

# Supreme Court v. Necropolitics: The Chaotic Judicialization of COVID-19 in Brazil

JOÃO BIEHL, LUCAS E. A. PRATES, AND JOSEPH J. AMON

## Abstract

Worldwide, governments have reacted to the COVID-19 pandemic with emergency orders and policies restricting rights to movement, assembly, and education that have impacted daily lives and livelihoods in profound ways. But some leaders, such as President Jair Bolsonaro in Brazil, have resisted taking such steps, denying the seriousness of the pandemic and sabotaging local control measures, thereby compromising population health. Facing one of the world's highest rates of COVID-19 infections and deaths, multiple political actors in Brazil have resorted to judicialization to advance the right to health and other protections in the country. Responding to this litigation has provided the country's Supreme Court an opportunity to assertively confront and counter the executive's necropolitics. In this article, we probe the malleable form and the constitutional basis of the Supreme Court's decisions, assessing their impact on the separation of powers, on the protection of human rights (for example, on those of prisoners, indigenous peoples, and essential workers), and relative to the implementation of evidence-based interventions (for example, lockdowns and vaccination). While the court's actions open up a distinct legal-political field (sometimes called "supremocracy")—oscillating between progressive imperatives, neoliberal valuations, and conservative decisions—the capacity of the judiciary to significantly address systemic violence and to robustly advance human rights remains to be seen.

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## Introduction

In the first week of March 2021, Brazil reported more than 468,000 cases of COVID-19, the highest number of cases in any country in the world, and the most yet recorded in Brazil.<sup>1</sup> Since the start of the pandemic through May 1, 2021, the country has reported more than 14 million cases and 400,000 deaths—and this despite high rates of underreporting.<sup>2</sup> The country’s universal public health system (Sistema Único de Saúde), once heralded as a pioneering means of social protection, is collapsing. As the pandemic assails the country, regional disparities are tragically exposed.<sup>3</sup> In the Amazon, for example, where three-quarters of the population in cities such as Manaus are estimated to have been infected, there are no oxygen cylinders available, and researchers describe hospitals as “suffocation chambers” where patients are unable to breathe and need to be manually ventilated.<sup>4</sup> Meanwhile, there is increasing concern that the immune protection conferred from previous infection may be waning or may not effectively prevent infection of new variants.<sup>5</sup> All this at a time when vaccination efforts are highly politicized and without clear operational plans.<sup>6</sup>

Critical voices around the world note that the responsibility for this calamity lies with President Jair Bolsonaro, as he downplayed COVID-19 and systematically sabotaged control measures (promoting herd immunity by contagion).<sup>7</sup> While this “necropolitical” scenario unfolded (subjugating “life to the power of death” and seriously comprising population health and human rights), new power dynamics crystallized.<sup>8</sup> Amidst Brazil’s unprecedented political and public health crises, and under intense social pressure, other state actors have been seeking to articulate effective responses, assert their authority, and save the day.

No other institution has been more directly involved in countering the Brazilian executive’s catastrophic handling of the pandemic than the country’s highly scrutinized Supreme Court, the Supremo Tribunal Federal (STF). Following approval of Federal Law 13,979 by the Congress in February 2020, the court has been playing an increasingly active, central political role.<sup>9</sup> The legislature acted

swiftly early in the pandemic, declaring a “state of public calamity” and creating the legal framework for subsequent political action.<sup>10</sup> Law 13,979 specifically stipulated that the responsibility to respond to the emergency was distributed throughout the federation—that is, it was not only in the hands of the central government but also in the hands of federal district and state and municipal authorities. According to the Brazilian Constitution (art. 24, XII), it is the concurrent competency of all spheres of government (federal and state governments, as well as municipalities) to legislate on health issues.<sup>11</sup> Since March 2020, the court has thus been adjudicating disputes between the central and regional governments over their concurrent competence to act on the right to health and issue normative measures (as in the case of lockdowns) and, at the same time, resetting the very terms of their interaction.

