

ABHANDLUNGEN / ARTICLES

Authoritarian Zones within Democracy: Rule of Law in Contemporary Brazil

By *Marta Rodriguez de Assis Machado** and *Raquel de Mattos Pimenta***

Abstract: President Jair Bolsonaro's government (2019-2022) brought unprecedented turmoil to the Brazilian democracy. In this paper, we argue that Bolsonaro's government builds on and expands pre-existing zones of authoritarianism embedded in the country. We illustrate the intricacies and perils of sustaining and expanding zones of authoritarianism in the Brazilian case in two domains: corruption and police violence, areas that represent some of the most important unsolved puzzles of redemocratization. They are bound together by the centrality of impunity, where unchecked power creates zones where the Rule of Law is contested. By illustrating the struggles to build accountability in these areas, we discuss the challenges that pre-existing zones of authoritarianism pose to democracy and how new autocrats have mobilized them. We also highlight analytical as well as empirical challenges for those studying autocratization processes in countries that are as hybrid or dual legal orders.

A. Introduction

President Jair Bolsonaro's government between 2019-2022 brought unprecedented turmoil to the Brazilian democracy. In this paper, we argue that Bolsonaro's government not only erodes institutions and democratic practices¹ but builds on and expands pre-existing zones of authoritarianism or enclaves² embedded in the political and economic domains of the country. These zones of authoritarianism are not restricted to one institution or rule, or a

* Professor of Law at Fundacao Getulio Vargas (FGV) Sao Paulo Law School, marta.machado@fgv.br.

** Professor of Law at Fundacao Getulio Vargas (FGV) Sao Paulo Law School, raquel.pimenta@fgv.br.

1 *Oscar Vilhena Vieira, Raquel de Mattos Pimenta, Marta Rodriguez de Assis Machado and Fabio de Sá e Silva, Estado de Direito e Populismo Autoritário: Erosão e Resistência Institucional no Brasil (2018-2022)* [book manuscript], forthcoming.

2 *Yanilda María González, Authoritarian Police in Democracy: Contested Security in Latin America*, Cambridge 2021.

single territorial domain; they are an entanglement of informal practices, formal rules, and institutions that produce, continuously and over time, unchecked powers as exceptions to the Rule of Law. Their maintenance speaks to the idea that the binary distinction between liberal and authoritarian regimes is much more complicated and intertwined than usually described in the literature.³ Hybrid systems are much more volatile and subjected to shifts between liberal and authoritarian practices and institutions.⁴

Rule of Law in Brazil is a contentious and gradual process of preserving and dismantling exceptions to fundamental rights, impartiality, and accountability. After decades of dictatorship, the 1988 Federal Constitution forged the country's return to democracy. The aversion to the horrors of the dictatorship pushed the creation of political, social, and economic rights, as well as a complex of institutions, symbols, and values designed to affirm full citizenship and to hold the powerful to account. While the magnitude of institutional crafting brought by the new Constitution should not be underestimated, the persistence of authoritarian practices, violence, and extreme inequality⁵ made the Rule of Law an incomplete endeavor.⁶

This brings analytical as well as empirical challenges for those studying the rise of autocratic legalism under the government of President Jair Bolsonaro. While the defining feature of autocrats rising to power through democratic elections is the use and abuse of legal methods to subvert the liberal content from constitutionalism,⁷ the literature does not

- 3 *Michael McCann and Filiz Kahraman*, *Beyond the Binary: On the Interdependence of Liberal and Illiberal/Authoritarian Legal Forms in Racial Capitalist Regimes*, *Annual Review of Law and Social Science* 17 (2021).
- 4 *McCann and Kahraman*, note 3.
- 5 In 2021, Brazil registered an average of 22.3 intentional violent deaths per 100 thousand inhabitants. Although the country is home to 2.7 % of the world's inhabitants, Brazil is responsible for 20.4 % of all homicides worldwide. In 2021, 84.1 % of the 6,145 victims of police killings were black. See Fórum Brasileiro de Segurança Pública, *Anuário Brasileiro de Segurança Pública 2022*, <https://forumseguranca.org.br/wp-content/uploads/2022/06/anuario-2022.pdf> (last accessed on 6 October 2022), p. 14; 28. In 2020, the proportions of the population in extreme poverty and poverty in Brazil, according to World Bank guidelines, are 5.7 % and 24.1 % of the population. There is yet another racial discrepancy in income distribution: in the same year, the rates of extreme poverty and poverty among black and brown people were 7.4 % and 31.0 %, with the highest incidences of poverty (31.9 %) and extreme poverty (7.5 %) being registered among black and brown women. See Agência IBGE Notícias, *Síntese de Indicadores Sociais: em 2020, sem programas sociais*, 32.1% da população do país estariam em situação de pobreza, <https://agenciadenoticias.ibge.gov.br/agencia-sa-la-de-imprensa/2013-agencia-de-noticias/releases/32418-sintese-de-indicadores-sociais-em-2020-sem-programas-sociais-32-1-da-populacao-do-pais-estariam-em-situacao-de-pobreza> (last accessed on 6 October 2022).
- 6 *Oscar Vilhena Vieira*, *Inequality and the subversion of the Rule of Law*, in: César Rodríguez-Garvito (ed.), *Law and Society in Latin America*, London 2014.
- 7 *Javier Corrales*, *The authoritarian resurgence: autocratic legalism in Venezuela*, *Journal of Democracy* 26 (2015); *Kim Lane Scheppele*, *Autocratic legalism*, *The University of Chicago Law Review* 85 (2018).

sufficiently take into account the role of pre-existing zones of authoritarianism within a democracy in this process.

In this paper, we describe the arrival of Jair Bolsonaro in the Presidency as a tipping force toward illiberalism. From the perspective of those preexisting zones of authoritarianism, rather than promoting a rupture, his government operates by expanding those zones and using them as opportunities to concentrate power or generate support for his political project. Expanding existing zones of authoritarianism is less politically and legally challenging than creating them, which would involve curtailing rights or debilitating accountability institutions. We hypothesize that if authoritarian practices are already embedded in a democratic context, autocratic advancements may go undetected, and institutional alarms are likely to take longer to go off. Resistance, therefore, is likely to be more complex and risks taking too long to be built.

We illustrate the intricacies and perils of the dynamics involving the dismantling and expanding zones of authoritarianism in Brazil using two case studies: corruption and police violence. For common citizens, successive democratic governments were unable to formulate effective policies that addressed corruption and violence with minimum respect for the individual rights.⁸ From the point of view of state accountability, these issues are defined by the abuse of private and public power, that remained unchecked by the lack of enforcement of the Constitutional legal order.

