

BRAZIL INSTITUTE

A Conversation with Justice Gilmar Mendes

Building a Modern and Transparent Electoral System in Brazil



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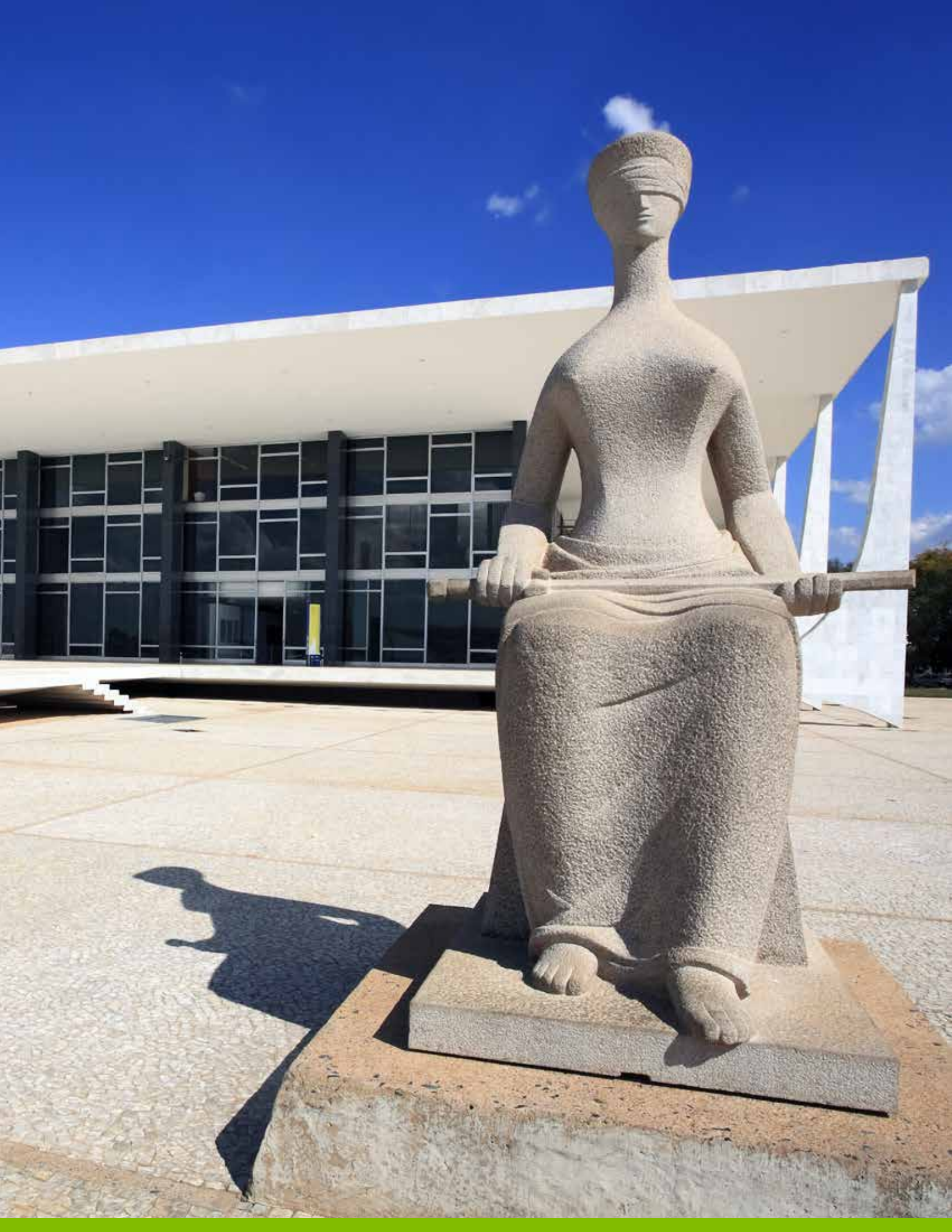
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A Note on the Rule of Law Series

Once seen as a mere formality in a land of impunity, especially for individuals in positions of power in society, Brazilian institutions have displayed in recent years a previously unsuspected capacity to bring people in high places to justice. Nowhere is this shift more evident than in two high profile cases separated by almost a decade and involving politicians, political operators, and business men accused of crimes of corruption.

