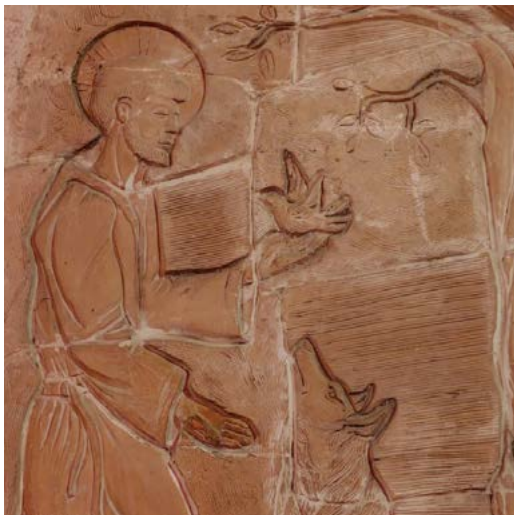

Fighting COVID-19 in a Fragile Democracy: The Case of Brazil

La lotta al COVID-19 in una democrazia fragile: il caso del Brasile

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EN This article examines the intersection of constitutionalism, populism, and the right to health through Brazil's response to the COVID-19 pandemic. Drawing on the 1988 Federal Constitution, the dynamics of Brazilian cooperative federalism, and a comparative analysis with the United States, it argues that the catastrophic pandemic response was not the product of institutional incapacity but of deliberate political choices by a populist government that treated the right to health as a target rather than a state obligation. It further reflects on the post-pandemic accountability trajectory, including the criminal conviction of former President Jair Bolsonaro in September 2025 for an attempted coup — a development that raises persisting questions about populism, democratic resilience, the judicialization of governance, and the structural inequalities that shaped COVID-19 mortality in both countries.

keywords: right to health, COVID-19, Brazil, populism, comparative constitutionalism, democratic resilience

IT Il presente articolo esamina l'intersezione tra costituzionalismo, populismo e diritto alla salute alla luce della risposta del Brasile alla pandemia di COVID-19. Attingendo alla Costituzione federale del 1988, alle dinamiche del federalismo cooperativo brasiliano e a un'analisi comparata con gli Stati Uniti, sostiene che la risposta pandemica catastrofica non sia stata il prodotto di un'incapacità istituzionale, bensì di scelte politiche deliberate di un governo populista che ha trattato il diritto alla salute come un obiettivo da colpire piuttosto che come un obbligo da adempiere. L'articolo riflette inoltre sulla traiettoria di responsabilizzazione post-pandemica, inclusa la condanna

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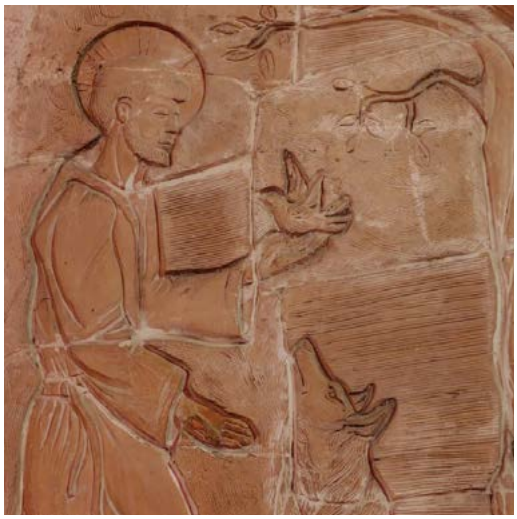

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penale dell'ex presidente Jair Bolsonaro nel settembre 2025 per tentato colpo di Stato — uno sviluppo che solleva interrogativi duraturi sul populismo, sulla resilienza democratica, sulla giudiziarizzazione della governance e sulle disuguaglianze strutturali che hanno determinato la mortalità da COVID-19 in entrambi i paesi.

keywords: diritto alla salute, COVID-19, Brasile, populismo, costituzionalismo comparato, resilienza democratica

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Articolo soggetto a revisione tra pari a doppio cieco

1. Introduction

The beginning of the twenty-first century has confronted humanity with a series of globalised threats, including climate change, depletion of natural resources, artificial intelligence, and pandemic disease, that no single state can address in isolation. COVID-19, which emerged from Wuhan in late 2019 and was declared a global pandemic by the World Health Organisation in March 2020, was a stress test of precisely this kind (Liu et al. 2020).

