

**Mayors in the Dock:
Judicial Responses to Local Corruption in Brazil**

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DISSERTATION

Submitted as partial fulfillment of the requirements
for the degree of Doctor of Philosophy in Political Science
in the Graduate College of the
University of Illinois at Chicago, 2014

Chicago, Illinois

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*Eu dedico esta tese à minha mãe, por ter me ensinado a lição mais importante de todas:
O valor da busca pela verdade.
Mãe, valeu a pena.*

*I dedicate this dissertation to my mom, for having taught me the most important lesson of all:
The value of seeking the truth.
Mom, it was worth it.*

ACKNOWLEDGMENTS

The journey that eventually brought me to the writing of this section of acknowledgements was a long one and, as a result, there are many people to thank. Firstly, I would like to express my gratitude to both CAPES and Fulbright for their financial support during my first four years in the United States. Without their investment in my education and research, I am sure none of the pages below would exist. I also thank the endless patience of Megan Spillman and Joe Graff at the Institute of International Education, of Giselle Melo and Glayna Braga at Fulbright, of Silvio dos Santos Salles and Ângela Moreira at CAPES, and of Kemi Abiona at the Office of International Services of the University of Illinois at Chicago. They provided all the logistic support needed to help me focus on my studies, guiding me through the various bureaucratic hurdles of a Brazilian student in the United States.

At the University of Illinois at Chicago, I owe thanks to many people. The Graduate College provided me with the Dean's Scholar Award during my last year of studies, which helped me to write in tranquility almost the entirety of this dissertation. The Department of Political Science, with its rigorous yet friendly academic environment, was the place where I was able to mature most of my ideas and learn a lot from a variety of perspectives on the study of politics. Professors Robert Bruhl, Stephen G. Engelmann, Yoram Z. Haftel, Dennis R. Judd, Noah J. Kaplan, Petia Kostadinova, Kevin L. Lyles, and Dick W. Simpson are to thank for that. Marilyn Getzov and, before her, James Nell helped me to navigate the uneasy waters of the graduate program. I express my sincere gratitude to both for their continuous help. Very especially, I would like to thank Evan McKenzie, Andy McFarland and Yue Zhang for finding time in their busy schedules to be part of my dissertation committee. Their insights, critiques, and comments have certainly helped to improve this manuscript. Finally, Sultan Tepe was the best mentor and advisor one could ask for. Her permanent support and genuine interest in my research have decidedly taken it to another level, far away from the much humbler and more confusing earlier versions of this project. She is largely to be credited for the final organization of this study.

Still in academia, I would like express my most sincere gratitude to Matthew M. Taylor at American University for his continuous encouragement. Since I first met him, he has been a loyal supporter of my academic endeavors and his participation in my dissertation committee only made justice to his invaluable knowledge on the topic. By the same token, I thank Matthew C. Ingram at the State University of New York at Albany. His help and comments were crucial at the early stages of this research. Similarly, I acknowledge my gratitude to Gerald N. Rosenberg for taking me as a student in his excellent courses on judicial politics at the University of Chicago. Much of my current knowledge on the topic follows his lessons. Finally, I would like also to thank the Brazilian tutor of my scholarship, André Luiz Marengo dos Santos. During all five years of graduate school in the United States and before that during my master's, he monitored closely my progress throughout graduate school and helped to keep my feet on the ground. I sincerely thank him for his permanent support and partnership.

While on fieldwork in Brazil, I was helped by a variety of people. Firstly, I would like to thank all my interviewees, whose patience to explain the intricacies of their work to a complete stranger allowed me to understand how complex judicial responses to mayoral corruption in Brazil are. The efforts of several of them, I should add, also give me true hope for a better, more honest and just country. In Porto Alegre, Marco Aurélio, Paulo, Felipe, Tiago and Gorete deserve my most sincere thanks for having been my first teachers on the issues pertaining to criminal cases of mayors. My three years of work as an intern with them constitute the backbone of the knowledge I brought to the writing of this dissertation. Still in Porto Alegre, I would like to thank Éverson Giovani Monteiro at the Procuradoria de Prefeitos of the Ministério Público do Estado do Rio Grande do Sul for organizing and making available to me invaluable data. In Belo Horizonte, I thank Mr. Affonso José Toneli for his warm welcome and the many conversations we had on issues much more interesting than my research. Andréa Emise Reis de Azevedo, at the for Grupo Especial de Combate aos Crimes Praticados por Agentes Políticos Municipais of the Ministério Público do Estado de Minas Gerais, was also of great help in sending me information about their work. I thank her promptness and availability. In Salvador, the hospitality of José Américo Azevedo was everything I

needed to conduct my research with peace of mind. Still in Salvador, I would like to thank everyone at the Núcleo de Investigação dos Crimes Atribuídos a Prefeitos of the Ministério Público do Estado da Bahia for their help, interest, and availability in sharing information and data.

Back in Chicago, David Sterrett, Sam Bassett, Missy Zmouda, Eddie Salinas, Marcie Reynolds, Hank Noll, Liz Alejo, Aviral Pathak, and many others that I probably forgot to cite, were great colleagues both inside and outside UIC's classrooms. Paulo Baptista Caruso MacDonald, Marcio Camargo Cunha Filho, and Diego Rafael Canabarro provided me more than their continuous friendship in Brazil. In fact, they worked almost as an informal committee of this project. In his regard, I would like to give a special thanks to Antônio Carlos Tovo Loureiro, whose everlasting friendship and generosity allowed me to develop his original idea into this study. My non-academic friends from Colégio Rosário, finally, provided me with some of the best moments when I visited my hometown along the past years. After so much time knowing each other, it is fantastic to realize that I can still count on such loyal friends as Bernardo Fachini, José Pedro Bortolini, Gabriel Franco Santos, and Mateus Nunes dos Santos.

In my family, I thank my dad and Lucy for their many welcomes in São Paulo in the several times Marina and I stopped by the city to renew our visas. I still hope, though, that we could spend more time together. My aunts Bete and Bia have been a constant joyful presence in my life. For their kindness, support and laughs, I sincerely thank them. Wherever my *vó* Lute is right now, I thank her for all she ever was to me, a source of tenderness that always makes me smile when I remember of her. Marina, my partner of life and dreams, deserves so many thanks that kind words do not suffice. She has been my source of courage, inspiration and calm as we navigated together through the various turbulent waters that hit our shores along these last five years. As we have been building a life and family of our own, I can only hope I am able to thank her every day for everything that she means to me.

In time, if there is anyone to blame for the mistakes of this dissertation, look no further. I am the sole responsible for them.

L. D. R.

TABLE OF CONTENTS

1.	Introduction: On the Judicial Politics of Corruption	
1.1.	Introduction: Courts and Corruption in Brazil and Beyond	1
1.2.	Why Judicial Responses to Political Corruption Matter	7
1.3.	Overview of the Approach and Argument	13
1.4.	Overview of the Dissertation	20
2.	Understanding Legal Accountability	
2.1.	Introduction: Hard Cases <i>Redux</i>	23
2.2.	The Theoretical Question: Judicial Responses to Political Corruption in a Democracy	26
2.3.	Convicting Corrupt Officials in a Court of Law: Stages of Legal Accountability	31
2.4.	Terms of the Explanation: Pluralism and Autonomy, Mobilization and Coordination	39
2.5.	Combining Institutional Autonomy and Inter-Institutional Coordination: A Typology	53
2.6.	Additional and Alternative Explanations	59
3.	Specifying the Research Design	
3.1.	Introduction: Learning from the Prosecution of Mayors in Brazil	74
3.2.	Case Selection (I) and Time Frame: Why Brazil since 1988?	76
3.3.	Case Selection (II): Why the States of Rio Grande do Sul, Minas Gerais, and Bahia?	81
3.4.	Units of Analysis: Legal Accountability of Mayoral Corruption by Brazilian States	88
3.5.	Methods and Operationalization of Main Concepts	101
4.	From Fragmented to Coordinated Autonomy in Rio Grande do Sul	
4.1.	Introduction: A Personal Story	109
4.2.	The Pre-History of the 4 ^a <i>Câmara Criminal</i> of the TJRS	112
4.3.	Risk-Taking in a Sea of Uncertainty: Specializing the Courts to Try Mayors	130
4.4.	Towards Coordinated Autonomy: Struggling to Produce a Unique Record in Brazil	141
4.5.	Conclusion: Withholding Fragmentation and Increasing Prevention	177
5.	Persistent Fragmented Autonomy in Minas Gerais	
5.1.	Introduction: 853 Municipalities	190
5.2.	Despite the Odds: Refusing Court Specialization	193
5.3.	Isolated Institutions, Poorly Mobilized Legal Actors and a Mixed Record	211
5.4.	Conclusion: Inching Toward Inter-Institutional Coordination	235
6.	Mobilization and Counter-Mobilization in Bahia	
6.1.	Introduction: Arriving in Salvador	242
6.2.	Despite the Odds: An Unlikely Place for Court Specialization	245
6.3.	Against the Grain: Meeting the Limits of <i>Realpolitik</i>	256
6.4.	Conclusion: The Long Road Toward Fragmented Autonomy	285
7.	Conclusion: Lessons Learned, Tasks Ahead and Beyond	
7.1.	Lessons Learned: Explaining Judicial Responses to Political Corruption	298
7.2.	Beyond Rio Grande do Sul, Minas Gerais and Bahia	311
7.3.	Beyond Legal Accountability: Implications and Tasks Ahead	318

References	328
Appendix I: List of Interviews	370
Appendix II: Glossary of Brazilian Expressions and Legal Terms	375
Appendix III: Accounting for the Dependent Variable	378
Vita	379

LIST OF FIGURES AND TABLES

Figures

1.1.	Map of Brazil Highlighting Three Selected States	14
1.2	Overview of the Argument	17
2.1.	Stages of Legal Accountability	32
4.1.	Indictments and Convictions of Mayors at the 4 th Criminal Panel of the TJRS, 1992-2012	168

Tables

2.1.	Typology of Judicial Systems in Legal Accountability	54
3.1.	Descriptive Statistics of Three Selected Brazilian States	82
3.2.	Descriptive Statistics of the Judicial System of Three Selected Brazilian States	94
3.3.	Access to the Field in Rio Grande do Sul, Minas Gerais and Bahia	107
7.1.	Legal Accountability of Mayors in Three Brazilian States, 1988-2012	300

LIST OF ABBREVIATIONS AND ACRONYMS

3CCE	<i>3ª Coordenadoria de Controle Externo</i> (Third Coordination of External Control)
4CC	<i>4ª Câmara Criminal</i> (Fourth Criminal Panel)
ACLU	American Civil Liberties Union
ACM	Antônio Carlos Magalhães
AGERGS	<i>Agência Estadual de Regulação dos Serviços Públicos Delegados do Rio Grande do Sul</i> (State Agency for the Regulation of Delegated Public Services of Rio Grande do Sul)
AJURIS	<i>Associação dos Juízes do Rio Grande do Sul</i> (Association of Judges of Rio Grande do Sul)
ALBA	<i>Assembleia Legislativa do Estado da Bahia</i> (Legislative Assembly of the State of Bahia)
ALMG	<i>Assembleia Legislativa do Estado de Minas Gerais</i> (Legislative Assembly of the State of Minas Gerais)
ALRS	<i>Assembleia Legislativa do Estado do Rio Grande do Sul</i> (Legislative Assembly of the State of Rio Grande do Sul)
AMB	<i>Associação dos Magistrados Brasileiros</i> (Association of Brazilian Judges)
AMMA	<i>Associação dos Magistrados do Maranhão</i> (Association of Judges of Maranhão)
AMPEB	<i>Associação do Ministério Público do Estado da Bahia</i> (Association of the Prosecutors' Office of the State of Bahia)
AMP/RS	<i>Associação do Ministério Público do Rio Grande do Sul</i> (Association of the Public Prosecution Office of Rio Grande do Sul)
ARENA	<i>Aliança Renovadora Nacional</i> (National Renewal Alliance)
BA	Bahia
CAB	<i>Centro Administrativo da Bahia</i> (Administrative Center of Bahia)
CDP	<i>Consultoria em Direito Público</i> (Consultancy in Public Law)
CESP	<i>Câmara Especializada</i> (Specialized Panel)
CGU	<i>Controladoria-Geral da União</i> (Comptroller-General of the Union)
CONAMP	<i>Confederação Nacional do Ministério Público</i> (National Confederation of the Public Prosecution Office)
CNIA	<i>Cadastro Nacional de Improbidade Administrativa</i> (National Record of Administrative Improbity)

CNJ	<i>Conselho Nacional de Justiça</i> (National Council of Justice)
CNMP	<i>Conselho Nacional do Ministério Público</i> (National Council of the Prosecutors' Office)
CNPG	<i>Conselho Nacional dos Procuradores-Gerais de Justiça</i> (National Council of Prosecutors-General)
CPI	<i>Comissão Parlamentar de Inquérito</i> (Parliamentary Investigative Committee)
DEM	<i>Democratas</i> (Democrats)
DPM	<i>Delegações de Prefeituras Municipais</i> (Delegations of Municipal Governments)
FAMURS	<i>Federação das Associações de Municípios do Rio Grande do Sul</i> (Federation of the Associations of Municipalities of Rio Grande do Sul)
FGV	<i>Fundação Getúlio Vargas</i> (Getúlio Vargas Foundation)
GDP	Gross Domestic Product
GECCPAPM	<i>Grupo Especial de Combate aos Crimes Praticados por Agentes Políticos Municipais</i> (Special Group on Crimes Committed by Municipal Political Agents)
GOVBA	<i>Governo do Estado da Bahia</i> (State Government of Bahia)
GOVMG	<i>Governo do Estado de Minas Gerais</i> (State Government of Minas Gerais)
GOVRS	<i>Governo do Estado do Rio Grande do Sul</i> (State Government of Rio Grande do Sul)
IBGE	<i>Instituto Brasileiro de Geografia e Estatística</i> (Brazilian Institute of Geography and Statistics)
IRCE	<i>Inspetoria Regional de Controle Externo</i> (Regional Inspecting Offices of External Control)
IRS	Internal Revenue Service
MDB	<i>Movimento Democrático Brasileiro</i> (Brazilian Democratic Movement),
MG	Minas Gerais
MP	<i>Ministério Público</i> (Prosecutors' Office)
MPBA	<i>Ministério Público do Estado da Bahia</i> (Prosecutors' Office of the State of Bahia)
MPC	<i>Ministério Público de Contas</i> (Prosecutors' Office before the Court of Accounts)
MPMG	<i>Ministério Público de Minas Gerais</i> (Prosecutors' Office of the State of Minas Gerais)
MPRS	<i>Ministério Público do Rio Grande do Sul</i> (Prosecutors' Office of the State of Rio Grande do Sul)
NAACP	National Association for the Advancement of Colored People

NICAP	<i>Núcleo de Investigação dos Crimes Atribuídos a Prefeitos</i> (Division of Investigation of Crimes Attributed to Mayors).
PC do B	<i>Partido Comunista do Brasil</i> (Communist Party of Brazil)
PDT	<i>Partido Democrático Trabalhista</i> (Democratic Labor Party)
PDS	<i>Partido Democrático Social</i> (Social Democratic Party)
PFL	<i>Partido da Frente Liberal</i> (Party of the Liberal Front)
PHS	<i>Partido Humanista da Solidariedade</i> (Humanist Party of Solidarity)
PL	<i>Partido Liberal</i> (Liberal Party)
PMDB	<i>Partido do Movimento Democrático Brasileiro</i> (Party of the Brazilian Democratic Movement)
PP	<i>Partido Progressista</i> (Progressive Party)
PPB	<i>Partido Progressista Brasileiro</i> (Brazilian Progressive Party)
PR	<i>Partido da República</i> (Party of the Republic)
PROCPREF	<i>Procuradoria de Prefeitos</i> (Division on Crimes of Mayors)
PSB	<i>Partido Socialista Brasileiro</i> (Brazilian Socialist Party)
PSDB	<i>Partido da Social Democracia Brasileira</i> (Party of the Brazilian Social Democracy)
PT	<i>Partido dos Trabalhadores</i> (Workers' Party)
PTB	<i>Partido Trabalhista Brasileiro</i> (Brazilian Labor Party)
RS	Rio Grande do Sul
SIAPC	<i>Sistema de Informações para Auditoria e Prestação de Contas</i> (Information System for Audit and Accountability)
SSP	<i>Secretaria de Segurança Pública</i> (Department of Public Safety)
STF	<i>Supremo Tribunal Federal</i> (Supreme Federal Tribunal)
STJ	<i>Superior Tribunal de Justiça</i> (Superior Court of Justice)
TCEBA	<i>Tribunal de Contas do Estado da Bahia</i> (Court of Accounts of the State of Bahia)

TCEMG	<i>Tribunal de Contas do Estado de Minas Gerais</i> (Court of Accounts of the State of Minas Gerais)
TCERS	<i>Tribunal de Contas do Estado do Rio Grande do Sul</i> (Court of Accounts of the State of Rio Grande do Sul)
TCMBA	<i>Tribunal de Contas dos Municípios da Bahia</i> (Court of Accounts of the Municipalities of Bahia)
TCU	<i>Tribunal de Contas da União</i> (Court of Accounts of the Union)
TJBA	<i>Tribunal de Justiça da Bahia</i> (Court of Appeals of Bahia)
TJMG	<i>Tribunal de Justiça de Minas Gerais</i> (Court of Appeals of Minas Gerais)
TJRS	<i>Tribunal de Justiça do Rio Grande do Sul</i> (Court of Appeals of Rio Grande do Sul)
TRE	<i>Tribunal Regional Eleitoral</i> (Regional Electoral Court)
TRF	<i>Tribunal Regional Federal</i> (Regional Federal Court)
TRT	<i>Tribunal Regional do Trabalho</i> (Regional Labor Court)
U.S.	United States of America

SUMMARY

This dissertation proposes an explanation of the variation of judicial responses to political corruption. It asks why some judicial systems are more effective than others in punishing corrupt elected officials – i.e., why legal accountability varies across polities and over time. It examines these questions in a comparative research project at the subnational level in Brazil. More specifically, this dissertation analyzes why the judicial systems of three Brazilian states – namely, Rio Grande do Sul, Minas Gerais, and Bahia – reveal radically different conviction rates of their mayors while enforcing identical national laws on mayoral corruption and what factors explain their variant performances. Going beyond the traditional emphasis on judicial independence to account for conviction rates in corruption cases, this analysis relies on publicly available data on convictions, archival research, in-depth interviews with seventy-five members of the legal community, a review of secondary sources, and on-site visits to courts, prosecutors’ offices, and auditing agencies. The proposed explanation draws on two pairs of interrelated variables: political pluralism and institutional autonomy, and legal mobilization and inter-institutional coordination. First, a relatively high level of *institutional autonomy* from the elected branches of government is necessary not only for the judiciary, but also for other institutions of the system of justice (i.e., auditing agencies, prosecutor’s offices, and so on) to promote sustained legal accountability results. That is, institutions responsible for case adjudication as well as those responsible for prosecuting, investigating and detecting irregularities require a certain level of autonomy to work effectively. This autonomy, in turn, rests primarily on the degree of *political pluralism* of the political system. Hegemonic or quasi-monopolistic political systems inhibit the workings of accountability institutions, whereas plural ones allow greater latitude to them. Second, higher levels of *inter-institutional coordination* among legal accountability institutions also increase judicial responses to corruption. When courts, prosecutors’ offices and auditing agencies streamline their work, conviction rates are expected to increase. This coordination, though, relies less on formal features of those institutions and more on *legal mobilization*, or the activism of actors working inside each of these agencies, who build bridges among otherwise isolated institutions. These

variables, finally, interact with each other to generate four types of legal accountability performances. From the least effective to the most, they are: constrained isolation, constrained coordination, fragmented autonomy, and coordinated autonomy.

CHAPTER 1. INTRODUCTION: ON THE JUDICIAL POLITICS OF CORRUPTION

1.1. Introduction: Courts and Corruption in Brazil and Beyond

From August to October of 2012, millions of Brazilians all over the country were glued to their television screens. In contrast to the country's stereotypical image, this sudden interest was not caused by a popular *telenovela* or soccer championship. Instead, the live transmission of the trials of forty high-ranking executive and legislative officials accused of illegal payments in the *Mensalão* scandal – which shook Lula's presidency in 2005 – captured the nation's attention.¹ A number of reasons help explain such a burst of interest, from the nature of the scandal to the biases of the country's mainstream media. Among them, however, is the fact that this episode was deemed by many a novelty in Brazil's political life. Allegedly, until that date very few corrupt public officials had been prosecuted, least of all successfully, in the country.

Since the return to democracy in the late 1980s, judicial responses to political corruption have been deemed timid in Brazil. Impunity, thus, is a main complaint, being captured by journalistic and academic accounts alike. One of the country's leading newspapers, *Folha de São Paulo*, estimates that out of the ten most famous corruption scandals since redemocratization, close to nine hundred individuals had been criminally indicted. Of these, no more than fifty-five – a bit over six percent – ended up convicted at some point in the long chain of appeals of Brazil's court system.² Similarly, examining six prominent scandals from 1988 to 2005, Taylor and Buranelli noticed that “the sanctions imposed on corruption are relatively minor. Of the six cases, only one had led to concrete criminal sanctions against an alleged wrongdoer to date, which suggests that

¹ The *Mensalão* scandal did not involve only public officials, but also party bureaucrats and businessmen.

² Data by Costa and Franco (2011).

the sanctions are too long in coming to pose a significant deterrent effect or even a punitive effect” (2007, 77-78). As a result, eighty-four percent of the respondents in two surveys administered in 2008 and 2009 agreed that “if the existing laws were enforced and there was not so much impunity, corruption would decrease.”³ Not incidentally, Brazil exhibits high levels of perceived corruption in practically all international rankings. On the Corruption Perceptions Index by Transparency International, for instance, it holds position number seventy-two in the world, scoring forty-two in a scale up to one hundred for clean government.⁴

Chief among the causes explaining this problematic performance in punishing corruption is the treatment received by public authorities in the country’s judicial system. The constitutional rule of *foro privilegiado*, or privileged jurisdiction, defines that several public officials enjoy special standing before the courts in criminal cases brought against them.⁵ They have, in short, the “right to trial in a higher court of justice” (Macaulay 2011, 238). Brazil’s president and its ministers, as well as members of Congress, hence, can only be criminally tried directly in the highest court of the country, the *Supremo Tribunal Federal* (STF). The *Mensalão* scandal was precisely one of such cases. By the same token, state governors can only be prosecuted before the *Superior*

³ In disaggregated form, sixty-five percent *totally* agree and nineteen percent *partially* agree with that sentence (cf. Bignotto 2011, 35).

⁴ Corruption Perceptions Index 2013, available at <http://www.transparency.org/cpi2013/results>, accessed in December 3, 2013. It is probably no accident that the 15th International Anti-Corruption Conference organized by Transparency International held in Brazil in November 2012 brought at its forefront the issue of impunity in the resulting Brasília Declaration, signed by over 140 countries, as available at <http://15iacc.org/about/declarations/the-brasilia-declaration/>, accessed in November 13, 2013.

⁵ Also referred to as *foro especial* and *foro por prerrogativa de função* – or, respectively, *special jurisdiction* and *jurisdiction as prerogative of position* – nowhere in the Brazilian Constitution *foro privilegiado* is actually called by any of these three terms. All these expressions have been largely coined in legal academia and made popular by the media. Importantly, several other governmental authorities enjoy this privilege in Brazil, including high-ranking military officers, judges, public prosecutors, member of auditing bodies, and the like. Finally, this is not a Brazilian peculiarity. It also exists in Western European countries of the civil law tradition, such as Germany, Portugal, and Spain (cf. Belém 2008, Mendonça 2008). The French *privilège de juridiction* that existed between 1974 and 1993, for instance, also granted special standing in the courts to various public officers of the country and, thus, “served to slow down investigation and in certain situations effectively ... shelve them” (Adut 2004, 577; see also Ruggiero 1996). Not surprisingly, the suppression of the law establishing such privilege in France, achieved in 1993, facilitated the prosecution of several public authorities in that country.

Tribunal de Justiça (STJ), the highest Brazilian court responsible for interpreting federal statutes. In effect, inasmuch as *foro privilegiado* was initially conceived “as a way of insulating politicians from frivolous lawsuits ... over time it has translated into a practical grant of immunity from prosecution” (Taylor 2011, 173). A report by the *Associação dos Magistrados Brasileiros* (AMB, or Association of Judges of Brazil) issued in 2007 highlights this. Out of the one hundred and thirty criminal cases filed at the STF against federal officials since 1988, only six were heard and not a single one resulted in conviction.⁶ At the STJ, the picture does not differ much: out of the almost five hundred cases filed, sixteen were tried and only five convictions resulted. A nearly direct association between *foro privilegiado* and weak criminal sanctions on corrupt behavior thus emerges in Brazil. This institutional arrangement, in other words, has been amply deemed a recipe for impunity and, as such, an incentive for corruption in the country (cf. Arantes 2011, Macaulay 2011, Power and Taylor 2011a, Taylor 2011).

Yet, this pessimistic diagnosis looks at Brazil solely as a monolithic unit, focusing on its national politics and its high courts, thus ignoring the role various initiatives have played in this regard at the country’s subnational level. And even if these cases do not receive as much attention as those of failed prosecution at the federal level do, these subnational cases nonetheless suggest that the broader picture is probably more nuanced than one may initially presume. Particularly interesting in this regard have been the initiatives taken at the state level to prosecute *mayors*. They too enjoy special standing in the criminal cases brought against them, being tried mostly by state courts of appeals known as *Tribunais de Justiça* (TJs). Even so, many city officials have not enjoyed the same luck of their counterparts tried by Brazil’s high courts, with some state courts

⁶ See Associação dos Magistrados Brasileiros (2007). True, the report is from 2007 and some convictions did take place later at the STF, starting in 2010 and including many of the accused in the *Mensalão* scandal in 2012, as well as federal representative Nathan Donadon in 2013.

displaying relative success in overcoming the obstacles provided by the *foro privilegiado*. In one of the most famous of these experiences, the courts of the southern state of Rio Grande do Sul tried more than one thousand criminal cases against mayors, leading to convictions in well over three hundred of them, with sentences ranging from community service to imprisonment. Not all Brazilian states are alike, however. With roughly twice the number of city halls and two times the population of Rio Grande do Sul, the state of Minas Gerais produced less than half of the mayoral convictions of the southern state. In the state of Bahia, meanwhile, the total number of convictions is still in the single digits, despite its similarly large number of municipalities.

In sum, criminal convictions of mayors vary significantly from state to state in Brazil. This variation is especially puzzling considering that the legislation applicable to such cases is national and, thus, uniform across the country as a whole. There is no clear explanation for why Brazilian states have been so uneven in their mayoral conviction rates. Such a variation, moreover, not only suggests that some states differ significantly from the stereotypical image displayed at the country's federal level, but also offers an opportunity to explore the underpinnings of judicial activity in cases of political corruption.

These largely ignored cases involving the prosecution of mayors by state-level judicial systems in Brazil, thus, offer a puzzle: why do superficially similar political system yield such distinct conviction rates if they enforce the same laws and operate by the same rules? By delving into this Brazilian subnational microcosm, my goal is to illuminate the broader theoretical question of why some court systems are more effective than others in punishing corrupt public officials.⁷ In so doing, I expect to contribute to a research agenda that has received surprisingly little systematic

⁷ Unless otherwise indicated, the expressions “theory” and “theoretical” are employed throughout this study to refer only to explanations of overall patterns of political phenomena. That is, in this study these expressions do *not* refer to what is often called *normative* political theory.

scholarly attention, which I will henceforth call the *judicial politics of corruption*. Even in Latin America, where corruption has clearly been considered a serious issue, only a few studies have focused on the anti-graft role of the judiciary.⁸ Many recently edited volumes on judicial politics in the region either ignore the topic or give it only superficial attention (e.g., Sieder, Schjolden, and Angell 2005, Couso, Hueeus, and Sieder 2010, Helmke and Ríos-Figueroa 2011). Helmke and Ríos-Figueroa, for instance, suggest that courts in Latin America primarily have been exerting two politically relevant roles, “arbitrating interbranch conflicts” and “enforcing rights” (2011, 9). Nowhere is it argued that the courts may be relevant in punishing corruption.⁹ This perception is largely attested to in the review of the Latin American judicial politics literature by Kapiszewski and Taylor (2008), who include this topic among those deserving more attention.¹⁰

Beyond Latin America, the literature on the judicial politics of corruption is not encouraging either. Comprehensive edited volumes cover a variety of topics on judicial politics, but provide little attention to the role of courts in punishing corrupt officials (e.g., Tate and Vallinder 1995, Whittington, Kelemen and Caldeira 2008). Even the vast socio-legal literature on the United States judiciary does not address this question very closely. As in other instances, the absence of this topic is patent in a variety of edited volumes (e.g., Hall and McGuire 2005, Stoltnick 2005,

⁸ In Latin America, these exceptions include the analyses by Restrepo (2003), Restrepo, Sánchez and Cuéllar (2006), Ríos-Figueroa (2006, 2012), Taylor and Buranelli (2007), and Taylor (2009, 2011).

⁹ This gap is surprising if one considers its immediate relevance to policy-making and even an early suggestion by O'Donnell to analyze the role of courts in their “actions aimed at preventing and eventually punishing presumably illegal action and omissions of state officers” (2005, 296). This gap also implies that the understanding of courts’ impact in Latin America’s political systems may be biased towards certain topics. That is, they may be powerful in separation-of-power struggles or civil rights cases, but close to irrelevant in the enforcement of anti-corruption laws. Each of these issues, however, has a valence that is polity-specific (see Locke and Thelen 1995). In other words, this means that assessing the political weight of the judiciary comparatively only makes sense if one also examines which issues are most relevant to each context. While in certain polities separation-of-power issues may be the actual *tour de force* cases to test the strength of the judiciary, in other scenarios they may refer to social rights, or corruption cases. That is, one can only assess the influence of the judiciary in each context accounting for these elements that have to be unveiled for each case, not determined exogenously. For a different take on the topic, see Kapiszewski (2011, 2012, 2013), and Kapiszewski, Silverstein and Kagan (2013).