The first involved a vote-buying scheme in Congress. The investigation originated in Congress with a Parliamentary Commission of Investigation (CPI) in 2005 and concluded in 2012 with guilty verdicts from Brazil's Supreme Federal Court for twenty-five of the thirty-nine persons indicted. Twelve were sentenced to unprecedented prison terms, including a former presidential chief of staff, the speaker of the lower House of Congress, and the president and the treasurer of the political party in power at the time of the crimes.

The second case was brought to light by a federal criminal investigation launched in early 2014 on allegations of large scale corruption against state oil company Petrobras. Dubbed the "Brazilian Oilgate" or Petrolão, this investigation has led to dozens of indictments, including of a former president of the Republic, a sitting president of the Senate, a speaker of the Brazilian House of Representatives (who has been expelled from office by his peers), and a significant number of members of Congress. Other high profile individuals have also been convicted and sentenced to prison terms, among them the heads of Brazil's largest construction contractors.

Expected to keep the Brazilian judicial system occupied for the foreseeable future, the Petrolão has fueled a national crisis that led to the impeachment and removal of a president, deepened a severe recession, and exposed the limits of a political and economic system that has reached its point of exhaustion. Despite the obvious adverse short-term implications for Brazilian society, the corruption investigations have won solid and enduring support among voters and the public in general. Remarkably, it has not resulted in diminishing support for democracy. On the contrary, the unprecedented crisis has strengthened arguments for reform and affirmation of government by people's consent under the rule of law.

Inspired by the hopeful evolution of the nation's crisis, the Brazil Institute launched in July 2016 a lectures series to explore the various institutional aspects of this historic, ongoing transformation in Latin America's largest country. The initiative, reflective of a broader Wilson Center focus on the global fight against corruption, brings to Washington audiences the judges, prosecutors, defense lawyers, legal experts, and practitioners engaged in the evolution of justice and rule of law in Brazil. The series is conducted in partnership with the American University's Washington College of Law program on Legal and Judicial Studies. Edited proceedings of each lecture will be available online, with lectures from the entire series collected in a volume to be published in the second semester of 2017. It is our hope that the statements gathered in this series will shed light on the ongoing efforts of a diverse group of actors to strengthen Brazilian institutions, and deepen the dialogue on rule of law both within and beyond Brazil.

Paulo Sotero
Director, Brazil Institute

JUSTICE GILMAR MENDES was appointed to the Supreme Court of Brazil in 2002 by former President Fernando Henrique Cardoso and is currently the longest-serving member of the Court. Justice Mendes studied law at the University of Brasilia and University of Munster, receiving his PhD in Law magna cum laudae in 1990. He has authored numerous books and articles on the Brazilian Supreme Court and Constitution.

Justice Mendes currently heads Brazil's Superior Electoral Court, which supervises elections at every level throughout Brazil. He served as Chief Justice of the Supreme Court from 2008-2010, a position that rotates every two years among the justices of the Court.

The **BRAZIL INSTITUTE** was honored to receive Justice Mendes and his colleague Justice Teori Zavascki in Washington, D.C. on November 7, 2016. **AMBASSADOR ANTHONY HARRINGTON**, former U.S. ambassador to Brazil and chair of the Brazil Institute Advisory Council, introduced the justices. **JUDGE PETER MESSITTE**, senior U.S. district judge for the District of Maryland, provided commentary.

The speeches and dialogue contained in this volume have been edited for clarity by Paulo Sotero, Anna Prusa, and Natalie Kosloff. Special thanks go to Julia Decerega for translating and transcribing the Q&As and to Kathy Butterfield for the design.

Building a Modern and Transparent Electoral System in Brazil

Justice Gilmar Mendes¹

Chief Justice of the Superior Electoral Court of Brazil

Justice of the Supreme Court of Brazil²

*Brazil Institute at the Woodrow Wilson International Center for Scholars
Washington, D.C. – November 7, 2016*

Since the 1988 Constitution, we have experienced the longest period of institutional stability in the history of our Republic. However, with respect to our political and electoral system, we have not been able to reach a consensus around required changes.

We currently grapple with several issues that, generally, stem from our open-list proportional representation system. It is a unique system that was the object of several studies, and fulfilled an important mission. It helped solve several serious political problems but has been showing signs of fatigue.

We left a two-party system behind and, with the 1988 Constitution, we adopted a multi-party system that grew to become somewhat limitless. In addition to the proportional representation system, the

current model allows for the formation of party coalitions in each election, which can vary in each state of the federation, and a presidential system under which the head of the executive branch has the clear power to set the agenda, even when representing a minority party.

