



Old Patrons, New Robes

How to Reform the Brazilian Supreme Court

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No political institution in Brazil wields more power today than the Supreme Court. Amassing unforeseen authority, the Court's eleven Justices are now simultaneously accusers, censors, investigators, enforcers, and legislators. In the process of its empowerment, the Court has not only eroded the separation of powers but also threatened the constitutional order itself. Such a dysfunctional judiciary raises an important question for the entire democratic world: Can a constitution survive when its supposed guardians—its final arbiters—are left unguarded?

Answering this question requires reconciling starkly different views among academics and leading policymakers. Many approve of the Court's expansion as a bulwark against what they characterize as the surging far-right. Others recognize the problems of a hypertrophic Court but minimize the challenge it poses to Brazilian democracy. Still others sound the alarm but fail to diagnose its root causes.¹

This brief resolves these contradictions by bringing history to the fore. The problem is far from new; the current Court draws from a well-attested playbook of Brazilian patrimonialism and existing institutional incentives to accumulate and entrench ever-increasing power. Policy solutions must reflect this historical reality.

Legislative reforms should encompass a seven-pronged plan aimed at eliminating Justices' monocratic prerogatives, reducing the Court's overwhelming caseload, establishing case deadlines, creating fixed terms, eliminating the Court's original jurisdiction, containing its self-regulatory power, and creating an independent commission that constrains the Court's self-dealing. Simultaneously, Brazil should strengthen enforcement mechanisms—the impeachment power, the congressional approval process for nominees, the media, and executive and legislative elections. Doing so would deter the Court from striking down any proposed reforms as unconstitutional.

To ground these policy reforms, this brief will dive into Brazil's patrimonialist past: its hallmarks, how it evolved, and how it endured. It will then apply this historical framing to the Court, retelling

the last twenty years of judicial power as a time of patrimonial resurgence. That historical diagnosis, in turn, will illuminate the logic behind each of the reforms proposed.

BRAZIL'S PATRIMONIALIST PAST

Patrimonialism is a transhistorical illness that has plagued dysfunctional democracies, authoritarian regimes, and everything in between. Historian Lilia Schwarcz described patrimonialism as “the understanding—misunderstanding—of the State as a private good, the ‘patrimony’ of whoever holds power.”² Under patrimonialist regimes, those who wield authority cease to view themselves as public servants and instead become, in the words of jurist and historian Raymundo Faoro, “owners of power.”³

Faoro proposed a transformative idea, a Brazilian twist on normal conceptions of patrimonialism. He observed that, aside from the use of the state apparatus for private ends, Brazilian patrons have repeatedly shared three defining characteristics: a monopoly over power, suppression of dissent, and the institutionalization of long-lasting political authority.

Brazilian patrimonialism took root in the colonial era. With provincial plantations at the center of political life, the landowning elite dominated local politics. Royal titles conferred legitimacy, helping these elites secure political power for generations. In that context, the financial interests of slave-owning elites displaced any sense of collective good. As Friar Vicente do Salvador, often called the father of Brazilian history, lamented, “No man in this land is a true republican, nor does he watch over, or see to the common good, but rather each looks after his private good.”⁴

Brazilian independence in 1822 failed to disrupt these dynamics. During Brazil’s six decades as an empire, a new aristocracy, linked to the emperor and vested with lifelong titles, dominated politics. In exchange for political and personal loyalty, the emperor granted this elite group control over the judiciary and parliament.⁵

Immediately following independence, Brazil’s patrons also adopted another of Faoro’s patrimonialist hallmarks: the suppression of dissent. The emperor’s closest advisor, José Bonifácio de Andrada e Silva, suspended a number of newspapers, part of a rampage dubbed the *Bonifácia*. Crucially, his public defense lay squarely on protecting the incumbent government against those newspapers that posed “threats against the state.”⁶ In 1830, the empire’s legislature codified limits on press freedom, criminalizing attacks on honor, acts that “provoked the people to disobey the law or authorities,” or acts that promoted “evident offense against public morals.”⁷

Republicanism did not uproot Brazilian patrimonialism. Elites either blatantly defrauded electoral processes or subjected them to systemic coercion, enabling São Paulo coffee barons and Minas Gerais dairy elites to control the presidency.

Control over public opinion also ran rampant. The first penal code of the regime established vague limitations on speech, and the 1923 “law of the press” enabled the federal government to

prosecute editors over what their newspapers printed.⁸ The government soon banned popular outlets such as *O Globo* and *A Manhã*.

Brazil's authoritarian periods produced another entrenched political elite. From 1937 to 1945, President Getúlio Vargas and his allies amassed sweeping dictatorial power. In 1964, the armed forces installed an authoritarian regime of their own, exercising extensive control over the Brazilian state until 1985. In both regimes, the suppression of dissent remained a defining feature: Authorities shut down news organizations, financed sympathetic newspapers, and treated opposition to the state as a crime.⁹

Both regimes also grounded their centralization of power in a new legal framework: the defense of institutions. Getúlio Vargas, for one, invoked threats of disorder and subversion to inaugurate the *Estado Novo*, enshrined the institutional defense rationale in the preamble of his new constitution, and defined a new "authoritarian constitutionalism" legal framework backed by Brazil's top jurists.¹⁰ Similarly, the armed forces framed the 1964 Brazilian coup d'état as a preemptive prodemocratic defense against communism, going so far as to enshrine a national security doctrine into the 1967 constitution—which later served as a legal basis for much of the military leadership's repressive practices.¹¹ Thus, both regimes normalized repressive measures through the language of institutional preservation.

These five centuries of politics, then, forged a distinctly Brazilian patrimonialism. As Faoro contended, though patrons remained committed to wielding the state for their own personal ends, they drew from previous counterparts on how to capture the state. They fully centralized state authority within themselves, found ways to institutionalize their power—through either titles, terms, or personal legitimacy—and commandeered public opinion.¹²

BECOMING BRAZIL'S NEW PATRONS

The twenty-one-year-old military dictatorship loomed large at the 1988 Constitutional Convention. To many, the regime had acquired near-absolute power by stripping the judiciary of its independence and strength (in the form of judicial review).¹³ The constitution, in their eyes, served primarily to right that wrong. A stronger, more independent, and "democratic" Supreme Court emerged in the process.