Yet the pandemic was not experienced equally. In countries governed by populist leaders, the health emergency was filtered through an ideological lens that systematically subordinated scientific consensus to political interest (Panizza et al. 2025). Brazil, under former President Jair Bolsonaro stands as one of the most documented cases of this phenomenon: a country with a sophisticated public health system, a robust fundamental rights constitutional framework, a constitutionally entrenched universal right to health, and a proven track record of pandemic preparedness, which nonetheless recorded over 700,000 deaths from COVID-19, the second highest toll globally in absolute numbers, behind only the United States (WHO 2023).

This article explores how that outcome came about. It argues that understanding the Brazilian COVID-19 response requires engaging simultaneously with three registers: the constitutional architecture of the right to health, the political and federative dynamics that shaped the executive response, and the comparative dimension, especially the parallels with the United States under President Donald Trump. Together, these registers reveal not a story of institutional failure but of institutional capture — a deliberate and, as later legal proceedings confirmed, criminal subversion of the state apparatus.

The article proceeds as follows. Section II sets out the constitutional and international legal framework of the right to health in Brazil. Section III analyses the Brazilian response, focusing on the executive's role, the judicialization of the crisis, and the work of the Senate COVID-19 Parliamentary Inquiry Commission. Section IV offers a comparative analysis with the United States. Section V draws conclusions and reflects on the long aftermath, including Bolsonaro's 2025 criminal conviction.

2. The Brazilian Constitutional Framework for the Right to Health

Brazil's constitutional history with respect to health reflects a long struggle, each constitution materialising the historical moment in which the country was immersed, alternating between greater or lesser balance between state power and citizens' fundamental rights, and transitioning through democratic and authoritarian periods.

Colonial Brazil was characterised by the complete absence of public health policy (Gazêta 2005), and the successive Constitutions of 1824, 1891, 1934, 1937,

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1946, and 1967 each treated health protection primarily as an instrument of economic development, tied to employment status and the protection of the productive workforce, rather than as a universal entitlement. The turning point occurred with the Sanitary Movement of the 1970s, a coalition of health professionals, intellectuals, and civil society organisations that emerged in opposition to the military dictatorship then in power and advocated for a reconceptualisation of health as a fundamental right, universally and equally accessible to all. The Sanitary Movement shaped the redemocratisation agenda, and its central demands were enshrined in the Constitution of 1988 (Almeida and Freire 2018).

The 1988 Constitution, known as the "Citizen Constitution", materialises a bold framework of justiciable fundamental rights, representing a paradigm shift with regard to the right to health in Brazil. Article 196 establishes, for the first time in Brazilian constitutional history, health as a universal right decoupled from employment status and reorganised as a duty of the state, to be fulfilled through social and economic policies aimed at reducing the risk of disease and ensuring universal and equal access to health services. This provision anchors the Unified Health System (SUS), a publicly funded universal and comprehensive health coverage system financed by general taxes that benefits more than 200 million people (Commonwealth Fund 2026). The 1988 Constitution further distributes legislative and administrative competence in health matters across the three federal entities: the Union, the states, and the municipalities.

Alongside the SUS, Article 199 of the 1988 Constitution expressly permits private participation in healthcare, supplementing SUS services through health plans, insurance schemes, and independent services, subject to public regulation, prohibition on receipt of public funds, and restrictions on foreign capital participation. This twofold architecture produces a structurally unequal system: higher-income groups access healthcare through the market, while those who cannot afford private insurance depend entirely on the SUS — a fault line within Brazil's social security policy with implications for health equity.

The right to health under the 1988 Constitution is not merely programmatic. Brazilian constitutional jurisprudence has developed two key doctrines to give it immediate operative force. The first is the doctrine of the existential minimum (*mínimo existencial*), borrowed from German constitutional law (*Existenzminimum*) and incorporated into STF jurisprudence from the ADPF 45 decision of 2004 onwards. This doctrine requires the state to secure the minimum conditions necessary for a dignified existence and limits the extent to which budgetary constraints may justify non-compliance with the state's social rights obligations. The second is the reservation of the possible (*reserva do possível*), which acknowledges that these same constraints may inform the pace of rights realisation, but cannot be invoked to frustrate or nullify constitutionally mandated public policies (STF ARE 639.337 AgR 2011)

Together, these doctrines grant the right to health in Brazil its justiciable content: individuals may seek judicial enforcement when the state fails to discharge its obligations. This constitutional background is essential to understanding both

what made the Bolsonaro administration's COVID-19 response unconstitutional and how the judiciary came to occupy such a prominent role in managing the crisis and mediating institutional conflicts during the pandemic.

