words of Haggard and Kaufman “defaulting on oversight constitutes a major

step in collapsing the mechanism of horizontal accountability so essential to liberal democracy”⁴⁰. Also, by the weakening of institutions of accountability, it becomes easier for the executive to make appointments at their discretion, stacking bureaucracy, independent agencies, judiciary, and law enforcement, with their allies, as discussed previously in the mechanism of centralizing and politicizing the executive power.

Another valuable contribution on the democratic backslide conceptualization is the one put forward by Nancy Bermeo, where she affirms that this phenomenon constitutes in the breakdown or weakening of existing democratic institutions, and resembling Ginsburg and Huq, she too differs in the speed of backsliding events. In her perception, backsliding as a fast and dramatic change over a wide range of institutions leads to outright democratic breakdown and authoritarian regimes, contrary; a gradual change in the institutions makes it less likely that a radical regime change occurs, leading to an ambiguous democratic or hybrid political system. Bermeo, in the work *On Democratic Backsliding*, presents three varieties of backsliding, the first is *promissory coup* – this classification is not part of this research focus. Following the argument of Haggard and Kaufman, initially discussed in this topic, the occurrence of coups represents a rapid dramatic change in the democratic status of the State, and we seek to understand the gradual phenomenon of events. The second model of backsliding for Bermeo is *executive aggrandizement*, which happens without the replacement of the executive – that would happen in a coup – and at a slow pace, with the weakening of checks on the executive power and of the institutions, seeking to hamper the opposition and maintain the executive preferences in the hands of those in power. The third form of backsliding is *manipulating elections strategically*, that for Bermeo is often joined with the second form and can be defined as a strategic manipulation aiming to tilt the electoral playing field in favor of one part. On this third form, the *modus operandis* can entail “hampering media access, using government funds for incumbent campaigns, keeping opposition candidates off the ballot, hampering voters’ registration, packing electoral commissions, changing electoral rules to favor incumbents, and harassing opponents – but all done in such a way that the elections themselves do not appear fraudulent”⁴¹.

Overall, backsliding represents a complex process that attacks incrementally institutions of liberal constitutional democracy, and considering a major reference the work of Ginsburg and Huq

⁴⁰ Haggard, S., & Kaufman, R. *Backsliding: Democratic Regress in the Contemporary World*. 2021. p. 51.

⁴¹ Bermeo, Nancy. “On Democratic Backsliding”. 2016. p. 13.

on the identification of mechanisms it is possible to elaborate a framework of the particular events that precede this phenomenon also addressed as democratic decay.

3.2. Constitutional Rot

A Constitution is the text of fundamental principles and laws by which a State is governed, it contains the definition and description of the main institutions of the State and also defines the relationship of these institutions among themselves, that being of the three branches (judiciary, legislative, executive). The Constitution will establish the basis of political organization and governing, with one important role of limiting and constraining State power and recognizing fundamental rights. Therefore, when government officials and politics put forward the intentions of not following these constitutional rules, it can represent a *constitutional crisis* once the Constitution can fail its central task of keeping the boundaries of political dispute and ensuring the respect of fundamental rights by restraining the powers of the State. A constitutional crisis can refer to a situation where there is a significant fear that the constitution will fail but it has not occurred yet. However, as said by Jack M. Balkin “one should not confuse heated constitutional disputes with constitutional crisis”⁴², as is the case of wrongly saying that ‘constitutional hardball’⁴³ is a constitutional crisis. This because constitutional hardball consists of political actors defying or bending arrangements of the political game that are considered unspoken rules of fair play in politics, however, these rules are not specifically or legally required. This terminology, when talking about democracy decline is important to avoid confusion on the process and on the events taking place, this because the constitutional crisis is an event susceptible to happen to any democracy in a brief period of time, contrary to the phenomenon entitled *constitutional rot* by Balkin, that can be a phenomenon susceptible to representative democracies and that may occur in a long period of time, that is a slow degradation of constitutional norms. Such differentiation in the speed of the process, once again remembers the previous arguments of Ginsburg and Huq of

⁴² Mark A Graber, Sanford Levinson, Mark Tushnet eds, *Constitutional Democracy in Crisis?* 2018. p. 16

⁴³ *Constitutional Hardball* as put by Mark Tushnet “consists of political claims and practices-legislative and executive initiatives-that are without much question within the bounds of existing constitutional doctrine and practice but that are nonetheless in some tension with existing pre-constitutional understandings.’ It is hardball because its practitioners see themselves as playing for keeps in a special kind of way; they believe the stakes of the political controversy their actions provoke are quite high, and that their defeat and their opponents’ victory would be a serious, perhaps permanent setback to the political positions they hold”. Tushnet, Mark V., "Constitutional Hardball". *The John Marshall Law Review*. 2004. p. 523.

authoritarian collapse and democratic erosion, which is precisely the reason for this topic of the thesis, approaching different terminologies that seek to address the issue surrounding democracy decline and identification of events that lead to it.

Constitutional rot, is an issue of democratic constitutions, meaning the value of requirement of the well-functioning of the institutions due to the existence of checks and balances of power, that are in place to avoid government officials from abusing their power to benefit themselves, also a system that ensures political competition in a way that public trust is not undermined. In this sense, constitutional rot is when:

[...] politicians disregard norms of fair political competition, undermine public trust, and repeatedly overreach by using constitutional hardball to rig the system in their favor and keep themselves (or their allies) in power, they cause the system of democratic (and republican) constitutionalism to decay.⁴⁴

There are four factors, according to Balkin, that can accelerate constitutional decay and lead to constitutional rot, eventually presenting risks to democratic politics, these factors are first the loss of trust of citizens in the government and in their fellow citizens, the second factor is polarization leading to a zero-sum conflict over social status, the third factor is the increase of economic inequality and fourth factor is policy disasters, that makes the people lose faith in the government. Policy disasters escalate the people's feelings of leaders that are incompetent and unrepresentative, and these factors along with others can exacerbate one another. The risk to democracy in this sense is that polarization and the demonizing of opposition can lead to political actors seeking to crush them, and democracy is about the existence of competition in the political scenario, a competition that contributes to growth. Another risk to democracy is that the undermining of political opposition destroys the norms of fair play and by means of hardball tactics, democratic politics can gradually descend into autocratic practices. These factors and risks of constitutional rot can be at first unapparent, quietly formulating themselves in the background, but eventually, the persistence of constitutional rot in a democratic governing system can result in a constitutional crisis later. This set of events is not necessarily a condition, it can just lead to a less and less democratic system, turning to an autocratic political system.

3.3. Autocratic Legalism

⁴⁴ Mark A Graber, Sanford Levinson, Mark Tushnet eds. *Constitutional Democracy in Crisis?*. 2018. p. 17.

Considering the events of democratic decline, the concept put forward by Kim L. Schepple is one evolving around a charismatic leader elected by democratic means, and that later will make use of their electoral mandate to dismantle and corrode by mean of the law the constitutional system and democracy.⁴⁵ Those are the ‘legalistic autocrats’ that have as a signature move not to play by the rules of the democratic game, making use of “their democratic mandates to launch legal reform that remove the checks on executive power, limit the challenges to their rule, and undermine the crucial accountability institutions of a democratic state”.⁴⁶ These autocrats seek to implement illiberal measures and make use of the constitution and other legal methods to attain their goals, being a phenomenon that generates democratic decline by using the own constitutional order, much similar to the previously considered terminology.

Since discussing the term ‘autocrat’ it is valid to briefly go into autocracy, which is a form of government where the power is exercised by one person, this person does not face any external control or legal restraints, resulting in a ruler with absolute power. Much like democracy has its etymology in Ancient Greek, so does autocracy which translates as ‘*autos*’ the self and ‘*kratos*’ power, meaning that the power comes from oneself, one person. A very different meaning from democracy, where the power comes from the people. In this regard, it is often assumed that totalitarian regimes or military dictatorships are autocracies, but not necessarily, since these regimes' power can be exercised by collective leadership, for example, a single political party or a military junta. Therefore, when discussing autocrats and *autocratic legalism*, it is understood by us that Schepple seeks to unite the classification of such leaders and their method of government to do it by means of the law, not by coups or other attempts of gaining power, but by rightful electoral victory. In her words “we can spot the legalistic autocrats while they are still consolidating power because they have ambitions to monopolize power and tend to use the same toolbox of tricks”.⁴⁷ This is also a reason to suspect when those elected democratically seek to instigate attacks and anger sentiment towards the institutions responsible for checking their actions, and rules that hold government accountable. This can be the first indication of autocratic legalists, that do not intend to be bound by constitutional constraints on the executive power.

⁴⁵ Schepple, Kim Lane. “Autocratic Legalism.” 2018. p. 545-545

⁴⁶ Schepple, Kim Lane. “Autocratic Legalism.” 2018. p. 547

⁴⁷ Schepple, Kim Lane. “Autocratic Legalism.” 2018. p. 556

On the understanding of legalistic autocrats, they “operate by pitting democracy against constitutionalism to the detriment of liberalism”⁴⁸, this means, inciting a conflict between democracy and constitutionalism, by frustrating democratic rights in the short-term with the justification that in the longer-term the democratic guarantees will be assured. Among their intentions, most often will entail the corrosion of the self-sustaining aspect of democracy, surrounded by checks and accountability, together with damaging the rotation of power. In the governing of legalistic autocrats, the legality of new laws is capable of undermining the constitutional order, suppressing it with new values, in a way that instead of new laws being written based on the values of the constitutions – that often imply liberal values – it put these values as a subject of surpassing. To accomplish this, legalist autocrats need to disable the actions of constitutional courts, once they are responsible for nullifying any unconstitutional policy, law, or enactment. The intention of disabling constitutional court is important to guarantee a certain legitimacy in their actions, trying to appear legalistic and respectful of the normative forces. Due to such possibilities, it is important to separate the rule of the game and those that structure it from those on the playing field of typical politics, once legalism can undermine constitutionalism from the inside.⁴⁹

The central issue of democracy without liberal constitutional constraints is that it can lead to a government only of the majority, in which the rights of the minorities are placed aside and not given ground for protection, and as it was said, democracy is about accommodating discussion and achieving concessions and common grounds. An intransigent majority that leans on harassment of minorities does not fulfill democratic principles, much less constitutional principles when it comes to anti-liberal political views that seek to dismantle constitutional constraints and as put by Jan-Werner Müller, this represents the phenomenon of *constitutional capture*, where autocrats aim to target the constitutional order checks and balances to ultimately dominate the political space, and challenging the path of any change in power.⁵⁰ Once again we can see how the terminologies connect and relate to each other, being able to complement and evolve from what has been developed.

From the perspective of someone not looking closely, it may not seem that an autocratic legalist is in power or that democracy faces any threats, especially since these autocrats seem to

⁴⁸ Scheppele, Kim Lane. “Autocratic Legalism.” 2018. p. 557

⁴⁹ Scheppele, Kim Lane. “Autocratic Legalism.” 2018. p. 563

⁵⁰ Müller, Jan-Werner. “Rising to the Challenge of Constitutional Capture.” 2014.

appear all about legitimacy, but instead, they are using these legal tools to ensure themselves in power, along with their supporters and biased bureaucratic apparatus. The undermining of constitutional checks on the executive branch is more perceived as democrats playing hardball, but dictators playing softball⁵¹, and maybe that is just the fine line intended to appear in place for outside eyes.

3.4. On Authoritarian Traits

Considering the autocratic aspects of the topic above and combining with the thesis of *How Democracies Dies* and *The Breakdown of Democratic Regime* which focus on the authoritarian aspects of a leader that assist in the erosion of democracy, it is possible to perceive again how the classifications, terminologies, and understandings about these threats to democracy can relate. In this topic, the study of the two works of reference focuses on a litmus test for identifying authoritarian politicians that can pose a threat to democracy from within.

In the words of Levitsky and Ziblatt “democracies may die at the hands not of generals [as in coups d’état] but of elected leaders – presidents or prime ministers who subvert the very process that brought them to power”⁵². This is because the recent events of dismantling democracy by the government are occurring in a ‘legal’ manner, sometimes disguised as measures to improve democracy, such as ending corruption or cleaning up the electoral process. In their argument democracies now die more commonly by the means mentioned above, not by blatant dictatorship, but by an electoral road to breakdown, which can deceive citizens once its methods and actions are not immediate and evident. There will continue to hold elections, constitutions, and other democratic institutions may remain in place, however, the substance of such democracy is not how it is supposed to be, and issues of accountability and the limiting of power may rise.

With the intention to better understand the challenges presented to the democratic form of governance, the book *How Democracies Die* by Levitsky and Ziblatt developed a ‘litmus test’ to identify these autocrats, in the hopes of keeping them outside the political field. The development of the ‘litmus test’ was based on the works of political scientist Juan J. Linz, author of *The Breakdown of Democratic Regime*, published in 1978 where it is emphasized the role of politicians

⁵¹ Scheppele, Kim Lane. “Autocratic Legalism.” 2018. p. 581

⁵² Levitsky, Steven, and Daniel Ziblatt. *How Democracies Die*. 2018. p. 9

and their significance in either strengthening or undermining democracy. In this sense, building on the work of Linz, four behavioral indicators are signaled by Levitsky and Ziblatt as authoritarian aspects of politicians.⁵³ The first indicator of authoritarian behavior is a rejection of (or weak commitment to) democratic rules of the game and can be expressed by words or actions; the second is a denial of the legitimacy of political opponents; the third is toleration or encouragement of violence; and, the fourth consists in the readiness and willingness to curtail civil liberties of opponents, including the media.⁵⁴ This ‘litmus test’ lead to an understanding that those politicians scoring positive are carrying certain authoritarian traits, which is common among populists, but a positive score on the authoritarianism test is never a good indication for a politician that should be seeking to represent the people and a democratic government.

Considering further each of these indicators of authoritarian behavior, the first one for example, the rejection of democratic rules of the game, the respect for the constitution which contains basic rules and principles is an intrinsic aspect of respecting democracy. Therefore, any attempt of the politician of violating it already represents a check in this mark, in the same sense falls the mere suggestion of canceling elections, which is an expressive anti-democratic measure. The extensions of rejection or weak commitment to democracy are also expressed when leaders do encourage unconstitutional means to change the power, that is not by elections, instead, encouraging military coups or mass protests that aim for a change in the government. Another example of this indicator is the attempt of the politician to undermine the legitimacy of elections, such as by refusing to accept credible electoral results.⁵⁵

The second indicator, denial of the legitimacy of political opponents, is present once the authoritarian politician does not respect their rivals and claims them to be criminals that violated that law and should not, therefore, be able to integrate into the political arena.⁵⁶ Such accusations of their rivals are contrary to the ideal of democracy where opposing parties reach an agreement and work together for the people, instead, due to authoritarian tendencies, a politician is subversive to the idea of a present opposition and seeks to exclude them from the field of politics by means of delegitimization.

⁵³ Levitsky, Steven, and Daniel Ziblatt. *How Democracies Die*. 2018. p. 18

⁵⁴ Levitsky, Steven, and Daniel Ziblatt. *How Democracies Die*. 2018. p. 18-19

⁵⁵ Levitsky, Steven, and Daniel Ziblatt. *How Democracies Die*. 2018. p. 18-19

⁵⁶ Levitsky, Steven, and Daniel Ziblatt. *How Democracies Die*. 2018. p. 18-19

Tolerate or encourage violence. This is the third behavioral indicator of a politician that has authoritarian tendencies. The politician will have ties to paramilitary forces, militias, and armed gangs; besides that, they will encourage partisan allies to attack opponents, and by refusing to condemn such attacks it does endorse the violence. It can also be seen as a ‘check’ for this third indicator if there is a praise of acts of political violence, those acts being in the past or elsewhere in the world, not necessarily in the context of their country.⁵⁷

The fourth indicator considers if the politician is willing to support “laws or politics that restrict civil liberties, such as expanded libel or defamation laws, or laws restricting protests, criticism of the government, or certain civic or political organizations”⁵⁸ also if a politician has “praised repressive measures taken by other governments”⁵⁹ in the past or elsewhere in the world or “threatened to take legal or other punitive action against critics in rival parties, civil society, or the media”⁶⁰. As we saw in the first topic of the chapter, respect for liberal rights is an intrinsic part of liberal constitutional democracy, therefore, an attempt to infringe on the right to speech and association implicates a direct attack on the functioning of democratic practices.

The identification of these aspects is relevant in special to democracy’s gatekeepers, that according to Levitsky and Ziblatt, are those responsible for filtering out authoritarians. The gatekeepers are the political parties and party leaders. According to their argument, democracies are not supposed to impose a party ban or prohibit a certain candidate from standing for election, however, considering the threats imposed from inside the system, it is necessary that those that form a democratic front prevent extremists from gaining power, they are, therefore, acting as protectors of democracy.

Back to the indicators of Levitsky and Ziblatt, as we saw, were built upon the work of Juan J. Linz and according to him, one important aspect is the legitimacy of governing. Legitimacy in the sense that democracy rests in courage and in openness to accept laws that one disagrees with as well as laws that one agrees with. Also, the legitimacy of being a ‘loyal opposition’ to the government, respecting the political institutions established and not claiming power in an illegitimate way, meaning an opposition that adheres to the rules of the game and upholds respect

⁵⁷ Levitsky, Steven, and Daniel Ziblatt. *How Democracies Die*. 2018. p. 18-19

⁵⁸ Levitsky, Steven, and Daniel Ziblatt. *How Democracies Die*. 2018. p. 19.

⁵⁹ Levitsky, Steven, and Daniel Ziblatt. *How Democracies Die*. 2018. p. 19.

⁶⁰ Levitsky, Steven, and Daniel Ziblatt. *How Democracies Die*. 2018. p. 19.

for the constitution and electoral legitimate tactics, for example.⁶¹ The legitimacy of the government may be affected when the efficacy and effectiveness of the government are not satisfactory and there is consequently an ineffectiveness resulting in a weakened legitimacy, with questions being raised with regards to the policies that are not efficacious as they should. Following that scenario, there can be an increase in resistance, and in some cases, illegitimate resistance that turns to violence for political ends.⁶² This is when a disloyal or semi-loyal opposition questions the existence of the current government and seeks to change it, a change that in extreme cases is by rejecting the political system on which their existence is based, looking for a central power with authority to coerce all to their will.

The context and steps above mentioned are an example of extremists and authoritarians slowly gaining space in the political sphere and possibly attaining power, ultimately representing a crisis in democratic institutions. Therefore, the ‘litmus test’ is an assessment of those politicians loyal to the democratic regime and rules, committed to them, and respecting the legal means presumed in participation in politics and rejection of any use of force. For these reasons, the importance of a loyal opposition is intrinsic to avoid a breakdown process, a loyal opposition contributes to a higher level of compliance, legitimacy, and support, which are part of and also enhance democratic aspects. Contrary, a disloyal opposition challenges legitimacy and can contribute to crisis and breakdown, once they instigate polarization and create distrust in society by leaning on the lack of efficacy and effectiveness of the current government⁶³, however, not attaining democratic rules as we saw in the indicators of authoritarian behavior and in the previous topic ‘Democratic Backsliding Framework’ developed by Ginsburg and Huq.

3.5. Conclusions

The classifications and framework methods discussed in this section were elaborated carefully by the academics mentioned and summarized with the intention of clarification and assessment of similarities. To further understand, we will briefly exemplify the events that can be categorized as democratic decay, democratic erosion, autocratic legalism, etc, by presenting the scenarios of some countries, such as Hungary, Poland, and Turkey in Europe, and Brazil,

⁶¹ Linz, Juan J. *The Breakdown of Democratic Regimes: Crisis, Breakdown and Reequilibration*. 1978. p. 17.

⁶² Linz, Juan J. *The Breakdown of Democratic Regimes: Crisis, Breakdown and Reequilibration*. 1978. p. 22-23

⁶³ Linz, Juan J. *The Breakdown of Democratic Regimes: Crisis, Breakdown and Reequilibration*. 1978. p. 50

Venezuela, and the United States in the Americas continent. However, considering that the main discussion will focus in Brazil, the other cases are mere exemplifications of how this trend is indeed a worldwide threat to democracy and evidence of the current decline it faces.

Chapter II – The Decline Scenario of Brazil and Polarization

Brazil has been a democracy since 1985, to the current date setting of about 38 years of democratic life. Its achievements and its steps towards establishing the country as a representative democracy did not come easy, a dark period predeceased the history of such development, as in many Latin American countries, Brazil was once under a military dictatorship. A background of censorship, repression, torture, and undemocratic government brings fear of any similar government.

The transition towards democracy in Brazil happened in the period of 1984-85, the country was under military rule since 1964 when the Brazilian Armed Forces proceeded with a coup d'état against the president at the time João Goulart. The dictatorship lasted for 21 years and came to an end on 15 March 1985, mostly due to the wave of democratization word wide and a crumbling domestic economy, both factors that were important to the massive popular demonstration entitled *Diretas Já* (Direct Now) that called for the resumption of direct elections for president of the republic, which had not occurred since the establishment of the military dictatorship, which elections occurred through an indirect electoral college with only military being candidates. The manifestations occurred in all major cities in the country, the intention of direct elections for the presidency where being put forward since 1983, however, was rejected. Only later with the strength of manifestations and the organization of political parties, and the dramatic economic crises along with a saturation of the overall population for the censorship, the military regime started to lose its prestige, and the process of re-democratization⁶⁴ of Brazil was on track.

In 1976 measures were already starting to take place to grant back liberties to the Brazilian people, in 1979 there was a promise of giving back democracy, with the own military government promulgating an amnesty law for the political crimes committed by and against the regime. The background of the *Diretas Já* culminated in the return of the country to civil power and the end of military dictatorship, with the first indirect election for president in 1984 with civilian and military candidates, and a new Constitution promulgated in 1988 and new direct elections for president in

⁶⁴ In the history of Brazil, democracy was first established in 1889 by a coup against the Empire. The period is called the Old Republic and at the time only powerful landowner held any power, since 1891 there have been presidential elections in Brazil. After subsequent coups there came the military coup due to tensions and fear of populists' politicians, from then until the end of the military regime, only the military were elected presidents by the Congress, no direct popular vote and no civilian candidates.

1989.

The military regime, when in power ruled with extensive censorship and committed a series of human rights abuses, such as institutionalized torture, extrajudicial killings, and forced disappearances. A constitution enacted by the military in 1967 restricted citizens from the right to freedom of speech and political opposition. An investigative report from the National Truth Commission⁶⁵ in 2014 it was assessed that 434 political death and disappearances happened during the censorship period of military rule in Brazil. The military background in Brazil left a dark mark in the country's history, after that period the military had no official role in domestic politics in Brazil and became subordinated to civilian authorities.

Today, Brazil is a constitutional republic with a federal and presidential system of government, based on representative democracy. The protection of civil liberties is strongly established in the 1988 Constitution. The branches of government are separated and independent, in specific the legislative power rests upon a two-chamber legislature National Congress. The historical period following the dictatorship was called *Nova Republica* (New Republic) and is characterized by the wide democratization of the country's politics and institutions.

The status of a consolidated democracy with regard to Brazil can be debatable. Following the interpretation of Linz and Stepan on what makes a democracy consolidated – discussed in the first part of this thesis – besides the presumed democratic political regime, to be considered a consolidated democracy there is a need for a free and lively civil society, a relatively autonomous political society, a state apparatus and political actors subjected to the rule of law, an state bureaucracy usable to a new elected democratic government, and last, institutionalized economic society⁶⁶. Besides such aspects, we can discuss respect for human rights and a high level of political participation and accountability as factors to determine the status of a consolidated democracy. Considering such elements, one could affirm that democracy in Brazil is consolidated, but the debate rests on the challenges posed by political instability once there is constant change in government and accusations of wrongdoing and corruption scandals involving politicians and

⁶⁵ “*Comissao Nacional da Verdade*” is a Commission established in 2011 by the president at the time Dilma Rousseff to investigate human rights violations that occurred in the period of 1946-1988 by the authoritarian military dictatorship regime that lasted from 1964 to 1985. The Commission lasted for two years and accessed all government files from the period and delivered a final report in 2014 issuing its findings. In the findings, about 337 agents of the Brazilian government were involved in the violations of human rights, such as forced disappearings, arbitrary prisons, torture, and subsequent death of those considered political opponents to the military regime. In the report it is stated that 434 people were killed by the military.

⁶⁶ Linz, Juan, and Alfred Stepan. “Toward Consolidated Democracies”. *Journal of Democracy*. 1996. p. 16.

business elites, both factors that contributed to an erosion of popular trust in political institutions in general, leading to a polarized society where constructive dialogue is hindered.

In this context, after a successful period of democratic development in Brazil, recent events damaged such achievements and led to backsliding, culminating in the victory of Jair Bolsonaro in the 2018 presidential election with 55% of the vote. A far-right politician that contributed to the perception of the rise of authoritarian leaders, such as Hungary's Viktor Orbán and Turkey's Recep Tayyip Erdoğan. From then on democracy in Brazil suffered challenges from many fronts, however, a possible successful outcome came. At the time of this writing, Luiz Inacio Lula da Silva was elected in 2022 and since January of 2023 has been the new – yet not new – president of Brazil, offering a slim of hope for Brazilian democracy in the sense the threats to it will not be posed anymore, instead growth and positivity is to come.

Prior to going into the discussion of Bolsonaro's challenge to democracy in Brazil, it is crucial to provide context on the events that led to his rise to power, it is imperative to examine the factors that paved the way for his ascent. Considering the events that took place, besides the issues of corruption that assaulted Brazil's political environment and put in check the consolidation status of Brazil's democracy, the setting of backslide can be perceived with the impeachment of Dilma Rousseff in August 2016 and the politicization of the judiciary. Important here to mention that it is argued that Dilma Rousseff's impeachment was a parliamentary or constitutional coup. In this first instance of backslide in Brazil, we see threats to democracy being posed by the legislative and judiciary, not the executive, as many scholars pointed out in their assessment of democratic decline in the previous chapter. Such aspects make of Brazil's situation a unique case, where attention to such factors is needed to further analyze the threat posed by the executive power when Bolsonaro came to the presidency.

It can be said Brazil's decay was not immediately obvious, however, the country started to face a "democracy crisis since 2014, with the start of a wide-ranging judicial probe into widespread corruption (the *Lava Jato* investigation, translating from Portuguese it means Car Wash) and the ousting of President Dilma Rousseff"⁶⁷. On this line of thought, we start with the case of politicization of the judiciary and the process of impeachment which was connected to it.

⁶⁷ Daly, Tom Gerald. "Diagnosing democratic decay." *Comparative Constitutional Law Round-table, Gilbert and Tobin Centre for Public Law, UNSW Law School*. 2017. p. 20.

The Politicisation of the Judiciary

The Judicial Branch is not argued to be the propagator of democracy's decline, usually, considering the argument of scholars put forward in the previous section, the judiciary becomes subject to decline when the executive power takes control of it. However, the case of Brazil demonstrates a unique aspect where the judiciary is not subverted to the will of the executive and an authoritarian figure of the president, but, instead, threatens democratic constitutionalism by "ignoring the constitutional text and substituting constitutional rules by personal conception of moral and justice"⁶⁸ and starting with the unbalancing of the system. Tom Daily when referring to Brazil's 'multi-dysfunctional' democracy undermining by means of the judiciary highlighted their elevated level of independence but entitled them as 'self-serving'.