¹⁰ A similar observation was recently made by Kapiszewski, Silverstein and Kagan (2013a) for the broader field of comparative judicial politics.

Murphy et al. 2006, O'Brien 2012). This is puzzling – to say the least – considering that over four thousand local public officials have been convicted on charges of corruption over the past ten years in the country's federal courts (cf. Simpson 2012, 7).

In effect, while the comparative judicial politics literature has expanded significantly in the last decades, it has largely ignored the issue of corruption, limiting its attention to the judicial review of public policies, inter-branch struggles and individual rights, a phenomena usually referred to as the “judicialization of politics” (cf. Tate and Vallinder 1995, Shapiro and Stone Sweet 2002, Kapizewski and Taylor 2008, Hirschl 2008, 2008a). As a result, most literature on the judicial politics of corruption consists of case studies, particularly on the famous Italian *mani pulite* investigations (e.g., Di Federico 1995, Alberti 1996, Nelken 1996, Pederzoli and Guarnieri 1997, Burnett and Mantovani 1998, Colazingari and Rose-Ackerman 1998, della Porta 2001, Clark 2003, Colombo 2006, Guarnieri 2013) and on political scandals in France in the 1980s and 1990s (e.g., Ruggiero 1996, Roussel 1998, 2002, Lascoumes 2001, Adut 2004, 2008), apart from a multitude of individual studies on other countries.¹¹

As a result, because the bulk of these works follows a case study format and focus on relatively successful initiatives at prosecuting corrupt officials, they fail to address variation in effective prosecution and conviction. Thus, they do not advance a more general argument as to why some courts are more successful in punishing corruption than others. Building a theory to answer this

¹¹ Accordingly, the literature in English on the topic is not limited to the Italian and French cases. Apart from a few analyses in the United States (e.g., Anechiarico and Jacobs 1996, Harriger 2000, Alt and Lassen 2007, Collins 2010a), there are case studies in countries as different as Spain (Maravall 2003), China (Sapio 2005), Indonesia (Tahyar 2010), the Philippines (Pangalangan 2010), and India (Mate 2013), to cite a few. Yet, given their case study approach, they do not assess why differences exist in this regard, apart from longitudinal ones. To my knowledge, the only studies that have moved beyond the case study approach towards openly comparative enterprises are those by Sousa (2002), Sims (2011), and Ríos-Figueroa (2006, 2012). Even in these studies, however, the first two are limited to Western European countries and the latter seem more concerned with the issue of corruption in the judiciary itself. Either way, all these works constitute a critical body of knowledge from which to draw insight and hypothesis to propose a more general theory on why judicial responses to corruption vary across different polities.

theoretical question is the goal of this study. Consequently, although my approach consists in analyzing subnational variation in only one country (Brazil) the argument I develop is applicable to other polities facing the similar challenge of bringing corrupt officials to justice.

1.2. Why Judicial Responses to Political Corruption Matter

Before proposing an explanation of the varying levels of judicial response to corruption, a few words are in order on the overall relevance of this topic. In this sense, while political corruption is typically deemed a problem of critical importance due to its harmful effects to both economic development and democratic consolidation,¹² the picture is much less clear as to why one should care about *judicial responses* to it. This begs the following question: why do judicial responses to political corruption matter? They matter, I argue, because they constitute a type of accountability – named *legal accountability*¹³ – that plays a critical role in the efforts of reducing the incidence of corrupt behavior among government officials.

Although surely polysemic, at its core the concept of accountability refers to the capacity of the citizenry to discern representative from unrepresentative performances of public officials, and to sanction them accordingly (cf. Manin, Przeworski and Stokes 1999, Schedler 1999). Typically, it concerns the *vertical* relationship between elected officials and their constituents, in which the latter hold the former accountable for their acts while in office, either punishing or rewarding them with their votes in the subsequent elections. *Legal accountability*, in turn, is one type of

¹² The detrimental effects of corruption over economic development and democratic consolidation are respectively reviewed in Mauro (1995) and Rose-Ackerman (2002), and Johnston (1999) and Nicolescu-Waggoner (2011), among a variety of other studies on these topics.

¹³ *Legal accountability* is also referred to as *judicial accountability* (e.g., Peruzzotti and Smulovitz 2006, Collins 2010). I avoid this latter term, however, because it may be more easily confused with holding *judges* accountable for their wrongful acts (cf. Burbank 2007).

horizontal accountability,¹⁴ in which predominantly non-elective institutions act on behalf of the public to make elected officials face the legal consequences of their acts. Legal accountability makes reference to the enforcement, by the judicial system, of laws establishing sanctions for the corrupt behavior of public officials. It is, therefore, an expression I use interchangeably for the notion of judicial response to political corruption.

The main relevance of legal accountability, by these terms, is that court rulings can impose harsh sanctions on the illicit use of public power for private gain. These decisions, in turn, can generate a deterrent effect, thereby contributing to reduce the overall incidence of political corruption. As Rose-Ackerman observes, the “deterrence of criminal behavior depends on the probability of detection and punishment and on the penalties imposed” (1999, 52).¹⁵ Penalties and sanctions for illicit behavior, however, can assume a variety of forms and are not limited to those imposed by the courts proper, including those by the electorate and even by administrative agencies. This begs the following question: why do *judicially imposed* sanctions matter?

In order to answer this question adequately, it may be useful to think counterfactually – i.e., is it possible to impose rigorous sanctions without the aid of the judiciary? One positive and perfectly feasible answer to this question suggests that mechanisms of vertical accountability can impose electoral sanctions on corrupt officials. If politicians are corrupt, the people would remove them from office by refusing to vote for them. The existing comparative evidence on voting behavior, however, is not encouraging, with well-known corrupt officials frequently being rewarded by the

¹⁴ The concept of *horizontal accountability* was made popular by O'Donnell, who defined it as the “kind of accountability [that] depends on the existence of state agencies that are legally empowered – and factually willing and able – to take actions ranging from routine oversight to criminal sanctions or impeachment in relation to possibly unlawful actions or omissions by other agents or agencies of the state” (1998, 116). It was not by accident that later O'Donnell called horizontal accountability “the legal institutionalization of mistrust” (2003, 34).

¹⁵ That the probability of sanction-imposition deters criminal behavior is not new, appearing in works as different as Becker (1968), Etzioni (1982), and Tsebelis (1989) and, before them, in Beccaria and Bentham, for instance.

voters and often ending up reelected (e.g., Rundquist, Strom, and Peters 1977, Peters and Welch 1980, Pereira, Melo and Figueiredo 2009). Likewise, electoral sanctions depend on a variety of factors to be effective, including media exposure, educational level of the citizenry, the pool of alternate candidates, the popularity enjoyed by corrupt officials, and the clarity of responsibility of the party and electoral systems (cf. Gerring and Thacker 2004, Kunicová and Rose-Ackerman 2005, Tavitis 2007, Ferraz and Finan 2008, Winters and Weitz-Shapiro, 2013, Zechmeister and Zizumbo-Colunga 2013). Finally, these are not constant, continuous controls. They take place only when elections occur – and in Brazil this means every four years. Hence, electoral sanctions can work, but are usually insufficient on their own to curb corruption.

Another justifiable argument suggests a reliance on administrative sanctions, including those traditionally imposed by anti-corruption agencies – e.g., firing bureaucrats under the suspicion of illicit gains, disallowing companies from contracting with the government, imposing fines. Still, ignoring the role of the judiciary as the final arbiter in rights disputes – especially in reference to the rights of those accused of corruption – is probably a mistake. In effect, courts can invalidate administrative procedures and often reverse or delay sanctions imposed by these agencies. A few recent studies note that the judiciary often creates problems over the investigative powers and the sanctions imposed by anti-corruption agencies, limiting their ability to act as effective curbs on corrupt practices (e.g., Quah 2010, Sousa 2010).¹⁶ Martinez (2011) notices, for instance, that less than one percent of the fines imposed by one of Brazil’s national auditing agencies, the *Tribunal de Contas de União* (TCU, or Federal Court of Accounts) were effectively carried out because most were challenged in the courts. Similarly, Alencar (2011) found that over ten percent of the

¹⁶ More amply, the judicial oversight of administrative decisions is an important part of courts’ daily activities, as the literature abundantly demonstrates on different regulatory areas such as environmental, tax and labor policies, among various others (see O’Leary 1993, Spriggs 1996, 1997, Hertogh and Halliday 2004, McAllister 2008).

civil servants expelled from Brazil's federal executive branch from 1993 to 2005 due to corrupt practices were reinstated due to court decisions. As the final resort to arbitrate limitations on rights, courts are inevitably involved in the interpretation and, thus, in the enforcement of administrative penalties. Finally, when political corruption is truly widespread, these sanctions may become equally rare, rendering the judiciary the last arena for punishing official misconduct. As della Porta and Vannucci argue relying on their analysis of Italy's case, "when the system of internal control between politicians and bureaucrats does not work to prevent corruption, the judiciary is the main institution that has to intervene in order to discover administrative illegalities and repress them" (1999, 139).

Similarly, electoral and administrative sanctions are often less rigorous than civil and especially criminal penalties imposed by the judiciary. If the intensity of the sanctions matters to produce a deterrent effect, then relying solely on electoral and administrative sanctions is probably not a wise anti-corruption strategy.¹⁷ It is no accident that nearly all cases of successful anti-corruption reform have, at some point, integrated the court system as an arena of action, with some authors even treating anti-corruption sanctions and *judicial* sanctions interchangeably in this realm.¹⁸ Not surprisingly, empirical research has been showing that higher probability of judicial sanctions are positively associated with cleaner government (cf. Goel and Rich 1989, Ruhl 2011, Ferraz and Finan 2011). In effect,

“... the naïve observer may think that if just a few cases are prosecuted, this indicates a low level of corruption. In fact, just the opposite is likely to be true: the scarcity of

¹⁷ The same is true for social accountability, which ultimately relies on public institutions. Accordingly, “if social accountability is to be democratic, it must operate in the institutional arena and seek a judicial response. Social sanctions and political response are not sufficient for an effective pursuit of justice” (Behrend 2006, 228).

¹⁸ Mennen, Frye, and Messick's quote illustrates the point: “Central to any successful comprehensive anti-corruption policy is the deterrence of corrupt behavior. Allegations of bribery, influence peddling, money laundering and other violations must be investigated and, when evidence warrants, prosecuted. Courts must expeditiously, but fairly, adjudicate the resulting cases” (2007, 310).

prosecutions can indicate a very high level of corruption... if many corruption cases are brought to trial, this can indicate an active fight against corruption and a low level of it, or a decreasing trend line” (Karklins 2005, 35).¹⁹

Finally, beyond the proper deterrent effect produced by court decisions, legal accountability also helps to strengthen social trust in the public character of the political institutions, thereby helping to reduce *perceived* levels of corruption (e.g., Levi 1998, Morris and Klesner 2010).²⁰ As Bohn points out, “an ill-performing judiciary magnifies the sense that impunity runs rampant, which increases the level of perception of corruption” (2012, 87). Effective judicial engagement against corruption, thus, is an essential ingredient in any serious effort at cleaning governments, since the “successful implementation of anticorruption reforms ... relies on the existence of actors willing to hold corrupt officials accountable” (Persson, Rothstein and Teorell 2013, 455). Still, the judiciary is just one piece in the much ampler puzzle of reducing corruption. As Canary and Redfield remark on the endemic corruption in Illinois,

“... the never-ending parade of local government officials from Chicago and other areas of the state going off to jail has not resulted in a moratorium on political corruption at the local level. Aggressive prosecution of political corruption is a necessary but not sufficient road to [successful anti-corruption] reform” (2012, 14).

My research explores this necessary parcel of the anti-corruption struggle. Yet, it is important to make one thing abundantly clear from the start: judicial responses matter to reduce overall levels of political corruption, but are probably not sufficient to achieve the desired result of cleaning government altogether. The existing studies tell us that anti-corruption reforms often rely on a

¹⁹ By these terms, my examination provides a foundation to the maxim that “higher level of convictions per capita often is less an indicator of high corruption than of a more determined fight against it” (Karklins 2005, 134). As such, a by-product of this study is to shed light on the use of judicial convictions as direct evidence of the incidence of corruption, an approach followed by a group of scholars (e.g., Meier and Holbrook 1992, Alt and Lassen 2007, Simpson 2012), but criticized by another (e.g., Sousa 2002, Treisman 2007). More than taking sides on this debate, my research illuminates conditions under which judicial convictions can be adequately used to this end.

²⁰ Much more broadly, I should add that the punishment of non-cooperative behavior is commonly associated with increased cooperation at the aggregate level across different human societies (cf. Henrich et al. 2006).

combination of multiple policies and approaches, in which courts play a decisive yet limited role. At the inevitable risk of oversimplification, effective anti-corruption initiatives have rested on four components.²¹ *First*, there is information-gathering. In other words, it is impossible to fight corruption if no one knows where, when, and how it occurs. The focus here is on transparency and the exposure of what is typically a secretive practice. *Second*, there is the imposition of sanctions on both corrupt officials and their private counterparts. More than the pursuit of justice, the purpose of this course of action is to produce the deterrent effect discussed previously and to build trust in public institutions. *Third*, there is institutional design. If corruption is endemic to certain governmental agencies, sanctions will not suffice. Their major rules of operation will have to be altered to prevent corruption from recurring. *Fourth*, final and most ambitiously, there is education and building public norms against corrupt behavior. This includes the long-term process of changing values not only of the public, but especially of public officials, who often sincerely ignore the unlawfulness of certain practices they end up involved with.

Clearly, the judiciary cannot and does not act in all four components of anti-corruption policies specified above. For the most part, it relies on other institutions in the first of them (information-gathering), participates actively in the second (sanction-imposition), and its decisions bring about important effects for the last two (institutional design and education). Given the complexity and scope of these tasks, thus, the literature does not single out any particular agency as *the* most critical one to reduce overall levels of public-sector corruption. Rather, it refers to “national integrity systems” (Langseth, Stapenhurst and Pope 1997, Pope 2000, Speck 2002) and “webs of accountability institutions” (Mainwaring 2003, Power and Taylor 2011a), among a multitude of

²¹ This four-pronged strategy is a combination of the arguments advanced by Klitgaard (1998), Klitgaard, MacLean-Abaroa, and Parris (2000), Mungiu-Pippidi (2006), and especially Manion (2004a, 2004b).

other similar expressions, all entailing a plethora of actors and institutions considered necessary to successfully reduce levels of official misconduct.²²

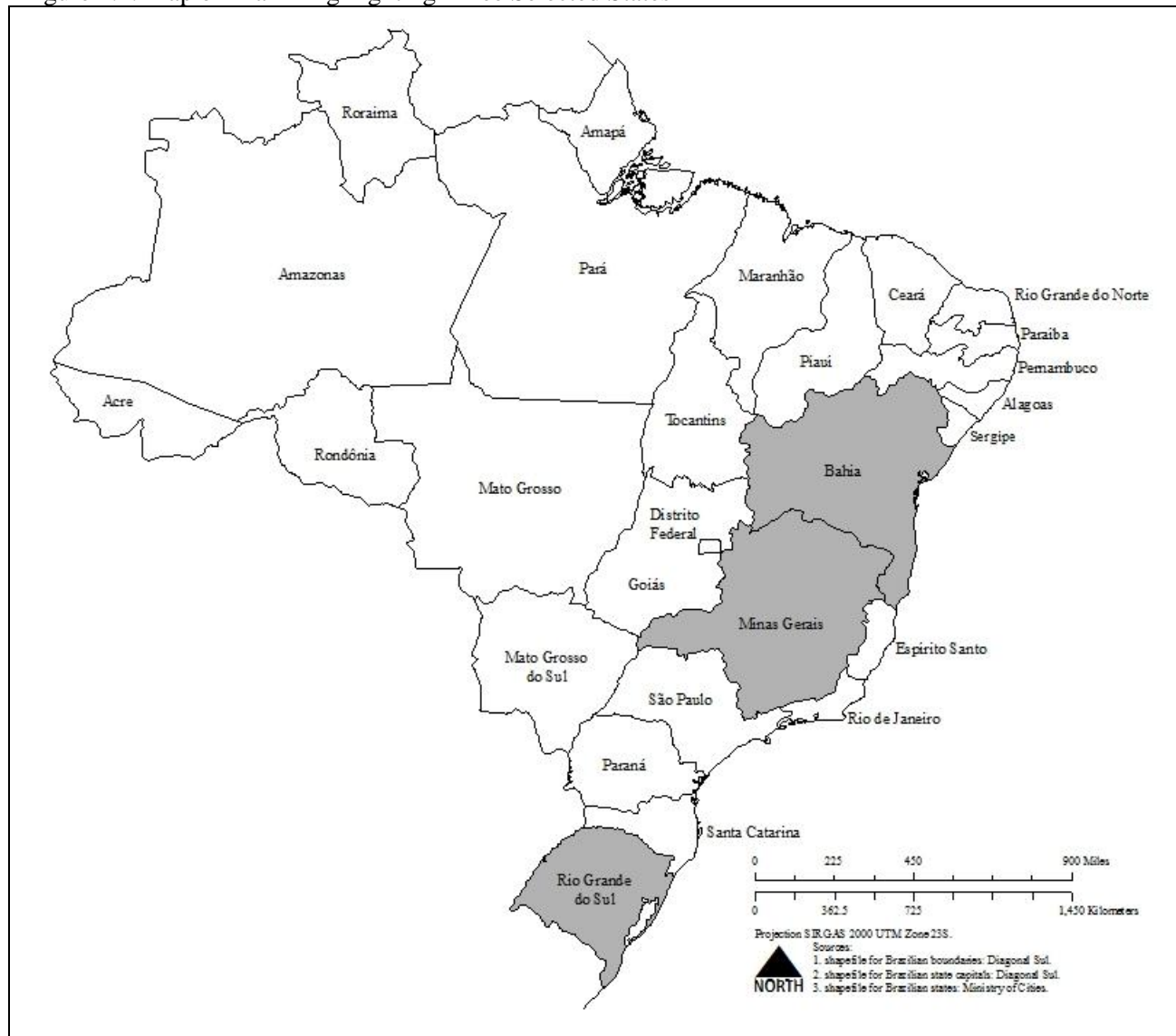
As a result, any attempt at explaining judicial responses to political corruption has to start by acknowledging another crucial and somewhat obvious fact: courts depend on a variety of other institutions to work properly as anti-corruption agencies. Because it is secretive, corruption has first to be detected; then properly investigated; then prosecutors have to bring a case to the courts; and only then the judicial branch proper can provide its response. That is, only at this latter stage can judicial sanctions be properly imposed. However, a series of actions precede it. The role of courts as anti-corruption agencies, hence, cannot be understood in isolation from the workings of these other institutions. Even what is deemed mainly a judicial task – i.e., criminally convicting corrupt officials – depends on other actors. Still, the activity of these other agencies cannot be taken for granted, and demands an adequate explanation as well. Proposing a model to examine the workings of the legal accountability institutions that comprise the *system of justice* or *judicial system* – rather than courts alone – on corruption, therefore, is the task at hand.

1.3. Overview of the Approach and Argument

To this end, I perform an in-depth comparison of the three Brazilian states cited previously – i.e., Rio Grande do Sul, Minas Gerais, and Bahia, highlighted in the map below (see Figure 1.1.). Particularly, I focus on how their judicial systems have been performing to enforce the country's national legislation on city hall corruption.

²² Consequently, because successful anti-corruption reform demands so many agents and institutions to be involved to work effectively, the existing literature argues that it cannot be made incrementally, but has to rely on “indirect ‘big bang’ approaches,” or periods of intense, sharp transformations to produce the desired results (see Rothstein 2011, 2011a).

Figure 1.1. Map of Brazil Highlighting Three Selected States



Apart from their dissimilar court records on mayoral convictions, these states share important characteristics that make their comparison appropriate. This includes a number of similarities in regards to institutional and cultural factors, such as their identical civil law traditions and their equally identical rules of recruitment, guarantees, and attributions of courts, public prosecution offices and auditing agencies, which are also defined nationally, largely turning these elements into constants as well. Moreover, these three states are among those with the larger populations (ranging from ten to twenty million people) and number of municipalities (averaging above four

hundred per state for the period) in Brazil. That is, their size and dimensions approximate that of other *countries* facing similar challenges, introducing some representativeness to the findings. In turn, because Rio Grande do Sul, Minas Gerais, and Bahia exhibit analogous populations and numbers of municipalities, they provide a relatively similar “pool” of potentially corrupt mayors in charge of cities of similar sizes from which convictions can be drawn, thereby helping control for the potential incidence of corruption as an explanation of varying conviction levels.

At the same time, these states differ in some important characteristics of their judicial systems, including overall institutional autonomy from the elected branches and level of anti-corruption coordination and mobilization of their legal actors. These, I propose, are the key components that explain most of the observed differences in mayoral convictions in those states and of judicial responses to political corruption more amply. As such, while there are several factors that help to explain variation in conviction levels in corruption cases, my argument emphasizes the two pairs of elements outlined below:

- First, the degree of *institutional autonomy* enjoyed by all institutions involved in the process of bringing corrupt officials to justice – i.e., the judiciary *as well as* prosecutors’ offices and oversight agencies – from the elected branches of government accounts for some of the variation in conviction rates. Only if each one of these accountability bodies is relatively free from political maneuvering, will it be able to perform its duties properly and thereby contribute to the interdependent processes of detecting, investigating, prosecuting and eventually convicting corrupt public officials. As such, if a single one of these stages is compromised, the efforts towards all others may be rendered useless. High levels of institutional autonomy from exogenous constraints, in turn, are expected to emerge from environments marked by high degrees of *political pluralism* – especially

high levels of electoral competition and distribution of political power – so that no single group or unified political elite exerts an overwhelming dominance and inhibits the operation of the components of the judicial system. That is, political pluralism provides multiple sources of power to support the autonomous activity of judges, prosecutors and investigators, so that their work need not be confined to the boundaries imposed by a single dominant political group. The level of institutional autonomy of the system of justice as generated by different degree of pluralism of the political system, therefore, is the first element explaining variation in judicial responses to political corruption.

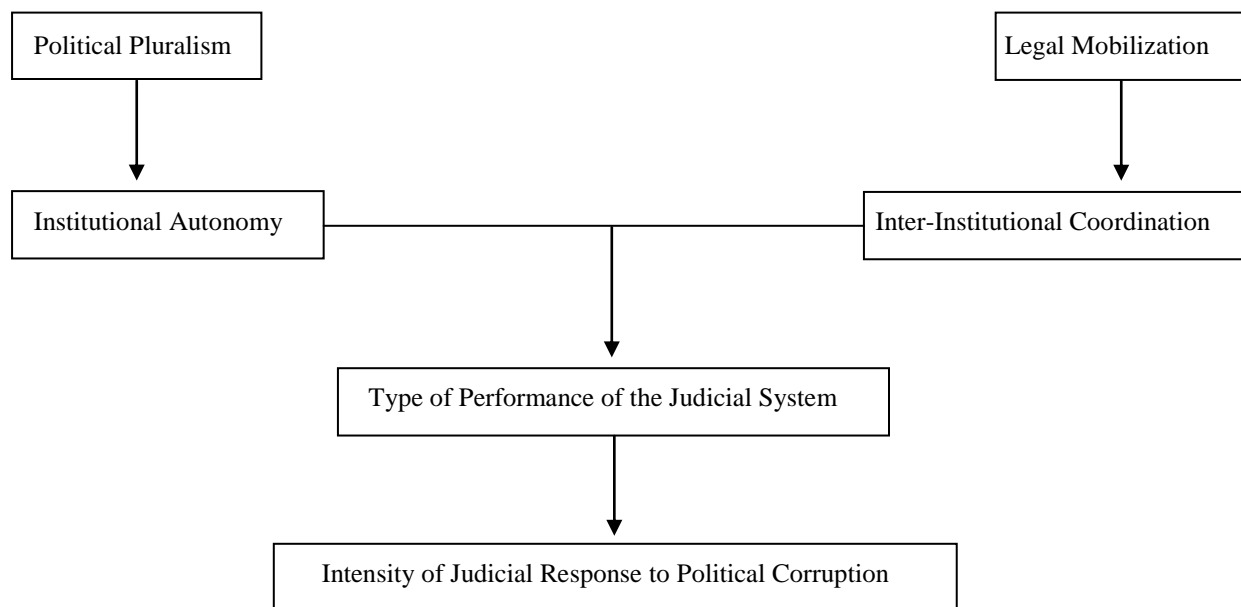
- Second, *inter-institutional coordination* refers to the ability of courts, prosecutors' offices and oversight authorities to narrow the gaps otherwise separating them, so that their work is not performed in isolation from each other. How well the various accountability agencies coordinate their activities, therefore, helps to explain different levels of judicial responses to corruption. That is, if judges, prosecutors, and auditors all streamline their work, they will yield more effective results than if they operate distant from one another, even for similar levels of institutional autonomy. Such coordination, in turn, needs to be built. It emerges, I argue, from high levels of anti-corruption mobilization of the actors working inside these institutions, who willingly pursue the adoption of the organizational arrangements that facilitate this joint work. *Legal mobilization* on the particular topic of corruption, hence, produces coordination among otherwise isolated agencies. In other words, just as political pluralism yields institutional autonomy, so legal mobilization generates inter-institutional coordination.

In this perspective, it is the combination of different levels of *institutional autonomy* and *inter-institutional coordination* – respectively supported by distinct degrees of *political pluralism* and

legal mobilization – that helps explaining variation in judicial responses to political corruption.²³

Therefore, this study proposes that if and when judges, prosecutors and other oversight officials all enjoy high levels of institutional autonomy and inter-institutional coordination, their work produces the highest levels of judicial responses to corruption. When both are low, convictions are rare to nonexistent. Finally, in-between cases emerge when levels of institutional autonomy and inter-institutional coordination differ from each other, one being high and the other low. In order to make these combinations clear, I develop a typology in the next chapter highlighting four types of performances of the system of justice on the issue of political corruption. For now, the figure below sums up the components and argument of my explanation (see Figure 1.2.).

Figure 1.2. Overview of the Argument



²³ Following the works by Dahl (1982) and Carpenter (2001), I use the terms institutional *autonomy* and institutional *independence* interchangeably. Still, I prefer the former expression due to an etymologic reason. Autonomy denotes the capacity of self-rule. Independence, in turn, indicates the absence of reliance on something other than oneself. Both are similar, but when it comes to bureaucratic entities such as courts, prosecutors' offices, auditing agencies etc., the main concern is their capacity to make decisions by the themselves (i.e., autonomy) rather than depending or not on other institutions (i.e., independence), since they clearly do. Not only all these agencies rely on legislatures for their material resources, but also courts depend on the executive branch to uphold their decisions, something that is well-known at least since the Federalist n. 78 by Alexander Hamilton.

This explanation is not derived only from the theoretical model developed for this research. It draws on the rich analysis of its elements in each of the cases examined in this study. In this sense, the judicial system of the state of Rio Grande do Sul best represents the type in which high levels of autonomy and coordination coexist, leading to relatively higher levels of mayoral convictions. This has been the case at least since 1992, when the state courts pioneered the creation of a judicial panel specialized in the adjudication of crimes of mayors which, in turn, sparked a wave of mobilization in the public prosecution office and the auditing agency of that state. Coupled with the high levels of electoral competition and distribution of power that have traditionally characterized policy-making in that state, the system of justice of Rio Grande do Sul enjoyed a significant degree of autonomy to mobilize and to coordinate its activities in order to oversee and sanction irregularities in the state's city halls.

The other end of the spectrum is illustrated by the judicial system of the state of Bahia, especially until the late 1990s, where not a single mayoral conviction had taken place, and only a few cases had been brought to trial. Accordingly, up until very recently, Bahia was the stronghold of the *carlista* political machine – controlled by the Magalhães family and especially by its patriarch, Antônio Carlos Magalhães – which exerted a quasi-hegemonic role in policy-making in the state for years, before and after the return to democracy in Brazil in the 1980s. Not surprisingly, for quite some time, the institutions of the judicial system of Bahia did not enjoy the autonomy they needed to successfully prosecute mayors. Still, in 1996 the courts managed to create a judicial panel specialized in crimes of mayors, very much alike the one in Rio Grande do Sul. Slowly, the mobilization of legal actors that resulted from such initiative in the subsequent years started to bridge the gaps among the institutions. Yet, such efforts ultimately met the limits imposed by a political system of limited pluralism, and only a few rigorous anti-corruption judicial measures

followed. This scenario that combined increased levels of mobilization and low levels of political pluralism, in turn, differed from the previous years in Bahia, when both elements remained low. As such, it is best portrayed as an in-between scenario in which inter-institutional coordination is constrained by limited institutional autonomy of the system of justice.

Finally, the other type of mixed performance is illustrated by the judicial system of the state of Minas Gerais for nearly the full period since the Brazilian redemocratization in the late 1980s. In this perspective, despite the relatively well insulated judicial system that emerges from the state's competitive politics, its many components do not work as jointly as they could. In effect, the judiciary, prosecutors' office, and auditing agency of the state seem to adopt their respective courses of action largely in uncoordinated fashion, yielding suboptimal case-handling through the court system and only mid-level conviction rates. This scenario emerged mostly because legal actors of each bureaucratic agency failed to mobilize sufficiently to improve the performances of their own institutions and narrow the gaps among them. Examples of such failed mobilization include the judges' refusal to adopt a specialized judicial panel on mayoral crimes despite the relative openness of elected officials to accept it and the willingness of prosecutors to support it, the overall lack of information-sharing (especially until recently) between the auditing agency of the state and the prosecutors' office, and a variety of judicial decisions that have been limiting the investigative powers of public prosecutors in Minas Gerais.