While doing so, the STF has often exercised discretionary, if controversial, decision-making powers (such as issuing monocratic decisions, which are verdicts handled by a single justice), thus fashioning new ways of positioning itself in relation to the other branches of government and the broader public.<sup>12</sup> The STF has also strategically retrieved and ruled on difficult lawsuits that had rested idle, and has anticipated disputes (as in the case of vaccination), thereby reshaping the political field and consolidating its policymaking-like power.<sup>13</sup>

Critics have called such an active pursuit of power by the Supreme Court an expression of “supremocracy.” For legal scholar Oscar Vilhena Vieira, the term speaks to the efforts of the court to consolidate “its authority in relation to other levels of the Brazilian judiciary” and to expand “its authority to the detriment of the legislative and executive powers.”<sup>14</sup> However, the label of supremocracy can be contested by those who see the actions of the Supreme Court as an appropriate response to an unprecedented crisis. Regardless of perspective, the pandemic has put the STF at the center of the political stage, having the final word on decisions taken by the executive and legislative powers in relation to a broad range of political, economic, moral, and social issues.<sup>15</sup>

In what follows, we probe the form and reach

of judicial power in a time of public health crisis and necropolitical authoritarianism. We highlight the biopolitical role of the Brazilian judiciary during the pandemic and probe the effect that COVID-19 judicialization is having on the separation of powers and on human rights, accountability, and democratic governance writ large. Specifically, we examine the court's responses to the vulnerability of marginalized groups (including prisoners, indigenous peoples, and essential workers) and the steps needed for their protection—including the protection of civil, political, and socioeconomic rights—as well as the emerging role of the court in shaping vaccination policy and access. In other words, in the context of a federal executive government that has done little to advance human rights protections, we examine how an emboldened Supreme Court, in a moment of unprecedented public health crisis, can counter and advance rights protections and the implementation of evidence-based interventions—and what negative impacts may also arise.

## Context and methods

The Brazilian legal system derives from the civil law system in place in European countries (for example, Portugal, France, and Germany) and is based mainly on statutes (elevating the importance of codified law over judicial precedent).<sup>16</sup> Given the broad range of citizen rights and state duties specified by the country's democratic Constitution of 1988, the Supreme Court analyzes a wide range of cases, without setting precedents.<sup>17</sup> Addressing myriad plaintiffs and with over 73,000 new cases under review in 2020 alone, the STF is the last instance for legal appeals.<sup>18</sup>

The pandemic lockdown and the challenges of online legal access has not limited the general functioning of the Brazilian judiciary, which reviewed more than 1 billion procedural acts and issued more than 22 million rulings between March and December 2020.<sup>19</sup> Since the beginning of the outbreak, courts throughout the country have been inundated with COVID-19-related cases. Cases have included demands for access to intensive care units, unapproved and unlicensed treatments,

economic aid relief, the temporary release of prisoners, and the adjudication of disputes over the public health duties of the various branches of government and of the private health insurance sector. The Supreme Court alone received over 7,000 COVID-19-related cases in 2020.<sup>20</sup> All of this occurred in a context where the judicialization of health (and especially medicines) has been growing exponentially throughout the country.<sup>21</sup> Data from the National Justice Council show that in 2017 there were nearly 1.8 million judicial cases concerning the right to health under review in Brazil.<sup>22</sup>

To grasp the scale and impact of the judicialization of the COVID-19 pandemic, we are in the process of conducting a multimethod exploratory study that includes (1) tracking COVID-19-related legislation, judicial rulings, and executive orders and their enforcement (using mainly the *Boletim Direitos na Pandemia, Conectas/CEPEDISA-USP*); (2) monitoring press coverage of the pandemic and tracking social media reactions from government authorities and civil society; (3) analyzing representative legal cases available in the *Observatório Nacional do Conselho Nacional de Justiça*, the *Painel de Ações COVID-19*, the *COVID-19 Processos Judiciais* platform, the *Dados Auxílio Emergencial* platform, and official databases from federal and state courts; and (4) conducting online interviews with key scholars and judicial and policy actors and attending COVID-19-related conferences organized by the *Observatório Nacional do Conselho Nacional de Justiça* (National Justice Council) and the Brazilian Bar Association. As this work continues, we present here an initial descriptive analysis of representative, and high-profile, cases that illustrate the tensions between federal and state/municipal executive authority and the ways in which the STF has intervened in response to COVID-19.

