and scope of the Handbook is to be commended. The Handbook will be highly informative for academics and practitioners engaged in the question of who judges are and how judges judge. It will also be helpful for those who, like me, seek to locate and understand their encounters with foreign judges across a range of jurisdictions and subject-matters.

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Diego Werneck Arguelhes, O Supremo: Entre o Direito e a Política (The Supreme Court: Between Law and Politics), História Real, Rio de Janeiro 2023, 255 pages, R$59,90, ISBN: 978-65-87518-27-5

How do Supreme Courts function? What is behind their decisions? What do their design tell us about the incentives for the judges? Those are the sort of questions that Arguelles presents on his book, regarding the Brazilian Supreme Court (Supremo Tribunal Federal or "STF" in Portuguese). As I later show, while campaigning for its readership, this book offers a range of valid questions about the intertwining of law and politics in the STF, without demonizing the political character of the Court. The book always questions what the meaning of such political influence is, and what sort of politics should surround a Supreme Court.

Arguelles starts his reflections on the functioning of the STF stating how the perception of the Brazilian legal academy has shifted by the years: going from a collective naivety, that believed in a Supreme Court that was totally departed from politics and just applied the Constitution, to a widespread cynicism, that identifies the Supreme Court as a political institution as any other (p. 14).

In his first chapter, Arguelles analyses the question if „*can they do that?*", referring to constant questions about the competences of the STF. He starts reflecting on how it is possible for the STF and its eleven judges to have that much power without being subject to people's vote. And for that he highlights the importance of distinguishing what is actually strange about it, from what is a natural consequence of having an institution designed like the Supreme Court (p. 31). Considering being a judge in a court means applying criteria that you did not create to solve problems that you are not part of (p. 32), judges are much more defined by what they cannot do (p. 33), and so are the Supreme Court judges. Although in their case, there will always be disputes around the meaning of the Constitution (p. 36), so that the application of the criteria created by others may not be that obvious. Moreover, the power of the judges derives from the deference to the norms created by those elected and not from an abstract notion of justice or knowledge (p. 37). This is why the

Supreme Court judges base their decisions on legal arguments (p. 38), that should not be obliviated by catchphrases used to impress the public (p. 40).

Nonetheless, recognizing the importance of an institution like the STF does not mean being satisfied with its present configuration and design (p. 45). Arguelles indicates that the Court can always be criticized for its decisions, and this is not a problem. The aim should be to foster better decisions in the future. However, it is important that the Supreme Court can demonstrate the legitimacy of its decisions, even to those who do not agree with them. This legitimacy is based on three conditions: the people who took the decision — how they behave and relate to the case; the design of their position and the incentives it gives them to deliver a certain decision; and the proceedings related to the decision-making process (p. 49). Those elements will guide the discussions in the book on how the STF decides and its legitimacy to do so.

In chapter 2, Arguelles focuses on the question „*who are those people?*". Here, the focus is on the discussion about how someone is nominated for a position at the Supreme Court, the criteria he or she has to fulfill and what this represents as incentives for the politicians involved in the nominations and for the ones that become STF judges. The judges of the Supreme Court are nominated by the president, but have to be confirmed by the Senate, which limits the powers of the president to some extent (p. 58).

The formal requisites to become a member of the STF are notorious legal knowledge and an unblemished reputation, however those elements are necessary but not sufficient. Other elements such as character, responsibility and professionalism are essential for this position. This is why it would make no sense to replace the current way of entering the Supreme Court with a public examination, as happens in other areas of the judiciary (p. 64). In practice, as the requisites to become a Supreme Court judge are quite open, the only tool available to assure that the nominations are made on a republican basis is the public opinion (p. 73). At this point, Arguelles highlights three points that the Constitution left open for the political debate related to the nominations: the nominee does not have to be a career judge (p. 76); there is no formal requirement related to diversity — although that should be morally mandatory considering Brazilian history (p. 77); and there is no formal proceeding that leads to the decision of the president (p. 77).

In this scenario, there are three main reasons for the president to nominate a certain person to the Supreme Court: to influence future decisions by the court; to give a signal to his electors and to the society regarding a certain agenda; and to fulfil certain demands by the current political coalition (p.79). All that reasons can be compatible with a republican posture (p. 79), as they are just a characteristic of the current design (p. 80). Nonetheless, they can represent a pathology if they affect the independence of the Supreme Court, so that it cannot assume positions contrary to the interests of the politicians and is not recognized as an institution that works following a different logic from the one of the politicians (p. 89). Those criteria are particularly important when the nomination to the Supreme Court aims to suppress the institution's haughtiness and independence (p. 90). This may be hard to gauge on concrete cases, and this is why Arguelles proposes a test (p. 93) where the

following two questions should be asked about the nominated person: does he or she has a legal carrier path that would include him or her among the most notable legal professionals of his or her times? And is he or she haughty enough in order to oppose the president's opinion or interests? If the answer to both questions is yes, the political aims previously indicated are legit (p. 94).