The in-depth analysis of these three cases serves two main functions. On the one hand, it serves to show how the abstract concepts of institutional autonomy and inter-institutional coordination work in practice. On the other hand, this analysis highlights the forces behind both change and stability in the performances of the judicial system of these states vis-à-vis city hall corruption. By delving into the intricacies of how state-level judges, prosecutors, oversight officials, and

political elites interact with each other on cases of mayoral corruption in the recent years of democracy in Brazil, moreover, I not only demonstrate the effects of my explanatory variables on the outcome of interest, but also address alternative explanations on the topic. In so doing, I advance an answer to the *theoretical* question as to why certain judicial systems are more effective than others in bringing corrupt officials to justice. In other words, as much as my approach is case-based, it is also theoretical and provides generalizable findings applicable to other polities facing similar challenges around the globe.

1.4. Overview of the Dissertation

The next chapter further details my framework of analysis and theoretical model summarized above. I introduce the rationale behind the research question and the main definitions involved in it, making clear what I mean by *judicial responses to political corruption* and the equivalent concept of *legal accountability*. In order to better explain my model, I outline the sequence of steps, from detection to adjudication, needed to develop responses to corruption. Paying attention to these stages is especially important because they highlight that not only the performance of the courts, but also of prosecutors' offices, oversight agencies, and investigative officials are critical to address this vastly interdependent arena. The chapter then moves on to detail the effect of each of my pairs of explanatory variables – political pluralism and institutional autonomy, legal mobilization and inter-institutional coordination – on levels of judicial activity in the anti-corruption field, outlining how they interact with one another. I then formulate a typology of their possible combinations, making my theoretical approach clear to address variation in judicial

responses to political corruption. In the final section of the chapter, I address additional and alternative explanations that could explain variation in legal accountability outcomes.

The third chapter details my approach to the topic, case selection, units of analysis, methods, operationalization of concepts and provides some of the needed background to understand how the judicial system works in Brazil. I detail some intricacies of court activity on cases against public officials in the country, especially mayors, and offer a brief review of the legislation and procedures applicable to these cases. The discussion also includes an overview of the institutions and processes responsible for holding mayors accountable, including how state courts as well as prosecutors' offices and auditing agencies organize themselves to curb corruption in Brazil's city halls. Only by assessing their *modus operandi* will I be able to make clear how institutional autonomy and inter-institutional coordination yield different results in Rio Grande do Sul, Minas Gerais, and Bahia, thereby substantiating the theoretical approach adopted in this analysis.

Having introduced the theoretical and descriptive bases of this study, chapters four to six present an in-depth analysis of the cases examined in this dissertation. The experience of Rio Grande do Sul – with its specialized judicial panel on mayoral crimes and well mobilized legal actors – is detailed in chapter four. Since this chapter introduces additional background on court procedures that is applicable to all other cases, it is longer than the other two. Chapter five, in turn, details the story of predominantly isolated judges, prosecutors and auditors in the state of Minas Gerais, including a few attempts at making them work closer together. The tumultuous case of Bahia – which involves a series of impasses and transformations, but overall poor results – is examined in chapter six.

Chapter seven sums up the findings and briefly applies the theoretical insights of this study to a fourth Brazilian state, Maranhão, which until very recently exhibited a record similar to the early years of Bahia. Also located in Brazil's Northeastern region, until very recently this state was also marked by an uncompetitive political environment, which limited the autonomy of the institutions of the system of justice, despite the mobilization of a few legal actors. After 2008, however, numerous convictions of mayors and former mayors started to take place there. Such a change, I suggest, was caused by an increase in the levels of political pluralism in that state (considering the rise of challengers to the rule of the Sarney family) and especially by the mobilization of legal actors (involving judges as well as the public prosecution office and the chapter of the Brazilian bar association in the state), which pressed the courts to adopt new rules on the adjudication of mayoral crimes in this new political environment. These elements, in turn, resulted in increased rates of conviction of mayors in Maranhão. This concluding chapter also offers a short account on the *Mensalão* case in Brazil's Supremo Tribunal Federal and points out to the possible application of my theoretical model to other countries. Finally, I specify what was left untouched in this dissertation pointing out to issues that were ignored or only bypassed here, from the aftermath of judicial decisions to the articulation of these findings into the ampler research agenda on political corruption. These topics, I contend, integrate an agenda for future academic works on the topic.

CHAPTER 2. UNDERSTANDING LEGAL ACCOUNTABILITY

2.1. Introduction: Hard Cases *Redux*

Are cases of corruption difficult to decide? Can they be called *hard cases*? From the perspective of legal scholars, the answer to both questions is clear: no. According to this view, hard cases are those in which decision-making is fraught with uncertainty arising from a conflict between high principles of law, so that “no settled rule dictates a decision either way” (Dworkin 1975, 1060). Interpreting unclear laws to justify judicial decisions would, therefore, be an arduous process. By these terms, corruption cases are clearly *not* hard ones. For the most part, the rules applicable to them are relatively undisputed – i.e., either government officials received bribes or did not; either contractors colluded with bureaucrats to conduct fraud in procurement procedures or did not; and if they did, the applicable sanctions are relatively straightforward. That is, the illegality and stipulated punishment for such acts are usually abundantly clear in the existing laws.

Still, the over seventy interviews conducted for this study suggest a different conclusion. In fact, if there is a common narrative I was able to ascertain from judges, prosecutors, attorneys and clerks, it is that cases concerning mayoral irregularities in Brazil are far from easy ones. Why have they argued so? If no uncertainty concerning legal interpretation exists, what could explain their unanimous opinion deeming these cases difficult? Corruption, it seems, attaches a different set of meanings to the traditional notion of *hard cases* used by legal scholars, accounting for much of their *sui generis* nature as compared to the divergences on constitutional meaning that legal theorists usually have in mind when they talk about hard cases. The difficulty associated with cases of corruption, in turn, appears to emanate from three main sources.

First, cases of corruption are *technically complex*. To be properly prosecuted and adjudicated, they often demand a non-trivial understanding of specialized issues, including public accounting, staffing rules for various types of public services and agencies, public procurement contracts on goods and services ranging from medicine supplies to trash disposal to fuel to software, among many others. As such, they involve a type of expertise not regularly possessed by lawyers, given their generalist and legalistic training.²⁴ On top of that, these cases demand ascertaining the intent of the actors involved. Yet, obtaining unequivocal evidence to this end is not easy in large bureaucratic entities such as the government.²⁵ “I did not know my aides were doing that,” may say one mayor. “How can I control everything everyone does in the city hall all the time?” may easily ask another. As a result, the facts of the case more than the rules applicable to it yield a substantive degree of uncertainty, rendering any decision far from effortless.

Second, given their complexity, these cases are extremely *time-consuming*. They easily generate immense files with thousands of pages of expert opinions, audit reports, and so on. One judge I interviewed in Bahia told me, for instance, he once received files of a single case that occupied almost his entire office. “When all files had finally arrived, I had to leave my office to make room for the case,” he joked (Interview # 63). As a result, each of these cases takes a significant amount of time to be properly examined and adjudicated. They demand a level of dedication that simply does not parallel the vast majority of cases that judges, public prosecutors, and attorneys routinely work on – e.g., private disputes, regular crime. And all this effort is geared towards solving only one case, just like dozens or hundreds of others that are *also* part of their jobs.

²⁴ This fact is true for a variety of other topics of courts’ work, especially social policy (Horowitz 1977). This type of complexity differs from most concerns of Posner (2013), who focuses on those internal to the court’s work.

²⁵ As Tilly argues, “even legal proceedings for adjudication of responsibility normally center not on exactly what caused a given outcome, but on what the average competent person (whether doctor, lawyer, engineer, or ordinary citizen) is supposed to know and do” (2008b, 13). This is also true for public officials. Whether or not they were allowed to adopt a given course of action is often known. What matters is determining the extent to which the action was caused with intent and knowledge of its unlawfulness, or by poor counseling and lack of expertise on the topic.

Finally, the *stakes are high*. Cases involving authorities attract significant public attention and mobilize a variety of actors who are not part of courts' daily activities. In effect, each step taken in such cases is publicly scrutinized by the media, the legal community, and other officials, with all the consequences this implies for the reputation and careers of judges and prosecutors, not to say the legitimacy of the judicial system as a whole. The amount of pressure such cases generate can easily be overwhelming. In some instances, they can put at risk the very independence of the judicial system or of its individual agents. Politicians may also go after prosecutors or judges who are considered "overly aggressive" and even attempt to reshape entire legal institutions, possibly frustrating all efforts to bring corrupt officials to justice in the first place. "Power," after all, "usually sinks its weight onto only one tray on the scales of justice," as Uruguayan writer Eduardo Galeano ironically remarked (2000, 201).

All in all, only a few judges and prosecutors feel truly comfortable working in these cases. These are "big, voluminous, complicated cases, and their trial takes a lot of time," sums up a judge from Rio Grande do Sul (Interview # 70). Additionally, they yield a degree of exposure that is inconsistent with the bulk of their activities, which takes place in a much more reserved, safer environment. In short, cases of corruption demand a huge effort to work on a variety of unknown topics and a strong willingness to take the heat. Frankly, *why bother?* Why be involved *at all* in these quarrels? If prosecutors and judges simply shun away from these cases, they will keep on performing their duties and more easily retain their positions, avoiding all work and trouble cases against public officials generate. For the most part, nothing *requires* them to leave their comfort zones to tackle these complex, time-consuming, delicate matters, least of all to prioritize them. And even if they do, nothing ensures they will succeed. Yet, despite the odds, some legal actors do take up the challenge and are occasionally successful in doing so. What explains this? How

can judicial systems be put to work in order to punish corrupt officials in spite of the hardness of these cases? Why have some judicial systems been so more successful than others in this regard? How have legal actors in Rio Grande do Sul managed to bring corrupt mayors to justice at much higher rates than their counterparts in Minas Gerais and, especially, Bahia? What explains such differences?

This chapter outlines the preliminary conceptual and theoretical steps before examining the cases selected for this research. In the next section, I specify the research question and the main definitions involved in it. Second, I outline a framework of analysis, delineating the sequential steps necessary to achieve judicial responses to corruption. Third, I identify the elements of my explanation to address variation in this domain. Fourth, I outline a typology of how judicial systems perform, given their respective levels of institutional autonomy and inter-institutional coordination. Fifth and finally, I address alternative and additional explanations to my proposed model. This chapter introduces the lexicon I have developed to examine the topic of my choice, laying down the theoretical foundations used through the remainder of this text.

2.2. The Theoretical Question: Judicial Responses to Political Corruption in a Democracy

Among minimally democratic regimes, why do some courts punish political corruption more often than others? Why are some judicial systems more capable or willing to sanction corrupt activities in government whereas others remain fundamentally indifferent to such practices? What explains variation in judicial responses to corruption by public officials in a democracy? These are, in short, the theoretical inquiries that guide this research. In order to make them clear, though, one qualification and two definitions have to be provided upfront.

The qualification involves the proper scope of this research, which is intended to be applicable only to minimally democratic regimes. By such regimes, I mean those that fulfill Dahl's twofold criteria of contestation and inclusiveness – which translate themselves into relatively free and fair elections, freedom of expression and association, alternative sources of information, etc.²⁶ – and which I adopt due to their widespread application in political science research.²⁷ My concern in making this qualification from the start is to recognize that the courts inevitably operate much differently under non-democratic regimes than they do under democratic ones, as the literature on the topic has demonstrated (e.g., Barros 2002, Magaloni 2003, Moustafa 2003, Pereira 2005, Ginsburg and Moustafa 2008, Stern 2010, 2011, Li 2012, He 2012).²⁸ The findings of this study are therefore intended to be applicable especially to countries of relatively recent transition to democracy in Latin America, like Brazil, as well as others in Southern and Eastern Europe, alongside perhaps more stable ones in other parts of the world.

Moving to the two definitions, it is essential to specify what I mean by “judicial response” and “political corruption” upfront as well. It is the combination of these two terms that forms the dependent variable of this study. Starting by the latter, inasmuch as this work is concerned with *mayoral* corruption, this adjective only specifies the site where the phenomenon takes place – i.e., within the executive branch of the local or municipal administration, as distinct from the

²⁶ For a detailed account, see Dahl (1971, 1998), and comments by Schmitter and Karl (1991) and Diamond (1999).

²⁷ According to Coppedge, Alvarez, and Maldonado, “three-quarters of what the most commonly used indicators of democracy have been measuring is variation on Robert Dahl's two dimensions of polyarchy – contestation and inclusiveness” (2008, 632).

²⁸ Courts are often deliberately used by non-democratic regimes to convict individuals in the opposition, an effort that is hard to distinguish from attempts at convicting those accused of corruption. This practice, hence, would render the dynamic examined in this dissertation much more complex. Limiting my analysis to democratic regimes is an attempt to control for this factor. By the same token, because clean government is fundamentally a public good, as I will detail below, political corruption hardly becomes a persistent issue in non-democratic regimes, where the separation between public and private spheres is significantly less clear. Given that corruption can be seen as the violation of a relationship of trust, it only makes sense speaking about it in politics when the government itself results from a process in which it is entrusted by the citizenry with power, a dynamics that is uncertain – to say the least – in a non-democratic regime. This implies, in other words, that anti-corruption efforts suffer from commitment problems in non-democratic regimes.

federal and state ones. This form of corruption, though, is a subset of the ampler category usually called *political corruption* – which is also referred to as public-sector, governmental or, simply, public corruption. This is, in turn, the theoretical focus of this dissertation. In this sense, I adopt the traditional definition of political corruption introduced by Nye, which consists of the

“... behavior which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence. This includes such behavior as bribery (use of a reward to pervert the judgment of a person in a position of trust); nepotism (bestowal of patronage by reason of ascriptive relationship rather than merit); and misappropriation (illegal appropriation of public resources for private-regarding uses)” (Nye 1967, 419).

I adopt this conception for the following three reasons. First, this is a well-established and well-accepted definition. While a deeper theoretical discussion can certainly be performed about the nature of the concept,²⁹ Nye’s definition is consistent with those adopted by most scholars (e.g., Huntington 1968, Klitgaard 1988, Rose-Ackerman 1999, della Porta and Vannucci 1999, Karklins 2002) and organizations that have worked on the topic (e.g., World Bank, Transparency International, World Justice Project). In sum, they all refer to political corruption as the misuse or abuse of entrusted power for private gain, emphasizing a sharp distinction between public and private spheres with the purpose of protecting the former. As O’Donnell (1998, 112-113) notes, this emphasis on a strong public-private dichotomy is derived from the republican component of modern poliarchies, not the liberal one. While the latter advances this distinction in order to protect the private sphere, republicanism proposes the same to preserve the public one. In effect, this definition avoids the unnecessary multiplication of concepts and follows a long tradition of studies on the topic, thereby facilitating the accumulation of knowledge.

²⁹ Examples of this theoretical discussion can be found in Johnston (1996), Philip (1997), Von Alemann (2004), and Warren (2004).

Second, this is a simple and straightforward definition of corruption. As Bailey posits, the “main benefit of this approach is its relatively narrow scope: we focus on government, public policy making, and public-private exchanges” (2009, 62). It is of easy operationalization in empirical research, facilitating the identification of the phenomenon and deriving clear implications from it. For instance, it distinguishes *political* corruption from other forms it may take – e.g., “private-to-private corruption,” where the member of a private organization violates his duties to obtain benefits for himself or for another organization (Aragadoña 2003). As long as it does not involve public officials or public policy making, corruption within private organizations remains outside the scope of this research. Similarly, this definition implies that clean government is essentially a public good. Obtaining it, thus, implies all the problems famously listed by Olson (1965), free-riding in particular. That is, nearly everyone wants public-regarding, law-abiding officials. Yet, the responsibility for turning this desire into reality suffers from the problems of any good of this sort: everyone is willing to have it, but only a few may be willing to work towards an objective that everybody will enjoy if achieved.³⁰ Finally, Nye’s definition avoids the mistake of treating corruption as synonymous with scandal (see Kjellberg 1994, Heidenheimer 1996, Giglioli 1996, Adut 2008).³¹ In fact, as Wilson once noticed, “corruption is not always scandalous” (1974, 29).

³⁰ That is why some scholars have been recently characterizing corruption less as a principal-agent problem and more as a collective action one (see Rothstein 2011, Persson, Rothstein and Teorell 2013). As Klitgaard, MacLean-Abaroa, and Parris argue, “because the benefits of preventing corruption are ... widespread, the logic of collective action predicts that an effective interest group will be hard to mobilize and sustain” (2000, 12). In effect, there are nearly no cases of anti-corruption lobbying, while there is plenty of lobby potentially conducive to corruption. Anti-corruption lobby, though, does exist. *Common Cause* in the United States (McFarland 1984) and *Transparency International* in Germany are two examples. It should not surprise, though, that nearly all successful anti-corruption efforts resulted from initiatives backed by institutions, which are traditional solutions to collective action problems.

³¹ This distinction also allows the important but ignored topic of examining why some cases of corruption become scandalous and others not, even if both are detected. Just as degrading social conditions need not turn into social problems recognized as such, so cases of corruption do not turn automatically into scandals. There is a process of construction of scandals as part of what Edelman (1988) termed the “political spectacle” that has received little scholarly attention, with the possible exception of Adut (2008). My focus, thus, does *not* distinguish corrupt events reaching ample media coverage from those that do not, avoiding the biases of the media’s own case selection.

Third and related to the former, adopting Nye's definition "typically involves applying a legal standard" (Svensson 2005, 20). That is why he speaks of corruption as a form of behavior that "deviates from the *formal* duties of a public role" (Nye 1967, 419, emphasis added). The focus on political corruption as a form of behavior that is not simply the misuse of public power for private gain – but one that assumes an illicit, illegal or unlawful form – is not specific to these authors. On the contrary, Klitgaard (1988, ix), della Porta and Vannucci (1999, 16; 2012, 4), Ríos-Figueroa (2006, 124-125), Power and Taylor (2011, 13), to mention a few, all rely on some form of legal-illegal dichotomy to make clear what they mean by *misuse* or *abuse* of public office for private gain.³² In accordance to the definition adopted here, thus, political corruption is a form of illicit or unlawful behavior. The underlying assumption is that some form of anti-corruption legislation exists, allowing violations to be identified. The existence of these laws, in turn, is an empirical question, not a conceptual one. The extent to which such laws exist depends on the characteristics of the cases under analysis. In Brazil, for the most part such legislation does exist, as I will detail in the upcoming sections. Consequently, for the specific purposes of this research, I equate corruption with the violation of the existing laws that forbid the use of public power for private gain.

It is the legal framework discussed above that provides the link between the concept of *political corruption* and that of *judicial response*. That legal component in defining corruption is precisely what allows the courts to act and potentially punish the misconduct of public officials. If a given behavior is not previously considered illegal by some formal standard – legislation, constitution, precedent, etc. – courts will have difficulty to act in this domain. True, courts can expand or limit

³² This emphasis, however, is not without its shortcomings. As Philip correctly notices, "that an act is legal does not always mean that it is not corrupt" (1997, 441). Symmetrically, not all unlawful acts performed by public officials are self-serving.

the application of such laws, but this preexisting legal provision is crucial to enable judicial anti-corruption activity. The application of anti-corruption laws by the judicial system, in turn, is the quintessential process examined in this study, summarized in the aforementioned concept of *legal accountability*, which I use interchangeably for judicial response to political corruption.

Paraphrasing Brinks (2008, 18), legal accountability can be understood as the responsiveness of the legal or judicial system to the claim of a violation of an anti-corruption law. By these terms, the “effectiveness of legal accountability can be measured by how many cases are brought before the courts, and how they are handled,” explains Karklins (2005, 133). For the purposes of this research, thus, different levels of judicial responses to corruption can be identified primarily in the *frequency of judicial convictions on cases involving self-serving violations of formal duties by public officers*. Albeit affected by a variety of factors, as I detail in Chapter 2, my goal is to propose an explanation on the overall patterns of variation observed in this domain.

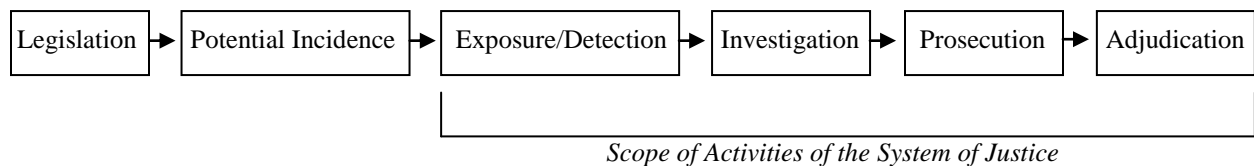
2.3. Convicting Corrupt Officials in a Court of Law: Stages of Legal Accountability

Before explaining *why* legal accountability varies, I take a step back to apprehend *how* it works. Only by first understanding the necessary steps towards the judicial conviction of corrupt acts will I be able to explain why it occurs at much higher levels in some places than in others. To this end, I outline the framework of analysis depicted in the figure below, which sums up the stages of legal accountability (see Figure 2.1.).

I draw on the existing literature on the topic (e.g., Restrepo 2003, Restrepo, Sánchez and Cuéllar 2006, Sapio 2005, Ríos-Figueroa 2006, 2012, Taylor and Buranelli 2007, Taylor 2009, Sims 2011) and expand on it based on studies of corruption (e.g., Klitgaard 1988, Karklins 2005),

judicial politics (e.g., Felstiner, Abel and Sarat 1981, Canon and Johnson 1999), public policy-making (e.g., Kingdon 2003, Jones and Baumgartner 2005, Smith and Larimer 2009) and criminal justice (e.g., Packer 1968, Cole 1970, Feeley 1979). In fact, this model may look common-place to those familiar with criminal justice studies, but it is curiously unknown to many judicial politics scholars, who tend to analyze courts in relative isolation from other governmental agencies. I should therefore note that it is not a hypothesis, but simply a heuristic device that captures the stages leading to the final result of convicting corrupt officials in a court of law. In other words, this is a guide highlighting the elements one should be attentive to when trying to identify reasons for variation in this realm. Finally, it is also worth noting that the boundaries separating these stages are not as strict as they may initially appear – e.g., acts of corruption may be detected during an investigation, not necessarily only before it.

Figure 2.1. Stages of Legal Accountability



Legislation. If political corruption includes *unlawful* acts, legal accountability has to start with formal provisions explicitly disallowing the use of public power for private gain and laying down sanctions. Such illegal acts need not to be unambiguously labeled “corruption” for this stage to be fulfilled, though. As long as practices typically deemed corrupt (bribery, embezzlement of public resources, fraud in procurement procedures, nepotism, etc.) are declared unlawful and contain enforcement provisions, it is enough. Similarly, laws need not be new – they may have been approved years or even decades earlier. As long as they are still valid, they suffice. In sum, laws have to exist that allow legal accountability to occur. This is even more so in civil law

systems like Latin America or continental Europe, in which the courts are expected to be strict enforcers of previously existing legal rules of the codes and statutes enacted by the legislature.³³ That is, judges need clear legislative substrata to justify their decisions. Without them, judicial responses to political corruption become virtually impossible. And this stage is clearly beyond the scope of activity of the judicial system, demanding legislative action to be fulfilled.³⁴

Potential Incidence. This stage does *not* refer to the occurrence of corruption. Rather, it refers to the availability of governmental acts, positions and resources that can be, if unlawfully pursued or employed, turned into corrupt ones. I call it *potential* incidence rather than simply *incidence*, moreover, for two other reasons. The first is because the actual incidence of a corrupt act can only be properly ascertained in the course of an investigation and, more formally, in a court decision, which defines the types of unlawful acts that occurred, those responsible for them, and their respective penalties. Second, an actual act of corruption need not occur to put the judicial machinery to work. In effect, several scandals have resulted from false allegations, portraying as unlawful acts that were not illegal to begin with.³⁵ Still, even false allegations can activate the

³³ As Merryman and Pérez-Perdomo notice, the key principles of the civil law tradition on criminal law are *nullum crimen sine lege* and *nullum poena sine lege*, which follow the classical work by Beccaria (1995 [1764]) and mean that no crime and sanction exist absent a previously existing law (i.e., statute) establishing it (2007, 125). For an overview of the judiciary under civil law systems, see Shapiro (1981, 126-156).

³⁴ This is a relevant qualification to the judicialization of politics literature, which focuses mostly on judicial review cases. Judicial discretion is much narrower in cases of corruption than it arguably is in the latter. Constitutional interpretation, especially in high courts, relies on what often are vague and unspecific legal provisions and therefore give much more room to the preferences of judges. Inversely, corruption cases are premised on the relatively clear guidelines of the criminal legislation, minimizing (albeit surely not eliminating) judicial discretion. That is, judges may limit the application or fail to enforce specific provisions of the existing anti-corruption criminal laws, but seldom create new crimes *ex novo* on their own.

³⁵ An example from 1993 involves a former president of the Brazilian Chamber of Deputies, federal representative Ibsen Pinheiro, who was accused by a popular weekly magazine of having made financial transactions totaling the equivalent to one million dollars, an amount that would be inconsistent with his earnings. Caught in the midst of another scandal (the so-called *Anões do Orçamento* scandal), he lost his congressional seat and was able to regain it only in 2006, after it was proved in the courts that the true amount was equivalent to one thousand, and not one million dollars. For a detailed account of this episode, see Teixeira (2007). By the same token, individuals may be wrongfully *convicted*, especially if the courts are corrupt or subject to pressure. A drastic example involves courts of exception in authoritarian regimes, which may convict individuals at much higher rates than their democratic counterparts. Still, as specified above, this research is limited to democratic regimes.

subsequent stages of the legal accountability process, at least to certify that no wrongdoing occurred. Without the potential incidence of corrupt acts, thus, hardly any response from the courts will follow. Controlling for this stage – which also remains beyond the scope of the judicial system – is hence vital to assess variation in legal accountability outcomes.

Exposure/Detection. This is the process by which potentially corrupt acts become public, taking two forms: exposure and detection. In the first, an individual or organization aware of potential irregularities brings them to public light. This is a path often taken by defecting participants in corrupt transactions or by someone that becomes aware of them, such as civil servants, watchdog organizations or the media.³⁶ In the second, potential acts of misconduct can be identified by an oversight governmental agency, including auditing body, public prosecution office, or the police. Crucial to both exposure and detection is the fact that acts of corruption do not take place in plain daylight. Instead, they are by their own nature hidden or secretive (Mény 1996, della porta and Vannucci 2012). Hence, bringing to public light unlawful acts that would otherwise remain out of its sight is a critical step to elicit legal accountability. This is, in effect, where the system of justice properly starts to work. It is no accident that most anti-corruption reforms first tackle this process of information-gathering. This may seem an obvious point, but raises several issues for the study of courts in this domain. Accordingly, the judiciary cannot convict people absent the knowledge of where, when, and how corrupt acts have taken place.³⁷ And courts often rely on other institutions to produce such information. This implies that a large part of the efforts in this realm – as in cases of white-collar and organized crimes more amply – consists simply in finding out which facts have or have not occurred, as well as who participated in them. As such, there is

³⁶ Importantly, much of the social accountability literature examines this dynamics (Peruzzotti and Smulovitz 2006).

³⁷ As Feeley argues in the realm of regular criminal activity, “the ‘facts’ of a case are *not* self-evident; they must be mobilized. A case is a continually evolving process up until the moment of final disposition. [...] ‘Facts’ must not only occur, they must be ‘observed,’ marshaled, and brought to bear as evidence in a case” (1979, 168).

an emphasis on the detection of corrupt acts that is costly, time-consuming, and which cannot be taken for granted. In effect, “detection, let alone prosecution or conviction, of corruption can be extraordinarily difficult given the complex and obscure nature of these illicit exchanges” (Sousa 2002, 281). As such, the greater the capacity of auditing agencies, public prosecution offices, and the police to collect these precious pieces of information on acts of official misconduct, the greater the potential for judicial convictions.³⁸

Investigation. After they are exposed or detected, alleged wrongdoings need to be examined to ascertain who was involved, as well as when, where, and how they occurred. In a certain sense, this is an extension of the previous stage, aiming at collecting specific evidence to determine the scope and veracity of the initial allegations. As a result, this task is often jointly performed by prosecutors’ offices and oversight institutions, such as auditing agencies and the police. In some countries, the courts are also involved in this stage. Accordingly, the investigation has the dual goal of both dismissing wrongful accusations and verifying the ramifications of allegedly corrupt acts, which may lead to the discovery of other potential acts of misconduct. The key contribution of this stage, in short, is to separate the wheat from the chaff. Three main options emerge as a result of this stage. First, the allegations can be dismissed because they fail to find violation to specific laws or intent to perform irregularities. Second, an investigation can yield inconclusive results, failing to obtain minimal evidence to be held successfully in a court of law. Third and final, when enough evidence is gathered linking specific individuals to particular acts deemed

³⁸ This reliance of the judiciary on other institutions to uncover corrupt acts points out to another key difference between the literature on the judicial politics of corruption and that on constitutional review. While the latter is mostly concerned with policies (say, on desegregation or abortion), the former is mostly based on specific acts that are not immediately self-evident. Public policies and governmental decisions potentially violating constitutional rights, as it turn out, are by definition public, taking place in plain daylight. The cost of detecting them, thus, is much lower than detecting corrupt activity. That is, constitutional controversies take place in an environment rich in information, often yielding a variety of plausible legal interpretations. On corruption, undersupply rather than oversupply of information is the issue. A large part of the dispute does not concern the interpretation of the laws applicable to the case, but the accurate description of facts without which no judicial conviction takes place.

unlawful, the case can follow its path towards effective legal accountability. It is only when this last result of this stage emerges that judicial responses to political corruption become available. Much depends, then, on the agents and institutions responsible for this extension of the process of information-gathering to build a case that can be accepted in court.

