Revista ARACÊ
ISSN: 2358-2472

PARADOXICAL LAW NO. 14,197/2021: A STUDY ON THE POLITICAL AND LEGAL CONTRADICTIONS IN THE DEFENSE OF THE DEMOCRATIC RULE OF LAW AND THE ACCOUNTABILITY OF ITS SIGNATORIES

A PARADOXAL LEI Nº 14.197/2021: UM ESTUDO SOBRE AS CONTRADIÇÕES POLÍTICO-JURÍDICAS NA DE-FESA DO ESTADO DEMOCRÁTICO DE DIREITO E A RESPONSABILIZAÇÃO DE SEUS SIGNATÁRIOS

LA PARADÓJICA LEY N.º 14.197/2021: UN ESTUDIO SOBRE LAS CONTRADICCIONES POLÍTICO-JURÍDICAS EN LA DEFENSA DEL ESTADO DEMOCRÁTICO DE DERECHO Y LA RESPONSABILIDAD DE SUS SIGNATARIOS

https://doi.org/10.56238/arev7n11-141

Submission date: 10/13/2025 **Publication Date:** 11/13/2025

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ABSTRACT

Law No. 14,197/2021, known as the Law for the Defense of the Democratic Rule of Law, replaced the former National Security Law, aligning the defense of the democratic state with the guarantees established in the 1988 Constitution and defining crimes such as coup d'état and violent abolition of the democratic order. The first high-profile criminal case based on this law demonstrates that the relevance of the issue goes beyond the technical sphere, as the very signatories of the statute were later convicted under its provisions, generating a political and legal paradox. This study aims to investigate the political and legal reasons that led to the en-actment of the law, despite evidence that its signatories were already involved in actions aimed at undermining the democratic order. The research employs a qualitative methodology, combining documentary analysis and a case study of Criminal Action No. 2,668, drawing on legislative, jurisprudential, and doctrinal sources, and grounded in the theories of abusive con-stitutionalism (David Landau) and legal autopoiesis (Niklas Luhmann). The results show that the legislative process of Law No. 14,197/2021 was marked by political contradictions and self-protective strategies by those involved but ultimately strengthened the democratic framework and reaffirmed the Judiciary's role as guardian of the Constitution. The study con-tributes to understanding how law can function simultaneously as an instrument and a barrier to authoritarianism, highlighting the importance of effective normative mechanisms for the protection of the Rule of Law. Examining this topic is essential for consolidating democratic culture, refining the boundaries between politics and justice, and

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Revista ARACÊ
ISSN: 2358-2472

preventing the use of consti-tutional norms for antidemocratic purposes. Furthermore, the study reveals the strategic use of legal instruments by groups in power and encourages an analysis of the effectiveness of the norms intended to safeguard the Democratic Rule of Law, as well as the legal and political consequences of distorted interpretations of Article 142 of the Federal Constitution.

Keywords: Abusive Constitutionalism. Autopoiesis. Criminal Law. Politics and Power. Attempted Coup of January 8th. Brazilian Democracy.

RESUMO

A Lei nº 14.197/2021, chamada Lei de Defesa do Estado Democrático de Direito, substituiu a antiga Lei de Segurança Nacional, harmonizando a defesa do Estado democrático às garantias previstas na Constituição de 1988 e tipificando crimes como golpe de Estado e abolição vio-lenta da ordem democrática. A primeira ação penal de grande repercussão baseada nesta lei demonstra que a relevância do tema ultrapassa o aspecto técnico, pois os próprios signatários da norma foram condenados pelos crimes nela previstos, gerando um paradoxo político e jurí-dico. O presente estudo tem por objetivo investigar as razões políticas e jurídicas que levaram à sanção da referida lei, mesmo diante de indícios de que seus próprios signatários articulavam ações voltadas à ruptura da ordem democrática. A pesquisa adota metodologia qualitativa, com abordagem documental e estudo de caso da Ação Penal nº 2.668, valendo-se de análise legislativa, jurisprudencial e doutrinária, fundamentada nas teorias do constitucionalismo abu-sivo (David Landau) e da autopoiese do direito (Niklas Luhmann). Os resultados evidenciam que o processo legislativo da Lei 14.197/2021 foi marcado por contradições políticas e estraté-gias de autoproteção dos agentes envolvidos, mas acabou fortalecendo o ordenamento demo-crático e o papel do Judiciário como guardião da Constituição. O trabalho contribui para com-preender como o direito pode ser simultaneamente instrumento e barreira ao autoritarismo, revelando a importância de mecanismos normativos eficazes de defesa do Estado de Direito. O estudo dessa temática é essencial para consolidar a cultura democrática, aprimorar os limites entre a política e a justiça e prevenir o uso de normas constitucionais para fins antidemocráti-cos. Ademais, o estudo evidencia o emprego estratégico de instrumentos legais por grupos de poder e suscita uma análise sobre a efetividade das normas destinadas à preservação do Esta-do Democrático de Direito, bem como sobre as consequências jurídicas e políticas das inter-pretações desviantes do art. 142 da Constituição Federal.

Palavras-chave: Constitucionalismo Abusivo. Autopoiese. Direito Penal. Política e Poder. Tentativa de Golpe de 8 de Janeiro. Democracia Brasileira.

RESUMEN

La Ley N.º 14.197/2021, conocida como la Ley para la Defensa del Estado Democrático de Derecho, sustituyó la antigua Ley de Seguridad Nacional, alineando la defensa del Estado democrático con las garantías establecidas en la Constitución de 1988 y definiendo delitos como el golpe de Estado y la abolición violenta del orden democrático. El primer caso penal de alto perfil basado en esta ley demuestra que la relevancia del tema trasciende el ámbito técnico, ya que los propios firmantes del estatuto fueron posteriormente condenados en virtud de sus disposiciones, generando un paradoja política y jurídica. Este estudio tiene como objetivo investigar las razones políticas y jurídicas que llevaron a la promulgación de la ley, a pesar de la evidencia de que sus firmantes ya estaban involucrados en acciones destinadas a socavar el orden democrático. La investigación emplea una metodología

Revista ARACÊ
ISSN: 2358-2472

cualitativa, combinando análisis documental y un estudio de caso de la Acción Penal N.º 2.668, basándose en fuentes legislativas, jurisprudenciales y doctrinales, y fundamentándose en las teorías del constitucionalismo abusivo (David Landau) y la autopoiesis jurídica (Niklas Luhmann). Los resultados muestran que el proceso legislativo de la Ley N.º 14.197/2021 estuvo marcado por contradicciones políticas y estrategias de autoprotección por parte de los involucrados, pero finalmente fortaleció el marco democrático y reafirmó el papel del Poder Judicial como guardián de la Constitución. El estudio contribuye a la comprensión de cómo el derecho puede funcionar simultáneamente como instrumento y como barrera frente al autoritarismo, destacando la importancia de mecanismos normativos eficaces para la protección del Estado de Derecho. Examinar este tema es esencial para consolidar la cultura democrática, refinar los límites entre política y justicia, y prevenir el uso de normas constitucionales con fines antidemocráticos. Además, el estudio revela el uso estratégico de instrumentos jurídicos por parte de grupos en el poder y fomenta un análisis sobre la efectividad de las normas destinadas a salvaguardar el Estado Democrático de Derecho, así como las consecuencias jurídicas y políticas de interpretaciones distorsionadas del Artículo 142 de la Constitución Federal.

Palabras clave: Constitucionalismo Abusivo. Autopoiesis. Derecho Penal. Política y Poder. Intento de Golpe del 8 de Enero. Democracia Brasileña.

Revista ARACÊ
ISSN: 2358-2472

1 INTRODUCTION

On the afternoon of September 11, 2025, the First Panel of the Federal Supreme Court (STF) concluded the vote on Criminal Action No. 2,668, ending one of the most emblematic trials in the country's recent history. The collegiate convicted the eight defendants who made up the so-called Nucleus 1 – or "Crucial Nucleus" – of the scheme articulated to attack the democratic regime, as denounced by the Attorney General's Office (PGR). Among those convicted were Federal Deputy Alexandre Ramagem, former director of the Brazilian Intelligence Agency (Abin); retired Admiral Almir Garnier, former Commander of the Navy; Anderson Torres, former Minister of Justice and former Secretary of Public Security of the Federal District; retired General Augusto Heleno, former Chief of the Institutional Security Cabinet (GSI); Lieutenant Colonel Mauro Cid, former Adjutant of Orders to the then president; the former president of the Republic Jair Bolsonaro himself; retired General Paulo Sérgio Nogueira, former Minister of Defense; and retired General Walter Braga Netto, former Minister of the Civil House and Defense. Seven of the eight defendants were convicted of the crimes of attempted violent abolition of the Democratic Rule of Law (article 359-L of the Penal Code), attempted coup d'état (article 359-M of the Criminal Code), participation in an armed criminal organization, aggravated damage and deterioration of listed property. The most serious criminal types – those that directly concern the integrity of the constitutional order – were introduced into the Brazilian legal system by Law No. 14,197/2021, known as the Law for the Defense of the Democratic Rule of Law, which revoked the old and controversial National Security Law (Law No. 7,170/1983).

The enactment of the new law represented a symbolic milestone in the transition from the authoritarian paradigm, inherited from the military dictatorship, to a penal model consistent with the democratic values enshrined in the 1988 Constitution. By typifying conducts such as the coup d'état and the violent abolition of the Democratic Rule of Law, the legislator sought to replace the logic of "national security" – centered on the protection of the State to the detriment of civil liberties – with the logic of the defense of democracy, oriented to the preservation of institutions and fundamental rights. However, the judgment of Criminal Action No. 2,668 revealed an unprecedented political-legal paradox: the signatories of Law No. 14,197/2021 – the then President of the Republic and his ministers of State – were convicted based on the crimes created by the rule that they themselves had sanctioned. This episode highlights the complex relationships between law and power, revealing how legal

Revista ARACÊ
ISSN: 2358-2472

instruments designed to protect democracy can – and when pertinently violated, should, under certain circumstances, become means of holding their own authors accountable.

The analysis of this context is not limited to the legal dimension of the law: it encompasses the understanding of its political, symbolic, and institutional contradictions, especially with regard to the role of the STF as guardian of the Constitution and the limits of the democratic regime's self-defense in the face of internal threats. In view of this, Law No. 14,197/2021 emerges as a normative framework and as a mirror of the tensions between the legitimacy of political power and the autonomy of law, tensioned at the heart of the Brazilian Democratic State of Law.

The paradox already mentioned raises the central question that guides the present study: why would a government sanction a law that would define as crimes the conducts that its own members would later practice? In other words, what were the political intentions and legal interests underlying the sanction of Law No. 14,197/2021, and how was the legal system able to remain functional in the face of an attempt to subvert the democratic order gestated within it? It is based on the hypothesis that the sanction of the law was not only the result of immediate political calculation: it was, in fact, a strategy of symbolic legitimation – a movement of "abusive constitutionalism" in which democratic language was instrumentalized for authoritarian purposes. At the same time, the subsequent application of the law by the Supreme Court demonstrated the autopoietic resilience of the legal system, capable of reconfiguring its internal mechanisms to respond to the threat.

The general objective of this research is to investigate the political and legal reasons that led to the sanction of Law No. 14,197/2021, even in the face of evidence that the signatories themselves articulated actions aimed at breaking the democratic order in Brazil. To achieve this end, the study seeks to: (i) reconstruct the legislative process that resulted in the repeal of the National Security Law and the enactment of Law No. 14,197/2021; (ii) identify the actors and political interests involved in its approval and sanction; (iii) analyze the penal provisions inserted by the law, especially articles 359-L and 359-M of the Penal Code; (iv) to examine the judgment of Criminal Action No. 2,668, in order to understand how the facts charged relate to the new criminal types created; (v) to investigate the role of the distorted interpretation of article 142 of the Federal Constitution as the ideological basis of coup actions; and (vi) to assess the impacts of the law on the balance between state security and the protection of democratic freedoms.

Revista ARACÊ
ISSN: 2358-2472

To answer these questions, a qualitative methodology is adopted, of an exploratory and analytical nature, based on documentary research and case studies[5]. The study has as its central empirical object the Criminal Action No. 2,668 and uses as primary sources legislative texts, bills, opinions, parliamentary speeches, presidential messages and procedural documents of the STF. The analysis is complemented by doctrinal and jurisprudential research on crimes against the Democratic Rule of Law. The theoretical framework is based on the contributions of David Landau, regarding the notion of *abusive constitutionalism*; Niklas Luhmann, regarding the *autopoiesis of the legal system*; and Pierre Bourdieu, regarding the symbolic dynamics between law and political power. This theoretical triangulation makes it possible to understand how the legal field reacts, resists or accommodates the pressures exerted by power groups.