We start with the *Lava Jato* operation. This paper does not have the intention to question the operation goal itself or the facts it brought to light; however, the focus is on the methods it applied in the conducting of the operation and its legal process. With that clarified, the *Lava Jato* operation concentrated on investigations involving bribery and corruption accusations against a hundred politicians and businessmen, it began in 2014 and from then on occupied a central stage in the political life of Brazil. The issue is the manner in which this anti-corruption investigation and judgment has been conducted, among the indicted was former President Lula da Silva for the Workers Party (PT). In the words of Boa Ventura Souza Santos, the judicial system that was supposed to be the ultimate defender of legal order became a dangerous source of legal disorder⁶⁹; this because illegal and unconstitutional judicial measures were taken demonstrating judicial activism and leading to a fostering and deepening social and political polarization that pushed Brazil to its edges with Bolsonaro's election in 2018, exercising his mandate until the end of 2022, when he lost re-election.

The *Lava Jato* operation was strongly inclined towards implicating politicians for the Worker Party and its leader, President Dilma Rousseff and former President Lula da Silva. They had strong participation in also focusing on these political figures, but the outcome was a distortion

⁶⁸ SALGADO, E. D. and E. GABARDO. "The Role of the Judicial Branch in Brazilian Rule of Law Erosion". *Revista De Investigações Constitucionais*. 2021. p. 732.

⁶⁹ B de Sousa Santos, 'Brazil: Democracy on the Edge of Chaos and the Dangers of Legal Disorder' Critical Legal Thinking 26 March 2016 <http://bit.ly/1UBwA9M>.

of the operation's judicial goals, turning it instead into an operation of political extermination.⁷⁰ The new dysfunctional character of the operation sought to accomplish goals, but the judicial logic behind it which involved means and ends, procedural rules, and constitutional guarantees where conflicted with the goals, and decisions were made propelling an anti-democratic drive subordinating ends to means⁷¹. The goals of the conservative block that was driving the investigation, instead of a judicial procedural drive, sought to change the political scenario where PT was dominant; the economic crisis also had a role, the middle class was on the brink of entering poverty, and this was what the media propagated helping the movement indulging the ends not the means of the operation to be achieved. A central character to these investigations was Judge Sérgio Moro, who instead of holding the impartial position of a judge, was directing the investigation in a stridently biased manner by engaging in strategy planning with public prosecutors in order to seek a conviction of the indicted.

Considering the biased behavior of the Judge Sérgio Moro, former President Lula da Silva was convicted and imprisoned pending further appeal of the convictions, something that removed him from the 2018 presidential election. Questioning such imprisonment without the elapsing of all instances of judgment and allowing the indicted to the presumption of innocence present in article 5 LVII of the Brazilian Constitution, the case of Lula went up to the Supreme Court, that sustained the unconstitutional decision of imprisonment of Lula. In the judgment of the case involving *habeas corpus* by the Supreme Court, not having a legal argument or constitutional basis, the decision of one minister was based on the 'sense of justice'⁷².

After the 2018 election and the presidency of Jair Bolsonaro demonstrated to pose a major challenge to democracy than ever before in the country, due to his authoritarian posture and attack against the judiciary, the Supreme Court proceeded with the annulment of the proceedings of the *Lava Jato* against Lula, basing the decision on the recognition of suspicion for the responsible magistrate (Judge Sérgio Moro), which is a procedural offense according to Brazilian law. The Court had knowledge of such abusive actions of judges and prosecutors of *Lava Jato*, however,

⁷⁰ B de Sousa Santos, 'Brazil: Democracy on the Edge of Chaos and the Dangers of Legal Disorder' Critical Legal Thinking 26 March 2016 <http://bit.ly/1UBwA9M>.

⁷¹ B de Sousa Santos, 'Brazil: Democracy on the Edge of Chaos and the Dangers of Legal Disorder' Critical Legal Thinking 26 March 2016 <http://bit.ly/1UBwA9M>.

⁷² SALGADO, E. D. and E. GABARDO. "The Role of the Judicial Branch in Brazilian Rule of Law Erosion". *Revista De Investigações Constitucionais*. 2021. p. 734. Making reference to the case of Habeas Corpus n. 126292 of the Federal Supreme Court, Minister Teori Zavascki. Decision em 17 de fevereiro de 2016.

due to ideological conception and moralist view⁷³ of reality chose to perceive otherwise until a bigger threat came to be presented and required action.

The *Lava Jato* operation worked to Bolsonaro's advantage in the 2018 election in several ways, it clear the path from the strong Workers Party, which was almost not strong enough to take elections for the second stage⁷⁴, allowed him to use the discourse of anti-corruption as a major driver to the presidential campaign, even counting with the support of Sérgio Moro who came to be Bolsonaro's Minister of Justice until his resignation due to allegations of the president's interference in investigations involving his sons. Later, in the 2022 runoff election, Sérgio Moro who was not a Federal Judge anymore, was elected a Senator and is seen by many Brazilians as a symbol against corruption. This is a very interesting aspect of the outcome, how a former Federal Judge took immensely relevant judicial action against a strong political opponent of Bolsonaro, and after his victory, came to be part of his government administration.

The decisions taken by *Lava Jato* which disrespected the legal process interfered with the politics of Brasil in an unprecedented manner, the Supreme Court's conniving initial posture lead to the imprisonment of Lula taking him out of the 2018 elections. In this context, the Workers Party had to change its candidate for president in the runoff for Fernando Haddad, a politician that did not hold enough chances against a population unsatisfied with the 13 years of government of the PT and elected Bolsonaro as a new president.

The Brazil Constitution is considered a living constitution, therefore, is subjected to interpretations according to time (values and meanings), nevertheless, this idea was pushed to another level when judicial moralistic activism took place. The judiciary should represent a neutral branch that objectively uses the law, not act as a promoter of an ideological approach to the due legal process, this puts at risk the rule of law, which is intrinsic for a democracy to stand.

Corruption in Brazil seems to be intertwined with politics and the majority of politicians, consequently, there is an impact of such integrity of politics in a democratic society, where the righteousness of those conducting the government in favor of citizens is valued. When such practices of subordinating systematically state institutions to a mix of bribery and blackmail the

⁷³ SALGADO, E. D. and E. GABARDO. "The Role of the Judicial Branch in Brazilian Rule of Law Erosion". *Revista De Investigações Constitucionais*. 2021. p. 737.

⁷⁴ On the first term of the 2018 Presidential Elections in Brazil, the Workers Party (PT) candidate Fernando Haddad accounted for 29.3% of votes, while Jair Bolsonaro (PSL) had 46% of votes. The victory of Bolsonaro came on the second term, with 55.1% of votes, while Haddad had 44.8%.

genuine character of democracy is undermined, it constitutes an ethical breach, mismanagement, and a violation of the rights of citizens, who put these politicians in the position of power they are. Practices of these politicians and economic elite engaging in large-scale corruption is a challenge democracy everywhere faces, based on this, the objective and efforts initiated by the *Lava Jato* operation were of immense relevance to the future of democracy in Brazil, promoting anti-corruption initiatives is an action in favor of democracy, not only in the sense of protecting state institutions from misconduct but also assuring accountability. The effective supervision of the governing system and of the electoral process against corruption by the own state institutions is one of the means by which democratic decline can be prevented.⁷⁵ Considering these arguments, the efforts of the *Lava Jato* operation were awarded an international prize⁷⁶ for its uncovering of the largest corruption case in Brazil with a number of 118 convictions of high-level politicians and businesspeople. Nonetheless, all the efforts put in by the operation and all the upstanding achievements it accomplished fell into discredit due to the conduct of some prosecutors and magistrates. When the Supreme Court annulled the corruption convictions against Lula da Silva in 2021 over the impartiality of Sérgio Moro, the motivations and political animus of the justice in the conducting of the judgments were tarnished. Quoting *The Economist*:

“any success that the investigations, arrests and convictions had in cleaning up Brazilian politics will probably be ephemeral. Lava Jato removed some bad actors from the stage, but failed to fix the culture of corruption [...] the lasting lesson from Lava Jato is the vital importance of insulating the judiciary from politicisation”.⁷⁷

In conclusion, these events involving the judicial branch in Brazil represented the first assault on Brazil’s democracy, the episodes that followed were a continuation of declining of what once was a consolidated democracy.

The Impeachment of Dilma Rousseff

⁷⁵ Ginsburg, Tom. and Huq, Aziz Z. *How to Save a Constitutional Democracy*. 2018. p. 200.

⁷⁶ The *Lava Jato* investigation won the ‘2016 Anti-Corruption Award’ by Transparency International, an global coalition against corruption founded in 1993, with the purpose of combat corruption and crime prevention. <https://www.transparency.org/en/press/brazils-carwash-task-force-wins-transparency-international-anti-corruption> Accessed on 21/07/2023

⁷⁷ “What did Lava Jato, Brazil’s anti-corruption investigation, achieve?”. *The Economist*. 09 March 2021. <https://www.economist.com/the-economist-explains/2021/03/09/what-did-lava-jato-brazils-anti-corruption-investigation-achieve> Last Accessed on 21/07/2023

In 2014, Dilma Rousseff was re-elected president of Brazil for a second term with a narrow margin, however, faced difficulties in holding the popularity that she once had in her first mandate, with levels of dissatisfaction growing from the people with many areas of government. In a wave of protests, organized mostly by the opposition, due to the disclosure of investigations from the *Lava Jato* operation, where numerous politicians were involved in accepting bribes from the state-owned oil company Petrobras from the years of 2003 to 2010, while Rousseff was on the board of directors. Some of the politicians involved in the investigative operation were from the president's party, PT (*Partido dos Trabalhadores* - Workers Party).

By then, Brazil had only faced one successful impeachment of the president in its recent democratic years after the dictatorship, of President Fernando Collor in 1992. It is common in Brazil to have constant and numerous formal requests for the impeachment of the president proposed by the opposition, almost the totality of them is not formally accepted or taken seriously. But once in a scenario of no political strength, lowering popular support, and economic difficulties, the impeachment discussion on Rousseff gained attention, and a formal petition for her impeachment was accepted by the president of the Chamber of Deputies, Eduardo Cunha, in December 2015, she was charged with criminal administrative misconduct and disregard for the federal budget, a violation of Brazil's Constitution article 85 and the Fiscal Responsibility Law article 36, it also encompassed in the petition the failure to act amidst the bribe scandals involving Petrobras, uncovered by the *Lava Jato* operation.

Dilma Rousseff, the 36th and first female President of Brazil, was formally impeached on August 2016, leaving Vice President Michel Temer as acting president. Following the Constitutional procedures of impeachment, the Senate voted 61-20 and found Rousseff guilty of breaching budgetary laws. Among these budgetary laws, there was special attention to the *pedaladas fiscais* (fiscal pedaling), a common practice of previous governments that had never led to impeachment. In Rousseff's case consisted in using funds of the state-owned bank to finance social programs without officially declaring the loans of these banks in the period of 2011 and 2014. Rousseff was accused of using such financial public investments in social programs to improve her chance of re-election which configuration in a fiscal responsibility crime breaking the Fiscal Responsibility Law and the Annual Budgetary Law.

It is argued that there was no proof of the crime of responsibility committed by Rousseff and that there was political manipulation in the National Congress to oust her and end the

hegemony of the Workers Party (the last 3 presidential elections had been won by them)⁷⁸, a constitutional coup in the words of Gustavo Lins Ribeiro. Also, worth mentioning that “just like previous presidencies, Rousseff’s administration had engaged in an accounting maneuver to try to make it look as if the government had more assets than it did”⁷⁹ without direct allocation from Congress. It is argued that what motivated the impeachment process was not such fiscal and budgetary matters, by the scandal involving corruption surrounding Rousseff administration people, although she was not personally involved, she was representing the party that had most politicians associated with. The opposition gained strength arguing that she failed to act against the scandal and those taking part in it, even with this not being the basis of the impeachment, was for sure the focus of it, leaving many to perceive it as a coup occurring by the will of the National Congress, the legislative branch.

The addressing of Rousseff’s impeachment as a coup is technically an inaccurate definition, as it has not involved any illegality in the process, however, considering the arguments that it was an effort of an opposite political elite group to exploit the law and subvert democracy to their goals. In an article published in the *New York Times* after the impeachment process, it was said by interviewed political scientists that the offenses implicated do not rise to the level of a rightful impeachment, and that those pushing for the impeachment were not trying to protect the integrity of democracy, but, rather, sought to manipulate it to their own ends, which was a change in the political scenario of Brazil⁸⁰.

Change in the political scenario occurred once the Workers Party of Rousseff, which advocated for egalitarian and environmental policies, protection of minorities, and social benefits, was ousted and the opposition party of the Vice President now becoming the new President, Michel Temer, was focused on business interests and lesser dedication to social benefits. The impeachment mechanism is the possibility to dispatch a president from office by a constitutional device and not by regular elections or term limits and is an intrinsic part of democratic governance⁸¹, however, it can be used to “push out weak presidents who had lost the ability to

⁷⁸ Ribeiro, Gustavo Lins. “The Brazilian Political Conundrum”. *Latin American Studies Association*, 2016.

⁷⁹ Ginsburg, Tom and Huq, Aziz Z. and Landau, David. “The Uses and Abuses of Presidential Impeachment”. *University of Chicago Law Review*. 2020.

⁸⁰ New York Times. “All Impeachments Are Political. But Was Brazil’s Something More Sinister?” 01 August 2016. <https://www.nytimes.com/2016/09/01/world/americas/brazil-impeachment-coup.html> Last accessed on 21/07/2023

⁸¹ Ginsburg, Tom and Huq, Aziz Z. and Landau, David. “The Uses and Abuses of Presidential Impeachment”. *University of Chicago Law Review*. 2020.

govern”, where the removal goes “beyond criminality to include governance failures or poor performance in office”⁸². In such scenarios, impeachment can reduce the quality of democracy once it makes use of a democratic and constitutional provision to carry out a political goal.

Overall, the popular manifestations that erupted in 2013 revealed two emerging trends, first, an increase in feelings of rejection and hostility toward the PT (*antipetismo* name to the movement against the PT); and second, the emergence of a small yet visible far-right edge openly expressing nostalgia for the military dictatorship's 'order' and 'clean government'⁸³. There was also a part of the population contrary to the impeachment that still supported the left, there were more manifestations in the streets after the impeachment occurred, bringing to light the rising polarization in Brazil, both at the level of the elite and of the masses that disagreed over the corruption scandals.

In 2022, the Budgetary Commission National Congress approved the budgetary accountability submitted by the former president of the 2014-2015 years, which were part of the argument supporting the impeachment process⁸⁴. The approval came with reservations that pledged for considerations of public government with regard to improving the governing methods. The Budgetary Commission also approved the accountability submitted by the administration of Michel Temer and Bolsonaro in the period of 2020-2021, seeking to provide a form of protection for a possible process of impeachment similar to the one that ousted Dilma Rousseff. Another recent development of the case occurred in 2023, when a federal court (*Tribunal Regional Federal da 1ª Região* - TRF-1) achieved the judicial probe of administrative impropriety against Dilma Rousseff on the matters of the *pedaladas fiscais* – which were an element of her impeachment in 2016⁸⁵.

This latest development seems to support the argument of a parliamentary or constitutional coup. Nevertheless, it only demonstrates how the legislative branch in Brazil subverted constitutional and democratic instruments to its political will and benefit. Such an act does

⁸² Ginsburg, Tom and Huq, Aziz Z. and Landau, David. “The Uses and Abuses of Presidential Impeachment”. *University of Chicago Law Review*. 2020.

⁸³ Hunter, Wendy. Timothy J. Power. "Bolsonaro and Brazil's Illiberal Backlash." *Journal of Democracy*. 2019, p. 72

⁸⁴ Banca Norte Comunicações - BNC Amazonas. “Congresso aprova contas da ex-presidente Dilma Rousseff”. 23 Dezembro 2022. <https://bncamazonas.com.br/poder/congresso-aprova-contas-da-ex-presidente-dilma-rousseff/#:~:text=O%20Congresso%20aprovou%20as%20contas%20de%202014%20e,salvaguada%20para%20os%20repasses%20relacionados%20ao%20or%C3%A7amento%20secreto>. Last accessed on 20/07/2023.

⁸⁵ G1. “TRF-1 mantém arquivado processo contra Dilma Rousseff pelas 'pedaladas fiscais'”. 22 August 2023. <https://g1.globo.com/politica/noticia/2023/08/22/trf-1-mantem-arquivado-processo-contradilma-rousseff-pelas-pedaladas-fiscais.ghtml> Last accessed on 25/08/2023.

represent in our view a setback for democratic compromise of the legislative and demonstrates a setting stage for backsliding in Brazil.

Polarization

The events of the economic recession, the uncovering of corruption scandals by the *Lava Jato*, and the Dilma Rousseff impeachment led to a series of consequences in Brazilian politics, specifically the rise of a new conservative right-wing opposition that included most of the middle and upper classes of Brazil. Many demonstrations were organized by this new opposition in 2015 and 2016, just like in 2013, and the discontentment with the Worker's Party (PT) government and refrain of them as a source of corruption and inefficiency were of great significance for the current stage of polarization that Brazil is set in. The dichotomy between 'left' and 'right' grew to proportions that were not seen before at the same time that there were demonstrations against there were also some in favor of the PT and the left, raising attention to the legal yet questionable impeachment of Rousseff, fueling the situation creating a polarized spectrum leading to difficulties in allowing for constructive discourse space.

A polarized society can lead to a vulnerable democracy once the negative consequences of polarization are more significant than its possible positive effects. Among the benefits of political polarization to democracy is the mobilization of participation and simplification of political choice, as well as the strengthening of political parties, however, when the polarization becomes severe, social cohesion and governability are threatened by the left-right ideological spectrum dividing people⁸⁶. Considering that democracy is a governing system designed to accommodate the competing interest of society, when intense levels of polarization lead to an environment of two different and mutually exclusive identities and interests, where opinions are radicalized and political stability and social cohesion are undermined⁸⁷, the impacts on the democratic environment can lead to erosion.

Polarization in this context can be defined as when there is a cross-cutting difference

⁸⁶ McCoy, J., Rahman, T., & Somer, M. "Polarization and the global crisis of democracy: Common patterns, dynamics, and pernicious consequences for democratic polities". *American Behavioral Scientist*. p. 17.

⁸⁷ McCoy, J., Rahman, T., & Somer, M. "Polarization and the global crisis of democracy: Common patterns, dynamics, and pernicious consequences for democratic polities". *American Behavioral Scientist*. p. 17. In reference to the works of Baldassarri, D., & Gelman, A. "Partisans without Constraint: Political Polarization and trends in American public opinion". *American Journal of Sociology*, vol. 114, n. 2. 2008, pp. 408-446.

between two poles that reinforces the perception of politics and society of ‘us’ versus ‘them’ leading to “pernicious consequences of severe polarization follow from these features as they make compromises, consensus, interaction, and tolerance increasingly costly and tenuous for individuals and political actors across the opposite sides”⁸⁸. In the occurrence of such levels of polarization, the electorate may lose confidence in the governing institutions and the normative support for democracy can decline by this distrust toward the opposing party, its candidates, and to social groups involved. These can reflect on problems of governance and communication, with an unwillingness or impossibility to negotiate and compromise, fundamental to a democracy, therefore, it can lead to instability and political gridlock paralyzing the government.

In the case of Brazil polarization may have started centering on the divisions over the corruption scandal and the impeachment, which made the stage for Jair Bolsonaro to emerge from the margins of the political system and support the deterioration of *mainstream political parties*⁸⁹ with an increase in the levels of political politicization in society even more. Both the left and rights opt for aggressive attacks and offenses instead of dialogue deepening the divisions. It can be said that the growing polarization had many to blame for, but the “PT’s refusal to recognize – let alone apologize for – numerous cases of egregious wrongdoing during its 13 years in power contributed to a political environment dominated by radical PT loyalists and those who demonized the party, with little room for moderates”⁹⁰.

According to McCoy and Somer, “contemporary polarizations often start when a previously disunited or marginalized segment of society becomes politically united and mobilized to achieve social, economic, cultural-ideological, or institutional goals”⁹¹. This description can be

⁸⁸ McCoy, J., Rahman, T., & Somer, M. “Polarization and the global crisis of democracy: Common patterns, dynamics, and pernicious consequences for democratic polities”. *American Behavioral Scientist*. p. 18.

⁸⁹ By ‘mainstream political parties’ we mean the Workers Party (Partido dos Trabalhadores - PT) and the Brazilian Social Democracy Party (Partido da Social Democracia Brasileira - PSDB) that have had most electors gravitating around since the late 1990s, alternating power in the presidency since Fernando Henrique Cardoso (PSDB), Lula da Silva (PT), Dilma Rousseff (PT), Michel Temer (PSDB). After the 2018 elections and then in the 2022 elections, the PSDB had a major electoral decline, with the rise of far-right in the country, the center-leaning party had no space to compete against the left. For example, PSDB had governed the state of São Paulo for two-dozen years, and in 2022, it was lost. The old duopoly of PSDB and PT was reversed with Bolsonaro’s far-right rise, shifting the political landscape in Brazil, not only in the presidential but in other executive positions such states and municipalities mandates and also in the Congress seats. (Hunter, Wendy, and Timothy Power. “Lula’s Second Act”. *Journal of Democracy*. 2023)

⁹⁰ Stuenkel, Oliver. “Brazil’s Polarization and Democratic Risk”. Chapter in the Report “Divisive Politics and Democratic Dangers in Latin America”. Carnegie Endowment for International Peace. February 2021.

⁹¹ McCoy, J., Rahman, T., & Somer, M. “Polarization and the global crisis of democracy: Common patterns, dynamics, and pernicious consequences for democratic polities”. *American Behavioral Scientist*. p. 18.

associated with the situation in Brazil and the case of those behind the manifestations of 2013, 2015, and 2016 against the Workers Party, organized by “new conservative or right-wing opposition groups, such as *Movimento Brasil Livre* and *Vem Pra Rua*”⁹² ⁹³ that underlined the cleavages of society and align in polarized rhetoric, something that came to be instrumental for the Bolsonaro election in 2018. Bolsonaro united and strengthened the groups of the right opposing the Workers Party and disarmed the opponent, it also led to a backlash for those that mobilized a counter-movement of opposition during the 2018 election run, and also in the following years of his government 2018-2022.

Given what has been said, even with initial polarization preceding the 2018 elections and culminating in the victory of Bolsonaro, the runoff of the 2022 elections only demonstrates an aggravation of the previous scenario. On October 30th, 2022, Lula da Silva ousted far-right Bolsonaro with a count of 50.9% against 49.1%, the closest result by percentage ever in a Brazilian presidential race, but what is interesting is the number of the first-round voting, where Lula and Bolsonaro combined claimed 92% of the votes, which compared with the previous three elections average the two candidates go to the second round have only claimed combined 77% of the votes in the first-round⁹⁴. This means that the confrontation between the two major candidates’ difference from the rest of the field of candidates is immense, considering the 92% of the 2022 first-round, only 8% of the electorate voted for other candidates, demonstrating, in comparison to the previous average of 77% that meant 23% voting for other candidates, that voter polarization was immense. To add the concerns to this math, it is also important to consider that Brazil has one of the world’s most fragmented electoral party systems, according to the Superior Electoral Tribunal (Tribunal Superior Eleitoral - TSE) there are 30 political parties registered⁹⁵. This overall information becomes an even more striking worry since high polarization can reflect on lesser social interaction between groups, leading to even more polarization.

In the 2022 runoff election in Brazil, Bolsonaro stood for hard-right nationalism and conservative discourse; Lula, on the other hand, promoted strong support for minorities and social

⁹² Vrydagh, Fanny, and Jiménez-Martínez, Cesar. “Talking with the right-wing: Pernicious polarization in Brazil and the philosophy of Paulo Freire”. *International Communication Gazette*. 2020.

⁹³ Movimento Brasil Livre (MBL), translated by us as ‘Free Brazil Movement’, was one of the main organizations behind the manifestations in favour of the impeachment of Dilma Rousseff.

⁹⁴ Hunter, Wendy, and Timothy Power. “Lula’s Second Act”. *Journal of Democracy*. 2023, pp. 127.

⁹⁵ Political parties in Brazil registered on the website of the TSE. <https://www.tse.jus.br/partidos/partidos-registrados-no-tse> Accessed on 26/07/2023.

values, it was opposing views for politics. Considering the psychology of polarization, the stereotyping of opposing groups and loathing emotions to the discourse with fear, distrust⁹⁶, and anger can play a fundamental role in dividing society, that is exactly the case in Brazil. The core of Bolsonaro's supporters is the so-called *anti-petista*, which are those voters that in no hypothesis want the PT (Workers Party) to return to power, and seek to prevent it at all costs, among these supporters there is an appreciation of nationalism and authoritarianism, with a more extreme part of the supported even praising and desiring the military dictatorship, also the conservatives evangelical Christians are a big part of Bolsonaro's electorate. On the other side of the pole, Lula represented the most feasible candidate for those Brazilians that came to perceive Bolsonaro as unacceptable and along with left-wing voters.

Bolsonaro was not the cause of polarization, he can be seen more as a catalyzer that took advantage of the political momentum, but later, after his election in 2018, the inflammation in society only grew. Bolsonaro opposed progressive measures of equal pay and advocated in favor of gun ownership, acting with hostility against the ones opposing his intentions, but not only, his irresponsible conduct with the covid-19 pandemic in 2021, careless and contrary to the conduct advised by the World Health Organization, generated a common against to his presidency, also the disregard for environmental policies, all that contributed for his loss of appeal and consequently not being able to achieve re-election in 2022. Making reference to other works, McCoy and Somer discuss how studies have "identified a number of mechanisms through which media has influenced affective polarization in the electorate"⁹⁷ including the formation of 'information bubbles', which can be said exactly the method used by Bolsonaro. The social media use by Bolsonaro fueled and deepened polarization, there came to be a division between '*bolsominions*' (Bolsonaro's supporters) and '*petralhas*' (PT supporters), and surveys conducted with the Brazilian electorate assessed that there is a lower level of willingness of opposing sites do engage with the individuals that have distinct political views⁹⁸.

Brazil's situation displays how both political and economic shocks can heighten dissatisfaction with incumbent parties while paving the way for disruptive politicians to capitalize

⁹⁶ McCoy, J., Rahman, T., & Somer, M. "Polarization and the global crisis of democracy: Common patterns, dynamics, and pernicious consequences for democratic polities". *American Behavioral Scientist*. p. 23.

⁹⁷ McCoy, J., Rahman, T., & Somer, M. "Polarization and the global crisis of democracy: Common patterns, dynamics, and pernicious consequences for democratic polities". *American Behavioral Scientist*. p. 22.

