Juristocracy Strikes Back

Brazil's Electoral Court Fines Bolsonaro and the Coup Makers

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Once again, Brazil's highest electoral court finds itself taking the spotlights in the international media for its incredibly fierce – and, admittedly, also controversial – involvement in the country's elections. As an institution deeply committed to the defence of democracy and its electoral processes, it has gone to previously unimagined lengths to secure that political competition stays within high standards of freedom and fairness, even in face of the most effortful attempts of subverting the electoral game. The Court's latest headline is no different.

As anyone who may be following the recent developments in the country may know, tough President Jair Bolsonaro has been defeated at the ballot box, he has refused to openly acknowledge his adversaries' victory, doing so only timidly and through members of his coalition. As such, it has remained relatively unclear whether he would cooperate to secure the government transition and peacefully turn in the presidential office. This Tuesday (22.11), he continued fuelling insecurity, as his coalition filed a complaint in the Electoral Justice pleading the court to void 60% of the votes of last month's run-off. In practical terms, such a nullification of ballots would result in him winning the presidential bid by more than one million votes.

According to this complaint, any vote cast in one of the electronic balloting boxes that were produced before 2016 had to be declared void, as they allegedly lacked a unique identifier that certified their veracity. The complaint, however, was rejected by the Court as swiftly and as violently as it judicially gets. In fact, so out of touch were the claims that Bolsonaro's coalition was fined with R$ 22,9 million (US$ 4,3 million) for abuse of process (*litigância de má-fé*) just the next day, had its access to public party fonds suspended (over R$ 146 million or US$ 26,7 million blocked), and multiple electoral and criminal investigations initiated against the leader of Bolsonaro's party (Liberal Party, PL; Valdemar da Costa Neto).

A bit too harsh or just fine?

The first head-turner of the mentioned decision surely is the enormous fine Bolsonaro's coalition must now pay. In Brazil's civil procedure, fines for abuse of process may be set between 1 and 10% of the material value of object of adjudication. Justice Alexandre de Moraes set this at 2%, which is at the lower end of the spectrum. The catch, however, was in the stipulation of the material value of the claim, which in cases without an obvious value such as this one, the Justice has discretion to unilaterally impose. Justice Moraes calculated the value by using the number of balloting machines challenged (279.000) and multiplied it by their individual cost (R$ 4.100), thus, reaching the value in question (2% of R$ 1,15 billion, *i.e.*, R$ 22,9 million).

Admittedly, the punishment was harsh, but Justice Moraes considered it proportional to Bolsonaro's blatant misuse of his political affiliations and the electoral justice for his unspeakable biddings. In his words, "political parties, as financed basically by public resources, are instruments of democracy, and it is thus unacceptable and unconstitutional that they be used to satisfy personal anti-democratic interests that threaten the rule of law, the Electoral Justice, and the sovereign will of 156.454.011 voters" (free translation).

A heavy hit on Bolsonaro's influence?

What may have truly sent ripples through the Bolsonarista ecosystem was not so much the fine itself, but its accessories. The blockage of access to the public

party fonds may starve Bolsonaro's coalition of valuable resources they need to exercise their activities in the coming weeks, possibly months – however long it takes for the coalition to pay fines or for its appeal to be adjudicated. These would be resources necessary both for regular activities, as well as other of more questionable nature, such as those that may be influencing Bolsonaro supporters to continue protesting the results of the elections and asking for military involvement.

Whatever the case, the decision is sending strong signals to whoever may still feel tempted to continue supporting antidemocratic solutions. The coalition parties, that is, the *Republicanos* and the Progressive Party, have already started claiming they had not been consulted about filing this particular complaint and categorically stated their acknowledgement of Bolsonaro's defeat and their wish of a regular change in government. Valdemar da Costa Neto, moreover, may be slowly gaining new perspective now that his neck is on the figurative noose and that he is taking backlash from his coalition allies. While this event is unlikely to directly change the minds of his supporters on the streets, who likely will continue to doubt the election results, there is some hope that at least the flow of resources sustaining them will come to an end, thus opening a path for a completely regular and unspectacular transition of government. Only the next few days will truly tell what this shockwave of isolation can achieve, however.

Normalizing juristocracy or taking responsibility

As justifiable as decisions such as these may be, it is undeniable that Brazil's political landscape has entered a dangerous self-reinforcing feedback loop: as the fight for power becomes more uncompromising, less self-restraint can the courts be allowed, if the rules of the democratic game are to be salvaged; outrage caused by increased judicial interference, on its turn, justifies further escalation of uncompromising behaviour of political forces that will ultimately further push the judiciary to be more invasive. And so on, and so forth.

Bolsonaro's overbearing behaviour continues to stretch the window of admissible discretion courts can exercise in the country, resulting in the normalization of a strongly judicialized culture overriding matters that would otherwise have been left to politicians without the need for escalating conflict, if not simply shrugged off – in other times, a complaint as unfit at this would have simply been dismissed as moot.

While institutional solutions are preferable to non-institutional ones, there are certainly some institutional solutions that are better than others. Political forces in Brazil may be finally realizing that they are at the point in which they must make an important decision: either start taking accountability for the politics they endorse or continue leaving the judiciary to decide for them how this accountability is to be distributed. If politicians are as genuinely annoyed by judicial interference as they claim, they should be clearer about adopting the former, as the *Republicanos* and the Progressive Party seem to be doing now. Adopting the latter, on the other hand, would reinforce representative democracy in the country. Oh, and it should not be forgotten – it may as well save politicians a penny or two here and there!

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