Judicial strength was reflected, first and foremost, in the Court's broad jurisdiction. Not only could the Court assess the constitutionality of legislation when a case arrived on appeal, but the constitution allowed parties to directly prompt the Court to review recently ratified bills themselves (through mechanisms properly termed Direct Acts of Unconstitutionality, or DAUs). The framers also created mechanisms for the Court to intervene whenever it deemed that constitutionally protected rights had not yet been sanctioned in law (so-called DAUs-by-omission and injunctive relief).

Fearful of lower-court capture by the executive, the framers determined that the Supreme Court would have original—and final—jurisdiction over all elected members of the Congress

and members of the executive branch for any crime committed while in office (an arrangement popularly known as the *privileged forum*). This marked the broadest original jurisdiction ever ceded to a constitutional court in a consolidated democracy.¹⁴

The most consequential piece of the Court's "strong" design is found in Article 102: "The Supreme Court is primarily responsible for guarding the Constitution."¹⁵ Little to no context surrounds that bold assertion of authority. Justices used it as an opportunity to interpret the text expansively.

Finally, unlike the United States, which had to gradually forge its power of judicial review, Brazil enshrined judicial review directly into the constitutional text with Article 97.¹⁶ The Court, therefore, possessed unquestioned supremacy over all constitutional matters.

The Court's widely accessible or "democratic" design magnified the power of its newfound jurisdiction. Because DAUs can be petitioned by a long list of actors (from the executive to any party with congressional representation), these groups possess unilateral power to risk undoing any legislative bill. The threat of its use, hence, is a powerful bargaining chip.¹⁷ Since DAUs end with the Court, Justices soon became powerful players in legislative discussions.

The "democratic" design of the Court also prevents the Court from passing the proverbial buck. Indeed, the framers believed that every case merited the attention of the Supreme Court. They therefore established a system by which the Court was required to rule on every case appealed to it that involved constitutional matters. The Court's docket quickly became overloaded. In the last few years, it has issued an annual average of a hundred thousand decisions.¹⁸

The Court's preeminence over legal questions and its policy leverage through DAUs were further entrenched by its profoundly independent design. Not only did the constitution grant Justices salary protection and tenure until the age of seventy-five, but it also granted them internal administrative oversight. The Court itself elaborated the rules that would govern its internal procedures (the "Internal Regiment"), free from any external power to enforce it.

Ultimately, principles of strength, democracy, and independence undergirding the Constitution created a Court meant to be a *primus inter pares* ("first among equals") across Brazil's newly democratic political institutions.

INDIVIDUALISM AND LAWMAKING POWER

By the early 2000s, the Court's broad accessibility had produced an overwhelming caseload, making it difficult for complex cases to receive adequate attention. To address this problem, Justices modified their Internal Regiment to allow any Justice the power to suspend proceedings and examine a case more thoroughly. This authority became known as a *vista*.

As the Court's composition changed, and no self-regulatory mechanisms proved effective to compel deadline compliance, Justices began to wield *vistas* as veto power. In 2014, the Brazilian Bar Association petitioned the Court (through a DAU) to strike down provisions

allowing corporate campaign financing. Six of the eleven Justices sided with the petitioners, effectively settling the issue. Yet because the Court votes *seriatim* (in sequence), each Justice still retained the right to vote individually. When Justice Gilmar Mendes's turn arrived, he requested a *vista* and retained the case for seventeen months (sixteen months past the formal deadline). During this delay, Brazil held the closest presidential election in its history up to that point under campaign finance rules that a majority of the Court had effectively deemed unconstitutional. Months later, Mendes openly acknowledged his veto-like aim: "It is not up to the Court to determine what electoral system the Congress should adopt."¹⁹

Even more consequential than *vistas* is the Court's individualized procedure. Each case that arrives at the Court is randomly assigned to a Justice (the *rapporteur*), who issues a preliminary ruling and sends the case to the Chief Justice for plenary docketing. This procedure emerged under the same seemingly benign justification that created the *vistas*: managing the Court's overwhelming docket.²⁰

Individual, preliminary rulings quickly became the norm. Between 2000 and 2019, 88 percent of the Court's decisions were issued monocratically.²¹ The Court's regulatory laxity provided Justices with broad discretion not only over whether to issue such rulings, but also over when—or whether—to send their cases to the plenary for collective review.

Justices quickly began to use this discretion as political leverage. In 2016, rumors emerged in the Congress that legislators were considering a transition toward parliamentarism. Before such discussions could evolve into formal proposals, Justice Teori Zavascki intervened. From his inventory of pending cases, he unearthed one from 1997 that perfectly aligned with the political moment and promptly scheduled it for preliminary review. Amid the prospect of an unfavorable ruling, legislative discussions rapidly dissipated. Zavascki then returned the case to judicial limbo, never issuing a preliminary decision.²² In the process, Zavascki transformed the Court into a self-initiating—and decisive—participant in legislative deliberations.

The individual agenda-setting power of Justices also transformed ostensibly temporary rulings into the indefinite law of the land. In 2004, for instance, Justice Marco Aurélio Mello issued a preliminary decision decriminalizing abortions involving anencephalic fetuses. Recognizing that he lacked majority support in plenary, he simply waited. Six years later, sensing that changes in the Court's composition had improved his chances, he finally sent the case for collective review, and triumphed.²³

Far from an exceptional case, this delay between individual rulings and plenary docketing has become commonplace. In 2018, Diego Werneck Arguelhes and Leandro Ribeiro published a report finding that the average delay for cases dealing with abstract review (DAUs) between 2007 and 2016 was 797 days, and 617 days for all other cases between 2012 and 2016.²⁴ That is close to two years where individual rulings have prevailed, unchecked by the Court's collective body.