⁹⁸ Vrydagh, Fanny, and, Jiménez-Martínez, Cesar. "Talking with the right-wing: Pernicious polarization in Brazil and the philosophy of Paulo Freire". *International Communication Gazette*. 2020. p. 459.

on societal divisions. Including religious divisions such as Bolsonaro did, pivoting evangelicals to be against the left, especially with evangelicals accounting for 30% of the population and a strong voting bloc of Bolsonaro⁹⁹. In a similar situation of intense polarization hampering democracy, the United States with its party system in place for decades represents a turbulent scenario leading to an even more polarized situation after Donald Trump's election in 2016. In the United States, considering the work of Suzanne Mettle in 'Four Threats: The Recurring Crises of American Democracy', the first major threat is *polarization* which creates paralysis and gridlock in the country, where "two parties are now divided over race and religion – two deeply polarizing issues that tend to generate greater intolerance and hostility than traditional policy issues such as taxes and government spending"¹⁰⁰. The partisan and ideological polarization in the United States did provide a stage for Donald Trump's rise to the presidency, his candidacy channeled the populist and anti-establishment part of the Republicans.

During his presidency polarization grew even more once he encouraged violence against protestors; threatened prosecution of his political opponents; challenged the integrity of the electoral system and voting outcome; censored and constrained federal agency reports; challenge core constitutional institutions and practices by attacking the FBI, Department of Justice, federal prosecutors, and federal judiciary; and even came to suggest that Democrats or the party are treasonous¹⁰¹. Among other measures harmful to democracy pursued by Trump, that also contributed to more polarization – once one side continue to support his mandate and actions, even if were harmful to the democratic system – was his politicized control over institutions such as the Justice Department, FBI, and the Supreme Court, resorting to executive appointments and allowing the restraints of the executive power to be malleable to the Republican party¹⁰².

Trump's presidency exacerbated the issue of gerrymandering with regard to public officials and the ideological composition of the government put forward along with the powers of the president¹⁰³. This gerrymandering cause damage to the accountability of Congress and further

⁹⁹ New York Times. "Brazil's disputed runoff faces 'spiritual warfare' for evangelical voters." 30 October 2022.

<https://www.nytimes.com/2022/10/30/world/americas/brazil-election-evangelicals.html> Last accessed on 25/08/2023

¹⁰⁰ Levitsky, Steven, and Daniel Ziblatt. *How Democracies Die*. 2018. p. 92.

¹⁰¹ Hochschild, Jennifer. "What's New? What's Next? Threats to the American Constitutional Order" in Mark A Graber, Sanford Levinson, Mark Tushnet eds, *Constitutional Democracy in Crisis?* New York: Oxford University Press, 2018. p. 99.

¹⁰² Lieberman, R., Mettler, S., Pepinsky, T., Roberts, K., & Valelly, R. "The Trump Presidency and American Democracy: A Historical and Comparative Analysis". *Perspectives on Politics*. 2019. p. 473.

¹⁰³ Posner, Eric A. "The Trump Presidency: A Constitutional Crisis in the United States?" in Mark A Graber, Sanford Levinson, Mark Tushnet eds, *Constitutional Democracy in Crisis?* New York: Oxford University Press, 2018. p. 111.

contributed to the polarization, however, attention must be paid to the context of Trump's election, where a financial crisis involving the failure of liberal interventionism and failure of conservative economic policy took a toll in society, leading many to support Trump as an outsider to change the situation due to public dissatisfaction with the democratic constitutional institutions of the country, these among not only Democrats but also Republicans¹⁰⁴. This dissatisfaction of the electorate with the current take on politics brought Trump to the United States Presidency in 2016, and the same was observed in Brazil with Bolsonaro's election in 2018, as it was argued initially.

When discussing pernicious polarization, the idea that citizens and political actors may support non-democratic actions just to hold on to power is a fear and a possibility, by perceiving the political field as a battlefield and the other as a rival, democracy-eroding practices can happen¹⁰⁵. In reference to a study performed in the United States, it was gathered that a Democrat candidate is likely to support a proposal to reduce the number of polling stations number in a specific area where the political support of candidates is usually for Republicans¹⁰⁶, which is an example of a position that violated democratic principles, and demonstrates the argument above where to secure power citizens and actor might support measures that subvert democracy and the electoral process to the party's benefit.

In the United States, ordinary citizens "may be drawn into polarization, as partisan affiliations increasingly reflect and reinforces cleavages of race, ethnicity, religiosity, and economic status; as a result, mass polarization may reinforce and exacerbate the divisions spurred by political elites"¹⁰⁷, these challenges come in conflict with key attributes of democracy, such as the idea of legitimate opposition. Partisan polarization keeps political parties far apart and divides society in a Us versus Them camp of mutual distrust, and according to Mettler's book, the United States "is in a process of pernicious polarization that has involved the country's formative rifts, two mass-based parties, and social identities" where already caused democratic erosion once it "weakened capacity for consensus-promoting institutions"¹⁰⁸. For example, considering matters of

¹⁰⁴ Posner, Eric A. "The Trump Presidency: A Constitutional Crisis in the United States?" in Mark A Graber, Sanford Levinson, Mark Tushnet eds, *Constitutional Democracy in Crisis?* New York: Oxford University Press, 2018. p. 112.

¹⁰⁵ Murat Somer, Jennifer L. McCoy & Russell E. Luke. "Pernicious polarization, autocratization and opposition strategies". *Democratization*. 2021.

¹⁰⁶ Svobik, Milan W. "Polarization versus Democracy." *Journal of Democracy*, 2019. p. 25-26.

¹⁰⁷ Mettler, Suzanne. Lieberman, Robert C. *Four Threats: The Recurring Crises of American Democracy*. 2020. p 5.

¹⁰⁸ Mettler, Suzanne. Lieberman, Robert C. *Four Threats: The Recurring Crises of American Democracy*. 2020. p 75.

the 2019-20 impeachment investigation and trial of Donald Trump, the Democrats were perceived by the Republicans as pursuing a quarrel that going against him since his election, only motivated by partisan interests to oust him from the Presidency, on the other hand, de Republicans saw the Democrats standing with Trump as corrupt leaders that only protected him in order to retain power and their own partisan interests¹⁰⁹.

As previously mentioned, Brazil has a multiparty system that allows for a diverse democratic representation, whereas the United States primarily features a two-party system with the Republicans and Democrats. However, the 2022 Brazilian elections share striking similarities with the situation in the United States. The rivalry between Bolsonaro and Lula can be likened to the contentious dynamic between Republicans and Democrats. This resemblance even extended to post-election events, with both Trump and Bolsonaro's supporters resorting to assaulting their respective Congress buildings on January 6, 2021, and January 8, 2023, respectively, to question the democratic electoral outcomes.

The polarization in Brazil and the United States predates the invasion incidents, as both Trump and Bolsonaro contributed to fomenting polarization by sowing doubts about the regularity of the electoral process and raising concerns about potential fraud. Their actions effectively primed the environment for the possible questioning of election results. The parallel between Brazil and the United States underscores the significance of addressing polarization in democratic societies to safeguard the integrity of the electoral system and uphold democratic values. By understanding the similarities and lessons from both nations, we can better appreciate the importance of fostering a more inclusive and constructive political discourse to promote democratic stability and unity.

Polarization: the tipping point

The scenario of polarized politics both in Brazil and the United States have one more striking similarity besides the election of presidents that on certain occasions disregarded the democratic decorum and instigated polarization, in the two countries, there was a major attack on democracy by the electorate that did not accept the electoral defeat of Bolsonaro and Trump. In the United States, Joe Biden was elected President and succeeded Donald Trump in the 2020

¹⁰⁹ Mettler, Suzanne. Lieberman, Robert C. *Four Threats: The Recurring Crises of American Democracy*. 2020. p 77.

elections. On January 6th, 2021, the day of the congressional formalization of Biden's election, – which occurs in the US Congress on Capitol Hill, Washington DC – a group of supporters of Trump assaulted the building aiming at stopping the election of Biden. This assault was driven by the belief that the elections were stolen by Democrats to prevent the continuation of Trump's presidency. This attack did not prevent Biden to be sworn into his mandate as President of the United States. On January 8th of 2023, two years later, a similar attack occurred in Brasília, the capital of Brazil, on the National Congress premises, this assault on Brazilian democratic institutions was charged by supporters of Jair Bolsonaro. The latest had lost his re-election attempt on October 30th, 2022, for Luiz Inácio Lula da Silva in a tight election, the intention was to override the legitimate election and was also not successful. The two assaults had a similar aim, background, consequences, and political context, for example, both occurred in a period of transition of power, where Trump and Bolsonaro, right-wing candidates, were ending their terms and ceding power to the left-wing. We consider these moments as tipping points of deep political polarization present in American and Brazilian democracies.

First, the United States. On the day of the inversion of the US Congress in Washington DC, Trump was conducting a rally against the election of Biden, he was accused to incite the mob of his supporters to storm the Congress by affirming that he had won the elections and that it was necessary to 'stop the steal'¹¹⁰. Following affirmations such as 'we will never concede'¹¹¹, 'you will have an illegitimate president [...] we can't let that happen'¹¹², Trump did suggest that his supporters marched to prevent the Democrat to be in power. What went on from that was an attack by a group of armed protesters on Capitol Hill, the Congress building. However, before claiming that the elections had been stolen, Trump was already making accusations of voter fraud ahead of the 2018 midterms elections and again in 2020 said that the possibility of losing the elections was only if it was rigged¹¹³. When he insisted on such accusations after he had effectively lost the election, it was not a surprise.

¹¹⁰ BBC. "Capitol riots: Did Trump's words at rally incite violence?". 14 February 2021 <https://www.bbc.com/news/world-us-canada-55640437> Last accessed on 01/08/2023.

¹¹¹ Washington Post. "Trump, Republicans incite crowd before mob storms Capitol". YouTube, <https://www.youtube.com/watch?v=mh3cbd7niTQ> Last Accessed on 01/08/2023.

¹¹² BBC. "Capitol riots: Did Trump's words at rally incite violence?" 14 February 2021 <https://www.bbc.com/news/world-us-canada-55640437> Last accessed on 01/08/2023.

¹¹³ ABC News. "A timeline of Donald Trump's election denial claims, which Republican politicians increasingly embrace" Tal Axelrod. 08 September 2022. <https://abcnews.go.com/Politics/timeline-donald-trumps-election-denial-claims-republican-politicians/story?id=89168408> Last accessed on 02/08/2023.

The events in Brazil were not by current knowledge incited by Bolsonaro, differently from what went on in the United States. The attack on the Congress Buildings in Brazilia on January 8th, 2023, was only a feature of Bolsonaro's supporters that feared an imaginative communist¹¹⁴ and accused electoral fraud over Lula's victory¹¹⁵. Following the Brazilian election result on October 30th, 2022, Bolsonaro did not acknowledge the re-election defeat and Lula's victory, he remained silent. Also, according to Brazil's democratic traditions, the former president is supposed to pass the presidential sash to the newly elected president, in the formal event of being sworn into office – it represents a peaceful transition of power. Bolsonaro was unable to conduct such manners once after the elections defeat, he went to Miami, United States, for medical reasons. Such facts did contribute to the narrative of his supporters that the election was stolen, in the end, the assault in Brazilian ended with about 200 arrests in the act¹¹⁶ and later totalizing 1200 people detained for questioning¹¹⁷.

In this context, what led Bolsonaro's supporters to believe that elections were stolen? Since his election in 2018, Bolsonaro has been critical of Brazil's electoral systems, he claimed in a live stream transmission in 2021 via Facebook that there were obvious patterns that indicated vote results fraud, however, did not provide any proof of such affirmation¹¹⁸. He also suggested that officials counted machine votes in secret and, therefore, could manipulate results, and that he had suspicions over the 2018 election, due to a hacker attempt to steal it, which failed¹¹⁹. Such long-time false implications over Brazil's elections system incited many of his supporters to question

¹¹⁴ The far-right in Brazil have in much inflated the narrative of 'communism fear' and that should be prevented by means of holding back left-wing politicians. The narrative gained more power with time, a statement by Jair Bolsonaro corroborated with it, for example, in an official visit to Washington in 2019 after his presidential victory in 2018, where he affirmed that it was his dream to free Brazil from the 'dirty ideology of the left'. Bloomberg. "Bolsonaro Sees Himself Ending 'Dirty Ideology of the Left' in Brazil". Iglesias, Simone Preissler. 18 March 2019. <https://www.bloomberg.com/news/articles/2019-03-18/bolsonaro-calls-for-an-end-to-communism-on-visit-to-washington#xj4y7vzkg> Last accessed on 02/08/2023.

¹¹⁵ Ferraris, N. "United States, Brazil, Political Polarization and Democratic Pushback. Assault on Democracy?". *II Politico*. 2023. p. 48.

¹¹⁶ G1. "Terroristas bolsonaristas invadem Congresso Nacional, Palácio do Planalto e STF, em Brasília" <https://g1.globo.com/df/distrito-federal/noticia/2023/01/08/bolsonaristas-radicaais-entram-em-confronto-com-a-policia-na-esplanada-e-sobem-rampa-do-congresso-nacional-em-brasilia.ghtml> . Last accessed on 01/08/2023.

¹¹⁷ New York Times. "What We Know About the Investigations Into the Brazil Protests". 09 January 2023. <https://www.nytimes.com/2023/01/09/world/americas/brazil-protests-investigation.html> Last accessed on 01/08/2023.

¹¹⁸ New York Times. "How Bolsonaro Build the Myth of Stolen Elections in Brazil". October 2022. <https://www.nytimes.com/interactive/2022/10/25/world/americas/brazil-bolsonaro-misinformation.html> Last accessed on 01/08/2023.

¹¹⁹ New York Times. "How Bolsonaro Build the Myth of Stolen Elections in Brazil". October 2022. <https://www.nytimes.com/interactive/2022/10/25/world/americas/brazil-bolsonaro-misinformation.html> Last accessed on 01/08/2023.

the legitimacy of the democratic elections' final result which led his failed re-election attempt, his consistent and methodical repetitions of doubts over the voting system are seen by us as yearslong camping to undermine the faith in Brazilian elections.

Brazil's voting system, which has been in operation for a quarter-century since 1996, utilizes reliable machines that have never been proven to incur fraud. The system has been tested rigorously and the voting machines are thoroughly checked for reliability before, during, and after voting is conducted. The allegation of fraud by Bolsonaro is without any support, Investigations on the operation of voting machines were conducted but no proof was found, nevertheless, such posture in much can be compared with Trump's attacks and questioning of voting in the United States¹²⁰.

In the United States and Brazil, we have witnessed cases where right-wing candidates who lost democratic elections refused to accept the left-wing as the current ruling power in the presidency. The concerning aspect is how allegations of fraud, without substantial evidence, can erode public trust in democratic institutions and the electoral process. Both Bolsonaro and Trump, by exploiting this subject, have attempted to polarize society, further damaging the structure of democracy, their actions have created divisions among society once they may influence supporters to doubt the legitimacy of the electoral process.

As a result of the anti-democratic attack that occurred in Brazil, the judiciary, and the legislative branch united in search of justice. Inquiry and investigations are being conducted by the Federal Prosecution Service (MPF), the Office of the Prosecutor General (PGR), and the Federal Police (PF), there is also a current Joint Parliamentary Commission of Inquiry (CPMI)¹²¹. The events that took place on the 8th of January in Brasília were an attack on democracy by a mob of supporters of Bolsonaro. The current investigations do not trace connections between Bolsonaro and the incitement of the events, he is not figured in the investigations until the time of this written.

¹²⁰ Al Jazeera. "Bolsonaro's false fraud claims involve this Brazil voting system". 06 September 2022. https://www.aljazeera.com/news/2022/9/6/bolsonaros-false-fraud-claims-involve-this-brazil-voting-systemwcdVKmCAZgtX8SXVNBZENMk981PvnmINpYyoOroU_Y8/edit Last Accessed on 01/08/2023

¹²¹ The *CPMI* is predicted in the Brazilian Constitution, it sets a mixed and temporary commission created by one-third of the member of each House of the National Congress (Deputies and Senators, destined to investigate determined facts for a determined period of time, with powers of judicial authorities. https://www.congressonacional.leg.br/legislacao-e-publicacoes/glossario-legislativo/-/legislativo/termo/comissao_parlamentar_mista_de_inquerito_cpmi Last accessed on 03/08/2023

A Brief on Bolsonaro's Government

Jair Messias Bolsonaro was elected in 2018 with 57.8 million votes¹²² to be the 38th president of Brazil, he hold office from 2019 to 2022. Bolsonaro is a retired military officer and is known for holding a national conservatism position on politics, promoting traditional family values, and preservation of social order. He had been involved in politics since 1991 as a Federal Deputy of the state of Rio de Janeiro in the Chamber of Deputies until his election to the presidency, – 27 years as a congressman. Over this period Bolsonaro only had put forward one bill in favor of educational matters and two others about healthcare-related issues, and 32 with regards to military matters, with only one bill passed, PL 2.514/1996, with regards to reducing taxes on industrial goods¹²³.

The ascension of Bolsonaro to the presidency followed many important events that occurred in Brazilian politics, namely the state inefficiency and corruption scandals in the country that involved the previous governments of the *Nova Republica* period (New Republic), which was the period after the military regime where the PSDB (center right, social-democratic party) and PT (left, workers' party) took turns in holding presidential office. Bolsonaro's ascension can be seen as the end of the *Nova Republica* period in Brazil.

In his election bid in 2018, Bolsonaro would be at first moment running against former president Luiz Inacio Lula da Silva, who had governed Brazil for two mandates (2003-2016). However, following the outcomes of the operation *Lava Jato*, Lula was declared ineligible and was replaced by the PT's new candidate Fernando Haddad. The polls for the election “told a relatively clear story of a simple contest between the left and the right. One side righteously defended morality, the other advancing progressive social policies; both portraying their vision as irreconcilable with the other”¹²⁴, as we discussed previously, an intensely polarized scenario. The outcome of the election was Bolsonaro's victory, he attracted the vote of the right-wing and with his discourse against the corruption of the PT government and Lula, he attracted the vote of those that were against their return to power.

¹²² TSE 2018. <https://www.tse.jus.br/eleicoes/eleicoes-2018/votacao-e-resultados> Last accessed on 26/09/2023

¹²³ Chagas-Bastos, Fabrício H. “Political Realignment in Brazil: Jair Bolsonaro and the Right Turn”. *Revista de Estudos Sociais*. 2019. p. 95

¹²⁴ Chagas-Bastos, Fabrício H. “Political Realignment in Brazil: Jair Bolsonaro and the Right Turn”. *Revista de Estudos Sociais*. 2019. p. 94

During this campaign, Bolsonaro's far-right spread misinformation through social media (WhatsApp, Twitter, and Facebook) in order to advance their political discourse, in Brazil it came to be addressed as 'fake-news'. These messages spread misinformation and were directed at creating social-status fears among those who were losing economic power (middle-class), leading to a feeling of anger and disquiet, inflating polarization in society once tensions "between social groups can enhance the tendency to make judgments based on group stereotypes, promoting nationalistic attachment and support for nationalistic leaders"¹²⁵. Bolsonaro's 2018 campaign built on that and continues during his years in office, hate speech towards the opposition and vulnerable sections of the population became normalized, including in his re-election campaign in 2022, which was not successful.

The tactic of spreading misinformation could be seen as a deception by Bolsonaro towards his electors, manipulating the truth with the use of 'fake news' and consequently manipulating the public opinion to sway the electorate towards him. This can happen by promoting biased viewpoints, false narratives and sensationalization of events. Considering that many will access the information in the social media but will not pursue any fact-check on the matter makes it easier for nonsensical and inaccurate information or claims to be shared among a group. The spreading of misinformation weakens democratic values such as truth, integrity, and accountability of governance.

The presidency of Bolsonaro was overall a turbulent time for Brazil, when elected he appointed to ministerial positions several military men, and following his campaign positions he took many anti-environmental measures, as well as anti-indigenous rights. Besides that, considering the efforts of the left-wing in to enhance and advance the educational system in Brazil, appears that Bolsonaro was in the contrary direction. The Ministry of Education, as well as, the Ministry of Science, Technology and Innovation had funds reduced with his entry to the presidency, for example, two agencies of research and education CNPq (National Council for Scientific and Technological Development) and CAPES (Coordination for the Improvement of Higher Education Personnel) lost 45% of their budget in the period of 2019-22 compared to 2015-18¹²⁶.

¹²⁵ Chagas-Bastos, Fabrício H. "Political Realignment in Brazil: Jair Bolsonaro and the Right Turn". *Revista de Estudos Sociais*. 2019. p. 95.

¹²⁶ Rodrigues, Meghie. "Bolsonaro's Troubled Legacy for Science, Health and the Environment." *Nature*, vol. 609, 2022, p. 891.

Budget cuts in the area of education can be seen as part of the campaign to undermine the morale of higher education in Brazil. In a similar path of undermining established institutions, one of Bolsonaro's earliest actions as President involved the transfer of authority on the demarcation of indigenous lands from the National Indigenous Foundation (FUNAI) to the Minister of Agriculture¹²⁷. This maneuver placed control in the hands of the agricultural lobby within the government, which aims to expand available land for agricultural purposes.

Bolsonaro's environmental policies – or the lack of them – were internationally exposed in the face of failure in dealing with the outbreak of wildfires in 2020, especially in the Amazon and Pantanal region, and on the verge of such issues, he came to deny the existence of fires¹²⁸. The denials were contrary to the information provided by the own government institutions of research, Brazil's National Institute for Space Research (INPE), which showed in reports from satellite data that the number of fires in the Amazon had increased compared with previous years¹²⁹. The environmental policies of Bolsonaro's government were disastrous and even had a negative impact on Brazil's *commodities* exports¹³⁰, it is difficult to say, but we believe that for Bolsonaro and his supporters, the idea that global capitalism does consider nowadays the protection of the environment and biodiversity is not yet a formed concept. This sentiment is exemplified by Bolsonaro's statement – when inquired about the record high deforestation data¹³¹ – where he asserted that the Amazon belongs to Brazil and suggested that European nations should 'mind their business' once they already destroyed their own environment¹³².

A critical concern surrounding Bolsonaro's political stance arose from his interference in judicial investigations involving his family. He exerted pressure on his Minister of Justice, Sergio

¹²⁷ VEJA. "Todas as medidas tomadas pelo governo Bolsonaro até agora". 7 January 2019. <https://veja.abril.com.br/politica/todas-as-medidas-tomadas-pelo-governo-bolsonaro-ate-agora/>

¹²⁸ Reuters. "Brazil's Bolsonaro calls surging Amazon fires a 'lie'". 12 August 2020. <https://www.reuters.com/article/us-brazil-environment-fires/brazils-bolsonaro-calls-surging-amazon-fires-a-lie-idUSKCN2572WB> Last accessed on 02/08/2023.

¹²⁹ CNN. "Bolsonaro says reports of Amazon fires are a 'lie.' Evidence says otherwise". 19 August 2020. <https://edition.cnn.com/2020/08/19/americas/brazil-amazon-fires-bolsonaro-intl/index.html> Last accessed on 02/08/2023.

¹³⁰ Le Monde Diplomatique Brazil. "A Amazônia e o antiambientalismo de resultados". 12 August 2020. <https://diplomatique.org.br/a-amazonia-e-o-antiambientalismo-de-resultados/> Last accessed on 02/08/2023.

¹³¹ The Guardian. "Deforestation of Brazilian Amazon surges to record high". 4 June 2019. <https://www.theguardian.com/world/2019/jun/04/deforestation-of-brazilian-amazon-surges-to-record-high-bolsonaro> Last accessed on 03/08/2023.

¹³² The Guardian. "Bolsonaro declares 'the Amazon is ours' and calls deforestation data 'lies'". 19 July 2019. <https://www.theguardian.com/world/2019/jul/19/jair-bolsonaro-brazil-amazon-rainforest-deforestation> Last accessed on 03/08/2023.

Moro, to remove the chief of the Federal Police, who was overseeing these investigations. Ultimately, Moro resigned amidst allegations of improper political interference in law enforcement by Bolsonaro¹³³. These incidents raise significant questions, given that Bolsonaro had frequently criticized the status quo in politics, both during his election campaign and throughout his presidency. However, his involvement in such political interferences brings into doubt the sincerity of his commitment to depart from traditional political practices once he makes misuse of the presidential office in order to hinder investigations of the Federal Police.

The most crucial point of Bolsonaro's governance came with the COVID-19 pandemic in 2020. His administration downplayed the disease outbreak, which potentially led to Brazil's death toll of 704,488¹³⁴. To control the crisis many governments imposed national strategies, among them the shutdown of non-essential places, physical distancing, and home confinement; while this was the strategy of some, Bolsonaro claimed that there was a 'hysteria' over the Coronavirus and that it was a 'small flu'¹³⁵ and urged for normalization of economic activity. On the verge of such a position, his current Minister of Health was strongly opposed to such behavior and came to be a critic of the President, and for that, he was fired on April 16, 2020¹³⁶.

Completely disregarding the public safety orientation of the World Health Organization for social distancing, Bolsonaro even attended rallies of protestors against the Coronavirus restriction¹³⁷ imposed by governors and mayors. As if the situation could not be more dramatic, Bolsonaro's cabinet minister endorsed anti-China theories about the disease¹³⁸, and himself was involved in spreading misinformation encouraging the use of hydroxychloroquine as a valid

¹³³ NPR. "Amid Pandemic, Brazil's Jair Bolsonaro Faces Political Crisis". 29 April 2020. <https://www.npr.org/2020/04/29/847732065/amid-pandemic-brazils-jair-bolsonar-faces-political-crisis> Last accessed on 03/08/2023.

¹³⁴ World Health Organization (WHO). Data from 3 January 2020 to 26 July 2023 <https://covid19.who.int/region/amro/country/br> Last accessed on 02/08/2023.

¹³⁵ Reuters. "Bolsonaro urges Brazilians back to work, dismisses coronavirus 'hysteria'". 24 March 2020. <http://reuters.com/article/us-health-coronavirus-brazil/bolsonaro-urges-brazilians-back-to-work-dismisses-coronavirus-hysteria-idUSKBN21B2H2> Last accessed on 02/08/2023.

¹³⁶ Washington Post. "Brazil's Bolsonaro fires Health Minister Mandetta after differences over coronavirus response". 16 April 2020. https://www.washingtonpost.com/world/the_americas/coronavirus-brazil-bolsonaro-luiz-henrique-mandetta-health-minister/2020/04/16/c143a8b0-7fe0-11ea-84c2-0792d8591911_story.html Last accessed on 02/08/2023.

¹³⁷ Al Jazeera. "Brazil's Bolsonaro joins protest against coronavirus restrictions". 20 April 2020. <https://www.aljazeera.com/news/2020/4/20/brazils-bolsonaro-joins-protest-against-coronavirus-restrictions> Last accessed on 02/08/2023.

¹³⁸ The Guardian. "China outraged after Brazil minister suggests Covid-19 is part of 'plan for world domination'". 7 April 2020. <https://www.theguardian.com/world/2020/apr/07/china-outraged-after-brazil-minister-suggests-covid-19-is-part-of-plan-for-world-domination> Last accessed on 02/08/2023.

treatment for the Coronavirus, even camming to be charged on the Supreme Court for such actions¹³⁹. Compiling these and more related disastrous positions regarding the pandemic, Bolsonaro's approval rates achieve the lowest numbers since his inauguration, with 53% disapproval by Brazilian society of his governance in September 2021¹⁴⁰.