In our first case, corruption, we describe how impunity led, at first, to incremental reforms, and more recently a big-push strategy through criminal enforcement. In the last thirty years, scandal after scandal of corruption brought incremental reforms to answer a lingering sense of impunity. Taken together, they created a fragmented and interdependent web of accountability⁹ responsible for monitoring, investigating, and punishing corrupt acts. Its efficacy was, however, contested.¹⁰ Due to the idea that impunity was still reigning, for the last decade, the anticorruption policy became over-reliant on controls through punishment, particularly based on expanding the reach of criminal law, rather than in other types of preventive or systemic interventions.¹¹

- 8 *Maria Herminia Tavares*, Por que Moro é tão popular: ex juiz tem respostas simples, e erradas, para a corrupção política e a segurança dos cidadãos, <https://www1.folha.uol.com.br/colunas/maria-herminia-tavares/2019/12/por-que-moro-e-popular.shtml> (last accessed on 6 October 2022).
- 9 *Scott Mainwaring* and *Christopher Welna*, *Democratic Accountability in Latin America*, Oxford 2005; *Timothy Power* and *Matthew Taylor*, *Corruption and democracy in Brazil: the struggle for accountability*, Notre Dame 2011.
- 10 *Matthew Taylor* and *Vinicius Buraneli*, Ending Up in Pizza: Accountability as a Problem of Institutional Arrangement in Brazil, *Latin American Politics and Society* 49 (2007).
- 11 *Susan Rose-Ackerman* and *Raquel de Mattos Pimenta*, Corruption in Brazil: Beyond the Criminal Law, in: Paul Lagunes / Jan Svejnar (eds.), *Corruption and the Lava Jato Scandal in Latin America*, 2020; *Leonardo Avritzer* and *Fernando Filgueiras*, *Corrupção e controles democráticos no Brasil - texto para discussão CEPAL/IPEA*, Brasília 2011; *Mariana Mota Prado* and *Marta Rodriguez de Assis Machado*, Using criminal law to fight corruption: the potential risks and limitations of Operation Car Wash (Lava Jato), *Direito GV* 37 (2021).

The idea of impunity was central to Lava Jato,¹² the largest anticorruption investigation in the country that started in 2014, officially ended in 2021, and brought down political leaders and powerful companies,¹³ with a controverted legacy.¹⁴ There is no doubt that Lava Jato unveiled a complex scheme of kickbacks, cartels, and illegal campaign financing involving important politicians and businesspersons. However, some of the tactics and strategies used by some of the federal prosecutors in charge and the then-presiding judge in the State of Paraná, Sergio Moro, were considered questionable¹⁵, while others were considered illegal. They have promoted an idea of penal populism¹⁶, in which, in the name of ending impunity, almost any means were justifiable.

Our second case is police violence. Since the 1988 Constitution, common crimes and organized criminality soared. The World Health Organization described the state of the country as an epidemic of violence. Growing violence served to legitimize the unrestricted and abusive use of the police force, a legacy both from colonial times and from the military dictatorship (1964-1988). Impunity, in this case, is rooted in the country's refusal to punish human rights violations perpetrated by state agents in the recent past. Now, violence by public agents is crystallized and updated in the black and poor communities, as recognized by the Inter-American Commission on Human Rights' latest report in the country.¹⁷ Building more accountability in public safety policies has proven to be a tortuous path.

Both corruption and police violence were enablers of President Bolsonaro's path to power. They were connected by the extensive use by the then-candidate of a moral discourse of zero-tolerance and law & order, which mobilized the population's fears and images of internal enemies. As part of his populist rhetoric, he relied on the division between

12 *Fernando Limongi*, *From Birth to Agony: The Political Life of Operation Car Wash*, University of Toronto Law Journal 71 (2021).

13 *Alisson Jones and Caio Mario Pereira Neto*, *Combating Corruption and Collusion in Public Procurement: Lessons from Operation Car Wash*, University of Toronto Law Journal 71 (2021).

14 *Fabiana Fernandes Carvalho and Florian F. Hoffmann*, *Corrupting Democracy? Interrogating the Role of Law in the Fight Against Corruption and Its Impact on (Democratic) Politics*, *Verfassung und Recht in Übersee* (2021) p. 157 – 159.

15 *Prado and Machado*, note 11.

16 *Supremo Tribunal Federal*, HC 193726, *Agravo regimental não provido*, 15 April 2021; United Nations Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2841/2016, UN Doc CCPR/C/134/D/2841/2016. See *Julia V. Roberts et. al.*, *Penal populism and Public Opinion: Lessons from Five Countries*, Oxford 2002.

17 “The Inter-American Commission asserts that those murders [committed by the police against males of African descent] cannot be considered isolated acts of violence. Rather, they constitute a systematic and generalized process led by State security institutions and judicial organs and geared to exterminating people of African descent with using extremely and deliberately cruel methods. In the Commission's opinion, could come dangerously close to procedures that seek to exterminate all or some of the population of that ethnic-racial origin.” Inter-American Commission on Human Rights, *Situation of Human Rights in Brazil*, Washington 2021, p. 23.

“good citizens”, and “thugs” or “crooks”, creating an idealized image of the past, when corruption and violence supposedly did not happen. Yet, once in the Presidency, Bolsonaro acted towards the expansion of the domains of unchecked power: his government decreased the efficacy of anticorruption policies and endorsed the abuse of force by the police.

On the surface, the context of these two domains – corruption and police violence – may seem different and only marginally connected. We recognize that anticorruption and public safety are policies that have specific trajectories and are immersed in different fields of political contestation. Impunity has been the driver of the anticorruption institutional building that culminated in the Lava Jato investigations, which in turn was weaponized as a means to moralize Brazilian politics and feed populist discourses. In the police violence field, the transition to democracy did not lead to significant reform of the public security field, nor the incremental reforms to tackle the problem were able to resolve it. Maintenance of police violence and impunity represents at the same time a continuum with the military dictatorship practices and habilitation for further abuses.

Both cases illustrate the Bolsonaro government's autocratic toolkit to dissipate struggles of accountability and expand authoritarianism: a combination of abusing Executive Power prerogatives and para-institutional discourse,¹⁸ findings that are consistent with most of the case studies we have been mapping in our Project on Autocratic Legalism in Brazil.¹⁹ Moreover, both issues are rooted in the abuse of power and the centrality of impunity, where unchecked power creates zones where the Rule of Law is contested.