3. The Brazilian Response to COVID-19

3.1. Context

The first confirmed case of COVID-19 in Brazil was recorded on 26 February 2020 in São Paulo (Globo 2020). After a month, all twenty-six Brazilian states and the Federal District had reported cases of the disease, with deaths recorded in eight of them (Silva et al. 2020). What followed exposed a paradox: a country demonstrably well prepared for health emergencies performing disastrously in the face of one.

Brazil has a National Plan for Response in place to Public Health Emergencies (Ministério da Saúde 2014), tested during major international events including the 2014 FIFA World Cup and the 2016 Olympic Games (Correio Braziliense 2011; FIOCRUZ 2016). It also possesses world-class public health research institutions, particularly the Oswaldo Cruz Foundation, with the capacity to develop and produce vaccines domestically (Fonseca et al. 2023). Additionally, Brazil's rights-based approach to the HIV/AIDS epidemic had been internationally recognised as a successful model (Henriques and Vasconcelos 2020). Nevertheless, none of these counted for much once federal leadership collapsed and a segment of society, following the president's lead, turned against public health measures. As a result, Bolsonaro's government produced what has been described as one of the worst pandemic responses in the world, with over 700,000 deaths (Ministério da Saúde 2023), the second-highest global death toll (WHO 2023), an outcome not of institutional incapacity but of deliberate political choices.

3.2. The Executive: Populism, Disinformation, and the Politics of Contagion

Jair Bolsonaro's response to the pandemic was characterised by the systematic weaponisation of disinformation. Between 2019 and 2022, he issued at least 6,685 false or distorted statements (Aos Fatos 2023). Those relating directly to COVID-19 formed a coherent strategy: minimise the gravity of the disease, promote ineffective treatments, obstruct the national vaccination programme, and attack the credibility of scientific institutions. A study by the Centre for Health Law Studies and Research of the University of São Paulo (CEPEDISA-USP), in partnership with Conectas Direitos Humanos, confirms that this strategy operated simultaneously across the normative, managerial, and discursive dimensions of the federal pandemic response; what was said, what was legislated, and what was done were intentional

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and mutually reinforcing, pointing to a coordinated political strategy other than mere administrative failure (Ventura and Reis 2021). The evidence points to a strategy that promoted mass infection in pursuit of herd immunity, allowing the economy to remain open while the most vulnerable bore the costs.

At the discursive level, Bolsonaro publicly promoted the use of hydroxychloroquine and ivermectin, the so-called "COVID kit", as effective treatments, despite overwhelming evidence to the contrary (Furlan and Caramelli 2021). Invoking his nationalist motto "Brazil above everything, God above everyone" (Lopes 2021), he further staged public appearances without masks, encouraged mass gatherings, and framed social distancing measures as an affront to individual freedom and economic recovery. His government also ordered the armed forces' laboratories to produce chloroquine (Ministério da Defesa 2020) at a cost of R$1.14 million and purchased ineffective drugs from third parties at a further cost of R$30.6 million in public funds, translating disinformation into institutional policy and expenditure (Senado do Brasil 2021).

Amid the pandemic, two particularly egregious episodes illustrate the extent to which the right to health was treated as expendable by Bolsonaro's government, and by private actors operating within his political orbit. The first involved Prevent Senior, a private health insurer with documented ties to Bolsonaro (Hellmann and Homedes 2022), which conducted unauthorised clinical trials using ineffective drugs, including hydroxychloroquine and ivermectin, on elderly patients with mild symptoms of COVID-19 without their informed consent, deliberately falsifying results to support the "COVID kit" narrative. The Parliamentary Commission of Inquiry (CPI) established that these falsified results were capitalised by the federal government to justify its disinformation strategy, transforming a private ethical violation into an instrument of state policy. The second case involved physician Flávio Cadegiani, an endocrinologist at the biotech company Applied Biology, who unilaterally altered an approved clinical trial with 294 volunteers with COVID-19 in the city of Brasília using proxalutamide, a male hormone blocker used to treat cancer, expanding its scope to 645 individuals and relocating it to Amazonas state at the peak of the health crisis there (Senado do Brasil 2021; Moutinho 2021), without federal intervention despite repeated warnings to health authorities (Senado do Brasil 2021). According to the National Health Council, the altered trial may have directly contributed to at least 200 deaths. Ultimately, the CPI recommended that Cadegiani's be indicted for crimes against humanity under Article 7(k) of the Rome Statute (Senado do Brasil 2021).

The CPI's accountability net extended well beyond these two episodes, recommending criminal charges against the owners and physicians of Prevent Senior, the president of the Federal Council of Medicine, politicians, digital influencers who had spread disinformation, scientists, businessmen, and public and private sector agents (Senado do Brasil 2021; Hellmann and Homedes 2022).