Armed with the power to dictate the timing of cases both before and during plenary proceedings, the Court gradually evolved into what former Justice Sepúlveda Pertence presciently described as "eleven non-communicating islands."²⁵ Individual Justices can effectively

pocket-veto cases, alter electoral outcomes, wait for favorable political conditions, and convert temporary rulings into durable law.

Finally, the Court in the early 2000s also began to actively legislate through its rulings. In 2007, public sector labor unions sought injunctive relief concerning the right of public employees to strike. Leveraging Article 5's silence on the scope of judicial power over injunctive relief, and breaking with contemporary jurisprudence, Mendes incorporated public employees into the framework of a 1989 law governing strikes in the private sector.²⁶ Practically, he had created new law.

The lasting significance of the decision, however, lay less in its outcome than in its reasoning. Mendes argued that "legislative inertia" in this case created a situation of "savagery with serious consequences for the constitutional order."²⁷ This marked the beginning of the Court's use of its guard-like mandate as its guiding ethos.

CENSORSHIP AND INVESTIGATIVE POWER

The year 2019 marked the greatest centralization of power in the Court's history. The preceding two years had seen Justices issue a flurry of corruption-related acquittals—nearly a decade of painstaking legal work undone, often with the stroke of a single, monocratic pen. A torrent of criticism against the Court swept through the media and the political arena. By March of that year, Chief Justice José Antonio Dias Toffoli had had enough.

In a gross reinterpretation of a narrow provision of the Court's Internal Regiment, Toffoli ascribed to the Court jurisdiction to investigate any crime that sought to undermine its institutional legitimacy. Bypassing the randomized selection process of case assignment, Toffoli named Justice Alexandre de Moraes to spearhead the investigation.²⁸ The now-infamous "Fake News Inquiry" was born.

A year later, when the Court approved of the constitutionality of the investigation in plenary by a 10-1 vote, it collectively endowed Moraes with broad discretion to ban publications and arrest publishers that violated or threatened to violate the "independence of the judiciary and the constitutional order."²⁹ The decision touted the Court's role as "guard of the Constitution" more than fifteen times.

The Court quickly turned the inquiry into a license to silence its critics. Just one month after the inquiry began, the news outlets *Crusoé* and *O Antagonista* published reports connecting Justice Toffoli to controversial dealings involving Odebrecht, Brazil's largest construction company. Despite the articles' reliance on official documentation, Justice Moraes imposed a daily fine of R\$100,000 (\$20,000 USD) on the outlets until the articles were taken down.³⁰ So they were. Meanwhile, President Jair Bolsonaro, the Public Ministry, and the Congress posed no meaningful resistance. Moraes was poised to keep going.

On August 19, 2022, he turned to private messages. The federal police searched the homes of eight prominent businessmen under Moraes's orders. The searches relied on WhatsApp

messages published by the news outlet Metr  poles, in which participants allegedly expressed antidemocratic sentiments. Moraes further ordered the freezing of their bank accounts and the suspension of their social media accounts.³¹ The episode sent a broader signal: Private communications fell within the inquiry’s grasp.

In 2022, deeming President Bolsonaro a “far-right” threat to democracy, Moraes increasingly shaped the informational environment in favor of presidential candidate Luiz In  cio Lula da Silva. Under the banner of targeting “misinformation,” Moraes penalized media outlets for casting Lula in a negative light. The largest right-wing media outlet, Jovem Pan, was fined for even mentioning Lula’s two-year stint in federal prison.³² Many social media accounts were also caught in the net.

Following Lula’s narrow electoral victory, Moraes remained committed to burying the Bolsonaro movement. In August 2024, after X (formerly Twitter) refused to comply with his orders concerning the removal of accounts associated with Bolsonaro supporters, Moraes suspended the platform nationwide. As many as 21.7 million accounts were blocked, the sixth-largest X community in the world.³³ As throughout the inquiry, Moraes justified these measures under the Court’s broader duty to defend the constitutional order.

Amid the Court’s capture of investigative authority, its legislative ambitions remained alive and well. In June 2019, the Court drew from Justice Mendes’s earlier doctrine on legislative omission to criminalize homophobia. In 2025, the Court outlined rules for social media platforms, and it later advised the Congress on indigenous land policy. The Court’s role as constitutional guard was the guiding legal framework in all three cases.³⁴

Ultimately, 2019 marked a Court that continued to grow in the likeness of Brazil’s former patrons. Justice Moraes extended the Court’s decades-old individualistic paradigm to new extremes, and the Court further bolstered its legislative authority. Meanwhile, the Court’s trump card remained front and center: its guard-like mandate to defend the constitutional order.

THE DEATH OF INSTITUTIONAL CHECKS

As much as the Court had centralized power, it was as yet an incomplete project. To further consolidate its patronage status, the Court needed to weaken remaining institutional checks: the presidential pardon and the impeachment process.

Both the constitutional text (Article 84) and prior Supreme Court jurisprudence had long given the president broad discretion to exercise the pardon power.³⁵ In May of 2022, however, the Court once again upended long-standing jurisprudence.

In annulling Bolsonaro’s pardon of Congressman Daniel Silveira, the Court held that it could invalidate pardons when they involved crimes against the constitutional order or when they served “personal interests” rather than broader public purposes.³⁶ Under the banner of such arbitrary concepts, the pardon power had effectively become subject to judicial approval.

The Court then mounted an attack on the Congress's impeachment power. On December 3, 2025, through a preliminary monocratic ruling, an all-too-familiar figure—Justice Gilmar Mendes—altered the 1950 Impeachment Law, determining that ordinary citizens could no longer initiate impeachment requests; instead, such requests had to originate with the attorney general. He further altered the voting requirement for impeachment proceedings from a simple majority to a supermajority standard in the Senate.