This paper proceeds as follows. First, we turn to the idea of zones of authoritarianism, where unchecked powers coexist within the Rule of Law, threatening at each turn, the legitimacy and support for democracy. Then, we describe the struggle between dismantling authoritarianism and building accountability in our two case studies, separating the pre-existing context and President Bolsonaro's actions to show how the latter feed into the former. We conclude by highlighting how these ideas may be useful to understand – and resist – autocratic governments, in Brazil and elsewhere. While specific to the country, this paper advances arguments that may be useful beyond the specific policies we analyze and, even, beyond Brazil. We hope to provide a nuanced view of imperfect democracies and how they are further instrumentalized by rising autocrats.

B. Incomplete transitions, permanent exceptions

Redemocratization brought new political and economic institutions into the Brazilian democratic legal order but was not able to secure rights and Rule of Law patterns in all areas and to all groups of citizens. The legal control of the use of power and violence, one main tenet of the Rule of Law, did not materialize in all fields. Throughout the decades, the persistence of extreme inequality, an acute problem in the Brazilian society, created

18 *Vieira, Pimenta, Machado and Sa e Silva*, note 1.

19 *Vieira, Pimenta, Machado and Sa e Silva*, note 1.

invisibility to the extremely poor, immunity to the privileged, and demonization of those willing to challenge the system.²⁰ To the underprivileged, high homicide rates, torture and the constant abuse use of lethal force by state agents have been turned into normalcy through the uses and practices of criminal law apparatus, persistently affecting the Brazilian black population. To the powerful, the sense of immunity before the law was never fully covered by the predicate of impartiality. The persistence of these exceptions is, in the long term, corrosive to the democratic system.

Discussing the Brazilian and Argentinian cases, Guillermo O'Donnell argues that after transitions from dictatorships, national-level democratic regimes coexist with subnational systems of private power, which he calls “brown areas”. Often with a territorial basis, “brown areas” are characterized by uneven power relations, where formal norms are intermittently applied and often encompassed by informal privatized norms, through continuous renegotiation of the boundaries between formal and informal legalities.²¹

Empirical work in the last decades focused on documenting the unequal experience citizens have in highly unequal formal democracies. As the literature moved beyond elections and institutions, some adjectives started to be used to describe those types of democracy: imperfect, incomplete, low-intensity, disjunctive, uncertain, uncivil, and illiberal, among others.²² Caldeira and Holston²³ describe it as a fundamental disjunction: the successful establishment of political democracy has not translated into rights, practices, and values of liberty and justice (civil citizenship). According to them, “uncivil political democracies” create and stabilize violence, injustice, and impunity, which delegitimize institutions of law and justice. The crafting of the unruly of law also operates at the interplay of political institutions with the economic realm. Exception creates and sustains extractive market institutions. Oliveira describes underdevelopment as the permanent exception form of

20 *Vieira*, note 6.

21 *Guillermo O'Donnell*, Why the Rule of Law matters, *Journal of Democracy* 15 (2004). O'Donnell also refers to situations of incompleteness at: *Guillermo O'Donnell*, Accountability horizontal e novas poliarquias, *Lua Nova* [online] 44 (1998).

22 See for example: *Elizabeth Jelin* and *Eric Hershberg*. *Constructing Democracy: Human Rights, Citizenship, and Society in Latin America*, Boulder 1996; *Juan E. Mendez*, *Guillermo O'Donnell* and *Paulo Sérgio Pinheiro*, *The (Un)Rule of Law and the Underprivileged in Latin America*, Notre Dame 1999; *Anthony Pereira*, *An Ugly Democracy? State violence and the Rule of Law in Postauthoritarian Brazil*, in: *Peter R. Kingston / Timothy J. Powers* (eds.), *Democratic Brazil: Actors, Institutions, and Processes*, Pittsburgh 2000; *Enrique Desmond Arias* and *Daniel M. Goldstein*, *Violent Democracies in Latin America*, Durham 2010; *Daniel Goldstein*, *The Spectacular City: Violence and Performance in Urban Bolivia*, Durham 2004; *Giovanna Maria Dora Dore*, *Jae H. Ku* and *Karl D. Jackson*, *Incomplete Democracies in the Asia-Pacific: Evidence from Indonesia, Korea, the Philippines and Thailand*, London 2014; *Ana Maria Sanjuán*, *Democracy, Citizenship and Violence in Venezuela*, in: *Suzana Rotker* (ed.), *Citizens of fear: Urban Violence in Latin America*, New Brunswick 2002..

23 *Teresa P. R. Caldeira* and *James Holston*, *Democracy and Violence in Brazil*, *Comparative Studies in Society and History* 41 (1999); *Paulo Sérgio Pinheiro*, *Autoritarismo e transição*, *Revista USP* 9 (1991).

capitalism in the periphery: “underdevelopment is the exception over the oppressed (...) auto-construction as the exception of the city, informal work as the exception of commodity, patrimonialism as the exception of market competition, state coercion as the exception to private accumulation”.²⁴

The recognition of zones of authoritarianism within democracies should not undermine the importance of the regime change, but rather open space for questions related to the types and quality of new democracies. These hybrid systems or situations of “incompleteness” reinforce exception as normalcy while, at the same time, the fragments of the Rule of Law are mobilized to advance respect for rights, build impartial institutions of law and justice, and expand citizenship. Contrary to pessimistic views, the results of these contradictions are not predetermined. However, they create theoretical and empirical challenges to distinguish autocratic advancements and to organize resistance, as illustrated by the examples below.

C. Corruption and Anticorruption: Discontinuities and entangled crisis

1. Incremental institutional building and the Lava Jato investigations

An infrastructure mega-project that brought billions of losses, given by the Federal Government to a construction company without any bidding proceeding or transparency, due to the influence of a powerful Minister. With minor adaptations, it could be the newspaper headline during the Lava Jato investigations, the crack-down on corruption that started in 2014. It was, however, the headline of *Der Spiegel* in 1978, during the military dictatorship, about the construction of nuclear plants in Brazil.²⁵ The most visible corruption scandal of the dictatorship laid bare the backpadding, opacity, and absence of any accountability that sustained the Brazilian “economic miracle” growth of these years.

The 1988 Constitution created the components of a Brazilian web of accountability aiming to hold the powerful to account both public and private agents: transparency, independent institutions, and a commitment to democracy and due process. During the next three decades, institutions such as the Federal Police, the Public Prosecution Office, the Judiciary, the Controllerships, and the Audit Courts created technical capabilities and

24 *Francisco Oliveira*, *Crítica à razão dualista: o Ornitórrinco*, São Paulo 2013.

25 *Malu Gaspar*, *A Organização: a Odebrecht e o esquema de corrupção que chocou o mundo*, São Paulo 2020; *Pedro Henrique Pedreira Campos*, *Estranhas catedrais: as empreiteiras brasileiras e a ditadura civil-militar*, Niterói 2013.

political prestige and gained new instruments and competencies.²⁶ They created an intricate web of control mechanisms within the Executive (for instance, between agencies and controllers) and between the Power branches.