As of June 2026, however, the specific pandemic-related prosecutions arising from those referrals have resulted in no documented convictions. The referrals were sent to a Prosecutor-General appointed by Bolsonaro, who sought to shelve

key investigations (Christian 2022); prosecutorial attention subsequently shifted to the coup proceedings, which absorbed the institutional momentum (STF 2025a). The practical result, at least for the moment, is that the private actors who participated in the systemic breach of the right to health during the pandemic have faced no effective criminal accountability.

A detail that acquired added significance only after Bolsonaro left office: while publicly claiming he had not been vaccinated against COVID-19, he had in fact ordered his aide-de-camp to enter false vaccination data into the Ministry of Health's system for himself, his daughter, and several close associates. Federal Police investigations, concluded in March 2024, established that the scheme was intended to produce vaccination certificates to facilitate travel to the United States following Bolsonaro's 2022 electoral defeat, and that it was directly linked to the preparation for the January 8, 2023, insurrection (Agência Brasil 2024).

3.3. The Federative Dimension

The Brazilian federation operates under a model of cooperative federalism, constitutionally enshrining shared competences among the Union, states, and municipalities in the field of public health, underpinned by a system of solidarity-based tax redistribution designed to reduce regional asymmetries. During the pandemic, both dimensions of this architecture — competence-sharing and fiscal solidarity — were coopted by Bolsonaro as political tools rather than governance mechanisms to address the COVID-19 crisis.

The federal government fostered tensions between the federative entities by consistently obstructing the cooperative mechanisms constitutionally envisaged. For example, it delayed and distorted the distribution of federally allocated SUS resources to subnational entities, with the most vulnerable states and municipalities, especially those governed by opposition parties, receiving the least support (Lancet 2022). More directly, the federal executive promoted vertical isolation, restricting protective measures to high-risk groups only, in direct opposition to WHO guidance on horizontal distancing measures and to the measures adopted by state and municipal governments, while using its control over national communication channels to undermine subnational public health authorities (Couto et al. 2021).

The result was a federative rupture: governors and mayors began acting in complete disregard of the federal government, not as a political choice but out of institutional necessity, transferring to the judiciary decisions that, in a functioning federal system, would have been made through cooperative political negotiation. The judiciary became an arena for resolving what was, at its core, a political and constitutional crisis of the executive's making.

3.4. The Judiciary: Crisis Manager of Last Resort

The judicialization of policy-making in Brazil predates the pandemic. It took firm root with the 1988 Constitution, which expanded fundamental rights to his-

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torically unprecedented levels and granted the judiciary a prominent constitutional role by establishing that no injury or threat to a right may be excluded from judicial consideration (article 5, XXXV) and designating the STF as guardian of the Constitution (article 102). The right to health in Brazil is an inalienable fundamental right of universal access, yet the persistent failure of the public power to ensure its realisation has made health litigation a distinctive feature of Brazilian constitutional practice, with at least 2.5 million health-related claims under review by Brazilian courts between 2015 and 2020 (CNJ 2021). The COVID-19 pandemic intensified this trend, with the crisis being judicialized at every level of the federal system. The Supreme Federal Court alone delivered at least 16,251 decisions related to COVID-19 between 2020 and 2024, with the most significant clustered around two axes: the definition of competences and the protection of the right to health (STF 2026a).

Two decisions stand out. In ADPF 672 (STF ADPF 672 2020) (Claim of Non-Compliance with a Fundamental Precept, a constitutional review action brought exclusively before the STF), filed by the Federal Council of the Brazilian Bar Association, the Court ruled that the executive power could not unilaterally disallow decisions of state and municipal governments taken in the exercise of their constitutional health competences, reaffirming the concurrent legislative competence of all federal entities in health matters on the basis of cooperative federalism. A further illustration is ADI 6.341 (*Ação Direta de Inconstitucionalidade* — Direct Action of Unconstitutionality), brought to challenge Provisional Measure 926, issued by Bolsonaro on 20 March 2020 in an attempt to concentrate lockdown powers in the federal executive by amending legislation Congress had passed only weeks earlier to ensure a coordinated national response. The Court unanimously struck it down, reaffirming the shared competency of all federative entities to legislate on essential services and determine lockdowns (STF ADI 6.341 2020). Bolsonaro responded on social media by claiming the STF had delegated unconstitutional pandemic powers to states and municipalities (Bolsonaro 2021); the Court, on the other hand, issued a public note describing the statement as untrue, a rare and telling institutional exchange (STF 2021).