In justifying his decision, Mendes mounted the most comprehensive defense yet of the Court's duty to defend the constitutional order. Citing constitutional scholar David Landau and sociologist Kim Scheppele, he argued that constitutional courts serve as essential safeguards of democracy itself. The impeachment process, he contended, could become a powerful intimidatory weapon against the Court. Repeatedly, he touted the Court's refrain: The use of the impeachment process in this way represented an attack against "the very structure of the constitutional order."³⁷

Seven days later, Mendes reversed the attorney general requirement, explaining that the Congress had begun discussions to amend the impeachment law "within the parameters set by this Supreme Court."³⁸ His rationale sent an unmistakable signal: The Court has the final word on institutional checks.

PATRIMONIALISM LAID BARE

The year 2026 brought patrimonialism's defining feature to the fore: the use of public institutions for private ends. A year prior, federal police investigators had uncovered an array of allegedly fraudulent schemes linked to Banco Master, a fast-growing midsize bank in Brazil. The Central Bank intervened, and authorities arrested Banco Master's president, Daniel Vorcaro. The scandal rapidly grew into one of the largest fraud schemes in Brazilian financial history.

As journalists dug deeper into the case, Vorcaro's connections to high-powered players in Brasília (Brazil's capital) began to mount. None drew greater attention than his proximity to Justices Alexandre de Moraes and José Antonio Dias Toffoli. Journalists found that Moraes's wife, a practicing attorney, had signed a R\$129 million (\$25 million USD) contract to provide legal services to Vorcaro.³⁹ A fund linked to Master also bought shares of a luxury resort owned by Justice Toffoli and members of his family.⁴⁰

After Vorcaro's arrest, the two Justices quickly wielded the apparatus of the Court to try to shield him. Toffoli unilaterally bypassed the chain of command, removed the case from the District Court, and brought it under Supreme Court jurisdiction.⁴¹ He then assigned himself as sole overseer of the case and immediately sealed the records of the proceedings.⁴² Given the Court's self-regulatory process, no effort was made to compel Toffoli to abide by the Internal Regiment's requirements for recusal.

Behind the scenes, Moraes also sought to sway proceedings. The federal police uncovered text messages from Moraes's phone where Vorcaro asks whether Moraes had been able to "block" the liquidation of Banco Master and makes note of procedural opportunities for

Moraes to intervene in the case. Moraes replied with one-time-view images that have not yet been recovered.⁴³ Vercaro's appeals seem to have yielded results. According to reporting by journalist Malu Gaspar, Moraes subsequently sought a meeting with Central Bank President Gabriel Galípolo in an effort to advocate on Banco Master's behalf.⁴⁴

Though much is sure to yet be uncovered, the Master scandal already looks like a page taken out of the five-hundred-year-old Brazilian way of doing politics. While the Portuguese crown offered land, the emperors offered nobility titles, and Vargas and the military offered jobs and regulatory benefits, the Court seems to offer judicial favor. In exchange, the Justices take a cut for themselves. In that sense, the Master scandal laid bare the purest form of patrimonialism to be at play in the Court.

EXPLAINING LEGISLATIVE AND EXECUTIVE SILENCE

Acquiescent—if not actively collusive—political branches have undergirded the Court's rise to patrimonialist politics. Such inertia is not surprising. More than three decades ago, Mark Graber explained that the political branches will often willingly shift contentious issues to the judiciary.⁴⁵ This "judicialization of politics," he argued, allows elected officials to conveniently shift responsibility for divisive decisions to an unelected institution. Brazil's institutional context amplifies this pathology.

First, DAUs allow parties to near-immediately refer disputed matters to the Court. The cases concerning the criminalization of homophobia, the abortion of anencephalic babies, and campaign financing all dealt with highly contentious issues. Most importantly, all three were brought by DAUs. As Graber demonstrated, shifting blame to the Court on these issues was far less electorally costly. Required to hear nearly every case when activated, the Court also lacked the institutional tools to deflect responsibility.

Second, political science literature a priori assumes that courts function as safeguards of liberal democracy. As Adam Przeworski argues, if democracy is understood to include constraints on the will of the majority, "then the erosion of judicial independence is *prima facie* evidence that something is wrong."⁴⁶ This understanding carries even greater force in Brazil, given its explicit enshrinement in the constitutional text. Within such a framework, critics would readily construe proposals limiting judicial authority as attacks on democracy itself.

The Brazilian political context in 2019 only strengthened this understanding. With Bolsonaro increasingly stigmatized as a burgeoning autocrat, any executive attempts to undermine judicial authority would be electorally hazardous. Bolsonaro's staunch allies in the Congress risked a similar fate. It is no wonder, then, that Bolsonaro's tenure as president (2019–2023) coincided with an unprecedented centralization of power in the Court.

Last, and most importantly, the *privileged forum* became an intimidation tool. As Senator Eduardo Girão and Judge Eliana Calmon revealed, the *forum* turned congressmen into "hostages" of the Court.⁴⁷ Justices' individual ability to pocket and reopen cases at will has

transformed cases into indefinite political ammunition. Congressional resistance, therefore, carried high personal stakes.

In the face of electoral incentives to defer issues to the Court, the judiciary's a priori credibility as a bulwark of democracy, Bolsonaro's antidemocratic reputation, and potential criminal charges hanging over their heads, both the Congress and executive largely acquiesced.

COMBATING BRAZIL'S NEW PATRONS

Brazil's patrimonialist tradition and the Court's trajectory toward patrimonial politics teach three important lessons. First, an imbalanced constitutional design facilitated the Court's rise, affording mechanisms that will remain available for capture despite future changes in the composition of the Court. Second, as the previous six constitutional regimes have revealed, a complete constitutional overhaul is unlikely to rid Brazil of patrimonialism. Third, constitutional amendments should be focused on establishing a genuine balance of powers.

Effective solutions must both strike at the symptoms of patrimonialism and carefully constrain the Court's strength, independence, and accessibility. This brief proposes a two-pronged strategy: first, amending the constitution to ensure legal supremacy; and second, strengthening enforcement powers.