However, there was a lingering analysis that the visible consolidation of institutions and instruments did not bring full accountability.²⁷ In fact, the idea of ‘impunity’ is a magnet concept for corruption and anticorruption analysis,²⁸ even if its measurement is disputed. Some point to the ineffectiveness of the Judicial system, with a low probability of conviction for corrupt acts.²⁹ Yet, conviction rates are a disputable measure of impunity, as they may stem from different factors, such as poorly instructed cases that need to be acquitted. Others nominate impunity as the strategic use of delays and postponements so that cases reach the statutes of limitation without a clear judicial answer to the facts, or without executing the judicial decision.³⁰ In this case, the underlying causes of impunity are much more complex to access.

More than its exact measurement, the idea of impunity has animated the Lava Jato investigations and justified its methods,³¹ innovative interpretations of criminal acts and criminal procedure laws, as well as the use of questionable repertoires used against common criminality, now revamped to white-collar crimes.³² Although Lava Jato was the result of new and strengthened institutions, impunity was perceived as an existential threat, a major problem to the political and economic system functioning in Brazil, which fuelled the use of penal populism in the investigation.³³

Some prosecutors and the leading judge of the investigations in the State of Paraná decided to promote a judicial ‘big push’, in contrast with the incremental institutional

26 Rogério Arantes and Thiago Moreira, Democracia, instituições de controle e justiça sob a ótica do pluralismo estatal, *Opinião Pública* [online] 25 (2019); Rogério Arantes and Thiago Moreira, O Ministério Público na fronteira entre a Justiça e a Política, *Justitia* (São Paulo) 197 (2007); Timothy J. Power and Matthew M. Taylor (eds.), *Corruption and Democracy in Brazil: The Struggle for Accountability*, Notre Dame 2011; Bruno Wilhelm Speck, *Inovação e rotina no Tribunal de Contas da União: O papel da instituição superior de controle financeiro no sistema político-administrativo brasileiro*, São Paulo 2000; Luciano Da Ros and Matthew M. Taylor, *Brazilian Politics on Trial*, Boulder 2022.

27 Taylor and Buranelli, note 10.

28 Maira Rocha Machado, Crime e/ou improbidade? Notas sobre a performance do sistema de justiça em casos de corrupção, *Revista Brasileira de Ciências Criminais* 112 (2015).

29 Carlos Higino Ribeiro de Alencar and Ivo Gico Jr, Corrupção e judiciário: a (in)eficácia do sistema judicial no combate à corrupção, *Revista Direito GV* 7 (2011).

30 José Álvaro Moisés (coord.), *Justiça criminal, impunidade e prescrição: relatório analítico propositivo, Núcleo de Estudos de Políticas Públicas da Universidade de São Paulo e Associação Brasileira de Jurimetria*, Brasília, 2019.

31 Limongi, note 12.

32 Prado and Machado, note 11.

33 Fabio de Sa e Silva, From Car Wash to Bolsonaro: Law and Lawyers in Brazil’s Illiberal Turn (2014-2018), *Journal of Law and Society* 47 (2020).

building anticorruption of the previous decades.³⁴ Lava Jato uncovered the pervasiveness of bribery, kickbacks, and illegal campaign financing between the state and the companies through a combination of new investigative tools (such as plea bargains or corporate non-trial agreements) and instruments to promote better coordination between enforcement institutions through joint task forces and/or extensive use of international cooperation.³⁵ Lava Jato's proceeding unfolded across several fronts, including criminal, anticorruption, and antitrust investigations, as well as through auditing in the Federal Court of Accounts, administrative improbity lawsuits, and political sanctions. A total of 226 criminal lawsuits were filed, 1054 individuals were prosecuted, 279 cooperation agreements were negotiated, electoral mandates were revoked, debarment sanctions preventing politicians from standing in elections were imposed, fines combined reached BRL 21.1 and Leniency Agreements totaling BRL 12.375 billion were executed with corporations.³⁶

However, over the years, the narrative of the investigations slowly shifted from a triumph of accountability over impunity³⁷ to a much more hesitant account. This erosion was the result of contested strategies,³⁸ controversial uses of criminal law,³⁹ and the open dispute of power among authorities.⁴⁰ Some commentators consider that Lava Jato, throughout the years, became a political project that aimed to control corruption through an over-reliance on criminal law and the Judiciary⁴¹ rather than igniting in the Legislative and Executive a larger discussion on reforms needed to increase access to markets and participation in public decisions.⁴² Moreover, messages' leaks showed undue backchanneling communications between the judge and prosecution.⁴³

The end of the Lava Jato task force at the beginning of 2021 was not a bang, but a whimper. In the final years of the investigations, most Brazilians already considered that little (43.4 %) to no (26 %) progress at all was achieved to curb corruption.⁴⁴ It was a reminder of the society's discomfort of living in the overlap between the reality of corruption

34 *Da Ros and Taylor*, note 26.

35 *Raquel de Mattos Pimenta and Otavio Venturini*, International Cooperation and Negotiated Settlements for Transnational Bribery: A Study of the Odebrecht Case, *Revista Direito GV* 17 (2021).

36 *Jones and Pereira Neto*, note 13.

37 *Sérgio Fernando Moro*, Preventing systemic corruption in Brazil, *Daedalus* 147 (2018).

38 *Fabiana Alves Rodrigues*, *Lava Jato: Aprendizado Institucional e Ação Estratégica na Justiça*, São Paulo 2020.

39 *Prado and Machado*, note 11.

40 *Raquel de Mattos Pimenta*, *A Construção dos Acordos de Leniência da Lei Anticorrupção*, São Paulo 2020.

41 *Limongi*, note 12.

42 *Rose-Ackerman and Pimenta*, note 11; *Jones / Pereira Neto*, note 13.

43 The Intercept Brasil, *As Mensagens Secretas da Lava Jato*, <https://theintercept.com/series/mensagens-lava-jato/> (last accessed on 6 October 2022).

44 *Latinobarometro*, Análisis Online, <https://www.latinobarometro.org/latOnline.jsp> (last accessed on 6 October 2022).

that Lava Jato uncovered, with the mounting evidence that the Rule of Law was, at times, weakened by some actions of the state agents who should have protected it.