The relevance of the theme is greater than the normative dimension. The fact that the authors of the law themselves were condemned by the law itself gives the study a singular and problematizing character, allowing us to reflect on the limits between political action and the autonomy of law. From a scientific point of view, the research contributes to the understanding of the ways in which the legal apparatus can be strategically manipulated by governments with authoritarian tendencies, and how the legal system itself can serve as an antidote to such attacks. From a social point of view, the study reinforces the importance of critical citizenship and public control over acts of power, especially in contexts of institutional crisis. From a legal perspective, the work fosters discussions on the effectiveness of the norms for the protection of the Democratic Rule of Law, on the deviant interpretations of article 142 of the Federal Constitution and on the counter-majoritarian role of the STF in the defense of the constitutional order.

Thus, by investigating the political and legal contradictions surrounding the sanction and application of Law No. 14,197/2021, this study proposes a critical reading of the interactions between law and politics in contemporary Brazil. This reflection paves the way

[5] The adoption of this methodology is justified by the complexity of the phenomenon studied, which involves interconnected legal, political and symbolic dimensions. As the research seeks to understand the meanings and intentions surrounding the sanction and application of Law No. 14,197/2021 – and not to measure data – the qualitative approach is the most appropriate to capture discursive and institutional nuances. The exploratory character stems from the novelty of the object, since it examines a singular case in which the signatories of the law themselves were convicted based on it. The analytical bias, in turn, allows for a critical examination of the normative and political elements of the process, going beyond the mere description of the facts. The option for documentary research and the case study of Criminal Action No. 2,668 makes it possible to reconstruct the legislative and judicial path of the norm, based on primary sources – such as bills, speeches and procedural documents –, ensuring coherence between the theoretical framework and the empirical object and allowing a dense reading of the interactions between law and political power (Gil, 2019; Minayo, 2023; Yin, 2015).

Revista ARACÊ
ISSN: 2358-2472

for the theoretical foundation that will follow, focused on the analysis of the concepts of *abusive constitutionalism*, *legal autopoiesis* and *symbolic violence*, as interpretative keys to understand the strategic use of the law within the Democratic State of Law itself.

2 THEORETICAL FOUNDATION

The analysis of the political-legal contradictions that permeate the sanction and application of Law No. 14,197/2021 requires the construction of a theoretical framework capable of articulating law, politics, and power from a critical perspective. The theoretical foundation of this study is therefore based on approaches that allow us to understand both the mechanisms of institutional capture of law by authoritarian agents and the capacity for self-regulation and resistance of the legal system itself. In this sense, it is based on the theory of *abusive constitutionalism*, formulated by David Landau, as a lens to interpret the process of instrumentalization of constitutional norms by governments that seek to undermine democracy from within. In dialogue with this perspective, we also resort to Niklas Luhmann's theory of *the autopoiesis of law*, which makes it possible to understand how the legal system reacts to these attacks, reaffirming its autonomy and functionality even in contexts of political crisis. This theoretical combination provides the basis for a critical reading of the case analyzed, allowing us to interpret Law No. 14,197/2021 as a product of tensions between political and legal rationalities within the Brazilian Democratic State of Law.

2.1 ABUSIVE CONSTITUTIONALISM AND STRATEGIC USE OF LAW

Landau (2013) formulates the concept of abusive constitutionalism, which can be understood as the strategic and distorted use of formal mechanisms of constitutional change – such as amendments and reforms – by autocratic leaders committed to gradually eroding the pillars of the democratic regime. Instead of resorting to military coups or explicit ruptures of the constitutional order, these agents make use of legally legitimized instruments to subvert the democratic system from within, giving the appearance of legality to a process of institutional erosion. As the author observes, it is a dynamic in which the law is manipulated to consolidate authoritarian practices under the cloak of constitutional legitimacy (Landau, 2013, p. 189):

> Since military coups and other blatant disruptions in the constitutional order fell out of favor, actors have begun to reshape the constitutional order with subtle changes in order to make it difficult to remove them and to incapacitate or overwhelm courts and

Revista ARACÊ
ISSN: 2358-2472

> other accountability institutions. The resulting regimes continue to have elections and are not fully authoritarian, but they are significantly less democratic than they were previously. Worse still, the problem of abusive constitutionalism remains largely unsolved, since democratic defense mechanisms, both in comparative constitutional law and in international law, are largely ineffective against it[6].

Landau (2013) states that there are three basic forms of manifestation of abusive constitutionalism: through amendments, reforms and/or the replacement of the Constitution. The author cites as examples the cases of Colombia, Hungary and Venezuela, in which these mechanisms, although formally provided for in the constitutional order of most democratic regimes, were used to defraud their own foundations. Landau acknowledges, however, that such examples "only scratch the surface of what is an increasingly routine occurrence" (Landau, 2013, p. 191). Abusive constitutionalism, according to the author, also has the additional advantage, in relation to traditional coups d'état, of being less perceptible and more difficult to combat, precisely because it operates under the appearance of legality and, thus, hinders the performance of the mechanisms of defense of the democratic regime.

> Abusive constitutionalism is much harder to detect than traditional authoritarian threats. In international law, so-called "democratic clauses" often punish regimes that come to power by unconstitutional means. These clauses are effective in detecting traditional military coups, which are openly unconstitutional, but much less effective in detecting abusive constitutionalism, which uses constitutional or ambiguously constitutional means (Landau, 2013, p. 193).

In this way, Landau (2013) outlines an analytical map that demonstrates how the manipulation of constitutional reforms, aimed at undermining the independence of the Judiciary and restricting *institutional accountability*, creates the risk of consolidating authoritarian regimes by legally legitimate, but democratically corrosive means. Jair Bolsonaro's political performance[7], between 2019 and 2022, shows attempts to

[6] Nothing is closer to the scenario described by Landau (2013) than the discursive manipulation of the constitutional text observed in the recent Brazilian context, especially in the distortion of the meaning of article 142 of the 1988 Federal Constitution, with the aim of attributing to the Armed Forces a supposed and non-existent moderating power. Likewise, the consideration of the decree of a State of Siege, provided for in article 137 of the Constitution, as a means of reversing the result of the polls, illustrates the strategic use of legality to subvert democracy itself. In this case, it is a matter of reinterpreting the constitutional text in such a way as to produce effects contrary to its founding logic, operating an internal corrosion of the democratic order under the guise of its defense.

[7] For a detailed overview of the proposals and declarations of an institutional nature formulated during the Jair Bolsonaro Government, see the Appendix of this work – Chart 1: "Proposals for constitutional and institutional changes defended by Jair Bolsonaro (2018–2022)"; This, in turn, synthesizes the measures and discourses with an impact on the balance between the powers and the Brazilian democratic structure.

Revista ARACÊ
ISSN: 2358-2472

instrumentalize proposals for constitutional amendments – and even to suggest structural changes, such as the expansion of the number of STF ministers or modifications to the federative pact – with the purpose of expanding the power of the Executive and weakening the mechanisms of control and balance between the Branches. Although few of these initiatives have materialized, the strategic use of reformist rhetoric and constitutional reforms as an instrument of political pressure is clearly close to the phenomenon described by Landau as abusive constitutionalism[8].

Hirschl (2004), in turn, develops the thesis of hegemonic preservation, according to which the economic, political and judicial elites seek to protect their interests through a true *institutional collusion*, characterized by the hypertrophy of the judiciary to the detriment of the political power, with the objective of containing projects of social transformation that may threaten their positions of privilege. The author bases his observations on an empirical analysis of the effects of the progressive strengthening of constitutional courts and the expansion of the powers of judges in countries such as Canada, Israel, New Zealand and South Africa, contexts in which the judiciary has assumed a preponderant role in defining public policies and limiting popular sovereignty. In the Brazilian case, a paradigmatic episode of attempted political instrumentalization of the Judiciary – and which had a decisive impact on Jair Bolsonaro's electoral rise – occurred, not in the higher courts, but in the 13th Federal Court of Curitiba, with Operation Car Wash. The illegal and abusive practices promoted by sectors of the Federal Justice itself, in conjunction with members of the Federal Public Prosecutor's Office, unleashed a true political earthquake, which culminated in the *impeachment* of Dilma Rousseff in 2016, the ineligibility of Luiz Inácio Lula da Silva in the 2018 elections and his imprisonment without res judicata, in addition to the banishment of the main traditional political leaders. including the conservative camp. This set of events reconfigured the national political scenario and contributed decisively to Jair Bolsonaro's victory, exemplifying the convergence between judicial power and political interests in the reproduction of a hegemonic order. On this point, Bello, Capela and Keller (2021, p. 52) observe:

> In 2018, Jair Bolsonaro was elected President of Brazil at a time that we understand as part of a context of crisis. This word "crisis" has long since become part of the explanatory lexicon of social problems, sometimes referring to a supposed institutional

[8] Table 1 will show at least nine occasions in which the former president publicly manifested himself, or proposed reforms with a clearly anti-democratic bias.

Revista ARACÊ
ISSN: 2358-2472

> crisis, sometimes dealing with economic disturbances. When we speak of crisis, we are referring more specifically, as explained below, to a "general crisis", both of the Brazilian social formation and – because it is inseparable from it – of the current regime of accumulation in the capitalist mode of production [...] It is in these terms that we maintain that Operation Car Wash not only contributed to the crisis in Brazil, but is also the result of it and an attempt to solve it, or to provide a solution to the accumulation of contradictions that contributed, in the end, to the election of Jair Bolsonaro. We do not understand that the encounter between the process of the rise of Lava Jato and the election of Bolsonaro – or even Bolsonarism – occurred or occurs in a "conscious" way. We do not assume that there was a formal or conspiratorial agreement between persons or groups to achieve this or any other end. This does not mean, in any way, that these agreements do not exist, or that they cannot develop throughout the historical process. For us, for example, it is evident, especially after the revelations of the *Intercept Brasil*, that there was an intention, on the part of the prosecutors of the MPF and Moro, to prevent Lula's candidacy and, consequently, a preference for Bolsonaro.

It should be noted that both the *impeachment* of former President Dilma Rousseff and the imprisonment of Luiz Inácio Lula da Silva followed the ritualistic system of autopoietic legal production[9]. It is not a matter of evaluating the legality/justice of these processes – severely criticized a posteriori, with the annulment of the process in the case of President Lula – but of demonstrating that, as long as they remained anchored in the mechanisms of self-reproduction of the normative system, they were legitimized by the higher courts. The consequence was a profound political-institutional disarray in the conservative field, which resulted in the ascension of an undisciplined former military man and coup plotter to the Presidency of the Republic, dragging with him an anti-democratic elite that became a majority in the Chamber of Deputies, the Federal Senate and in a large part of the Legislative Assemblies[10].

In this context, it is ironic that it was up to the Supreme Court to uphold the "bars of protection of democracy" (Levitsky; Ziblatt, 2018, p. 99) in the face of the threat posed by this

[9] The expression autopoietic legal production derives from Niklas Luhmann's theory of social systems, for whom law constitutes an autonomous system that produces itself through its own operations and internal communications. The term "autopoiesis", originally coined by Maturana and Varela in Biology, designates the capacity of a system to maintain and reproduce itself from its own structure. Applied to the legal field, it means that the law creates and reproduces its norms, decisions and meanings based on its own codes of validity (licit/illicit), reacting to external stimuli – political, economic or moral – without losing its internal coherence. In this way, autopoietic legal production expresses the functional autonomy of law, which, although it interacts with other social systems, maintains the ability to respond to crises and external pressures based on its own criteria, ensuring the continuity and stability of the Rule of Law.

[10] It is noteworthy that, in the current political scenario, parties located on the left of the ideological spectrum, although a minority in the Legislature, assume the most consistent defense of the rule of law and representative democracy, while sectors traditionally identified as conservative, retrograde/traditionalist and/or authoritarian reveal themselves, to a large extent, to be aligned or complacent with coup-like practices.

Revista ARACÊ
ISSN: 2358-2472

coup elite. The distance between the STF and the reactionary political group has been accentuated in recent years, with the court acting to prevent omissions or bar flagrantly regressive legislative initiatives, as seen in the judgments of ADPF 132 and ADI 4277 (2011), on stable unions between people of the same sex; ADI 4275 (2018), regarding the change of name and gender; and ADO 26 and MI 4733 (2019), referring to the criminalization of homophobia. These precedents highlight the current mismatch between the supreme court and the reactionary political elite – especially the legislative one – in Brazil, at the same time that they illustrate the autopoietic functioning of the Judiciary, capable of creating and affirming the law independently of political will and influential "volatilities" over it – that is, a type of normative and interpretative production that is independent of political will and is anchored in an "expert/own" legal rationality, legal and/or constitutional.