The changing political climate of recent months might also weaken the structures that incentivized previous legislative acquiescence. The media has turned to consistently battering the Court. In addition, many leading presidential and congressional candidates have made Supreme Court reform the center of their electoral platforms. With the country gearing up for a nationwide election in October 2026, the Brazilian media and the voters must move their candidates toward reform.

1. PROPOSED CONSTITUTIONAL AMENDMENTS

1. *Create Certiorari*

The Congress must adopt a constitutional amendment granting the Supreme Court complete discretion to reject any appellate cases it deems proper, replacing the current "general repercussion" requirement (currently the only reason it can provide to reject cases). Its decision as to which cases should be heard, however, should be determined by a collective decision-making process involving all the Justices. The Court's overwhelming caseload was a driving force in both the decentralization of authority and the creation of *vistas*—both prominent mechanisms in its early rise to power. As research on civil law systems reveals, the possibility of having rulings overturned will ensure that lower courts uphold Supreme Court precedent.

2. Collectivize the Case Procedure

The Congress should enact a constitutional amendment aimed at eliminating the individualistic elements of the current case procedure. There should be no more *rapporteurs* (the case reporters individually assigned to issue a preliminary ruling), and Justices should deliberate collectively, akin to the US model. To eliminate the *vistas*, the Congress should also prohibit the current *seriatim* model: Justices should write their rulings rather than air them orally on national cable television, and Justices should deliberate in private over what precise rules and outcomes the majority of them can agree on. The most senior Justice in the majority coalition should assign the majority opinion draft to a Justice of his choosing (the Chief Justice should always be the senior Justice in his coalition). *Turmas* (smaller bodies composed of five Justices) should likewise be eliminated.

Importantly, the Court's current individualized model rests on the premise that its docket is overwhelming. The implementation of *certiorari* (Proposal 1) would render the current dangerous procedure unnecessary.

3. Impose Mandatory Decision Deadlines

The Congress should enact a constitutional amendment requiring that cases before the Court be subject to fixed deadlines. If the Court fails to issue a ruling within the designated period, the lower court decision should automatically remain in force. This reform would eliminate the Court's ability to indefinitely "pocket-veto" cases and deploy them at politically advantageous moments.

4. Eliminate the Court's Original Jurisdiction

The Congress should pass a constitutional amendment stipulating that the Court will operate solely as a court of final resort. This requires:

- eliminating abstract constitutional review mechanisms (including all DAUs and forms of injunctive relief); and
- abolishing the privileged forum.

The first will bar parties from accessing the Supreme Court except after a ruling from a court of appeals, or under strict emergency situations to be determined by the Congress. Once activated, the Court will be asked to rule on specific cases, not standalone pieces of legislation. The second will require courts to treat all criminal cases the same, including those involving elected officials. A defendant's public-office status should confer no special treatment.

Eliminating abstract review will limit the Court's influence on hot-button political issues by delaying its ability to alter legislative bills. Coupled with the proposal to collectivize the case procedure, abolishing the privileged forum will ensure that the Congress is no longer intimidated into abandoning its legislative prerogatives and, if need be, its impeachment powers. Proposals 2 and 4 will, therefore, deter or actively prevent the Court from gaining political prominence.

5. Establish Term Limits for Justices

The Congress should implement a constitutional amendment requiring that Justices serve fixed terms—modestly longer than senatorial terms. In practice, the years already served by sitting Justices should be discounted from the term limit set by the Congress.

Long-term entrenchment has historically been one of the defining features of patrimonial authority. Fixed terms would introduce regular institutional renewal and reduce the accumulation of concentrated power in specific individuals.

6. Adopt a Congressional Override of Regimental Changes

Given the Court’s proven adaptive power, reform should move beyond the mechanisms leveraged by the Court to its institutional discretion to do so. The Congress should therefore enact an amendment that allows it to veto regimental changes under a simple majority rule, subject to a short deadline. To avoid giving the Senate disproportionate power over the Court, this authority should be assigned to the Chamber of Deputies.

7. Create the Supreme Court Oversight Commission

Purpose The Congress should enact a constitutional amendment that creates an independent commission focused on approving recusal requests and evaluating the success of the reforms. This amendment should also contain a clause implementing a mandatory review after ten years, subject to one five-year renewal. This temporary mandate will prevent the commission from indefinitely tilting the balance of powers toward itself.

Composition The commission should consist of two lower-court judges (elected by their peers), one Supreme Court Justice (alternating every two years based on order of seniority), the congressional leader of the opposition, and the president of each house. Its members should serve one-to-three-year staggered terms, varying by the institution to which they belong. Neither the legislative members nor those of the judiciary should amount to more than half of the body.

Voting Process For parties to reach this commission for recusal review, they must first go through the Court’s regular recusal process. A supermajority of the commission should be required to deem a Justice suspect. Ties should favor the Court’s initial ruling.

Deliverable A progress report highlighting the status of the reforms and of the patrimonialist hallmarks should be published annually. At the end of its tenth year, the commission should make a formal recommendation to the Congress regarding the extension of its tenure and its final evaluation of the reforms’ success. Beyond public release, the final report should trigger a ninety-day Senate hearing on its findings, and a vote on whether to renew the commission’s mandate. If renewed, the commission should issue another progress report after five years.

2. STRENGTHENED ENFORCEMENT MECHANISMS

Institutional reforms alone may prove insufficient. Like any patronage, the Court will be highly protective of its power and may strike these reforms as unconstitutional. Hence, the proposed formal constraints need to be paired with credible enforcement.

1. *Have Congress Restore the Impeachment's Deterrent Power*

Justices must believe that the power of impeachment can be a credible threat to their power. To accomplish this, the Congress must impeach Justice Alexandre de Moraes. Not only is he the primary culprit of the Court's control over press and speech, but he is also at the center of its massive corruption scandal with Banco Master. He must serve as an example to his colleagues on the bench and, most importantly, to future Justices who attempt to trifle with the separation of powers.

