



# The Political Legitimacy of the Judiciary

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**Antonio Araldo Ferraz Dal Pozzo**  
Sócio Fundador | Founding Partner  
Autor | Author  
araldo@dalpozzo.com.br

**Augusto Neves Dal Pozzo**  
Sócio Fundador | Founding Partner  
augusto@dalpozzo.com.br

**João Negrini Neto**  
Sócio | Partner  
joao@dalpozzo.com.br

**Percival José Bariani Junior**  
Sócio | Partner  
percival@dalpozzo.com.br

**Beatriz Neves Dal Pozzo**  
Chief Executive Officer | CEO  
beatriz@dalpozzo.com.br

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**DALPOZZO**  
ADVOGADOS

**SÃO PAULO**  
Rua Gomes de Carvalho, 1510 - 9º andar  
04547-005 - Vila Olímpia - São Paulo  
Office +55 11 3058-7800

**BRASÍLIA**  
SHS Quadra 06 - Conjunto A - Bloco E - Sala 1411  
70316-000 - Edifício Brasil 21 - Brasília DF  
Office +55 61 3033-1760

[dalpozzo.com.br](http://dalpozzo.com.br)

On November 19, 1863, then President Abraham Lincoln delivered one of his most famous speeches, in Gettysburg, the site of a bloody battle during the American Civil War: "that we here highly resolve that these dead shall not have died in vain, that this nation under God shall have a new birth of freedom, and that a government of the people, by the people, for the people shall not perish from the Earth". Lincoln had just defined, precisely and synthetically, the democratic regime - "the government of the people, by the people and for the people".

Brazil is a democracy: "All power comes from the people, that exercises it directly, or by means of elected representatives".

The election, carried out via direct, universal and secret vote, in an indirect democracy such as ours, consists of a system of political endowment to the representatives in their positions. This endowment is what gives the elected representatives the political legitimacy to carry out their mandate, which they can lose in the cases anticipated in the Federal Constitution.

However, the members of the Judiciary do not acquire political legitimacy by being voted - but by means of other legitimating systems, such as a public entrance exam.

Therefore, their political legitimacy does not derive from the political endowment of an election (which occurs without popular participation). Nevertheless, magistrates represent the people when in the exercise of their functions, representing the Power of the State.

The importance of the Judiciary, as the highest instance to protect and safeguard the constitutional values and to settle disputes, is unquestionable, making a decisive contribution to the balance and stability of social relations.

It is this acceptance by the people that gives the Members of the Judiciary their political legitimacy. It comes from a complete harmony with the prevailing values for the majority of the population. Such values and principles interfere decisively in the exegesis and application of legal norms. When there is an overall feeling among the people that the principle of impartiality has been broken, or when highly questionable positions, from a legal point of view, are taken, then that harmony is broken.





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We are currently witnessing openly bipolar feelings towards some magistrates: some are placed on an altar; others receive rampant disapproval. Both are serious, but the latter is more worrying and deserves deeper consideration, because it can quickly contaminate the political legitimacy of the Judiciary, in a democratic regime with few and inefficient mechanisms of correction.