On the other hand, our democratic evolution and the proliferation of political parties, many of which have no clear ideology, have intensified the competition for votes and the demand for significant financial resources to meet the extremely high cost of political campaigns.

In the 2014 elections, for example, companies from a single group contributed as much as R\$500 million (approximately \$150 million). In such an environment, the lack of limits was undoubtedly a major flaw in the corporate campaign finance system.

“...With the 1988 Constitution, we adopted a multi-party system that grew to become somewhat limitless.”

ELECTORAL AND CAMPAIGN FINANCE REFORMS

In 2015, attempts to overcome this situation were sought through relevant and innovative new legislation and several historic Brazilian Supreme Court (STF) decisions.

Law 13,165/2015 introduced significant changes to the electoral process, such as the establishment of limits on campaign expenditures. At the same time, Supreme Court decisions—such as one declaring corporate campaign contributions to be unconstitutional and one banning undisclosed contributions—represent paradigm shifts with significant impact on campaign finance, which became apparent in the 2016 municipal elections.

Law 13,165/2015 effected profound changes in the electoral process. One highlight, for example, is the requirement to hold new elections when a Superior Electoral Court decision revokes the registration, electoral certificate, or term of office of a candidate elected with a majority vote. The purpose of the provision is to curb lawsuits by competing candidates vying for office even after the conclusion of the elections, and to soften the political instability that such vacancies usually engenders.

Another key provision was the rule establishing that, in elections under proportional representation, candidates

must receive at least 10 percent of the votes to be elected. This measure attempts to mitigate one of the flaws of our open-list proportional system: the high level of transfer of votes, which causes distortions such as the well-known cases of public figures whose electoral success enables the election of fellow party members with poor showings in the polls.³

In addition to these important innovations, the main change introduced by the new law is the establishment of clear spending caps for political campaigns in both majority-vote and proportional elections.

We should note that, in addition to the challenges in ensuring compliance with the established caps, the fact that the law established significant reductions in campaign spending is a cause for concern.

In this year's elections, for example, in cities with up to ten thousand voters, spending was capped at only R\$100,000.00 (one hundred thousand reals) for Mayor and R\$10,000.00 (ten thousand reals) for Councilman. This strict regulation requires our institutions to rigorously oversee campaign accounts. And we should note that, in the 2016 elections, we had approximately five-hundred thousand candidates.

In light of the difficulties of obtaining accurate accounts in past campaigns, the Superior Electoral Court started a process

to improve its campaign finance oversight mechanisms. The 2014 elections served as an experiment for substantial changes introduced to campaign finance inspection in 2016.

The law now requires candidates to report their accounts to the Superior Electoral Court every 72 hours, so contributions and expenditures may be tracked in real time. In addition, the Superior Electoral Court entered into several agreements with other oversight institutions, such as the Federal Court of Accounts and the Internal Revenue Service.

This cooperation gives the Superior Electoral Court access to these institutions' auditing know-how and allows databases to be cross-referenced, which greatly increases the efficiency of campaign finance oversight.

In addition to these legislation changes, recent Brazilian Supreme Court decisions have also given new meaning to political campaign finance dynamics.

For example, in reviewing Constitutionality Case 5,394/DF, the Supreme Court understood that undisclosed campaign

contributions are inconsistent with the principle of transparency. The decision was not overly controversial as the identification of donors was already a common practice at the Superior Electoral Court. In any event, the ban on anonymous contributions is important to combat fraud in campaign finance reporting.

The most notable impact on campaign finance was outlined in the decision on Constitutionality Case 4,650/DF, filed by the Brazilian Bar Association (OAB). The campaign finance model in effect until then allowed for private individual and corporate contributions, without externally imposed limits, as the parties established their own campaign spending caps. Contributions had to be made and recorded by name, whatever the amount.

The theory defended by the Bar Association was based on the assumption that the ban on corporate contributions to political campaigns would be a fundamental step in preventing the exchange of favors between elected officials and corporate donors. In reviewing the case, a majority of the Supreme Court partially upheld the case and declared the legal provisions



Justice Gilmar Mendes (left) and Ambassador Anthony Harrington at the Brazil Institute (November 7, 2016)

authorizing corporate contributions to be unconstitutional.