Taken together, these cases illustrate how the STF's role during COVID-19 went well beyond adjudication of competence disputes. In practice, it became the primary institutional counterweight to the executive's excesses, and the constitutional arena where disputes that should have been managed at the political level were submitted for judicial resolution.

This is a double-edged legacy. On one hand, the Court's interventions saved lives and prevented an even more catastrophic federative collapse during a public health emergency. On the other hand, the excessive judicialization of a fundamental social right raises questions about the democratic legitimacy of a constitutional court substituting for the political process, and about whether it can compensate for the absence of the political accountability that should have operated in the first place.

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3.5. Parliamentary Accountability: The CPI of the Pandemic

Between April and October 2021, the Senate conducted a Parliamentary Commission of Inquiry (CPI) into the federal government's pandemic response. Over 69 hearings over six months, the Commission documented 15 categories of potential criminal conduct and produced a 1,289-page final report, recommending criminal charges against 66 individuals and two companies. The Commission recommended that Bolsonaro be held personally accountable for nine crimes, including causing an epidemic resulting in death, violation of preventive health measures, quackery, incitement to crime, irregular use of public funds, malfeasance, and crimes of responsibility. Most significantly, it included charges of crimes against humanity under Article 7 of the Rome Statute, in connection with the oxygen crisis in Manaus that resulted in patients asphyxiating in hospitals (Senado do Brasil 2021; Freitas et al. 2023; CNN 2021).

The initial trajectory of the CPI's conclusions was frustrating. The Prosecutor-General appointed by Bolsonaro, whose mandate ran until September 2023, procrastinated on the criminal referrals and ultimately sought to shelve key investigations. It fell to the STF, responding to a request from senators, to maintain the investigative proceedings in motion (Christian 2022).

The COVID-19 accountability proceedings eventually merged into a much larger criminal case arising from the attempted coup of January 8, 2023, in which the STF convicted 29 defendants across four criminal actions between September and December 2025, with Bolsonaro receiving the heaviest sentence of 27 years and three months (STF 2025a). As the Senate inquiry continued to produce evidence and later investigations exposed the vaccine fraud and the broader coup plot, a picture emerged of a presidency that had treated the pandemic not merely as a political inconvenience to be managed but as an opportunity to consolidate authoritarian power.

4. A Comparative Dimension: Brazil and the United States

4.1. Different Legal Frameworks, Similar Outcomes

Brazil and the United States share more than geographic features. Both rank among the world's largest countries by area and among the most populous nations, and together constitute the two largest economies in the Americas. Both societies were shaped by European colonisation, the forced displacement of native populations, and the transatlantic slave trade, historical foundations whose legacies of structural inequality remain visible in both countries' COVID-19 mortality data, as the following analysis shows.

As independent nations, both became federal presidential constitutional republics with bicameral legislatures. Yet they present an instructive contrast in legal architecture, especially regarding the right to health. Brazil constitutiona-

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lises health as a universal fundamental right with immediate operative force, underpinned by a public health system of universal coverage. The United States, by contrast, has not ratified the ICESCR, does not recognise health as a justiciable constitutional right, and relies on a predominantly private insurance system supplemented by statutory programmes, such as Medicare and Medicaid, for those unable to afford private care (Orentlicher 2012). During the COVID-19 pandemic, the majority of US public health directives relied upon these same statutory provisions (Wiley et al. 2022).

The United States was ranked first out of 195 countries in pandemic preparedness by the 2019 Global Health Security Index, and yet recorded the highest absolute COVID-19 death toll in the world. Brazil, which also performed well in this index, ranking 22nd, with an overall score above that countries such as Austria, Italy, Ireland, and Mexico, had the second-highest number of COVID-19 deaths (NTI et al. 2019; WHO 2023). The paradox is the same in both cases: institutional capacity, however extensive, cannot substitute for the fidelity of the executive power to its constitutional obligations. In this vein, what the two countries shared during the pandemic period that directly impacted their responses was not a legal or institutional deficit but a political one, as both were governed at the federal level by populist presidents who treated the pandemic as an ideological battleground rather than a public health emergency.

4.2. The Trump–Bolsonaro Parallel

The similarities between Donald Trump's and Jair Bolsonaro's pandemic responses have been extensively documented. Both adopted mutually reinforcing policies, including unproven drug treatments. Trump explicitly endorsed hydroxychloroquine and chloroquine on 19 March 2020, and Bolsonaro followed suit two days later, promoting the same drugs as the cornerstone of his COVID kit strategy. Brazil even received two million doses of hydroxychloroquine from the United States, in what scholars have termed the "hydroxychloroquine alliance", a transnational network of far-right leaders and alt-science advocates who united around the promotion of the drug despite the absence of solid clinical evidence (Casarões and Magalhães 2021).