II. *Bolsonaro Government and loosening the web of accountability*

A few years before, in the presidential campaign of 2018, no one could have imagined this ending for Lava Jato. Amidst an anti-corruption and anti-establishment sentiment, Bolsonaro used the populist anti-corruption rhetoric used by Lava Jato to antagonize his opponents, especially the Worker's Party. As a candidate, he argued: "Those who are against Lava Jato are also against Brazil and the Brazilians"⁴⁵ and promised, "not to allow the end of Lava Jato".⁴⁶

Key figures of Lava Jato embraced Jair Bolsonaro's candidacy and government. The former presiding judge of the Lava Jato investigations, Sergio Moro, left the benches to become Minister of Justice of Bolsonaro, barely a year after convicting the runner-up on the Presidential race, the former President Luiz Inácio Lula da Silva, of the Worker's Party. A few years later, the Brazilian Supreme Court considered that Moro was partial in his rulings against President Lula.⁴⁷

Bolsonaro's anticorruption promises were short-lived.⁴⁸ Moro exited the government in 2021 accusing the President of improperly trying to interfere in Federal Police investigations. A ministerial meeting video shows Bolsonaro complaining that "ongoing investigations should not harm his family or friends".⁴⁹

This was only one of the visible episodes of setbacks that the government imposed on the anticorruption system.⁵⁰ His tactics were based on the strategic use of the Executive's prerogatives to lose the web of accountability. First, through administrative reorganization of agencies and nominations within the Executive. Following the episode with Sergio Moro, the Head of the Federal Police was fired. Bolsonaro changed individuals at key posts

45 *Jair Bolsonaro*, <https://twitter.com/jairbolsonaro/status/1068163002883629057> (last accessed on 6 October 2022).

46 *Jair Bolsonaro*, <https://twitter.com/jairbolsonaro/status/1047447252137119745> (last accessed on 6 October 2022).

47 Supremo Tribunal Federal, 2ª Turma reconhece parcialidade de ex-juiz Sérgio Moro na condenação de Lula no caso Triplex, <https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=462854&ori=1> (last accessed on 6 October 2022).

48 *Paul Lagunes, Gregory Michener, Fernanda Odilla and Fernanda Pires*, President Bolsonaro's Promises and Actions on Corruption Control, *Direito GV* 17 (2021).

49 Folha de São Paulo, Veja transcrição comentada da fala de Bolsonaro na reunião em que citou PF e proteção da família, <https://www1.folha.uol.com.br/poder/2020/05/veja-transcricao-comentada-da-fala-de-bolsonaro-na-reuniao-em-que-citou-pf-e-protecao-da-familia.shtml> (last accessed on 6 October 2022).

50 *Paul Lagunes, Gregory Michener, Fernanda Odilla and Fernanda Pires*, note 41; *Transparência Internacional Brasil, Brazil: Setbacks in the Legal and Institutional Anti-Corruption Frameworks (2020 Update)*, <https://dev.transparenciainternacional.org.br/publicacoes/brazil-setbacks-in-the-legal-and-institutional-anti-corruption-frameworks-2020-update/> (last accessed on 6 October 2022).

at the Federal Revenues Service responsible for cooperating and sharing information with other law-enforcements,⁵¹ once they started investigating his son, a Brazilian Senator, for corruption and money laundering. Related to the same investigations, his government also fired the head of the Brazilian Financial Intelligence Unit and reallocated the agency within the Executive.⁵²

Second, using the Executive prerogative of nominating the head of independent control institutions (as the Prosecutor General and the Attorney General). Since 2003, Presidents picked a name for Prosecutor General from a shortlist presented by the prosecutors themselves. This was some guarantee that the Prosecutor-General would first attend to the interests of prosecutors that had put him or her on the shortlist, rather than only relying on the chief of the executive. The President's decision to circumvent this practice was seen as weakening the Prosecution Office's independence from the Executive, which is particularly important given the attribution of the Prosecutor-General of investigating the President and his Ministers, as well as members of the House and the Senate. The same pattern of attempting to co-opt the apex of control institutions was also adopted in the nominations of the General Attorney.⁵³

Third, by decreasing transparency and access to information in his government. Bolsonaro has attempted to change the 2011 Access to Information Law, but most of his actions were reverted by the Judiciary. Studies show that while the level of governmental responses to information requests has remained the same throughout the Bolsonaro government, the systematic use of the few exceptions allowed for secrecy have increased.⁵⁴

NGOs and international organizations have urged Brazil to take steps to prevent the erosion of its anti-corruption policies.⁵⁵ Impunity – as a speech and as a reality – seems to be lurking once again, as uncovered by the corruption scandals related to vaccine

51 Folhapress, Alvo de Flávio Bolsonaro é exonerado de cargo na Receita Federal, <https://valor.globo.com/politica/noticia/2020/12/04/alvo-de-flvio-bolsonaro-exonerado-na-receita-em-meio-presso-para-anular-provas-de-rachadinha.ghtml> (last accessed on 6 October 2022).

52 Senado Notícias, Lei transfere Coaf do Ministério da Economia para o Banco Central, <https://www12.senado.leg.br/noticias/materias/2020/01/08/lei-transfere-coaf-do-ministerio-da-economia-para-o-banco-central> (last accessed on 6 October 2022).

53 *Eloísa Machado de Almeida* and *Luiza Pavan Ferraro*, *Arquitetura jurídica da desresponsabilização: Advocacia Geral da União e Procuradoria Geral da República nas ações contra o governo Jair Bolsonaro no Supremo Tribunal Federal*, forthcoming.

54 *Raquel Pimenta*, *Opacidade, transparência e sigilo sob o governo Bolsonaro*, forthcoming.

55 *Transparência Internacional Brasil*, note 50; OECD, Brazil must immediately end threats to independence and capacity of law enforcement to fight corruption, <https://www.oecd.org/brazil/brazil-must-immediately-end-threats-to-independence-and-capacity-of-law-enforcement-to-fight-corruption.htm> (last accessed on 6 October 2022).

purchases during the COVID-19 crisis⁵⁶ or the potential corruption involving members of his family.⁵⁷

The combination of the inner crisis within anticorruption policies due to contestations on Lava Jato, combined with Bolsonaro's attacks on accountability institutions has produced setbacks in the Brazilian anticorruption policy. To imagine and implement future improvements to make sure that the powerful are held to account and that the Rule of Law is upheld is likely to be a much more complex and politically contested task.

D. Police Violence: Continuity and Habilitation

I. Continuity through impunity

Police violence against the black poor population is a resilient colonial practice.⁵⁸ It was also an open practice against activists and opponents of the regime during the civil-military regime. In this case, the Brazilian transition to democracy shows a pattern of "full continuity".⁵⁹ Rather than a shift or incremental advancements, the transition meant incorporating repressive techniques into the daily practices of the police.