After the hearing, the Brazilian Congress signaled that it might approve a constitutional amendment to reestablish corporate contributions. By the way, this would have been an interesting example of dialogue between judiciary and political institutions. In any event, current legislation allows only individual contributions.

However, it doesn't seem likely that a ban on corporate contributions will solve the problems of the current political party finance model.

Repeated corruption scandals in our recent constitutional history have exposed the challenges in balancing the relationship between political and economic power in campaign finance.

Campaign finance reforms must be developed concurrently with the desired electoral model. However, we reformed campaign finance without changing the existing electoral model.

The definition of the electoral system is a complex choice. We must decide, for example, whether we will have party-list voting, whether we will continue with the open-list system, or whether we will adopt a pure or mixed district voting model. The proper finance model can only be determined with some certainty once these points are resolved.

Therefore, any change in campaign finance requires a concurrent reform in the electoral system, party system, and election law, in addition to a restructuring of the electoral process oversight bodies.

We do not have a tradition of individual campaign contributions. This reality will lead candidates to seek options outside electoral laws, as campaign costs will remain unchanged.

Given that reducing campaign costs does not seem like an idea that will be implemented soon, we can project that the ban on corporate contributions, in addition to the lack of funds from individual donors, will lead to an increase in secret contributions, the so-called "slush funds."

In addition, as I have been arguing in lectures and at the Superior Electoral Court (Ordinary Appeal No. 919-42/AC, decision rendered on 9/16/2014), the exclusion of corporate entities without considering a reform of the political system and elections laws, and strengthening oversight institutions, will give rise to a genuinely Brazilian sophisticated donor, the "ghost donor."

A mere ban on corporate contributions will not solve the historical issues that we have mentioned. In particular, if current election campaign costs remain unchanged, the volume of contributions, whether formal or outside the law, will increase significantly, and consequently so will the volume of transactions to be examined by the Superior Electoral Court.

Moreover, as awareness grew that the private contribution model was at risk, political parties started to pad the Party Fund (the federal Special Fund for Financial Assistance to Political Parties), perhaps with the intent to use public funds to bridge any gaps in financing from the private sector. These are substantial amounts, nearing R\$1 billion a year. The purpose

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of the fund is to support party activities and cover advertising costs, among other expenditures, but also to finance parties' participation in elections.

Taxpayers must know that these are public funds transferred to political parties and they must decide whether this is an appropriate model, particularly given the currently disorganized state of the parties. Brazil currently has 35 parties, and 28 are represented in Congress. All receive transfers from the Party Fund, which occasionally creates grave distortions in the use of these transfers.

In this context, it is clear that the success of an electoral reform requires much more than merely establishing campaign spending caps or banning corporate contributions to political parties. We urgently need to think about solutions that involve changes to the electoral system, the party system, and election laws, and thus the restructuring of election oversight institutions, particularly the Superior Electoral Court and the Electoral Prosecutor's Office.

ELECTRONIC VOTING AND BIOMETRICS

The good news is that, despite all the serious issues with the political, electoral, and party system, Brazil has been immensely successful in organizing and managing elections.

As evidence of this, the Brazilian Superior Electoral Court conducted, in 2016, the largest computerized election in the world. More than 119 million voters used electronic polling stations in the first round of municipal elections, with approximately five-hundred thousand candidates to mayor, deputy mayor, and councilman in 5,568 municipalities. We were able to know the election results a few hours after the polls closed.

The introduction of electronic voting during the 1996 municipal elections was a historic change in the voting and vote-counting model in Brazil. That year, voters in state capitals and cities with more than two-hundred thousand voters used the first electronic polling stations. Since the year 2000, all Brazilian voters now use electronic polling stations.



From left to right: Ambassador Anthony Harrington Justice Gilmar Mendes, and Justice Teori Zavascki (November 7, 2016)

We are very proud of our electronic voting system, which is speedy and reliable. Earning that trust was based on two pillars: security and transparency. And these two pillars were strengthened by the technology employed, which is under constant improvement.

In addition to providing greater speed, automation allowed all stages of the process to be monitored and audited by the parties, institutions and any interested citizen, thus enhancing the transparency and security of the electronic voting and vote counting system.

The security mechanisms that the Superior Electoral Court adopted ensure the reliability of the systems and the success of the elections. Several audits and inspections have been conducted during the almost 20 years of use of the computerized voting system, not only by the political parties but also by information technology experts from renowned universities.