2. *Use the Confirmation Process as Leverage*

The Senate's confirmation authority should function not merely as a mechanism for filling vacancies, but as an institutional bargaining tool. Senators must either delay proceedings or, if necessary, consistently reject the president's nominees until the constitutional and legislative changes suggested in this brief pass judicial muster.

3. *Strengthen Civil Society Oversight*

The Brazilian media and civil ecosystems must both embody and remind their people that republican governance requires constant vigilance. Opposition leaders must mobilize protests and the mainstream media must expose the Court's excesses on a consistent basis. If no action is taken to reform the Court and impeach Justices, the people must vote collusive or acquiescent congressmen out of office. Such media and electoral pressure can effectively embolden the Congress to curb the Court's power.

CONCLUSION

Brazil currently wrestles with a patrimonialist judiciary. It legislates, investigates, and judges monocratically. It silences its opponents. It is entrenched at the center of political power. Like its predecessors, it wields the power of the state to serve personal—financial and political—ends. In that sense, Brazil's imperial judiciary is not unprecedented; it echoes the country's earlier experiments with political despotism.

Yet the current Court is not merely a repetition of the past. The 1988 constitution created an institutional environment that enabled its rise. All the while, the executive and legislative branches fundamentally failed to resist—either out of political convenience or fear of legal retaliation.

Understanding this history is fundamental to effective reform. The Congress must adopt constitutional amendments that tackle these patrimonialist hallmarks and reignite institutional

checks. Formal reforms must also be backed by enforcement: The Congress must restore impeachment's deterrent effect, boycotting Supreme Court nominees when necessary, and the public must hold elected officials accountable through elections and sustained media scrutiny.

Ultimately, restoring Brazilian democracy depends on its institutions. Political institutions must reclaim the constitutional checks they have abandoned, while civil society must support efforts to curb judicial overreach. Only this robust coalition can defeat Brazil's old patrimonialist way of doing politics.

NOTES

1. On advocates of the defense against the far-right, see Filipe Campante and Steven Levitsky, "Brazil Just Succeeded Where America Failed," *The New York Times*, September 12, 2025, <https://www.nytimes.com/2025/09/12/opinion/trump-bolsonaro-conviction-democracy.html>; and Diego A. Zambrano, Ludmilla Martins da Silva, Rolando Garcia Miron, and Santiago P. Rodríguez, "How Latin America's Judges Are Defending Democracy," *Journal of Democracy* 35, no. 1 (2024); on minimizing the challenge posed by the Court, see Diego Werneck Arguelhes, *O Supremo: entre o direito e a política* [The Supreme Court: Between law and politics] (História Real, 2023); on misdiagnosing the root causes, see Fabrício Lunardi, *O STF na política e a política no STF* [The STF in politics and politics in the STF] (Saraiva Jur/IDP, 2020).
2. Lilia Moritz Schwarcz, *Brazilian Authoritarianism: Past and Present* (Princeton University Press, 2022), 53.
3. Raymundo Faoro, *Os donos do poder: formação do patronato político brasileiro* [The owners of power: The formation of Brazil's political patronage] (Editora Globo, 1958).
4. Frei Vicente do Salvador, *História do Brasil 1500-1627* [History of Brazil, 1500-1627] (Fundação Biblioteca Nacional / Editora UnB / Fundação Darcy Ribeiro, 2014), 28.
5. Schwarcz, *Brazilian Authoritarianism*, 81; and Richard Graham, *Patronage and Politics in Nineteenth-Century Brazil* (Stanford University Press, 1990), 1-7.
6. Assessoria de Comunicação do CEDEM, da Unesp, "Censura à imprensa no Império e Primeira República" [Press censorship in the Empire and First Republic], CEDEM/UNESP, 2017.
7. Lei no. 37.987, de 20 de setembro de 1830 [Law no. 37,987, of September 20, 1830], *Câmara dos Deputados*, https://www2.camara.leg.br/legin/fed/lei_sn/1824-1899/lei-37987-20-setembro-1830-565654-publicacaooriginal-89402-pl.html.
8. Decreto no. 847, de 11 de outubro de 1890 [Decree no. 847, of October 11, 1890], *Planalto*, https://www.planalto.gov.br/ccivil_03/decreto/1851-1899/d847.htm; and Decreto no. 4.743, de 31 de outubro de 1923 [Decree no. 4,743, of October 31, 1923], *Câmara dos Deputados*, <https://www2.camara.leg.br/legin/fed/decret/1920-1929/decreto-4743-31-outubro-1923-567758-publicacaooriginal-91090-pl.html>.
9. On Vargas and the Estado Novo, see Francisco Vidal Luna and Herbert S. Klein, "The Vargas Period, 1930-1945," in *The Economic and Social History of Brazil Since 1889* (Cambridge University Press, 2014), 87-88; and Maria Helena Capelato, "The Estado Novo: Politics and Political Propaganda in Brazil, 1937-1945," in *Oxford Research Encyclopedia of Latin American History*, ed. Ángela Vergara (Oxford University Press, 2021), 6; on the military dictatorship, see Lília M. Schwarcz and Heloisa M. Starling, *Brazil: A Biography* (Farrar, Straus and Giroux, 2018), 562-63, 566-67, 573-74.
10. UOL Educação, "Proclamação ao povo brasileiro (trechos): Getúlio Vargas" [Proclamation to the Brazilian People (excerpts): Getúlio Vargas], accessed September 8, 2026, <https://educacao.uol.com.br/disciplinas/historia-brasil/proclamacao-ao-povo-brasileiro-trechos-getulio-vargas.htm>; *Constituição dos Estados Unidos do Brasil, de 10 de novembro de 1937* [Constitution of the United States of Brazil, of November 10, 1937], *Presidência da República*, https://www.planalto.gov.br/ccivil_03/constituicao/constituicao37.htm; and Oliveira Vianna, *Instituições Políticas Brasileiras* [Brazilian political institutions] (Senado Federal, 1999).