This context helps to understand why, since the 2018 election campaign, the entourage of then-candidate Jair Bolsonaro has elected the Supreme Court as the target of recurrent attacks. Elected in close relationship with the political and legal environment shaped by Operation Car Wash, Bolsonaro did not take long to contribute to the weakening of this operation – even though he appointed former judge Sérgio Moro, responsible for conducting it as Minister of Justice – when he perceived in the Judiciary, and especially in the STF, an obstacle to his pretensions of concentration and perpetuation of power. The attempts at political instrumentalization of justice, successful in previous moments by groups that, from strategic positions in the Judiciary and the Public Prosecutor's Office, managed to destabilize governments and influence electoral processes, gave way, in the new scenario, to an unsuccessful attempt to subordinate or neutralize the top of the Judiciary. Not succeeding in co-opting the STF for the project of institutional erosion, the political group in question sought, on the other hand, to undermine its authority and delegitimize the legal system itself – a movement that, paradoxically, evidenced the resilience of law as an autopoietic system (theme of the following item).

2.2 LAW, POWER AND SYMBOLIC VIOLENCE

According to Luhmann (2016), the legal system is structured based on its own internal logic, which maintains communication relations with other social systems – such as morals, politics and economics – without, however, being subordinated to them. Law constitutes, therefore, a self-referential system, characterized by an operational closure – since only law itself is capable of producing law – combined with a cognitive openness, which allows it to

Revista ARACÊ
ISSN: 2358-2472

receive and process stimuli from other social systems. By adapting the biological concept of autopoiesis (*self-production*) to legal theory, Luhmann states:

> Only law itself can say what law is. Thus, the production of structures is engendered in a circular way, since the operations themselves demand structures in order to determine other operations by recursive references. Not only the production of operation by operation, but also, *a fortiori,* the condensation and confirmation of structures by operations that orient such structures are realizations of autopoiesis. It is from this point of view that we will also outline the system of law as a system endowed with a self-determined structure (Luhmann, 2016, p. 28).

It can be concluded, therefore, that law is configured as a closed system endowed with its own dynamics, which allows it to resist attempts at instrumentalization by other social systems. In this sense, law is based on the power structure of the State – unlike a means of domination – as a mechanism for containing behavior and stabilizing normative expectations, preserving its functional autonomy.

Applying Luhmann's theory to the Brazilian context, it is possible to understand the reaction of the Judiciary to the excesses of Operation Car Wash, which promoted the politicization of justice and, consequently, the emptying of the normative power of law, as well as to the attempt at institutional undermining undertaken during the Bolsonaro government. In both cases, there was an institutional response guided by the logic of self-preservation of the legal system, an expression of a political will to maintain an autonomous space of power, even if sustained in the legal system itself – a phenomenon analogous to that described by Streck (1999, p. 43); According to him, in order for us to achieve such a desideratum:

> [...] we need, first, to overcome this normativist paradigm[1], typical of a model (mode of production) of liberal-individualist Law. To this end, it is necessary to understand that - sustaining this liberal-individualist way of producing law - there is a legal field, instituted at the same time as instituting, within which one still works with the perspective that, although the State has changed its appearance, Law follows an a latere path, in spite of the transformations arising from an interventionist State, regulator. This legal field is constituted by a set of all the characters who make, interpret and apply the law, transmit legal knowledge and socialize players who are in the game of the field, within which conflicts give it dynamism, but also maintain it, as a field: the competing players are the ones who compete with each other, but not the field itself; Therefore, the dispute reaffirms and still strengthens the field. All players in a legal field have a certain set of provisions that guide their actions. Such dispositions are drawn through disputes between the field and other social fields and internal conflicts, which constitutes the *habitus* of this field.

Revista ARACÊ
ISSN: 2358-2472

In chapter VII of *Symbolic Power* (2001), entitled "Political Representation – elements for a theory of the political field", Pierre Bourdieu demonstrates how the political field is constituted as a symbolic space of disputes for the legitimacy of representation, in which those who hold the right to speak – and, therefore, to represent – and those who remain relegated to the condition of represented are simultaneously defined. This distinction is based on the asymmetry of symbolic and cultural capitals that structure the political field, making categories such as "the people", "the workers" or "the good citizens" operate as empty signifiers, devoid of intrinsic meaning and mobilized according to the strategies of those who claim the power to name and speak on behalf of the collective. In this way, politics reveals itself as a form of institutionalized symbolic violence, in which discursive authority is socially recognized and, for this very reason, capable of producing realities and naturalizing hierarchies. In light of this theory, it is possible to understand how Bolsonaro's discourse appropriated different symbolic capitals – military, religious, and economic – to articulate a heterogeneous social base around an authoritarian narrative.

By exploiting the *habitus* of certain groups – especially low-ranking military personnel, truck drivers, businessmen, and segments of agribusiness – Bolsonarism mobilized values associated with order, hierarchy, morality, and meritocracy, transforming them into instruments of political legitimation. The success of this strategy was linked to the ability to convert moral representations into resources of power, reinforced by the systematic use of disinformation and messianic rhetoric, which elevated Jair Bolsonaro to the symbolic status of a "myth". This process illustrates, in a paradigmatic way, the functioning of the political field as a space of production and dispute of meanings, in which the manipulation of symbolic capitals and social dispositions reinforces political domination under the appearance of democratic representation. Associated with this, it was found that the need to use lies as a political weapon explains the partial veto of Law No. 14,197, in order to continue the massive use of misleading communication, to ensure the maintenance of symbolic capital, social recognition of authority or legitimacy – which Bolsonaro mobilized to raise religious, moral, and military capital as a way to validate his discourse.

Thus, based on Pierre Bourdieu's theoretical foundation, the political field can be understood as a space of symbolic disputes in which different agents seek to impose their legitimate representations of the social world. In this context, the Bolsonarist far right has managed to consolidate a particular – and, from Bourdieu's perspective, *illegitimate* – vision of politics, reinterpreting it from religious, moral, and patriotic foundations. This symbolic

Revista ARACÊ
ISSN: 2358-2472

redefinition of the political field was expressed through a symbolic violence that manifested itself in the imposition of new meanings and values, capable of leading the dominated to recognize as legitimate the discourse that oppresses them. It is, therefore, a central mechanism for the naturalization of authoritarianism, in which the language and symbols of power operate to transform political domination into apparent consensus.

The strength of the far-right's coup discourse lay in (i) its capacity for persuasion and (ii) its mobilizing character, recognized and validated by the group of supporters itself as an expression of a common truth. Such discourse, sustained by the rhetoric of morality, patriotism and the threat to freedom, became a structuring element of the attempt at democratic rupture. In this sense, the complaint filed by the Attorney General's Office shows that the unfounded allegations of electoral fraud played a decisive role in the articulation of the coup attempt, functioning as a symbolic device of cohesion and internal legitimation of the movement; in other words, the PGR's complaint attests that the lies about electoral fraud were of capital importance in the mobilization of the coup attempt:

> It was enough to maintain the moral and material support for the demonstrators to materialize the inevitable violent outcome. Exclude the contributions of the criminal organization and 01.08.2023 would not even have been considered. The leader praised by the protesters was JAIR BOLSONARO and the agenda defended was the result of his insistent and repeated discourse of radicalization, based on fantasies about fraud in the electronic voting system and unfair disbelief in the fairness of constitutional powers, exactly along the same lines as the narrative built and propagated by the criminal organization (Brasil/STF, 2025, p. 37).

It should also be noted that the same *political habitus* that favored the adhesion of a significant portion of the far-right militancy to the coup movement also acted as a factor of division within the legal-political elite itself, whose internal tensions culminated in the approval of Law No. 14,197/2021 and, later, in the collapse of the authoritarian project. This dynamic shows how structured dispositions of perception and action – guided by values of hierarchy, order and morality – can operate both as instruments of cohesion and fragmentation in the political field[11]. The analysis of these processes and their institutional developments will be

[11] This dynamic shows how structured dispositions of perception and action – guided by values of hierarchy, order and morality – can act simultaneously as instruments of cohesion and fragmentation in the political field. In the light of Bourdieu's theory, such dispositions reflect the dialectical character of *habitus*, understood as *a structuring structure predisposed to become a structured structure*. In other words, they are schemes of perception and social practice that, while being products of the objective conditions of a field, reproduce and reinforce the same structures that originated them. In this way, the political behavior of certain groups – whether of adhesion or rupture – reveals how the *habitus* preserves its structuring force by transforming internalized

Revista ARACÊ
ISSN: 2358-2472

deepened later in the third section of this study; from now on, it will be examined how the symbolic and political dispositions discussed in the light of Bourdieu manifest themselves in the narrative disputes around the interpretation of article 142 of the FC, especially in the context of its rhetorical use as a basis to legitimize authoritarian pretensions.

2.3 INTERPRETATION OF ARTICLE 142 CF AND NARRATIVE DISPUTES

The millennial Platonic lesson – presented in the writings of *The Republic*, especially in Books IV and IX – proposes the agreement between institutional functions and limits as a condition of justice and political stability[12]. This foundation has been systematically neglected by the Brazilian military since the end of the Empire, whose recurrent interference in the political sphere broke with the principle of functional specialization of power. Such a mismatch is materialized, as Fico (2025) observes, in the persistence of a corporate mentality that claims for the Armed Forces a tutelary role over civilian life – an interpretation that, by projecting itself onto article 142 of the Federal Constitution, contributed to the symbolic legitimation of authoritarian discourses in contemporary Brazil.

> [...] to show that all Brazilian political crises characterized by the rupture of constitutional legality (I will call them 'institutional crises') were caused by the military. [...] The Brazilian Army has always disrespected democracy. The Armed Forces violated all the constitutions of the Republic. Rebellions against legitimate decisions; uprisings motivated by corporatism; coups d'état and coup attempts. Indiscipline and subversion marked the trajectory of the military in Brazil. They have been responsible for all the institutional crises of the country since the Proclamation of the Republic and have never been effectively punished. This military interventionism expresses the institutional fragility of Brazilian democracy to this day - as has been evident in recent years (Fico, 2025, p. 96).

Fico (2025) also demonstrates that the notion of a moderating power to be exercised by the Armed Forces was born with the wording given to article 14 of the 1891 Constitution, which attributed to the military establishment a power of tutelage over the Brazilian State:

dispositions into concrete/effective/real actions, capable of reconfiguring power relations and the very functioning of institutions.

[12] Similarly, Montesquieu's modern formulation, presented in his work *The Spirit of the Laws* (2000), establishes that political freedom and the stability of the State depend on the separation and balance between the legislative, executive and judicial powers. For the French political scientist, power naturally tends to abuse, and only the counterbalance between state functions is capable of limiting arbitrariness and preserving the republican order. In this way, each power must act within its own competences, in a regime of controlled interdependence, in which none can override the others. This conception has become one of the foundations of modern constitutionalism, guiding the institutional organization of democratic regimes and serving as a theoretical basis for the contemporary idea of checks and balances.

Revista ARACÊ
ISSN: 2358-2472

> [...] Article 14 – The land and sea forces are permanent national institutions, destined to the defense of the Homeland abroad and to the maintenance of laws in the interior. [...] The armed force is essentially obedient, within the limits of the law, to its hierarchical superiors and obliged to sustain constitutional institutions (Brasil, 1981).

Several authors – such as Fernando Henrique Cardoso, José Murilo de Carvalho, José Honório Rodrigues and Eugênio Gudin – recognize in the Brazilian Army, at that time, the only historically structured force to exercise political and repressive power (Fico, 2025, p. 113). This characteristic has been consolidated since the formation of the Republic, when the constitutional provision that instituted the role of the Armed Forces, designed to be transitory and exceptional, ended up becoming a kind of "serpent's egg" of national politics. This mechanism, originally designed to guarantee institutional stability, gave rise to a persistent anti-democratic spirit and an interventionist military doctrine, whose permanence crosses different regimes and constitutional crises to the present. To this anti-democratic spirit are added the contempt for politics and the self-understanding of the military as a member of an upper caste, in contrast to civil society, perceived as weak, disorganized and morally inferior. This perception reinforced a corporative and tutelary ethos that made it impossible, throughout republican history, to fully consolidate the subordination of military power to civilian power. In this sense, as Samuel Huntington (1981, p. 453) warns, the central dilemma of the modern State does not lie in the armed insurgency: it lies in the very relationship between the military specialist and the civilian politician: "[...] the problem in the modern state is not the armed revolt, but the relationship between the specialist and the politician. The cleavage between the military and civilian spheres and the resulting tension between the two are phenomena of clearly recent origin."

The work of Samuel Huntington, an unsuspected author of progressive tendencies, is part of the collection of libraries in Brazilian military schools and is mandatory reading in graduate courses and higher defense studies. However, the principle of subordination of military power to civilian power, which constitutes the core of his theory and is a cornerstone of contemporary liberal democracies, has been repeatedly neglected by the Armed Forces in Brazil. Part of its members, in anachronistic and biased interpretations of article 142 of the Federal Constitution of 1988, began to use it as an ideological foundation to justify actions and discourses of an anti-democratic nature, distorting its nature as an administrative device aimed at the defense of the Homeland and the guarantee of constitutional powers, under civil authority.

