

Can Brazil's Democratic Institutions be Rebounded from Bolsonaro's Authoritarian Agenda?

di Sergio Verdugo

Jair Bolsonaro's presidency is over, and so it may seem his project of democratic erosion—by which Brazilian democracy was gradually undermined. Compared to Bolsonaro, the recently elected president, Luiz Inácio Lula da Silva (“Lula”), is more committed to core principles such as judicial independence, and his political strategy appears to be based on coalition-building politics that seem friendlier to democracy. If Lula is successful, then Brazil will probably be considered a democratic “near miss.” A “near-miss” democracy is a rebounded democratic regime that has substantially deteriorated. It was on the way to collapsing or becoming an authoritarian regime, but it recovered. According to Ginsburg and Huq, near misses typically take place after unelected authorities such as judges and party elites succeed in slowing down the erosion of democracy so that democratic movements can regroup and stop those advancing the authoritarian agenda (Tom Ginsburg & Aziz Huq, *Democracy's “Near Misses”*, *Journal of Democracy*, 29-4, 2018). As I will show in this essay, the idea of near misses may fit well with Brazil's political landscape. However, I will also argue that the risk of democratic erosion persists and that, despite Bolsonaro's defeat, the “miss” part of the “near miss” concept is still on its way. In other words, defeating Bolsonaro was a necessary but insufficient condition for recovering Brazilian democracy.

Bolsonaro is a former military and ex-legislator elected in 2018 as president of Brazil. He ran as an openly authoritarian option with an anti-party narrative and as an outsider to the two mainstream traditional parties. His ascent to power was accompanied by a populist far-right narrative that found fertile ground to grow after corruption scandals rose in previous administrations. His calls to end corruption and promote a law-and-order agenda while upholding far-right policies (Thomas Bustamante & Conrado Hübner Mendes, *Freedom without responsibility: the promise of Bolsonaro's COVID-19 denial*, *Jus Cogens*, 3, 2021) was attractive to voters. As a president, Bolsonaro initiated an agenda of democratic erosion by first rejecting the political dynamics of “coalitional presidentialism” (Juliano Zaiden Benvindo, *Informal Co-Optation Semi-Presidentialism: Bolsonaro's Most Successful Autocratizing Strategy*, *Int'l J. Const. L. Blog*, 2022). Coalitional presidentialism had explained how Brazilian presidents lacking majorities in Congress could still advance their agendas by using their powers to get allies and build larger legislative coalitions (See Timothy Power, *Optimism, Pessimism, and Coalitional Presidentialism: Debating the Institutional Design of Brazilian Democracy*, *Bulletin of Latin American Research*, 29, 1, 2010). It was a stabilizing factor of Brazilian democracy that lowered the stakes of political conflict and partly overcame some dysfunctional aspects of the presidential regime. Nevertheless, coalitional presidentialism requires attitudes Bolsonaro despised, such as bargaining, compromising, achieving agreements, and enlarging the government's supporting coalition. Bolsonaro ended these political dynamics and replaced them with a strategy of co-optation and militarization, weakening and fragmenting the party system, boosting polarization,

and advancing the risks that Juan Linz had connected years ago with the apparently inherent problems of presidential regimes.

During his presidency, Bolsonaro deepened Temer's plans to blur the separation between politics, the military, and the *milícias*, while politicizing the armed forces. He appointed thousands of members of the armed forces in the bureaucratic apparatus, developed a militaristic political narrative and expanded the militarization of the police forces (Emilio Peluso Neder Meyer, *Constitutional Erosion in Brazil*, Hart, 2021). Bolsonaro made budget cuts for education and research, attacked the media, professors and scientists, invoked the National Security Law against his critics, and preferred to use online forms of communication. During the Pandemic, Bolsonaro promoted a misinformation campaign, delayed vaccination plans by refusing to strike deals with laboratories, and promoted the herd immunity policy against the advice of an overwhelming majority of the scientific community. He mocked the victims of the virus, openly opposed social distancing measures, and called the virus a "little flu." He also removed top officers that had promoted initiatives he disliked (Wendy Hunter & Timothy Power, *Lula's Second Act*, *Journal of Democracy*, 34-1, 2023).

Bolsonaro's decisions were disastrous for Brazil's attempt to control the pandemic, and generated tensions with other Brazilian authorities. An example is how Bolsonaro dealt with state governors that tried to implement pandemic-related policies (Victor Marcel Pinheiro *et al*, *The impacts of the COVID-19 crisis on the Brazilian legal system*, *The Theory and Practice of Legislation*, 8-1-2, 2020) and how he threatened the Supreme Court even to shut it down while encouraging protesters to attack institutions. The Court had demanded the enactment of policies to protect the population against the virus, required the government to release epidemiological data, put into question the official propaganda calling the people to go back to work, and tried to constrain the powers of the police during the state of emergency (Emilio Peluso Neder Meyer *et al*, *Courts and COVID-19: an Assessment of Countries Dealing with Democratic Erosion*, Jus Cogens, 2023). Bolsonaro's legacy also includes a damaged Amazon rainforest, around 700,000 dead people due to the poor management of the pandemic, a fragmented party system, and a politicized military. We are yet to fully understand how long-term public trust in the Brazilian institutional framework was damaged due to the way Bolsonaro had put into question the credibility of independent and non-majoritarian institutions, including the electoral processes and the courts.