While in earlier work we sought to understand individual and community-level drivers of judicialization, here we are interested in its institutional drivers, particularly in the extent to which judicialization consolidates the authority of the judiciary vis-à-vis the other branches of the Brazilian government.<sup>23</sup> This tension between the

executive, legislature, and courts—at state and federal levels—is of particular interest in relation to government actions and policies that infringe upon rights, where the judiciary has a distinct role in evaluating whether such actions meet standards of legality, evidence-based necessity, proportionality, nondiscrimination, and gradualism.<sup>24</sup> More broadly, analyzing the judiciary’s response to executive branch actions further informs our understanding of the justiciability of health rights generally and during public health emergencies in particular.

### The judiciary as a key site of politics during the COVID-19 pandemic

Reflecting the pervasive impact of the COVID-19 pandemic in Brazil, our analysis found great diversity in all of the key domains examined. First, we identified a diversity of litigants, ranging from individual patients and at-risk subjects to municipalities and states and public and private institutions (from the health and non-health sector alike)—represented by both public and private attorneys. Second, we found a diversity of issues deemed an “emergency,” such as the lack of hospital beds and ventilators, labor rights and access to financial assistance, lockdowns and quarantine enforcements, commercial operations, and taxation exemptions. Third, unlike the more individualized phenomenon of the right to medicines, we found that COVID-19 cases tended to speak to larger structural issues affecting entire populations, with the rulings more directly impacting governance and the public-private sector interface.

During the pandemic, the country has been witnessing clashes between the Supreme Court and the federal executive branch in a frequency and scale never seen after the redemocratization period. Some of the main conflicts have revolved around the autonomy of states, municipalities, and the federal district; the protection of vulnerable populations; and issues related to infrastructure and technoscience. A close look at specific cases reveals significant legal and ideological contradictions and social biases at play in the work of the judiciary,

determining progressive advances as well as conservative impediments.

### *Supremocracy v. necropolitics*

Three cases vividly illustrate how the Supreme Court has opposed the Bolsonaro administration and strengthened the decision-making power of other spheres of government. Early on in the pandemic, the left-wing political party Rede Sustentabilidade filed a direct action of unconstitutionality (ADI 6.343) against the federal government. The plaintiff asked the STF to suspend a provisional presidential decree that centralized authority in the federal government of all actions related to the transportation of people and cargo, thus precluding the implementation of local prevention measures. The court agreed with the plaintiff’s request and emphasized the authority of states and municipalities to implement measures to control the pandemic, also mandating that future measures be scientifically based.<sup>25</sup>

In April 2020, the Brazilian Bar Association followed suit, filing a claim of non-compliance (ADPF n. 672) against the federal government, demanding that the Supreme Court oblige the president to uphold COVID-19 control measures implemented by states, municipalities, and the federal district. The Bar Association also asked the court to require that the president implement emergency economic measures to aid the population. The STF partially accepted the Bar Association’s arguments, determining that the federal government could not override the policies that states, municipalities, and the federal district levied against COVID-19.<sup>26</sup> Yet the STF passed on the opportunity to force the Bolsonaro administration to change its course of denying the seriousness of the pandemic in the name of putting the ‘economy first.’ In the words of Minister Alexandre de Moraes, it was constitutionally “unacceptable” for the court to mandate the president on policymaking.<sup>27</sup>