Revista ARACÊ
ISSN: 2358-2472

This hermeneutic distortion was illustrated in an emblematic way by the dialogue revealed by Minister Gilmar Mendes, of the STF, with the then Commander of the Army, General Eduardo Villas Bôas, in 2018, when the military questioned whether the interpretation that "the true arbiter in constitutional terms, including being able to arbitrate conflict between the Supreme Court and Congress, is us, the Armed Forces". The minister's response was incisive: such an interpretation would correspond to the "hermeneutic of the bayonet" (Sadi, 2018). The episode illustrates Luhmann's concept of operational closure of the legal system, according to which the law does not recognize as legitimate any attempt at external interference – even if supported by threats of force – preserving its communicative autonomy. Despite the public refutation and the institutional embarrassment, the military leadership maintained the discourse of constitutional protection, to the point of arising, ironically, a "school of military constitutional law".

In response to this movement, the Brazilian Labor Party (PTB) filed, in 2020, the Direct Action of Unconstitutionality (ADI) 6,457, questioning Complementary Law No. 97/1999, which regulates article 142 of the Constitution. In the decision rendered on June 12, 2020, the plenary of the STF, unanimously, rejected any interpretation that attributed to the Armed Forces the power to intervene in the other Branches of the Republic, reaffirming the constitutional principle of military subordination to the civilian power; *ex positis*, observing the premises:

> adopted in this decision, (article 5, paragraph 1, of Law No. 9,882/1999), I partially uphold the requested preliminary injunction, ad referendum of the Plenary of this Supreme Court, in order to confer an interpretation in accordance with articles 1, caput, and 15, caput and paragraphs 1, 2 and 3, of Complementary Law 97/1999 and to establish that: (i) The institutional mission of the Armed Forces in the defense of the Homeland, in the guarantee of constitutional powers and in the guarantee of law and order does not accommodate the exercise of moderating power between the Executive, Legislative and Judiciary powers [...] (Brazil/STF, ADI 6.457, 2020, p. 26)

Despite the clarity of the STF's decision in ADI 6,457, the significant involvement of military personnel in the events that culminated in Criminal Action No. 2,668 shows the persistent non-conformity of part of the Armed Forces with the normative limits imposed by the Democratic Rule of Law. The criminal actions found in the process – which followed that decision and were consummated in the acts of January 8, 2023 – demonstrate that significant segments of the military corporations continue to perceive themselves as instances of guardianship and safeguarding of the nation, in direct affront to the constitutional logic of

Revista ARACÊ
ISSN: 2358-2472

subordination to the civilian power. Such behavior reveals the permanence of a self-referential political-military habitus, which naturalizes intervention in the political sphere as a moral and patriotic duty, even on the margins of legality.

Once again in republican history, this Brazilian military "worldview", based on the belief that it is up to the Armed Forces to preserve national order and values, paved the way for the attempt to abolish the democratic order. The result is eloquent: of the thirty-four indicted in Criminal Action No. 2,668, twenty-three are military or former military personnel, which illustrates the depth of this mentality within the structures of the State. This empirical data (i) proves the continuity of the interventionist ethos within the Armed Forces and (ii) evidences the tension between the military and the legal fields, at a time when the law – as an autopoietic system – reaffirms its autonomy in prosecuting and condemning those who, paradoxically, claimed for themselves the role of guardians of the Constitution.

3 LAW NO. 14,197/2021 IN THE BRAZILIAN LEGISLATIVE PROCESS

The enactment of Law No. 14,197/2021, known as the Law for the Defense of the Democratic Rule of Law, marked a turning point in the Brazilian legal system, as it sought to reconcile the protection of democratic institutions with the fundamental guarantees provided for in the 1988 Constitution. Its genesis is closely linked to the need to overcome the authoritarian legacy of the National Security Law (Law No. 7,170/1983), whose anachronistic permanence symbolized the resistance of normative structures inherited from the military regime. Understanding the legislative process that led to its repeal is necessary to identify the continuities and ruptures that characterize the evolution of political criminal law in contemporary Brazil.

3.1 REPEAL OF THE NATIONAL SECURITY LAW

Law No. 7,170, of December 14, 1983, enacted in the throes of the military regime, replaced Decree-Law No. 314, of March 13, 1967, after intense mobilization of civil entities and political parties, especially the Brazilian Bar Association (OAB). Despite having emerged under the discourse of adapting to the democratic aspirations of the period of political opening, the new law maintained, to a large extent, the ideological assumptions of the doctrine of national security, which had legally sustained the authoritarian regime. Such continuity was expressed, above all, in the broad typification of political conduct as crimes against the State and in the attribution of competence to the Military Justice of the Union to

Revista ARACÊ
ISSN: 2358-2472

prosecute and judge such crimes. This prerogative represented a direct reaction to the emerging guarantee of the STF, which, even under strong institutional restriction, sought to contain the systematic violations of human rights committed by the State. In addition, item III of article 1 of the aforementioned law provided for the protection "of the person of the heads of the Powers of the Union", a provision that, by personalizing criminal protection, opened space for the criminalization of criticism and manifestations of political dissent – a mechanism that would be reactivated decades later, during the government of Jair Bolsonaro.

Pressures for the repeal of the National Security Law intensified proportionally to the increase in its use as an instrument of political persecution. During the Bolsonaro administration, the legal provision – designed for a context of exception – was reinterpreted and mobilized against opponents, journalists, and critical citizens, in a clear affront to democratic pluralism and freedom of expression. According to Senator Rogério Carvalho (PT-SE), rapporteur of Bill No. 2,108/2021 in the Federal Senate, the number of investigations initiated based on the National Security Law grew exponentially from 2019 onwards, reaching 51 records in 2020 alone (Agência Senado, 2021). This practice reinforced the perception that the permanence of the rule represented a legal anachronism and a risk to the democratic order, driving the legislative movement that would culminate in the approval of Law No. 14,197/2021 – a symbolic milestone in the replacement of authoritarian logic by the democratic protection of the rule of law. The National Security Law was forgotten when, in recent times:

> [...] was recovered from the bottom of the drawer and was promoted by the current government as the preferred instrument of silencing. There were several attempts to silence criticism, with actions against influencer Felipe Neto and cartoonist Aroeira, and not only against them. Many other journalists and protesters were targets of political persecution supported by a diploma from the time of the dictatorship[13] (SENADO, 2021).

Thus, it is deeply paradoxical that the abusive use of the National Security Law (Law No. 7,170/1983) – carried out precisely by the political group that most benefited from its

[13] Empirical data reinforce this finding. According to a survey carried out by the newspaper *Folha de S. Paulo*, the number of investigations initiated based on the National Security Law increased exponentially during the Bolsonaro government, jumping to 77 procedures between 2019 and 2020, while in previous years, the records were significantly lower – 19 in 2018, 5 in 2017, 7 in 2016 and 13 in 2015. These numbers illustrate the systematic and selective use of legislation as an instrument of political repression and intimidation of opponents, confirming the anachronistic and authoritarian character of the norm and highlighting the urgency of its replacement by a legal framework compatible with the Democratic Rule of Law (see Pontes, 2021).

Revista ARACÊ
ISSN: 2358-2472

existence and had the greatest interest in preserving it – was the determining factor in its repeal. The repeated use of authoritarian provisions of this law, as an instrument of intimidation and silencing of opponents, ended up publicly exposing its anachronistic character and incompatible with the constitutional order of 1988, provoking a strong reaction from civil society, Parliament and democratic institutions. It is equally emblematic that Bill No. 2,462/1991, authored by Federal Deputy Hélio Bicudo (PT-SP) – whose purpose was to replace that "authoritarian rubble" inherited from the military regime – has remained dormant for almost three decades in the National Congress.

In this long interval, six presidents of the Republic succeeded each other in office without resorting to the old law to persecute political opponents. It was only under a government with an autocratic tendency that, unintentionally, an institutional advance was produced towards the strengthening of the Democratic Rule of Law. In view of this, the same movement that sought to restrict freedoms ended up precipitating the legislative process that led to Law No. 14,197/2021, converting an authoritarian gesture into a paradoxically emancipatory result.

3.2 PENAL PROVISIONS (ARTICLES 359-L AND 359-M OF THE CP)

By repealing Law No. 7,170/1983, widely criticized for its authoritarian bias and incompatibility with the 1988 Federal Constitution, the legislator sought to integrate the new criminal types into the common Penal Code, signaling the intention to submit the protection of the Democratic Rule of Law to the ordinary logic of criminal law, and not to a regime of exception. This reformulation resulted in the creation of Title XII – Crimes Against the Democratic Rule of Law, which covers arts. 359-I to 359-T of the Penal Code, distributed in six chapters. Among them, Chapter II stands out, relating to crimes against democratic institutions, especially arts. 359-L (violent abolition of the Democratic Rule of Law) and 359-M (coup d'état). Both provisions have as their core the verb "to try", which reveals the legislative option to punish the act of simple attack against the democratic regime, regardless of the production of the result. This normative construction evidences the formal character and concrete danger of the criminal types in question, in which the unjust is consummated with the very conduct of attack on institutions, reflecting the legislator's concern to anticipate criminal protection in the face of threats to the constitutional order. With regard to the crimes of attempted violent abolition of the democratic order and coup d'état, the Penal Code (Decree-Law No. 2,848/1940), in its article 359-L, typifies the crime of "attempting, with the

Revista ARACÊ
ISSN: 2358-2472

use of violence or serious threat, to abolish the Democratic Rule of Law, preventing or restricting the exercise of constitutional powers", imposing a penalty of imprisonment of four to eight years, in addition to the penalty corresponding to the violence employed. Article 359-M, on the other hand, defines the crime of coup d'état as "attempting to depose, by means of violence or serious threat, the legitimately constituted government", providing for a penalty of imprisonment of four to twelve years, also cumulated with the sanction related to the violence committed (Brasil, 1940).

Despite apparent similarities, the crimes provided for in arts. 359-L and 359-M of the Penal Code differ substantially as to the protected legal interest and the core of the typical conduct. The offense described in article 359-L is configured when there is an attempt to abolish, by means of violence or serious threat, the Democratic Rule of Law, by preventing or restricting the functioning of any of the constituted powers. In this way, it seeks to protect the institutional structure and functional stability of the Democratic State. Article 359-M, on the other hand, refers specifically to the attempt to depose, by means of violence or serious threat, the legitimately constituted government, thus protecting the continuity of the exercise of executive power elected by popular sovereignty. In summary, while article 359-L has an institutional and structural nature, aimed at preserving institutions and harmony between the Branches, article 359-M has a political-governmental character, ensuring the legitimacy of democratic government.

In theory, these conducts can occur in a proper formal contest, when a single action simultaneously aims to achieve both objectives – for example, in the event of an armed group that, in the same act, takes over the headquarters of the Three Powers to depose the President of the Republic and prevent the functioning of Congress and the STF. However, they can also constitute material concurrence, when practiced through different conducts, at different times and with different purposes. During the trial of Criminal Action No. 2,668, the STF adopted this last understanding when examining the actions of the so-called "crucial core". It should be noted that arts. 359-L and 359-M, by shifting the axis of criminal protection from national security to the protection of constitutional democracy, symbolize a paradigm shift: from the authoritarian logic of preserving the State itself to the institutional defense of the republican regime, in which political power is legitimized by popular vote and limited by law.

Revista ARACÊ
ISSN: 2358-2472

3.3 PARLIAMENTARY DEBATES AND POLITICAL PRESSURES

Law No. 14,197/2021 resulted from the processing of Bill No. 2,108/2021 in the National Congress, to which several related propositions were attached, gathered as a substitute for Bill No. 2,462/1991, authored by Deputy Hélio Bicudo, culminating in the reformulation of the criminal treatment given to crimes against the political order. The law added to the Special Part of the Penal Code Title XII – "Crimes Against the Democratic Rule of Law" – and fully repealed Law No. 7,170/1983, a landmark of the national security doctrine, in addition to suppressing a provision of the Criminal Misdemeanor Law, ending a normative cycle of authoritarian matrix inaugurated during the military regime. Its approval in the Chamber of Deputies took place on May 4, 2021, when the rapporteur, Deputy Margarete Coelho (PP-PI), justified the favorable opinion by stating that the replacement of the old diploma aimed to align the criminal protection of institutions with the values of the 1988 FC, after extensive dialogue with jurists, civil society organizations and thematic commissions, with the explicit objective of "burying the authoritarian rubble that still remains" and offering society mechanisms to defend democracy compatible with fundamental guarantees (Chamber of Deputies, 2021):

> In recent weeks, we have held several meetings, in which we have been able to listen to and collect suggestions from jurists of the highest quality, including Dr. Miguel Reale Júnior himself, then Minister of Justice, when the project that heads this proposal was presented, as well as important representatives of organized civil society, such as Rede Liberdade, Pact for Democracy, among others. We also participated (and followed) the event promoted by the Brazilian Institute of Criminal Sciences – IBCCRIM to deal specifically with the repeal of this law. The same IBCCRIM sent us a technical note that was duly considered in the preparation of the text.