The democratic Constitution of 1988 did not address significant or structural changes in public security agencies. While the Constitution brings an explicit commitment to human rights and due process, police violence has remained an unsolved knot in the Brazilian constitutional democracy. The explosion of violent criminality in the 1980s and the spirals of violence perpetrated by the polices – militarized and repressive – increased fear, mistrust, and unsafety among the population. Public safety became a key feature of the political and social agenda post redemocratization, but paved the way to law & order discourses, with populist undertones based on stigmatization and demonization.⁶⁰ The Constitution transferred the subordination of the Military Police⁶¹ – which continued to be the ostensive police – from the Army to the civilian state governments, but the police kept its features and practices: highly militarized, hierarchical, and violent.

56 Senado Federal, Relatório Final Comissão Parlamentar de Inquérito (CPI) COVID-19, Brasília 2021.

57 *Juliana Dal Piva*, *O Negócio do Jair: a História Proibida do Clã Bolsonaro*, Rio de Janeiro 2022.

58 *Alessandra Teixeira, Fernando Afonso Salla and Maria Gabriela da Silva Martins da Cunha Marinho*, *Vadiagem e prisões correccionais em São Paulo: mecanismos de controle no firmamento da república*, *Estudos históricos* 29 (2016).

59 *Paulo Sérgio Pinheiro, Eduardo A. Izumino and Maria Cristina Jakimiak Fernandes*, *Violência fatal: conflitos policiais em São Paulo (81-89)*, *Revista USP* 9 (1991).

60 *Vieira*, note 6.

61 In Brazil, the military police are forces responsible for maintaining public order within the States and the Federal District, subordinated to the state governments. Each state has its own military police, with its own general commander. State military police forces are distinct from national Brazilian armed forces. Civil Police forces of the states, also subordinated to each State Governor, handle crime investigation, such as detective work and forensics.

The Inter-American Commission of Human Rights reports a “pattern of extrajudicial executions of adolescents and young people of African descent in peripheral regions or slums” and an “a pattern of systematic impunity in such cases, especially those involving security forces agents as perpetrators”.⁶² Data from 2021 brought by the latest Public Security Yearbook showed that the number of police killings has increased significantly from approximately 2,000 people per year in 2013 to a relatively stable level of over 6,000 people per year as of 2018.⁶³ Victims of police interventions are 99.2 % male; 74 % under 29 years old; and afro-descendants represent 84.1 % of those killed⁶⁴ (while they are only 563 % of the general population).⁶⁵ The Brazilian black movement has been denouncing police brutality against the black population since the 1970s, and more recently they have started to refer to this police violence as an Afro-descendant “genocide”.⁶⁶

There is a pervasive common sense shared by Brazilian organizations linked to public security – and supported by a significant parcel of the Brazilian society: abuses of power and violence by the police are allowed against “criminals”, a label used to any young blacks living in favelas or peripheral neighborhoods.⁶⁷

This combination of institutional racism and abuse governs the Brazilian public security forces and is supported by the controlling authorities. The practice of abusive stops and frisks, verbal aggressions, torture, and killings are not only part of the military and truculent institutional ethos (and training) but is reinforced by formal institutions: internal administrative controls and the criminal justice “normal” functioning guarantee that police

- 62 Conectas Direitos Humanos, Relatório preliminar da CIDH traz 71 recomendações ao Brasil, <https://www.conectas.org/noticias/relatorio-preliminar-da-cidh-apresenta-71-recomendacoes-a-brasil> (last accessed on 6 October 2022).
- 63 Without considering the existence of a significant hidden figure, which also includes cases of disappearances, an average of 200 people are missing per day. See *Samira Bueno*, Uma ausência permanente: desafios para compreensão dos registros de desaparecimentos no Brasil, in: Fórum Brasileiro de Segurança Pública, Anuário Brasileiro de Segurança Pública 2022, <https://forumseguranca.org.br/wp-content/uploads/2022/06/anuario-2022.pdf> (last accessed on 6 October 2022).
- 64 Fórum Brasileiro de Segurança Pública, Anuário Brasileiro de Segurança Pública 2022, <https://forumseguranca.org.br/wp-content/uploads/2022/06/anuario-2022.pdf> (last accessed on 6 October 2022), p. 82-84.
- 65 Fórum Brasileiro de Segurança Pública, Anuário Brasileiro de Segurança Pública 2021, <https://forumseguranca.org.br/wp-content/uploads/2022/06/anuario-2022.pdf> (last accessed on 6 October 2022), p. 67.
- 66 *Paulo Cesar Ramos*, Gramática negra contra a violência de Estado: da discriminação racial ao genocídio negro (1978-2018), Doctoral dissertation, São Paulo, 2021; *Ana Luiza Pinheiro Flauzina*, As fronteiras raciais do genocídio, *University of Brasília Law Journal* 01 (2014).
- 67 *Michel Misse*, La acumulación social de la violencia en Rio de Janeiro y en Brasil: algunas reflexiones, *Co-herencia* 7 (2010); *Jacqueline Sinhoretto*, *Giane Silvestre* and *Maria Carolina Schlittler*, Desigualdade racial e segurança pública em São Paulo: letalidade policial e prisões em flagrante [Racial inequality and public safety in São Paulo: police lethality and arrests in flagrante], São Carlos 2014; *Flauzina*, note 55.

agents who use violence against citizens will not be declared liable for their actions.⁶⁸ The cover-up stories of self-defense and the simulacrum of judicial cases that are easily dismissed or never reach a conviction have been successfully working as a varnish film to cover up illegal killings and accommodate authoritarian uses of coercive force within the Brazilian constitutional project.

The 1992 Carandiru case is an illustration. The execution of 111 citizens by the Police within a prison complex in São Paulo prompted human rights mobilization and created a political opportunity to discuss the problem in the public sphere and formal arenas.⁶⁹ They resulted in important reforms such as the 1996 “Bicudo Law” (Law n. 2190/96) that shifted the jurisdiction of crimes committed by the military police against civilians from military courts (considered biased in favor of the corporation) to civilian courts. Civilian courts were supposedly in a better position to impose the Rule of Law, but time showed they are not. The Carandiru criminal case shows exceptional resilience in the criminal justice system. It has been processed for already 30 years, while the majority of police killings cases would have been dismissed much earlier by the public prosecutors based on narratives of self-defense.⁷⁰ The case managed to reach convictions by the jury trial but they were all reverted by the São Paulo Appeal Court. This heterodox nullification led the case to the Brazilian Supreme Court. The Court had decided to maintain the conviction of the police officers, in a decision possibly pending appeal.⁷¹ Up to this date, justice for the dead has been delayed or inconclusive, perpetuating impunity, and the tacit endorsement of the patterns of abuse by the police force. The justice system (lack of) performance is a key element to understand the persistence of police brutality. The degree of abuse by the police is directly related to the functioning of accountability systems. The absence of accountability is an element of escalation of violence.⁷²