11. Rafael Dilly Patrus, "The Argument of Legality and the 1964 Coup d'État," *Acervo* 37, no. 3 (2024); and Danilo Lima, *Legalidade e autoritarismo: o papel dos juristas na consolidação da ditadura militar de 1964* [Legality and authoritarianism: The role of jurists in the consolidation of the 1964 military dictatorship] (Universidade do Vale do Rio dos Sinos, 2018), 83.
12. A condensed version of this historical account was originally published by *The Hill* on August 4, 2025: Felipe Jafet, "Trump Is Right About Brazil," <https://thehill.com/opinion/international/5431164-its-sad-but-trump-is-right-about-brazil/>.
13. Daniel McDonald, "Making the 'Citizen Constitution': Popular Participation in the Brazilian Transition to Democracy, 1985–1988," *The Americas* 79, no. 4 (2022); and Fernando José Gonçalves Acunha, Mohamed A. Arafa, and Juliano Zaiden Benvindo, "The Brazilian Constitution of 1988 and Its Ancient Ghosts: Comparison, History and the Ever-Present Need to Fight Authoritarianism," *Revista de Investigações Constitucionais* 5, no. 3 (2018).
14. Arguelhes, *O Supremo*, 134.
15. *Constituição da República Federativa do Brasil* [Constitution of the Federative Republic of Brazil] (Senado Federal, 1988), Art. 102.
16. *Constituição da República*, Art. 97.
17. *Constituição da República*, Art. 103; and Lunardi, *O STF*, 228–29.
18. Supremo Tribunal Federal, "STF alcança menor acervo de processos em 31 anos" [STF reaches lowest case backlog in 31 years], *STF Notícias*, December 19, 2025, <https://noticias.stf.jus.br/postsnoticias/stf-alcanca-menor-acervo-de-processos-em-31-anos/>.
19. "Gilmar Mendes: Reforma política é tarefa do Congresso e não do Judiciário" [Gilmar Mendes: Political reform is a job for Congress, not the Judiciary], *Senado Notícias*, February 24, 2015, <https://www12.senado.leg.br/noticias/materias/2015/02/24/gilmar-mendes-reforma-politica-e-tarefa-do-congresso-e-nao-do-judiciario>.
20. Rodrigo Varini Mutti, "Decisão monocrática do relator e agravo interno: Uma análise do artigo 557 do Código de Processo Civil" [Monocratic ruling by the rapporteur and internal appeals: An analysis of Article 557 of the Code of Civil Procedure], *Âmbito Jurídico*, November 30, 2005, <https://ambitojuridico.com.br/decisao-monocratica-do-relator-e-agravo-interno-uma-analise-do-artigo-557-do-codigo-de-processo-civil/>.
21. Arguelhes, *O Supremo*, 144.
22. Arguelhes, *O Supremo*, 165–66.
23. Marco Aurélio Mello, *História oral do Supremo (1988–2013)* [Oral history of the Supreme Court (1988–2013)], vol. 18, ed. Pedro Cantisano, Thomaz Pereira, and Michael Mohallem (Escola de Direito do Rio de Janeiro da Fundação Getúlio Vargas, 2017), 64–65.
24. Diego Werneck Arguelhes and Leandro Molhano Ribeiro, "'The Court, It Is I'? Individual Judicial Powers in the Brazilian Supreme Court and Their Implications for Constitutional Theory," *Global Constitutionalism* 7, no. 2 (2018): 251.
25. Fernando de Castro Fontainha, Angelo Gamba Silva, and Izabel Saenger Nuñez, *História oral do Supremo* [Oral history of the Supreme Court] (FGV Direito Rio, 2015), 116.
26. *Constituição da República*, Art. 5.
27. Gilmar Ferreira Mendes, "Voto proferido pelo Ministro Gilmar Mendes no MI 670 – Direito de Greve dos Servidores Públicos" [Opinion delivered by Justice Gilmar Mendes in Writ of Injunction 670 – Right to Strike of Public Servants], *Observatório da Jurisdição Constitucional* 1, no. 1 (2007–8): 18.
28. "Presidente do STF abre inquérito para apurar ameaças e fake news que têm a Corte como alvo" [President of the STF opens inquiry into threats and fake news targeting the Court], *STF Notícias*, March 14, 2019, <https://noticias.stf.jus.br/postsnoticias/presidente-do-stf-abre-inquerito-para-apurar-ameacas-e-fake-news-que-tem-a-corte-como-alvo/>.
29. Supremo Tribunal Federal (STF), ADPF 572/DF, Rel. Min. Edson Fachin, 34, <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=755791517>.