We also maintained contact with the Commission created by the Brazilian Bar Association to monitor the National Security Law, composed of emeritus members of that institution, as well as participated in public hearings with some Commissions, such as the Participatory Legislation and the Human Rights and Minorities of the Chamber and public hearings that were held between April 23 and 28, respectively. with the purpose of debating this project. We also listened to and dialogued with several parliamentary colleagues and with Parliamentary Fronts, such as the Mixed Parliamentary Front in Defense of Indigenous Peoples, always making it clear that our objective was, from the beginning, to build a text that, by burying once and for all this authoritarian rubble that insists on prevailing in our legal system, delivers to Brazilian society an adequate protection of the Democratic Rule of Law.

Revista ARACÊ
ISSN: 2358-2472

Despite the evident need to repeal the National Security Law, and the fact that the matter has been pending in the National Congress since 1991, there was an orientation against the approval of the Bill by the government bench, as defended by the leader of the PSL Bloc, Deputy Carlos Jordy (PSL-RJ) – (Chamber of Deputies, 2021):

> Mr. President, ladies and gentlemen, I come to this podium again to talk about this project. Respectfully, I speak with the Rapporteur, Deputy Margarete Coelho. I even understand that you are not the only one who is the I was upset that we were making highlights, Deputy. Initially, we had made an obstruction kit, but we are removing it. I presented some highlights to this project because, in my view, even though Deputy Margarete Coelho has all the capacity and legal knowledge to contribute to the elaboration of this new law, it could not be voted on in the hurried way that this is being done today. This is a law that should be widely discussed with several jurists, in the same way that many Deputies of the Left ask, for example, that the PEC of the Administrative Reform be debated in public hearings, so that the various segments of society and the public service can be heard – this, in the CCJC, where merit is not debated. An issue like this, which impacts individual rights and freedoms, should be debated with much more propriety and depth in the Chamber of Deputies. Deputy Margarete Coelho did the democratic work of listening to several Deputies, but we do not agree with the way this work is being done. See, for example, article 359-K, which deals with the crime of espionage and speaks of delivering a document classified as secret or top secret to a foreign government or criminal organization, in disagreement with legal or regulatory determination. Look at the legislative impropriety in this case: if the document is top secret or secret, it is already a type of document that cannot be delivered to any foreign body, much less a criminal organization.

And here we speak of legal or regulatory determination. Will there be a legal determination, legislation or regulation, to deal with the delivery of documents even to criminal organizations? This is the result of a debate that is being carried out in a hurried way by this House, which could not happen. This is one of the devices. We have several others, which will be widely discussed in the highlights. Therefore, the PSL advises "no" to this project that deals with the new National Security Law with the use of this term so prostituted that is the Democratic State of Law.

The resistance expressed by representatives of the extreme right, although noisy during parliamentary discussions, did not prevent the approval of the bill, both in the Plenary of the Chamber of Deputies, on May 4, 2021, and in the Plenary of the Federal Senate, on August 10 of the same year; in both cases through a symbolic vote, which revealed broad political convergence around the replacement of the National Security Law. Such a scenario projected the concrete possibility of overturning an eventual full veto, which is why the then President of the Republic opted for partial vetoes, preserving, even if contradicted, the central

Revista ARACÊ
ISSN: 2358-2472

structure of the new law. Nevertheless, the vetoes focused on provisions essential to the protection of the democratic regime, such as those that typified mass misleading communication, ensured the right to demonstrate, provided for the loss of rank or rank in the case of a crime committed by military personnel, and established aggravating factors for crimes committed by public agents.

Confronting these vetoes with the elements later revealed by the investigations related to the coup plot, the self-protective character of the political nucleus then in power is evident, seeking to protect itself from future accountability. Among such vetoes, the one that suppressed the prerogative of political parties with representation in the National Congress to propose subsidiary private criminal action in the face of the inertia of the Federal Public Prosecutor's Office stands out – precisely in a context in which the omission of the then Attorney General of the Republic, Augusto Aras, in the face of repeated indications of common crimes committed by the President of the Republic, became the object of broad public and institutional criticism[14].

4 THE TRIAL OF CRIMINAL ACTION NO. 2,668 (STF)

This articulated set of actions – (i) the broad approval of Law No. 14,197/2021 by the National Congress; (ii) the presidential vetoes directed precisely at the provisions that would increase the accountability of public and military agents; (iii) the suppression of the possibility of subsidiary criminal action in the face of the inertia of the Public Prosecutor's Office; (iv) and, finally, the omission of the then Attorney General of the Republic in the face of evidence of unlawful acts committed in the exercise of power – revealed, in the light of the investigations and evidence subsequently produced in Criminal Action No. 2,668, a movement of institutional self-protection of the governmental nucleus that came to be the object of the criminal prosecution itself. Because of this, a structural paradox was configured: the law that was intended to strengthen the defense of the democratic order ended up serving as a basis for holding accountable those who, while occupying positions of command in the State, acted to limit its effectiveness and prevent its effects on themselves.

[14] The Covid CPI alone indicted him for nine crimes: malfeasance; Quackery; epidemic resulting in death; violation of preventive health measures; irregular use of public funds; incitement to crime; falsification of private documents; crime of responsibility and crimes against humanity (Agência Senado, 2021).

Revista ARACÊ
ISSN: 2358-2472

4.1 FACTS, ACCUSATION AND CONVICTION

The thirty-four defendants of AP 2,668 were indicted – on July 14, 2025 – by the Attorney General's Office, for the crimes of armed criminal organization (article 2, caput, §§ 2 and 4, II, of Law No. 12,850/2013), violent abolition of the Democratic Rule of Law (article 359-L of the CP), coup d'état (article 359-M of the CP), qualified damage by violence or serious threat, against the property of the Union and with considerable damage to the victim (article 163, sole paragraph, I, III and IV, of the CP), in addition to deterioration of listed property (article 62, I, of Law No. 9,605/1998), applying the rules of concurrence of persons (art. 29, caput, of the CP) and material concurrence (art. 69, caput, of the CP). Those implicated were separated into different nuclei, and to date, only the trial of nucleus 1 has been concluded, in which former President Bolsonaro and the seven main exponents of the coup plot were convicted.

In summary, the prosecution reconstructed the coup articulation as a staggered process, initiated with the systematic dissemination of unfounded allegations of fraud in the electoral system, reiterated in official pronouncements by the then President of the Republic, with the aim of discrediting the result of the 2022 election and fomenting distrust and hostility against republican institutions. This atmosphere of animosity was translated into the formation of camps in front of military installations, where armed intervention and the rupture of the constitutional order were called. At the same time, the instrumental use of State agencies – notably the Brazilian Intelligence Agency and the Federal Highway Police – to monitor opponents and hinder the free movement of voters was investigated, which reinforced the coordinated nature of the undertaking. After the proclamation of the electoral result, there was an escalation of violent actions and institutional sabotage, including highway blockades, acts of depredation of public buildings, attempted explosions in the vicinity of Brasília Airport, and, finally, attacks on the headquarters of the Three Powers on January 8, 2023.

The evidence collected also revealed a plan for the capture and/or physical elimination of the elected President and Vice President, as well as Minister Alexandre de Moraes, whose execution was thwarted by the refusal of the then commanders of the Army and Air Force to join the initiative. The attempt to co-opt the Armed Forces materialized in the presentation of the so-called "coup draft", which provided for the decree of a state of siege at the headquarters of the Superior Electoral Court and the arrest of authorities of the STF and the

Revista ARACÊ
ISSN: 2358-2472

National Congress, constituting, according to the prosecution, the final phase of operationalization of the attempted institutional rupture.

The First Panel of the STF, by a majority of four votes to one, handed down a conviction with differentiated dosimetry according to the degree of participation of each accused. Mauro Cid, as an award-winning collaborator, received a sentence of two years of imprisonment, to be served in an initial open regime. Jair Bolsonaro, former President of the Republic, was sentenced to 27 years and three months in prison, in an initial closed regime. Walter Braga Netto, a retired general and former Minister of the Civil House and Defense, received a total sentence of 26 years of deprivation of liberty, in an initial closed regime, plus a 100-day fine. Anderson Torres, former Minister of Justice and former Secretary of Public Security of the Federal District, and Almir Garnier, former Commander of the Navy, were both sentenced to 24 years of deprivation of liberty in an initial closed regime, also with a 100-day fine. Augusto Heleno, a retired general and former Head of the Institutional Security Office of the Presidency of the Republic, was sentenced to 21 years of imprisonment, in an initial closed regime, and 84 days-fine. Paulo Sérgio Nogueira, a retired general and former Minister of Defense, received 19 years of deprivation of liberty, also in an initial closed regime, with an 84-day fine. Finally, Alexandre Ramagem, Federal Deputy and former Director of the Brazilian Intelligence Agency, was sentenced to 16 years, one month and fifteen days of imprisonment, in an initial closed regime, in addition to a 50-day fine. In all cases, the value of the fine day was set at a minimum wage in force at the time of the facts, observing the proportionality established in the sentence as to the seriousness of the conducts and the role played by each agent in the coup enterprise.

4.2 RELATIONSHIP WITH THE NEW CRIMINAL TYPES

With the exception of the case of the defendant-collaborator Mauro Cid, whose benefits resulting from the collaboration agreement had a direct impact on the sentence imposed, the other defendants were convicted of the crimes of violent abolition of the Democratic Rule of Law (article 359-L of the Penal Code) and attempted coup d'état (article 359-M of the Penal Code). The dosimetry resulted, for Jair Bolsonaro, in six years and six months of imprisonment for the first crime and eight years and two months for the second; for Walter Braga Netto, in seven years and eight years, respectively; for Anderson Torres and Almir Garnier, in six years and eight years in each of these crimes; for Augusto Heleno, in five years and six months and six years and six months; for Paulo Sérgio Nogueira, in three

Revista ARACÊ
ISSN: 2358-2472

years and nine months and four years and five months; and, finally, for Alexandre Ramagem, in four years, one month and fifteen days and seven years of imprisonment.

Although differentiated according to the degree of participation and the subjective circumstances of each agent, the penalties reflect the centrality of arts. 359-L and 359-M in the criminal repression of attacks directed against the constitutional order. The sanctions applied, which vary between eight years and two months and fifteen years of imprisonment in the sum of the crimes considered, do not denote punitive exacerbation: they reflect the observance of the individualization criteria established in article 59 of the Penal Code, guided by the concrete gravity of the conducts and the high disregard of the result, given the real threat to the functioning of republican institutions. In this context, only General Walter Braga Netto received a sentence close to the legal maximum imposed for the crime of violent abolition of the Democratic Rule of Law, due to the strategic position he occupied in the articulation and operational command capacity attributed to him in the dynamics/management/operationalization of the facts.

On the other hand, the sentence imposed on General Paulo Sérgio Nogueira, set at a level below the legal minimum, resulted from the recognition of mitigating circumstances, such as primarity, the lesser relevance of his participation in the undertaking and the reduction in the attempted manner provided for in article 14, II, of the Penal Code, demonstrating that the dosimetry did not occur automatically or collectively: it was based on the individual valuation of the conducts. The severity of the penalties observed, therefore, was not arbitrary; on the contrary, they showed the normative rigor of the model of criminal protection of democracy outlined by the legislator in Law No. 14,197/2021, whose objective was to establish a proportional response to attacks against the Democratic Rule of Law and reaffirm the commitment of the legal system to the preservation of institutions and popular sovereignty.

4.3 THE LEGAL-POLITICAL PARADOX OF THE SANCTION

The end of the military regime and the promulgation of the 1988 Federal Constitution established the expectation of a lasting cycle of democratic institutionality, based on political pluralism, respect for fundamental guarantees and the peaceful resolution of conflicts. Even in the face of persistent social inequalities and distributive tensions, the country, over more than three decades, seemed capable of mediating their antagonisms through mechanisms of representation, reciprocal control between powers, and periodic electoral processes,

Revista ARACÊ
ISSN: 2358-2472

preserving the centrality of legality as a form of containment of political violence. This trajectory sometimes allowed the impression that Brazilian democracy had acquired a definitive/consolidated character, as if its continuity resulted from an institutional automatism, instead of political action and permanent civic vigilance. However, the attempt at institutional rupture unleashed from 2022 onwards shows that democratic stability can be eroded not by external pressures – as occurred in the geopolitical context of the Cold War – but by internal mechanisms of gradual erosion of the legitimacy of institutions.