The Superior Electoral Court makes the electronic voting systems available to university researchers, hackers, and the general public for broad security testing. Public security tests were established as part of the Brazilian electoral system, which must be conducted before each election. The Superior Electoral Court's own initiative in conducting these tests demonstrates its level of maturity.

In addition, one way to ensure the security of the information entered at the electronic polling station is to check the authenticity of the systems used. To this end, before these systems are sent to the Regional Electoral Courts for installation at the polling sites, the Superior Electoral Court gathers representatives from all political parties, the Public Prosecutor's Office, and the Brazilian Bar Association for the "digital signature" ceremony.

The digital signature ensures the authenticity of the polling station software, namely that it was produced and generated

by the Superior Electoral Court. It uses an encryption technique that seeks to confirm that the polling station software did not lose its original characteristics due recording or reading errors. If the digital signature is valid, the file has not been changed.

The electronic polling station uses the most advanced encryption. This is an additional feature that is implemented both in the hardware and software, thus ensuring that only the software developed by the Superior Electoral Court may run on the electronic polling stations.

The station equipment runs in isolation. It does not contain any mechanism that may be connected to computer networks such as the Internet. The polling station does not have the hardware required for a network connection—for any type of connection, wired or wireless—nor does it include any software that allows for connection to networks or remote access.

In addition to electronic voting, we should mention another significant improvement in our electoral process, namely the introduction of biometric data to our voter registration.

The Brazilian voter rolls are the largest in Latin America. We currently have 144 million

registered voters. Biometrics are being gradually implemented since the 2008 municipal elections.

Biometrics is a technology that adds even more security to voter identification when casting a vote, making it virtually impossible for voter identification fraud to occur. The biometric reader confirms the identity of each citizen based on unique fingerprints stored in a database maintained by the Superior Electoral Court.

We should note that we already have a database with more than 50 million biometrically registered voters in more than 2,500 cities. Shortly, all Brazilian voters will be biometrically identified, which will provide, in combination with electronic voting, a significant level of security in the performance of this civic duty.

For all these reasons, we hope that the political, electoral, and party systems achieve the same level of enhancement that the Superior Electoral Court was able to achieve with respect to the organization of the electoral process.

Questions and Answers

Q: Is it possible to separate Dilma Rousseff from Michel Temer in the investigations into the 2014 elections?

A: Well, the first thing I should clarify is that this process began in 2015 and it is an extraordinary process. It was the first time the Supreme Electoral Tribunal accepted a penal action calling into question the validity of the mandate of the President of the Republic.

The Electoral Court has frequently accepted complaints against governors or senators. I should note that there is some regional variation: It was uncommon for the Court to accept complaints originating in the Central-South region, because it was understood that there was greater natural electoral competition and equity in that region than in the North and Northeast.

But, in light of the facts and the complaints presented, the Court decided to accept the case against the president—but it has been complicated. The minister tasked with reviewing the original complaint (the rapporteur) initially rejected it. I requested a recess to look into the case files further, and we spent a year talking about this issue. Then there was a change in leadership on the case and Minister Herman Benjamin took over as rapporteur. In the middle of this process there was the impeachment, which made this a delicate issue, since the direct target of the complaint [President Dilma Rousseff] is no longer in office.

Questions obviously remain about the possibility of separating the complaints [versus viewing the Rousseff-Temer ticket as a single entity]. The process has moved forward, but we do not yet know when it will end. This raises another question because the ruling could have direct implications for an election, which would be a direct election if the judgment happens this year [2016], and an indirect election if the judgment happens next year [2017]. This type of situation has never been discussed in the Superior Electoral Court. The only similar precedent is a case from the 1990s, when the Court evaluated a complaint from the state of Roraima. The governor had been elected, had his mandate disputed, and then passed away during his term in office. The Court considered accepting the complaint against his vice governor, but ultimately found him not guilty. Yet it is very likely that the Court would have sided in favor of the complaint if the governor had been alive.

What will happen in this current case? I do not know. The Court will make the decision fully aware of its great institutional responsibility, particularly given our current national context.

Independent of the position the Court takes and the results, this will be a historic case. First, because there had never before been an investigation related to presidential elections. At most, we had discussed abuses related to television ads during campaigns. But now, thanks

in part to investigations conducted in the Operation Car Wash, we know a lot about the campaign. Minister Herman just gave an interview saying that he is shocked by the colossal numbers involved in the campaign, by the confessions obtained, by the people involved, by the business leaders who made donations to the campaign. That is why there is historic significance to this case, why we to analyze the merits of this process as the case unfolds. This case will allow us to know what happened during the 2014 campaign, and could pave the way for new legislation.