That same month, the northeastern state of Maranhão, then an epicenter of the country’s pandemic and governed by the leftist Partido Comunista do Brasil, petitioned the STF to halt the

Bolsonaro administration's efforts to confiscate and redistribute dozens of ICU ventilators purchased by the state. The federal government's move revealed the precariousness of the country's public health infrastructure and was widely seen by the Brazilian public as a partisan and retaliatory attack on a state that provided Bolsonaro little political support. The court ended up ruling in favor of the state of Maranhão, preventing the seizure of the ventilators.<sup>28</sup>

These three cases evince the large assortment of political actors and entities resorting to judicialization in their efforts to tackle the direct impact that the judiciary has had on governance in the midst of the pandemic. By exposing and opposing the Bolsonaro administration's refusal to implement adequate control measures and stopping its predatory rule (as in the attempt to confiscate equipment), the STF tactically acted in tandem with the legislature, seeking to both rectify the federal government's fatalistic public health policymaking (downplaying prevention to keep the economy open) and limit its authority. In doing so, "the judiciary has given power to the states," as one interlocutor poignantly told us.<sup>29</sup> Given the dire fiscal situation of most states and their dependence on federal funds, in practice this power has had limited effect. The fact is that the Bolsonaro administration has required local governments to support the president's denialism in order to receive emergency funds critical to keep the economy going.

Meanwhile, these three rulings were widely disseminated by the press and in social media platforms, generating a heated public debate about the lack of a federal plan of action to fight the pandemic and about the political authority of the country's highest court. A rhetorical turf war between President Bolsonaro and the country's governors and mayors over leadership, constitutionality, effectiveness, and accountability has also crystallized in the process. At this early point in the pandemic, the Supreme Court, using its malleable form of authority, consolidated its problem-solving image. And in doing so, the STF helped instantiate an informal, parallel form of political power that operates against and in tandem with Bolsonaro's necropolitical authoritarianism, challenging his

authority but not directly forcing him to effect a biopolitics appropriate to the situation.

### *Selective justice*

The numerous interventions of the Brazilian Supreme Court during the pandemic have also been marked by contradictions and internal fissures, especially when it comes to the guarantee of constitutionally mandated human rights. While quick to assert its authority to advance the ability of states, municipalities, and the federal district to implement COVID-19 measures, the STF was mixed in its response to the impact of the pandemic on racial minorities resulting from the country's historical and pervasive contemporary systemic racism.<sup>30</sup>

For example, two-thirds of Brazil's inmate population are Black, and the great majority are poor.<sup>31</sup> The country's infamous correctional system is crumbling and overcrowded, indisputably putting detainees at high risk of infection.<sup>32</sup> Over 75% of all COVID-19-related cases submitted to the STF between March and May 2020 were *habeas corpus* (mostly filed by public defenders), requesting the release of older prisoners and those with underlying health conditions that put them at risk of severe illness and death. Yet the STF rejected over 90% of these requests, finding decisively against the right to health for this population.<sup>33</sup>

Among the collective claims, ADPF 347 stands out. Introduced by the Socialismo e Liberdade political party, the lawsuit asked the court to deem the country's "hellish" and "negligent" penal system "unconstitutional" and therefore requested the court to act immediately, either by commuting or by reducing sentences.<sup>34</sup> In March 2020, given the pandemic's rapid encroachment among vulnerable populations, Justice Marco Aurélio issued a temporary injunction (valid for all inmates in the country) asking criminal court judges to assess the situation of prisoners at risk of COVID-19 in their jurisdictions.<sup>35</sup> Nonetheless, a majority of justices swiftly overturned Justice Aurélio's injunction.