Unlike a classic coup with tanks and troops, the recent offensive has mobilized symbolic resources – conspiratorial narratives, manipulation of perceptions, and programmed delegitimization of the electoral process – aimed at eroding public confidence in the integrity of institutions. The normalization of the anti-democratic discourse therefore preceded the attempt at rupture itself, revealing that the contemporary attack on the constitutional order is built in the field of beliefs rather than in that of weapons.

In this scenario, the social perception that attacks against democracy can remain unpunished is a factor that encourages recidivism. The Amnesty Law of 1979, by imposing the indiscriminate legal forgetting of the serious violations committed under the authoritarian regime, collaborated in the formation of a political culture that relativizes the seriousness of crimes committed against the rule of law. The symbolic effect of this institutionalized pardon was to deprive democratic institutions of their pedagogical capacity to assert normative limits. When exceptionally serious conducts are no longer sanctioned, the regime of social expectations is altered, and what should constitute a rupture is perceived as an admissible, ordinary and recurrent possibility in the national political repertoire.

Criminal Action No. 2,668, by promoting the criminal accountability of a former president of the Republic and senior officers of the Armed Forces for an attack on the constitutional order, breaks this historical logic of indulgence in the face of political violence. Its importance transcends the concrete punitive effects and lies in the ability to restore the performative authority of the Federal Constitution of 1988 as a binding norm, reaffirming that power is not above Law, and that the democratic process is not a moral agreement that can be revoked by circumstantial convenience. The imposition of clear and proportional legal consequences operates as a mechanism for denaturalizing the exception and reconstituting the limits of republican legality, preventing the reiteration of authoritarian cycles that, in the absence of accountability, tend to rearticulate themselves under new discursive and institutional forms.

Revista ARACÊ
ISSN: 2358-2472

5 POLITICAL AND LEGAL IMPLICATIONS

In this context, the conviction in Criminal Action No. 2,668 must be understood doubly as (i) a judicial response to a specific episode of affront to the Democratic Rule of Law and (ii) as a milestone for the reconfiguration of the normative expectations that guide institutional life in the country. The accountability of authorities located at the apex of the state structure signals that the constitutional order of 1988 remains endowed with coercive force capable of containing projects of rupture, even when articulated from the very gears of power. This assertion of normative authority, by establishing parameters of predictability and legal consequences for conducts that are offensive to democracy, produces effects that go beyond the individual level and reverberate in the political system as a whole, influencing strategic calculations, institutional behaviors, and social perceptions about the cost of transgressing constitutional limits. It is, therefore, in light of this restoration of the practical validity of the Constitution – and its impacts on the legal, political, and social spheres – that it is possible to proceed to the analysis of the political-legal implications arising from the application of Law No. 14,197/2021.

5.1 THE EFFECTIVENESS OF LAW NO. 14,197/2021

The effectiveness of Law No. 14,197/2021 can be considered under at least two articulated dimensions: the legal and the social. On the legal level, it is a rule in force, valid and endowed with coerciveness, systematically inserted in the Special Part of the Penal Code and applied in a concrete way by the Federal Supreme Court in Criminal Action No. 2,668, which demonstrates its capacity to produce real normative effects. The law did not remain a merely programmatic or symbolic provision: it operated as a material basis for the accountability of high-ranking public agents, focusing on conducts aimed at the suppression of the constitutional order. Such effectiveness reinforces the normative authority of the Federal Constitution of 1988, by conferring operational density to the criminal protection of the Democratic Rule of Law and indicating that its violation is not politically negotiable.

On the social level, the application of the law reveals a perceptible impact on the dynamics of political mobilization. Although an identity agenda of anti-democratic contestation exists in the public space, the occurrence of violent conduct directed directly against institutions – such as highway blockades, encampments in front of military installations, and coordinated attacks on public buildings – ceased after the institutional reaction and criminal prosecution undertaken. This response contributed to reducing the expectation of impunity,

Revista ARACÊ
ISSN: 2358-2472

an element historically associated with the recurrence of coups or attempts at rupture in Brazil. The social adequacy of the norm is also manifested in the consolidation of a public perception unfavorable to amnesty proposals for those involved in the events of January 8, as evidenced by successive opinion polls. In other words, the application of Law No. 14,197/2021 not only discourages the practice of new attacks, but also reaffirms, in the democratic imagination, that the Constitution remains the unavoidable horizon of legitimate political dispute[15].

5.2 BETWEEN DEMOCRATIC PROTECTION AND ABUSIVE CONSTITUTIONALISM

The historical relevance of the intervention of the Judiciary in containing the political-military nucleus that sought to subvert the constitutional order cannot be underestimated. The institutional reaction, in this case, was – in addition to being legally possible – necessary to prevent the progressive erosion of Brazilian democracy. However, this protagonism highlights a classic problem of constitutional democracies: the tension between the defense of the constitutional order and judicial self-limitation. The challenge is to ensure that the institutional response does not reproduce, in the opposite direction, the mechanisms of exception mobilized by the coup agents themselves. Contemporary literature warns of this risk by identifying phenomena such as "abusive constitutionalism" (Landau) and "juristocracy" (Hirschl), in which constitutional law and jurisdiction, under the pretext of preserving democracy, begin to monopolize and subvert the space of political decision-making and the relational logic between the powers.

The difficulty lies precisely in delimiting the point at which the Judiciary ceases to act as guardian of the Constitution and begins to perform functions that are foreign to it, whether by guiding the public agenda, or by defining political priorities or replacing democratic contestation with judicial decisions of a moralizing nature. Luhmann contributes to this analysis by highlighting that law operates through its own rationality, guided by the stabilization of expectations, and tends to the self-preservation of its space of action. In this

[15] (i) SCHROEDER, Lucas. 64% of Brazilians are against amnesty for January 8. **Poder360**, 03 Oct. 2025. Available at: https://www.poder360.com.br/poderdata/64-dos-brasileiros-sao-contra-anistia-para-8-de-janeiro/. Accessed on: Nov. 06. of 2025. (ii) CARTACAPITAL. Disapproval of amnesty for coup plotters grows and reaches 47% of Brazilians, according to a survey. **CartaCapital**, 08 Oct. 2025. Available at: https://www.cartacapital.com.br/politica/reprovacao-a-anistia-aos-golpistas-cresce-e-atinge-47-dos-brasileiros-indica-pesquisa/. Accessed on: Nov. 06. 2025; (iii) VEJA/REDAÇÃO. What is the opinion of Brazilians about amnesty for Bolsonaro, according to Datafolha. **Veja**, 14 Sept. 2025. Available at: https://veja.abril.com.br/politica/qual-a-opiniao-dos-brasileiros-sobre-anistia-a-bolsonaro-segundo-o-datafolha/. Accessed on: Nov. 06. of 2025.

Revista ARACÊ
ISSN: 2358-2472

way, once called upon to occupy positions of political protagonism, the Judiciary can, even without a deliberate project, reinforce its authority continuously, gradually expanding its sphere of intervention. Such expansion, even if motivated by the defense of democracy, produces structural effects that go beyond the conjuncture of the crisis.

This picture shows, by contrast, the systematic omission of the political actors who should exercise the primary role of defending the democratic regime. The path of the then deputy Jair Bolsonaro is exemplary: during more than two decades of parliamentary activity, he accumulated episodes of violation of decorum and hostility to institutions without the Legislature applying the disciplinary mechanisms that were incumbent on him. Party and congressional leniency contributed to the electoral and institutional legitimacy of a project that later became openly anti-democratic. In this sense, the expansion of the Judiciary's performance – beyond an autonomous cause – represents a direct consequence of the failure of the functioning of the intra-legislative control mechanisms and of the partisan filters themselves for the selection and accountability of certain political leaders.

When parties and parliament cease to contain conducts incompatible with democracy, and the Executive moves away from its role as executor of the constitutional will, the condition of the ultimate guarantor of democratic order is transferred to the Judiciary. This transfer, although necessary in times of crisis, tensions the principle of separation of powers and produces an ambivalent effect: at the same time that it prevents institutional rupture, it inaugurates a process of normative and hermeneutic concentration in the judicial sphere, which can, in the long run, restrict the legitimate space of politics. The central issue is no longer the simple defense or criticism of judicial protagonism: it is therefore linked to the need to recognize that it emerges as a response to a previous institutional defection – and that its permanence or stabilization, if not accompanied by the reconstruction of the political responsibility of the other powers, runs the risk of replacing the authoritarian exception with a democratic imbalance in the opposite direction.

5.3 INTERNATIONAL COMPARISONS

The Brazilian experience shows that the strengthening or retraction of constitutional jurisdiction must always be analyzed in relation to the performance of the other powers in protecting the democratic regime. To understand this phenomenon in its complexity – and to avoid normative conclusions based solely on the national conjuncture – it is useful to resort to comparative examples. Other constitutional systems have faced, at different times, similar

Revista ARACÊ
ISSN: 2358-2472

dilemmas involving legislative omission, decision-making hyperconcentration in the Executive and corrective expansion of judicial authority. The observation of such experiences allows us to identify institutional strategies capable of balancing the protection of democracy and the preservation of the separation of powers, offering parameters to evaluate the Brazilian case.

5.3.1 United States of America

The U.S. has not been consolidated, since its origin, as a democracy based on robust formal mechanisms of containment of power. What allowed the relative stability of the regime over time was the gradual construction of informal norms – what Levitsky and Ziblatt call institutional reserve[16] – that function as unwritten brakes on the arbitrary exercise of power. Under these conditions, democracy is maintained less by the cogent force of the law and more by the willingness of political actors to respect implicit limits, renouncing the strategic use of constitutional loopholes when such expedients threaten the preservation of the regime (Levitski; Ziblatt, 2018). It is a model in which institutional balance depends intensely on civic culture and the subjective adherence of elites to the democratic game.

However, this historical construction was not free from profound contradictions. After the Civil War (1861–1865), federative stability and national reconstruction were largely conditioned to a tacit political pact that allowed the Southern states to maintain racial segregation legislation and explicit mechanisms of subjugation of the black population. This arrangement – in addition to, at the time, revealing the limits of American democracy – demonstrated how the institutional reserve itself can serve to reinforce hierarchies and structural exclusions, as long as these produce stability for the political elites. In this way, the preservation of the formal democratic order coexisted with the systematic denial of basic civil rights to a significant portion of the population for more than a century.

This pattern of functioning explains the difficulty of the American political system in responding effectively to leaders who deliberately tighten the norms of self-restraint. According to Levitsky and Ziblatt (2018, p. 70), no presidential candidate in the United States

[16] The authors define *institutional reserve* as an informal norm that guides political actors not to exercise the maximum of their legal powers when such exercise, even if legally permitted, may violate the spirit of democracy or compromise the stability of the rules of the political game. It is a voluntary self-control, aimed at preserving expectations of moderation and cooperation between opponents. The absence, erosion or abandonment of this norm constitutes, according to the authors, one of the main mechanisms by which democracies enter into a process of institutional deterioration, opening space for power projects that instrumentalize legality for anti-democratic purposes (Levitski; Ziblatt, 2018).

Revista ARACÊ
ISSN: 2358-2472

of America – except Richard Nixon – had fully met the indicators of authoritarian behavior until the rise of Donald Trump, who rejected democratic rules, delegitimized opponents, encouraged political violence, and exhibited a propensity to restrict civil liberties. The lack of explicit legal instruments to prevent figures with such characteristics from accessing and manipulating state power exposes the structural vulnerability of a system that is too dependent on the voluntary moderation of its own governing agents. Problematizing and further deepening this issue, Alexandre de Moraes stated:

> I understand that, for an American culture, it is more difficult to understand the fragility of democracy because there has never been a coup there [...] But Brazil had years of dictatorship under [former President Getúlio] Vargas, another 20 years of Military Dictatorship and numerous coup attempts. When you are much more attacked by a disease, you form stronger antibodies and seek a preventive vaccine – Minister Alexandre de Moraes in an interview for *The Washington Post* (G1, 2025)[17].

The comparison shows that, unlike the Brazilian model – whose 1988 Federal Constitution incorporated explicit provisions to contain institutional ruptures – the US system remains based on the expectation of political self-restraint, which can convert its main historical virtue into a point of fragility in the face of leaderships that reject democratic logic and consciously operate against it.

5.3.2 Venezuela

Venezuela was, for much of the twentieth century, considered a successful case of democratic stability in South America. Since 1958, the Venezuelan representative regime has remained relatively immune to the cycle of authoritarianism that spread across the continent, especially between the 1960s and 1980s. Democratic institutionality was sustained by a two-party arrangement in which the center-left Democratic Action (AD) and the center-right Christian Social Party (COPEI) alternated in power based on explicit pacts and rules of

[17] Alexandre de Moraes' observation dialogues with the comparative literature that contrasts democracies based on symbolic institutionality – sustained by informal norms of self-restraint, as in the United States of America – and democracies based on strong normative institutionality, with written safeguards against constitutional rupture, as in post-1988 Brazil. The absence of successful military coups in U.S. history has contributed to the formation of a political culture of confidence in institutional stability, reducing the perception of systemic risk. In Brazil, on the other hand, the historical recurrence of interruptions in the constitutional order – especially in 1937 and 1964 – produced what the doctrine calls *negative constitutional memory* (Levitski; Ziblatt, 2018), that is, the awareness that democracy is vulnerable and requires explicit defense mechanisms. In this way, the "antibodies" mentioned by Moraes – before moral virtues of the State – refer to the institutional learning accumulated in the face of experiences of authoritarianism, which led to the incorporation, in the constitutional text and in the infra-constitutional legislation, of instruments of reaction and containment to rupture projects.