Trump and Bolsonaro also converged in their hostility toward scientific and public health institutions, systematically undermining those working to combat the pandemic. Trump repeatedly challenged the Centers for Disease Control and Prevention (CDC) and the Food and Drug Administration (FDA). Meanwhile, Bolsonaro attacked the Brazilian Health Regulatory Agency (ANVISA). They also framed pandemic measures as attacks on economic freedom and individual liberty, creating a governance void that prompted an improvised subnational response by governors and mayors in both countries (Wiley et al. 2022; Carvalho et al. 2021). Beyond their attacks on domestic institutions, both targeted the World Health Organisation (WHO), with Trump going as far as initiating the formal process of withdrawal from the organisation, accusing it of being excessively def-

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erential to China (Gostin 2020), a position echoed by Bolsonaro (Casarões and Magalhães 2021), though Brazil maintained its institutional relationship with the WHO throughout the pandemic.

The parallel extended to their authoritarian political strategies, with both using the pandemic as a platform for consolidating a loyal base through disinformation and the stigmatisation of political opponents. Studies have documented the convergence of their discursive strategies and the cross-fertilisation of misinformation across their respective publics (Casarões and Magalhães 2021; Carvalho et al. 2021). The parallel, however, broke after the US presidential election of November 2020, when Biden's victory inaugurated a fundamentally different federal approach to the pandemic, a divergence that makes the Brazilian trajectory all the more striking for its continuity.

The election of Joseph Biden in November 2020 inaugurated a fundamentally different phase of the US pandemic response, with the CDC recovering its institutional independence and issuing a National COVID-19 Preparedness Plan (Biden White House 2022), and reversing the previous administration's withdrawal from the WHO on its first day in office (Biden White House 2021). Brazil had no such inflexion point until Bolsonaro's electoral defeat in October 2022, and the damage accumulated across his entire presidency without interruption.

4.3. Constitutional Design and Pandemic Response: A Legal Comparison

The Brazil-United States parallel in responding to COVID-19 is instructive not only as a political phenomenon but also as a constitutional one. The two countries' divergent legal architectures and contrasting approaches to the enforcement of second-generation fundamental rights produced different legal responses to the pandemic and, crucially, different constraints on executive misconduct, even where the determination to abuse power was comparably present.

In Brazil, the constitutional entrenchment of the right to health as a universal, justiciable, and immediately applicable fundamental right provided litigants, civil society organisations, political parties, and subnational governments with a direct legal basis to challenge federal inaction and obstruction. The STF's interventions in ADPF 672 and ADI 6.341 were not exercises of judicial excess but applications of explicit constitutional mandates. When Bolsonaro attempted to concentrate pandemic powers in the federal executive, he ran into the 1988 Constitution's cooperative federalism model, combined with the justiciable right to health, a constitutional wall that gave the judiciary both the legal authority and the doctrinal tools to push back. The cost was an unprecedented degree of judicial governance during the pandemic, with the judicialization of the crisis at every level of the federal system. Nevertheless, the constitutional framework at least provided a mechanism of resistance forged from Brazil's own authoritarian experience.

The United States, on the other hand, presents a strikingly different picture. The Constitution contains no express recognition of second-generation fundamental

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rights, and the Supreme Court has consistently declined to recognise health care as a fundamental right attracting heightened constitutional protection (DeShaney v. Winnebago County 1989; Maher v. Roe 1977). The legal basis for pandemic measures rested instead on statutory authorities, principally the Public Health Service Act and the Stafford Act at the federal level, and state police powers at the subnational level, whose scope was contested, unevenly applied, and, in several instances, struck down by federal courts on administrative law and non-delegation grounds (Alabama Association of Realtors v. HHS 2021; NFIB v. OSHA 2022). The absence of justiciable socioeconomic rights meant there was no constitutional mechanism equivalent to ADPF 672 for the direct judicial enforcement of the right to health against executive obstruction of the public health response.

This constitutional gap had concrete consequences. When the Trump administration undermined the CDC, suppressed guidance, and promoted hydroxychloroquine without clinical evidence, the main legal constraints were political rather than judicial. Congressional oversight, the Administrative Procedure Act, and the threat of electoral accountability imposed some discipline, but none provided the immediate, rights-based judicial check that the Brazilian constitutional framework afforded. American states exercised their own police powers vigorously, producing a form of federative fragmentation analogous to that witnessed in Brazil, though arising from a structural absence of federal public health authority rather than its deliberate subversion, and without a constitutional architecture of cooperative federalism to mediate the resulting conflicts.