Prosecution. After it is investigated, a prosecutor has to bring the case to the court aiming to convict an individual or, more likely, a group of individuals responsible for the irregularities. In most countries, courts are fundamentally *passive* institutions. They simply do not take action themselves. Instead, they wait for cases to arrive. This is no different in corruption cases. Thus, a stage that necessarily precedes adjudication is the decision to prosecute. Such a decision reflects a judgment made by the prosecutor in charge of a case that the evidence uncovered during the pre-judicial investigation is sufficient to bring an indictment successfully to court. This decision, as a result, directly affects the rates of judicial response to political corruption. If courts are to be active anti-corruption agencies, they require an active prosecutors' office. As Rose-Ackerman argues, the "effectiveness of the judiciary will be low if no one brings cases. Thus there must not only be tough statutes but also prosecutors willing to spend time on such cases" (1996, 372-373). There is, not incidentally, a large body of literature on the anti-corruption work of public prosecutors (e.g., Alberti 1996, Di Federico 1998, Arantes 2000, 2002, Sadek and Cavalcanti 2003, Cowdery 2007, Dandurand 2007, 2007a, van Aaken, Feld and Voigt 2008), who are in most legal systems the only actors legally allowed to press criminal charges in this domain. Without their efforts, it becomes virtually impossible to yield high levels of legal accountability. From this follows that the varying performances of prosecutors' offices – including their degrees of institutional autonomy from political influence and their internal organizational arrangements,

with or without specialization on this particular topic – are fundamental variables accounting for the variation in judicial responses to political corruption.³⁹

Adjudication. This is the proper stage in which the courts themselves act. In a strict sense, thus, *judicial* responses to political corruption take place here. It refers to the decisions reached by a judge, collegiate of judges, or jury after hearing arguments from the prosecution and the defense on a trial where evidence is presented. The final decision is that on the merits of a case, leading to either conviction or acquittal. Still, numerous other decisions are made by a court once a case arrives. Such preliminary decisions involve the hearing of the case itself (or its dismissal from the start), the admissibility of certain types of evidence, the production of evidence in court, pretrial detention and bail, and the like. The end result, nonetheless, is a decision on the merits, determining the guilt or not of a specific individual or group of individuals for the corrupt acts alleged by the prosecution. Thus, inasmuch as exposure, detection, investigation and prosecution all entail costs for the accused – and are sometimes even interpreted as forms of punishment (see Feeley 1979) – it is only at the final stage of adjudication that convictions can take place. Judging politicians is the key dilemma here, posing a series of pitfalls that do not exist in regular criminal cases, and approximating the impasses found in a growing literature that examines attempts at holding public officials responsible for their acts in the courts, as in the prosecution of police violence (e.g., Brinks 2008), of human rights violations by former authoritarian regimes (e.g., Collins 2010, Hunneus 2010, Ocantos 2012), of organized crime (e.g., Bailey and Taylor

³⁹ This suggests yet another difference between the judicial politics of corruption and the more traditional literature on judicial review cases. Accordingly, a large parcel of the latter emphasizes the existence of “support structures” for legal mobilization, which encompass the material resources and personnel needed to pursue such strategy in a successful manner (see Zemans 1983, McCann 1994, Epp 1998, Southworth 2008). In this literature, though, most of these actors lie outside the state, as the famous cases of the Legal Defense and Educational Fund of the National Association for the Advancement of Colored People (NAACP) and the American Civil Liberties Union (ACLU) in the United States illustrate. This is largely *not* what happens in cases of corruption, in which the main litigants are almost by definition public prosecutors. Still, there are some arrangements that allow individuals to bring suits to the courts on cases against corruption, even if these are limited in impact (e.g., Mate 2013).

2009, McCarthy 2010) and of presidential irregularities (e.g., Conaghan 2012), among various others.⁴⁰

The description above outlines the sequential steps necessary to successfully achieve judicial convictions in cases of political corruption. The proper domain of the judicial system's response to corruption, however, is limited to its last four stages. Strictly speaking, legal accountability starts with an oversight agency detecting otherwise hidden irregular activities or being informed by other actors of such acts. Still, of all potentially corrupt acts taking place, only a few will ever become public, being either exposed or detected. Among those, only some will be thoroughly investigated and the investigations will find evidence linking specific agents to indeed corrupt practices – others, however, are going to fail to find material evidence or determine authorship of an actual irregularity. Of those, only a parcel will be taken to a court of law by the prosecution. And of those only an even smaller subset will result in a judicial conviction. Information is lost from one stage to the other. The sequence from detection to conviction, hence, almost inevitably exhibits the shape of a funnel or cone, narrowing from one stage to the next.⁴¹ Identifying the elements explaining why some judicial systems manage to make these identical stages operate more efficiently and with less loss of information than others is the task of the next section.

⁴⁰ As in the previous stages, this one also stresses essential differences between the judicial politics of corruption and the literature on judicial review cases, with the latter targeting governmental decisions and the former, individuals. The logic here is that of *blaming*, a judgment of outcome and agency implying a sharp “us-them” boundary (Tilly 2008a). Thus, while deciding any of these cases necessarily implies costs to the judges, these emanate from different sources. The costs of judicial rulings on policies often vary in accordance to the characteristics of the policies, including their impact and scope (cf. Taylor 2008, 48-71). The costs of judicial rulings on corruption, in turn, vary with the position and political support enjoyed by the officials involved. Convicting high-ranking officials supported by large coalitions entails a much higher cost than convicting unpopular or even entirely unknown low-ranking officers. Not surprisingly, this topic resembles the literature on presidential impeachments, despite the different instances of activity, given that the latter are mostly legislative procedures whereas my focus is on the courts (e.g., Pérez-Liñán 2007, Llanos and Marsteintredt 2010).

⁴¹ As an auditor I interviewed explained: “The logic is the following: bad audit reports entail bad decisions, whereas excellent reports *may or may not* lead to excellent decisions” (Interview #66, emphasis added).

2.4. Terms of the Explanation: Pluralism and Autonomy, Mobilization and Coordination

Because studies on what I have termed the judicial politics of corruption are few in number and mostly unsystematic, they provide little direct guidance on proposing an explanation to variation in judicial responses to corruption. Building an analytical model, thus, demands deriving insights indirectly from several bodies of literature to address the many aspects of this topic. To this end, I draw mostly on four of them, including (a) the existing studies of legal accountability; (b) the literature on comparative judicial politics; (c) analyses of successful anti-corruption reform; and (d) studies on legal mobilization. From the first I take the emphasis on the autonomy of judicial, prosecutorial and monitoring bodies or processes and their effects on judicial responses in cases of corruption. From the second, I derive the conditions for to the autonomy of these agencies, characterized mostly by contexts of relatively high degrees of *political pluralism*. From the third, I take the need to move beyond the operation of each individual agency and account for the interdependence of their activities. This implies that the *coordination* of their work yields more effective judicial responses to corruption, reflecting itself in the internal organization of each institution. From the latter, finally, I take the suggestion that *legal mobilization* helps connect potentially uncooperative institutions, helping generate such coordinative arrangements.

My explanation for why some court systems are more active than others in punishing corrupt officials in minimally democratic regimes comprises four components. Political pluralism and legal mobilization, I argue, interact to generate different combinations of institutional autonomy and inter-institutional coordination, which are the proximate causes for different legal accountability outcomes. Blending high levels of both autonomy and coordination should yield intense judicial responses to political corruption. These, in turn, are respectively supported by similarly elevated levels of political pluralism and legal mobilization. That is, when the political

context is plural and legal actors jointly mobilize, the institutions of the system of justice should enjoy a relative absence of exogenous constraints and be able to coordinate their work, making judicial responses to political corruption frequent. Conversely, when pluralism and mobilization are both low, autonomy and coordination levels will be insufficient to render legal accountability minimally possible. Finally, in-between scenarios emerge when either of these features is low and the other high, producing mixed performances. My detailed explanation for these two pairs of elements – i.e., autonomy and pluralism, mobilization and coordination – is below.

Institutional Autonomy and its Sources

The existing case studies on the topic suggest that the autonomy of judicial, prosecutorial, and oversight institutions are crucial features for legal accountability to take place. This is especially true in reference to judicial independence, which is amply believed to be a key ingredient in the fight against corruption.⁴² This reasoning posits the courts will only be able to rule against those in power if judges enjoy a relatively high degree of autonomy from the ones in those positions. By these terms, the likelihood of judges convicting corrupt officials will increase as they enjoy greater freedom of pressure from the elected branches of government.⁴³ As much as this logic is intuitive, it is also incomplete. Seen through the lenses of the legal accountability framework discussed above, the focus alone on courts is misguided. *Judicial* independence, thus, is only a

⁴² Examples of such perspective abound. I provide three of them. First, “there can be no effective accountability in a democracy if judicial institutions are not allowed to work independently, without the interference of political power, business, or civil society” (Bahrend 2006, 228). Second, “law enforcement cannot be an effective anti-corruption tool unless the judiciary is independent both of the rest of the state and the private sector” (Rose-Ackerman 2007, 15). Third, “politicians have much to fear when the judiciary is independent, including the fear that their abuse of office will be investigated, prosecuted, and, if the facts add up, also punished” (Vogl 2012, 144).

⁴³ This argument is derived from the literature on anti-corruption agencies and judicial review. On the former, it argues that any form of oversight has to be exerted with autonomy from those who are overseen in order to be effective. Several studies on corruption support this logic. This is, in effect, the main argument behind the amply recommended creation of independent anti-corruption agencies, following the example of Hong Kong’s Independent Commission against Corruption (e.g., Klitgaard 1988, 98-121, Sousa 2010, Quah 2010). On the latter, the literature on judicial politics abounds with examples on how judicial independence is a key condition for courts to exert their powers of judicial review, even if contingently (e.g., Ferejohn 1999, Helmke 2004, Clark 2010).

part of a much ampler story leading to an active anti-corruption judicial system. Instead of thinking solely about the judiciary, the system of justice – which comprises the courts *as well as* prosecutorial and oversight authorities – has to be considered.⁴⁴ This suggests that the degree of autonomy enjoyed by each of these bodies largely accounts for the varying existing levels of judicial responses to corruption. In other words, the *institutional autonomy* of the many agencies comprising the judicial system is a necessary condition for sustained legal accountability efforts. In its absence, judicial responses to corruption may not become entirely impossible, but rather difficult. Institutional autonomy, thus, sets the initial benchmark without which judicial anti-corruption efforts, if existent, will either have limited impact or be short-lived. The abundant literature on Italy's *mani pulite* investigations (e.g., Di Federico 1995, Alberti 1996, Nelken 1996, Pederzoli and Guarnieri 1997, Burnett and Mantovani 1998, Colazingari and Rose-Ackerman 1998, della Porta 2001, Colombo 2006, Guarnieri 2013) as well as on the successful prosecutions of political scandals in France (e.g., Ruggiero 1996, Roussel 1998) highlights how the autonomy of judges, prosecutors, etc. was an essential ingredient to achieve those results.

To strengthen the point, consider the inverse scenario. To take the two examples just cited, after both Italy and France watched their courts and prosecutors take the lead in the anti-corruption effort in the 1990s, a wave of reform swept both nations. In subsequent years, each of them passed new legislation limiting the investigative powers of magistrates and prosecutors, reducing their autonomy to act on alleged cases of misconduct. Not surprisingly, both countries witnessed a decline in legal accountability efforts in the 2000s (Joly 2007, della Porta and Vannucci 2007, Vannucci 2009). A more drastic example comes from Peru under former president Alberto Fujimori. In its inaugural year, several judges and prosecutors were fired by presidential decree

⁴⁴ This is similar to the notion of *legal complex* (Halliday and Karpick 2011), which argues that one cannot properly explain court behavior absent an adequate understanding of the legal community itself (Halliday 2013).

to ensure that only loyalists stayed on the bench. Sometime later, many of the remaining ones entered the payroll of Vladimiro Montesinos Torres – the head of Peru’s national intelligence service – to receive monthly bribes (McMillan and Zoido 2004, Conaghan 2005). The autonomy of Peruvian judges and prosecutors under Fujimori’s presidency, in effect, was severely curtailed by the instability of their positions and by corruption itself. As a result, “whenever opposition leaders turned to courts to complain about suspected abuses, the cases either disappeared in the judicial bureaucracy or were thrown out altogether” (Conaghan 2005, 167).

In order to explain variation in judicial responses to political corruption, thus, an important step is to observe the degree of autonomy that all institutions comprising the judicial system enjoy. That is, as much as the focus has to be on the system of justice as a whole, it has nonetheless to start by the individual pieces constitutive of it. These are, after all, the gears that make the entire judicial machinery work, or fail to do so. Paradoxically, the emphasis on the institutional autonomy of each of these agencies derives from the *interdependence* of their work. Given the sequential nature of the legal accountability process, each previous stage (and the institution responsible for it) ultimately works as a veto point or gatekeeper for the later ones. And if one stage fails, the entire process may be compromised. As such, if *any* institution in the sequence of stages is not sufficiently autonomous to perform its duties, it may not only subvert the work of those acting after it, but may also discourage institutions in the stages coming before it from working effectively. If a prosecutors’ office, for instance, lacks autonomy, it will bring only few cases to the courts. This will not only prevent the judges from working at their full potential, but will also disincentivize oversight bodies or potential whistleblowers from bringing corrupt acts to public light in the first place. This interdependence demonstrates not only how fragile this entire system is, but also how open it is for attempts at political manipulation. Efforts of political elites

at avoiding legal accountability need not attack all institutions of the judicial system at once to succeed. By compromising just one of them, the entire system may fail to work.⁴⁵ Autonomous institutions, though, do not come out of thin air. In order to understand the conditions leading to their emergence, I consider the broader scholarship on comparative judicial politics.

In this sense, a substantial body of literature argues that the level of exogenous constraints posed on the judicial branch varies negatively with the degree of distribution of power in democratic regimes (e.g., Shapiro and Stone 1994, Tate 1995, Cooter and Ginsburg 1996, Domingo 2000, Ferejohn 2002, 2013, Guarnieri and Pederzoli 2002, Herron and Randazzo 2003, Chavez 2004, 2008, 2008a, Whittington 2005, Ginsburg 2008, Ingram 2009, Chavez, Ferejohn and Weingast 2010, Aydin 2013).⁴⁶ It claims that high levels of party fragmentation and electoral competition, as well as elevated frequency of divided government are all associated with greater autonomy of the judiciary. Inversely, overly centralized, quasi-monopolistic and/or high-dominance political systems inhibit court power. These same findings apply to the sources of greater prosecutorial, oversight and auditing autonomy, as another substantive body of scholarship shows (e.g., Sadek and Cavalcanti 2003, De Figueiredo 2003, van Aaken, Salzberger and Voigt 2004, van Aaken, Feld and Voigt 2008, Melo, Pereira and Figueiredo 2009, Melo and Pereira 2013).

⁴⁵ This insight is taken from Cowdery, who notices that “each silo [of investigation, prosecution and adjudication] is vulnerable to attack and corruption. If one silo supervises and directs the other, then only that silo needs to be targeted to corrupt both” (2007, 82). Similarly, the “chain of complementarities means that checks and balances form a package. If one is weak, all are weak” (McMillan and Zoido 2004, 86). In effect, “individual institutional frailties may weaken the entirety of the web of accountability” (Power and Taylor 2011a, 253).

⁴⁶ Similar conclusions were reached in comparative politics studies that have addressed the topic, associating higher number of veto players and the presence of power-sharing arrangements with greater autonomy of the judiciary (see Lijphart 1996, Tsebelis 2002, Andrews and Montinola 2004). For a different take, see Smithey and Ishiyama (2000), Trochev (2004, 2010), and Popova (2010), all with conclusions derived from analyses of post-communist countries. Finally, other theory associating increased electoral uncertainty to greater judicial power is the so-called *insurance model*, which states that current political elites would minimize the upcoming loss of power by empowering the courts to retain influence (e.g., Magalhães 1999, Ginsburg 2003, Hirschl 2004, Finkel 2008, Epperly 2013). Critiques to this logic include the lack of clarity on (a) why elites would reform *courts* and not other institutions (e.g., electoral rules, as in Boix 1999), and (b) *how* these reforms were approved in such unstable contexts. For a review, see Ingram (2009, 39-59).

The existing literature shows us, hence, that levels of political pluralism and autonomy of the judicial system's institutions are positively associated. When the former is high, political elites are less cohesive, governing coalitions become more unstable, and electoral outcomes turn out more uncertain, making it harder for elected officials to manipulate or limit the workings of judicial, prosecutorial and oversight agencies. This, in turn, expands the autonomy of the system of justice from the imposition of exogenous constraints on how such bodies should perform their duties. Defined as the absence of a dominant, unified group of power holders, political pluralism thereby opens up space for the various pieces of the judicial system to act with greater latitude, freer of pressure from the constraints potentially imposed by dominant political machines.⁴⁷

Higher levels of pluralism, though, do not prevent political interference in judicial activity from taking place entirely. The cases of Italy and France cited above, as well as various periods of the U.S. history with intense court-curbing activity highlight that (e.g., Nagel 1965, Rosenberg 1992, Whittington 2001, 2003, Clark 2009, 2010). Institutional autonomy, thus, is never absolute, but a matter of degree. In effect, the level of autonomy and the types of threats posed on the judicial institutions of Italy and France differ significantly from those of the much less plural political

⁴⁷ I recall the original meaning of a “pluralist system” advanced by Dahl, for whom it does *not* refer to a perfectly open democratic process (and not even a polyarchal one), but to *dispersed* or *noncumulative inequalities*, so that politically active groups and elites are not as unified as elite-power theorists had suggested (cf. Dahl, 2005, 85-86, Dahl 1984). In short, the definition of political pluralism adopted here is of that opposed to “monism” in which “no single group holds the dominant power position, power is always shifting” (Austin 2007, 678). For the purposes of this study, thus, the distinction between *political pluralism* and *political fragmentation* concerns the types of actors and institutions to which each concept applies to. Given my focus on democratic regimes, political pluralism refers to the distribution of power among elected and party officials, especially those holding top positions in the executive and legislative branches. Political fragmentation, in turn, refers to the actors inside the system of justice – judges, prosecutors, auditors, etc., as reflected in how coordinated or not the performance of their institutions (i.e., courts, prosecutors’ offices, auditing agencies) is. In short, political pluralism refers to the distribution of power in the “grand” political arena whereas political fragmentation refers to the allocation of resources and different jurisdictions within the “policy subsystem” or “policy community” (which, in this research, is the judicial system). Roughly speaking, thus, political pluralism is a matter of the elected branches of government, and political fragmentation a matter of the judiciary and the bureaucracy. The distinction between “grand” politics and “policy subsystem” politics in a democracy is clearer in what Zhang (2013) calls *functional* fragmentation, as distinct from what she calls territorial and intergovernmental fragmentation. As a horizontal type of fragmentation, it refers to the separation of jurisdictions among bureaucratic agencies at the same level of government that are responsible for implementing policies previously sanctioned by political elites.

system of Peru under Fujimori. Intense judicial responses to political corruption, thus, should be expected in contexts of more autonomous institutions of the judicial system and these scenarios, in turn, should be expected in environments marked by greater levels of political pluralism.

Rooting Inter-Institutional Coordination in Legal Mobilization

The autonomy of the various institutions comprising the system of justice is only part of the story about legal accountability because it is a double-edged sword. On the one hand, it is a crucial component for sustained judicial responses to corruption in minimally democratic regimes. On the other, it may become an obstacle for increased effectiveness. That is, although institutional autonomy facilitates the detection, investigation, prosecution, and adjudication of corruption, it does not mitigate the interdependence of these stages entirely. Autonomy implies differentiation of functions, but may just as easily generate isolation. By these terms, the autonomy of judicial, prosecutorial and oversight institutions can translate itself into an effort towards organizational self-preservation, which may ultimately lead to turf wars.⁴⁸ As such, institutional autonomy may not only lead to greater independence of these agencies from the elected branches, but also *from each other*. Walls of separation between perfectly autonomous institutions, though, may render their work significantly less effective. Take the example provided by Klitgaard, who

“... spent some time in Venezuela [in 1992] with the many agencies involved in the fight against corruption at the national level: the police, the Contraloría, the prosecutors, the Supreme Court (which administers all courts), and finally the cabinet. The various agencies guarded their autonomy and did not want to meet in joint workshops – each wanted its own. Each agency’s staff told in its workshop the most extraordinary stories about how its own good efforts had been thwarted by the incompetence and, yes, the corruption of the other agencies. They noted how cases would disappear from gathering information to investigation to prosecution to judicial decision” (Klitgaard, MacLead-Abaroa, and Parris 2000, 69).

⁴⁸ That is, autonomous yet severely self-protective agencies may become mutually distrustful and even undermine each others’ powers, leading to a scenario of “predatory autonomy,” with agencies fighting each other above all else.

Institutional autonomy, therefore, may become a barrier rather than a catalyst to the joint effort of bringing corrupt officials to justice. *Coordination among otherwise isolated institutions* is hence a critical element explaining variation in legal accountability outcomes.⁴⁹ Some examples from the other end of the “coordination spectrum” illustrate the point. It has been acknowledged that an important factor leading to the large number of convictions in the Italian *mani pulite* investigations was the way in which judicial and prosecutorial careers intertwined. Rather than belonging to two separate bodies, judges and prosecutors belong to the same civil service career track in Italy. While this arrangement generates a great number of critiques on the impartiality of the judges, this unity of prosecution and judicial careers facilitated coordination between these two bodies and, in turn, facilitated judicial responses to corruption (e.g., Nelken 1996, Burnett and Mantovani 1998, Guarnieri 2011, 2013).⁵⁰ Likewise, task-forces have also contributed to connect otherwise separated entities. Even if they are *ad hoc* and do not exist on a permanent basis, they increase inter-institutional coordination and help yield more effective results (e.g., Arantes 2000, Buscaglia 2007, Paludo, Lima and Aras 2011). How well the institutions of the system of justice coordinate their work, in other words, accounts for a significant parcel of the variation in judicial responses to corruption, even for contexts with similar levels of exogenous constraints posed on courts, prosecutors’ offices, etc. Equally autonomous judicial systems may yield radically different results depending on how integrated the operation of their agencies is.

What does inter-institutional coordination mean, though? A useful metaphor is thinking of the judicial system as an archipelago of bureaucracies. Like islands, oversight agencies, prosecutors’

⁴⁹ Accordingly, this insight is taken from corruption studies (e.g., Klitgaard, MacLead-Abaroa, and Parris 2000, Speck 2002, Quirke 2010, Power and Taylor 2011a) and applied it here to the specific issue of legal accountability. In short, it argues that “the linkages between organizations matter inasmuch as the performance of agencies in isolation” (Santiso 2006, 105).

⁵⁰ Similarly, Italian judges also developed a close relationship with the police, even applying to cases of corruption investigative techniques that were initially developed for the fight against organized crime and terrorism in the preceding decades (see Guarnieri 2013).

offices, courts, and so on, are entities largely dissociated from one another. Still, the appropriate infrastructure can help them connect. *Building bridges* is the common rhetoric here. Yet, these are not just structures that occupy the otherwise “empty” space between two bodies. Just like bridges are anchored in firm ground, coordination-enabling mechanisms are first and foremost secured in the *internal* organization of each bureaucratic entity. Hence, in order to understand how coordination emerges, one has to start by looking closely at the actual *modus operandi* of each agency involved in the dynamics of bringing corrupt officials to justice. That is the case because such internal arrangements are key mediating structures between institutions’ alleged missions and their actual end-product, be it auditing reports, indictments, or judicial rulings. By altering the capacity an institution has to work in complex cases, they can minimize the loss of information from one stage to the next in the legal accountability process. This, in turn, affects the perception other proximate agencies have about how a given institution performs its duties. How courts organize their work, for instance, signals to prosecutors their willingness to try cases of misconduct. A specialized judicial panel is one mechanism adopted by some Brazilian state courts to adjudicate mayoral crimes, including some examined here.⁵¹ This arrangement can alter profoundly the speed, quality and transparency of court work, possibly encouraging prosecutors to bring more cases to trial. Eventually, this initiative may foster specialization within the public prosecution office itself, thereby facilitating cooperation between two expert bodies, more easily matching the expectations one forms about the work of the other and helping establish readily identifiable individuals responsible for each task.

As such, because the need for widespread coordination bears the risk of diluting responsibility, coordination-enabling mechanisms usually work when they assign clear tasks to specific offices

⁵¹ More recently, specialized anti-corruption courts have also been established in Indonesia and the Philippines, as examined in the studies by Tahyar (2010) and Pangalangan (2010), respectively.

or individuals, assuming the forms of liaison offices, specialized panels, coordinating officials, etc. These function essentially as *focal points*, facilitating joint action more than imposing it from above.⁵² In this sense, coordination means above all establishing unambiguous points of contact between two or more institutions so that information-disclosure agreements, task-forces, regular meetings, and other coordinative practices can be turned from ideal into reality. Mechanisms like these need not be established with the declared or intentional goal of increasing coordination, though. They may originate in one agency's effort to improve its own capacity to handle these cases. Yet, in so doing this institution makes clear its commitment to the anti-corruption agenda, opening up and exposing itself to others. If other agencies follow, then such interaction has the chance of becoming a part of their daily routines rather than a sporadic event.

Yet, internal arrangements are only part of the story. To return to the metaphor of the system of justice as an archipelago of bureaucracies, the bridges connecting the islands have first to be *built* and, second, be *constantly utilized* in order to properly fulfill their devised roles. Claiming that specialization facilitates coordination, for instance, is one thing. Another is explaining where it came from and what made it effective. This implies that it is crucial to account for the impulse leading to the establishment of such arrangements as well as their actual operation to understand how coordination effectively takes place and, consequently, how it affects legal accountability performance.

Fundamentally, coordination presupposes willingness to cooperate. In this sense, it emerges from the endogenous mobilization of legal actors working inside each anti-corruption agency, being built from within and not from the outside. Understood both as the preparation to act and the

⁵² Here I follow the insight by Klitgaard, MacLean-Abaroa, and Parris, for whom "there is a ... need in campaigns against corruption: a focal point ... because no single agency can do everything in the fight against corruption and therefore a coordinated effort is required, the official body has to be above all a facilitator of joint action, a mobilizer of the resources of many agencies of government" (2000, 68).

actual engagement via the legal channels, *legal mobilization* captures the cooperation of two or more institutions and how intense their resulting interaction is.⁵³ This aspect, in turn, shifts the focus away from factors largely exogenous to the system of justice (i.e., the constraints potentially imposed by political elites) to account for the motivation of their own actors. In other words, as much as political pluralism provides legal actors with space to act autonomously from the elected branches in order to pursue anti-corruption strategies, it does not guarantee that they will do that. As Guarnieri notices, “it does not follow that institutionally independent judges will automatically behave in an independent way” (2003, 223). Even when power is concentrated, legal actors may courageously take the initiative to mobilize, attempting to build bridges among their institutions to punish official misconduct. While their effectiveness may be limited by the low autonomy of the institutions they operate within, this is also a plausible scenario. Institutional autonomy from exogenous constraints, thus, fails to specify why legal actors leave their comfort zones of working on regular criminal activity to move up the scale towards the inevitably delicate issue of corruption. Varying levels of legal mobilization, as a result, may help to account for what judges, public prosecutors, and oversight officials actually *do* to fight corruption, apart from the environment in which they operate.

⁵³ As a conceptual note, I use the term “legal mobilization” rather than “judicial activism” for the following reasons. First, *judicial* activism is confined to the judiciary itself and, as such, ignores the essential work of prosecutors, investigators and oversight officials in this regard. Second, judicial activism is often limited to the types of decisions reached by the judiciary on cases of constitutional interpretation (Canon 1983, Holland 1991, Keck 2002, Lindquist and Cross 2009, Yung 2011). In turn, legal mobilization is a generic expression that refers to the mobilization of legal channels (courts, prosecution offices, juridical discourse) to the advancement of nearly any agendas, from equal pay to environmental causes to human rights (Zemans 1983, McCann 1994, 2008, Epp 1998, Collins 2010). Third, mobilization is a less normatively loaded term than activism. While the former is often used negatively – at least since its coinage by Arthur Schlesinger, Jr. in 1947 – to suggest judges stepping out of their “proper” functions, mobilization simply implies the use of legal channels to further any goals not achieved in other governmental arenas (administration, legislature, etc.), to recall original the meaning of political jurisprudence by Shapiro (1964). Finally, albeit the term legal mobilization often refers to the efforts of “nonofficial legal actors” (McCann 2008, 523), this need not be the case, more broadly implying “a desire or want” that is “translated into a demand as an assertion of rights” (Zemans 1983, 700).

Following a dynamic that is true for both the birth of social movements and interest groups (e.g., McAdam 1999, Walker, Jr. 1991), legal mobilization starts with a change in mentalities. Existing case studies on the topic highlight that periods of intense judicial responses to corruption resulted largely from a *redefinition of how legal actors perceived their respective professional identities* on this specific issue (e.g., Ruggiero 1996, Pizzorno 1998, Roussel 1998, della Porta 2001, Adut 2008, Sims 2011). That is, the broader political landscape had not changed significantly and the resulting autonomy enjoyed by courts, prosecution offices and oversight agencies remained largely unaltered over time. What changed were the meanings legal actors attributed to their roles, emanating from their increased awareness that corruption was an issue demanding to be tackled seriously and that it was their job to do so. It was a process of *responsibility-claiming* in which the operators of legal accountability institutions reshaped the perceived grandeur of their activities, identifying them as a “superior” or “distinct” form of politics.⁵⁴ Along this process they became “moral” or “norm entrepreneurs” (cf. Becker 1963, Sunstein 1996).