Q: The Superior Electoral Court is the government entity responsible for carrying out elections in Brazil. How do you handle systemic vote-buying and electoral corruption at the local and state levels?

A: I think this is a huge problem that also has to do with socioeconomic asymmetries in Brazil. It is hard to contemplate the idea of vote buying in São Paulo, but it is not uncommon in the North or in the Northeast. It is not only a cultural question, but also one that involves socioeconomic conditions. We have very serious legislation about this issue. And there have been several cases where vote buying was established, and people were removed from office.

However, vote-buying is a delicate subject and we only accept cases that with specific evidence. The law certainly mandates punishment for an individual who was eventually convinced or persuaded [to vote a certain way] because of construction material donations, or free medications, or a surgery. But this can be difficult to enforce in practice. In the last cycle, the Superior

Electoral Court even adopted a mechanism, an app called “Pardal,” which allowed individual citizens to send photographs and data to the Prosecutor’s office and the Regional Electoral Justice office to collect evidence for this type of infraction. But unfortunately, I think these practices are going to continue to occur. We cannot be effective given the current the socio-economic asymmetries.

Q: Do you think Supreme Court defendants should be allowed to occupy posts in the line of succession of the presidency?

A: This is always an issue that needs to be examined with caution. My vision is a bit different from the one that was debated in the Supreme Court: I believe this requires self-restraint, it requires that we act with caution.

In my view, it is important to consider the following question: Does the potential harm incurred if the defendant were to assume the Office of the President also apply to the post currently occupied by the defendant? In other words, if the individual in question is suspended from the succession (i.e., not allowed to assume the office of the President), should he or she also be barred from holding from that original post? I tend, at this time, to say that the suspension should be applied only to the temporary assumption of the Office of President. Especially since the person may be found not guilty—and there are many examples of this.

Q: What is your opinion on the *pedido de vistas* (recess request to look into case files further) of Minister Dias Toffoli and do you think a vote on this case will be possible this year?

A: I think the request was a healthy one. In Brazil, there is a certain authoritarianism when it comes to the conclusion of a judgment—a sense that the votes have been cast.

Why interrupt the judgment? Often it is a chance to reflect or even convince others that we should consider a new aspect of the case. The vote is also a historic mark. Since the 1988 Constitution, we have not had a tragedy, like the *Dred Scott v. Sandford* decision [in the United States]. But we have had extremely bad cases. For example, we killed a constitutional amendment on *precatórios* [public debt the courts order the government to pay, either as a result of individual lawsuits or debts owed to local governments]. We are still trying to resolve the issues we created with that decision. It was a technical case where we messed up the whole system Congress had designed. If we had asked for a *pedido de vistas*, however, we might have been spared this public embarrassment.

So it can be good to make a *pedido de vistas*, especially since we do not need to rush decisions—we are not resolving these questions to settle specific cases, but rather for a permanent resolution of an issue. In fact, this is a key difference between our judicial rulings and legislation. Our decision, even if it is not permanent or eternal, is put forth under the pretense of longevity.

Legislators can operate on a trial and error basis. They can regret and repeal whatever decisions they make.

Q: What is your opinion on the Military Police crackdown on Brazilians protesting the federal spending cap (PEC) and the recent decision of a Federal District judge to authorize the use of techniques compared with torture to make invaded schools uninhabitable, despite the presence of minors?

A: The issue of school invasions is a very delicate one. As Minister Teori pointed out in his remarks, there are no rights without limits. And a clear limit is when you infringe on someone else's right.

In this case specifically, in *Paraná*, there was a series of public school invasions in locations where we had planned to have polling stations. We had to move those sites. That cost R\$ 3 million (almost US\$ 1 million). As far as the disruption of classes, it is unclear if the invasion is by students of that same school—some say they are high school students, and some seem to be college students with ties to political movements. This needs to be looked into.

It is natural that people protest. It shows the vitality of our democracy in Brazil. But limits are also necessary, and we are beginning to have this discussion. The right to protest with faces covered, for example, is a subject we need to talk about.

Q: There have been claims of election rigging in United States and in Brazil of late, as well as talk of coup d'états. How do you evaluate this process in terms of the health of the Brazilian democracy?