Brazil had elections in October 2022. Bolsonaro ran for re-election against the former president Lula da Silva, after his convictions by the *Lava Jato* were annulled, he figured as the main option for the Workers Party (PT) to defeat Bolsonaro. According to TSE, the authoritative body overseeing elections, there was the participation of 123,682,372 eligible voters. In a closely contested race, Lula secured victory with a total of 60,345,999 votes, commanding a narrow margin of 50.9%. Bolsonaro, on the other hand, garnered 58,206,354 votes, capturing 49.1% of the votes. The democratic process played out intensely, resulting in Bolsonaro's defeat and an end to his potential re-election bid and a new positive perspective for democracy in Brazil.

Military Involvement in the 2022 Brazilian Elections

The Brazilian Constitution of 1988, Article 142, firming after the end of the Military Dictatorship in 1985, established the Armed Forces – Navy, Army, and Airforce – as permanent national institutions subordinated to the executive branch, the President of the Republic, their civilian commander-in-chief¹⁴¹. The same constitutional provision establishes to the Armed Forces the guarantee of the constitutional powers and safeguard of 'law and order'. Considering the history of military rule, the military abstained from politics. The initially mentioned constitutional provision established that the active military is not allowed to be filiated to political parties, consequently, cannot run for elections and figure like-positions.

Bolsonaro, a retired military man, when in office from 2019–22, positioned over 6,000 active or reserve military personnel within various government roles. However, the concerning development emerged in relation to the military's role in the 2022 elections. Before the 2020

¹³⁹ The Brazilian Report. "Bolsonaro could face criminal charges for chloroquine endorsement". 22 February 2021. <https://brazilian.report/liveblog/coronavirus/2021/02/22/bolsonaro-could-face-criminal-charges-for-chloroquine-endorsement/> Last accessed on 02/08/2023.

¹⁴⁰ STATISTA. <https://www.statista.com/statistics/1027308/approval-brazilian-president-bolsonaro/> Last accessed on 02/08/2023.

¹⁴¹ Brazilian Constitutions – *CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL DE 1988*. https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm

elections, military involvement in electoral matters had been confined to logistical assistance, such as the transportation of voting machines. The situation evolved significantly due to Bolsonaro's persistent criticism towards the voting machinery and system. His extensive questioning ultimately led to a profound shift in the military's engagement with the electoral process.

In Brazil, the Superior Electoral Court (*Tribunal Superior Eleitoral*, TSE) is the highest body of the Electoral Justice branch of the Brazilian government and among their responsibilities is the judiciary control over the electoral proceedings. Taking into account the attacks of Bolsonaro to the integrity of the electoral proceedings in Brazil and accusations of fraud, the TSE in a normative decree, *Portaria n° 578* of 8th September 2021, created a Commission for the Transparency of Elections (Comissão de Transparência das Eleições - CTE) and the Observatory of Transparency of Elections (Observatório de Transparência das Eleições - OTE)¹⁴².

In the normative, the Commission was instituted to amplify the transparency and security of the steps of preparation and realization of the elections, enhancing the participation of specialists from civil society and public institutions in the audit of the electoral process, therefore, contributing to its integrity. The Observatory sought to include civil society institutions (those with notary knowledge of technology, human rights, democracy and political science) to contribute to the objectives of transparency of the electoral process, as well as public institutions. The Armed Forces, under the Ministry of Defense, among other entities, were included in both the Commission and Observatory. On the same grounds of including the Armed Forces in the process of oversight of the electronic voting system, the TSE *Resolution n° 23.673* of 14th December 2021, – which considers the inspection and audit of the electronic voting system – established as one of the inspections entities for the legitimization of the process the Armed Forces (Article 6, XIII)¹⁴³.

The contributions of the Armed Forces to the TSE have the characteristics of technical rigor and collaboration under the legality conceded by the Electoral Justice. For democratic elections, supervision of the voting process represents transparency, which is of great importance. The participation of relevant institutions from the private and public sectors contributes to this idea and enhances the validity of the process. However, considering the history of Brazil with the military it is to be taken as worrisome the participation of the Armed Forces in the 2022 elections.

¹⁴² *Portaria n° 578*. TSE. Brazil. 8 September 2021. <https://www.tse.jus.br/legislacao/compilada/prt/2021/portaria-no-578-de-8-de-setembro-de-2021>

¹⁴³ *Resolução n° 23.673*. TSE. Brazil. 14 December 2021. <https://www.tse.jus.br/legislacao/compilada/res/2021/resolucao-no-23-673-14-de-dezembro-de-2021>

The electoral process in Brazil is the responsibility of the Electoral Justice, a branch of the state completely dedicated to all aspects of the electoral process and accounted with high-level experts of the matters, going from legal to technical knowledge. There was never before proof of fraud of any interest of the Armed Forces in participating in this process, with Bolsonaro's authoritarian military inclinations these came to change, his constant questioning of the integrity of electronic voting and accusations of fraud influenced this new turn of military involvement in the voting process.

A comprehensive technical report, commissioned by the Ministry of Defense, meticulously analyzed the electronic voting system both prior to and following the October 2022 elections. The first assessment occurred before the elections, while the second evaluation focused on the system's performance on election day itself. Considering the report, the Armed Forces created a group composed of officials' specialists in system operation and information technology to represent them in the audit task, the *Equipe das Forças Armadas de Fiscalização e Auditoria do Sistema Eletrônico de Votação* (EFASEV). The operation of the Electronic Voting System (*Sistema Eletrônico de Votação - SEV*) which is present in each voting machine has a source-code. The TSE limited the access of the EFASEV, as well as of others, in the access of it, a matter of safety. In the report of the Armed Forces, it was put forward this impossibility to access the source-code, considering it had limitations in the understanding of the analysis of its security. Following such affirmation, the report alleges that the tool it had access to did offer conclusions in the transparency of the electronic voting process, however, the 'correct' functioning of the system could not be attested for.

When the expression 'correct' is used by the Armed Forces it can give a dubious understanding. It is already presumed that the system functions correctly, once it has never accounted for any fraud in the electronic voting process in Brazil. By saying they could not attest for the correct function puts in check the so far functioning of the system.

The first report of the Armed Forces assessed many steps of the electoral process, for example in an integrity test run with the machines, the biometry function, the *zerésima* (a sought of receipt issued by the voting machine computing the votes), with these regards no anomaly was presented¹⁴⁴. Nevertheless, the report's focus remained on the lack of full access to the source-

¹⁴⁴ Technical Report EFASEV https://static.poder360.com.br/2022/11/Relatorio_EFASEV.pdf Last Accessed on 04/08/2023.

code, concluding such conditions limited the scope of the efficacy of the proceeding of oversight performed by the EFASEV, there were also considerations made by the report that sought to improve the electoral proceedings¹⁴⁵. Finally, the EFASEV attested to the compromise with the collaborative spirit of the Electoral Justice in assuring the transparency and suitability of the process for Brazilian Democracy.

Later, after the election's first and second terms occurred in October 2022, the Ministry of Defense directed a communication to the President of the TSE, *Ofício n° 29126/GM-MD* from 9th November 2022. In this communication between the Armed Forces and the Electoral Justice, it was affirmed that the voting system is not exempted or immune to the possible influence of a malware code that can alter its functioning, however, no evidence of actual fraud in the electoral process was found. This brings to discredit the allegations of Bolsonaro once the in accordance with the military report there was only evidence that “the electoral justice system preserved evenness and security”¹⁴⁶.

Since Brazil’s return to democracy after the end of the Military regime, there have been 15 Ministers of Defense, only in Bolsonaro’s government there were 3 different. Before 2019 none of the Ministers of Defense were military men, most of them were politicians and businessmen of relevant positions. The connections of Bolsonaro with the military extended to the point where many branches of government had military filling positions, the placement of two generals and one army commander to the office of Ministry of Defense must certainly influence the Armed Forces to conduct such a thorough oversight of the electoral proceedings taking place in 2022 where Bolsonaro would run for re-elections in presumed tight race for the presidency.

The far-right in Brazil has among its supporters a parcel that holds a strong nostalgia for the military regime when there was a hard grip on security in the country. Considering Bolsonaro has a central figure of the Brazilian far-right it comes as no surprise that among his supporters there are many who endorse military rule. After the elections defeat in October 2022 many of those who supported Bolsonaro and despised the left-wing set camps in front of military bases all over

¹⁴⁵ “Atuação das Forças Armadas em apoio ao TSE no aprimoramento da segurança e transparência do processo eleitoral”. <https://www.gov.br/defesa/pt-br/aceso-a-informacao/outros/atuacao-das-forcas-armadas-em-apoio-ao-tse-no-aprimoramento-da-seguranca-e-transparencia-do-processo-eleitoral> Last Accessed on 04/08/2023.

¹⁴⁶ The Guardian. “Brazil military finds no evidence of election fraud, dashing hopes of Bolsonaro supporters”. 10 November 2022. <https://www.theguardian.com/world/2022/nov/10/brazil-military-finds-no-evidence-of-election-dashing-hopes-of-bolsonaro-supporters> Last accessed on 04/08/2023.

the country and were in fact pledging for military takeover¹⁴⁷. Much similar, in the attacks on the democratic institutions in Brasília on 8th January 2023 there were also banners asking for military intervention, on these events the military did come, but to arrest those invading Brazil's Congress buildings.

From the defeat in the elections on 30th October 2022 until the aftermath of the assault in Brasília on 8th January 2023 there were people constantly protesting and camping in front of military bases. When the Ministry of Defense issued the communication not ruling out that the electronic voting system could be subject to fraud it fuels the allegations of those who believe that there was fraud in the elections, that Bolsonaro had not lost, but was a victim of fraud¹⁴⁸.

Oversight of the elections and the participation of other institutions besides the Electoral Justice gives more credibility to the process, consequently in benefit of democracy, accountability, and transparency. The justification for the military to be involved in the audit and inspection of the voting system and electoral procedure is plausible if there was a case of fraud, or if the system was demonstrating irregularities or issues. However, this was not the case, the TSE and the Electoral Justice had already attested to the veracity of the process and the electronic voting system constantly throughout the years when elections were conducted without any issues of fraud. From our perspective, the interest of the Armed Forces to take part in the 2022 elections oversight at this point could only be justified by ties it holds with Bolsonaro, a former military, that issued many unsubstantiated claims that questioned the integrity of the electronic voting system and sought to discredit it.

In conclusion, the involvement of the Brazilian Armed Forces in pursuing involvement in overseeing the electoral process in the 2022 elections was a worrying moment for democracy. This is not a function of the military, in a country with a tragic history of military regimes where human rights violations and democracy were not respected, such involvement in elections is an outrage.

¹⁴⁷ New York Times. "Refusing to Accept Defeat, Bolsonaro Backers Call on Military to Intervene". 02 November 2022. <https://www.nytimes.com/2022/11/02/world/americas/bolsonaro-election-protests.html> Last accessed on 04/08/2023.

¹⁴⁸ BBC. "Brazil's far-right faithfuls are not giving up". 26 December 2022. <https://www.bbc.com/news/world-latin-america-64094197> Last accessed on 04/08/2023.

Chapter III – Decline in Practice

“A quality democracy should blend and balance three main elements: popular sovereignty or majority rule, protection of freedom for everyone and for minority rights, and the permanent reaffirmation of values such as moderation, civic responsibility and tolerance.” – Larry Diamond

The present chapter seeks to assemble a combination of the initially present aspects of democracy backslide with cases considered as a representation of such a phenomenon, in accordance with relevant scholars, to then demonstrate how they relate to the case of Brazil during Jair Bolsonaro’s presidency 2019-2022. The examples of democratic decay will be set in the specific framework of Ginsburg and Huq, they are Hungary, Poland, Turkey, and Venezuela. The framework will also be complemented with other scholars' perspectives, as we saw in the first chapter, such concepts can be intertwined, as is the *elimination of institutional checks* associated with a *rejection of the democratic rules of the game*.

Seeking to provide the examples with clarity, we first assess the case of each country to then discuss Brazil’s similarities and differences regarding the decay framework. The intent is to demonstrate the worldwide threat to democracy gained prominence in the political sphere, not only in recent democracies but in semi-established ones.

Formal Constitutional Amendments

In the pathway of identifying democracy decline *formal constitutional amendments* can represent one of the most significant and of major impact to democracies. The possibility of making use of a legal performance of changing or implementing a constitutional provision in order to achieve undemocratic measures, marginalizing the political opposition and attack pluralism, which can also be seen as a *rejection of the democratic rule of the game* as put by Levitsky and Ziblatt. To exemplify this method of the framework the case of Hungary and Venezuela will be put forward.

First, before discussing how this aspect of decline is applied in Hungary, it is necessary to give a contextualization of the country's scenario. Hungary is a post-communist country that went

through a process of democratization at the end of the Cold War, there was a constitution, elections, and separation of power, all set once the communist regime ended, and a new phase started for the country. The first indication of backsliding started to occur in 2010 when the Fidesz party won the election and Viktor Orbán became Prime Minister. The party, which initially was challenging the post-communist socialist party in Hungary (Hungarian Socialist Party - MSZP) since the late 1990s throughout the 2000s, gained power after two losses to MSZP in 2002 and 2006. These losses led Fidesz to further radicalize its position, and when in a moment of crisis during the last mandate of MSZP, followed by a blatant lie of their formal Prime Minister with regards to the economic state of Hungary, the Fidesz capitalized on this political issue and won the election in 2010. The result was 263 of the 386 seats in the Parliament were won by the Fidesz party, which gave them a constitutional majority. This was a turning point for Hungary, Fidesz was able to pursue changes in the rules of government to suit their own party interests, such changes included moving the power of the judiciary in order to “obstructed the autonomy of civil society, changed election laws to their advantage, consolidated their control over both the state and private media”¹⁴⁹.

With the constitutional majority and in power, Fidesz exploited it to draft a new constitution, which was something that Hungary did not have since the post-Cold War constitution, which was only amended by Communist-era documents. In the later election of 2014, Fidesz once again reassured electoral victory, with 133 out of 199 seats in the Parliament, a change in the number of seats occurred with a previous reform in the Parliament introduced by Fidesz, something achieved using their constitutional majority of the first mandate. Following elections in 2018 and again in 2022, Fidesz and Orbán continue to rule Hungary’s politics, each time again tightening their control over the country and setting a supremacy of legislative seats. The majority of seats in Parliament continue to allow them to perform constitutional changes, tilting the electoral playing field in favor of themselves and also capturing the judiciary, both elements that are supposedly independent in a government.

Such a situation in Hungary represents very well the framework aspect of using formal constitutional amendments. When using the constitutional majority to produce amendments or like in the Hungarian case, to produce a completely new constitution, intending to change electoral regulation, Fidesz was able to entrench itself in the system and eliminate the possibility of democratic rotation, which is totally contrary to the idea of democracy. Some of the changes to the

¹⁴⁹ Bernhard, Michael. “Democratic Backsliding in Poland and Hungary.” *Slavic Review*. 2021, p 599.

Hungarian Constitution put forward by Fidesz in 2010-11 included changing the previous requirement of four-fifths of the parliament to produce amendments. By changing such a supermajority of the vote to produce constitutional amendments, Fidesz dissolves a secure barrier against the possibility of easily achieving constitutional changes, as should ideally be, since the idea of a constitution is not as flexible as ordinary laws. Continuing on the change pursued by Fidesz with their constitutional majority, it was into effect alterations regarding the elimination of “multiparty check on new judicial appointments, leaving the power to staff and expanding Supreme Court in the hands of the increasingly hegemonic party”¹⁵⁰. Also, an addition by Fidesz to the constitutional architecture was the establishment of a new Budget Commission (controlled by Fidesz) that had three members selected by the party, and such a budget council could veto budgets that would add to the national debts. Such provision regarding the passing of a budget gives power to a Fidesz-controlled council to decide on the failing or passing of a budget, representing an instrument of one-party hegemony. In the same path of interfering with the independent entities that are part of the executive branch and are essential to the administrative rule of law, the new constitutional provisions by Fidesz created the Electoral Commission and Media Board, both filled with loyalists of the party with a twelve-year mandate¹⁵¹.

The supermajority in parliament of Fidesz and Orbán allowed for constitutional reforms also in the judicial appointments, which expanded the size of the Supreme Court and packed with political appointees, as well as political appointees to a new National Judicial Office “controlled immediately by Fidesz, that wielded broad powers not only over case selection but also over the assignment of cases across the judiciary”.¹⁵² Whenever a judge would resist to the reforms put forwards by the new amendments, there was a threat of removal or retirement. Not only, the previous constitution had the provision of *actio popularis* jurisdiction, which allowed basically anyone to challenge the constitutional character of a law, however, with the new constitution, the access to the Court became limited, each time more, representing the crumbling settings of the separation of power.

The scenario in Venezuela's backsliding has also marked formal constitutional amendments, nevertheless, the situation of democratic decline in the country happened much before then in Hungary and is currently identified as a fully autocratic regime by international

¹⁵⁰ Ginsburg, Tom. and Huq, Aziz Z. *How to Save a Constitutional Democracy*. 2018. p.92

¹⁵¹ Ginsburg, Tom. and Huq, Aziz Z. *How to Save a Constitutional Democracy*. 2018. p.69.

¹⁵² Ginsburg, Tom. and Huq, Aziz Z. *How to Save a Constitutional Democracy*. 2018. p.69.

organizations that measure levels of democracy seen in Chapter 1. To understand the situation we go back to the 1990s when the country started to transition from a mere unstable democracy to semi-authoritarianism, then in the next decade to the current state of full-fledged authoritarianism since 2015. In 1998, Hugo Chávez became president of the country in a context of economic and political instability and a two-party dominance, at first, he had immense popularity, and his supporters were called *Chavistas*. Right after coming to power, Chávez had to deal with an ideologically hostile Congress and Supreme Court, which were filled with opposition, something that limited his ability to carry out his agenda. To circumvent and neutralize such inconvenience in his politics, Chávez called for a referendum where the writing of a new constitution was a topic. He won the referendum and instituted a new Constitutional Assembly filled with Chavistas. In a matter of a few months, a new constitution was written, in Chávez's conception it was the will of the people and they are the holder of the power to call for a new constitutional text, an argument that ended up being agreed upon by the Supreme Court. Even with the previous Venezuelan constitution having provisions for amendments, this would be a process that required Congress to pass the changes, since negotiating with them was not in Chávez's intentions, the referendum to call for Constitutional Assembly was a better move. The constitutional amendment process in democratic backslide by means of setting up a Constituent Assembly to write a new constitution caused a drastic reshaping of the Venezuelan electoral system, in ways that dramatically changed the trajectory of the country's democracy and gave a start to decline.

The Chávez constitution of 1999 was written without opposition input, but due to his referendum victory, it was perceived as a form of legitimization to conduct matters in such ways. The new provisions of the constitution “reduced checks and centralized power in the hands of the president”¹⁵³ it also gave him the power to dissolve the legislature and increased his control over the country's oil resources. Not stopping there, Chávez packed the courts with loyalists, the same with the military, and dismantled independent media, therefore, removing opposition figures from power and replacing them with loyalists he could control¹⁵⁴. Later, when he passed away in 2013, he chose his successor, Nicolás Maduro. Maduro was unpopular and struggled amidst an economic crisis and social unrest, however, continued the same authoritarian pathway as Chávez, leading democracy levels to even lower standards.

¹⁵³ Landau, David. “Constitution-Making and Authoritarianism in Venezuela” in Mark A Graber, Sanford Levinson, Mark Tushnet eds, *Constitutional Democracy in Crisis?* New York: Oxford University Press, 2018. p. 164.

¹⁵⁴ Landau, David. “Abusive Constitutionalism”. *U.C. Davis Law Review*. p. 206.

Nicolás Maduro's administration made repressive use of the law to prevent the opposition from obtaining political power, but once in 2015 the legislative elections the opposition had a majority victory in the National Assembly, Maduro's regime sought to discredit the results by tainting fraud and using its control of the Courts to do so. However, the National Assembly (NA) refused to comply with the decisions, and later in a Court's decision, the NA had its powers removed and transferred to other institutions, setting any decisions of the NA as void, giving power to the president to in emergency situations bypass the legislature. In this context, Maduro called for a new constituent process in 2017, with a newer constitution following the steps of his predecessor in concentrating the power in the hands of his regime, and even more, difficulties were placed for the opposition to have grounds for action¹⁵⁵.

In conclusion, the examples of Hungary and Venezuela show us how elected leaders can use legal devices associated with democracy and constitutional traditions to damage the democratic constitutional order. These two examples are used by David Landau when discussing abusive constitutionalism, which consists of such practices of using constitutional amendment tools to undermine democracy¹⁵⁶. The use of constitutional changes to hold on to power often by diffusing other democratic institutions such as courts that exercise checks on the executive power, is a method of authoritarian leaders to further establish their control, they can also pursue this by placing loyalists among key institutions and in the media¹⁵⁷. The abusive constitutionalism concept considers not only constitutional amendments but also constitutional replacement, both instruments that can be used by authoritarian leaders to advance their goals and agendas on government. Considering Hungary and Venezuela, we can perceive a certain attempt to have a sought of legality in the reforms, initially following democratic procedures to undermine the own democratic norms and process by using loopholes of procedural inefficiencies to erode institutions, bowing it to the party's goals, by amendments or a full new constitution. As we saw Fidesz made use of their constitutional majority in parliament to rewrite the constitution and Venezuela's authoritarian leader Hugo Chávez used his popularity to call a referendum in order to write a new constitution. Both cases led to the same result, the rules of the game changed unilaterally.

¹⁵⁵ Landau, David. "Constitution-Making and Authoritarianism in Venezuela" in Mark A Graber, Sanford Levinson, Mark Tushnet eds, *Constitutional Democracy in Crisis?* New York: Oxford University Press, 2018. p. 171-173.

¹⁵⁶ Landau, David. "Abusive Constitutionalism". *U.C. Davis Law Review*.

¹⁵⁷ Landau, David. "Abusive Constitutionalism". *U.C. Davis Law Review*.

10.1. Brazil

The indicator in the framework of democracy decline, that accounts for a new constitution or a constitutional amendment that is achieved by an elected leader that makes use of legitimate forms to change legislation in order to favor themselves, represents a fear for liberal constitutional democracy. During Bolsonaro's government, many constitutional amendments were put forward, as well as in other past administrations, however, two significant changes that would have caused an impact on Brazil's democracy did not obtain success or are still yet to be voted on by Congress. Therefore, we argue that this specific indicator of democracy decline was not identified in the case of Brazil during the Bolsonaro administration 2019-22, differing from the cases above of Hungary and Venezuela, where new constitutions were enacted and allowed for their authoritarian governments to tilt the playing field in their favor.

The current Constitution of Brazil came into force in 1988 after the end of the Military Dictatorship. The Constitution is very extensive and analytical, consequently, it had to be amended many times throughout its 34 years of existence. The constitutional amendment procedure follows the presentation of a proposal – by the Chamber of Deputies or Senate, the President of the Republic, or by executive branch amendment bill. Then, there is the deliberation process which will discuss and debate the proposed amendment in both houses of the National Congress. In order to gain approval, a constitutional amendment in Brazil must obtain a qualified majority (three-fifths) of the total membership of both the Chamber of Deputies and Senate, in two rounds of voting in each. On numbers, it means 308 votes in the Chamber of Deputies and 49 votes in the Senate. As put forward, the constitutional amendment procedure in accordance with the Brazilian Constitution requires a qualified majority, therefore, not a simplistic procedure of amendment. There are also special matters in the Constitution that are not subject to change, such as the federative formation of the state, separation of powers, individual rights and guarantees, and the right to vote.

Considering the procedure of constitutional amendment in Brazil, when the proposals were put forward by the main allies of Bolsonaro's government in the Chamber of Deputies, besides having to be approved by the two houses, there is also the need for committee approval. The Committee of Constitution, Justice and Citizenship (*Comissão de Constituição e Justiça e de*

Cidadania - CCJC) is responsible for assessing the constitutional, legal, and juridical aspects of the constitutional amendment proposition.

The first significant constitutional amendment proposal put forward by Bolsonaro and his allies concerned the electronic voting system of Brazil. The amendment proposal was presented on 13/09/2019. It is in the path of authoritarian leaders the delegitimization of elections, which is also a strategy that compromises democracy. Bolsonaro – who has been attacking the electoral system of electronic voting, accusing it of fraud and undermining its credibility, and of the electoral justice system, without evidence – endorsed a constitutional amendment proposal on such matters. The Constitutional Amendment Proposal (PEC) n° 135/2019 sought to impose a change to the electronic system to print a receipt of every vote, for the civil electorate to audit the result. This means a charge to the credibility of the system and to the legal authority that is responsible for performing the accountability of votes.

The amendment to change the system for it to have a printed version of the vote in the hands of the civilian electorate for audit did not obtain an absolute majority to be passed. The PEC n° 135/2019 had the approval of the Committee that evaluated the constitutionality on 17/12/2019. However, in plenary voting in the Chamber of Deputies on 10/08/2021 failed in achieving the absolute majority of 308 votes, it received 229 in favor and 218 against the measure¹⁵⁸. The number of votes demonstrates that there was a significant number of supporters of the proposal, representing the fragility of the scenario, however, it is important to focus on the achievement of democracy that it did not pass.

The other constitutional amendment proposal by Bolsonaro and his allies was concerning the retirement age of the Supreme Court judges, which is another tactic in the playbook of authoritarian leaders. To assess the matters of this second proposal we go back to 2015 when there was the approval of a constitutional amendment to set the age of retirement of Supreme Court judges from 70 to 75¹⁵⁹. Since then, the age of retirement has been 75, prolonging the stability of judges in the court. Considering Bolsonaro's difficult relationship with the Supreme Court's judges, his allies proposed a constitutional amendment in the Chamber of Deputies that would

¹⁵⁸ AP. "Brazil's Bolsonaro loses his bid to reform voting system". 11 August 2021. <https://apnews.com/article/science-caribbean-brazil-b2e06ac9af1ec7b015b0ae6a1bf9ac98> Last accessed on 07/08/2023

¹⁵⁹ Constitutional Amendment n° 88, 7 May 2015. Full text of the constitutional amendment is available at: http://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc88.htm Last accessed on 07/08/2023

return the retirement age from 75 to 70 years old, as it was originally written in the Brazilian 1988 Constitution. In the case of approval of this proposed amendment, Bolsonaro would be allowed to appoint two new judges due to vacancies elapsing from having retired two judges. The Constitutional Amendment Proposal (PEC) n° 159/2019 was presented by Representative Bia Kicis in the Chamber of Deputies and on 03/10/2019, it was approved by the Committee that assesses the constitutionality of the amendment on 23/11/2021¹⁶⁰. Keeping in mind that the measure intended to restore the original constitutional provision that was changed, it was presumable that the constitutional assessment committee would approve it. The question remains for the voting in the Chamber of Deputies and Senate.