This process of responsibility-claiming should *not* be confounded with the professionalism of judges, public prosecutors, and oversight officials. Accordingly, legal actors may be perfectly professionalized – belonging to meritocratic bureaucracies instead of being political appointees – and still simply shun away from politically controversial cases like those of corruption, despite the absence of exogenous constraints. More than just looking at their modes of recruitment or career tracks, what matters is the type of professional identity the agents of legal accountability institutions display, more or less committed to the issue of corruption. Just like professionalized legal actors may see themselves as wholly *apolitical* – seeing their jobs as comprised exclusively

⁵⁴ See especially Roussel (1998, 262-273) and della Porta (2001) in this regard. The change in the importance of judicial and prosecutorial roles is often portrayed and justified as a “different” and often “superior” form of politics in which legal elites act “as defenders of citizens in the face of a corrupt political class” (della Porta 2001, 15-16). On the usage of legal channels as a “superior” form of politics see the “elite-vanguard” type of cause lawyering proposed by Hilbink (2004, 673).

of “common” criminal or civil cases – so they may perceive the mission of their institutions as inextricably linked to taking a strong stance against political corruption. These perceptions and identities, in turn, affect directly the capacity courts, public prosecution offices, and oversight agencies have to mobilize and, consequently, to work together in order to fight corruption.⁵⁵

These new mentalities or identities are turned into practices via new judicial, prosecutorial, and oversight repertoires of action which, I claim, include the development of new organizational arrangements that enable improved handling of corruption cases and thereby facilitate inter-institutional coordination. Discursive or ideational transformations, thus, are at the root of what is largely a process of endogenous institutional change.⁵⁶ Because such procedures affect how these institutions operate, they are usually objects of contention among peers inside each of these bodies. Making institutions with multiple, potentially competing missions work effectively as anti-corruption agencies, as a result, involves firstly an effort at bringing together members of each institution to accept these new arrangements. Coalitions of judges, prosecutors, and the like, have to be formed inside each agency to that end, producing a process of legal mobilization from within. Once created, such new arrangements can only be effective as long as actors inside these institutions remain mobilized to make them fulfill their devised roles.

Institutions, in this sense, “are *instruments* actors use to negotiate the complexity of the world” so that “far from dictating particular actions,” they are “enabling structures within which actors

⁵⁵ Probably the best reference on “apolitical” judicial identities is Hilbink’s (2007) account on the Chilean judiciary. Symmetrically, “active” roles are not exclusive of professionalized elites. Political appointees may also use their positions once in the system of justice to mobilize vigorously for certain causes. The active positions of chief justice Earl Warren – who had been governor of California before joining the U.S. Supreme Court – on the desegregation cases of the 1950s and 1960s is a famous example in this regard. Another probably less famous example is that of chief justice William Howard Taft – who had been the president of the country before moving to the judiciary – and significantly helped increase the autonomy of the U.S. federal courts (see Crowe 2007, 2012).

⁵⁶ This insight is explicitly formulated by the “discursive,” “constructivist” and “ideational” institutionalisms (e.g., Blyth 2002, Hay 2006, Schmidt 2008, 2011), being also followed by a group of scholars aligned to the historical institutionalism who examines processes of *endogenous* institutional change (e.g., Hall 1993, Mahoney and Thelen 2010, Hall 2010, Bell 2011, Lewis and Steinmo 2012).

exercise robust agency” (Hall 2010, 217, emphasis in the original). Specialized judicial panels on mayoral crimes, for instance, have a huge potential to improve case-handling capacity and yield inter-institutional coordination. Yet, once created their effectiveness will inevitably depend on their operators – i.e., on how judges, prosecutors, etc. will *use* this instrument to bring mayors to justice, or fail to do so. Symmetrically, even if new arrangements do not prove to be suitable for the task, they can be adjusted by committed participants over time, in a process of institutional learning. Consequently, if legal actors are indeed mobilized to fight corruption, they will help building bridges to connect the archipelago of bureaucracies that characterizes the system of justice; if not, isolation will prevail.

Similarly, legal mobilization is embedded in the realization that the work of each institution is complemented by the work of others toward the perceived shared mission of achieving effective legal accountability results. This means that they avoid jeopardizing the autonomy of each other as much as they become a network of mutual support, reinforcing the relevance of their roles by asserting the salience of the issue they all work on. Seen through these lenses, the notion of mobilized legal actors narrowing the gaps among a variety of legal accountability institutions comes close to the ideas of *advocacy coalitions* and *shared-action groups*, which ultimately refer to communities of activists connecting different institutions – often administrative agencies and legislative committees – to advance their goals on a specific policy issue.⁵⁷ As such, just as institutional autonomy emerges from a plural political system, so inter-institutional coordination comes from the endogenous mobilization of legal actors working inside anti-corruption agencies.

It is this effort that creates and activates the mechanisms enabling coordination. Mobilization and

⁵⁷ *Advocacy coalitions* consist of “people from a variety of positions (elected and agency officials, interest group leaders, researchers) who share a particular belief system – i.e., a set of basic values, causal assumptions, and problem perceptions – and who show a non-trivial degree of coordinated activity over time” (Sabatier 1988, 139). In turn, *shared-action groups* are coalitions working within “issue networks” with the purpose of pushing for their pet proposals in a specific realm of policy-making, or issue-area (see Hecl 1978, McFarland 2004).

coordination, after all, are two sides of the same coin, both reflecting Arendt's concept of power as the "ability to act in concert" (1970, 44).

In sum, my overall explanation for variation in legal accountability outcomes includes *both* the autonomy of each institution and the coordination among them. If the two coexist at high levels, the conditions are set for thorough judicial responses to corruption. If both are low, the responses will be close to nonexistent. Likewise, even if institutional autonomy and inter-institutional coordination work as proximate causes for different legal accountability performances, they emanate from different sources. The former emerges from a plural political system, in which it is more difficult for exogenous constraints to be imposed on courts, prosecutors' offices, etc. The latter, in turn, derives from the mobilization of legal actors on the specific subject of corruption, who help organize the internal work of their agencies to tackle that issue and facilitate joint action. As such, different levels of exogenous constraints and endogenous mobilization combine to generate distinct legal accountability performances, as captured in the typology below.

2.5. Combining Institutional Autonomy and Inter-Institutional Coordination: A Typology

The proposed typology follows a recent call for taking "complexification" into account in comparative political research.⁵⁸ Still, building a typology to explain intricate political events is not a panacea. First, it abides by the rules of concept formation (e.g., Sartori 1970, Collier and Mahon, Jr. 1993, Gerring 1999), which I adopt to build ideal-types, given their "middle ground between the uniqueness of historical events and the generality of laws" (Ragin and Zaret 1983,

⁵⁸ This suggestion was forcefully made by Schmitter, for whom "complexity requires that one attempt to understand the effect(s) of a set of variables (a 'context' or 'ideal-type') rather than those of a single variable" (2009, 53).

732).⁵⁹ Second, it follows rules for advancing *explanatory* typologies, which are different from merely descriptive or classificatory ones. They are multidimensional by definition, so that “the cell types are the outcomes to be explained and the rows and columns are the explanatory variables” (Collier, LaPorte and Seawright 2012, 218).⁶⁰ As such, I develop ideal-types that aim to explain why some judicial systems are more assertive than others against corruption by combining the elements discussed in the previous section. Four combinations of different levels of institutional autonomy and inter-institutional coordination, hence, are produced by distinct levels of political pluralism and legal mobilization.⁶¹ These four ideal-types are displayed in the table below (see Table 2.1.) and explained after it in decreasing order of legal accountability effectiveness – i.e., the conviction levels they are likely to yield.

Table 2.1. Typology of Judicial Systems in Legal Accountability

		<i>Inter-Institutional Coordination</i>	
		<i>Low</i>	<i>High</i>
<i>Institutional</i>	<i>Low</i>	Constrained Isolation	Constrained Coordination
<i>Autonomy</i>	<i>High</i>	Fragmented Autonomy	Coordinated Autonomy

Before explaining each type, two quick notes are in order. Firstly, while the proposed typology is largely static and does not account for the passage of time, it highlights how change may occur from one ideal-type to another if any or perhaps both of its elements change, either increasing or

⁵⁹ I adopt a traditionally Weberian approach, for whom an “ideal type is formed by the one-sided accentuation of one or more points of view and by the synthesis of a great many diffuse, discrete, more or less present and occasionally absent concrete individual phenomena, which are arranged according to those onesidedly emphasized viewpoints into a unified analytical construct” (Weber 1904 [1949], 90). Thus, I follow Collier and Mahon’s notion of “family resemblances,” in which “there may be no single attribute that category members all share” (1993, 847). Because “family resemblances” are not exhaustive, sufficient and all-encompassing as the types of concepts proposed by Sartori (1970), and even exhibit some overlapping elements, they seem closer to the Weberian notion of ideal-types.

⁶⁰ For a detailed account on explanatory typologies, see Elman (2005), and Bennett and Elman (2006).

⁶¹ Importantly, political pluralism, legal mobilization, institutional autonomy, and inter-institutional coordination could all be operationalized as ratio or ordinal variables. By these terms, I engage in what Elman (2005) calls “compression” – and particularly “rescaling” – simplifying these measures into a much simpler high-low dichotomy that fits more easily the purpose of building a two-by-two table.

decreasing. In this sense, changes in the level of inter-institutional coordination are endogenous to the various agencies of the system of justice, referring to the mobilization of legal actors inside those institutions. Changes in the autonomy of the institutions, in turn, are largely exogenous to the judicial system, resting on the dynamics of the political system itself. Secondly, because this typology is borne out of the empirical examination of the cases examined in this research, I also highlight which types they refer to as well as how each of these cases have changed over the past decades in regards to crimes of mayors.⁶²

Coordinated Autonomy. Starting by the combination that yields the highest levels of judicial responses to political corruption, this scenario is characterized simultaneously by high levels of political pluralism and anti-corruption legal mobilization. These, in turn, produce a judicial system marked by high levels of institutional autonomy and inter-institutional coordination. It generates high rates of conviction because there are only a few exogenous constraints imposed upon highly coordinated institutions. As such, legal accountability agencies operate jointly via a series of internal organizational arrangements that facilitate communication and improve their capacity to manage cases of corruption. They perform their activities, furthermore, in a relatively favorable political environment, and their concerted activities ultimately end up reinforcing each others' capabilities.⁶³ As a result, judicial responses to corruption are frequent, routinized, and largely expected, deriving from organizational arrangements mobilized to that end. These, in

⁶² This follows the notion that ideal-types are essentially *inductive* categories, in tune with the Weberian tradition on the topic (see Kalberg 2003, 146).

⁶³ By these terms, the joint action of courts, prosecutors' offices, and oversight agencies helps forming something that resembles a "subgovernment," "policy monopoly," "arrangement of limited participation," or, more popularly, an "iron triangle" (McFarland 2004, Lowi 2009, Baumgartner and Jones 2009). The latter term was coined to refer to an arrangement in which interest groups, congressional committees, and administrative agencies blur the boundaries that would normally separate them in order to advance the interests of a specific issue area – agriculture, defense, etc. – often at the expense of ampler political participation. The pejorative tone attributed to the term, however, should not elude us from the ampler use this expression may have: that on surpassing the limitations of the individual institutions to coordinate activities in a given issue area – here, legal accountability – and shield its participants from exogenous intervention, such as the one potentially performed by political elites.

turn, resulted from innovative and risk-taking individuals, being operated mostly by what I called “responsibility-claimers.” The system of justice of the state of Rio Grande do Sul best illustrates this dynamic, especially since 1992 when it created the first specialized judicial panel to try criminal cases of mayors in Brazil. The learning process that led to that institutional innovation, nonetheless, had started as early as 1989, with judges and prosecutors pursuing the most efficient organizational arrangements to try these cases. The judicial system of the state of Minas Gerais, in turn, seems to be attempting to move in this direction since the beginning of the 2000s, but resistance within the judiciary and the auditing agency has been preventing more cohesive work, as shown in Chapter 5. Finally, the system of justice of the state of Bahia also attempted to move in this direction between the mid-1990s and the mid-2000s, but faced a series of constraints imposed by the elected branches of government.

Fragmented Autonomy. This scenario is marked by high levels of institutional autonomy, but relatively low levels of coordination among the various bodies integrating the judicial system. As such, the judicial system cannot be adequately described as a “system” in the proper sense of the word. Rather, it could more accurately be portrayed as a collection of disjointed institutions which, in turn, are largely aggregates of individuals with loosely defined roles. A majority of risk-averse judges, public prosecutors, and oversight authorities, in effect, occupy largely inward-looking bureaucracies that have the potential to work together, but shun away from doing so. As a result, each agency decides its course of action largely in disregard for others and, at times, even limiting each others’ powers, as when judges limit the investigative powers of prosecutors. For the most part, nevertheless, these are conflict-avoiding bodies operating in an environment marked by relatively high degree of autonomy from the elected branches. As a result, judicial responses to corruption are relatively common but inconsistent and unsystematic,

emerging from unconstrained *individual* initiatives, rather than the *institutional* commitments that typify previous performance. Hence, there is a high level of individual autonomy and disagreement over each of the institutions' missions. Not accidentally, anti-corruption legal mobilization often becomes a burden for those pursuing it, encountering strong resistance even among peers. For over two decades since redemocratization, the judicial system of Minas Gerais has been displaying this dynamic in reference to the crimes of mayors. Legal accountability institutions, as it turns out, have been working with a relatively high degree of autonomy from the elected branches, but low levels of mobilization inside most of them have been preventing increases in inter-institutional coordination. Mobilization attempts have existed, but have usually stopped especially at the judges' and auditors' refusal to mobilize. Thus, only prosecutors have been really active in Minas Gerais, but their efforts have not resonated in other agencies. Since 2007, the judicial system of Bahia also seems to be moving in this direction, with the dismantling of its specialized panel to adjudicate mayoral crimes, which had been created in 1996.

Constrained Coordination. This scenario is the flipside of the previous one, so that high levels of legal mobilization meet the limits imposed by a highly centralized political system. In this scenario, a relatively high degree of inter-institutional coordination against corruption does try to take place, but the low autonomy of a few institutions in the system of justice prevents this initiative from becoming effective. In this context, many legal actors and agencies endogenously mobilize against corruption, but some are not sufficiently autonomous and end up frustrating the efforts of the others. Even when all institutions are on board, their rules of operation end up being reshaped by political elites, once again aborting the effort. In short, the institutions of the judicial system lack autonomy from the elected branches of government. Increases in anti-corruption mobilization do take place and generate coordinative-enabling arrangements, but have

limited impact given the existing exogenous constraints. That is, because the political elites are faced with what they consider to be a threat from legal actors, they work to prevent the mobilization of the latter from achieving its results. Nearly as two colliding bodies, the relationship between politicians and legal actors takes an extremely contentious form. As a result, judicial responses to political corruption exist, but are few in number, limited in impact, erratic and clustered around specific periods of time, often right before political interference in the workings of the judicial system takes place. They derive from the extraordinary effort of risk-taking actors who mobilize in largely unfavorable contexts. Consequently, legal accountability occurs occasionally, but successful initiatives are short-lived at best. This dynamic is clearly illustrated by the judicial system of the state of Bahia from the end of the 1990s until the mid-2000s. Following the pioneering case of Rio Grande do Sul, the state of Bahia also adopted a specialized judicial panel to try mayoral crimes. As in the former, judges, prosecutors and auditors in Bahia increasingly streamlined their work but, differently than their counterparts in South Brazil, faced strong resistance. Despite the efforts, this initiative led to a quite reduced number of convictions of mayors, largely because it took place in a hostile political environment.

Constrained Isolation. This scenario is marked by low levels of both political pluralism and anti-corruption legal mobilization, resulting in equally low levels of institutional autonomy and inter-institutional coordination. In effect, it produces the lowest levels of judicial responses to political corruption, with rare to nonexistent convictions. If and when they take place, they result from highly episodic and individualized initiatives. These efforts, nevertheless, almost inevitably fail over time, given the severe institutional constraints and lack of support among peers and other proximate institutions to hold public officials legally accountable for their misconducts. In this context, legal accountability is probably not even deemed a serious issue because the actors

and institutions responsible for making it effective are largely isolated from each other and deeply embedded in an overly centralized political system. Perhaps the best example of this dynamic is the state of Bahia before 1996, when practically all institutions of the judicial system were stringently constrained within the domains of the *carlista* political machine and practically no efforts at bringing corrupt mayors to justice took place. In fact, this dynamic is illustrated by all states of the country – including Rio Grande do Sul and Minas Gerais – before the full return to democracy in Brazil in the 1980s, when the issue of mayoral corruption was mostly absent from the agendas of legal actors and political elites alike.

2.6. Additional and Alternative Explanations

The ideal-types described above highlight four basic dynamics of judicial systems on corruption. Like any typology, it simplifies what is clearly much more complex and nuanced. Nonetheless, it illuminates why and how legal accountability varies, at the same time as it combines elements that are often contrasted in the judicial politics literature. Most studies on court empowerment, in effect, have analyzed either exogenous or endogenous factors conducive to that empowerment. Varying levels of political competition and legal activism, for instance, are discussed mostly as mutually exclusive explanations as to why courts acquire greater weight in politics.⁶⁴ As a result, only recently have analysts been combining these elements into a relatively unified theoretical

⁶⁴ Examples of the literature emphasizing exogenous factors contributing to court empowerment include those by Magalhães (1999), Ginsburg (2003), Chavez (2007), and Hirschl (2009). Studies focusing on endogenous factors conducive to greater judicial power include those by Hilbink (2009, 2012), Woods (2009), Woods and Hilbink (2009), and Couso (2010). It should be noticed that court empowerment from within implies mobilization that is often *issue-specific* (on corruption, same-sex marriage, health policy, etc.), and hence cannot be understood as a source of court power applicable with equal strength to all policy domains.

account.⁶⁵ The proposed typology performs exactly that, narrowing the gap between these two often contrasting takes on the topic. Still, this typology does not exhaust all possible scenarios of this interplay and a group of elements is excluded from it. I have grouped them into six broad categories – the preferences of political elites, the ultimate motivation of legal actors, political culture and public support for the courts, judicial corruption, economic development and judicial capacity, and other legal accountability stages – which account for additional and alternative explanations for varying judicial responses to corruption. I examine them below.

The Preferences of Political Elites. So far, I have implicitly assumed that elected officials either oppose or, at best, are indifferent to what the system of justice does in regards to corruption. In other words, I have described a “worst-case scenario” from the perspective of the institutions responsible for holding politicians accountable for their acts. However, it is plausible that some politicians may encourage legal actors to mobilize against corruption and may perhaps help by expanding the autonomy and coordinative capacities of their agencies to that end. Even in this scenario, however, the typology above is likely to capture the resulting dynamics.

Under coordinated autonomy, if political elites are benevolent towards anti-corruption efforts, they will only facilitate a dynamic that was already in place, perhaps even attempting to claim credit for its results. Given the high degree of pluralism, though, it is likely that this preference of the political elites will only be temporary. Under fragmented autonomy, benevolent elites may support the mobilization of legal actors, but the ultimate decision to mobilize will still reside inside legal accountability institutions. If their actors refuse to act, increased coordination will not follow. Coordination-enabling arrangements may even be created, but will remain purely

⁶⁵ Works by Ingram (2009, 2012), Nunes (2010, 2010a), Couso and Hilbink (2010) are some of the few attempting to combine both takes on the topic.

formal mechanisms, empty of the practices that give meaning to them. As I detail in Chapter 5, this was largely what happened in Minas Gerais in 2000 and in 2007, when state representatives proposed the creation of a specialized court panel on crimes of mayors, but the judges rejected it.

If the judicial system lacks autonomy and political elites want to encourage legal accountability, in turn, two scenarios follow. Under constrained coordination, legal actors are already mobilized, so benevolent political elites open up space for them to act. Still, this space will be far from unlimited. Investigations on corruption will have to be confined to individuals and practices outside the ruling coalition and, thus, be limited in their impact, targeting precisely those with lesser power. If legal accountability efforts impinge upon members of the ruling coalition, over time the court structure will almost inevitably be reshaped from the outside in order to be contained. As such, a scenario resembling what I have termed constrained coordination is still likely to prevail.⁶⁶ Under limited differentiation, finally, benevolent elites face the challenges of expanding both the autonomy and the coordinative capacities of the judicial system. Such tasks, in effect, pose the exact same obstacles discussed respectively for the constrained coordination and fragmented autonomy contexts with benevolent elites. That is, the scope of the legal accountability effort will be restricted and the decision to mobilize in order to improve coordination will still reside with the legal actors, not with political elites. As such, if an overly centralized political system attempts to empower a non-mobilized judicial system, the final dynamic will still resemble what I have called limited differentiation.

⁶⁶ The dynamic of “benevolent” anti-corruption elites with mobilized legal actors, as a result, is unlikely to take hold in minimally democratic regimes. It seems more suitable in non-democratic ones, in which the courts are then used as a means to annihilate the opposition. In such a context, political elites are likely to populate the institutions of the system of justice with individuals aligned to their ideas. These, in turn, will mobilize against the opposition and aggressively prosecute them. Even in this extreme scenario, therefore, coordination cannot be imposed from the outside, presupposing mobilization from within. Ultimately, it presupposes the availability of individuals to assume those roles, who may not be easily identifiable. Forming individuals to perform those tasks, in turn, is not an automatic process, usually taking time to take hold within the legal profession (see Teles 2008).

This highlights a critical point discussed previously. The type of coordination truly conducive to high levels of legal accountability cannot result from the centralized imposition by an external actor.⁶⁷ If that is the case, it will probably result from low institutional autonomy which, in turn, will leave an open door for political manipulation. Similarly, this means that the type of inter-institutional coordination compatible with institutional autonomy is not one that emerges from the exogenous imposition of rules by a central agency. To be effective, the initiative to increase inter-institutional coordination has to come from the very institutions whose work needs to be coordinated. Such a pursuit, in other words, has to be endogenous to the institutions responsible for bringing corrupt officials to justice. Such an initiative may even be taken by only one of these agencies. Yet, it has to resonate in others to be effective, rather than being imposed from above or the outside. Actors in one institution, hence, may intend to build bridges with others, but the success of this effort will inevitably depend on the disposition and willingness of the agents who work in those other bodies to do so, much more than on coercion.

The Ultimate Motivation of Legal Actors. The discussion above raises another point that I have ignored so far: the ultimate motivation of judges, public prosecutors, and oversight officials for engaging or not in anti-corruption mobilization. While adopting an active position on this issue is commonly considered a normatively positive practice, the motivations of these actors need not be fueled by positive intentions for it to take place. In fact, they can be quite mundane, ranging from a sincere belief in the social relevance of tackling corruption, to an intellectual interest in the topic, to an attempt at performing a reasonable job in order to satisfy peer expectations, to the pure pursuit of status and power or, which is more likely, an inexact combination of them. In this

⁶⁷ Although task-forces imposed by higher levels of government are common solutions to *functional fragmentation* (see Zhang 2013, 8-10), they are unlikely to work in the anti-corruption realm. One example were the anticorruption reforms of President Vicente Fox in Mexico, which led to a mixed records due to the incapacity of a single willing actor to impose it from above to all governmental spheres absent the engagement of the latter (Morris 2009, 83-132).

perspective, singling out the precise reason why legal actors mobilize in this domain does not exactly matter inasmuch as these actors do so with the declared goal of holding public officials accountable for their acts of misconduct. By the same token, understanding lack of mobilization does not demand assessing reasons beyond those reported by the individuals involved in this dynamic, alongside observing their actual behavior. The alternative to the proposed emphasis on observed behavior and self-reported justifications would be either assuming or ascribing reasons for their behavior, neither of which would increase the accuracy of the findings.⁶⁸

I make this observation because frequently accounts of anti-corruption legal mobilization efforts portray judges and prosecutors rather negatively, suggesting that they targeted specific groups or attempted to dismantle the entire political class, often with the aid of the media (e.g., Mantovanni and Burnet 1998, Maravall 2003). True as it may be, judges, prosecutors, and investigators can be self-interested, power-hungry agents – just like most elected officials *allegedly* are – and still contribute to legal accountability, as long as they act purposefully to that end. In effect, moral crusaders and *justiceiros* (i.e., punishers) are common in politics. One example comes from a group of judges of the so-called “Milan Pool of Magistrates” who became famous during the Italian *mani pulite* investigations and left their judicial careers to run for elected offices;⁶⁹ another is almost institutionalized in the political life of the United States, with district attorneys often intertwining their legal careers with electoral and partisan politics.

Among the ultimate motivations frequently discussed in this regard, an important one refers to the partisanship of legal actors. This concern commonly arises where judicial, prosecutorial and

⁶⁸ This follows the approach which stating that the “alternative to considering self-reported reasons relevant is the assumption that observed behavior reveals the actor’s reasons,” given that it “is difficult to see how motivations can be imputed in complex political settings without consideration of self-reported reasons” (Wood 2009, 127).

⁶⁹ This is the case, for instance, of Antonio Di Pietro, who was one of the collaborators leading to the establishment of the political party called *Italia dei Valori*.

oversight positions are filled via political appointments, as opposed to the bureaucratized civil service model that characterizes most countries of civil law tradition such as Brazil. Even when political appointees fill in the ranks of all legal accountability institutions, though, I believe my theoretical categories better illuminate the resulting dynamic. Let me explore for a moment the possible scenarios of this interplay.

On the one hand, if auditors, investigators, prosecutors and judges all belong to different political parties from one another *and* if they all behave strictly along partisan lines (i.e., targeting only parties other than their own), their efforts will be largely uncoordinated, reaching only a narrow middle ground. In other words, inter-institutional coordination will be low and only occasionally will legal accountability emerge. Therefore, if institutional autonomy is low because of an overly centralized political system, *limited differentiation* will arise, yielding rare to nonexistent judicial responses to political corruption.⁷⁰ If political power is not concentrated and institutional autonomy is high, then *fragmented autonomy* will result from the disjoint activities of the various legal accountability agencies populated by individuals with distinct goals.

On the other hand, if all legal actors belong to same political party and if they all behave strictly along partisan lines, they will probably be mobilized to narrow the gap among their respective institutions, thereby increasing inter-institutional coordination. The question then is the level of institutional autonomy available to these actors, which refers again to how politically plural that given polity is. If power is concentrated and legal elites are aligned to the ruling coalition, what I have previously termed *constrained coordination* will result, with legal accountability efforts being confined precisely to those with lesser power. Finally, if legal actors are aligned to those in

⁷⁰ It should be noticed, however, that this hypothetical scenario has an extremely low probability of taking place. If the political system is truly dominated by a quasi-monopolistic group or coalition, it is unlikely that the resulting political appointees to the system of justice will be of various different political parties as this illustration suggests. Instead, they will more likely all belong to the same party of the ruling coalition.

power and political pluralism is high, then it is likely those in power will be both temporary and less capable of controlling legal accountability efforts. Over time, this dynamic is then likely to approximate what I have called *coordinated autonomy*, with legal actors increasingly stepping out of their strict partisan affiliations and/or being frequently replaced by new appointees, as new groups alternate in elected positions.

The partisanship of legal actors, furthermore, can itself be seen as a form of low institutional autonomy, limiting the resulting dynamics to only the *constrained coordination* and the *limited differentiation* scenarios discussed above. Yet, I would not go to that extreme. While the practice of appointing political affiliates to key positions in legal accountability institutions does open the door to political maneuvering, some of these appointees end up acting with a substantial degree of independence from the parties that appointed them and are even allowed to remain in office after they do so. To provide a brief example close to home, former U.S. attorney for the Northern District of Illinois Patrick Fitzgerald was appointed in 2001 by a Republic president (George W. H. Bush) with a Republican sponsor (Senator Peter Fitzgerald, unrelated). Still, this did not prevent him from indicting the equally Republican state governor George Ryan in 2003, ending up in a sentence of six and a half years in prison. By the same token, this did not prevent Patrick Fitzgerald from remaining in office for almost eleven years until he decided to leave, long after his appointer had left office. True, part of Fitzgerald's autonomy came from the fact that he was a federal prosecutor targeting state- and local-level corruption. Still, this story does not fit a strict partisanship narrative. That said, I do not deny that the partisanship of legal actors may play a role in this realm. This is surely possible and even likely in some contexts. My sole claim is that even the relationships emerging from the partisan affiliation of legal accountability actors can be better understood through the lenses of the pairs of concepts – respectively, political pluralism

and institutional autonomy, legal mobilization and inter-institutional coordination – and the resulting typology advanced here.

Political Culture and Public Support for Courts. A third category of alternative and additional explanations concerns the relationship between the judicial system and a broader set of values of the political community exhibits. Accordingly, “a relatively simple explanation for cross-country differences in policy regimes is the catchall category culture,” as Lieberman (2009, 8) correctly points out. Paraphrasing him, I would note that one could just as easily conclude that polities with “modern” political cultures would exhibit “impersonal” or “rational-legal” attitudes or values, in turn being more likely to have independent, professionalized and responsive courts.⁷¹ If that is the case, “the proposition would be true by definition. It would be a tautology” (ibid). That is, defining, operationalizing and comparing the influence of different cultures on political and judicial outcomes is a rather difficult task, largely because culture is often treated as an all-encompassing category that conflates explanations and outcomes.⁷² To paraphrase Lieberman once again, if I were to take a narrower approach and define culture as the attitudes legal actors display towards overseeing, investigating, prosecuting and adjudicating corrupt officials, the

⁷¹ To return to the example of Illinois, hardly anyone would object that it is a state that exhibits a “modern” political culture outlook as compared to most countries or polities in the world, especially when compared to a country like Brazil. Yet, the nearly complete absence of initiatives at state-level legal accountability institutions in Illinois to curb political corruption in the state or in its cities cannot be explained in reference to this alleged culture. The reason for this state of affairs becomes clearer in light of the strong ties the state’s attorney general has with the Democratic party and its political machine in the state.