With that in mind, he starts discussing the problems related to the way STF judges are currently nominated. Here, the author highlights the uneven period of time the Supreme Court judges stay at the Court (p. 103). As they can stay at their position until they complete seventy-five years of age, the earlier they were nominated, the longer they stay (p. 104). This is a problem because it leads to: different presidents influencing for uneven periods of time the Court; uneven periods of time for the renewal of the Court; and the inequality among the presidents put the citizens who elected those presidents in uneven positions (p. 105). All that could be solved by the judges having a fixed mandate at the Court (p. 105), demonstrating that no judge is more relevant for the formation of the jurisprudence of the Court than the others (p. 106). However, transitional rules may be implemented in order to prevent some political actors to obtain disproportional gains (p. 109).

Other changes in the design of the Supreme Court, that are object of propositions of Constitutional Amendments are related to the number and sort of institutions involved in the nomination of new judges — e.g., limiting the nomination to names listed by other institutions, like the public prosecutions office, association of judges or the bar association — and to increasing the voting quorum for the decisions made by the Court (p. 110). Arguelles criticizes those propositions because they usually intend to limit the influence of politics in the STF (p. 111), although they cannot deliver such result. In the context of a Supreme Court that has an enlarged criminal competence over many politicians, such changes do not influence in the incentives for the judges decide in a more republican way and the answer for that is not to pretend that the STF is an institution departed from politics (p. 115).

In the sequence, the author discusses the effective power of the Senate in limiting the president while nominating someone to the Supreme Court (p. 115). Here, it is possible to consider that the veto power of the Senate is effective not just as it has been used lately, but also when the threat of having it used is sufficient to modulate the nomination made by president (p. 116). Arguelles defends that more than confirming or not the president's nomination, key are the reasons why the Senate did it and the nomination hearings should be used to better inform the population regarding the political reasons and the institutional implications of it (p. 119) and vague or false answers by the nominee should influence the Senate's decision (p. 123).

In chapter 3 Arguelles deals with the question „*what does the Supreme Court do?*" (p. 127). Following this, he presents the main sort of cases over which the Supreme Court has jurisdiction: (I) constitutional review cases; (II) criminal cases; (III) appeals; and (IV) other cases of original competence (p. 129). It is given special attention to STF's original

jurisdiction on criminal cases related to a number of politicians, because this always puts the Court under the suspicion of deciding according to political motivations (p. 134). Due to the complexity of dealing with criminal cases from the beginning and the lack of time to decide all of them before prescription, in 2018 the Court decided that it has jurisdiction over criminal cases related to politicians just if the alleged crimes had been carried out during a mandate and in connection with the exercise of the function. This decision is presented by Arguelles as positive, however it does not solve the issue of the STF being accused of having political biases, as it still has to decide on which criminal cases it has jurisdiction (p. 137). Moreover, the Court has been expanding its jurisdiction over many sensible topics, related to the current political and electoral environment, what also impacts on the public perception that the judges are subject to no limits (p. 139).

Another issue that Arguelles highlights as problematic is the number of cases that are decided monocratically at the STF (p. 142). Although such decisions exist because single judges can decide urgent issues faster than the collegiate and the time of the collegiate is rare (so it should be used to decide core cases), it is a problem that single judges of the Supreme Court can rule on topics that are central to the society (p. 146).

On chapter 4, Arguelles focuses on the questions „*why this case?*“ and „*why now?*“, to discuss when the cases are decided by the STF (p. 153). Firstly, the agenda of the Court is decided externally, as it can rule just on cases that were presented to it (p. 157). However, considering the amount and range of cases that are presented to the STF, it ends up having some discretion on what is going to be decided and when (p. 164), especially because there is no other authority able to enforce the Court's deadlines (p. 172).