A: Some people have said there was a coup in Brazil—but if it was a coup, it was very peculiar coup.

First, the president and vice-president were elected together, and were political allies. And second, the whole process was regulated by the Supreme Court, upholding her [President Dilma Rousseff's] right to defense, etc. I was the last justice to be appointed by President Fernando Henrique Cardoso. All the other justices were appointed by a PT government [the Workers' Party of Presidents Rousseff and Luiz Inácio Lula da Silva].

So why this discourse? Because you always need a script, a narrative. Collor's impeachment case was actually much simpler. This one was scrutinized at every step of the way.

However, life continues and the [October] election results show that people think democracy was preserved—otherwise the electoral results would have been different [Editor's note: the October 2016 municipal elections were widely perceived as a defeat for Rousseff's Workers' Party, and a victory for President Temer's PMDB and coalition partner PSDB].

Of course there might have been a certain abuse in a general context. I mean, Rio de Janeiro just announced a state of public [financial] calamity. This is a case of pure fiscal irresponsibility, which is a

constitutional matter. What's being done with this spending cap amendment that was mentioned earlier is nothing more and nothing less than an attempt to reestablish fiscal responsibility as a Constitutional norm.

The Constitution already contained this idea, regulated in the last part of Fernando Henrique Cardoso's government through the Law of Fiscal Responsibility, which is now being applied to Rio de Janeiro. The idea that when there is an excess [deficit], a phase of greater prudence starts—limits to work days are put in place, and employees may be let go. We are living that today.

Look at the crisis in the country right now. We have today 12 million people unemployed. It's a national tragedy. This is the biggest crisis we have faced, largely due to fiscal irresponsibility—that was evident in the impeachment process.

Brazilians, as Minister Teori said, are very generous. We minimize many things, making them sound like minor infractions when they are in fact monumental fiscal frauds. The lack of expenditure records; the government claiming as revenue the money coming from banks, which were actually loans—this was treated as if it were a misdemeanor. But it's not. We are talking about budget fraud. And the Constitution makes this clear.

I believe that the impeachment decision showed our democratic vitality. It was the way to undo a mandate that had already been lost due to a governability crisis.

Q: Were the campaign finance reforms in Brazil entirely positive or were there some negative aspects? Also, electoral regulations change with each election. Would it be better to have more permanent rules to give stability to the electoral process?

A: The changes to campaign expenditures were positive. I don't think that the model adopted should necessarily continue—the model allowing only individual contributions. Maybe we should discuss this model, but I also want to emphasize that we should discuss the financing associated with a change in the electoral system.

As far as reforming electoral regulations, that's a necessity that even members of Congress recognize exists. The Constitution has a cautionary rule requiring such changes take place at least a year before elections. At the moment, we are in a process of continuous reform but there is also real instability. Ideally there would not be too many changes [right now], but with the understanding that the process would lead to more extensive reform in the future.



ENDNOTES


- 1 *Editor's Note:* In Brazil, all judges on the superior federal courts are referred to using the title of “Minister.” In this publication, we make the distinction between judges on the Brazilian Supreme Court and judges on the other superior courts (such as the Superior Electoral Tribunal) by referring to the former as “Justices” in the U.S. style (e.g., Justice Gilmar Mendes) and referring to the latter as “Ministers.”
- 2 *Editor's Note:* Brazil's highest constitutional court, the *Supremo Tribunal Federal*, is referred to interchangeably in English as the Supreme Court or the Supreme Federal Tribunal (STF). The court consists of eleven justices, appointed by the president and approved by the Federal Senate. Three members of the Supreme Court also sit on the Superior Electoral Court (one of whom serves as its Chief Justice).
- 3 *Editor's Note:* Brazilian federal deputies are elected through a proportional representation open-list system. The number of deputies elected from each party is proportional to the number of votes that party receives. However, citizens vote directly for candidates, not parties, and the candidates who receive the most votes are the ones who get their party's seats. In practice, this means that a highly popular candidate—a former football star, for example—can win enough votes to bring several colleagues into the lower house on his coattails, even if those colleagues did poorly in the popular vote. As a result, parties are often eager to attract popular figures. Yet parties also lack control over their members—party loyalty and seniority are not required to get elected, as is often the case in closed-list systems.



*Opening of the 2017 Session of the Supreme Court of Brazil
(Image credit: Agência Brasil)*





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