30. Supremo Tribunal Federal, Inquérito 4.781/DF, decisão de April 12, 2019 (ordering the removal of content from *Crusoé* and *O Antagonista*), Rel. Min. Alexandre de Moraes, hosted by *Migalhas*, <https://www.migalhas.com.br/arquivos/2019/4/art20190415-15.pdf>.
31. Supremo Tribunal Federal, Petição 10.543/DF, decisão de August 19, 2022 (ordering search and seizure operations against targeted business executives), Rel. Min. Alexandre de Moraes, hosted by CartaCapital, <https://www.cartacapital.com.br/wp-content/uploads/2022/08/Decisa771oPET10543.pdf>.
32. Felipe Cerqueira, “Jovem Pan sob censura” [Jovem Pan under censorship], *Jovem Pan*, October 19, 2022, <https://jovempan.com.br/noticias/brasil/jovem-pan-sob-censura.html>.
33. “Musk’s X Back Online to Some Brazil Users After Suspension Lifted,” Reuters, October 9, 2024, <https://www.reuters.com/technology/musks-x-back-online-some-brazil-users-after-suspension-lifted-2024-10-09/>.
34. Supremo Tribunal Federal, Ação Direta de Inconstitucionalidade por Omissão 26/DF e Mandado de Injunção 4.733/DF, acórdão de June 13, 2019 (equating homophobia and transphobia to the crime of racism), Rel. Min. Celso de Mello, hosted by Supremo Tribunal Federal, 1, 23, <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=753957476>; Supremo Tribunal Federal, Recurso Extraordinário 1.037.396/SP, voto do Min. Cristiano Zanin, June 11, 2025 (concerning the partial unconstitutionality of Article 19 of the Marco Civil da Internet), Rel. Min. Dias Toffoli, hosted by Supremo Tribunal Federal, 21, <https://noticias-stf-wp-prd.s3.sa-east-1.amazonaws.com/wp-content/uploads/wpallimport/uploads/2025/06/11212950/RE-1037396-Voto-CZ.pdf>; and Supremo Tribunal Federal, Ação Direta de Inconstitucionalidade 7.582/DF (challenging the constitutionality of Law 14.701/2023 regarding the indigenous land demarcation framework), Rel. Min. Gilmar Mendes, electronic case docket, accessed May 28, 2026, 287, <https://redir.stf.jus.br/estfvisualizadorpub/jsp/consultarprocessoeletronico/ConsultarProcessoEletronico.jsf?seqobjetoincidente=6824370>.
35. *Constituição da República*, Art. 84; and Supremo Tribunal Federal, Arguição de Descumprimento de Preceito Fundamental 964/DF (challenging the presidential decree granting an individual pardon to Daniel Silveira), Rel. Min. Rosa Weber, electronic case docket, accessed May 28, 2026, 203, <https://redir.stf.jus.br/estfvisualizadorpub/jsp/consultarprocessoeletronico/ConsultarProcessoEletronico.jsf?seqobjetoincidente=6389004>.
36. STF, ADPF 964/DF, Rel. Min. Rosa Weber, 5, 64.
37. Supremo Tribunal Federal, Medida Cautelar na Arguição de Descumprimento de Preceito Fundamental 1.259/DF (granting an injunction to reregulate and restrict the legal rite of impeachment for Supreme Court justices), Rel. Min. Gilmar Mendes, decisão de December 3, 2025, hosted by *JOTA*, 4, 9–10, 11, <https://portal.jota.info/wp-content/uploads/2025/12/impeachment-ministro-do-stf-liminar-gilmar-mendes.pdf>.
38. Supremo Tribunal Federal, Arguição de Descumprimento de Preceito Fundamental 1.259/DF, decisão de December 10, 2025 (suspending the previously granted injunction regarding the STF impeachment rite pending legislative review), Rel. Min. Gilmar Mendes, hosted by *JOTA*, 3, <https://portal.jota.info/wp-content/uploads/2025/12/impeachment-ministro-do-stf-liminar-gilmar-mendes.pdf>.
39. “Mulher de Moraes manteve contrato de R\$ 129 milhões com Master, diz jornal” [Moraes’s wife kept R\$129 million contract with Master, newspaper says], CNN Brasil, December 12, 2025, <https://www.cnnbrasil.com.br/politica/mulher-de-moraes-manteve-contrato-de-r-129-milhoes-com-master-diz-jornal/>.
40. Erich Mafra, “Resort da família de Toffoli é comprado por advogado ligado à J&F” [Toffoli family’s resort bought by lawyer linked to J&F], *Revista Oeste*, January 15, 2026, <https://revistaoeste.com/politica/resort-da-familia-de-toffoli-e-comprado-por-advogado-ligado-a-jf/>; and Manoela Alcântara, “Toffoli confirma ter sido sócio do resort Tayayá, no Paraná” [Toffoli confirms having been a partner in the Tayayá Resort, in Paraná], *Metrópoles*, February 12, 2026, <https://www.metrópoles.com/colunas/manoela-alcantara/toffoli-confirma-ter-sido-socio-do-resort-tayaya-no-parana>.
41. “Entenda por que Toffoli definiu competência do STF no caso do Banco Master” [Understand why Toffoli determined the Banco Master case as part of the STF’s jurisdiction], CNN Brasil, December 4, 2025, <https://www.cnnbrasil.com.br/politica/entenda-por-que-toffoli-definiu-competencia-do-stf-no-caso-do-banco-master/>.
42. Luísa Martins and Davi Vittorazzi, “Toffoli impõe sigilo a caso Vorcaro no STF” [Toffoli imposes secrecy on Vorcaro case at the STF], CNN Brasil, December 2, 2025, <https://www.cnnbrasil.com.br/politica/toffoli-impoe-sigilo-a-caso-vorcaro-no-stf/>.

43. "Vorcaro trocou mensagens com Moraes no dia em que foi preso, diz jornal" [Vorcaro exchanged messages with Moraes on the day he was arrested, newspaper says], CNN Brasil, March 6, 2026, <https://www.cnnbrasil.com.br/politica/vorcaro-trocou-mensagens-com-moraes-no-dia-em-que-foi-preso-diz-jornal/>.
44. Malu Gaspar, "Alexandre de Moraes procurou Galípolo para pedir pelo Master junto ao Banco Central" [Alexandre de Moraes approached Galípolo to lobby for Master with the Central Bank], *O Globo*, December 22, 2025, <https://oglobo.globo.com/blogs/malu-gaspar/post/2025/12/alexandre-de-moraes-procurou-galipolo-para-pedir-pelo-master-junto-ao-banco-central.ghtml>.
45. Mark A. Graber, "The Nonmajoritarian Difficulty: Legislative Deference to the Judiciary," *Studies in American Political Development* 7, no. 1 (1993): 36.
46. Adam Przeworski, *Crises of Democracy* (Cambridge University Press, 2019), 4.
47. Agência Senado, "Para Girão, fim do foro privilegiado acabará com 'chantagem institucional'" [For Girão, end of privileged forum will end "institutional blackmail"], *Senado Notícias*, August 13, 2025, <https://www12.senado.leg.br/noticias/materias/2025/08/13/para-girao-fim-do-foro-privilegiado-acabara-com-chantagem-institucional>.



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