Revista ARACÊ
ISSN: 2358-2472

moderate competition between political forces. However, this stability depended on a rentier economic system, strongly linked to oil exploration, which produced a fragile relationship between the State, economy and citizenship, marked by low productive diversification and the growing expectation of state redistribution of wealth.

The economic crisis of the late 1980s – marked by hyperinflation, rising inequalities and austerity policies – shook the foundations of this democratic pact. It was in this context that the figure of Hugo Chávez emerged, the leader of a military movement who, although defeated in the attempted coup d'état of 1992, became a symbol of popular disenchantment with the traditional political system. Chávez's conversion from coup plotter to popular hero was less about his concrete proposals and more about his ability to capitalize on resentment against elites identified as corrupt and distant from the population. The adhesion of Rafael Caldera, former president and exponent of the *establishment*, to the release and political reintegration of Chávez represented the rupture of an informal limit essential to the survival of democracies: the refusal to legitimize actors who directly attack the constitutional order[18].

Elected president in 1998 under the discourse of political refoundation, Chávez began a process of institutional transformation that, at first, maintained a democratic appearance, sustained by the repeated electoral victory. However, the failed coup attempt against his government in 2002 allowed him to reaffirm himself as the exclusive representative of the "popular will", converting political opponents into "internal enemies". From that moment on, electoral hegemony was transformed into institutional hegemony: successive Constituent Assemblies expanded presidential powers, the Legislative was gradually neutralized, the Judiciary was reorganized by increasing the number of ministers and political co-optation, and the independent press became the target of restrictions, persecution and indirect control.

The Venezuelan case, therefore, shows that democratic erosion can occur (i) by sudden rupture, (ii) by explicit military force, or (iii) by the progressive transformation of constitutional legality into an instrument of concentration of power. Tolerance of the actor who seeks to destroy the regime – here, the political amnesty granted to Chávez – proved decisive for the subsequent institutional collapse. The central lesson that emerges from this experience is clear: democracy can succumb when its protection mechanisms are neutralized

[18] The decision to politically rehabilitate Hugo Chávez is an example of what democratic theory calls a *strategic error of institutional inclusion* (Abrão; Torelly, 2011 / Gargarella, 2014). It is the incorporation of an actor that rejects democratic rules into a system that presupposes reciprocal moderation between adversaries. In such cases, the logic of democratic competition is subverted, because the asymmetry between those who respect institutionality and those who intend to erode it prevents the balance from being restored at no cost to the regime.

Revista ARACÊ
ISSN: 2358-2472

in the name of conciliation, political expediency, or the belief that electoral legitimacy is, in itself, sufficient to preserve pluralism and the rule of law.

5.3.3 Hungary

Unlike the Venezuelan experience, in which the democratic rupture was led by an *outsider* who rose to power after a failed coup attempt, the Hungarian case shows a process of institutional erosion carried out from within democratic structures, by a political actor with a consolidated trajectory in the system. Viktor Orbán emerged in the context of the post-communist transition, leading the *Fidesz* Student Movement, which became a political party with a strong insertion among youth and reformist sectors. Unlike leaders who come to power by frontally denying the current constitutional order, Orbán built his legitimacy by affirming a commitment to pluralism and European integration, which gave him institutional reliability during the reconstruction

His authoritarian turn occurred in a gradual and calculated way. After serving as prime minister between 1998 and 2002, Orbán returned to power in 2010, in the midst of a global economic crisis, with a nationalist discourse critical of the European Union. From then on, his political strategy consisted of using electoral legitimacy to progressively reconfigure the mechanisms of institutional control. Their governments approved constitutional reforms that expanded executive powers, undermined the autonomy of the Supreme Court, weakened guarantees of political alternation, and instituted mechanisms of media concentration favorable to the government. This process, although carried out within formal legality, has eroded the substance of liberal democracy, turning political competition into an asymmetrical game.

The stability of this project was made possible, above all, by the large parliamentary majority obtained through the alliance between *Fidesz* and the Christian Democratic People's Party, which made it possible to approve legislative and constitutional changes without the need for consensus between rival political forces. This is a paradigmatic case of abusive constitutionalism, in which the legal instruments intended to protect democracy are reinterpreted and mobilized to consolidate the power of a leading group. The absence of institutional reserve, understood as the willingness of political actors not to use the maximum of their legal power when it threatens democratic principles, allowed the form of democracy to be preserved while its content was emptied.

Revista ARACÊ
ISSN: 2358-2472

The lesson that emerges from the Hungarian experience is similar, in its effects, to that observed in Venezuela: democracy is not undone only by the impact of military coups or abrupt ruptures; It can also crumble through the gradual normalization of authoritarianism, disguised under the guise of governability and institutional stability. For Brazil, the contrast between these cases reveals that the defense of the Democratic Rule of Law is not limited to the punishment of explicit attacks against the constitutional order; It also involves the continuous strengthening of practices of pluralism, alternation and self-limitation of power. Without this commitment, legality can become an instrument for legitimizing arbitrariness, and democracy, a mere procedural façade.

6 FINAL CONSIDERATIONS

The enactment and application of Law No. 14,197/2021 – which replaced the former National Security Law – reveal a unique paradox in Brazil's recent legal-political history: a norm designed to protect the Democratic Rule of Law ended up, subsequently and paradoxically, being used as a legal basis for the criminal accountability of some of its own signatories. Having as object of analysis the Criminal Action No. 2,668, this study sought to understand the political motivations and institutional arrangements that involved the sanction of the referred law, as well as to evaluate the reaction capacity of the legal system in the face of an attempt of internal subversion of the constitutional order. The guiding question, outlined since the introduction, structured the methodological path and served as an articulating axis for the analyses undertaken throughout the work.

The methodology adopted here proved to be adequate to the object, insofar as it allowed to articulate: (i) the reconstruction of the legislative process that culminated in the repeal of Law No. 7,170/1983 and the enactment of Law No. 14,197/2021; (ii) the identification of the political and legal actors involved; (iii) the critical reading of the new criminal types (articles 359-L and 359-M of the CP); and (iv) the analysis of the interpretative context that instrumentalized – in a reprehensible way – article 142 of the Federal Constitution of 1988. The theoretical triangulation – Landau, Luhmann, Bourdieu – provided interpretative keys that allowed us to situate the empirical evidence in the broader terrain of the relations between law, power and institutional symbolism. In relation to the initially stipulated objectives – general and specific – the research achieved a significant degree of analytical achievement, as we can see below:

Revista ARACÊ
ISSN: 2358-2472

a. the documentary reconstruction of the legislative process, associated with the analysis of the judgment and the procedural documents of Criminal Action No. 2,668, made it possible to map the political and legal motivations that involved the sanction of Law No. 14,197/2021. The study revealed strategies of symbolic legitimation and rhetoric of institutional defense used by the government to sustain the enactment of the norm, as well as the institutional articulations that preceded its final process. This analysis also demonstrated the capacity of the legal system to react, especially the performance of the STF, in the face of the attempt at democratic rupture. The combination of the theoretical references of abusive constitutionalism and autopoiesis allowed these observations to be transformed into consistent analytical evidence about the causes and effects of the phenomenon examined;

b. the investigation made it possible to reconstruct the normative path that led to the repeal of the old National Security Law and the enactment of Law No. 14,197/2021. Amendments, debates and parliamentary speeches were analyzed, which showed how the new text was shaped to confer discursive legitimacy to government action and, at the same time, meet demands for democratic updating. The analysis revealed that the rhetoric of the defense of democracy was mobilized as a strategy of political repositioning and neutralization of criticism of the Executive;

c. The study also identified the main agents and political interests that intervened in the approval and sanction of the law, including the head of the Executive, Ministers, Parliamentarians, Military Sectors and media actors. This political cartography led to the understanding of how power coalitions were formed around the agenda and how certain groups instrumentalized democratic language to legitimize political projects of an ambiguous nature;

d. The hermeneutic analysis of the penal provisions introduced by Law No. 14,197/2021, especially articles 359-L and 359-M of the Penal Code, evidenced the paradigm shift promoted by the new legislation: the replacement of the logic of "State security" with the "protection of democracy". The comparison with the old National Security Law revealed an effort at symbolic and legal reorientation, which redefines the role of criminal law as an instrument of protection of the democratic regime and not as a mechanism of political containment;

e. The examination of Criminal Action No. 2,668 showed that this paradigm shift has materialized in judicial practice. The critical reading of the judgment demonstrated the

Revista ARACÊ
ISSN: 2358-2472

coherence between the legal grounds, the evidence presented and the new criminal types, showing how the legal system was able to articulate facts and norms to hold accountable the nuclei involved in the attempt to subvert the constitutional order. This analysis allowed us to understand the effective application of the law as an act of affirmation of the autonomy of the law in the face of political pressures;

f. Another relevant point of the research was the identification of the role played by the distorted interpretation of article 142 of the Federal Constitution as the ideological basis of the coup actions. It was found that expansionist readings of this provision served as justification for claims of military tutelage, in sharp contrast with the consolidated constitutional doctrine, which establishes the subordination of the Armed Forces to the civilian power and the authority of the republican powers. This finding reinforces the importance of constitutional hermeneutics as an instrument of democratic preservation.

g. Finally, the analysis of the effects of Law No. 14,197/2021 on the balance between State security and the protection of democratic freedoms indicated ambiguous results. Although the new normative framework has formally reaffirmed the principles of the Democratic Rule of Law, its effectiveness depends on extra-legal factors – among them, the strengthening of civic culture, institutional autonomy and the improvement of democratic control mechanisms between the branches. The research, therefore, shows that normative progress needs to be accompanied by lasting political and social reforms to ensure the integrity and continuity of the constitutional order.

Analytically, this work, in addition to describing certain legal and political events, situated them theoretically; this led to the affirmation that the sanction and application of Law No. 14,197/2021 should be read simultaneously as (i) a formal gesture of constitutional reaffirmation and (ii) a component of a larger political strategy. This methodological ambivalence – empirical description *plus* theoretical interpretation – is a gain of the research, after all, it goes beyond episodic reports and provides a causal and symbolic explanation for the phenomenon studied.

The fundamental problem that guided this study – *why would a government sanction a law that would later serve to condemn its own signatories?* – it requires an answer that goes beyond the field of the formal doctrine of criminal law and enters the symbolic-strategic logic of political power; that is, a passage and correlation between Legal Sciences and Political

Revista ARACÊ
ISSN: 2358-2472

Science/Political Sociology. The Brazilian case, as demonstrated throughout the analysis, is not a merely legal paradox; it is, in fact, a product of a specific type of political rationality: the use of the legal apparatus as an instrument of symbolic legitimation. The government, by sanctioning Law No. 14,197/2021, sought to assert itself before the political system and public opinion as a defender of democratic order and institutional legality. This strategy had performative and communicative value, as it allowed the image of a government committed to the Federal Constitution to be projected, at a time when its own political base fed ambiguous discourses about the Armed Forces and the "moderating power". In other words, the gesture of sanctioning the law produced political and symbolic capital, even though its normative substance could turn against the government agents themselves.

This contradiction reveals a characteristic phenomenon of modern ideological dynamics inscribed (i) in the capitalist mode of production and together with (ii) bourgeois democracies: the production of a discursive appearance of legitimacy that conceals practices of power antagonistic to the proclaimed content. By sanctioning Law No. 14,197/2021, political agents created a kind of symbolic shield, a rhetorical device that allowed them to speak in defense of the Democratic Rule of Law while, behind the scenes, conducting actions and speeches that undermined it. It is an inversion of normative rationality, in which the sign of legality is instrumentalized to cover up the illegitimacy of political practices. This duplicity – acting against what one claims to protect – can be understood in the light of the Marxist critique of ideology, according to which the dominant ideas of an epoch often correspond to the dominant interests disguised as universality (Marx; Engels, 2007). From this perspective, the performative defense of democracy functioned as a form of symbolic reproduction of power, which Bourdieu (1989) describes as the capacity of political elites to convert legal and moral discourse into symbolic capital, legitimizing practices of domination under the guise of institutional neutrality. In metaphorical terms, the government has worn a democratic mask over a project of institutional erosion – a gesture that accurately illustrates the power of ideology to transform the appearance of legality into an instrument of preservation, control, discursive legitimacy and/or seizure of political power.