Once the legislative schedule of voting and the order of issues is long in Congress, the measure has not yet come to vote. Bolsonaro left the presidency in 2022, therefore, he was not able to appoint two new judges for the Supreme Court. The composition of the Brazilian Supreme Court is of 11 judges, Bolsonaro already had two appointments, one in 2020 and the other in 2021 by ordinary retirement of judges at the age of 75. In case the amendment was successful in the time of Bolsonaro's presidency or in case of his re-election, he would have made 4 appointments to the Supreme Court.

It is relevant to mention that in 2015, when the retirement age was changed from 70 to 75, it was to prevent the – at the time President – Dilma Rousseff, from making another nomination to the Supreme Court. Would have been her 5th nomination due to the retirement of past judges. This constitutional amendment from 2015 had the approval vote of Bolsonaro¹⁶¹, when Representative in the Chamber of Deputies¹⁶². However, now, figuring out a new political scenario for Bolsonaro and his supporters, they sought to promote their political interests to change the Court's equilibrium. There were many juridical questions over the fundamentals of this new amendment proposed (PEC 159/2019) to lower the retirement age once again, such as the judges already in place in the Court were already holding the right to remain until the age of 75, which would not change significantly to Bolsonaro, also it was criticized the lack of empirical evidence

¹⁶⁰ Constitutional Amendment Proposal - PEC n° 159/2019. Full content and processing available at: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2223878> Last accessed on 07/08/2023

¹⁶¹ Folha de S. Paulo. “Bolsonaro votou a favor de aposentadoria aos 75 para STF que agora quer revogar” 20 November 2018. <https://www1.folha.uol.com.br/colunas/monicabergamo/2018/11/bolsonaro-votou-a-favor-de-aposentadoria-aos-75-para-stf-que-agora-quer-revogar.shtml> Last accessed on 07/08/2023

¹⁶² Folha de S. Paulo. “Aliados de Bolsonaro tentam dar um golpe do pijama no Supremo”. 13 February 2019. <https://www1.folha.uol.com.br/colunas/bruno-boghossian/2019/02/aliados-de-bolsonaro-tentam-dar-um-golpe-do-pijama-no-supremo.shtml> Last accessed on 07/08/2023

for this new amendment and judicial instability it represented¹⁶³. Both are problematic aspects of democracy.

The discussion of lowering the retirement age of judges is a known strategy of authoritarian leaders and governments that intend to overcome the independence of courts. In an interview with Representative Bia Kicis who made the proposal, she said that it intended to align the agenda of the court with the electoral polls¹⁶⁴. The composition of a Supreme Court is usually of judges appointed for a long period of time, their appointment occurs at different moments and by different political coalitions of power, therefore, allowing for different ideologies and a variation of perspectives due to time.

This second amendment proposal ended up not being successful for Bolsonaro and his allies in Congress, not due to any restraint of the actors or legislative branch denial, but to the difficulties in the process itself, and perhaps due to Bolsonaro's difficult relationship also in Congress that did not make a strong case for the amendment proposal to be higher in the list of voting matters. Overall, the intentions of Bolsonaro and his allies toward the Supreme Court became clear, it was of enemies, something that along the way became each time more evident, as we will discuss in the next chapter.

Thus, in our analysis of democracy decline using the indicator of *formal constitutional amendments*, we assess that the case of Brazil, under Bolsonaro's leadership, did not execute this avenue. For democracy decline the significance of substantial changes to a constitution or the introduction of an entirely new one is paramount – when these changes align with undemocratic intentions. Verifying that such an indicator was not accounted as successful in Brazil's Bolsonaro, different than the context of Hungary and Venezuela, we bolster the concept of democratic resilience. This term refers to democracy's capacity to proactively avert substantial institutional setbacks, prevent autocratization, and stave off critical indicators of decline that could otherwise precipitate a collapse to a bare minimum democratic standard.

Elimination of Institutional Checks

¹⁶³ CONJUR. “Inconstitucionalidades formais e materiais da PEC 159/2019” 12 February 2022. <https://www.conjur.com.br/2022-fev-12/diario-classe-inconstitucionalidades-formais-materiais-pec-1592019> Last accessed on 07/08/2023

¹⁶⁴ DEMOS - Observatório para Monitoramento dos Riscos Eleitorais no Brasil. “Threats to democracy, disinformation and attacks on the Brazilian Judiciary”. 2022.

Liberal constitutional democracies presume the distinction of different elements within the government, these elements tend to operate with a certain degree of apprehension with each other, therefore, a plurality of voices and concerns can be expressed. In this sense, this apprehension or tension existing allows for a constant check of the power of those ruling, preventing this way that the concentration of authority from becoming an open door to misuse of power and undermining democracy and its process. The division of government into branches is primordial, with the legislative, judicial, and executive performing their particular functions with each other to respond.

Poland, much similar to the context of Hungary, was once considered a leader in the process of democratization in post-communist Europe, now the country follows the path of Fidesz when it comes to democratic failure. It has as a relevant point of context for the events of backsliding the party Law and Justice (PiS) return to power in 2015¹⁶⁵, where then the example of illiberal reforms taken by Fidesz served as an ambition in Poland and for Jarosław Kaczyński, leader of the PiS party and a populist-nationalist himself. The new ambitions of Polish politics led to a decline in the quality of democracy as observed in the data in Chapter 1, however, differently from the Hungarian context, PiS suffered from the absence of a legislative supermajority to make direct changes to the constitution.

The PiS inability to directly change the constitution led the backsliding to take different alternatives, for example, paralyzing “the work of the Constitutional Tribunal by amending the law governing its function, and then to capture it through the appointment of political loyalists”¹⁶⁶. The Constitutional Tribunal then became a supporter of the party, scrutinizing laws that enhanced their power, in continuation of their strategies to undermine checks and balances. PiS turned to the judicial system, by extending the power of the possibility of appointing a court president and made use of disciplinary procedures to selectively harass and intimidate independent judges¹⁶⁷. This allowed for control over lower courts and court leadership, an overall control over the judicial system¹⁶⁸. These changes to the Constitutional Court demonstrate the intent of the PiS to dismantle and assault the independence of the Court – part of the judicial branch – preventing them from

¹⁶⁵ The Law and Justice (PiS) had a brief start in the 2005 elections when in a coalition with other ultra-conservative catholic parties. However, the coalition lasted until 2007, but during the time of its existence, PiS would attack the media, judiciary, rights of sexual minorities, and even the independent Central Bank.

¹⁶⁶ Stanley, Ben. “Backsliding Away? The Quality of Democracy in Central and Eastern Europe”. *Journal of Contemporary European Research*. 2019. p. 349

¹⁶⁷ Stanley, Ben. “Backsliding Away? The Quality of Democracy in Central and Eastern Europe”. *Journal of Contemporary European Research*. 2019. p. 349

¹⁶⁸ Scheppele, Kim Lane. “Autocratic Legalism.” *Journal of Democracy*. 2018. pg. 553.

putting forward stances that stand against the party's agenda, undermining the safeguard of legality.

In Venezuela, Hugo Chávez launched a forceful assault on the principles of liberal democracy by meticulously manipulating the judicial system. His strategy was a well-orchestrated sequence of moves that began with the intimidation of Supreme Court judges, followed by an ambitious overhaul of the Constitution. Chávez initiated this assault by coercing threats against the incumbent judges, thereby exerting undue pressure on the highest judicial body and undermining its independence. Building on this, he comprehensively reformulated the constitution of the Court, involving the removal and replacement of certain members. In a subsequent development that underscored the extent of his influence, Chávez engineered a significant expansion of the Court's composition in 2004, augmenting its size from 20 to 32 seats. This expansion provided him with a prime opportunity to appoint 17 new judges who shared his ideological inclinations.

This calculated maneuver enabled Chávez to tighten his grip on the judiciary and allowed him to uphold actions done to manipulate elections. Effectively tilting the balance of power and the playing field in his favor, gravely undermining the foundations of liberal democracy. The same can be said by Nicolás Maduro who gave continuation to the methods of his predecessor and used the Court's ruling to invalidate laws of the National Assembly, continuing to use control over the judicial system to engage even further his autocratic legalism in Venezuela.

Turning to Turkey, the elimination of institutional checks occurred when the AKP came to power. Democracy was not considered consolidated in Turkey¹⁶⁹ when this occurred, however, once they settled in government, the state and its institutions became an instrument of party control. As said by Ginsburg and Huq, consequently checks and balances became less significant than they should in a liberal democracy.

To contextualize the decline in Turkey we start with Recep Tayyip Erdoğan and the AKP (Justice and Development Party), their ascension to power came in 2003 when Erdoğan became Prime Minister of the country and later in 2014 president –due to a change from parliamentary

¹⁶⁹ Democracy in Turkey was not yet considered consolidated when Erdoğan and the AKP came to power, this argument is more strongly exemplified by Lauren McLaren and Burak Cop in the article “The Failure of Democracy in Turkey: A Comparative Analysis” published in 2011. This affirmation comes after an analysis of the authors over restrictions to the freedom of speech and the presence of the military in the Turkish background. In their assessment, a fully functioning democracy was not in place in Turkey in the previous years, and in the face of a democratic decline, the improvement of such democratic levels did not occur.

government to presidential put forward by AKP–, a position he holds until today. With the strong representation of the AKP in the parliament and Erdoğan in power, many antidemocratic systems were put in place, with tools to bypass traditional checks within the government, while also directing a positive opinion towards the party. A significant moment for this outcome was a referendum brought by the – at the time – Prime Minister Erdoğan that gave the ability to AKP to fill the courts with judges more sympathetic towards them, targeting opposition of Kurdish nationalist groups and leftists from the opposition.

The gradual erosion of Turkish democracy and its institutional checks faced a turning moment when due to a failed coup d'état of the opposition a state of emergency was put in place by Erdoğan in 2016, leading to a constitutional reform in 2017. According to the laws at that moment, a state of emergency is supposed to last a maximum of six months and guarantees restriction of the media and among other things to allow the president to bypass certain democratic processes. State of emergency should not last long, however, in Turkey, it only ended in 2019 with the year's election being pushed to the next year and resulting in Erdoğan victory and second term in the presidency. When conducting a Constitutional Reform in 2017 the executive office powers were given to the president, bolstering his powers and dismantling checks and balances with 117 of 172 articles facing change. According to Freedom House's report from 2022, Constitutional changes made compromised the judicial independence in Turkey, with 4.200 judges and prosecutors being replaced by government loyalists, creating a situation where any judge or prosecutor that issues a ruling against the government is a target for replacement or removal from the position¹⁷⁰.

The situation in Turkey makes a case for when democracy is undermined by the elimination of institutional checks and balances, Erdoğan and the AKP control over the judiciary allows for judgments to be politically motivated, usually targeting the opposition, consequently affecting the aspect of electoral competition, that will be further discussed, but also the constitutional reform that went on also demonstrate the aspect of formal constitutional amendments done to undermine democracy. In summary, it is possible that more than one of these aspects of the backsliding framework is present in the country's decline trajectory.

¹⁷⁰ Freedom House. "Turkey: Freedom in the World 2022". <https://freedomhouse.org/country/turkey/freedom-world/2022> Last Accessed on 25/08/2023

For these charismatic populists like Kaczyński (PiS), Chávez, Maduro, Erdoğan, and even Orbán, – when in the events of democratic backslide by means of partisan degradation – ensure the capture of the judiciary is a significant benefit, rather than its wrecking. This is because once controlling it the positive results they can achieve are much greater and are a long-term situation. When by means of appointments, control of procedures and the timing of measures can be used by authoritarian and undemocratic leaders to undermine checks and balances, there is no need to worry about violating laws, which is an extremely dangerous path to have a democracy on.

11.1. Brazil

Since his election as chief of the Executive branch, Bolsonaro has attacked the Judiciary branch, especially the Supreme Court (STF) and the Superior Electoral Court (TSE). This behavior represents an institutional instability between the three branches and therefore a threat to democracy pillars. A few matters are of relevance to understanding Bolsonaro’s disagreements with the courts, the electronic voting system and pandemic restrictions. These disagreements led Bolsonaro to “disobey judicial decisions, spread disinformation to turn specific judges into enemies and targets for his followers”¹⁷¹.

Similar to Chávez, Bolsonaro manifested intentions to increase the number of judges in the Supreme Court, in order to change the scenario, going from 11 judges to 21 during his electoral campaign in 2018¹⁷². This never happened, but it was among his initial intentions, demonstrating from the start that the current composition of the Supreme Court was in conflict with his intentions, once it needed new judges to corroborate with his goals.

Bolsonaro’s first attacks on the Judiciary branch started when he issued allegations delegitimizing the electoral process, which is regulated by Electoral Justice and its higher body the Superior Electoral Court (TSE). Without evidence Bolsonaro has questioned the electronic voting system, accusing it of fraud in the 2018 election¹⁷³, manifesting himself in favor of the

¹⁷¹ DEMOS - Observatório para Monitoramento dos Riscos Eleitorais no Brasil. “Threats to democracy, disinformation and attacks on the Brazilian Judiciary”. 2022.

¹⁷² Folha de S. Paulo. “Bolsonaro quer aumentar número de ministros do Supremo”. 02 July 2018. <https://www1.folha.uol.com.br/poder/2018/07/bolsonaro-quer-aumentar-numero-de-ministros-do-supremo.shtml>
Last accessed on 25/08/2023

¹⁷³ Bolsonaro claimed that in the 2018 election, he was supposed to have won in the first round, but there was manipulation of the electoral results, this claim is without any proof.

constitutional amendment PEC n° 135/2019 that sought to impose changes in the system for paper voting audit.

The COVID-19 pandemic had a huge impact on Brazil's economy. The Federal Government with the President as representative of the Executive chief was not enforcing any a measure that would difficult economic activity, mostly due to Bolsonaro's arguments that the country could not stop. On the verge of such inaction and omission of the Federal Government in conducting emergency public policies, the Supreme Court decided that the States and Municipalities could take restrictive measures (ADPF 672), such as social isolation and restriction of economic activity, with the ultimate goal of fighting the pandemic as a matter of public health emergency¹⁷⁴. This ruling of the Court did not cause prejudice to the competencies of the Federal Government once they were given to States and Municipalities to complement. Bolsonaro, who was a critic of measures to restrict economic activity and social isolation, disagreed with the decision taken by the Supreme Court and accused the media of 'spreading panic'¹⁷⁵. There were also decisions of the Court that sought to deal with the fight over the pandemic in indigenous lands (ADPF 709) and the national vaccination plan (ADPF 770).

Even further on his disregard for the public health emergency, Bolsonaro participated in demonstrations against the measures to combat the coronavirus, in these demonstrations there were anti-democratic shouts, claiming for the closure of the Supreme Court and Congress¹⁷⁶. The Supreme Court's action called ADPF is *Arguição de Descumprimento de Preceito Fundamental* which can be translated as 'action against the violation of a constitutional fundamental right'. Such a decision of the Court can be involved by petition, which was the case for either of the circumstances mentioned in the paragraph above. The petitions were proposed usually by the opposition; however, they entail subjects entitled to constitutional protection in accordance with Brazilian law.

New York Times. "How Bolsonaro Build the Myth of Stolen Elections in Brazil". October 2022. <https://www.nytimes.com/interactive/2022/10/25/world/americas/brazil-bolsonaro-misinformation.html> Last accessed on 01/08/2023.

¹⁷⁴ ADPF 672. Full content and processing available at: <https://portal.stf.jus.br/processos/detalhe.asp?incidente=5885755> Last accessed on 08/07/2023

¹⁷⁵ Folha de S. Paulo. "Com 100 mil mortos pela Covid, Bolsonaro critica isolamento e acusa Globo de espalhar 'pânico'". 09 August 2020. <https://www1.folha.uol.com.br/equilibrioesaude/2020/08/com-100-mil-mortos-pela-covid-bolsonaro-critica-isolamento-e-acusa-globo-de-espalhar-panico.shtml> Last accessed on 08/07/2023

¹⁷⁶ G1. "Bolsonaro volta a apoiar ato antidemocrático contra o STF e o Congresso, em Brasília". 03 Mayo 2020. <https://g1.globo.com/fantastico/noticia/2020/05/03/bolsonaro-volta-a-apoiar-ato-antidemocratico-contra-o-stf-e-o-congresso-em-brasilia.ghtml> Last accessed on 08/07/2023

Given that the Supreme Court and Congress embody the Judicial and Legislative powers respectively, it is disconcerting to observe the Executive power, represented by President Bolsonaro, participating in rallies calling for the attack and shutdown of these crucial institutions. Such a stance undermines the harmonious functioning of the three branches of government and poses a grave threat to the democratic framework as a whole. These institutions are indispensable pillars of democracy, the attempt to undermine their role is a backslide indicator once the upholding of the rule of law and safeguarding the rights and freedoms of the citizens they serve is of major importance.

The Supreme Court also ruled against¹⁷⁷ the interests of Bolsonaro when suspended the nomination of Alexandre Ramagem to the head of the Federal police¹⁷⁸, due to an allegation that the appointment would illegally favor the President's interests in ongoing investigations involving his allies and relatives¹⁷⁹. Another situation of conflict between Bolsonaro and the Court occurred when Representative Daniel Silveira, an ally of Bolsonaro, was convicted of encouraging the abolition of democracy and threatening physical violence against the Court's judges. When the conviction of his supporter was announced, Bolsonaro, as President, granted an individual pardon to Silveira¹⁸⁰. The mechanism of individual pardon is in the powers of the President as head of the Executive branch, however, the use of this mechanism in favor of an individual that attacked the Supreme Court and democracy is unprecedented. It is also discussed by Brazilian jurists that Bolsonaro acted against the Constitution by granting this pardon, which goes against the function of his existence and could further be taken down, which is exactly what happened in 2023¹⁸¹. When overruling the pardon granted by Bolsonaro the Supreme Court judges argued that a crime against the democratic state is a political crime and not subject to amnesty.

Amidst the series of clashes between Bolsonaro and both the Supreme Court and the Electoral Supreme Court, a deep-seated political-institutional crisis unfolded, fueled by the

¹⁷⁷ Supreme Court Judgment: *Mandado de Segurança 37.097/DF*. Full access to the Court's decision: <https://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/MSRamagem.pdf> Last accessed on 08/07/2023

¹⁷⁸ Reuters. "Brazil supreme court bars Ramagem appointment as federal police chief - ruling". 29 April 2020 <https://www.reuters.com/article/brazil-politics-idUSE6N288023> Last accessed on 08/07/2023

¹⁷⁹ BBC. "Caso Queiroz e família Bolsonaro: quem depositou dinheiro para quem". 25 August 2020. <https://www.bbc.com/portuguese/brasil-53913205> Last accessed on 08/07/2023

¹⁸⁰ G1. "Bolsonaro concede perdão a Daniel Silveira e provoca crise com STF". 21 April 2022. <https://g1.globo.com/jornal-nacional/noticia/2022/04/21/bolsonaro-concede-perdao-a-daniel-silveira-e-provoca-crise-com-stf.ghtml> Last accessed on 08/07/2023

¹⁸¹ G1. "STF derruba perdão da pena de Daniel Silveira, concedido pelo ex-presidente Jair Bolsonaro" 10 May 2023. <https://g1.globo.com/politica/noticia/2023/05/10/stf-derruba-perdao-da-pena-de-daniel-silveira-concedido-pelo-ex-presidente-jair-bolsonaro.ghtml> Last accessed on 08/07/2023

President's persistent rhetoric of constant distrust towards the institutions. In August of 2021, Bolsonaro formally submitted an impeachment petition against Supreme Court Judge Alexandre de Moraes to the Senate¹⁸². Although the petition failed to gain traction, it further exacerbated the already strained relationship between Bolsonaro and the Court. Supreme Notably, Judge Alexandre de Moraes holds a pivotal role in the ongoing investigations into Bolsonaro and his associates, specifically concerning allegations of electoral fraud within Brazil's voting system¹⁸³.

In summary, as was discussed on the previous topic of *formal constitutional amendment*, – the endeavor by Bolsonaro's allies to enact a constitutional amendment, aimed to retire Supreme Court judges. It becomes evident that Bolsonaro stands to gain significantly if his actions encounter less resistance from the judiciary. This situation underscores the purpose of institutional checks, designed to uphold the principles of democratic governance. The pursuit of removing judges to reduce institutional checks to his endeavors constitutes an undemocratic and authoritarian tactic employed by Bolsonaro. By fostering a narrative of delegitimization against the Court and its judges, often with disinformation, Bolsonaro seeks to fabricate an institutional crisis. This strategy serves the purpose of circumventing both judicial and electoral oversight while sowing seeds of doubt and eroding institutional credibility. It is apparent that Bolsonaro views a scene of instability among the executive, legislative, and judiciary as favorable. He perceives a weakened institutional framework as a canvas upon which he can portray himself as the sole defender of democracy in the eyes of his supporters.

In assessing this indicator of democracy decline, it is evident that while Bolsonaro may not have eradicated institutional checks and balances, he has undeniably exerted significant strain upon them. Through a deliberate campaign aimed at delegitimizing and weakening the authority of the Supreme Court, Bolsonaro, ultimately, has managed to sway his supporters against democratic institutions. This was achieved by engaging in a campaign of insults and intimidation of judges of the Supreme Court, attempting to undermine the trust of society in the electoral system by conveying baseless allegations of fraud. Contrary to the examples of Poland, Venezuela, and Turkey, where the courts were targeted in the early stages of democratic decline, Bolsonaro's approach was merely attempted once he did not succeed in the elimination of institutional checks

¹⁸² Reuters. "Brazil's Bolsonaro asks Senate to impeach a Supreme Court justice". 21 August 2021. <https://www.reuters.com/world/americas/brazils-bolsonaro-asks-senate-impeach-supreme-court-justice-2021-08-20/>
Last accessed on 08/07/2023

¹⁸³ Inquire n° 4781/2019 - *Inquérito das Fake News*.

on his government. Rather, the persistent actions of the Supreme Court have frequently countered his undemocratic intentions, resulting in a contentious relationship between the branches of power.

Centralizing and Politicizing the Executive Power

The pressure on democracy, following the cases initially put forward, is mostly driven by the executive, as is the case of Prime Minister Viktor Orbán in Hungary and Presidents Chávez/Maduro in Venezuela. The emergence of antidemocratic sentiment can come from charismatic populism or from partisan degradation, as previously mentioned in the works of Ginsburg and Huq. The executive branch unravels three institutional premises of democracy, which are, competitive elections; rights of political speech and association; and the administrative and adjudicative rule of law. By means of antidemocratic attempts to pursue a dismantling of internal executive safeguards of democratic government, can go beyond checks on government once it involves the necessary separation of powers and the perception that each branch of government operates with unitary independence. The idea of independence or autonomic capacity of the bureaucracy is a central feature of effective governance, it ensures the operation in accordance with written rules. However, when the leader of the party is in power or the head of the executive is prone to corrode democratic qualities, there is an issue in sight.

In the case of Hungary, for example, when Fidesz took power and sought to fill administrative positions of the Budget Counsel, Media Council, Election Commission, National Bank, and Ombudsman Office with their own loyal officials, meant that the bureaucracy part of the state was now part of the party, and responded only in the ways of the party. Consequently, any business that would elapse from there would be those that the party was a patron of, for example, being awarded government contracts, especially media outlets that would disfavor the opposition of the party, representing a direct blow at democracy and the idea of the state's impartiality. As put forward by Meyer-Sahling and Toth, there was more political appointment of top officials in Hungary with the rule of Fidesz than ever before in the country's democratic history, demonstrating a clear on-set democratic backsliding, in their words:

Orbán government appears to systematically use patronage powers in order to reward and co-opt supporters, to manage careers and to coordinate policy. The initial evidence therefore suggests that political appointments, even in the absence

of government changes, to top positions may amount to a regime-specific mode of governance in illiberal democracies.¹⁸⁴

These appointments of loyalists to fill bureaucratic positions that seek to reshape the political playing field to favor or advantage one party is a form of exercising control. The idea is that appointments should be made on a merit-base, therefore, presuming the necessity to make accommodations to the presence of possible officials holding such positions being part of the opposition, and consequently strengthening democratic accountability.

In Turkey, the AKP also made use of the bureaucracy as an instrument of control belonging to the party and not to the State. By infiltrating social services, health services, and public housing services the AKP and Erdoğan use *political patronage*¹⁸⁵ to have leverage over the population that receives social benefits from the state. This is because people living in a more precarious situation believe that only by maintaining AKP and Erdoğan in power they will continue to receive the benefits granted by them, however, it is supposed to presume considering the idea of the welfare state, that this benefit is owned independently of those in power, by the State as an institution. However, to maintain a hold of power, this is not how the AKP and Erdoğan are conducting the matter in Turkey¹⁸⁶, they are using social assistance as a tool for the voting potential of the poor. Such actions are only possible because of the distribution of public jobs to those loyal to the AKP, who will eventually profit from such positions only when supporting the party and Erdoğan.

This strong network of political patronage, along with a clientelist relationship with the private sector, played a major role in helping AKP and Erdoğan in the 2023 elections, where Turkey's economic crisis was very high and the support for the government was not at scoring high either. The situation in Turkey demonstrates how the executive power was able to entrench a politicization and centralization of other areas of government in their favor, therefore, against the idea of impartiality of the institutions and consequently compromising the idea of a functioning democracy where the system does not bend to the will and benefit of those in power, but it is a

¹⁸⁴ Meyer-Sahling, Jan-Hinrik and Toth, Fanni. "Governing Illiberal Democracies: Democratic Backsliding and the Political Appointment of Top Officials in Hungary". 2020. pg. 110

¹⁸⁵ *Political Patronage* is when the act of hiring or appointing an individual to hold a government position is only based on a biased assessment of partisan loyalty. By means of such loyal officials, they can be used to help maintain those they support in power.

¹⁸⁶ Samson, Adam. "The patronage network behind Recep Tayyip Erdoğan's bid for third decade in power". Financial Times. May 2023. <https://www.ft.com/content/21231807-0b07-4585-a1bd-b8b3ee5f15ae> Accessed on 10/07/2023

system applied to government and opposition in the same level, and most importantly, do not make use of government apparatus to pursue an advantageous position.

12.1. Brazil

In the case of Brazil with Bolsonaro as President, assessing the democracy decline framework, the element of *centralizing and politicizing the executive power* is identified by his capture over the bureaucracy. As put by Huq and Ginsburg the bureaucracy is not a natural ally of democracy, it involves policy judgment that varies with the elected government, but mostly, the issue might involve staffing of government positions. This is because the positioning of bureaucracy varies with their political connections, usually to a particular string of politics. When discussing the democratic decline and the attacks on bureaucratic autonomy it will involve the maneuvers over personal functions involving checking and rule-of-law functioning.