⁷² The focus on culture approximates the argument on the existence of a “rights” or “legal consciousness” among the population or affected groups as a condition for expanding the scope of individual rights (e.g., Merry 1990, McCann 1994, Epp 1998, Silbey 2005, Patterson 2008, Vanhala 2011). Still, corruption is not a matter of rights as abortion or desegregation. Instead, it is a matter of the public duties and their violations. Thus, as much as civil society groups and the media may be concerned with the issue of corruption and may even help exposing potential acts of misconduct, ultimately the investigation and prosecution are in the hands of public agents, not of private litigants. Those actors may even help expanding the autonomy and coordinative capacities of legal accountability institutions by multiplying the sources of support for court decisions. Still here, political pluralism and legal mobilization better reflect this dynamics. Finally, I do not deny that something like “political culture” does exist, only that it remains to be seen how such an overly aggregate concept could do a better job at explaining political outcomes than other less ambitious categories. Lack of specificity is a common complaint in culture-driven explanations in comparative politics, given the several meanings – at times contradictory – the term “political culture” entails. For a review of how different and potentially confusing explanations centered on this concept may be, see Wilson (2000a).

resulting measures would still be so close both to the outcome of interest and to my explanatory variables that they would not only be tautological, but also of little help to uncover why judicial responses to corruption vary at all (see Lieberman 2009, 57). That is, an approach focused on culture alone seems more ambiguous and less clear than one addressing the topic from the angle of the different disaggregated elements discussed here.

The same thing happens for notions like *organizational culture*, which could be intuitively useful to address the workings of courts, prosecution offices, and oversight agencies. Still, I believe it is more useful to unpack such a vague concept into various of its elements – i.e., how active the actors of each legal accountability institution effectively are on the issue of corruption, how they perceive their roles in regards to legal accountability, which type of professional identities they project, how they organize the internal work of these institutions, how they perceive the work of other proximate institutions, etc. The focus on organizational culture, additionally, suffers from a problem inherent in the cultural approach, being overly static. It barely addresses *change*, which is precisely one of the interesting elements of the cases examined here.

A similar common explanation for variation in the political weight of courts is the level of trust and support they enjoy from the general public (Caldeira and Gibson 1992, Gibson, Caldeira and Baird 1998, Vanberg 2000, 2001, Staton 2004, 2010). This affects particularly my notion of institutional autonomy, since elected officials would avoid confronting legal actors in light of a potential political (especially electoral) backlash. From a theoretical perspective, I do not object this point. I only highlight that judiciaries generally enjoy greater support and trust from the general public than do the elected branches of government. This is true for Brazil as it is for most democracies. An explanation focused on this continuous support, consequently, fails to address why judicial assertiveness varies across space and time.

Another option would be examining public support for anti-corruption judicial activity on a case-by-case basis, following the different attention each alleged case of corruption receives. There are, however, a few problems with this approach. A critical one is that the direction of causality is not clear. Because corruption is secretive by definition, it needs first to be detected before any public attention can be drawn to it. Such detection, in turn, may result precisely from the work of oversight, investigative and prosecutorial officials, who could perhaps be pursuing public attention in the first place as a result of their efforts. That is, instead of increased public support on a specific case causing judicial assertiveness to increase, it could just as easily be the other way around, with legal actors driving public attention due to their diligent work. A different scenario may also be true, with legal actors simply preferring to avoid the spotlight these cases generate. Thus, while public support may indeed help to account for how a few *episodes* of legal accountability unfold, it does not seem reasonable to suggest that such a case-by-case approach would address systemic differences of judicial responses to political corruption, accounting for variation of hundreds of convictions spanning years of judicial activity.⁷³

Perhaps more critically, most of the “cultural” and “public-support” related variables are largely controlled for in this research. Starting by the former, as the next chapter will make clear, public support for the courts of Rio Grande do Sul, Minas Gerais and Bahia has been nearly identical for the period, and therefore cannot account for the observed differences in legal accountability results. In a similar sense, the subnational design advanced here controls for a variety of shared cultural traits, including language, religion (predominantly Christian and Catholic), and legal

⁷³ Additionally, I would also argue that public support for judicial activity also seems to be an overly aggregate variable. That is the case because it tends to conflate the sources of institutional autonomy and inter-institutional coordination of which I have talked about previously. In other words, just like with political culture, different levels of political pluralism and legal mobilization can both be seen at the same time as results and causes of public support for judicial activity in this regard, helping little to unveil the specific mechanisms that account for different legal accountability performances and outcomes.

traditions. True, Rio Grande do Sul, Minas Gerais and Bahia are not identical in all cultural aspects. They do differ, for instance, on the origins of the immigrants they received and the current ethnicity of their populations. Such differences, though, should only matter for the purposes of this research to the extent that (i) they are activated to generate politically relevant categories rather than mere social conditions, *and* (ii) they are not captured by any of my proposed variables, *and* (iii) if they truly affect the outcome I intend to explain (variation in criminal conviction rates of mayors). Only if these conditions are satisfied, would we need to be concerned with the cultural differences among the three states examined here and it is not at all apparent that this is the case.⁷⁴

Judicial Corruption. Courts need not only fight corruption, but may also engage in it. In effect, there is a large body of literature on the issue of judicial corruption (e.g., Ríos-Figueroa 2006, 2012, Due Process of Law Foundation 2007, Transparency International 2007, Bond 2008). The relationship between judicial corruption, on the one hand, and institutional autonomy and inter-institutional coordination, on the other, is a dynamic one. As some authors point out, if the judiciary is highly independent, it may become itself corrupt, an observation that is valid for all other legal institutions. In other words, a completely independent judiciary, prosecution office, or oversight agency “could increase corruption because it would add an additional unchecked veto point that would have an incentive to engage in corruption” (Ríos-Figueroa 2006, 133).

⁷⁴ For instance, even in the domain of the ethnic composition of the populations of Rio Grande do Sul, Minas Gerais and Bahia, in which there are indeed differences, these do not seem to be a determinant category in the political lexicon in none of the three states. Brazil, in effect, has been portrayed as ethnically plural, but porous or fluid in this regard, standing in clear contrast with other countries in which such boundaries are much more institutionalized or clearer, like the United States, South Africa, and India (see Lieberman 2009). Still, even if these categories migrated to the realm of politics, they are just as likely to be better reflected into (and be captured by) my categories of political pluralism and legal mobilization. Finally, one of the only cultural categories that stand out, particularly in Rio Grande do Sul, is regionalism (Love 1971, Cortés 1974, Oliven 1996). Even here I frankly do not see how it could possibly affect mayoral conviction rates. In other words, the few existing cultural differences among these three states are unlikely to account for the observed variation in the dependent variable.

However, there is another important meaning of the notion of institutional autonomy that yields a different effect. Often referred to as “judicial impartiality” in court studies, it takes place “at the level of the case” and concerns the distance legal actors should maintain from the parties of each case they adjudicate, prosecute, or oversee, including those potentially corruptive of them (see Scheppele 2002). If this type of autonomy is high, consequently, it will not contribute to increase corruption but will also help fighting it.⁷⁵ Critically, this implies that only legal accountability institutions that are relatively free from corruption can fight it sustainably in other branches or spheres of government. If some of their members are deemed corrupt, courts, public prosecution offices, and oversight agencies will hardly be effective in bringing corrupt politicians to justice. Those taking bribes to declare politicians innocent or colluding with them will undermine the possible anti-corruption mobilization of others, thereby discrediting the institution and rendering it vulnerable to attack. This suggests, in turn, that these two dimensions – judicial corruption and judicial anti-corruption activity – are largely endogenous to each other.⁷⁶

Not accidentally, levels of judicial corruption and of mayoral convictions in Brazil are inversely related to one another in the three states selected for this research. Accordingly, Rio Grande do Sul exhibits the highest levels of mayoral convictions and the lowest levels of judicial corruption (one quarter of the national average). Bahia, in turn, has the lowest levels of mayoral convictions and the highest levels of judicial corruption (two times above the national average), with Minas Gerais in-between the two other states for both indices, but still better than the national average

⁷⁵ If one takes this conception of independence into account, it becomes clear that high levels of it are consistent with less judicial corruption, not more. By the same token, courts can be almost completely independent and not become sources of corruption as long as they are transparent as well.

⁷⁶ That is the case because legal accountability demands institutions that are open and willing to expose themselves to others in order to enhance coordination. This, in turn, presupposes an environment of trust among peers (i.e., of colleagues within an institution) and of credibility to the outside (i.e., the institution is perceived as relatively honest and trustful by proximate institutions). The cleaning of the institutions of the system of justice, thus, may take place either before or during increases in legal accountability efforts.

on judicial corruption (approximately one quarter below it).⁷⁷ In other words, judicial corruption is largely endogenous to both political pluralism (which increases transparency and, thus, judicial accountability) and legal mobilization (i.e., anti-corruption initiatives seldom emerge in corrupt agencies, except to start an internal clean-up process before moving to other directions).

Economic Development and Judicial Capacity. A variable that is constantly highlighted in the existing studies addressing differences in levels of perceived and experienced corruption across polities is the level of human and, very especially, economic development.⁷⁸ While the specific mechanisms by which the level of wealth inversely affects corruption levels remain unclear, one could perfectly suggest that one such mechanism is the increased availability of resources to the institutions of the judicial system, which makes them work more efficiently.⁷⁹ Judicial capacity, hence, is a reasonable explanation as to why courts acquire greater political assertiveness in the anti-corruption domain. If so much relies on the case-handling capacities of legal accountability agencies to detect, investigate, prosecute and try cases of corruption, then it is plausible that such capabilities will influence how judicial responses to corruption unfold. That is, just as support structures are critical for sustained legal mobilization efforts, so are the resources available to legal accountability institutions in this domain. At the same time, the cases examined here highlight that capacity on the specific issue of corruption was largely developed as a function of the interplay between institutional autonomy and inter-institutional coordination, not the other way around. That is, the capacity of the various anti-corruption agencies emerged or failed to

⁷⁷ This data was collected by Matthew C. Ingram for 2006 from the *Corregedoria* (equivalent to Internal Affairs) of the *Conselho Nacional de Justiça* (CNJ, or National Council of Justice), including actions against judges for excessive delays and requests for disciplinary action. This data was obtained via personal communication with the author, whom I thank for his interest and help, in February 1, 2013, and is used here with permission.

⁷⁸ For instance, the importance of the variables related to economic and human development is stressed in the extensive review of the topic by Treisman (2007).

⁷⁹ Another mechanism by which levels of economic development could affect legal accountability is by multiplying sources of information and ultimately diversifying political groups, as in traditional version of modernization theory. Yet, such measures would coincide with (and be better captured by) political pluralism and institutional autonomy.

improve as a result of how much political latitude and mobilization judges, public prosecutors, and oversight officials had on the particular issue of corruption. Not surprisingly, abstract measures of judicial capacity do not differ much among the three cases examined here in reference to budget, personnel, and the like. It was how the existing resources were mobilized by the existing legal actors and the absence of political constraints they enjoyed that mattered most.

Other Legal Accountability Stages. As abstract as my typology and categories are, they account only for four stages of the legal accountability framework detailed previously, from detection to adjudication. Hence, it ignores everything that comes either before or after it. The earlier stages of legal accountability – *legislation* and *potential incidence* – can surely affect the capacity of the judicial system to hold public officials legally accountable.⁸⁰ Yet, my case selection controls for both of them, as I detail in the next chapter. As for the legal accountability stages coming after adjudication (appeals, implementation of judicial decisions, etc.), my case selection also controls for them. Because I examine how criminal cases brought against mayors are tried before the state courts of appeals of Rio Grande do Sul, Minas Gerais and Bahia, appeals of such cases can only be made to the same national high courts, the STJ and the STF, implying that all three states are equally subject to their jurisdictions and relatively homogenous positions. Similarly, because these appeals affect the capacity of the state courts to implement their decisions, this stage too is controlled for as a function of those appeals. This means that I can concentrate my attention on judicial behavior, and understand it as a function of all state-level institutions responsible for the detection, investigation and prosecution of mayoral irregularities, depending on how autonomous and coordinated they are. That is, I surely do not claim that all these other stages – coming before and after the ones examined here – do not matter. To the contrary they do matter and surely

⁸⁰ The study by Sousa (2002), comparing Britain, France and Portugal, for instance, abundantly demonstrates how differences in legislation matter in this domain.

affect how judicial responses to corruption take place. It is my design that helps me avoid them, as I will detail in the next pages.

CHAPTER 3. SPECIFYING THE RESEARCH DESIGN

3.1. Introduction: Learning from the Prosecution of Mayors in Brazil

Gaining international prominence due to a corrupt mayor was probably not one of the ambitions of the small seashore municipality of Cidreira, in Brazil's southernmost state of Rio Grande do Sul. Yet, this was precisely what happened. In August 2000, a series of articles by journalist Andrew Downie became news in various U.S. newspapers detailing how the city's mayor, Elói Braz Sessim, had been sentenced to thirteen years in jail for misappropriation of public funds and bribe-taking.⁸¹ While in the city hall in the early 1990s, Sessim became notorious for contracting overpriced superfluous public works, the most well-known of which was the *Sessinzão*, or "Big Sessim," as it was popularly nicknamed a soccer stadium inaugurated in 1995. Constructed for a city that had no sports history nor professional team to play in it, the stadium had the capacity to sit two times the entire city's population of 8,000 people (at that time), and held only nineteen official matches after its opening.⁸² While it may be difficult to see the benefit of such work for the community, this was surely not the case from the mayor's perspective. Above all, it meant an opportunity to demand bribes from contractors who otherwise would not get paid by the city hall for their services, a crime for which mayor Sessim was eventually convicted after one contractor refused to pay and reported him to the authorities. Still standing today, the *Sessinzão* became a source of problems to the city, which still owes a debt of approximately three 3 million U.S.

⁸¹ The articles can be found in *The Christian Science Monitor*, *Houston Chronicle* and *San Francisco Chronicle* (see Downie 2000, 2000a, 2000b).

⁸² The stadium is officially called Municipal Stadium Antônio Sessim, named after the former mayor's father. It was projected to seat approximately 18,000 spectators, being one of the largest stadiums in the state of Rio Grande do Sul. Information retrieved from: Zero Hora. 2013. Polêmica no Litoral: Sessinzão à Venda. Esportes, July 11, available at: <http://m.zerohora.com.br/noticias/esportes/a4196880>, accessed in December 10, 2013.

dollars for its construction and has found no practical use for the stadium in past years. More than a symbol of corruption and waste of public resources, though, the *Sessinzão* should serve as a warning of the perils of using large sums to build grandiose public works like, for instance, the sports arenas Brazil is still building for the World Cup of 2014 and the Olympics of 2016.

Clearly, however, the articles published by Andrew Downie in 2000 were not exclusively about Cidreira or Sessim, but used this picturesque case to illustrate what the author then considered to be a trend toward anti-corruption efforts in Brazil. Specifically, the articles noticed that Sessim had been convicted by “a unique court,” which had been established to hear only criminal cases against mayors in the state of Rio Grande do Sul. As a result of this arrangement, one of the articles observes, “112 of the state’s 467 mayors have been found guilty of wrongdoing and expelled from office since 1994” (Downie 2000, 1). About the time mayor Sessim was making news in the U.S., though, another specialized court, very similar to the one of Rio Grande do Sul, was generating a radically different record in another Brazilian state. Downie’s articles do not mention it, but the judiciary of Bahia also established a specialized court in 1996, and several cases were brought to it. Still, not a single conviction had taken place. Clearly, the sole existence of specialized courts does not account for such radically different rates of conviction. So, what does? More importantly, what can such differences reveal, if anything, about the underlying causes of variation in legal accountability outcomes?

Inasmuch as narratives like those of Cidreira, Sessim and a specialized court in Rio Grande do Sul surely constitute informative journalistic accounts, we need to go beyond anecdotes alone if we are to truly learn anything about it and, especially, *from* it. And the only way to be sure that such a localized microcosm will be able to illuminate other cases facing similar challenges is to be clear and strict about research design and methods. The purpose of this chapter is to detail my

choices in the analysis of the cases selected for this research. To this end, in order to uncover why judicial responses to corruption differ, I examine the workings of the judicial systems of the Brazilian states of Rio Grande do Sul, Minas Gerais, and Bahia in the detection, investigation, prosecution and adjudication of crimes of mayors since 1988.⁸³ Within each state, I analyze three institutions: courts, public prosecution offices, and auditing agencies. I assess their individual features, the interaction of these bodies with one another as well as with the elected branches of government on the specific issue of city hall corruption. These, in turn, constitute my units of analysis, detailed in the third section. I close the chapter with a final section detailing my approach to the two pairs of explanatory variables discussed here – i.e., pluralism and autonomy, mobilization and coordination – and how they account for the observed differences in mayoral conviction rates, making clear my methods and operationalization of main concepts.

3.2. Case Selection (I) and Time Frame: Why Brazil since 1988?

Following the tenets of comparative research, my selection of cases is designed to maximize both the internal and external validity of the conclusions of this study. That is, it aims at both ruling out alternative explanations and amplifying the representativeness of its findings (see Lijphart 1971, 1975, Sartori 1991, Gerring 2007). As such, my case selection addresses two interrelated questions: why Brazil, and, within it, why the states of Rio Grande do Sul, Minas Gerais, and Bahia? I will answer the first question in this section and the second question in the next one.

⁸³ As discussed in the previous chapter, I have excluded the legal accountability stages of legislation and potential incidence because my case selection, detailed in the next sections, controls for them and hence allows me to focus on the proper domain of the judicial system and its responses to political wrongdoings.

I argue that research on legal accountability is theoretically interesting in Brazil for two reasons. The first is related to the country's recent record on corruption, which makes it a representative case of this dynamic in new democracies. While the country's economy has grown markedly in the past decades, it still ranks in the middle tier of corruption indexes, remaining close to both the South American and world averages, and performing similarly to democracies as different as South Africa, India, Greece, and Romania, as well as non-democracies like China and Saudi Arabia.⁸⁴ By the same token, Brazil's record on corruption has not changed much over the past two decades, as the generally pessimistic accounts of Geddes and Ribeiro Neto (1992), Fleischer (1997), Weyland (1998), Flynn (2005), Taylor and Buranelli (2007), Power and Taylor (2011), to mention a few from different time periods, all suggest.⁸⁵

Brazil, thus, is neither the worst nor the best country in this regard, and it is also one that has not changed noticeably since its return to democracy in the late 1980s. As such, it is a representative case of relatively high but not overwhelming levels of corruption. Conclusions derived from its analysis can therefore illuminate other countries facing the challenge of bringing corrupt public officials to justice. At the same time, the case of Brazil matters in itself, given the size, economic salience and political weight it exhibits. In effect, theories on topics as varied as transitions from authoritarian rule (O'Donnell and Schmitter 1986), corporatism (Schmitter 1971, 1974), and participatory democracy (Baiocchi 2005, Avritzer 2009, Pateman 2012), to mention a few, have either been built from the analysis of Brazil or identified it as a paradigmatic case. Subnational

⁸⁴ For instance, in the Corruption Perceptions Index by Transparency International, Brazil scored forty-two out of one hundred for the year of 2013, which was nearly identical to both the world and the South American averages, which equal forty-three and forty-one, respectively. Strictly speaking of its continent, Brazil slightly outperforms some of its neighbors (e.g., Argentina, Colombia, and Peru) but is clearly below others, especially Chile and Uruguay. Data available at: <http://www.transparency.org/cpi2013/results>, accessed in December 3, 2013.

⁸⁵ Brazil averages thirty-seven for the entire 1995-2013 period, which is identical to the South American average and a bit lower than the world average of forty-five for the same period. Data calculated by the author based on information available at: <http://www.transparency.org/research/cpi/overview>, accessed in December 3, 2013.

research in Brazil, in turn, can help illuminate other nations even more so because, although they are subnational entities, the states examined here have populations, territorial size, levels of wealth and democracy similar in their magnitudes and dilemmas to many *countries*.

The second and much more critical reason why research on legal accountability is theoretically interesting in the country relates to Brazil's criminal and anti-corruption legislation, which is exclusively national. While Brazil is federative system, it does not allow its states to legislate on the topic. Criminal law and procedure, hence, are identical for the country as a whole. The bulk of the *enforcement* of these laws, however, is performed by state-level judicial systems, which also share various similarities across the entire country. As Macaulay points out,

“Brazil is unusual in combining a highly centralized legal framework with a strong federal system of government. Unlike many other federal countries, penal law and procedure, as with other areas of law, are unitary, legislated at the national level and applied across the entire country. The key structural attributes of the justice system are determined by the federal constitution. Consequently, in terms of overarching institutional architecture, the criminal justice systems of the twenty-six states and the federal district are virtually identical ... However, day-to-day management of the courts, public prosecutorial service, police, and prison services is decentralized and delegated to the state-level political authorities. This means that the control of the criminal justice is fragmented. It also means, importantly, that different *branches* of government exert influences at distinct *levels* of government” (2011, 226, emphasis in original).

What looks like an unusual arrangement actually provides an interesting research opportunity. Because legislation on corruption is a constant and not a variable, it simply does not explain why conviction rates on corruption differ so much across Brazilian states. *Subnational* research in the country, thus, rules out two explanations for legal accountability results: the corrupt acts defined as unlawful, and the procedures deployed to sanction them. Accordingly, criminal legislation applicable to mayoral corruption in Brazil includes primarily three statutes: decree-law n. 2.848 of 1940, which establishes the country's criminal code and dedicates an entire section to “crimes against public administration” (between articles 312 and 359), updated by various laws since its

enactment; decree-law n. 201 of 1967, which specifically defines mayoral crimes; and law n. 8.666 of 1993, on public procurement. Combined, these three pieces of legislation account for roughly three quarters of all crimes attributed to mayors ending up in Brazilian courts.⁸⁶ They encompass practices such as embezzlement, bribe-taking, dispensing with competitive bidding absent proper requisites, nepotism, and other forms of misuse of public power for private gain. The sanctions applicable to each of these crimes vary, but can yield sentences up to twelve years of prison, fines, removal from office, and ineligibility for up to five years, if convicted.

At the procedural level, the rules are also identical for the country as a whole. They concern the rule of *foro privilegiado*, or privileged jurisdiction, as defined in Brazil's 1988 constitution and detailed in law n. 8.038 of 1990. This rule grants several public authorities special standing in the courts, a privilege that is extended to all other individuals accused of the same crime.⁸⁷ Similarly, the guidelines of decree-law n. 3.689 of 1941, which establishes the country's code of criminal

⁸⁶ Estimate based on data provided by the prosecutors' offices of Rio Grande do Sul, Minas Gerais, and Bahia, on file with author. To a minor extent, other laws on mayoral corruption include: law n. 7.347 of 1985, for failure to collaborate in prosecutorial investigations on civil cases of administrative improbity; law n. 6.766 of 1979, on illegal urban subdivisions; law n. 4.898 of 1965, for malfeasance; law n. 8.137 of 1990, on tax crimes, among others.

⁸⁷ According to the article 102 of the Brazilian constitution, apart from the cases subject to impeachment by Congress, under *foro privilegiado* the STF tries cases in which the accused includes the president of the country, the vice-president, members of Congress, its own justices, and the prosecutor-general. The STF also tries all criminal cases in which the accused are ministers of state, heads of the armed forces, members of other high courts or of the national auditing agency, and chiefs of permanent diplomatic missions. According to the article 105, the STJ tries cases in which the accused includes appellate judges, members of state auditing agencies, and public prosecutors acting before appellate courts, as well as state governors unless they are subject to impeachment by their respective state assemblies. In accordance to article 108, federal appellate courts try cases in which the accused include federal, labor and military judges as well as federal public prosecutors under their jurisdictions. Mayors, in turn, are tried in the state courts of appeals, in accordance to the article 29 of the Brazilian constitution, with a few exceptions, as I will detail below. Other authorities may be granted this privilege in state constitutions. Typically, this involves state representatives, secretaries, prosecutors and judges, who enjoy privileged jurisdiction for the cases tried against them directly in the state appellate courts, as defined for mayors in the national constitution. Importantly, the law n. 8.038 of 1990 defines procedures for the trial of public officials before the STF and STJ under the *foro privilegiado* rule, but also applies to all other authorities enjoying this privilege, as defined in law n. 8.658 of 1993. Finally, the *foro privilegiado* rule implies that this privilege is *not* only limited to the public officials involved in that case. In fact, all other individuals involved in that same case come to enjoy this privilege as well. As such, if a single public official is involved in a case, all other individuals accused in that same case (as many as they may be) have a right to *foro privilegiado*. For instance, if a mayor is accused of fraud in procurement procedures alongside one of his municipal secretaries and the owner of a business company, all of them are going to be tried before a State Court of Appeals – i.e., the case is *not* split between a higher court for the mayor and a lower court for the two other involved. This is the *princípio da conexão*, or connection principle (see Taylor 2011, 182, fn. 20).

procedure, also apply to all Brazilian courts identically. The final interpretation of these laws, in turn, lies with the national high courts (the STF and the STJ) so that state-level judicial systems operate within the limits equally imposed to all by their rulings. Finally, the guarantees enjoyed individually by judges, prosecutors, and senior auditors (mode of selection, wages, tenure in office, etc.) are also fairly uniform across the country, also deriving from national legislation.⁸⁸

All these similarities, in turn, rule out various alternative explanations that are often hard to control for in comparative corruption research, including the content of criminal legislation and the individual autonomy enjoyed by law enforcement personnel. The research design avoids these problems and helps to focus on variables critical for this research: political pluralism and institutional autonomy, legal mobilization and inter-institutional coordination. As Macaulay notices, law enforcement officials at the state-level in Brazil “operate within the structures of the state governments, act largely autonomously of their federal counterparts (and often of each other), and are frequently heavily influenced by essentially local political factors” (2011, 219). It is in reference to such “local political factors” that I develop my explanation on the variation of judicial responses to corruption across such states. This design thus resembles that of Putnam’s (1993) study on the civic engagement and government performance in Italian provinces, focusing on within-country variation.⁸⁹ All these elements, in turn, maximize internal validity, a direct benefit of subnational research in general (Snyder 2001), which I use to advance theories of judicial politics following a group of scholars on the topic (e.g., Epp 1990, Trochev 2004,

⁸⁸ This follows from the organic law of the national judiciary (supplementary law n. 35 of 1979) and the organic law of the national public prosecution office (law n. 8.625 of 1993), respectively, as well as the country’s constitution, which regulates the topic. Similarly, since 2004, judges and public prosecutors all abide by the rules of their national governing bodies – the *Conselho Nacional de Justiça* (CNJ, or National Council of Justice) and the *Conselho Nacional do Ministério Público* (CNMP, or National Council of the Public Prosecution Office) – which were both created by the constitutional amendment n. 45 of 2004, the so-called “reform of the judiciary.”

⁸⁹ Examples of other studies that have adopted the same design of explaining within-country variation include those by Kalyvas (2006), Tsai (2007), and Wilkinson (2004), respectively on Greece, China, and India, concerning topics as different as the interplay between violence and elections, the provision of public goods, among others.

Shambayati 2004, Beer 2006, Chávez 2007, Ingram 2009, 2012, Castagnola 2012). Brazilian subnational research on the judicial politics of corruption, thus, maximizes both the internal and the external validity of the findings of this study.

Finally, while various laws discussed in the previous above were passed well before the current Brazilian constitution was issued, I choose the year of its enactment, 1988, as the starting point of this research.⁹⁰ Although the courts enforce laws that were enacted prior to it, the 1988 constitution lays down the foundations of the country's current democratic regime. That is, it marks Brazil's return to democracy after over twenty years of military rule since 1964 and the end of the transition from authoritarianism in the early 1980s. Given my theoretical concern with judicial responses to corruption in minimally democratic regimes, I limit my analysis to precisely the recent democratic period in Brazil. It was also the 1988 constitution that made clear that mayors enjoy special standing in the courts, a rule that was applicable to a more limited set of authorities earlier. Similarly, there are nearly no cases of legal accountability before 1988. That was so not only because Brazil was not a democracy but also because the prosecution office was until then part of the executive branch of government, remaining firmly under its control during the years of authoritarianism, something that changed in 1988 as well. As for its upper time limit, this research includes data up until mid-2013, when most fieldwork took place.

3.3. Case Selection (II): Why the States of Rio Grande do Sul, Minas Gerais, and Bahia?

It would not be feasible to compare with the necessary depth all twenty-six Brazilian states and the federal district. The resulting analysis would either take too long or be too shallow. As such,

⁹⁰ Importantly, the choice of a research's time frame should also be explicit and follow the rules of case selection, given that it refers to the choice of the "temporal units" for the purposes of comparison (see Bartolini 1993).

prioritization is in order. The reasons for my choice of the states of Rio Grande do Sul, Minas Gerais, and Bahia are detailed right after the table summarizing data about them (see Table 3.1.).

Table 3.1. Descriptive Statistics of Three Selected Brazilian States

	<i>Rio Grande do Sul</i>	<i>Minas Gerais</i>	<i>Bahia</i>
Criminal Convictions of Mayors			
1988	0	0	0
1995, cumulative*	43	0	0
2000, cumulative*	129	18	0
2005, cumulative*	216	28	1
2012, cumulative*	340	149	6
Number of municipalities			
1988	244 (5th)	722 (1st)	367 (3rd)
1996 onwards	497 (3rd)	853 (1st)	417 (4th)
Population			
1991	9,138,670 (5th)	15,743,152 (2nd)	11,867,991 (4th)
2010	10,695,532 (5th)	19,595,309 (2nd)	14,021,432 (4th)
Average population per municipality			
1991**	37,453	21,804	32,337
2010	21,520	22,972	33,624
Gross Domestic Product (GDP)			
1995	US\$ 49 billion (4th)	US\$ 60 billion (3rd)	US\$ 26 billion (6th)
2010	US\$ 143 billion (4th)	US\$ 199 billion (3rd)	US\$ 87 billion (6th)
GDP per capita			
1995	US\$ 5,143 (4th)	US\$ 3,609 (10th)	US\$ 2,112 (19th)
2010	US\$ 13,418 (5th)	US\$ 10,193 (9th)	US\$ 6,257 (19th)
Municipal Human Development Index			
1991	0.542, low (5th)	0.478, very low (10th)	0.386, very low (22nd)
2000	0.664, medium (4th)	0.624, medium (8th)	0.512, low (23rd)
2010	0.746, high (6th)	0.731, high (9th)	0.660, medium (22nd)
Classification of the political system (1982-2002)			
Public trust in the judiciary (2011-2012)	5.6/10	5.5/10	5.4/10
Average number of serious irregularities per city in federal audits (2006-2009)			
Index of state corruption (1998-2008)	0.051 (0-1 scale)	0.194 (0-1 scale)	0.415 (0-1 scale)
Percent of federal representatives charged with corruption			
	0.21	0.34	0.26

Sources: For criminal convictions of mayors, see Appendix III; for the number of municipalities, Tomio (2002); for population, gross domestic product, and gross domestic product per capita in 2010, IBGE (2012), where R\$ 1,00 = US\$ 0,50; for population, gross domestic product and gross domestic product per capita in 1995, Fundação João Pinheiro (2010), where R\$ 1,00 = US\$ 1,00; for municipal human development index: <http://www.pnud.org.br/IDH/DH.aspx?indiceAccordion=0>, accessed December 12, 2013; for classification of state political systems, Borges (2007, 2008, 2011); for trust in the judiciary, FGV (2013); for number of irregularities in federal audits, Vieira (2012); for index of state corruption, Boll (2010); for federal representatives charged with corruption, Sardinha and Guimarães (2012).