In this context, it becomes relevant to understand who can make a case before the Court (p. 174). For that, first it is necessary to consider that the cases can be collegially decided by the Supreme Court in the plenary, in the virtual plenary or in one of the two chambers (each one composed of five judges) (p. 175). The plenary and the virtual plenary are presided over by the president of the Supreme Court and the chambers also have presidents (p. 176). Each case has a rapporteur, that is responsible for resuming the case and delivering the first vote (p. 177). Presidents and rapporteurs have special competencies (p. 176): rapporteurs can decide when a case is ready to be ruled by the Court (p. 177) and presidents can decide which cases (among those that were considered ready to be ruled) are actually being added to the agenda of the Court (p. 184). And those decisions can be taken considering the most variable factors (p. 178), including how well accepted will the vote by the rapporteur be — by the other judges or by society (p. 181).

In the virtual plenary — that expanded during COVID-19 pandemic — there is no debate among the Supreme Court judges, they just upload their votes (p. 185). Here, the rapporteur can start the voting process without the agreement of the president (p. 186). Nevertheless, the other judges also have some power in preventing a certain judgment: they can request the so called “vistas” — a request to see the proceedings that comes from the period when they were not all digital, so the judges would request more time to see and better understand them (p. 189). This request is meaningful specially if it is made

for a reasonable period of time (p. 189). In practice, a judge can take years to give the proceedings back to the plenum (p. 190) and, thereby, control when a case will be ruled by the Court (p. 193).

This scenario of an agenda that is formed according to the criteria of the judges combined with a large number of monocratic decisions contributes to the public perception of the STF, that has no boundaries and acts according to its political preferences (p. 195). Arguelles points out that some reasonable criteria, like clear deadlines, would limit the judges, but would also contribute to the image of a Supreme Court that acts according to the law (p. 196).

Chapter 5, on its side, presents the question „*why so much exposure?*“, and here Arguelles questions the presence of the Supreme Court itself and from its judges in the social debate (p. 201). It is expected that someone with the power of the STF gets public attention (p. 203) and it is important that the Court also communicates and explains its decisions on its own terms (p. 205). But the question here regards how this communication is done (p. 207) and the author indicates that such communication becomes pathological when it is done in an individual, and not institutional, way and when it is illegal, violating norms that apply to all judges (p. 210).

The author proposes a difference between institutional issues, that should be communicated officially from the moment on the Court reaches a decision, and judicial issues, where dissenting opinions from the judges are welcomed in the formal contexts of the Court (p. 211). Regarding judicial issues, it would be hard to have just an institutional communication, because each judge delivers their own vote and, since 2002, the public debates among the judges are broadcasted live in TV Justiça (p. 212). But even in a context that incentives the judges to give appealing discourses to the public (p. 215) it is possible for them not to share their opinions outside the Court (p. 216). Arguelles also highlights the pathological aspect of STF judges giving informal opinions outside the cases (p. 217), trying to signalize to politicians how they would decide a non-yet-existing case and exercising more individual power over the Court (p. 218). Lastly, all that should also be considered illegal, as the law that organizes the national judiciary in Brazil forbids a judge to speak about any case that is yet to be ruled or to criticize any other ruling, except if in teaching or in a technical work (p. 223).

Those communication strategies by the judges of the Supreme Court are usually justified with three arguments: the Court is under attack — mainly during Bolsonaro's government — and needs to be aggressive in its defense (p. 227); the judges hold freedom of speech (p. 228); that limitation would impose a too high demand for the judges (p. 232). Arguelles indicates that all those justifications are not valid, because, first, such communication problems did not start during Bolsonaro's government, and they also do not strengthen a Court that is under attack (p. 228). Secondly, being a judge of a Supreme Court comes with certain responsibilities, and this may limit one's presence in social media or in public debates, if it, otherwise, would compromise his or her image as a judge (p.

231). Third, there are great examples of STF judges that did not disrespect the individual communication limitations, showing that it is possible to do so (p. 232).

To conclude, Arguelles indicates that the function of the Supreme Court will always foster the argument that the Court is acting politically, by the nature of the cases it decides. However, it is not possible to tackle such arguments, if, even before that, the judges have wide individual power to decide what and when is going to be ruled, affecting public policies but also the lives of politicians (p. 238). The current design of the Brazilian Supreme Court let the judges themselves decide if they will act based on their political preferences or not (p. 239). Added to this design, personal choices of some judges to publicly discuss the topics that are yet to be decided also to contribute to an image of a Supreme Court that is politically guided (p. 239).

Overall (and this is not just one of those book review clichés), this book condenses key discussions and presents the right questions about the functioning of the Brazilian Supreme Court and is useful not just to understand the STF, but the Brazilian judiciary as a whole. Although Arguelles says this is not an academic book, this book should be read by academics and constitutionalists.

Jessica Holl