The judiciary's punitive tendency, as reflected in this action, has also been clearly manifested in public statements. On several occasions, the current chief justice, Luiz Fux, claimed that it was

not possible to release prisoners in the context of the pandemic because of the risk of such individuals committing more crimes.<sup>36</sup> Such conservative discourse is aligned with one of the key mottos of *bolsonarism*—“a good bandit is a dead bandit”—and appeals to the president’s constituency that supports the idea that “the culture of human rights is over and now it is the turn of the good humans.”<sup>37</sup>

In its actions in response to the COVID-19 pandemic, the STF can be seen as marshalling public support by choosing which causes to sponsor and which battles to fight. Under coordinated attack from right-wing extremist groups, the court is clearly concerned with its autonomy and political relevance in a vacuum of effective governance and threatened by retaliation from Bolsonaro.<sup>38</sup> Thus, when it comes to ruling on unpopular causes, such as the rights of prisoners to health and life, the court is cautious. This is evident in the more recent decision by Justice Edson Fachin asking criminal judges to commute the sentences of only those prisoners who have committed “crimes with no violence.”<sup>39</sup>

In contrast to its unwillingness to protect prisoners, the Supreme Court has been more proactive and decisive in the case of indigenous rights (also maligned in Bolsonaro’s predatory rhetoric and neo-extractivist policies).<sup>40</sup> The most significant example here is the court’s uptake of the claim ADPF 709, in which the Articulation of Indigenous Peoples of Brazil, an indigenous organization supported by six leftist political parties, asked the STF to order the Bolsonaro administration to implement a series of specific protective measures for indigenous peoples during the pandemic.<sup>41</sup> In its August 2020 ruling, the STF acknowledged the validity of most of these requests and demanded that the government, among other things, introduce sanitary barriers to protect indigenous villages, convene an emergency task force involving all stakeholders, and present a comprehensive action plan.<sup>42</sup>

This was a historic ruling. Never before had the judiciary acknowledged the legitimacy of an indigenous organization to present claims to the country’s highest court. As indigenous attorney and anthropologist Eloy Terena put it, “for the first

time, indigenous [peoples] come to the judiciary in their own name.”<sup>43</sup> By early 2021, the Bolsonaro administration had already submitted several versions of the required action plan: all of them were rejected by the STF because they were deemed inadequate and because the government kept “putting the lives and health of indigenous peoples at risk.”<sup>44</sup>

In pragmatically advancing the indigenous cause (as duly mandated by the Constitution) during the pandemic, the court once again tactically assessed the political impact of its stance. It certainly did not escape the justices that claims of the vulnerable indigenous peoples were supported by a strong social and media mobilization and that President Bolsonaro was already being cast internationally as inciting genocide.<sup>45</sup> Newly emboldened, Amazonian indigenous leaders have since filed a new case against Bolsonaro before the International Criminal Court.<sup>46</sup>

### *Neoliberal values and judicial populism*

The court’s conservative slant toward prisoners is aligned with the neoliberal consequentialist reasoning embraced by most justices when adjudicating cases related to socioeconomic rights. During the pandemic, this was clearly visible when the majority sided with the Bolsonaro administration’s policies that allowed the reduction of wages and the suspension of contracts without the acquiescence of labor unions (ADI 6.342 and ADI 6.363).<sup>47</sup> According to Justice Luiz Fux, “In situations of serious crisis, the Supreme Court is required to act in a manner marked by the precepts of prudence, deference to technical judgments made by other powers and consequentialism, understood as an attempt to foresee the systemic consequences of a given decision before it is made.”<sup>48</sup>

In her dissenting vote, Justice Carmen Lúcia laid bare the exclusionary neoliberal underpinnings of such a ruling:

*We are not talking about the ideal here. We are talking about sticking to constitutional principles that allow us to interpret them in such a way as to ensure the value of labor and of workers. If you lose your job, it may have yet another consequence ...*

*you may not be able to socially isolate as you will go out looking for a job. That's what life is, that's what guarantees the survival of each person, especially those most socially vulnerable.*<sup>49</sup>