This comparison between Brazil and the United States discloses something important about the relationship between constitutional design and pandemic governance. A justiciable right to health does not prevent a populist government from subverting public health policy, as Brazil's experience during the COVID-19 pandemic demonstrates. What it does provide is a set of legally enforceable obligations, institutional standing for judicial intervention, and a constitutional lexicon through which other institutions can organise and legitimise resistance within the separation of powers framework. In this vein, the STF's role was imperfect and legitimately contested, but it was constitutionally grounded as an institutional counterweight to Bolsonaro during a crisis that had fatal consequences for hundreds of thousands of Brazilians, particularly the socioeconomically vulnerable. In the United States, the absence of equivalent constitutional anchoring meant that resistance to executive misconduct during the pandemic was weaker, largely political, decentralised, and dependent on the robustness of institutions: the CDC, state governors, and courts acting on administrative rather than constitutional grounds, all of which were themselves targets of the federal administration's assault.

The lesson is not that constitutional entrenchment of socioeconomic rights alone is sufficient to ensure the realisation of fundamental rights, but that such entrenchment is necessary so that other constitutional institutions, such as constitutional courts operating within a cooperative federal system, can check constitutional abuses and resist attacks on the rule of law and on democracy itself,

as the Brazilian case demonstrates. Its absence, as illustrated by the US constitutional framework, leaves a governance vacuum that populist and authoritarian governments are well-positioned to exploit.

4.4. The Inequality Dimension

In countries under populist governance during the pandemic, excess mortality was consistently higher than in comparable democracies with science-based responses. Populism's degradation of democratic institutions, media freedom, social cohesion, and evidence-based governance produced measurable death tolls (Bayerlein et al. 2021).

Besides populism, a key variable shared by both countries that compounded this effect is structural inequality, rooted in the colonial period and persistently reproduced ever since. Both Brazil, with a Gini coefficient of 48.9 in 2020, placing it among the world's most unequal countries, and the United States, the most unequal of the G7 nations (World Bank 2022; Pew Research Center 2020), saw COVID-19 mortality disproportionately concentrated among the most disadvantaged social groups (Davies 2021). In Brazil, afrodescendants and other historically marginalised groups bore a vastly disproportionate share of deaths, reflecting not only differential exposure to the virus but differential access to health services, uneven vaccine distribution, and precarious housing and working conditions that made compliance with social distancing measures impossible (Batista, Proença and Silva 2021).

Achille Mbembe's concept of necropolitics — the sovereign power to determine who may live and who must die (Mbembe 2019) — illuminates both what the data reveal and how populist governments exercise power against minorities and disadvantaged populations. The populations most devastated by COVID-19 in both Brazil and the United States were those already positioned at the bottom of colonial inequality structures. The pandemic did not create this vulnerability; it exposed and amplified it, under the governance of leaders who showed no interest in addressing it.

5. Epilogue: Accountability and Its Limits

The accountability trajectory of Brazil's COVID-19 response did not end in 2022 with the conclusion of Bolsonaro's first term, against a backdrop of deep military involvement across his government and the events that followed, a dimension underscored by the fact that Bolsonaro himself is a former military officer and his running mate for a second term, former Army General Walter Braga Netto, was among those convicted in the proceedings. The subsequent accountability measures illustrate both the resilience of Brazilian democratic institutions and their enduring fragility, a tension that runs to this day.

Bolsonaro did not easily relinquish the prospect of a second term. On 18 June 2022, just a few months before the national elections, President Bolsonaro con-

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vened a meeting with ambassadors in Brasília, questioning the legitimacy and safety of the Brazilian electoral process and the use of electronic voting machines, disseminating misinformation (New York Times 2022). Bolsonaro also affirmed that there was a plot led by the Supreme Court to tamper with the election in favour of then-candidate Luís Inácio Lula da Silva. This tactic of delegitimising the electoral process mirrored Donald Trump's strategy in the United States following his defeat to Joe Biden in the 2020 presidential election.

Soon after losing the election to Lula in the second round of voting on 30 October 2022, Bolsonaro's supporters launched a series of protests across the country, including road and highway blockades in at least 23 states, alleging electoral fraud (CNN Brasil 2022). Bolsonaro himself left Brazil on 30 December 2022, never formally conceding defeat, and took refuge in Florida (Galvão 2023). As the road blockades lost momentum, protesters regrouped in front of military barracks across the country, camping for weeks and openly calling on the armed forces to carry out a coup and prevent Lula's inauguration (Neiva 2022). On 8 January 2023, one week after Lula's inauguration, thousands of Bolsonaro supporters stormed Three Powers Square (*Praça dos Três Poderes*) in Brasília, invading and vandalising the Presidential Palace, the National Congress, and the Supreme Federal Court in an attempt to overthrow the democratically elected government and subvert the constitutional legal order, constituting, in the subsequent criminal proceedings, the *actus reus* of the offences of attempted abolition of the democratic rule of law and participation in an armed criminal organisation (STF 2025a).