With Bolsonaro's election in 2018, the strong military presence in the democratic institutions of Brazil became a concerning aspect. Since the Military Dictatorship, they have not been involved in politics. The Vice-President elected with Bolsonaro was General Antonio Hamilton Mourão, but the most attentive fact was a large number¹⁸⁷ of ex-military officers were appointed to key positions in the government administration. Of the 22 ministries in government, 8 are represented by military men¹⁸⁸. Going from a period of the Truth Commission¹⁸⁹ to a 'post-truth politics'¹⁹⁰ in Brazil under Bolsonaro, who has unapologetically defended the military regime legacy. It was accounted in 2020 by the Brazilian Federal Audit Office (*TCU - Tribunal de Contas*

¹⁸⁷ Jota. "Mais militares assumiram cargos no Executivo no governo Bolsonaro". 10 June 2020. <https://www.jota.info/jotinhas/mais-militares-assumiram-cargos-no-executivo-no-governo-bolsonaro-10062022> Last accessed on 10/08/2023

¹⁸⁸ Folha de S. Paulo. "Bolsonaro Increases Military Spending in First Year of Government". 2 March 2020. <https://www1.folha.uol.com.br/internacional/en/business/2020/03/bolsonaro-increases-military-spending-in-first-year-of-government.shtml> Last accessed on 09/08/2023

¹⁸⁹ The *National Truth Commission* was established by President Dilma Rousseff in 2011 to conduct hearings and gather experts' testimony with regard to the concerning torture and killings carried out during the military regime of 1964-1985 in Brazil. There was at the time fierce opposition by the military.

BBC. "Brazil truth commission arouses military opposition". 11 January 2010 <http://news.bbc.co.uk/2/hi/8451109.stm> Last accessed on 09/08/2023

¹⁹⁰ Atencio, Rebecca J. "From Truth Commission to Post-Truth Politics in Brazil." *Current History*. 2019.

da União) that there were 6.157 military personnel serving in civilian positions in the government during the presidency of Jair Bolsonaro¹⁹¹.

The appointment of military men, although, problematic for democracy in Brazil, given the history of Dictatorship, is not *per se* an endgame backslide. However, it does question the achievement of keeping the holding of office positions in government in the hands of those with actual capacities. For example, during the COVID-19 pandemic, facing a Minister of Health who did not follow Bolsonaro's erratic posture, he was replaced by an army officer who had no medical training or knowledge. Nevertheless, the new army Minister, General Pazuello, along with Bolsonaro, defended the early use of hydroxychloroquine, even with the lack of sufficient evidence of its efficacy, with risks of worsening the clinical condition¹⁹². This situation around the Ministry of Health appears to demonstrate that Bolsonaro only wanted to fill the position in his government with those who supported his radical behavior.

The notable presence of military personnel within the democratic government administration under Bolsonaro draws parallels with Nicolás Maduro's military policy, a concept referred to by Javier Corrales as '*function fusion*'. Function fusion entails "taking an existing institution and giving it functions that are normally assigned to other institutions"¹⁹³. An example of this phenomenon can be observed in Venezuela, where the military has assumed economic-civilian functions within the government. This strategic overlapping of institutional actions and responsibilities serves the purpose of sustaining a cohesive coalition of support from various institutional actors. While it may be an overstatement and a stretch to equate Bolsonaro's approach with Maduro's, there is a discernible resemblance in their strategies. Bolsonaro's emulation of certain tactics employed by the Venezuelan autocratic leader is evident in his placement of military personnel in civilian government positions.

¹⁹¹ G1. "Governo Bolsonaro mais que dobra número de militares em cargos civis, aponta TCU". 17 July 2020. <https://g1.globo.com/politica/noticia/2020/07/17/governo-bolsonaro-tem-6157-militares-em-cargos-civis-diz-tcu.ghtml> Last accessed 18/08/2023.

¹⁹² Folha de S. Paulo. "Pazuello Tells Mercosur Health Ministers that Early Treatment 'Made and Makes a Difference' for Covid". 4 December 2020. <https://www1.folha.uol.com.br/internacional/en/scienceandhealth/2020/12/pazuello-tells-mercosur-health-ministers-that-early-treatment-made-and-makes-a-difference-for-covid.shtml> Last accessed on 09/08/2023

¹⁹³ Corrales, Javier. "Venezuela's Autocratization, 1999-2021: Variations in Temporalities, Party Systems, and Institutional Controls" in Fung, Archon, David Moss, and Odd Arne Westad, eds. *When Democracy Breaks: Studies in Democratic Erosion and Collapse, from Ancient Athens to the Present Day*. Oxford University Press, forthcoming, p. 17.

It is expected that when there is a radical change in the governance of the State, as was in Brazil from the left-wing to the far-right, there would be significant changes in office positions, representing the new stances of government ideals. It is part of the democracy pluralistic policies the occurrence of change that realizes the perceptions of the elected leadership. However, with Bolsonaro it was a level above this, he was committed to not including in his perceptions the participation of ‘leftists’ and those who supported the Workers Party in previous administrations. This meant to get rid of those in government positions affiliated with the party, resulting in a *megaexoneração*¹⁹⁴ (translated to huge exoneration), where Bolsonaro exonerated by Decree many commissioned public officers from diverse areas of government in order to end socialist and communist ideals inside the government¹⁹⁵, a sought of witch-hunt involving government officials linked to the left-wing.

Bolsonaro did not manage re-election and considering the high levels of polarization in Brazilian society and politics. Lula’s election and the return of the left to the cabinet of presidency in Brazil, it is expected the same to happen, with lower levels of exoneration, but in the same context, of eliminating public policies associated with the opposition. Such events do not contribute to a democratic form of government.

The control over the bureaucracy by Bolsonaro had a huge impact on environmental policies, besides the public policies dismantling concerning it, following the release of satellite data from the Brazilian National Institute for Space Research (INPE), deforestation in the Amazon increased by 88% in 2019 compared with 2018¹⁹⁶. Over such release of data, Bolsonaro fired the head of the INPE, Ricardo Galvao, alleging that such data is ‘a lie’ and accusing the head of the government agency of serving NGOs¹⁹⁷. This only corroborates the argument that Bolsonaro's bureaucracy capture is self-serving to only benefit his personal administration, contrary to the democratic ideal of serving the electorate. Once it was released data from a government agency that was contrary to his administration, he sought out to change it. Moreover, the disarrange of the

¹⁹⁴ VEJA. ‘Megaexoneração’ atinge Fazenda, Planejamento, Trabalho e Indústria Leia”. 03 January 2019. <https://veja.abril.com.br/coluna/radar/megaexoneracao-atinge-fazenda-planejamento-trabalho-e-industria> Last accessed on 08/09/2023

¹⁹⁵ Estado de Minas. “Governo Bolsonaro já exonerou quase 4 mil comissionados”. 05 January 2019. https://www.em.com.br/app/noticia/politica/2019/01/05/interna_politica,1019087/governo-bolsonaro-ja-exonerou-quase-4-mil-comissionados.shtml Last accessed on 08/09/2023

¹⁹⁶ “Amazon Deforestation Shot Up by 278% Last Month, Satellite Data Show” 07 August 2019. <https://www.livescience.com/66120-amazon-rainforest-deforestation-bolsonaro.html> Last accessed on 08/09/2023

¹⁹⁷ BBC. “Brazil deforestation row: Space research head Galvão out”. 2 August 2019. <https://www.bbc.com/news/world-latin-america-49212115> Last accessed on 08/09/2023

federal bureaucracy under Bolsonaro involving civil servants has accounted for intimidation and fear, institutional dismantling, and decision-making paralysis¹⁹⁸.

In an unsuccessful attempt to capture a government official position in his favor, Bolsonaro nominated a family friend to be head of the Federal Police in the face of ongoing investigations involving his allies and relatives. This attempt was blocked by the Supreme Court. Another unsuccessful attempt by Bolsonaro was to nominate his son as United States Ambassador, despite his lack of diplomatic experience¹⁹⁹. Once Bolsonaro manifested his intentions of pursuing such action, there was great political shock with many manifestations contrary to such action that could configure nepotism. The negative reaction led Bolsonaro's son to give up any attempt to be U.S. Ambassador, once it would need Congress to vote on approval, and that did not seem to be a possible outcome. A bureaucratic positioning that consists of the allocation only considering doling out goodies for family and *think-alike politicians*²⁰⁰, it makes difficult to expect effective government.

The control of the bureaucracy by the executive power in democracy decline is a troubling situation, as is also the politicizing of government policies. Taking reference beyond Huq and Ginsburg, we contribute to the analysis of democracy's decline with Bolsonaro's dismantling of public policies. Policy dismantling is a potential indicator of democracy's decline when it occurs without a transparent process and without public participation, or even without attending to the rule of law. When the objective of the dismantling is to diminish minority rights, concentrate power, erode checks and balances, and impact on the good condition of democratic institutions; then the dismantling is a case of backslide. Not all dismantling of policies means democracy decline, it can involve the political priorities of those elected.

Policy dismantling occurs when the number of policies or policy instruments is diminished, lowering the intensity, and modifying core elements of the policy and its capacities to be implemented and supervised²⁰¹. The shift in governmental policies in Brazil came in 2016 when

¹⁹⁸ Morais de Sá e Silva, Michelle. "Policy dismantling by capacity manipulation in a context of democratic backsliding: The bureaucracy in disarray in Bolsonaro's Brazil", *International Review of Public Policy*. 2022.

¹⁹⁹ BBC. "Brazil's President Bolsonaro offers US ambassador job to son". 12 July 2019. <https://www.bbc.com/news/world-latin-america-48959460> Last accessed on 08/09/2023

²⁰⁰ For *think-alike politicians* in the context of Bolsonaro's government we do not refer to far-right or right-wing allies, but to those that have the erratic and anti-democratic behavior and speech of Bolsonaro. That disregard for the respect for the opposition and a polite manner to conduct politics, does not account for the spreading of disinformation and hate speech.

²⁰¹ Milhorance, C. "Policy dismantling and democratic regression in Brazil under Bolsonaro: Coalition politics, ideas, and underlying discourses". *Review of Policy Research*. 2022. p. 2

Michael Temer took office after Dilma's impeachment, going from a left-wing administration to a conservative-oriented government. With Bolsonaro's far-right positioning, this reached its peak, with the dismantling of a wide range of public policies in the fields of environment, health, education, rural development, and social.

The change in administrations and goal-oriented policies is part of politics and of democracy, the scenario is mutable. The case concerning policy dismantling in Bolsonaro's government is the impact on the social rights of citizens, changing the "overall policy goals and review the historical rights of minority groups and indigenous populations"²⁰².

Following the Constitutional Amendment 95/2016, public spending was frozen for 20 years, this included spending on education and the universal health system, as a measure to avoid the financial ruin of the State. When taking office Bolsonaro's administration, in compass with the budget freeze, focused on reducing public spending, therefore, replacing state prerogatives with private initiatives. This led to a budget reduction impact on policies in several fields, education, health, environment, a social right, contrarily, the military spending was expanded²⁰³.

Considering environmental policies, Brazil has two relevant state agencies that are directed at supervising the Amazon Forest, the Brazilian Institute of Environment and Renewable Natural Resources (IBAMA) and Chico Mendes Institute for Biodiversity Conservation (ICMBio). Already in his first year of government, Bolsonaro cut "95% of the budget for the National Policy on Climate Change; 26% of the Federal Conservation Management and Implementation Program budget; 24% of IBAMA's Inspection and Control Program budget; and 20% of the Environmental Inspection, Prevention, and Control of Forest Fires Program budget"²⁰⁴. These cuts, for example, impacted on discretionary spending, such as the purchase of fuel for vehicles of these state environmental agencies to perform their combat on deforestation in the Amazon. The agribusiness took advantage of such a lack of substantial material capabilities from the state to promote their interests. Taking as reference the announces of Ricardo Salles, who is an anti-environmental activist, legal protection over the areas has 'stifled economic development', he has also said that

²⁰² Milhorce, C. "Policy dismantling and democratic regression in Brazil under Bolsonaro: Coalition politics, ideas, and underlying discourses". *Review of Policy Research*. 2022. p. 7

²⁰³ Folha de S. Paulo. "Bolsonaro Increases Military Spending in First Year of Government". 2 March 2020. <https://www1.folha.uol.com.br/internacional/en/business/2020/03/bolsonaro-increases-military-spending-in-first-year-of-government.shtml> Last accessed on 09/08/2023

²⁰⁴ Milhorce, C. "Policy dismantling and democratic regression in Brazil under Bolsonaro: Coalition politics, ideas, and underlying discourses". *Review of Policy Research*. 2022. p. 8.

the government should take advantage of the media's attention to the COVID-19 pandemic to push through environmental norms²⁰⁵.

These actions of dismantling environmental regulations and policies led to an increase in deforestation rates but mostly had a huge impact on indigenous protection. We take the case of Yanomami protection to demonstrate briefly the immense impact that dismantling social policies can have.

The Yanomami are an indigenous population in Brazil's Amazon, they have been suffering from the illegal gold miners in their territory since the 1980s. During the government of Bolsonaro, it was reported that the number of illegal mining in the indigenous territory had a high increase. These mining activities on their territory and in their rivers cause the release of mercury in the water that is consumed and used in their farming, consequently poisoning and transmitting illness to the native indigenous. Considering the limited contact with outsiders, the Yanomami possess low immunity, therefore, conditions like flu and anemia can be life-threatening. Data from the Ministry of Health showed about 570 Yanomami children have died from untreated diseases during the presidency of Bolsonaro 2019-22, about a 29% increase compared to previous years²⁰⁶. This has happened due to the deterioration of services and policies provided for indigenous people, there was even a bill proposal that sought to legalize mining activities in indigenous lands supported by Bolsonaro²⁰⁷, however, failed.

The erosion of governmental institutions and agencies tasked with protecting indigenous rights was a mark of Bolsonaro's government policies. By weakening their protection, the indigenous territories were left in an even more vulnerable situation, as cited in Chapter 2, the protection and promotion of indigenous rights was changed from a specific agency to the Minister of Agriculture. In a report published by Human Rights Watch, when he took office, Bolsonaro appointed a new director to the agency of Indigenous Affairs (FUNAI), this appointee removed

²⁰⁵ TIMES. "Brazil Is Burning—and President Bolsonaro's 'Terminator' Environment Minister Is Rolling Back More Protections". 24 September 2020. <https://time.com/5895167/brazil-fires-ricardo-salles-environment/> Last accessed on 08/09/2023

²⁰⁶ AP. "Why Brazil's Yanomami are being decimated by disease, mining". 26 January 2023. <https://apnews.com/article/jair-bolsonaro-technology-politics-health-brazil-government-beb55045d93c3152c9ec8e8c79b32cfc> Last accessed on 10/08/2023

²⁰⁷ AP. "In Brazil, artists and activists protest against mining bill". 10 March 2022. <https://apnews.com/article/jair-bolsonaro-entertainment-business-forests-caribbean-983e88ddf3969668c1bb3bc774f9143e> Last accessed on 10/08/2023

experienced careers public servants, which hampered efforts to protect indigenous territories and policies associated²⁰⁸.

In a broader context, the erosion of policies safeguarding the rights of marginalized communities, notably indigenous populations, alongside the erosion of environmental protections within the governmental framework, presents a telling sign of democratic regression under the administration of Bolsonaro in Brazil. The dismantling of these policies occurred with Bolsonaro's grip over the bureaucracy, concentrating power and appointing to key positions those who would maintain sympathy for his vision. The intricate network of governmental agencies in Brazil, dedicated to these critical areas of indigenous and environment, serves as a testament to the fortification of democratic institutions. The unraveling of these agencies, however, has a contrasting effect, weakening the defense of minority rights and their representation. This erosion essentially undermines the protection of rights and of representation of these marginalized communities.

Finally, Bolsonaro's presidency witnessed a comprehensive reorganization of the federal bureaucracy, an institution under his direct authority as the federal government's chief. This restructuring was driven by inter-related and mutual interests²⁰⁹. A previously strong professional-build bureaucracy that existed in the Brazilian federal government was impacted by Bolsonaro, along with the dismantling of policy, resulting in levels of backslide.

Shrinking the Public Sphere

The public sphere, in summary, consists of a space where citizens can deliberate about common affairs. In a democratic society, it is expected that a space for sharing knowledge and beliefs is contemplated, however, in the case of deterioration of such democratic values, such space will be filled with political behavior that seeks to appeal to voters' emotional affiliation and expect these voters not to discuss politician's efficacy in matters of governance. Such a scenario is an example of a pathway of the democratic backsliding framework, where a charismatic leader or a specific party will exploit and channel its public discourse into crude identity politics. As examples

²⁰⁸ Human Rights Watch. "Brazil: Indigenous Rights Under Serious Threat". 9 August 2022.

<https://www.hrw.org/news/2022/08/09/brazil-indigenous-rights-under-serious-threat> Last accessed on 10/08/2023

²⁰⁹ Morais de Sá e Silva, Michelle. "Policy dismantling by capacity manipulation in a context of democratic backsliding: The bureaucracy in disarray in Bolsonaro's Brazil", *International Review of Public Policy*. 2022.

of this specific mechanism of democracy decline, we put forward cases where authoritarian leaders obtained control over the media and the press a diminished the circulation of information to one that suited their interests a corroborated with their narratives.

In the same line of shrinking the public sphere, we see the discussion of Levitsky and Ziblatt of *readiness to curtail civil liberties of opponents, including the media* which authoritarian politicians will use to restrict criticism of the government when done not only by the media but also by civic or political organizations, by the use of laws, threatening with legal and other punitive actions against those manifesting against the government²¹⁰.

Considering Poland, for example, the PiS enacted legislation in 2015 to make all broadcasters of the country have a member on the board of directors who is a representative of the government, which in theory goes against media independence. According to Freedom House, since 2016 the news coverage in Poland has grown more partisan, with editorial policy in the public media being asserted by the government²¹¹. The PiS has also embraced the disinformation playbook by creating a state-sponsored propaganda network to influence online political discourse. In spite of that, Poland does contemplate an independent media and a plurality of voices are still heard, however, the government methods exercise more control over it. The *Public Media Alliance* has reported on the Polish government issuing fines that have a character of punishing the expression of opinion on those being critical of the government, something that reduces the plurality of opinions as well as the public's information on matters relevant to their political life, essential aspects of democracy²¹².

When shrinking the public sphere, governments may make use of financial regulations, less government funding for organizations, more control, and negative campaigning on certain NGOs. This is the case in Poland, civil society organizations that campaign for minority and women's rights, human rights, reproductive freedoms, and LGBTQ+ rights, face much more difficulties and government backlash than organizations that uphold conservative values, which only receive greater support.

²¹⁰ Levitsky, Steven, and Daniel Ziblatt. *How Democracies Die*. 2018. pg. 19.

²¹¹ Freedom House: "Pluralism Under Attack: The Assault on Press Freedom in Poland". 28 June 2017. <https://freedomhouse.org/article/new-report-pluralism-under-attack-assault-press-freedom-poland> Last accessed on 25/08/2023.

²¹² "Focus On Poland: Pressure on independent media" May 2023. Public Media Alliance. <https://www.publicmediaalliance.org/focus-on-poland-pressure-on-independent-media/> Accessed on 20 June 2023.

Venezuela can be a perfect example of this method of the backsliding framework. Chávez government withdrew the broadcast concession of private companies with legislation directed to the telecommunication vehicles in 2000, later amended in 2011 to all audiovisual production. The suspension or revocation of the concession was based on the interests of the nation, public order, or security demand, and was conducted at the discretion of the government. The abuse of the law is an element of autocratic legalism, the media outlets in Venezuela are a hegemony of the government, with targeted media channels having their licenses not renewed, and excessive fees applied for supposedly violating media law, all of this when they do not perform a form of self-censoring to refrain from covering political events and manifesting against the government²¹³. Due to such actions towards a *communicational hegemony* (terminology used by Javier Corrales to characterize Chávez's control over the independent media and shifting it to a government-controlled media), it became difficult for an ordinary person in Venezuela to have access to a truly independent media outlet. Access to information not controlled by the government can only happen through private media, something that is not easily available or economically accessible. This leads to a diminishment of press pluralism which is strategically what the *chavismo* intended.

In discussing 'stealth authoritarianism', Ozan O. Varol gives an example of Turkey and the prospect that by pursuing silencing the media and the opposition modern authoritarians will erode democracy through the use of nonpolitical criminal laws, which at first seems legitimate and neutral to electoral aspects, however, the purpose is to eliminate opposition. Newspapers when critical to the government would be targets of thorough inspections and tax audits, something that did not apply in the same standards for supporters of the government. Such practices eventually neutralize checks of the government and weaken the ability of political opponents to present any challenge to the government in power, less information is distributed to the society once the media themselves do self-censorship to avoid punishments. The impact of these prosecutions of political opponents is done by the control that Erdoğan and the AKP hold of judges and of the bureaucracy in the country, it also will impact on core components of democracy, such as competitiveness and multiparty presence because once opposition raises a voice of criticism any small irregularities will be pursued as a major one. Being the elimination of political competition one of the elements of the framework of democracy backslide, we once again see how the elements can connect among each other, and that means applied will affect more than one aspect of democracy.

²¹³ Corrales, Javier. "Autocratic Legalism in Venezuela". *Journal of Democracy*. 2015. p 45.

Overall, this control of the authoritarian government and leaders over the media in the country does harm the freedom of the press and controls political speech. It means that the government-controlled media will avoid directing criticism toward the ruling power and therefore prevent the citizens from being aware of what the scenario is, there is no transparency. Consequently, the accountability and scrutiny over government actions are restricted to the pieces of information that will only boost their morale and are positive to their government.

13.1. Brazil

Shrinking the public sphere indicator of democracy decline in the case of Brazil focuses more notably on problematic situations involving the press and the spreading of false information. As we discussed, the public sphere refers to a space where individuals can engage in discussions on common concerns in society, which is a component of a healthy democracy, through which citizens can express opinions, exchange ideas, and hold those in power accountable. When shrinking the public sphere there is a reduction of the space of open dialogue and informed engagement of citizens. With that in mind, press freedom allows for unbiased information to reach the citizens, not allowing for a limited availability of viewpoints to come across and suppress critical voices.

The cases of Poland, Venezuela, and Turkey focus on authoritarian control of the media, transforming a free press into a government-controlled one. Consequently, the information that reaches the civilians is limited to the extent that benefits the government, harming the informed engagement of citizens. In Brazil we see a different scenario, the media did not succumb to government control, instead, there was a charge over the control of the narrative by means of misinformation methods using social media.

During the era of military dictatorship press freedom in Brazil faced significant challenges, marked by extensive censorship and even cases of journalists being silenced through disappearances and death for exposing the regime's crimes. Against this historical backdrop, the shadows of press and media censorship loom an offense to Brazil's 34 years of democracy. Bolsonaro and the far-right front did not enact any repressive laws nor gain direct media control, which could ease the control of the narrative. Nonetheless, Bolsonaro's tactics, involving relentless assaults on the media and dissemination of false information, do undermine democracy. Notably,

these actions have been triggered by criticism and opposition, often fueling his supporters to adopt a similar antagonistic stance towards the media, journalists, and political dissent.

Not limited to holding a speech against the media and attacking journalists, the unfolding of democracy decline in the form of the mechanism *shrinking of the public sphere* by Bolsonaro occurred also by disinformation rhetoric. The tactic of disinformation or as is referred to in Brazil as *'fake news'* is one of the main reasons for the friction between Bolsonaro and the media/journalists. The misinformation and disinformation in Bolsonaro's speech started already in his presidential campaign in 2018 against his opponents, when by means of social media messages with false information were spread in order to gain support, manipulate the public, and achieve electoral advantage²¹⁴. It was reported that from a sampled number of 11.957 messages spread within WhatsApp groups during the 2018 elections in Brazil, about 42% had false right-wing content²¹⁵. With his electoral victory such methods of spreading falsehoods continued, one of the main subjects addressed by Bolsonaro was the election process and the electronic system by which it operates.

The case of misinformation shrinks the public sphere and poses a threat to democracy once it confuses the public about reality, by shielding those who spread false information from scrutiny. Furthermore, misinformation undermines the trust of citizens towards the media and their engagement with it, leading to the discrediting of legitimate news sources. These aspects of misinformation erode the public discourse, and informed discussion becomes hindered by inaccuracy and derailed by falsehoods. Disinformation is used as a weapon to disseminate illogical content and obstruct the press reporting on the government, a tactic of authoritarian leaders.

Disinformation in Brazil became the subject of investigations and measures by the state institutions, the Electoral Justice and the Electoral Superior Tribunal (TSE) created a special platform to identify fake news. There was the conduction of investigations by the Federal Police over the spreading of misinformation which uncovered that a great quantity of it occurred by members of Bolsonaro's cabinet, and by social media outlets such as Twitter, YouTube,

²¹⁴ Ozawa, J. V. S., Woolley, S. C., Straubhaar, J., Riedl, M. J., Joseff, K., & Gursky, J. "How Disinformation on WhatsApp Went From Campaign Weapon to Governmental Propaganda in Brazil". *Social Media + Society*. 2023.

²¹⁵ Ozawa, J. V. S., Woolley, S. C., Straubhaar, J., Riedl, M. J., Joseff, K., & Gursky, J. "How Disinformation on WhatsApp Went From Campaign Weapon to Governmental Propaganda in Brazil". *Social Media + Society*. 2023. p. 3.

Facebook²¹⁶. This scenario involves challenges in holding politicians accountable, a crucial aspect of democracy, which raises the question of how we can ensure accountability from those in power when society's grasp on reality becomes uncertain.

The issue of fake news led to the opening of an Inquiry by the Brazilian Supreme Court (STF)²¹⁷ to investigate and pursue legal action against the circulation of disinformation and misinformation. On the same path of investigations, the Brazilian Federal Police uncovered that advertisements of government agencies were being posted on websites that published fake news²¹⁸. Which meant that government resources were being directed to the funding of false information websites. This led to a criticism of the lack of transparency of the Secretary of Social Communication of the Republic Presidency (Secom) – responsible for these advertisements – who had directed publicity resources from the government to the funding of websites of ideological content. Ideological content aligned with the position of Bolsonaro. On investigations conducted by the *CPMI das Fake News*²¹⁹, it was identified that Secom had 2 million government advertisements on websites, YouTube, and messaging apps, that published *fake news*²²⁰. In this context, we acknowledge the efforts of democratic institutions in the judiciary and legislative branches to uphold the truth in the media and the press, seeking to end disinformation.

Bolsonaro's administration's misinformation led to a constant conflict between the media and journalists. To demonstrate this affirmation, we focus on the misinformation spread by Bolsonaro himself concerning the COVID-19 Pandemic, which is the subject of the publishing of Nicoletti and Flores. Considering the health crisis of the pandemic many directions were put

²¹⁶ UOL. “PF aponta como o 'gabinete do ódio' se expandiu além do Palácio do Planalto”. 13 June 2021. <https://noticias.uol.com.br/politica/ultimas-noticias/2021/06/13/gabinete-do-odio.htm> Last accessed on 17/08/2023

²¹⁷ Inquérito 4781 - Inquiry of Fake News addressed by the Brazilian Supreme Court.