* Total number of criminal convictions of mayors and former mayors, cumulative for the previous years until December 31 of each year (i.e., 1995, 2000, 2005, and 2012).

** Calculated based on the number of municipalities existing in 1988.

First of all, each one of these states has a substantive number of municipalities and hence of city halls, which helps controlling for the potential incidence of mayoral corruption, so that the latter does not account for the variation in conviction rates. Accordingly, the total number of city halls in Rio Grande do Sul jumped from 244 to almost five hundred between 1988 and 1996, when new rules were approved that limited the emancipation of new municipalities, remaining at the latter number since.⁹¹ The total number of city halls in Minas Gerais, in turn, remained above seven hundred for the entire period, peaking at the national maximum of 853 municipalities since 1996. In Bahia, finally, the overall number of city halls changed little, ranging between 367 and 417, but is still among the largest in the country. In effect, since 1996, these have been three out of the four Brazilian states with the highest number of municipalities and city halls. The similarly large available “stock” of potentially corrupt mayors for each of these three states, therefore, simply does not account for the radically different observed conviction rates.⁹²

Likewise, the states with higher mayoral conviction rates do *not* exhibit higher levels of potential mayoral corruption, so that the latter does not explain the former. Still, given that there are no direct measures of subnational corruption in Brazil, I have to rely on the following three indirect ones. First, there are audit reports of city halls by the *Controladoria-Geral da União* (CGU), a federal anti-corruption agency established in 2003. Data of these inspections have the advantage of addressing a large number of municipalities throughout the entire country selected them

⁹¹ The new rules included an amendment (n. 15, of 1996) to the Brazilian constitution, which established more rigid rules for municipal emancipations. For excellent analyses of this process, see Tomio (2002, 2002a). The case of Rio Grande do Sul, additionally, also exhibited the largest proportional increase in the number of new municipalities in the country, apart from entirely new states like Tocantins, also as examined by Tomio (2005).

⁹² Considering that each municipality has a mayor elected every four years and that reelection only came to be allowed in the mayoral elections of 2000 onwards (due to constitutional amendment n. 16, of 1997), if we arbitrarily define a perfect reelection rate of one hundred percent for the elections after that year, these three states provide each a large poll of potentially corrupt mayors, respectively at least 1482 in Rio Grande do Sul, 3150 in Minas Gerais, and 1568 in Bahia. These data, however, are only a gross approximation of the minimum until the year 2012, given that several mayors were not reelected in each of these states and that vice-mayors took office during elected mayors’ terms because the latter ran for other elective positions while in the city hall, among others.

randomly through public lotteries, thus avoiding selection bias. The data has also the advantage of being relatively independent from the cases examined in this study, since these inspections audit the use of *federal* funds and their misuse results in prosecution in federal courts, not state ones. These data largely confirm my expectations that corruption does not account for conviction levels across these states. Based on the data collected by Vieira (2012) for the audits performed from 2006 to 2009 by the CGU, municipalities inspected in the state of Bahia yielded an average of 12.91 *serious* irregularities – i.e., those deemed clearly unlawful – as compared to the roughly similar records of 2.45 per city in Minas Gerais and 2.89 per city in Rio Grande do Sul. These data, though, should be read with care, given that it covers only the recent period – after 2006 – and, hence, does not account for the greatest parcel of the time examined in this study.⁹³

Second, Boll (2010) has calculated an “index of state corruption” in Brazil from the number of irregularities identified by another auditing agency, the *Tribunal de Contas da União* (TCU). Relying on the *Cadastro de Contas Irregulares* (or Database of Irregular Audits) of the TCU, his index takes into account both the incidence of irregularities and their amounts, controlling for the population of the states and normalizing averages for the entire period from 1998 to 2008. As in the previous measure, the data also has the advantage of being relatively independent from the

⁹³ Another reasons why data from the CGU audits should be read with care is the following. Although the selection of the municipalities to be audited is random, there is reason to believe that the elaboration of the audit reports may not be as transparent. Two interviewees (#74 and #75) from CGU argued that the reports initially prepared by its agents are indeed largely unbiased. Yet, before the reports are made public, many would be “softened up” to minimize irregularities or have their publication delayed in order to avoid problems to mayors affiliated to political parties belonging to the federal governing coalition. That would be the case because the CGU is an agency of the federal executive branch and its reports may be submitted to such controls. Still, a rigorous statistical analysis showed that “mayors with more political power, those affiliated with higher levels of government ... did not receive preferential audits” (Ferraz and Finan 2008, 705). At the same time, mayors who are politically affiliated with the federal government actually may feel freer to produce a greater number of irregularities precisely because of their greater political clout. So, rather than having more favorable reports, what they may want are less rigorous ones in order to balance out their greater hunger for public resources. In other words, because they would enjoy protection of the federal government, they would have an incentive to perform more wrongdoings. Thus, the auditors would find their (greater number of) irregularities, but before the audit reports are released, they would be toned down. And the result of such toning down may precisely be the one found by Ferraz and Finan (2008) in which no differences exist between mayors belonging to political parties affiliated or not to the federal governing coalition.

cases analyzed here, since these are also audits of the use of federal funds. Another advantage is the longer period of time covered in his index, which spans over ten years. The disadvantage is that it does not distinguish between irregularities of state- and local-level institutions. Likewise, not all detected irregularities resulted from random audits. Still, the findings largely confirm my expectation that the levels of incidence of corruption do not account for the variation in convictions. Rio Grande do Sul exhibits the lowest corruption score and Bahia the highest, with Minas Gerais in-between the two.

Third and final, another indirect and probably less reliable approach looks at political officials other than mayors who had been charged with corruption over the past few years. A survey with congressmen by Sardinha and Guimarães (2012) which included these three states suggests that differences in corruption levels do not explain differences in convictions. In effect, Rio Grande do Sul exhibits the lowest percentage of its federal deputies and senators with criminal actions brought against them – twenty-one percent – as compared to roughly thirty-four percent in Minas Gerais and twenty-six percent in Bahia.⁹⁴ All in all, therefore, the available evidence suggests that the three states examined in this study exhibit corruption levels that simply do not explain their mayoral conviction rates.

From a wider angle, Minas Gerais, Bahia, and Rio Grande do Sul also share other characteristics that control for potential confounders, roughly exhibiting a similar average population per city, close to the national average of approximately 34,000 inhabitants per municipality. In turn, they

⁹⁴ The data Sardinha and Guimarães (2012) shows that out of the 31 federal representatives and three senators of the state of Rio Grande do Sul, seven of them had been formally indicted in a court of law (20.58 percent). In Minas Gerais, out of 53 federal representatives and three senators, 2 of the latter and 17 of the former had been indicted (or 33.92 percent of the total). Finally, in the state of Bahia, eleven federal representatives over 39 representatives and three senators had been indicted (or 26.19 percent). As with the previous measure, these data should also be read with care, given that the number of congressmen who were mentioned in investigations at the Brazilian Supreme Federal Tribunal dropped significantly after 2003 (see Hiroi 2013).

represent each of the three most populous regions in which the country is officially divided – i.e., Southeast, Northeast, and South, respectively – thereby introducing some representativeness of regional variations. The choice of these states, thus, allows me to focus more on cases that offer a greater potential for generalizing for the country as a whole, avoiding the particularities of the well-known states of Rio de Janeiro and São Paulo, which receive most scholarly attention but exhibit a host of exceptionalities given their prominent status.⁹⁵ The large size of my selected states, moreover, is related to the equally large size of the bureaucracies responsible for bringing municipal officials to justice, as I will detail in the upcoming section. Courts, public prosecution offices, and auditing bodies in Rio Grande do Sul, Minas Gerais, and Bahia, in effect, are among the largest – in reference to budget, personnel, etc. – in Brazil.

Finally, these states were chosen because they exhibit changes over time encompassing all four ideal-types displayed in my typology, both illustrating and allowing the verification of my findings. Thus, more than three cases (i.e., one per state), my research reveals transformations in each of them spanning over all types of legal accountability performances discussed previously. Accordingly, the courts of Rio Grande do Sul were the first to create a specialized judicial panel on crimes of mayors – the 4^a *Câmara Criminal*, or 4th Criminal Panel, in 1992 – which spurred a wave of changes in other institutions in the state, including the creation of the first specialized division on crimes of mayors in a prosecutors’ office in Brazil, which helped streamline work

⁹⁵ The state of São Paulo, with roughly 42 million inhabitants, yields an average of approximately sixty-four thousand people per municipality, almost twice the national average. The state of Rio de Janeiro, in turn, averages about one hundred seventy three thousand inhabitants per city, about five times the average for the country. The latter is the third most populous state of the country, but most of its inhabitants are concentrated in the metropolitan area of the city of Rio de Janeiro, with its almost twelve million inhabitants. In effect, only ninety-two municipalities exist in this state due to its much smaller area. In contrast to these two states, none of the three states examined in this study possesses a global city or a metropolitan area of national reach, following the classification of IBGE. In addition to the similar average population of their cities (which approximates the national average), Rio Grande do Sul, Minas Gerais, and Bahia possess only one metropolitan area of regional impact and similar size (Porto Alegre, Belo Horizonte, and Salvador, with respectively 4 million, 4.9 million and 3.6 million inhabitants) as well as a few regional centers around cities like Caxias do Sul, Pelotas and Passo Fundo in Rio Grande do Sul, Uberlândia, Juiz de Fora and Montes Claros in Minas Gerais, and Feira de Santana, Vitória da Conquista and Itabuna in Bahia.

with the state's auditing agency. Such remarkable innovations have been widely recognized by the media⁹⁶ and the *Associação dos Magistrados Brasileiros* (AMB, the national association of judges), which even labeled it a “model to be adopted” in the country (2007, 39), but has been surprisingly ignored in the literature.⁹⁷ Its analysis, in turn, highlights how change from what I called *fragmented autonomy* to *coordinated autonomy* can take place.

On Minas Gerais, there was more than one attempt to create a specialized judicial panel like that of Rio Grande do Sul, but it never succeeded. Why? These two states share many characteristics relevant to corruption and judicial activity – from levels of economic and human development, to the popular trust in the courts, to their degrees of political pluralism – that simply do not account for the observed variation in mayoral conviction rates. The comparison between Rio Grande do Sul and Minas Gerais, thus, follows a traditional “most similar systems design” (Przeworski and Teune 1970). The key difference explaining the failure to adopt a specialized judicial panel to try mayors, I claim, is that the judges in Minas Gerais never mobilized as their counterparts in Rio Grande do Sul did to that end. Hence, if anything explains the different rates of conviction of mayors in these two states, it has to do with how inter-institutional coordination emerged as a function of the mobilization (or lack thereof) of legal actors in each state. Minas Gerais, by these terms, represents a persistent case of *fragmented autonomy*, even if attempts to change that did occur during the period covered in this study.

⁹⁶ Accordingly, various articles in newspapers such as *Folha de São Paulo* (Souza 1996), *O Estado de São Paulo* (Albuquerque 1999), and even in the Latin American edition of the magazine *Time* (McGirk 2000) acknowledged and described this pioneer experience in the State Court of Appeals of Rio Grande do Sul, as I will detail in Chapter 4. In effect, attempts by other states to replicate the arrangements of Rio Grande do Sul soon followed, some successfully. The first state to replicate a specialized panel at the court of appeals was precisely the state of Bahia, as I describe in Chapter 6. A specialized division in the prosecutors' office, however, only came into being in 2003. The state of São Paulo – the wealthiest and most populous of Brazil – adopted the arrangements pioneered in Rio Grande do Sul a few years later. The prosecutorial division on crimes of mayors was established in 1995, and the specialized judicial panel emerged only as late as 2007.

⁹⁷ This case was indeed cited in some studies (e.g. Sadek and Cavalcanti 2003, Hudson 2011) but, to my knowledge, no thoroughly analysis about it has been made thus far.

The state of Bahia, thus, was included because between 1996 and 2006 it also had a specialized judicial panel, very similar to the one adopted in Rio Grande do Sul. Yet, the conviction rates of Bahia and Rio Grande do Sul differ sharply. This serves to show not only the limits imposed by the lack of institutional autonomy, but also how formal rules and their usage interact. The mere replication of institutional arrangements is insufficient: without the context and spirit that guided their creation they do not seem to produce the same outcomes. A comparison between Rio Grande do Sul and Bahia highlights precisely this phenomenon. The state of Bahia, in effect, changed from *constrained isolation* in the early 1990s to *constrained coordination* between 1996 and 2007 to *fragmented autonomy* in recent years.

3.4. Units of Analysis: Legal Accountability of Mayoral Corruption by Brazilian States

Within my cases, I examine how three institutions work in the realm of city hall corruption: courts, prosecution offices, and auditing agencies. This poses two questions. The first is why the focus on cases of mayoral corruption and the second concerns the emphasis on the three institutions just cited. My answers to each of these questions are detailed below.

The emphasis on mayoral corruption follows from the fact that the responsibility for enforcing criminal laws on such cases is largely confined to state-level institutions in Brazil. Recalling the *foro privilegiado* rule, it places several officials beyond the reach of the ordinary judicial districts (“*comarcas*”) where most Brazilians accused of crimes are tried.⁹⁸ Article 29, X, of the Brazilian constitution of 1988, nonetheless, defines that criminal cases against mayors should be brought

⁹⁸ Several public officials, in effect, are even beyond the reach of state courts. The majority of federal and state-level officials are tried before the high courts at the country’s capital, Brasília, the STF and the STJ, as I have described in the first section of Chapter 1.

before the *Tribunais de Justiça*, or state courts of appeals. That is, unlike a number of other public officials of the country, the Brazilian states are in charge for overseeing, prosecuting, and judging criminal cases involving the heads of city halls in the country. In other words, the enforcement of *national* laws on mayoral crimes is performed mostly by *state-level* institutions. The choice for criminal cases against mayors thus follows from the research design focusing on Brazil's subnational dynamics on the judicial politics of corruption. However, a few observations are in order before I discuss how such cases are processed.

First, state courts are not the only branch of the Brazilian judiciary responsible for trying mayoral criminal cases. If they involve misuse of federal resources or electoral crimes (vote-buying, irregular campaign contributions, etc.), federal appellate courts (*Tribunais Regionais Federais*, or TRFs) and electoral appellate courts (*Tribunais Regionais Eleitorais*, or TREs), respectively, are in charge of such cases.⁹⁹ These, nonetheless, are relatively narrower possibilities and these federal and electoral courts are both funded by the federal government, being therefore less influenced by the politics of each state.¹⁰⁰ Criminal cases of mayors tried by the state courts of appeals, consequently, are the ones that most amplify the weight of local political factors on court dynamics and, as a result, serve as intriguing tests to the subnational approach advanced in

⁹⁹ The jurisdiction of federal and electoral courts over these crimes of mayors is defined in the court summary opinions (known as *súmulas*) n. 208 and 209 of the STJ, and n. 702 of the STF. Federal crimes, by these terms, are identical to those tried in state courts, the only difference being the source of resources. Even here, however, there is a grey area. If such federal resources have been incorporated to the property of the municipality, they are no longer considered federal resources, and the jurisdiction belongs to the state courts. In fact, much disagreement exists in this regard. I thank one of my interviewees, Gilvan Alves Franco, for calling my attention to this issue. Finally, electoral crimes are more clearly defined in articles 289 to 354 of the law n. 4.737 of 1965, which establishes the country's electoral code, in which scenario the cases are referred to regional electoral courts.

¹⁰⁰ Federal courts are entirely administered by the federal government, which is responsible for their funding and the recruitment of their judges and personnel. In turn, electoral courts are also mostly funded by the federal government, but their composition is mixed. An electoral judgeship is *not* a permanent position, but one temporarily cumulated especially by state judges. Federal judges and private attorneys, to a lesser extent, are also members of the regional electoral courts of the country alongside state appellate and district judges, also on temporary and cumulative bases.

this study.¹⁰¹ Not all crimes tried under *foro privilegiado*, though, refer to political corruption. Between fifteen and twenty percent of the cases involve either environmental crimes for which city hall officials can be held accountable¹⁰² or a host of crimes allegedly committed by mayors not in the exercise of their positions (i.e., as “private individuals”), ranging from illegal gun possession, to drunk driving, to murder – not surprisingly, some of the most frequent memories

¹⁰¹ Importantly, *civil* sanctions can also be applied to corruption on cases of “administrative improbity” in Brazil, which address basic bureaucratic procedural violations. Administrative improbity cases are not heard using the *foro privilegiado* rule, but the prosecution of these cases is also often less rigorous than criminal prosecutions. They are filed exclusively by the prosecutors’ office and can lead to fines, removal from office, and ineligibility for a certain period, but do not entail prison sentences. Critically, investigation of administrative improbity cases is conducted exclusively by the prosecutors’ office, based on vaguer allegations of misconduct, as opposed to the more specific criminal ones. Accordingly, the “apparent advantage of administrative improbity hearings – that they require no involvement by the police and avoid problems with special standing or the rigors of the criminal code – has proved to be a key weakness: the excessive formalism of the courts, the number of dilatory appeals, and the various hierarchical avenues for appeal have provided sometimes even to get the cases dismissed” (Arantes 2011, 199). I deliberately ignore such civil cases because the criminal ones allow me to perform a “hard test” of the dynamics of judicial responses to corruption. Considering that criminal convictions are more rigorous and difficult to achieve than civil ones, conclusions derived from the analysis of the former should travel with relative ease to the latter, but not the other way around. That is, not all civil cases of administrative improbity yield criminal charges, but all criminal convictions on the charges of misconduct can yield civil cases of administrative improbity. Criminal cases of wrongdoing, thus, form a subgroup of those on the same topic in the civil arena, representing an ultimate and often harsher sanction. Not surprisingly, there is clearly an interaction between these two spheres and the observed variation in civil convictions follows a pattern very similar to the criminal ones in the three states analyzed here. Available data from the *Cadastro Nacional de Improbidade Administrativa* (CNIA, or National Record of Administrative Improbity) of the CNJ, informs that Rio Grande do Sul averages 5.7 convictions per 100,000 inhabitants, whereas these are at 2.6 and 0.1 per 100,000 inhabitants in Minas Gerais and Bahia, respectively (as available at: http://www.cnj.jus.br/improbidade_adm/consultar_requerido.php, accessed in November 30, 2012). In absolute numbers, Rio Grande do Sul, Minas Gerais and Bahia yielded 608, 505, and 14 convictions, respectively. The available data of CNIA, however, should be read with care, given that they are most likely incomplete and subject to report bias. As one of my interviewees – public prosecutor José Guilherme Giacomuzzi, whom I thank for his interest in helping me in this research – warned me, for civil convictions on administrative improbity cases to be part of the CNIA, when such convictions take place, they have to be informed by the judge of the case to the CNJ, and several judges simply fail to do so. Some prosecutors’ offices of the country have even attempted to encourage the provision of such information by the judges – supplying uniform forms to make this task easier – but many still fail to act. Hence, not only several judges simply fail to report such data, but also such initiatives of the prosecutors’ office introduce a variation across the Brazilian states, affecting the reported results. Finally, it is important to mention that the arrangement of civil charges on cases of administrative improbity is largely unique to Brazil. It resulted from law n. 8.429 enacted in 1992 – approved in the midst of the corruption scandals that led to the opening of the impeachment process against President Collor de Melo – largely because criminal convictions were deemed too hard to achieve in the country. I thank once again José Guilherme Giacomuzzi, for calling my attention to this relevant aspect. For a detailed account, see Giacomuzzi (2013, 292), Arantes (2011), and García (2011). In time, this dynamic resembles the one described by McCarthy (2010) on the prosecution of human trafficking in Russia, in which public prosecutors rely on suboptimal legal strategies to punish what is clearly criminal behavior. As a result, by sticking to the *criminal* cases, I strengthen the potential for generalization of the findings of this research, given that most countries rely on criminal charges to sanction corrupt behavior.

¹⁰² Under the law n. 9.605 of 1998 and, previously, the law n. 4.771 of 1965 (which established the country’s forest code), failing to prevent or contributing to deforestation, pollution, and environmental degradation for economic purposes can yield criminal sanctions to mayors ranging from one to five years of imprisonment.

of my interviewees pertained precisely to these cases. Still, the vast majority of cases do concern political corruption: approximately eighty percent. The focus for criminal cases of mayors, thus, is in tune with the logic of emphasizing Brazil's subnational dynamics on the judicial politics of corruption in order to enhance internal validity of this study.

Apart from these reasons pertaining mostly to research design, the focus on mayoral corruption emanates from the fact that local politics is no small business in Brazil. Following the decentralization trend of the post-authoritarian period in the country, municipalities had their powers significantly enlarged in the 1988 constitution. They gained for the first time the "status of federal entities, which eliminate[d] the ability of state and federal governments to interfere with municipal laws" (Samuels 2000, 82). This increased latitude meant that municipal public officials not only were granted an unprecedented amount of resources from automatic transfers of state and federal funds, but also the responsibility to provide services as diverse as health care, education, and transportation. As Baiocchi, Keller and Silva notice, "the degree of democratic responsibility and authority (and, to a lesser extent, resources) that Brazilian *municípios* enjoy is, with the possible exception of South Africa, unsurpassed in the developing world" (2011, 7).¹⁰³

This increased autonomy of local institutions has placed mayors on the center stage of Brazil's political life. As Samuels notices, this "transformation has had important consequences for democratic representation in Brazil, for it reversed the historic role of mayors from being passive recipients of state- and federal-government largesse to active, creative problem-solvers" (2000, 88). In effect, several "mayors carry far more political weight than do federal deputies," who frequently act "as on behalf of mayors by attempting to pry resources from federal and state

¹⁰³ In a similar sense, "Brazilian municipalities have a degree of autonomy that is unheard of in the rest of the [Latin American] continent" (Samuels 2000, 82).

governments” (ibid). This increased local autonomy, though, has yielded a mixed record. On the one hand, it led to various innovative and well-praised policies, most notably participatory budgeting. On the other hand, the recurrent problems with municipal corruption in Brazil gained prominence.¹⁰⁴ Accordingly, apart from the two houses of Congress, the institutions deemed most corrupt by Brazilians are local. In a recent series of surveys asking respondents how corrupt twenty-six institutions and social groups were, the city council and city hall ranked respectively third and fourth as the most corrupt in Brazil, below only the Chamber of Deputies and the Federal Senate (see Bignoto 2011, 26).¹⁰⁵

It should not come as a surprise that much of the anti-corruption efforts developed in recent years focused on the role of mayors. This means that they have probably been the public officials targeted the most in legal accountability efforts, as compared to the efforts aiming at other authorities so far in the country. Still, results have been uneven across the Brazilian states in this realm, and even when legal accountability finally works, a frequent complaint is that only mayors of small towns get caught (Arantes 2000, 2002). This is, however, only a half-truth: the mayors of small municipalities constitute the majority of those held accountable precisely because most Brazilian cities are small. According to the *Instituto Brasileiro de Geografia e Estatística* (or Brazilian Institute of Geography and Statistics, IBGE), there are only sixteen municipalities with more than one million inhabitants in the country. Inversely, there are 5,376 out of 5,565 municipalities in Brazil (or over ninety-six percent of them) with less than one

¹⁰⁴ There is an extensive literature on local corruption in Brazil dating the phenomenon back to as old as the turn nineteenth century, of which probably the most representative work is the one on *coronelismo* by Leal (1977 [1949]), as detailed by Roniger (1987) and Carvalho (1997).

¹⁰⁵ On a scale from zero to ten, local institutions ended up very close to each other but nearly one point and a half above the average, placing them above state-level institutions, the police, the wealthy, the courts, the Brazilian presidency, businessmen – which are all above average – as well as the media, NGOs, churches of all kinds, and the poor, which are below average (see Bignoto 2011, 26).

hundred and fifty thousand people and each one of those has both the status of a city and a mayoral position.¹⁰⁶

These small communities matter for a variety of reasons. First and foremost, they matter for those who live in them, a large number. About half of the entire Brazilian population, or about one hundred million people, live in municipalities with less than one hundred and fifty thousand people.¹⁰⁷ In effect, the first contact with politics and the government for a significant number of Brazilians takes place precisely in this environment.¹⁰⁸ Similarly, the relative absence of legal accountability at the municipal level in various states in Brazil, even for such small cities, should indicate that this dynamics matters also to political elites, given that they may have been working hard precisely to make such outcomes remain absent. By the same token, small and middle-sized communities have been recently used in a number of studies to build theories on topics as varied as the provision of public goods (Tsai 2007), civic engagement (Williamson 2010), political participation (Baiocchi, Keller and Silva 2011), and strategies for economic development (Bliss 2011), to name a few.¹⁰⁹ Finally, fighting local corruption bears important implications for corruption in the other political spheres. Given that mayoral positions are used as entry routes for many politicians in Brazil, holding them accountable is an important first step towards cleaning up the system, from the bottom up. Impunity at the early stage of the officials' careers makes easy for them to go up the ladder from local to state to national politics with the same degree of impunity and, hence, of corruption. As a result, "a key factor behind the persistence of

¹⁰⁶ Data from *Estimativas populacionais para os municípios brasileiro em 01.07.2013*, accessed in September 16, 2013 at: http://www.ibge.gov.br/home/estatistica/populacao/estimativa2013/estimativa_dou.shtm.

¹⁰⁷ Ibid, this ratio was calculated from the total estimate of two hundred million Brazilian inhabitants of July of 2013. For a detailed account of politics and data on Brazilian municipalities, see Marengo dos Santos (2013).

¹⁰⁸ An identical point was raised in a recent book on small local communities in the United States (see Oliver 2013).

¹⁰⁹ This is also true for corruption studies, where a substantial literature has focused on municipal corruption to build ampler theories (e.g., Gardiner 1970, Menes 2008). This focus on in-depth, small-scale studies, in turn, looks like a return to what once was mainstream political science (e.g., Hunter 1953, Dahl 1961, Polsby 1963).

malfeasance among the members of Brazil's National Congress is the array of serious deficiencies in the operation of the criminal justice system at the subnational level – that is, within each of Brazil's twenty-seven states,” concludes Macaulay (2011, 218).

Table 3.2. Descriptive Statistics of the Judicial System of Three Selected Brazilian States

	<i>Rio Grande do Sul</i>	<i>Minas Gerais</i>	<i>Bahia</i>
<i>Judiciary</i>			
Percent of state budget	6.09	5.77	4.57
District judgeships (<i>comarcas</i>)	164	296	227
District judges (<i>juízes de direito</i>)	587	748	512
Appellate judges (<i>desembargadores</i>)	134	122	33
Permanent judiciary employees	13,636	21,434	11,601
New cases per year	~ 3,200,000	~ 3,250,000	~ 1,890,000
New appeals per year	~ 450,000	~ 305,000	~ 72,000
New cases per year per district judge	5,468	4,349	3,694
New appeals per year per appellate judge	3,378	2,502	2,188
Panels in court of appeals (as of 2012)	33	25	7
Specialized panel on crimes of mayors	Yes, 1992-present	No	Yes, 1996-2007
<i>Public Prosecution Office</i>			
Percent of state budget	2.04	1.80	1.26
Prosecutors (<i>promotores de justiça</i>)	528	813	499
Prosecutors before courts of appeals (<i>procuradores de justiça</i>)	111	114	44
Permanent employees	1,407	1,922	669
Specialized division on crimes of mayors	Yes, 1992-present	Yes, 2000-present	Yes, 2003-present
<i>Auditing Agency</i>			
Percent of state budget	0.95	0.75	0.91 (0.27)*
Employees	967	1,338	1,169 (449)*
Administrative units audited	1,218	2,196	1,334 (954)*
<i>In loco</i> audits per administrative unit	2.20	0.14	1.60 (0.05)*
Regional offices	Yes	No	Yes

Sources: On budget, average for previous years calculated based on GOVRS (2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013), GOVMG (2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013), and GOVBA (2007, 2008, 2009, 2010, 2011, 2012, 2013); on the other data of the judiciary, average for previous years calculated based on CNJ (2003, 2007, 2009, 2009a, 2009b, 2009c, 2010, 2010a, 2012, 2013) and Ministério da Justiça (2004); on the public prosecution office average for previous years calculated based on Ministério da Justiça (2004a), MPRS (2005, 2007, 2008, 2009), and CNMP (2012, 2013); on the auditing agencies, data from Moraes (2006) and Melo, Pereira and Figueiredo (2009), except for the number of employees of the first two states, calculated directly from their websites (see section 5.3., below).

* As I will detail in the next chapters, Bahia has two auditing agencies, the TCEBA (which audits only state-level institutions) and the TCMBA (which audits only municipal-level institutions); because both Rio Grande do Sul and Minas Gerais possess only one auditing agency responsible for auditing both local-level and state-level institutions, I have combined the data of the TCEBA and the TCMBA so that the data of Bahia's auditing agency is comparable to the other states; because the focus of this research is municipal corruption, though, I have kept the data specifically for the TCMBA in parenthesis.