Despite these problems, it could be argued that Bolsonaro was ultimately a failure. He lacked legislative majorities, did not build a large political supporting coalition, some of his legislative vetoes were overridden by Congress, and ultimately lost his war against the Supreme Court. It could be argued, then, that despite the harm, he failed in completely undermining core liberal democratic principles nor in entrenching his political platform. Unlike Orbán in Hungary, Bolsonaro did not enact a constitution, did not obtain overwhelming legislative majorities, and failed to capture the judicial system fully. Bolsonaro's electoral defeat could be considered a victory for democracy. Nevertheless, the path to democratic erosion Bolsonaro initiated in Brazil is far from over.

We should first consider that Bolsonaro's political platform is still popular and that the way he succeeded in raising the stake of electoral defeat will make it hard to fully provide for stable and predictable political processes based on a shared understanding of what democratic principles should be upheld. Those shared understandings are weakened at best and have disappeared at worst, and rebuilding a democratic culture after that damage will be no easy task. The far-right movement that supported Bolsonaro performed well during the 2022 elections. 14 out of the 27 elected governors had backed Bolsonaro. True, Lula won the run-off presidential election, but almost half of the country (49.1%) supported Bolsonaro, while the center was abandoned. Lula comes from the left, and centrists had no choice but to back him up against Bolsonaro's threat. Combined, Bolsonaro and Lula got 92% of the votes during the first round of the elections, and the candidate that ranked third only got 4.16% of the votes. The electoral campaigns focused more on the urgent need to defeat the other rather than emphasizing policy proposals: "Bolsonaristas on Facebook, Twitter, and WhatsApp relentlessly tarred Lula as a godless communist intent on shuttering all Christian churches in the country..." and "Lula run as "not Bolsonaro" (Wendy Hunter & Timothy Power, *Lula's Second Act*, *Journal of Democracy*, 34-1, 2023). Currently, the party system seems to be adapting to a more polarized reality. After the concurrent congressional elections last year, 23 parties have representatives in the lower chamber, and no one has a majority. Bolsonaro's party increased the number of House representatives and Senators, having 99 representatives (out of 513) and 15 senators (out of 81). Dozens of legislators come from the military. Compared to Bolsonaro's party, Lula's party only elected 68 representatives and 9 senators.

Before and after losing the election, Bolsonaro made unjustified accusations against the electoral process and the electronic voting system. He then did not concede the defeat, and rioters supporting him—probably influenced by the misinformation campaign—attacked the Supreme Court, the Congress, and the presidential palace. It could be argued that the far right in Brazil is no longer loyal to Bolsonaro. After all, many of those right-wingers that got elected did not back Bolsonaro's accusations of a supposedly rigged voting process. However, it may not matter for now. The attitude of far-right politicians defending the electoral process should not be seen as a sign of democratic commitment but of instrumental behavior aimed at not putting into question their own elections. Also, other politicians from *Bolsonarismo* can take the post from Bolsonaro, as long as the ground continues to be fertile for the far-right to grow and the center to continue to disappear.

Lula is starting his presidential term with an explicit distrust against a politicized military, and it will be no easy task to turn the armed forces into non-partisan institutions while also removing the military influence over the bureaucratic apparatus (Adriana Marques, *The Armed Forces after Bolsonaro*, *Int'l J. Const. L. Blog*, 2023). In a country where the memory of a dictatorship (1964-1985) is still fresh and authoritarian features have grown, the problems of the military and police forces should be taken seriously (Emilio Peluso Neder Meyer, *Constitutional Erosion in Brazil*, Hart, 2021). For *Bolsonarismo* and perhaps beyond, Lula represents the worst problems of a political system perceived as corrupt and elitist. Innocent or not, Lula had spent 580 days in prison on charges of bribery and money laundering and was prevented from running for the presidency in 2018. The Supreme Court—an enemy of Bolsonaro—later invalidated Lula's

conviction on non-substantive grounds in 2021. Lula is an easy target for anti-party narratives. If he fails to return democratic processes back on track, those narratives can have a strong comeback, with or without Bolsonaro leading the way.

Going back to Ginsburg and Huq's argument, the defeat of Bolsonaro seems to fit with the near-miss idea because non-majoritarian institutions of Brazil's political regime—such as the Supreme Court, the Superior Electoral Court, the state's bureaucratic apparatus, and the multi-party system—served as speed bumps to Bolsonaro's erosion agenda. Those speed bumps allowed Bolsonaro's opponents to regroup and present Lula's successful presidential nomination. However, to succeed Lula will need to rebuild the coalitional presidentialism dynamics in a highly adverse context: a fragmented scenario where the stakes are high, the differences between factions have elevated, the armed forces have become relevant players, and the center has lost its appeal. If the coalitional presidentialism project fails, we can expect to observe high levels of legislative gridlock and perhaps the paralysis of relevant policies Brazilians care about. If that happens, the anti-party narrative can continue to grow at the expense of Lula's popularity and resume the path of democratic erosion. Brazil won't be a "near miss" democracy but a country still experiencing democratic decay. This is one of the reasons why Brazil's democracy is not yet safe. Perhaps only a few democratic regimes are.

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