- 68 *Marta Rodriguez de Assis Machado*, *The Pacifying Police Units in Rio de Janeiro: a bypass of what?*, *Revista Estudos Institucionais* 6 (2020); *Poliana da Silva Ferreira*, *Justiça e letalidade policial*, São Paulo 2021; *Orlando Zaccone*, *Indignos de Vida. A Forma Jurídica da Política de Extermínio de Inimigos na Cidade do Rio de Janeiro*, Rio de Janeiro 2015; *Juliana Farias*, *Governo de Mortes: uma etnografia da gestão de populações de favela no Rio de Janeiro*, Rio de Janeiro 2020.
- 69 *Maira Rocha Machado* and *Marta Rodriguez de Assis Machado*, *Carandiru não é coisa do passado: um balanço sobre os processos, as instituições e as narrativas 23 anos após o massacre*, São Paulo 2015.
- 70 *Jacqueline Sinhoretto*, *Giane Silvestre* and *Maria Carolina Schlittler*, *Desigualdade racial e segurança pública em São Paulo: letalidade policial e prisões em flagrante*, São Carlos 2014; *Joana Domingues Vargas* and *Ludmila Mendonça Lopes Ribeiro*, *Estudos de Fluxo da Justiça Criminal: Balanço e Perspectivas*, *Anais do XXXII - Encontro Anual da Anpocs*, Caxambu 2008.
- 71 Supremo Tribunal Federal, *Decisão do ministro Roberto Barroso mantém condenação de policiais militares por Massacre do Carandiru*, <https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=491736&ori=1> (last accessed on 6 October 2022).
- 72 *Paul Chevigny*, *Edge of the knife: Police violence in the Americas*, New York 1995.

The judiciary is not the only democratic institution reproducing authoritarian zones. Opposition to human rights and the legitimization of crimes perpetrated by the State through the police force is a persistent popular narrative,⁷³ and a recurrent discourse in the political arena and electoral cycles i.e. reproduced in the core of democratic mechanisms.

II. *Continuity and habilitation in the Bolsonaro Government*

Jair Bolsonaro has expressly defended police executions and even declared his intention to grant amnesty to convicted police officers. Among them, he specifically mentioned the policemen involved in the Carandiru case. Bolsonaro's campaign relied on law & order discourses, heavily supported by the militarized police forces, and galvanized the general public's fear: approval of executions, tortures, and all abuses committed during the dictatorship, fierce opposition to the grammar of human rights, and deliberate policy to expand access to guns defended as a crucial tool of self-defense for "good citizens" against "bandits".⁷⁴ Although such discourses have been present in all electoral cycles and even sustained victories in local or parliamentary elections, with Bolsonaro, they reached a new level: the federal government.

Bolsonaro's habilitating discourse also translated into policy. He aims to dismantle the already fragile accountability system, by formalizing the criminal justice system (in)action towards police violence, for instance, by offering pardon for security agents who incurred in excessive use of force to self-defense⁷⁵ and by expanding the legal concept of exculpation for lethal use of force. The "anti-crime package", a bill sent by the government to Congress in 2019, was an attempt to expand the legal concept of self-defense in a two-pronged strategy: first, it tried to include in its general definition reactions based on "excusable fear, surprise or violent emotion" and, second, it proposed the creation of a specific hypothesis of self-defense by police officers, which involved anticipating the possibility of use of lethal force to situations of "*imminent risks of armed conflict*" or to "*prevent unjust and imminent aggression*". Due to civil society mobilization, the proposal was barred by Congress, and months later a new bill was proposed by the Federal Executive (PL 6125/2019).⁷⁶ The new bill – still pending vote – deals exclusively with

73 *Teresa Pires do Rio Caldeira*, *Cidade de muros: Crime, segregação e cidadania em São Paulo*, São Paulo 2000.

74 *Ludmila Ribeiro and Valeria Oliveira*, "Eu quero que o povo se arme: a política de segurança pública de Bolsonaro", in: *Leonardo Avritzer / Fábio Kerche / Marjorie Marona*, *Governo Bolsonaro: retrocesso democrático e degradação política*, Belo Horizonte 2021; *Sofia Rolim*, *Guns and police in the age of Bolsonaro: pathways to the implementation of an authoritarian public security agenda* [Working paper], 2022.

75 Decree nº 10.189, of December 23, 2019. When announcing the measure, he specifically mentioned his willingness to pardon the policemen involved in the Carandiru case, who, in fact, have never been convicted.

76 Câmara dos Deputados, PL 6125/2019, <https://www.camara.leg.br/proposicoesWeb/fichadetramacao?idProposicao=2230394> (last accessed on 6 October 2022).

security and military agents acting in the context of Law and Order Guarantee operations (GLO)⁷⁷ and defines the situations in which self-defense will be *presumed*: the practice or imminence of practice of a terrorist act; conduct capable of causing death or bodily injury; a situation in which the victim's freedom is restricted by violence or a serious threat; or if a person ostensibly carries or uses a firearm. The bill also prohibits the arrest of public security agents in flagrante delicto and provides that, if prosecuted, they will be represented by the Attorney General's Office (AGU).

There has been an increased use of GLOs in the last decade, pushed by the international mega-events⁷⁸ and by the alleged objective of combating drug trafficking.⁷⁹ There is a lot of criticism of GLOs since they have been a stage for violent civilian deaths by military personnel.⁸⁰ There are no established protocols that guarantee transparency and accountability of the actions of the armed forces.⁸¹ Moreover, since 2017, military officers who commit crimes against civilians have been put on trial by the jurisdiction of military courts. Considered a measure to guarantee impunity, Federal Law n. 13491/2017 partially revoked the Bicudo Law. Bolsonaro's bill is part of this continuum that combines increased militarization and less accountability.