The acknowledgement of the relationship between economic position and vulnerability to infection (and severe illness) during public health emergencies has been absent not only in the majority view of Brazil's Supreme Court but also in many (if not most) countries, and has been granted insufficient attention in normative human rights standards.<sup>50</sup> As noted by Leonard Rubenstein and Matthew Decamp, the vulnerability of essential workers is inadequately considered under article 4 of the International Covenant on Economic, Social and Cultural Rights, in the Committee on Economic, Social and Cultural Rights' General Comment 14 on the right to the highest attainable standard of health, and in the Siracusa Principles—all of which fail to envision circumstances where exceptions to restrictions on rights (such as the right to movement) risk health rather than protect it.<sup>51</sup> In these cases, individuals such as essential workers who are *not* subject to rights restrictions may need equal or greater support from the government than those under lockdowns or state-imposed quarantines.

### *Anticipating the war over vaccines*

The Supreme Court's stance on COVID-19 vaccination is emblematic of its ability to both counteract the Bolsonaro administration's (in)actions and shape the political game to come (albeit not substantially altering the lagging federal policy). In December 2020, the Supreme Court ruled by a vast majority (10 to 1) that compulsory vaccination is constitutional and that it can be carried out by any sphere of government. The court swept aside concerns about informed consent and bodily autonomy and rejected the reasoning of unconstitutionality presented by the center-right party Partido Trabalhista Brasileiro (a supporter of the Bolsonaro administration) in ADI 6.587. Instead, the STF agreed with the local governance and public good arguments presented by the left-leaning Partido Democrático Trabalhista in ADI 6.586.<sup>52</sup> While consolidating the biopolitical authority of

states, municipalities, and the federal district (in line with the legislature's first pandemic decentralizing ruling), the court also reinforced its image of relying on scientific principles and exposing right-wing appropriation of human rights language. This said, the vaccination ruling basically reinforced the compulsory elements of the country's celebrated mass child-immunization campaigns of the past four decades.<sup>53</sup>

The Supreme Court's techno-judicial authority has certainly been strengthened through the political war over immunization. Since December 2020, the STF has been flooded with vaccination-related lawsuits and has ruled, for example, that states and municipalities could purchase vaccines even if these had not been authorized by ANVISA (Brazil's National Health Surveillance Agency).<sup>54</sup> Given the president's and his allies' campaign to discredit vaccines, the rulings on these lawsuits sharpened the antagonism between the judiciary and *bolsonarism* at large.

Interestingly, the court anticipated—and, to a certain extent, choreographed—this clash. As early as October 2020, the STF began to signal that it would be acting on the COVID-19 vaccination question. Attuned to a growing societal polarization over the value or danger of immunization (as fomented by President Bolsonaro and his cronies), Chief Justice Luiz Fux then told journalists: “Mark my words: there will be a judicialization of vaccination, and I think that this is a necessary thing.”<sup>55</sup> According to Fux, the issue should be settled by the STF because the court is the most important institution for guaranteeing the country's *segurança jurídica* (i.e., legal transparency, stability and predictability). The court's move therefore sought to both impede the authoritarian erosion of the rule of law and engender new rules for the political field (at a time when the vaccines themselves had not yet materialized). This anticipatory *modus operandi* created the conditions for new confrontations and political repositioning. In the wake of the government's disastrous handling of vaccination planning and vaccine production and distribution, there has been a significant drop in the government's approval rating and there are growing calls

for the president's impeachment. This said, the effectiveness of this anticipatory action by the Supreme Court (seen by many as rushed) is also quite limited, since an effective vaccination plan needs a centralized purchase and distribution process to gain scale.

## Conclusion

Worldwide, governments have reacted to the COVID-19 pandemic with emergency orders and policies restricting the rights to movement, assembly, and education that have impacted people's daily lives and livelihoods in profound ways. These include lockdowns, stay-at-home orders, and restrictions on public gatherings, schools, restaurants, and other business. These orders sometimes include harsh criminal sanctions and police or military enforcement. Some of them have been arbitrary or opportunistic, such as by lifting or loosening environmental regulations or restricting access to sexual and reproductive health and rights (including access to abortion and contraception).<sup>56</sup> Only some of the myriad impacts on physical and mental health from these actions have been documented; the full consequences will undoubtedly be significant and concentrated in already vulnerable and marginalized communities.