The insurrection failed within hours, and several thousand participants were arrested. Federal Police investigations subsequently revealed that the attack had been planned in advance, that the security apparatus of the Federal District had been deliberately sabotaged to facilitate the acts of vandalism (Barrucho 2023), and that a draft coup decree had been found at the home of former Bolsonaro's Justice Minister Anderson Torres (G1 Globo 2023). The events of 8 January drew immediate international parallels with the assault on the United States Capitol on 6 January 2021, and marked the point at which the COVID-19 accountability proceedings merged into a broader criminal case that would ultimately result in Bolsonaro's conviction.

The enforcement of the sentence followed a turbulent path. The case reached *res judicata* on 25 November 2025, when the deadline for presenting further appeals expired, and Bolsonaro began serving his sentence of 27 years and three months at the Federal Police Superintendency in Brasília, before being transferred to a military facility in January 2026. In March 2026, following a sudden health episode, he was granted temporary humanitarian house arrest by STF Justice Alexandre de Moraes, subject to electronic monitoring and strict conditions, including a prohibition on external communications (STF 2026b).

Bolsonaro's trial attained a significant international dimension. Having been re-elected for a second term after Biden, President Trump labelled the proceedings a "witch hunt", imposed tariffs on several Brazilian exports in July 2025, and applied the Magnitsky Act to impose sanctions against Justice Alexandre de Mo-

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raes and other members of the Brazilian judiciary (White House 2025; Time 2025). These interventions did not alter the outcome of the trial and, paradoxically, may have strengthened Lula's domestic position by framing the proceedings as a defence of Brazilian sovereignty.

The COVID-19 component of the criminal accountability picture remains unresolved. The CPI's findings, including the charges of crimes against humanity in connection with Manaus, have not yet led to separate criminal proceedings, and the vaccine fraud indictment was absorbed into the broader coup proceedings. Whether the specific conduct documented during the pandemic will yield distinct criminal accountability remains an open question, one that matters not only for justice and democratic accountability but as a test of the Brazilian constitutional order.

6. Conclusions

Several conclusions emerge from this analysis.

First, the constitutionalisation of a right does not guarantee its realisation. Brazil's 1988 Constitution provides one of the world's most robust frameworks for fundamental rights, and a universal right to health — yet these proved insufficient to avoid a catastrophic pandemic response. What proved indispensable during the COVID-19 pandemic was the legal architecture through which other democratic institutions could resist, check, and ultimately survive the assault of a government determined to subvert its own constitutional obligations, as the Brazilian and United States cases demonstrate.

Second, populism kills. The systematic replacement of scientific expertise with ideology, the weaponisation of disinformation, and the exploitation of federative mechanisms as arenas of political conflict rather than cooperative governance produced measurable excess mortality in Brazil and in the United States alike, both governed by populist regimes during the pandemic. This is not a rhetorical claim but an empirically supported one, borne out by the comparative mortality record across countries with populist governments during the pandemic.

Third, structural inequalities are not only social problems; they are also public health vulnerabilities, as the demographic profile of deaths during the pandemic demonstrated. The intersection of populism and inequality in both Brazil and the United States concentrated COVID-19 mortality among the most marginalised populations, reproducing and deepening colonial patterns of exclusion. Any serious engagement with pandemic preparedness must also be an engagement with social justice.

Fourth, the conviction of Bolsonaro for a coup attempt is not simply a criminal law matter but a constitutional one, establishing that presidents who use the machinery of state to subvert democracy are subject to accountability. Whether this accountability extends to the specific violations of the right to health committed during the pandemic remains to be seen.

Finally, the Brazilian case gives a broader lesson about democratic resilience. Institutions that appeared robust — a federal judiciary, a bicameral legislature, a

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decentralised federative system, and a world-renowned electoral system — bent but did not break under the pressure of a populist executive committed to their subversion. The STF's role during the pandemic, and again in the criminal proceedings that followed, was imperfect and legitimately contested in its scope, but it was decisive in mediating the crisis. The lesson is not that courts should govern; it is that the rule of law requires multiple, overlapping points of resistance within democratic institutions to survive a sustained attack in a moment of crisis.

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