Bolsonaro's model is not based on creating new policies but rather crystallizing the existing informal norms through public discourse and legal changes. Passing formal rules

- 77 The negotiated transition process from the military dictatorship to the civilian government did not completely exclude the possibility of domestic participation of the armed forces. According to the 1988 Brazilian Constitution, the defense of internal order is the primary task of permanent civilian forces, but there is a provision (Article 142) that authorizes missions of the Armed Forces to guarantee law and order, an intervention that should be regulated by law. Guarantee of Law and Order (GLO) is characterized as a military operation determined by the President and conducted by the Armed Forces in an episodic manner, in a previously established area and for a limited time. It aims to preserve public order and the safety of people and of property, in situations of exhaustion of the regular public security regular resources (federal police; federal highway police; federal railway police; civil police; military police and military fire departments). Only the president can authorize a GLO.
- 78 The Armed Forces also acted in GLO during the United Nations Conference on Sustainable Development in Rio de Janeiro (Rio + 20), in 2012; the FIFA Confederations Cup (2013), the visit of Pope Francisco and the Catholic event World Youth Day, both in 2013; at the 2014 World Cup and the Rio 2016 Olympic Games.
- 79 Rio de Janeiro was the state where it happened most times and also where the period was most extended. While most of the operations lasted from 1 to 3 months, two GLOs in favelas in Rio de Janeiro, with the alleged objective of combating drug trafficking, had a long duration - between 2010 and 2012, the occupation of Complexo do Alemão and Complexo da Penha; and between 2014 and 2015, occupying the Complexo da Maré.
- 80 *Natália Viana*, O Exército é acusado de matar inocentes em operações de segurança pública, <https://apublica.org/2018/10/exercito-e-acusado-de-matar-inocentes-em-operacoes-de-seguranca-publica> (last accessed on 6 October 2022).
- 81 *Rute Rodrigues* and *Carolina Armstrong*, A intervenção federal no Rio de Janeiro e as organizações da sociedade civil, Relatório de Pesquisa: Instituto de Pesquisa Econômica Aplicada, Brasília 2019.

is not only a reinforcement of the practice, but a limitation to other actors that may wish to disrupt such patterns by upholding the Rule of Law. “Good bandit is a dead bandit” is a saying signaling a long-standing cultural pattern that associates order and authority with the use of violence⁸² but a populist motto signaling to reaffirm and expand lethal authoritarian practices upon the disadvantaged. The rising number of police killings right after Bolsonaro took office suggests that although the measures proposed by Bolsonaro were barred so far, these initiatives might have informal effects.⁸³ By vocalizing and formalizing what is implicit, Bolsonaro attempts to hollow out the Rule of Law, as incomplete and uncivil as it is.

In 2020, the Supreme Court ordered the suspension of ostensive Police operations in Rio during the COVID-19 pandemic except for indispensable cases. This signaled a possible change in the role of the judiciary in face of police violence, although recent progressive positions at the top of the judiciary have often been resisted in the lower courts of the criminal justice system. In 2021, the police from Rio de Janeiro entered the neighborhood Favela do Jacarezinho, and shot to death 24 citizens. One police officer was also killed. It was the deadliest Police operation in the state and it happened in blatant disobedience to the Supreme Court ruling, showing the resilience of the informal norm that authorizes executions. The responsible for the operation cynically declared that the operation was exceptional, as mandated by the Supreme Court, and criticized “judicial activism” that impairs the work of the police.⁸⁴ The following day, Bolsonaro’s Vice President, General Hamilton Mourão, said all of the dead were “bandits” or “outlaws”, mobilizing a known discourse to justify illegalities and abuses.

The Jacarezinho massacre only confirms how rights violation or (un)rule of law remains relatively stable throughout redemocratization, even if contested. Contemporary impunity for police violence is a continuum in history, what changes seem to be the direction of forces governing the zone's dynamics if it aims to overcome or to expand it.

E. Concluding Remarks

We have argued that understanding the resilience of zones of authoritarianism, as a mix of formal and informal rules and organizations that reproduce unchecked powers in imperfect democracies, is crucial to understand the rise of new autocrats. Using the examples of

82 *Caldeira and Holston*, note 24.

83 *André Filipe Pereira Reid dos Santos, Lucas Melo Borges de Souza and Thiago Fabres de Carvalho*, Aspectos simbólicos, políticos e práticos da letalidade policial no Rio de Janeiro e em São Paulo durante o Governo Bolsonaro, *Revista Eletrônica Direito e Sociedade* 8 (2020); *Sofia Rolim*, Carta branca para matar: excludente de ilicitude e elementos totalitários na política de segurança pública de Bolsonaro, forthcoming.

84 *Eliane Santos and Nicolás Satriano*, Polícia nega execuções no Jacarezinho e critica ‘ativismo judicial’: falta de operação dá péssimo resultado, diz delegado, <https://g1.globo.com/rj/rio-de-janeiro/noticia/2021/05/06/entrevista-coletiva-operacao-jacarezinho.ghtml> (last accessed on 6 October 2022).

corruption and police violence in contemporary Brazil, we showed that those existing zones can be appropriated, expanded, and mobilized by authoritarian rulers. Impunity cut across both zones as a proxy of the resilience of arbitrary practices over the Rule of Law and the embeddedness of authoritarianism within accountability institutions. In those democracies, the coexistence of the formal and informal, the legal and the illegal, the liberal and the illiberal, and the Rule of Law and authoritarianism, complicates the discussion on binary terms. It is better described as processes in which the two dynamics coexist, interact and function as opportunities or threats towards one end or the other: processes of autocratization versus process of democratic consolidation. These movements are much more nuanced than previously mapped by the new literature on autocratic legalism.

The problem of impunity has shown different dynamics in each field, although maintaining close relation to the erosion of the Rule of Law in both cases. The attempt to bring the powerful to account and the lingering idea that impunity was a continuity in the Brazilian history has been a driver for anticorruption policies, with ever-expanding controls in place, and a series of institutional reforms that successfully created a web of accountability institutions. Enabled by those reforms, some actors in the judicial system started a blitzkrieg against the political system, launching the Lava Jato task force. The idea of impunity fed populist law & order discourses that allowed for heterodox use of the criminal law apparatus. While the massive investigation left a controverted legacy, gains in accountability are now threatened by the progressive dismantling of key institutions and instruments promoted by the Bolsonaro government.

In the case of police violence, reforms were insufficient and blocked. The problem persisted among democratic governments, which were committed to the Rule of Law and human rights and even proposed some incremental reforms, although they were shy or never got traction. Police violence was accepted and enabled by the accountability institution that has consistently guaranteed impunity for police officers and authorities. The Bolsonaro government here does not produce a total diversion of the path, the zone was already functioning outside the constitutional frame. However, the government means an important change in direction – between a failing Rule of Law system with attempts to reform institutions aiming at constitutional compliance; or, on the contrary, heading to the consolidation of the exceptions as a political project.

Both fields are crossed by populist dynamics that create polarized divisions between good citizens and enemies (“corrupts”, “bandits”), mobilize anti-pluralist sentiments, and generate impatience towards the Rule of Law. Those partial forms of political populism are not only instrumental to autocrats but affect the robustness of the Rule of Law in the long run.⁸⁵

85 *Nicola Lacey*, *Populism and the Rule of Law*, *Annual Review of Law and Social Science* 15 (2019).