²¹⁸ O Globo. “MPF abre inquérito para investigar suspeita que governo direciona verba para sites ideológicos” 26 May 2020. <https://oglobo.globo.com/politica/mpf-abre-inquerito-para-investigar-suspeita-que-governo-direciona-verba-para-sites-ideologicos-24446907> Last accessed on 18/08/2023

²¹⁹ “*Comissão Parlamentar Mista de Inquérito (CPMI) das Fake News*” or Joint Parliamentary Inquiry Committee on Fake News is a parliamentary commission of Deputies and Senators created to investigate the existence of a network of production and propagation of disinformation on social media. Its creation was motivated due to the high quantity of disinformation during the 2018 elections. Later in 2020, the CPMI was extended to also focus on the dissemination of disinformation over the COVID-19 Pandemic. The CPMI on Fake News is now concluded and attested to the presence of disinformation tactics on social media by a number of political actors and the use of public revenue to fund advertisements on websites that publish fake news content. <https://legis.senado.leg.br/comissoes/txtmat?codmat=137594>

²²⁰ O Globo. “CPMI das Fake News identifica 2 milhões de anúncios da Secom em canais de 'conteúdo inadequado' em só 38 dias”. 02 June 2020. <https://blogs.oglobo.globo.com/sonar-a-escuta-das-redes/post/cpmi-das-fake-news-identifica-2-milhoes-de-anuncios-da-secom-em-canais-de-conteudo-inadequado-em-so-38-dias.html> Last accessed on 18/08/2023

forward by the World Health Organization (WHO) and initially by the Brazilian Ministry of Health (which after conflict with Bolsonaro had its Minister replaced with one that agreed with Bolsonaro's views). Their directions included social distancing and consequently the suspension of non-essential economic activities. Bolsonaro was strongly opposed to such measures and used his social platform to communicate with his supporters and express his view against such measures, discrediting news reports about the pandemic and minimizing its seriousness. The press would denounce the posture taken by President Bolsonaro in the pandemic, in return, he would by his channels of communication, mostly YouTube, attack the press and professionals that direct criticism towards him²²¹. His attacks on the press were a tactic to validate his negationist position related to the pandemic.

The Brazilian National Federation of Journalists (FENAJ) reported that Bolsonaro's attacks on the press regarding the pandemic damaged the quality of information distribution in Brazil, in three months there were about 141 attacks on the press²²². When attacking the press and journalists, Bolsonaro discredits the media and directs his supporters to act the same way. These attacks were made by platforms such as Twitter, Facebook, and YouTube, the tone used by Bolsonaro was aggressive and hostile. The false information about the pandemic caused confusion and distrust among the people and had an adverse effect on the fight against the disease, Bolsonaro encouraged his followers to doubt the press and discredit news reports²²³.

Journalists became subject to verbal harassment and verbal attacks when reporting against the President, which is a danger to democracy once it can lead to censorship and self-censorship due to systematic intimidation. This was not the case in Brazil, where it was assessed that the journalistic coverage was not intimidated by these attacks²²⁴, however, there is a clear correlation between "violence against press professionals – exacerbated by the new coronavirus pandemic – and the content published on Jair Bolsonaro's YouTube channels"²²⁵. Attacks on the press and

²²¹ Nicoletti, Janara, and Ana Marta M. Flores. "Violence Against Journalists on Jair Bolsonaro's YouTube Channel: Analysis of the First 100 Days of the Covid-19 Pandemic in Brazil." *Brazilian Journalism Research*. 2022.

²²² FENAJ. "Ao jogar apoiadores contra jornalistas, Bolsonaro prejudica combate ao Coronavírus". 3 April 2020. <https://fenaj.org.br/ao-jogar-apoiadores-contra-jornalistas-bolsonaro-prejudica-combate-ao-coronavirus/> Last Accessed on 17/08/2023.

²²³ Nicoletti, Janara, and Ana Marta M. Flores. "Violence Against Journalists on Jair Bolsonaro's YouTube Channel: Analysis of the First 100 Days of the Covid-19 Pandemic in Brazil." *Brazilian Journalism Research*. 2022.

²²⁴ Ozawa, J. V. S., Lukito, J., Lee, T., Varma, A., & Alves, R. "Attacks Against Journalists in Brazil: Catalyzing Effects and Resilience During Jair Bolsonaro's Government." *The International Journal of Press/Politics*, 2023.

²²⁵ Nicoletti, Janara, and Ana Marta M. Flores. "Violence Against Journalists on Jair Bolsonaro's YouTube Channel: Analysis of the First 100 Days of the Covid-19 Pandemic in Brazil." *Brazilian Journalism Research*. 2022. p. 26.

misinformation spreading by Bolsonaro led his supporters to accept media coverage only from those who praised the government and did not oppose his views. This leads to control by Bolsonaro of the public discourse.

A dramatic moment occurred when Bolsonaro, using his authority over the Federal Government and Minister of Health, removed all data on the number of infected and death tolls from the government portal²²⁶. This can be seen as an attempt to control the narrative, once in the moment such actions took place the toll of death and contamination in Brazil was one of the highest worldwide. It was said by the government that the portal was under maintenance, however, the maneuver omitted data that damaged Bolsonaro's administration. This measure put into question the official data on the disease and diminished the fight against the pandemic to the extent that could not be assessed if death was by COVID or other diagnoses.

On the verge of this situation, the press in Brazil along with Municipalities and States pursued a consortium to publish the data on deaths and contaminations by the coronavirus. The initiative allowed for transparency over the impact of the disease and on vaccination, preventing Bolsonaro and his administration from omitting information and contributing to his narrative that the disease was not so serious. Only after a decision from the Supreme Court, the government return to the platform the full display of data on the COVID death tolls, contamination, and vaccination²²⁷.

Ultimately, the role of the press and journalists is extremely important as watchdogs of power institutions such as governments. The quality of this role can measure the levels of democracy in a country because undemocratic political regimes will restrict press freedom and will tend to undermine the role of the press and journalists who criticize and expose their flaws. By attacking the press and spreading disinformation, Bolsonaro, the head of the executive branch, destabilizes democracy. His actions contribute to a greater inflammation of the polarized scenario in Brazil, where the ideology of 'us versus them' is reinforced by emotions of resentment and anger. The encouragement of press attacks and false information dissemination by the President himself seeks to only gain self-promotion and push his ideology, eroding public discourse by

²²⁶ G1. "Após reduzir boletim diário, governo Bolsonaro retira dados acumulados da Covid-19 do site". 6 June 2020. <https://g1.globo.com/politica/noticia/2020/06/06/apos-reduzir-boletim-governo-bolsonaro-retira-dados-acumulados-da-covid-19-de-site-oficial.ghtml> Last Accessed on 18/08/2023.

²²⁷ G1. "Governo obedece à ordem do STF, e Ministério da Saúde volta a divulgar dados completos da covid". 9 June 2020. <https://g1.globo.com/politica/noticia/2020/06/09/ministerio-da-saude-volta-a-divulgar-no-site-oficial-dados-acumulados-da-covid-19.ghtml> Last Accessed on 18/08/2023.

manipulating the truth and deceiving his supporters. All of this results in an impact on the public sphere that will suffer with illegitimate and fraudulent arguments coming from Bolsonaro and his supporters.

Elimination of Political Competition

The existence of political competition is essential for democracy, it allows for the alteration of power and the existence of meaningful opposition. Citizens choose among the politicians who will represent their interests and advocate their cause in democratic government, however, once the possibility of choice is limited by others in power to solidify their own power, it sets in motion a trajectory of democratic decline.

When the Hungarian party of Viktor Orbán proceeded with constitutional amendments (the first element discussed of the framework) he pursued to only consolidate his and the Fidesz's power, eliminating institutional checkpoints that ensured political competition. When using its supermajority in the parliament to bend it on its will, Fidesz took steps to introduce an electoral reform. By means of legislation passed in early 2011, electoral rules were changed to propose a difficulty in the public understanding, among them there were changes in the number of members of parliament and the creation of new electoral districts, setting those and others as single-member districts, consequently difficultating political competition and representation of all, once there, the idea of multiparty cooperation does not exist.

The Fidesz reforms in the constitution emphasize the legality of the party's antidemocratic measures of government. Before the new constitution of 2010-11, the electoral system in Hungary was two-round elections, however, it came to be eliminated, and replaced by single-round. This reform reduced political competition and restricted the electoral playing field to only major parties, those which in the case of Hungary are the parties associated with Fidesz. Such affirmation is supported by data collected from the Hungarian National Election Office that demonstrates a clear trend toward reducing local electoral competition among major parties which is associated with the successive rise of Fidesz²²⁸.

²²⁸ Jakli, Laura. and Stenberg, Matthew. "Everyday illiberalism: How Hungarian subnational politics propel single-party dominance". *Governance*. 2021. p. 318.

The implementation of regulations that would facilitate the consolidation of Orbán illiberal²²⁹ government involved methods such as reducing oversight of the governing coalition and limiting opportunities for political contestation²³⁰. When reducing political contestation, it is by consequence diminishes the capacity of civil society and civil organizations to engage with the local democratic process, it gives the opposition less capacity to represent constituents that are the opposition. Fidesz and Orbán's new measures included setting a limited number of opportunities for the opposition to speak, debate, and propose local legislative action²³¹, consequently, opposition parties face obstacles and limitations in their voice. These limitations reduce the capacity of the political opposition and limit the participation of civil society in the democratic process.

The method of reduction of oversight mechanisms limits public awareness of the matters taken by politicians and prevents them from pushback, consequently, Fidesz becomes more empowered to act with impunity. Reduction of oversight can be of many forms: fiscal oversight, political checks and balances, and media access. Once again, we can perceive how the different methods from the democracy decline framework can be connected.

Recep Tayyip Erdoğan, while holding the position of Mayor of Istanbul in 1996, said in an interview that ‘democracy is a streetcar that you ride until you reach your destination, then you step off’. Being true to his statement, when later Prime Minister and then President of Turkey, Erdoğan unleashed several processes that resulted in a tilted political playing field, as mentioned in the previous aspect of the backslide framework, readiness and willingness of the leader to curtail civil liberties and the media, by selective prosecuting political opponents for nonpolitical crimes, he prevents the opposition from gaining space. An example is the prosecution of Sevan Nişanyan “a vocal critic of Erdoğan” who came to be “sentenced to more than sixteen years in prison for violating various building codes. The convictions may have been legally accurate, but in Turkey, illegal construction is the norm, not the exception”²³². Such practices of building construction

²²⁹ Viktor Orbán gave a speech in 2014 where he claimed that the new state of Hungary is an illiberal state. A state that does not reject the fundamental principles of liberalism such as freedoms but does not make it a central element of its ideology and state organization, it does, however, apply different elements of a national approach. The speech was given at the 25th Bálványos Summer Free University and Student Camp.

²³⁰ Jakli, Laura. and Stenberg, Matthew. “Everyday illiberalism: How Hungarian subnational politics propel single-party dominance”. *Governance*. 2021. p. 324

²³¹ Jakli, Laura. and Stenberg, Matthew. “Everyday illiberalism: How Hungarian subnational politics propel single-party dominance”. *Governance*. 2021. p. 325

²³² Varol, Ozan O. “Stealth Authoritarianism in Turkey” in Mark A Graber, Sanford Levinson, Mark Tushnet eds, *Constitutional Democracy in Crisis?* New York: Oxford University Press, 2018. pg 253.

violations are present even in the presidential palace of Erdoğan, however, the rule of law seems to be applicable to the convenience of the government, as said by Óscar Benavides: ‘For my friends, everything; for my enemies, the law’.

Besides such methods to damage competition and participation of the opposition in the political space in Turkey, in June 2015 when facing a defeat in the parliamentary majority, the AKP refused to step down, however, since there was a tentative coup in 2016 and the establishment of the state of emergency, Erdoğan was only ruling by decree for two years, not worrying about parliamentary representation. Later in 2019 when AKP lost several municipal elections, Erdoğan’s government proceeded to “curtail the power of opposition mayors by limiting their financial resources and threatening them with punitive action. More strikingly, the government replaced 24 elected pro-Kurdish mayors with government appointees”²³³. These practices show that even with elections happening the playing field is uneven, with little competition actually in place, and even fewer chances of victory for the opposition.

Turkey had a recent election in 2023 with Erdoğan winning once again. In an opinion written in the *Washington Post*, the club of autocracies in the world had another win due to the Turkish majority rejecting liberal democracy in favor of populism²³⁴ with 52% of the popular vote being in favor of the continuation of Erdoğan’s rule. In these elections, it was assessed by free international media that state propaganda and election-day irregularities occurred, and even if ‘free elections’ happened, they were not indeed fair²³⁵. Holding control of significant state broadcasts, Erdoğan made constant appearances, with little space given to the opposition. It was suggested by state broadcasts and the government that the run-off opponent of Erdoğan to the presidency was associated with a terrorist organization, with an altered video being spread in the press. In summary, these last elections in Turkey, – according to the assessment of international observers – media bias and limits to the freedom of expression created a tilted playing field that limited the opposition and contributed to advantages for the AKP and Erdoğan.

In Venezuela, many tactics were applied by the governments of Chávez and Maduro in order to maintain their hold on power and prevent political competition. The tactics involved a

²³³ Esen, Berk. and Gumuscu, Sebnem. “Why did Turkish democracy collapse? A political economy account of AKP’s authoritarianism”. *Party Politics*. 2021

²³⁴ Washington Post. “Erdogan won Turkey’s election. But this is not the end of the story”. 29 May 2023. [washingtonpost.com/opinions/2023/05/29/turkey-election-results-erdogan-challenge/](https://www.washingtonpost.com/opinions/2023/05/29/turkey-election-results-erdogan-challenge/) Accessed on 07 July 2023.

²³⁵ Foreign Policy. “Why Turkish Pollsters Didn’t Foresee Erdogan’s Win”. 7 June 2023. <https://foreignpolicy.com/2023/06/07/turkey-elections-polls-erdogan-kilicdaroglu/> Last accessed on 7 July 2023.

major difference in air-time propaganda between the parties benefiting the ruling government; arbitrarily keeping polling stations open longer when it helped the government; barring candidates and observers; pressuring state employees and welfare recipients to vote for the ruling party; manipulating voting rules to the ruling party; and, harassing voters at the polls²³⁶. There were even the threatening local municipalities and governments ruled by the opposition of not providing central-government financial support, and withdrawing legal funds²³⁷, in order to damage the opposition's current government and reflect on their possible future votes. All these tactics used by the government were able to be achieved due to the capture of key state institutions, electoral authorities, and the judiciary. For example, it was already in the Hugo Chávez government that he eroded the autonomy of the electoral authorities that are responsible for monitoring elections. Due to such maneuver, the National Electoral Council (CNE) was just another partisan body that lacked impartiality and was in the later elections unwilling to investigate possible fraud allegations against Chávez or Maduro, and complied with the tactics previously mentioned exercised by the government. Remembering that the high-level judges were partisan for the government when *eliminated institutional checks*, decisions of the courts would also benefit the PSUV (The United Socialist Party of Venezuela), the party founded by Chávez and later on of Maduro.

The situation for representative democracy in Venezuela is critical, with such impositions and tricks imposed by the ruling government constituting a major difficulty for opposition candidates. It is reported that in 2021 the government created a fake opposition party to further divide the opposition²³⁸. Such tactics prevent the competitiveness of the opposition, consequently producing an asymmetrical party relationship tilting the playing field of politics, which harms participatory democracy. As presented by Scheppele on *autocratic legalism*, the application of the law with a biased perspective – as in harsh towards political enemies and soft when it comes to loyalists – is a method of eroding liberal democracy, which is exactly the events perceived in Venezuela by the government of Chávez and Maduro.

Procedures taken to change and make political competition less viable are a symptom of democratic backsliding. Opposition is essential for the functionality of the neutrality of a country's

²³⁶ Ginsburg, Tom. and Huq, Aziz Z. *How to Save a Constitutional Democracy*. 2018. p. 113.

²³⁷ Ginsburg, Tom. and Huq, Aziz Z. *How to Save a Constitutional Democracy*. 2018. p. 113.

²³⁸ Corrales, Javier. "Venezuela's Autocratization, 1999-2021: Variations in Temporalities, Party Systems, and Institutional Controls" in Fung, Archon, David Moss, and Odd Arne Westad, eds. *When Democracy Breaks: Studies in Democratic Erosion and Collapse, from Ancient Athens to the Present Day*. Oxford University Press, forthcoming. pg 16.

political space, a electoral platform exists so the variety of constituents can pursue and vote according to their preferences, and once such neutrality is diminished, so is the ability of the electorate to really manifest its true political will. Venezuela's case shows us how the opposition was repressed and denied honest opportunities to compete with a government's autocratic tendencies and democratic backslide tactics. Following this line, Javier Corrales discusses how *electoral irregularities* in Venezuela are a major contributing factor to democratic backsliding, once such irregularities increase the threat of the ruling party over the opposition and against honest electoral practices.

Javier Corrales characterizes *electoral irregularities* as “practices, regulations, and even laws that violate international standards calling for elections for state office”²³⁹. When assessing his takes in Venezuela, Corrales mentions how these irregularities can be replicable elsewhere, specifically when there is a situation of rising electoral competitiveness. There is a distinction between electoral fraud and electoral irregularities, for the first, it is the suppression of votes on voting day, by means of illegal acts, the second – and object of our discussion – is a broader concept that also includes electoral fraud, however, it also entails the manipulation of norms and rules that govern elections. Electoral irregularities “include problems on the day of voting (e.g., fraud, infrastructure, disruption, coercion of voters), and just as important, practices, norms, and rules affecting the pre-campaign, the campaign, and the post-elections periods”²⁴⁰.

The seriousness of electoral irregularities comes from the difficulty imposed on the opposition in matters of competing with the ruling party which can lead to a discouragement towards political participation of citizens. This was exactly the case for Venezuela in 2005 when the opposition – facing a denial of the referendum for presidential recall by the electoral commission that was packed with *Chavistas* – coordinated a boycott of the elections, hoping that high abstention of voting would annulate elections achieving something. However, it only demoralized the opposition with a defeat once the electoral results were taken as valid and Chávez continued another mandate as president.

Considering the threats posed to the opposition, for Corrales, they can become fragmented into three groups: those that will continue to fight for electoral competitiveness; those that condemn the opposition that accepted the unfair rules imposed by the government; and last those

²³⁹ Corrales, Javier. “Democratic Backsliding through Electoral Irregularities: The Case of Venezuela.” 2020. pg 43.

²⁴⁰ Corrales, Javier. “Democratic Backsliding through Electoral Irregularities: The Case of Venezuela.” 2020. pg 44.

that disengage from political participation. Such fragmentation of the opposition with the intent to cause disarray, disunity, and decline within is what electoral irregularities try to achieve.

On the same path as eliminating political competition is the denial of the legitimacy of opponents, aspects of backsliding that can be very well seen when there is a rejection of the legitimacy of opponents that were voted to power. This happened with Orbán's Fidesz in 2002 when they lost the parliamentary elections and tried to undermine the legitimacy of the representation by the opposition, refusing to concede defeat²⁴¹. Presents similarity to the posture of Trump in the United States in 2020 and to what was presumed to be the intentions of Bolsonaro in 2022, which took a significant turn as we will discuss further.

14.1. Brazil

The elimination of political competition in Brazil did not take matters such as control over electoral bodies, however, when associating this element of the framework developed by Ginsburg and Huq with what Levitsky and Ziblatt characterize as the *denial of the legitimacy of political opponents*, we can perceive the impact of this mechanism in Brazil's backslide. According to them, this indicator of authoritarian behavior entails the claim by leaders that their rivals constitute a threat to the prevailing way of life or with baseless accusations describe their rivals as criminals. In this path, Bolsonaro and the far-right demonized their political opponents –the left and the Workers Party (PT)– and promised to save Brazil in his run for the presidency in 2018²⁴². Considering the polarized scenario in the country, the tactic worked to his advantage.

Bolsonaro managed to coordinate his attacks against the opposition through hate speech and *fake news* strategy, by means of what is known as *Gabinete do Ódio*²⁴³ (Office of Hate). His communication style is extremist, filled with racism, especially towards indigenous people, and

²⁴¹ Halmai, Gábor. "A Coup Against Constitutional Democracy" in Mark A Graber, Sanford Levinson, Mark Tushnet eds, *Constitutional Democracy in Crisis?* New York: Oxford University Press, 2018. pg 253.

²⁴² Hunter, Wendy and Timothy J. Power. "Bolsonaro and Brazil's Illiberal Backlash." *Journal of Democracy*, vol. 30 no. 1, 2019, p. 68-82.

²⁴³ The *Gabinete do Ódio* (Office of Hate), a far-right group composed of Bolsonaro's sons and other close allies, is characterized by the news media in Brazil for their attacks against democratic institutions. They operate in a vast fake news network and also operate with fake profiles that spread hatred on social media directed to an ideological community aligned with Bolsonaro.

misogynistic views²⁴⁴. An example was when Bolsonaro engaged in a discussion with female Deputy Maria do Rosário, saying that he would not even rape her because she was not worth it²⁴⁵. He even came to praise torture, as was the case of his speech in favor of Dilma Rousseff's impeachment, while still a congressman. When voting for the impeachment he made a historical parallel with the military dictatorship from 1964 when he mentioned the fight against communism and dedicated his vote in favor of her impeachment in 'memory of Carlos Alberto Bilhante Ustra'²⁴⁶. A colonel of the army who is a notorious torturer and human rights abuser. To contextualize the damage of his affirmation, Dilma Rousseff is a victim herself of the military dictatorship. In another moment, Bolsonaro said that the mistake of the dictatorship was to torture instead of killing more²⁴⁷. Such implications demonstrate that Bolsonaro did support the torture of his political opponents, which is not an aspect of democratic government, where respect for the opposition is praised. The allegations referred to above occurred when Bolsonaro was still State Deputy in Brazil, however, his aggressive behavior towards those who opposed him continued to happen after taking hold of office, as we saw in the attacks on the press.

Democracy requires the possibility of power transitions and respect for competition among meaningful oppositions that act in conformity with the law. This presumes that violence has no part in a liberal constitutional democracy. When a government leader encourages or tolerates violence this idea is threatened, as is the case of Bolsonaro praising torture and apology for sexual violence against a woman. Levitsky and Ziblato put has an indicator of authoritarian behavior and therefore an indicator of democracy decline this characteristic. The endorsement of violence or refusal to condemn it shows no respect for the democratic system that does not include such methods in its functioning.

The tactic of *fake news* and hate speech used by Bolsonaro and his allies seek to delegitimize the opposition, therefore, harming competition. Respect for opposition is an important element of checks and balances in a democratic government, it allows for the assessment of how

²⁴⁴ Reuters. "Factbox - Far-right Brazilian candidate thrives on controversy" 17 May 2017. <https://www.reuters.com/article/us-brazil-politics-bolsonaro-factbox/factbox-far-right-brazilian-candidate-thrives-on-controversy-idUSKCN1I12T3> Last accessed on 24/08/2023.

²⁴⁵ G1. <https://g1.globo.com/ultimas-noticias/video/deputado-jair-bolsonaro-diz-que-nao-estupra-maria-do-rosario-porque-ela-nao-merece-3821273.ghtml> Last accessed on 23/08/2023.

²⁴⁶ Atencio, Rebecca J. "From Truth Commission to Post-Truth Politics in Brazil." *Current History*. 2019. p. 70.

²⁴⁷ The Guardian. "Fury as Bolsonaro orders Brazil army to mark 55th anniversary of military coup". 27 March 2019. <https://www.theguardian.com/world/2019/mar/27/brazil-bolsonaro-military-coup-1964#:~:text=While%20still%20a%20congressman%2C%20he,before%20the%20return%20to%20democracy.> Last accessed on 24/08/2023.

serious that idea of alternation of power is to the government. This is because if there is no support for the alternation of power, we are not talking about a democracy where the power positions are rotative.

As initially stated, Bolsonaro did not exert direct control over electoral bodies. However, an analysis can be conducted regarding the negative impact on political competition surrounding the conviction of Lula da Silva²⁴⁸ by former federal judge Sérgio Moro, who later served as Minister of Justice under Bolsonaro's administration. The *Lava Jato* Operation, active from 2014 to 2018, uncovered significant structural corruption schemes within Brazilian politics, marking a notable achievement for democracy. Nevertheless, the timing of Judge Moro's conviction of Lula in 2018, just prior to the elections, and his subsequent transition from a judicial career to a ministerial role within Bolsonaro's administration, raises concerns about the impartiality of judges and the law in a democratic society.

This sequence of events creates a conflicting situation. Sérgio Moro, who had been a prominent figure in the opposition to the left due to the corruption scandal acted in ways that benefited Bolsonaro's electoral success – when in the position of a federal judge – to later relinquish his judicial role to join the government's administration. Moreover, the subsequent annulment of Lula's conviction by the Supreme Court due to questions about Judge Sérgio Moro's impartiality in the operation's proceedings further amplifies the problematic aspects of these events. This series of developments could be interpreted as a strategic maneuver that effectively diminished political competition, even if not being planned or orchestrated by Bolsonaro, it does account for the representation of an element in the democracy decline framework that benefited him. Overall, the events involving Judge Sérgio Moro's questionable conviction of Lula in 2018 to later figure as a minister of Bolsonaro's government is problematic for the upholding of political competition in a liberal constitutional democracy.

On top of that, returning to the discussions of *electoral irregularities* in Venezuela, Corrales specifies a list of violations that can be recognized as such. On this list, there are two that relate to the case of Brazil under Bolsonaro's administration. These are “voting day irregularities, including major disruption of infrastructure needed for voting to happen smoothly (e.g., broken machines, power outages) or disorder and lack of transparency at voting booths” and, considering

²⁴⁸ BBC. “Lula: Jailed ex-leader pulls out of Brazil election”. 12 September 2018. [bbc.com/news/world-latin-america-45482160](https://www.bbc.com/news/world-latin-america-45482160) Last accessed on 24/08/2023.

international standards for clean elections the recognition of results, that “elected officials must recognize the result of the election, and allow for a smooth transfer of full power to winners”²⁴⁹. As it was put forward by the author, the case of electoral irregularities in Venezuela could be replicated elsewhere. Whether that was even an awareness, or an intention of Bolsonaro’s administration is unknown, nevertheless, it is associated with the facts that did take place.

Considering the first, *voting day irregularities, including major disruption of infrastructure needed for voting to happen smoothly*, we take as fitting to the violation on the list the events that took place during Bolsonaro’s administration in the 2022 Brazilian elections. The 2022 election’s first round occurred on October 2, on occasion, there were roadblocks by federal highway police stopping vehicles and conducting questioning. The stopping of these vehicles was in particular of buses that were transporting voters to the polls, nearly 300 buses were stopped, in a possible effort to suppress the outcome of presidential elections²⁵⁰.

On initial investigation conducted by election officials, the highway police stop delayed the buses, yet the voters did reach their intended polling posts, however, interviews of The New York Times assessed that some people indeed gave up voting due to this operation²⁵¹. Over such occurrences, the election officials issued an order²⁵² to the head of the Brazilian federal highway police to halt any traffic stop operation scheduled for the second round of the elections, to prevent any possibility of hindering people’s efforts to vote. The federal highway police still performed the actions on the second-round election on 30 October, this time more than 550 buses were stopped. These roadblocks happened especially in the northeastern part of Brazil, where Lula and the left have historically held a stronger poll advantage.²⁵³

The head chief of the federal highway police used his social media to urge people to vote for Bolsonaro on the day before the elections. Accounting messages posted on social media and interviews with voters assess that those who did plan on voting for Lula encountered more stern

²⁴⁹ Corrales, Javier. “Democratic Backsliding through Electoral Irregularities: The Case of Venezuela.” 2020. p. 46-47.