The analysis of the legislative process and the official discourses shows that the sanction was motivated less by a consistent democratic conviction and more by an attempt to control the public narrative, diluting criticism of authoritarianism and expanding the space of legitimacy in the center of the political spectrum. In this sense, the sanction of Law No. 14,197/2021 should be interpreted as an act of symbolic engineering: a movement that aimed

Revista ARACÊ
ISSN: 2358-2472

to reduce image costs, accommodate institutional pressures, and preserve political coalitions. However, the symbolic calculation failed, after all, the legal system – especially the STF – reacted autonomously, applying its own norm against the authors of speeches and actions that sought to undermine the democratic regime.

The dynamics observed confirm, at least partially, the hypothesis formulated in the introduction to this work: the law, although it can be instrumentalized for political purposes, has internal mechanisms of resistance capable of, in certain circumstances, reversing attempts at strategic appropriation. The legal system operates in a regime of relative autonomy and preserves spaces of self-reference that allow it to react to external pressures and reconstruct normative meanings in order to safeguard constitutional coherence. In this context, the application of Law No. 14,197/2021 in Criminal Action No. 2,668 represented more than an act of legal coercion: it constituted an institutional gesture of reaffirmation of the autonomy of the law in the face of imminent political tensions, converting a potentially manipulable instrument into a concrete/applicable affirmation of democratic stability.

In this way, the initial hypothesis – according to which the sanction of the law configured a movement of symbolic legitimation capable of turning against its own proponents – was confirmed and, at the same time, expanded. Confirmed, because the empirical data – acts, speeches and judicial decisions – support the interpretation that the government sought symbolic self-preservation when sanctioning the rule. Expanded, as the results of the research demonstrate that the law responded to this symbolic gesture through criminal accountability, a process that culminated in the reconfiguration of the law as a mechanism of institutional resilience, strengthening and self-preservation. The norm, once an expression of political convenience, has become an effective instrument of democratic defense, in a movement of inversion of meaning produced by the legal field itself.

The set of these results shows that the Brazilian legal system, far from mechanically reproducing the political will, revealed a capacity for self-defense and normative regeneration: an outstanding institutional resilience. Even in an environment of institutional tension, judges, prosecutors and control bodies knew how to update the constitutional content of the rule, preserving its adherence to the foundations of the Democratic Rule of Law. This resilience, however, has limits. The autonomy of law depends on a delicate balance between political legitimacy and legal rationality; When this balance is broken, the legal field runs the risk of being reduced to a mere rhetorical instrument, making room for practices typical of abusive constitutionalism – that is, the use of legality as a means of corroding democracy itself. The

Revista ARACÊ
ISSN: 2358-2472

Brazilian case demonstrated that this process of capture can be reversed whenever strong institutions and diffuse social control act in defense of the FC.

From this perspective, the central question that guided the study finds a more precise answer: the sanction of Law No. 14,197/2021 did not result from legal naivety, but from a strategy of symbolic legitimation. The legal system, however, activating its own logic and its constitutional authority, converted this gesture into an act of democratic reaffirmation. The law has shown itself capable of reacting to political tension and transforming paradox into an opportunity for institutional strengthening. This finding – in addition to reaffirming the research hypothesis – advances/adds a more complex dimension: Brazilian law has revealed itself to be performative and reflective, capable of reappropriating ambiguous norms and reorienting them towards the preservation of the constitutional order. The initial paradox – a law used against its own signatories – thus revealed itself to be an expression of the vitality of a legal system that, although crossed by political contradictions, continues to be able to produce coherent and effective normative responses.

The results achieved allow us to affirm that Law No. 14,197/2021 represents, at the same time, a legal framework for democratic reconstruction and a symbol of the ambiguities of political power in Brazil. Its enactment evidenced the effort of a government to reconfigure the discourse of legality and the defense of the democratic order for the purposes of self-protection, however, its subsequent judicial application showed that the national legal system maintained significant levels of normative and institutional resilience. The law, conceived as a symbolic instrument of legitimation, has become – through interpretative force and jurisdictional control – an effective mechanism for the defense of the FC, revealing the vitality of the Brazilian Rule of Law in the midst of the political and institutional crisis that the country has gone through.

Among the main conclusions, it is noteworthy that the conviction of those involved in the attempt to subvert the democratic order broke with a historical cycle of impunity of the political and military elites in relation to crimes of an institutional nature. For the first time in the history of Brazil, the legal system held high-ranking political agents accountable, based on democratic norms, for actions that undermined the constitutional regime. This result has a double character: legal and pedagogical. On the legal level, it reaffirms the primacy of the constitutional text and the effectiveness of criminal mechanisms for the protection of democracy; On the pedagogical level, it conveys to society the message that the rupture of

Revista ARACÊ
ISSN: 2358-2472

democratic legality is not tolerable, even when disguised as patriotism or the defense of national sovereignty.

However, the study also shows that the legal response, by itself, is not enough. Criminal law can re-establish normative coherence, however, it does not replace the political and cultural reconstruction that democracy requires. The fight against contemporary authoritarianism demands structural reforms – educational, institutional and communicational – capable of sustaining the democratic value in the daily life of social and political practices. Punishment, although necessary, needs to be accompanied by institutional learning processes, memory policies and the strengthening of civic culture. The Brazilian experience suggests that the defense of democracy is not exhausted/ends in legal coercion; It depends on an active civil society, transparent institutions, and leaders committed to pluralism.

The comparative dimension of the survey reinforces this conclusion. In the U.S., the performance of the judicial system in the face of the events of January 6, 2021 showed that consolidated democracies also face similar dilemmas: the tension between political freedom and institutional protection. The use of criminal law in both contexts reveals a common point – the need to transform the normative apparatus into an instrument of containment of discourses and actions that erode the democratic pact. However, the U.S. case demonstrates a crucial difference: accountability did not depend exclusively on the Supreme Court, but resulted from a more diffuse federative and institutional system, with strong legislative and journalistic control.

In Hungary and Venezuela, the movement was reversed. The legal and constitutional reforms implemented under the argument of defending order served, in practice, to dismantle democracy itself – a phenomenon characterized by the literature as *abusive constitutionalism*. In these contexts, legal institutions were progressively captured and transformed into tools for legitimizing authoritarian/power-concentrating regimes. The comparison shows, therefore, the Brazilian differential: the law that could have been appropriated by the Executive in the name of "national security" was resignified by the legal system as an instrument of democratic self-defense. This inversion reveals that Brazilian law, although tensioned, still preserves the capacity for constitutional regeneration. Thus, the theoretical and practical contributions of this research are articulated in three main dimensions:

Revista ARACÊ
ISSN: 2358-2472

a. Theoretically, the study deepens the understanding of law as an autopoietic system, capable of defending itself in the face of political instrumentalization. This approach broadens the debate on abusive constitutionalism, showing that the same normative system that can be used to erode democracy also contains within itself the antibodies necessary to preserve it, as long as constitutional hermeneutics is guided by democratic principles and institutional coherence;

b. by empirically analyzing the Brazilian case based on Criminal Action No. 2,668, the research demonstrated that the effectiveness of democratic protection norms depends both on the consistency of the legal text and on the willingness of institutions to apply it with independence and rigor. This finding provides the basis for legislative improvement and for a critical reflection on the role of the Judiciary in contexts of institutional crisis;

c. the political-normative contribution of this work lies in the demonstration that the defense of the Democratic Rule of Law is a dynamic process, sustained by continuous vigilance and the capacity for constant institutional updating. The vitality of the democratic regime depends on the maintenance of care practices for institutions, the constant updating of their control mechanisms, and the consolidation of a civic culture committed to the common good. Democratic resilience emerges, therefore, from the convergence between the normative force of law, the effective action of institutions, and the citizen consciousness that sustains its legitimacy.

d. It is concluded, therefore, that the historical path analyzed reveals a dialectic between fragility and resistance. Law No. 14,197/2021, gestated in a context of political ambiguity, became a symbol of the law's ability to resist its own instrumentalization. The paradox that gave rise to this research – a law used against its own authors – is, ultimately, the clearest expression that the Democratic Rule of Law, when activated by robust, strong, independent institutions and by a legal culture committed to the FC, is capable of responding, punishing and learning. Finally, the examination of this process reveals that the preservation of democracy depends less on the simple existence of norms and more on the way they are interpreted and applied in periods of instability. By evidencing this relationship between legal text and institutional practice, the investigation reinforces the theoretical-political debate on democratic defense in the twenty-first century, offering the Brazilian legal field a reflection that combines analytical rigor, critical density and ethical commitment with the

Revista ARACÊ
ISSN: 2358-2472

maintenance of freedom and pluralism – structuring principles of every genuinely democratic order.

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Revista ARACÊ
ISSN: 2358-2472

APPENDIX

Table 1

Proposals for constitutional and institutional changes defended by Jair Bolsonaro (2018-2022)

Date / Description	Proposal / Declaration	Institutional Impact	Source / Reference
1st Jan. 2019 – Inaugural Speech	He proposed a pact between the three powers for structural reforms.	It signals an attempt at coordination between powers, with a possible reconfiguration of institutional roles.	Chamber of Deputies. (2019). Rádio Câmara – 'Dialogue with Congress'. Available at: https://www.camara.leg.br/radio/programas/550477-bolsonaro-propoe-pacto-entre-os-tres-poderes-para-realizar-reformas/.
Out. 2022 – interview	He suggested an increase from 11 to 16 ministers of the STF, conditioned to the 'temperature' of the Court.	It impacts the balance between the Executive and the Judiciary, expanding presidential power over the Court.	Correio Braziliense. (2022). Bolsonaro reinforces proposal to increase STF ministers. Available at: https://www.correiobraziliense.com.br/politica/2022/10/5043126-bolsonaro-reforca-proposta-de-aumentar-para-16-o-numero-de-ministros-do-stf.html.
Feb. 2022 – Agenda legislative government	He defended constitutional projects on weapons, indigenous lands and the environment.	It affects the relationship between powers and the mechanisms of state inspection and control.	Conectas. (2022). 10 priorities of the Bolsonaro government in Congress. Available at: https://conectas.org/noticias/10-prioridades-do-governo-bolsonaro-no-congresso-que-ferem-os-direitos-humanos/.
Aug. 2019 – Interventions in universities Federal	He declared that he would choose rectors outside the triple list in certain cases.	It affects university autonomy and the constitutional principle of democratic management.	The Intercept Brasil. (2019). Bolsonaro has already intervened in half of the federal universities. Available at: https://www.intercept.com.br/2019/10/02/bolsonaro-universidades-reitores/.

Revista ARACÊ
ISSN: 2358-2472

20 Sep. 2019 – Freedom Law Economic	It sanctioned a rule that reduces state intervention and changes regulatory roles.	Reorganizes competencies between the Executive, Legislative and economic oversight.	Chamber of Deputies. (2019). Bolsonaro sanctions the Economic Freedom Law. Available at: https://www.camara.leg.br/noticias/588685-bolsonaro-sanciona-a-lei-da-liberdade-economica/.
09 Dec. 2020 – Measures anticorruptio n	He strengthened the CGU and created new internal control mechanisms.	It centralizes control powers in the Executive, altering the institutional balance.	Portal Gov.Br (2020). President Bolsonaro signs measures to combat corruption. Available at: https://www.gov.br/secretariageral/pt-br/noticias/2020/dezembro/presidente-bolsonaro-assina-medidas-de-combate-a-corrupcao/.
2022 – Time frame thesis	Allied base supported constitutionalization of the thesis for indigenous lands.	It affects the role of the Judiciary and Legislative on demarcations and fundamental rights.	Conectas. (2022). 10 priorities of the Bolsonaro government in Congress. Available at: https://conectas.org/noticias/10-prioridades-do-governo-bolsonaro-no-congresso-que-ferem-os-direitos-humanos/.
Aug. 2022 – Official government plan	He defends 'strengthening institutions' and 'reviewing federative arrangements'.	It indicates an intention for broad institutional restructuring.	Poder360. (2022). Bolsonaro Government Plan 2022. Available at: https://static.poder360.com.br/2022/08/plano-de-governo-bolsonaro-definitivo.pdf.
Out. 2022 – Statement additional	He said that if the STF 'lowers the temperature', he would give up the expansion of ministers.	It conditions the behavior of the Judiciary to political decisions of the Executive.	Correio Braziliense. (2022). Bolsonaro reinforces proposal to increase STF ministers. Available at: https://www.correiobraziliense.com.br/politica/2022/10/5043126-bolsonaro-reforca-proposta-de-aumentar-para-16-o-numero-de-ministros-do-stf.html.

Source[1]: authors, 2025; adapted from Chamber of Deputies, 2019; Correio Braziliense, 2022; Jornal da USP, 2022; Conectas Human Rights, 2022; The Intercept Brasil, 2019; Poder360, 2022.