Recognizing the potential for harm from restrictions on human rights in times of emergency, international law requires that such restrictions be considered in relation to key standards, as codified in the Siracusa Principles. However, this task requires an ability to foresee specific harms that may be hard to assess or inconvenient to political expediencies. Courts therefore serve an important role in checking the potential for abuses during such emergencies, when fear of a serious and poorly understood emerging infectious disease may cause overreaction and a discriminatory or indiscriminate trampling of rights. Complementing this role of checking abuses resulting from emergency responses that restrict rights is the responsibility of courts to uphold the right to health and the state's obligation to implement evidence-based prevention and treatment and to ensure that vulnerable popu-

lations are protected.

During the COVID-19 crisis in Brazil, most of the Supreme Court's actions have been in tension with the executive (both confronting some of its omissions and decentralizing its authority). The STF has acted to support states and municipalities in their desire to implement prevention measures and has blocked the Bolsonaro administration from interfering with such efforts. These legal actions can be seen as a necessary (but insufficient) corrective to ongoing necropolitics and also as a minimal counterpoint to the president's efforts to undermine democratic processes. Importantly, the court has not been consistent in its interventions in support of the right to health, for it has upheld the rights of indigenous people while simultaneously choosing not to act on behalf of prisoners or essential workers. In these instances, the Supreme Court can be seen as less concerned with the rights guaranteed in the Constitution and international treaties and more mobilized by a political project of its own, which includes its self-preservation in the face of constant attacks by the executive and by right-wing forces associated with it.

In sum, the widespread judicialization of COVID-19 has provided the Supreme Court an opportunity to strengthen its capacity to confront and rectify the executive's governing failure, while also supporting its own efforts to concentrate greater power. In the lawsuits analyzed in this initial study, the STF acted assertively to prohibit the federal executive from superseding state and local authority—whether related to the implementation of public health control measures (lockdowns), control of vital means for treatment (ventilators), or vaccination policy. Further, the court ruled on which populations at high risk of COVID-19 got relief and which did not, thus reinforcing the STF's authority as a kind of commander-in-chief on various fronts. Most of the actions of the court have, in fact, been to the detriment of the executive, both confronting its omission and directly shaping the agenda of governance during the pandemic (*realpolitik* with the legislature and at times exacerbating the overall policymaking chaos).<sup>57</sup> In this way, the STF has expanded its role as a check

on federal executive power. This growing authority of the Supreme Court has been recognized and supported by various social, political, and economic actors (from marginalized groups to political parties and corporations). In other words, the justices seem well aware that politics today depends on judicialization and, ultimately, on the STF.

As Brazil faces the perfect storm involving an intersection of public health, economic, and political crises, the STF is forging ahead in a forceful and cunning fashion (oscillating between progressive imperatives, neoliberal valuations, and conservative decisions), orchestrating the political field, and probing the plasticity of the separation of powers and the limits of constitutionality. The court is thus extending the exercise of its core functions to actual governance, with wide-ranging political impact and uneven sociomedical outcomes (as the court only tangentially and strategically addresses unpopular causes that speak to the country's historical inequalities).

The Supreme Court has indeed become a decisive political locus: not only for the deliberations and decisions of other justices or other powers but for any biopolitical impasse during the unfolding calamity. Amidst cries of "supremocracy" and increasing judicialization, the right course of action to check Bolsonaro's necropolitics remains undetermined. While the court opens up a distinct legal-political maneuvering vis-à-vis authoritarianism during the pandemic, the capacity of the judiciary to significantly address Brazil's precarious infrastructures of care, and to robustly advance human rights protections, remains to be seen.

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