²⁵⁰ The Brazilian Report. “More details on alleged voter suppression case emerge”. 30 October 2022. <https://brazilian.report/liveblog/2022/10/30/alleged-voter-suppression-brazil/> Last accessed on 24/08/2023

²⁵¹ The New York Times. “Brazil’s election officials demand answers for police stops of buses carrying voters”. 30 October 2022. <https://www.nytimes.com/2022/10/30/world/americas/brazil-voters-police-elections.html> Last accessed on 24/08/2023.

²⁵² <https://www.tse.jus.br/comunicacao/noticias/2022/Outubro/tse-proibe-prf-de-realizar-operacoes-direcionadas-ao-transporte-publico-de-eleitores> Last accessed on 24/08/2023

²⁵³ The Brazilian Report. “More details on alleged voter suppression case emerge” 30 October 2022. <https://brazilian.report/liveblog/2022/10/30/alleged-voter-suppression-brazil/> Last accessed on 24/08/2023

behavior from the police. Considering that, the electoral officials ordered that the chief of the federal highway police provide proof that the action performed by officers stopping vehicles was not violating election rules to benefit Bolsonaro²⁵⁴. Later in 2023, an investigation concluded that the federal highway police action on election day failed to comply with the decision of electoral officials who had vetoed such an operation. The then head of the federal highway police was convicted due alleged attempt of political interference in favor of Bolsonaro.²⁵⁵ ²⁵⁶ It was accounted that ‘human and material resources’ from the federal highway police hindered voters’ transport by performing roadblock patrols on election day.

Another contrasting situation with Venezuela is the 2017 gubernatorial elections. There was an abrupt relocation of polling places on the eve of election day, causing a considerable hindrance for voters who would have to travel several hours in order to reach the new polling stations²⁵⁷. As we saw in the case of Brazil, these actions on election day are what Corrales identifies as voting day irregularities, they disrupt the electoral process on the day of voting and tilt the playing field obstructing the electoral competition, by preventing citizens from manifesting their choice. It stands as a contradiction to the principles of a democratic government.

The second electoral irregularity we take from Corrales list is the international standard for clean elections where *elected officials must recognize the result of the elections, and allow for a smooth transfer of full power to winners*. The last element ‘transfer of full power to winners’ did occur in Brazil after Bolsonaro lost the 2022 re-election bid to Lula. However, this did not happen smoothly or with Bolsonaro’s recognition of the election result.

Before the second round of elections was concluded, Bolsonaro raised alarms on the possibility of echoing Trump’s actions of falsely claiming that the election was stolen. On occasion months before the election, in a speech, Bolsonaro said that the outcomes of the elections could be only his victory, death, or arrest, not even implying defeat. After the results of the October 30th election day, Bolsonaro did not admit defeat or repeated baseless claims of election fraud, his chief of staff was the one to say that the government would hand over power to the incoming

²⁵⁴ Superior Electoral Court - TSE Brasil - *Petição Cível* nº 0601800-39.2022.6.00.0000.

²⁵⁵ AP. “Brazil’s former highway police director has been arrested in a probe into election interference”. 9 August 2023. <https://apnews.com/article/brazil-election-interference-highway-police-2bc4b9c290f644dde391ce6eb3abed21> Last accessed on 24/08/2023.

²⁵⁶ Folha de S. Paulo. “Former Federal Highway Police Chief in Brazil Arrested on Suspicion of Interfering in the Election”. 10 August 2023. <https://www1.folha.uol.com.br/internacional/en/brazil/2023/08/former-federal-highway-police-chief-in-brazil-arrested-on-suspicion-of-interfering-in-the-election.shtml> Last accessed on 24/08/2023.

²⁵⁷ Ginsburg, Tom. and Huq, Aziz Z. *How to Save a Constitutional Democracy*. 2018. p. 114.

administration, it took two days after the results for such a manifestation to occur²⁵⁸. Bolsonaro's speech after defeat was only addressed thanks to his supporters and celebrating his government's accomplishments, he said he had always followed the Constitution and encouraged protests to be peaceful²⁵⁹.

Before the presidential inauguration ceremony, Bolsonaro left Brazil and went to Miami, United States²⁶⁰. Due to that, the democratic convention in Brazil where a former president passed the presidential sash to the successor, did not occur as usual. It was left the responsibility of the Vice-President, army general, Hamilton Mourão, to conduct the proceedings. Such actions of not fully recognizing the election's defeat nor proceeding in accordance with the democratic tradition of attending the inauguration can be categorized by Corrales classification as an electoral irregularity. They degrade the democratic *sine qua non* principle of accepting election results. Moreover, these actions also contribute to the narrative of Bolsonaro's supporters that the elections were a fraud which eventually led to the mob attacks against the democratic institution in Brasília on January 8th.

Reaching an ultimate on the assessment of this last mechanism of democracy decline in Brazil, the elimination of political competition, we evaluate that indeed Bolsonaro's government and even when not directly associated contributed to the backslide. Here the *Lava Jato* Operation, which had in 2019 leaked private messages involving Judge Moro and federal prosecutors, showed that there was an illegal and improper conduction of investigation, with partiality and biased conviction, with a possible political agenda that eliminated Bolsonaro's main rival, Lula da Silva, from the 2018 presidential race²⁶¹. Also, the federal highway police actions. Neither accounted for Bolsonaro's personal participation, nevertheless, he was ultimately the beneficiary of actions that hindered political competition. It can only be imputed to his person the hate speech and

²⁵⁸ New York Times. "Bolsonaro Agrees to Transition, Two Days After Losing Brazil Election". 1 November 2022. <https://www.nytimes.com/2022/11/01/world/americas/bolsonaro-protest-brazil-election.html> Last accessed on 24/03/2023

²⁵⁹ New York Times. "Bolsonaro Agrees to Transition, Two Days After Losing Brazil Election". 1 November 2022. <https://www.nytimes.com/2022/11/01/world/americas/bolsonaro-protest-brazil-election.html> Last accessed on 24/03/2023

²⁶⁰ CNN. "Jair Bolsonaro leaves Brazil for the US ahead of Lula's inauguration". 30 December 2022. <https://edition.cnn.com/2022/12/30/americas/brazil-jair-bolsonaro-us-lula-inauguration-intl-latam/index.html> Last accessed on 24/03/2023

²⁶¹ New York Times. "Leaked Messages Raise Fairness Questions in Brazil Corruption Inquiry". 10 June 2019. <https://www.nytimes.com/2019/06/10/world/americas/brazil-car-wash-lava-jato.html> Last accessed on 24/08/2023

disinformation strategy, conducting a dangerous narrative against his supporters, which ultimately led to an assault on democratic institutions and what we see as a decline in Brazilian democracy.

Conclusion

The arguments put forward in this section sought to demonstrate how closely or how distant the events of democracy decline in the case of Hungary, Poland, Venezuela, and Turkey are from the case of Brazil and Jair Bolsonaro's presidency. In our concluding assessment –after posing many accounted facts– there was indeed a decline in Brazil's democracy. Resonating to Chapter 2 and now with the orchestra of events that unfolded during Bolsonaro's presidency, we see the similarities of erosion of democratic institutions, nonetheless, we also assess the differences and peculiarities of Brazil's case. In some situations, the democratic decline can be attributed to Bolsonaro, but some are a product of what he has initiated, or better, what initiated with the intense political polarization that has emerged in Brazilian society before him. Something which he has cleverly taken advantage of and complemented with his own methods, such as disinformation spreading, conducting the narrative to his supporters, those who follow him impetuously.

Chapter IV – Jair Bolsonaro’s Ineligibility

Democracy presupposes among the mentioned aspects in Chapter 1, the *sine qua non* principle of trusting the system and respecting the roles of the institutions. When Jair Bolsonaro, attacked the Brazilian electoral system and the Supreme Court judges, he broke these principles. In 2023, these actions had a consequence. His fierce attacks and criticism over fraud in the electoral system without substantial proof led to a corrosion of the public’s trust in the country’s electoral system, under such considerations, the Brazilian Superior Electoral Court (*Tribunal Superior Eleitoral - TSE*) ruled for blocking Bolsonaro from seeking public office until 2030.

The allegations of fraud in the 2018 electoral bid were a constant affirmation by Bolsonaro, as well as the doubts over the functioning of the voting machines, which in his opinion are subject to fraud²⁶². These allegations were never proven, they were in fact counter-argued by the electoral authorities, each time verifying the authenticity and verifiability of the electoral process. When accusing the system of fraud and questioning its integrity, Bolsonaro diminishes the trust in the democratic system in place in Brazil. Consequently, the scenario of political instability, social unrest, and potential conflict becomes imminent. The attacks of January 8th are a demonstration of what can happen in a situation of social unrest, of citizens who believed that the results of the 2022 elections were a fraud, once it differed from their want, which was Bolsonaro’s victory.

In the legal procedure of electoral investigation (*Ação de Investigação Judicial Eleitoral n° 0600814-85*²⁶³) processed by the Brazilian Superior Electoral Court in 2023, Bolsonaro was judged and found guilty of abuse of political power and improper use of communication vehicles when arranged a meeting on 18/07/2022 with foreign ambassadors to attack the integrity of the electoral process and spread disinformation with regards to the system. The meeting took place less than three months ahead of the voting day of the 2022 elections and the speech of the former President, where he discredited the electronic system of voting, was transmitted by *TV Brasil*, a public television network owned by federal public administration.

Initially, we already put forward our perception that these actions of the judicial branch

²⁶² New York Times. “How Bolsonaro Build the Myth of Stolen Elections in Brazil”. October 2022. <https://www.nytimes.com/interactive/2022/10/25/world/americas/brazil-bolsonaro-misinformation.html> Last accessed on 01/08/2023.

²⁶³ Tribunal Superior Eleitoral (TSE). Voto Ministro Relator Benedito Gonçalves. Ação de Investigação Judicial Eleitoral (AIJE). Processo n° 0600814-85.2022.6.00.0000. Published on 04/07/2023. <https://consultaunificadapje.tse.jus.br/#/public/resultado/0600814-85.2022.6.00.0000> Last accessed on 08/09/2023.

demonstrate a strong stand for Brazilian democracy. As seen in the previous chapter they had an important role in placing checks on Bolsonaro's government, but in this 2023 ineligibility judgment case, they also prevented a political figure of authoritarian and anti-democratic behavior from engaging in near-future elections. The case of militant democracy²⁶⁴ could be put forward here, as well as the extent to which the Supreme Court's powers can go, however, this is not the focus of our work. The focus is democracy decline in Brazil with Bolsonaro and the matter of his ineligibility for the next years, which is a consequence of his attacks on democratic institutions and the electoral process. With those considerations made, we proceed with assessing the judgment of the Court which ponders the attacks of Bolsonaro on Brazilian democracy.

The legal procedure²⁶⁵ before the Superior Electoral Court was taken by an opposition party considering an event that took place on 18/07/2022 where Jair Bolsonaro, in the exercise of the presidential office, arranged a meeting with foreign ambassadors. In the meeting, he attacked the integrity of the electoral process and spread informational disorder regarding the electronic voting system in Brazil. It was said by Bolsonaro that the 2018 elections were the subject of fraud, affirmation conveyed without any proof, and that the Ministers of the Supreme Court were associated with the left, questioning their impartiality.

Bolsonaro's legal defense argument was appealing to freedom of speech, by which he could expose his positions to the international community with regard to the doubts over the electoral process and seek to enhance oversight and transparency. A healthy democratic system encourages transparency, accountability, and the right to challenge electoral outcomes through legal and peaceful means. Nevertheless, Bolsonaro's actions went beyond that. The electoral authorities, TSE, had conducted an informative session with the embassies to debate each topic put forward by those who questioned the electoral process, and there were even Commissions of transparency created, as we saw in Chapter 2. Therefore, Bolsonaro's critics and allegations had already been counter-argued and answered by authorities, consequently, when continuing to falsely pursue these allegations, he goes against the system, the electoral authorities, and

²⁶⁴ 'Militant Democracy' or Defensive Democracy are terminologies referring to the existence of laws and court rulings that can limit certain rights and freedoms in a democratic society envisioning the protection of the State democratic institutions. The discussions around this topic can be to the existence of compliance with democratic values such as freedom of association and the right to be elected, contrasting with measures to prevent anti-democratic groups or persons from abusing of these values.

²⁶⁵ Tribunal Superior Eleitoral (TSE). Voto Ministro Relator Benedito Gonçalves. Ação de Investigação Judicial Eleitoral (AIJE). Processo nº 0600814-85.2022.6.00.0000. Published on 04/07/2023. <https://consultaunificadapje.tse.jus.br/#/public/resultado/0600814-85.2022.6.00.0000> Last accessed on 08/09/2023.

institutions, placing at check the democratic stability. This type of conduct exacerbates the division and polarization within Brazilian society.

On the judgment of the Superior Electoral Court, the result was five against two, with the majority following the vote of the Reporting Minister²⁶⁶, Benedito Gonçalves, recognizing that there was an abuse of political power by Bolsonaro and a misuse of the media in his favor. The Reporting Minister considered that the meeting conducted by Bolsonaro as President with ambassadors should be considered as an element of the electoral campaign of his re-election bid in 2022, and for this reason, the action is configured as an abuse of political power and improper use of communication vehicle.

Abuse of political power is characterized when the public agent, who is linked to the public administration, deviates from the purpose of his mandate with the intention of causing interference in the electoral process. Making use of the public administration structures to benefit themselves. On the other hand, improper use of communication vehicles is the disproportional exposition of one candidate compared with the others, causing an unbalanced dispute.

With these considerations made, the Reporting Minister dealt with the defense argument of freedom of speech – put forward by Bolsonaro – posing that words have an impact and can cause damage to democracy. Therefore, even with the censorship of speech not being aligned with a democratic society, it is not a neutral factor once it can be invoked in order to mitigate the hate speech and disincentives to democratic stability. Therefore, the indicted Bolsonaro, when using sensationalization, aggressive and fabricated/false content in his speech against the electoral system infers in antidemocratic lines. The spread of *fake news* and disinformation negatively affects the transmission of the knowledge chain, which is based on trust. In the case of Bolsonaro, the *fake news* seeks to consolidate the beliefs of the public which he intends to please, his supporters.

In the decision, the Reporting Minister says that the use of false information as a tool of political mobilization or as a strategy to dominate the public debate creates risks of democracy rupture. Accountability is an important factor here, politicians must look after democracy, and not seek turmoil by disinformation. On that account, when Bolsonaro questions the security of the

²⁶⁶ ‘Reporting Minister’ refers to the *Ministro Relator*, who is the Judge (in the case of a superior court) designated to analyze the legal process in detail and after such analysis, prepare a report to present to the colleague Ministers of the court. After presenting the reports, the *Ministro Relator* issued his vote on the matter, which will be used as a reference to the other Ministers that might follow the vote or disagree with it.

electronic system of voting, making accusations of fraud without proof and doubting the transparency and reliability of the elections – as he did on the 18/07/2022 meeting – even after accounted evidence put forward by the electoral authorities that there have been no fraud and no risk of fraud in the elections, Bolsonaro incurs persistent behavior that endangers democracy.

To summarize, the meeting put forward by the former President made use of communication vehicles of the public administration to transmit the Head of State speech to the prestigious audience of Heads of Diplomatic Mission – which he invited exploiting the credential of being President – putting forward malicious articulations of electoral connotation, conspiring against the integrity of the electoral system. The transmission of this meeting occurring on state television broadcast corroborates with the thesis of misuse of communication vehicles, also the fact that the meeting took place in the *Palácio da Alvorada* (the presidential residency), a state facility, both factors that only were possible due to his position as President.

On many occasions in the meeting, Bolsonaro mentioned that he wanted transparency, implying that the process in the past and so far, had not been transparent. He made use of distorted and false arguments that there was fraud in the 2018 elections, which he won, but according to him, his victory was supposed to have happened in the first-round of voting, not the second as it was.

The Reporting Minister concluded that Bolsonaro's meeting had clear electoral intentions, seeking to influence his electorate as well as the national and international public opinion. His speech attempted to fear possible fraud in the 2022 elections as it happened in 2018, attacking the credibility of the electronic voting system and discrediting the electoral authorities by arguing that there was inertia and connivance of these authorities with the 2018 fraud. So far, the electoral process of electronic voting has not been subject to fraud. Investigations were conducted by the Brazilian Federal Police and Bolsonaro made use of distorted elements of the investigation to gain credibility. The content of these ongoing investigations obtained by the police intelligence was disclosed by Bolsonaro without respecting the secrecy of the investigation. The leak of this ongoing investigation is also the subject of the Minister's vote, as well as the assessment of Bolsonaro's distorted disclosure of it, this is because the investigation assessed a previous hacker attempt to the Superior Electoral Tribunal in 2018, which was unsuccessful and did not compromise the voting system. But since such last information does not corroborate with the fraud rhetoric, it was omitted.

Overall, the decision that led to Bolsonaro's ineligibility was ruled considering his abuse of power of the Presidential Office to conduct a meeting for electoral purposes. However, the content of this meeting is the undemocratic attack on the electoral process, which becomes an important element in the assessment of democracy decline in Brazil. We can perceive the resilience of institutions in preventing the corrosion by the executive branch's assault that Bolsonaro's presidency posed to Brazilian democracy.

Bolsonaro's narrative of delegitimization of the electoral process and the Supreme Court incited his followers against democratic institutions. His actions can be seen as an attempt to weaken the judicial capacity to impose checks, protecting himself from what was an imminent defeat in the 2022 elections, by casting doubt on the system of elections. These actions represent what Levitsky and Ziblatt put as an indicator of authoritarian behavior, *rejection of (or weak commitment to) democratic rules of the game*, due to his constant undermining of the electoral system's legitimacy. Especially in the figure of a public authority, the influence it can exert is enormous, and to direct it against electoral trust without substantial evidence is a clear assault on democracy.

In conclusion, Brazil's democracy saw a victory in the ineligibility of Bolsonaro, the actions taken by him when President from 2019-2022 put forward in the previous Chapter were not the cause of the Court's ruling. Nevertheless, they did provide a corroborate argument for it, as is his attacks on the electoral system without evidence, what seemed to be a suggestion that only his victory on the electoral re-election bid would have been accepted. This is what he inferred on an Independence Day speech proffered on September 7th, 2021, where he said that the only hypothesis of him leaving the presidency was arrest or death, not at all considering the possibility of defeat²⁶⁷. In this Independence Day speech in 2021, he also rallied his supporters against the Supreme Court's Judges. Therefore, once again broke the *sine qua non* principle of democracy by not maintaining civic harmony between the independent branches of government and of peaceful transition of power by alluding a possible emulation of Donald Trump's actions in the United States, where he rejected the election results and claimed fraud in the process. In the end, Bolsonaro did not question the election results, but never personally acknowledged them, which contributed to his supporter's narrative, leading to the fateful events of January 8th.

²⁶⁷ BBC. "As ameaças de Bolsonaro em discurso no 7 de Setembro". 7 September 2021. <https://www.bbc.com/portuguese/brasil-58479785> Last accessed on 08/09/2023.

Chapter V – Final Remarks

The democratic system of government, with its intrinsic attributes such as elections, transparency, accountability, rotation of power, respect for the rule of law, and checks and balances, has been long perceived as the only game in town for some time. As was conceptualized by Huntington, democracy has faced waves of promotion but also of reversion, where there has been a decrease in the number of democracies. Nowadays, coups are not the major threat to democratic government; they come from within the system, from elected incumbents who are willing to exploit polarization and sentiment of resentment in the population to their political advantage. These threats have led many nations to face a breakdown in shared values of democracy, with liberal constitutional democracies being subverted to authoritarian leaders' own pursuit of power.

Data gathered from research institutions shows that some countries did face a decline in indicators related to democracy, such as representative government and checks on government, which are essential for the existence of a self-sustaining democracy. The analysis of these indicators in Poland, Hungary, Turkey, Venezuela, the United States of America, and Brazil shows that the threat and trend of democracy decline are facts. With the evidence of this phenomenon upon us, this research sought to conceptualize the academic method of identification of democratic decline. The terminology used by academics to discuss the very topic of democracy decline is vast, but there is a core similarity between them, and it is by using these similarities that we further develop the democracy decline in Brazil during the presidency of Jair Bolsonaro. After identifying the elements of democracy's backslide, we assessed which were indeed present in the Brazilian context and which were not.

The framework of Ginsburg and Huq was central to the fitting of democracy decline elements in the case of Bolsonaro in Brazil. By analyzing the already academically discussed cases of backsliding in other countries in the past years, this thesis tried to show how the Brazilian scenario was similar, or in other aspects, how it was also a uniquely shaped political scenario of decline. When assessing the first element of formal constitutional amendments, Brazil's case was nothing like that of Hungary and Venezuela, where a new constitution was passed allowing the authoritarian government to shape and tilt the playing field in their favor. Differently, we saw that in Brazil, constitutional amendments attempted with the support of Bolsonaro, that would benefit

him greatly as the number of judges in the Supreme Court, were not successful. Not being able to alter the composition of the Supreme Court to have more judges backing his decisions, the second element of the democracy decline framework, the elimination of institutional checks, became a difficulty to Bolsonaro. His time in the presidency was marked by a constant clash with the Supreme Court, with the pinnacle of Bolsonaro rallying his supporters against judges due to constant limitations imposed by the Court over his undemocratic attitudes. Distinctly, the cases of Poland, Venezuela, and Turkey demonstrate how powerful authoritarian leaders can become once control over the Supreme Court and judicial branch is attained. When authoritarian leaders and government obtain control of the judicial branch there is no need to carefully follow the legal provisions once the courts can rule in their favor.

The fact that both these initial elements of the decline framework were not verified in this thesis studies of Bolsonaro's government in Brazil shows how the decline did not reach the dramatic level it has in the cases put forward as a comparison. Especially considering the elimination of institutional checks and the frequent clashes between Bolsonaro and the Supreme Court, it is possible to perceive the strength of democratic institutions in preventing an elected leader from pursuing undemocratic goals when in power. However, the next elements in the decline framework were accounted for in our case study of Brazil.

When pursuing the centralization and politicization of the executive power, Viktor Orbán in Hungary, Chávez/Maduro in Venezuela, and Erdoğan in Turkey; entrenched themselves in their powerful positions even more by controlling the government apparatus through bureaucracy positioning. Maintaining key loyal figures in government positions that benefit their administration. The mentioned cases involved replaced administrative positions in media and election commissions in Hungary, and political patronage in Turkey by Erdoğan. In Brazil, Bolsonaro and his anti-environmental policies focused on maintaining in the position of environmental agencies only those who had the same anti-environmental perceptions. Contrary to what were supposed to be independent governmental agencies that fought for the protection, there was an action of dismantling from the inside. Similar, during the coronavirus pandemic Bolsonaro constantly changed the Minister of Health to one that would endorse his cynical and discredited posture towards the virus danger was also a mark of his bureaucratic arrangements. By this Bolsonaro demonstrated that his intentions were not connected with achieving results that benefited the country, but with those that would corroborate with his anti-environmentalist and

negationist views. The dismantling of policies to support these extreme-right goals came attacking mostly environmental policies and institutions, affecting the indigenous population in Brazil, and the protection of their human rights.

The fourth element, shrinking the public sphere, which consists of the space where citizens deliberate and engage in discussions over societal concerns, came to be under attack by Bolsonaro's undemocratic behaviors even before his presidential term. To control the narrative, Bolsonaro relied on the tactic of disseminating false information that would trigger his supporters against the opposition and exacerbate polarization. Manipulating the public and spreading falsehoods is confusing for society; they undermine the democratic idea of trust and accountability in governance. The disinformation campaign of Bolsonaro started in the 2018 elections and continued during his presidency, with the pinnacle of it being his attacks on the integrity of the electoral system and voting process in Brazil, leading his supporters to not accept the credible and valid results of the 2022 elections. This led to the tragic events of January 8th when Bolsonaro's supporters invaded the Congress buildings in Brasilia seeking to overrule the election results.

These actions of spreading misinformation are part of the content of the judicial action taken by the electoral justice against Bolsonaro in 2023. The judicial action considers Bolsonaro's use of the presidential office prerogatives to arrange a meeting with a foreign ambassador where he spoke falsehoods about the Brazilian electoral process. The meeting was transmitted by a state broadcaster, and the situation was interpreted by the Superior Electoral Court judgment as an electoral campaign act, therefore figuring as an abuse of the presidential office for his own electoral gains, leading to a conviction of ineligibility for Bolsonaro for the next 8 years.

Even with the ineligibility conviction assessing the spreading of electoral disinformation, the conviction itself was for the practice of abuse of power. Nevertheless, it resulted in a judicial punishment for Bolsonaro's anti-democratic behavior of using means of disinformation to inflame a polarized society and reinforce his ideology, controlling the public space. The tactic of disinformation also relates to the last element of the framework, the elimination of political competition. By which Bolsonaro's tactic sought to demonize his opponent spreading disinformation and relied on the 'us versus them' sentiments. Such methods damage public trust in politics and harm political competition. But on this element, two events were the most undemocratic situations that occurred in the country in the last few years. One of them was the actions of the Brazilian Federal Police on election day in 2022 of performing roadblocks. These roadblocks

occurred mostly in areas of electoral support for the left-wing candidate and sought to impose difficulty in reaching the polls, which we associate with electoral irregularities practiced in Venezuela. The second is the conviction of an electoral candidate who was a major opponent of Bolsonaro running for the elections, with the conviction being questionable due to the biased position of the judge responsible. The judge who set this conviction later came to be one of Bolsonaro's ministers, demonstrated a connection between his interests and those of Bolsonaro in preventing Lula da Silva from running for office in the 2018 elections. However, in the case of Brazil, different from the authoritarianism of Viktor Orbán in Hungary, where Fidesz introduced electoral reform to its benefit, Bolsonaro did not make a similar move.

By assessing these elements of the backslide framework and comparing the examples with Brazil we were able to assess better the presence of decline in each aspect. The different historical context of Brazil with the Military Dictatorship and its social-economic difficulties with corruption bring a particularity not attested for in the other examples, democratic decline here has a different element of complexity. As well as the dismantling of environmental policies by Bolsonaro's administration, which impacts the perception of democracy in the protection of minorities. Nonetheless, a constant in the examples put forward, like, in the academic discussions, the erosion and weakening of democratic institutions are always present in the cases of decline. The promotion of effective checks and balances between the institutions, an essential aspect of a democratic society, appears to need more political commitment to sustain themselves lately. A need for more constructive diversity in policy-making is in order, the rhetoric of emphasizing on the divisions in society is also a constant in democracy decline, with authoritarian figures leaning toward an appeal that benefits their cynical politics.

The research developed led to the conclusion that even with the many avenues identifiable for democracy's decline, such as autocratic legalism, ending the independence of the judiciary, or sabotaging state accountability, there is still the possibility for democracy to be nurtured and endure attacks. The research analyzed, as well as the waves of democracy theory, lead to the belief that when threatened, backslide can backfire and increase public support for democracy. As was the case for the Brazilian 2022 elections, where Bolsonaro lost the re-election bid and many became aware of his undemocratic behaviors. By these means, we conclude that only by fighting back against authoritarianism can liberal democracy defend itself from those who seek to erode it from within.

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