So, how are the mayors held accountable for their acts of misconduct? The use of criminal cases against mayors as my units of analysis turns three state-level institutions into focal points of my work. Within each state, I analyze the activity of the auditing agency (the *Tribunal de Contas*, or Court of Accounts), the public prosecution office (the *Ministério Público*), and the court system. The remainder of this section describes the essential features of these three bodies, following the table above (see Table 3.2.), which summarizes descriptive data about them.

Starting with the Brazilian judiciary, it is critical to understand what a large and complex organization it is, diversified both vertically and horizontally. It has five branches – state, federal, labor, electoral, and military courts – divided into roughly a fourfold hierarchy that goes from district judges, to state or regional appellate courts, to national appellate courts on statutory interpretation, to the STF, which works as a final court reviewing the constitutionality of the acts of other branches of government and of judicial decisions. With a total workload of twenty-eight million new cases per year, the courts of Brazil have almost four hundred thousand employees and a global budget of approximately 28 billion U.S. dollars, or one percent of the country's gross domestic product (cf. CNJ 2013, 296-297). A little more than fifteen thousand district judges selected via rigorous competitive examinations and approximately two thousand appellate judges – selected mostly from the senior members of the former¹¹⁰ – work in this huge machinery.

Given the immense number of individuals working in it, it should not surprise that the Brazilian courts have been famously described as bureaucratized and atomistic, i.e., marked by high levels of individual autonomy of their judges from each other (Arantes 1997, Ballard 1999, Santiso 2003, Taylor 2005, 2007, 2008). Despite its enormity, however, most studies on the Brazilian

¹¹⁰ Importantly, even the highest courts of the country – which are comprised of appellate judges selected by the Brazilian presidency and Senate – exhibit high levels of professionalization, with its members being selected largely from well-known and respected jurists (see Da Ros 2010, 2012, Brinks 2011, Kapiszewski 2012).

judiciary have focused either on highest court (e.g. Castro 1997, Vianna, Burgos and Salles 2007, Taylor 2008, Taylor and Da Ros 2008, Oliveira 2008, Kapiszewski 2011, 2012) or on its institutional design (e.g., Castro 1997a, Arantes 1997, 2005, Taylor 2007).

There are not many analyses of state courts in Brazil, which are precisely the courts carrying out most of the judiciary's work.¹¹¹ The bulk of the caseload is the responsibility of three branches of the Brazilian judiciary – state, federal, and labor courts – but particularly the first. Data from 2012, for instance, reveal that the state courts of Brazil received close to twenty million new cases that year, or over seventy percent of the total for the country, as compared to three to four million in the federal and labor courts, and roughly one million cases divided between electoral and military courts. Given their workloads, state courts consume US\$ 15 billion a year, with close to twelve thousand judges and two hundred and sixty thousand employees (see CNJ 2013).

As a result, the state judiciaries of Brazil are, above all, large organizational entities. This is true also for their respective *Tribunais de Justiça*, the courts of appeals in which mayors are tried for their crimes. Such appellate courts house dozens of judges called *desembargadores*, who receive thousands of cases per year. Typically, *Tribunais de Justiça* are internally divided in multiple panels called *câmaras*. These panels have four to five members, but usually only three appellate judges sit at a time for weekly trials, so that the remainders do not go to session every week, allowing extra time for reviewing cases or taking vacations without stopping court work. These panels, in effect, work largely as courts within a court, being often divided into two large groups of criminal and civil panels. As of 2013, for instance, the *Tribunal de Justiça do Rio Grande do Sul* has eight criminal panels and twenty-five civil panels, in which more than one hundred

¹¹¹ Nonetheless, such studies do exist, as exemplified in the works by Bonelli (2001, 2005), Perissinotto (2007), Perissinotto, Medeiros and Wowk (2008), and Engelmann and Cunha Filho (2013), among others. Apart from those, a few large-scale surveys including all Brazilian judges also provide data on state judges and appellate judges, as the works by Vianna et al. (1997) and Sadek (2006) illustrate.

appellate judges work. Each of these panels has its own staff and clerk's office, called *secretaria*, apart from the personnel in the chambers of each *desembargador*.

The state courts and the *Tribunais de Justiça* of Rio Grande do Sul, Minas Gerais, and Bahia, in turn, are among the largest of the country in nearly all aspects (caseload, budget, number of judges and employees, etc), as the averages for the previous years reported in the table above illustrate. On the specific priority given to mayoral crimes, however, they differ. While they all perform the critical task of adjudicating such irregularities and also help uncovering evidence during the *instrução* of such cases (a stage of Brazilian criminal procedure in which all evidence of a case is compiled), not all such state courts have considered establishing specialized panels on mayoral crimes to facilitate the processing of such actions.

The Brazilian public prosecution office – called *Ministério Público* (MP, or public ministry) – mimics most of the organization of the courts. As a statewide institution, it has a large number of district prosecutors (known as *promotores de justiça*) and prosecutors officiating before the state courts of appeals (called *procuradores de justiça*) of largely professionalized backgrounds, as well as a similarly large number of employees. The Brazilian *Ministério Público*, though, is more than a traditional public prosecution office. Following legislative and constitutional changes in the 1980s and 1990s, the *Ministério Público* has acquired a host of new powers and attributions, particularly concerning the legal defense of “collective and diffuse rights,” such as those of the elderly, disabled, and children, as well as jurisdiction over environmental, urban, and consumer law, among others (see Arantes 1999, Silva 2001, Maciel and Koerner 2002, Vianna and Burgos 2005, Cavalcanti 2006, McAllister 2008, 2011, Coslovsky 2009, 2011, Mueller 2009, Carvalho Neto and Leitão 2010, Aguilar 2011, Maciel 2011, Losekann 2013).

Along this process, the MP also gained independence from the executive branch. Before 1988, one of its main roles was representing the interests of the former in the country's courts. The new constitution stripped away such responsibility, so that the public prosecution office could focus on its new role of defending society's interests, elevating it to the status of an autonomous agency. These changes not only boosted the impact of the *Ministério Público* in many sensitive areas previously beyond its reach, but also helped expand the budget, personnel and influence of the institution as a whole in Brazil's political life along the past two decades. As a result, from a predominantly accusatorial body of the criminal justice system, the *Ministério Público* reshaped its identity to become a defender of the interests of society via the rigorous oversight of law enforcement. Along this transformation, fighting corruption became something of a cornerstone of this new public prosecution office, mixing the traditional role of the accuser in criminal cases with the defense of collective interests (see Arantes 2002, Da Ros 2009). Across the three states examined here, this is the institution that varies the least. Not surprisingly, the public prosecution offices of the states of Rio Grande do Sul, Minas Gerais and Bahia, have all been active in the anti-corruption arena over the past decades. As detailed below, they all have specialized divisions on crimes of mayors, even if these had been established in different moments of time and due to distinct circumstances. Finally, the *Ministério Público* is obviously critical in the *prosecution* of mayors, but its job does not stop there. Accordingly, it also helps in the investigation (usually shared with other institutions) and facilitates the exposure of corruption by welcoming potential whistleblowers to its regional offices.

The reasons for focusing on the courts and public prosecution offices should be clear by now: without judges and public prosecutors, criminal convictions become virtually impossible. It is the latter who bring the cases and the former who decide them. Failure to understand how these two

sorts of actors operate is therefore failure to understand how adjudication, prosecution and, to some extent, investigation and detection work. Yet, two interrelated questions remain: why the focus on auditing agencies, and why *not* the police? My emphasis on auditing agencies – which are called *Tribunais de Contas*, or Courts of Accounts, but do *not* belong to Brazil’s judiciary despite of their name – is due to the following reasons.

First, these agencies are responsible for exerting the so-called “external control” of city halls, as defined in article 31 of the country’s constitution enacted in 1988. This task includes primarily elaborating audit reports for all city halls within their statewide jurisdictions at least once a year in order to oversee public expenditures and assess their compliance with the law. Additionally, they can also self-initiate *in loco* audits for suspicion of irregularities, which do not demand any form of judicial authorization to grant them access to city hall documents. All such reports are then submitted to the agency’s top panel, which is composed primarily by tenured political appointees, frequently former state representatives en route to retirement, to decide whether or not such expenditures have conformed to the law. These powers and attributions, therefore, make the *Tribunais de Contas* critical components in the detection and investigation of wrongdoings at the local level, often providing support for the prosecution and adjudication of these cases.

Still, Courts of Accounts do not audit only city halls, but also city councils, the state government and legislature, as well as all agencies managing public resources (e.g., state-owned companies, foundations with government contracts). This generates a large number of “administrative units” within their jurisdictions, and each of them demands its own yearly audit report to be elaborated and decided by the top panel of the Courts of Accounts. While this yields a substantive amount of work, it also turns these agencies into potentially powerful legal accountability actors. In effect, there is an important and extensive literature about them (e.g., Speck 2000, 2000a, 2008,

2011, Arantes, Abrucio and Teixeira 2002, Santiso 2006, 2007, 2009, Moraes 2006, Freitas and Guimarães 2007, Loureiro, Teixeira and Moraes 2009, Melo, Pereira and Figueiredo 2009, Menezes 2012, Melo and Pereira 2012, Melo and Pereira 2013). Given their focus on overseeing official misconduct, it should not come as a surprise that several scholars have shown how relevant their performance is to curb corruption. Similarly, my own empirical investigation in each state – and especially the interviews with public prosecutors and judges – was revealing. Relying on snowball sampling, I was increasingly led by my interviewees to a new appreciation of the role these agencies perform to legal accountability in Brazil, given the importance the latter attribute to them. Relatively few cases the prosecutors took to the courts originated in police investigations, while a large and sometimes overwhelming number came from these auditing bodies. Consequently, most of the anti-corruption efforts at the municipal level in Brazil do not involve regular police forces – which are also state-level, and not local-level bodies¹¹² – and rely often on the efforts of *Tribunais de Contas* or on exposure. The police, thus, are focused mostly on regular criminal activity in the overwhelming majority of Brazilian states.

Moreover, as with courts and public prosecution offices, the basic framework of the *Tribunais de Contas* is relatively similar throughout the country, being defined in the 1988 constitution. This is especially true with reference to the safeguards enjoyed by their top officials – *conselheiros* and *auditores substitutos*, or councilors and senior auditors. The national constitution, however, delegates to the states further regulation on the topic. Thus, apart from a few federal guidelines, the courts of accounts differ drastically in how they perform their work, how centralized or decentralized their activities are (i.e., whether or not they have field offices or rely solely on a

¹¹² Apart from a few very recent initiatives in this regard, this is probably true for the country as a whole, with the exception of the federal police, which has increasingly taken an active anti-corruption role (see Arantes 2011). Even there, however, its performance is nationwide and thus closer to a constant than to a variable.

single office in the state's capital), how often they actually go into the field to collect data (and, inversely, how much they rely on the information sent by the city halls to elaborate their reports), and so on. The *Tribunais de Contas* of Rio Grande do Sul, Minas Gerais and Bahia are among the largest and better funded in the country, with hundreds of servants overseeing the public expenditures of similarly large numbers of administrative units, as the table above also displays.

The *Tribunais de Contas*, *Ministérios Públicos* and *Tribunais de Justiça* of each Brazilian state, consequently, are the main ingredients in the struggle against mayoral corruption in the country. By explaining how such different results emerge from the varying practices of judicial systems enforcing identical laws, I provide a theoretical insight into why legal accountability varies so markedly across polities and over time. The in-depth analysis of the performances of Rio Grande do Sul, Minas Gerais, and Bahia in the domain of mayoral corruption, thus, both illuminates how my main concepts – that is, political pluralism and institutional autonomy, legal mobilization and inter-institutional coordination – effectively materialize in specific contexts and how alternative explanations fail to address such variation with the same strength. Differences across the three cases as well as changes over time within each one of them, in other words, make clear how my typology and its respective ideal-types account for such dynamics, thereby providing explanations for the sources of stability and change in such performances.

3.5. Methods and Operationalization of Main Concepts

At the methodological level, my research blends various approaches, from semi-structured in-depth interviews, to content analysis, to archival research, to quantitative analysis of convictions data in order to properly compare the three cases examined here. For the most part, this analysis

draws on my previous experience as a trained lawyer in Brazil, which permitted me to conduct extensive fieldwork in those three states in order to unveil how the actors involved in the legal accountability process – i.e., judges, public prosecutors, auditors, court staff, attorneys, etc. – undertake and understand their work, as well as how they perceive the operation of other proximate institutions and actors with which they interact.

My research included on-site visits to various legal accountability institutions in each of the Brazilian states examined in this dissertation, in which I conducted in-depth semi-structured interviews with over seventy subjects, informal conversations with dozens of others, and an extensive review of rule and procedure of corruption cases in Brazil.¹¹³ In so doing, I followed a long tradition of empirical studies that approach legal institutions “from within” – i.e., first understanding how their participants organize and perceive their activities in order to grasp which dilemmas they involve and ultimately which impacts they yield (e.g., Cole 1970, Feeley 1979, Silbey 1981, Perry 1991, Cohen 2002, Kapizewski 2010).

This assessment “from within” is the point of departure for my analysis and informs most of my conclusions. However, I have also sought to complement it with archival research of legislative, judicial, and media records, a review of secondary literature on each of the cases, aggregate data on the institutions examined (e.g., budget, personnel), and the analysis of publicly available court records on several cases involving mayoral corruption in each state. The combination of these different components helps me to delve into the internal dynamics of case-processing through the

¹¹³ Specifically on the interviews, I have relied on both active and retired/former members of the legal accountability institutions examined here. I have approached the former not only because I intended to account for past events, but also because such individuals “frequently have more time and [...] have retained their ‘institutional memory’” (Peabody et al. 1990, 453). Moreover, as Phillips observed it for his research on educational policy-making in Britain, “retrospective interviews thus provided the strategic advantage of divorcing interviewees from pressure which might have had detrimental impact upon the candour of their responses” (Phillips 1998, 12).

various institutions of the judicial system – i.e., courts, prosecutions offices, and auditing bodies – in order to assess each of the main concepts discussed here. By blending these approaches, I triangulate the findings and provide internal validity to my conclusions. Critically, there are five main concepts involved in this dissertation. The first is the dependent variable itself – i.e., the level of judicial response to political corruption – and the four others are the elements employed to explain it, concerning the different degrees of political pluralism, institutional autonomy, legal mobilization, and inter-institutional coordination. I will detail my operationalization as well as the methods employed to ascertain each of them below.

First, I measure judicial responses to political corruption primarily with the aggregate number of mayoral criminal convictions achieved in each state examined here since the late 1980s. This measurement shows that Rio Grande do Sul achieved roughly three hundred and forty mayoral criminal convictions, while Minas Gerais achieved roughly one hundred and forty, and not more than six resulted in the state of Bahia. Final decision on the merits of a case is only one decision in the processing of a case, though. As such, I adopted other measures that captured greater or lesser judicial willingness to punish corrupt officials when relevant. In Bahia, for instance, while the overall record of convictions is indeed poor, it is elusive to look solely at conviction. From 2003 to 2006, when judges intensified their efforts against mayoral corruption, most of their assertive rulings came at the beginning and not at the end of the cases. Decisions preliminarily arresting mayors and removing them from office at the onset of the cases, hence, were the main strategies employed by judges to signal their willingness to adjudicate mayoral misconducts rigorously. Finally, I deliberately ignore reputational sanctions brought about by pre-adjudication as well post-decision stages (e.g., interpretation of the decision by high courts, incarceration). In other words, my analysis is limited to the final decision made by the state courts. Thus, it ignores

both appeals to the high courts, which are federal, and the implementation of the decisions of the state courts, limiting my analysis to judicial behavior.

Moving to political pluralism, I rely on the growing body of literature on state-level politics in Brazil, which compares how dominant and/or competitive their respective political systems have been in the recent period of democracy in the country (e.g., Abrucio 1998, Borges 2007, 2011, Castro, Anastasia e Nunes 2009, Bohn and Paiva 2009, Nunes 2012). This material includes aggregate measures of political competition, fragmentation and polarization constructed from data on electoral and party politics to compare policy-making in the twenty-six Brazilian states and the federal district. In this sense, they fit the purpose of sketching the broader political environment of the three states examined in dissertation. In addition to that I rely on secondary evidence collected in academic research on the specific political systems of Rio Grande do Sul (e.g., Schneider 2006, Passos 2013), Minas Gerais (e.g., Borges 2008, Nunes 2013), and Bahia (e.g., Dantas Neto 2003, 2006, Souza 2007, Montero 2010, 2012). These studies provide denser historical accounts that help identify continuity and change in state-level politics as well as key events in each subnational unit, helping contextualize the activity of their respective courts.

Third, there are two main dimensions on institutional autonomy. One concerns the safeguards enjoyed by individual judges, public prosecutors, and auditors (e.g., form of recruitment, wages, and tenure in office) and another refers to the institutions themselves and how they relate to the elected branches of government, thus concerning their stability, budget, size, organization of internal work, etc. On the first, the individual guarantees of judges, prosecutors and auditors are fairly uniform across the country, given that the legislation establishing them is national and, once again, identical for all states. These laws include the federal constitution of 1988, as well as specific legislation on each institution examined here. Accordingly, the careers of judges and

public prosecutors are almost identical. Similarly to what happens in the civil service judicial systems of continental Europe, Brazilian judges and public prosecutors are selected via rigorous examinations at young age right after college, and move up the career ladder of their respective institutions slowly, based on seniority and/or merit as defined by their peers. In contrast to most continental European judges, however, Brazilian judges and public prosecutors do not follow the same career track, but instead belong to different institutions with parallel hierarchies. Political input comes in the selection of their top members, but even there it is fairly limited to appointing individuals previously nominated by judges and prosecutors. The personnel of the auditing agencies, in turn, also exhibit similar careers throughout the country, mixing civil servants and political appointees. Almost all their top officials, however, are selected from the ranks of experienced elected officials, who are often appointed to the courts of accounts as a way to “retire” them from regular politics. As a result, the individual autonomy of judges, prosecutors, and auditors is for the most part a constant, and not a variable across the three states examined here. On the second meaning attributed to institutional autonomy, there are also various similarities defined in national legislation. At the same time, there are crucial differences. It is in reference to these differences at the institutional level of courts, prosecution offices, and auditing bodies that I build my explanation for the variation in legal accountability results. These include, but are not limited to the budget, size, capacity to regulate their internal work, and very especially attempts by political elites at curbing or reshaping these institutions in the specific topic of crimes of mayors.

In order to ascertain these events, I triangulate the narratives of key participants with archival research and legislative history. This includes examining how changes in political elites lead to attempts at reshaping courts, prosecution offices, and auditing bodies, linking the analysis of

pluralism and institutional autonomy by tracing the effects of the former in the latter.¹¹⁴ That is, even if these state-level bodies enforce national legislation on mayoral corruption, they depend on other state-level political authorities to perform their jobs adequately, especially the state executive and legislative branches. And because the latter are in close contact with their local supporters – and, among them, particularly mayors – this implies that eventual pressures against legal accountability efforts are channeled via state-level elected officials.

Fourth, looking at legal mobilization requires understanding the concrete actions of the actors involved in this dynamic as well as their reported reasons. This implies the need to track the history of the actors within the court system and account for their initiatives to build bridges with other institutions. Here, again, the bulk of my approach consists of the triangulation of interviews and its complementation with archival research on judicial, legislative and media records. Still, because mobilization and coordination are largely self-reinforcing, they cannot be examined in isolation from each other. As specified above, it is legal mobilization that generates and activates coordination-enabling arrangements, allowing agencies to work together. Because coordination is rooted in the internal organizational arrangements of each institution, understanding it requires looking at their rules of operation as well as the perceptions of their agents vis-à-vis other institutions. As such, an important emphasis has to be placed on understanding the intricacies of the operation of courts, prosecutor's offices, and auditing agencies, and especially the *meanings judges, prosecutors, auditors, attorneys and other legal elites attach to them*. The idea here, then, is to take a closer look at court work from the perspective of their practitioners, taking seriously how they perceive (and the meanings they attribute to) the internal procedures pertaining to criminal cases of mayors. In short, judges, prosecutors and auditing officials justify the bulk of

¹¹⁴ This follows the orientation for process-tracing, examining the impact of each causal variable on their respective outcome (see Bennett 2010, Mahoney 2010, Collier 2011).

their actions using what Tilly (2008a) termed “codes or workplace jargons,” which may be impenetrable to outsiders, but constitute the day-by-day basis of their activities.¹¹⁵ Without understanding their meanings as well as how and why they matter to the members of these institutions, one cannot apprehend how these organizational structures effectively work and the results they consequently yield. In effect, most of my approach here relies on in-depth interviews with those working in these various agencies, listed in Appendix I.

Table 3.3. Access to the Field in Rio Grande do Sul, Minas Gerais and Bahia

	<i>Rio Grande do Sul</i>	<i>Minas Gerais</i>	<i>Bahia</i>
Interviews			
- <i>Anonymous</i>	07 (24.1 percent)	10 (45.4 percent)	13 (59.1 percent)
- <i>Non-Anonymous</i>	22 (75.9 percent)	12 (54.6 percent)	09 (40.9 percent)
- <i>Total</i>	29	22	22
Refusals	03	03	05

The availability and form of access to each of my interviewees, though, varied significantly from state to state, as the table above illustrates (see Table 3.3.). Having been a trained lawyer in Rio Grande do Sul has probably made it easier for judges, prosecutors, and auditors of that state to accept being interviewed by me. In effect, my personal professional trajectory intertwines with that of the criminal cases of mayors in Rio Grande do Sul, as I will explain in the introduction of Chapter 4. Not surprisingly, this was the most welcoming of three states in this regard. In part, however, the alleged “good record” of their institutions has probably contributed to them being mostly open and sometimes eager to talk about their jobs. Some of these were among the longest interviews I had. Likewise, most interviewees did not ask to remain anonymous, given the pride

¹¹⁵ Law, after all, is primarily a language and, as such, *constitutes* the practices and perceptions of reality of legal actors, rather than being solely an instrument of manipulation to achieve whichever ends (Carter and Burke 2009). This contradicts the basic belief connecting the American legal realism of the early twentieth century and the recent scholarship on the attitudinal model of judicial behavior, both implying that the legal language or discourse is largely, if not exclusively, instrumental. As Leiter sums up for the legal realists, “in deciding cases, judges respond primarily to the stimulus of the facts of the case, rather than to the legal rules and reasons” (2002, 53). Or, as Jerome Frank posited more than eighty years ago, “law is made up not of rules for decision laid down by the courts but of the decisions themselves” (1930, 125). On the attitudinal model, Segal and Spaeth similarly suggest that “judicial opinions containing ... [legal] rules merely rationalize decisions; they are not causes of them” (2002, 88).

many of them take of their work. Out of the twenty-nine interviews performed in this state, only seven subjects asked not to be identified by name, roughly one quarter of them, with three individuals refusing to be interviewed.

Differently than the openness to be interviewed I observed in Rio Grande do Sul, I could not help but notice a relative uneasiness and even discomfort especially on the part of most judges to talk about the topic in Minas Gerais, and some were vague and elusive about it. In effect, a large number of interviewees asked to remain anonymous, even if the number of refusals was similar to the one observed in Rio Grande do Sul. Finally, while anonymity was the tonic in Minas Gerais, it was even more so in Bahia. Additionally, plain refusal to be interviewed struck me especially on the part of judges. The six refusals in this state, hence, all came from potential informants in such positions.

In a way, these different rates of anonymity and refusal to be interviewed in the three states is itself revealing of the observed differences in the performances of the judicial systems of each of these states. That is, in Rio Grande do Sul most legal actors are willing to talk about their well-recognized work, while in Minas Gerais only some feel comfortable to discuss it openly, and in Bahia the delicate position of most legal accountability institutions makes even fewer individuals welcome to tell – even anonymously – the stories surrounding their jobs.

CHAPTER 4. FROM FRAGMENTED TO COORDINATED AUTONOMY IN RIO GRANDE DO SUL

4.1. Introduction: A Personal Story

Before turning to political science, for quite some time I wanted to become a lawyer. In 2001, I was admitted to a law degree at the federal university of my home state in Brazil, Rio Grande do Sul. A few months later that year, I started an internship (or *estágio*) in a law firm where I would work until 2004, when I decided to leave it to pursue the academic career that eventually brought me to the writing of this dissertation. Inasmuch as I left that internship almost ten years ago, it nonetheless apparently never entirely left me.

Accordingly, I worked for more than three years at *Moreira de Oliveira Advogados Associados*, a small but well-respected firm in downtown Porto Alegre, the capital and most populous city of the state. Although surely not limited to it, some of the firm's workload consisted in defending municipal mayors from all over the state who had been indicted for different types of crimes allegedly committed during their terms in office. As an intern, I quickly learned that those cases were all handled by the 4^a *Câmara Criminal* – 4CC, or Fourth Criminal Panel – of the state court of appeals, which had a specialized jurisdiction on the topic. During those years, for countless times I visited the 4CC clerk's office to deliver documents, check case records, talk to clerks, or simply watch court sessions in which real lawyers worked on.

As a result of my decision to follow an academic career, though, I also decided to ignore the 4CC altogether for many years to come. And even though I did eventually finish my law degree, both my bachelor's and future master's thesis addressed topics largely unrelated to municipal mayors or the 4CC. In fact, nearly every academic work of mine so far has been on Brazil's Supreme

Federal Tribunal, and up until the third year of my doctoral studies I was still geared towards writing a dissertation about it.

After a long time dedicated to the study of the same institution, however, I started to yearn for a breath of fresh air. The growing literature on corruption in Brazil – with its generally pessimistic account on the role played by the courts of the country in this realm – caught my attention.¹¹⁶ The more I read it, the more the memories of mayors and their attorneys cursing what they deemed to be excesses or activism of the 4CC crept into my mind. How could it be, in a country where so many corrupt officials allegedly go unpunished by the courts, that hundreds of mayors had been convicted by that judicial panel? Quickly I realized that no comprehensive studies on the 4CC existed¹¹⁷ and decided to set out on that direction. I soon acknowledged, though, that a case study about it could not involve only its appellate judges and court staff. Rather, it had to encompass a thoroughly analysis of how the *Ministério Público* and the *Tribunal de Contas* of the state also worked in this regard. From one institution, now I had three of them. Following this reasoning, I soon understood that addressing this dynamics in a single Brazilian state would not suffice. While the 4CC was widely considered exceptional, I had to be sure *if* and especially *why* that was the case. And the only adequate way to do so was examining similar institutions in other states of the country, thus the inclusion of Minas Gerais and Bahia.

¹¹⁶ The burst of scholarly interest on the issue of corruption in Brazil is quite recent and includes works on topics as different as anti-corruption reforms and their effects (e.g., Taylor 2009, Filgueiras and Aranha 2011, Praça 2013), the reasons why constituents largely continue to support well-known corrupt officials (e.g., Bonifácio 2013, Winters and Weitz-Shapiro 2013), and comprehensive analyses of institutional anti-corruption efforts (e.g., Speck 2002, Power and Taylor 2011), among several others. On the specific account of the courts as generally permissible institutions in regards to corruption, I rely mostly on the works by Taylor and Buranelli (2007), Macaulay (2011), Power and Taylor (2011, 2011a), and Taylor (2011). Among the few who acknowledge that mayors do *not* enjoy the same lack of legal accountability of other public officials in the country is Arantes, who points out that “the alleged impunity that benefits the Brazilian political class does not apply to mayors” (2002, 228, translation mine).

¹¹⁷ As mentioned in the previous chapter, this pioneer experience of a specialized court on crimes of mayors had been cited in other studies (e.g., Sadek and Cavalcanti 2003, Hudson 2011) but, to my knowledge, no systematic analysis had been performed so far about the 4ª *Câmara Criminal* in Rio Grande do Sul.

This chapter encompasses the case that originated this research. It hence discusses not only the creation and workings of the 4CC, but also the efforts of the prosecutors' office and the auditing agency of the state to curb corruption in city halls. Much of my theory in the previous chapters is informed by the insights I gained from this case. Similarly, many conclusions about the other two cases resulted from the absence of elements that I observed here. Still, many of those first impressions were inevitably reformed by the subsequent analysis of Minas Gerais and Bahia. For instance, the emphasis I had initially placed on court specialization to explain varying legal accountability outcomes gave room to an increased awareness of the importance legal mobilization plays in this realm to activate inter-institutional coordination. Thus, as much as my conclusions are informed by this case, they have surely not remained intact after the iterative process of comparison adopted in this study.

This chapter is organized as follows. In the upcoming section, I outline the period following the enactment of the 1988 constitution and discuss the uncertainties concerning the processing of criminal cases of mayors in the court of appeals of Rio Grande do Sul. This offers a prospective take on the history of the 4CC. It sets the stage to understand the dilemmas that eventually led to its creation and introduces much of the background of Brazilian criminal law and procedure needed to understand properly not only this chapter, but also the next two. In the next section, I address the process of institutional change proper, detailing how judges mobilized to establish the 4CC and the reflexes it brought about to both the state's *Ministério Público* and *Tribunal de Contas*. Taking place in a favorable, plural political context that allowed the judicial system to act autonomously, this is a story of endogenous organizational mobilization and innovation, which led to increased levels of inter-institutional coordination. As such, it changed the legal accountability of mayors in Rio Grande do Sul from a scenario of *fragmented autonomy* to one

characterized by *coordinated autonomy*. Once the basic features of the judicial system of the state are defined, I then detail how its comparatively high levels of mayoral convictions were produced. This includes the story of making the 4CC, the prosecutors' office and the auditing agency work closely together to bring heads of city halls to justice as well as the struggles these efforts yielded with other branches of the state government. Having discussed the performance of the judicial system of Rio Grande do Sul over the past decades, I conclude the chapter turning to the more tentative task of addressing some of its current dilemmas. This refers to the current risk of fragmentation and reduced inter-institutional coordination derived from an apparent decrease in the mobilization of its actors and institutions in the past few years.

4.2. The Pre-History of the 4^a Câmara Criminal of the TJRS

When explaining the creation of the Fourth Criminal Panel of the *Tribunal de Justiça do Estado do Rio Grande do Sul* (TJRS), it may be tempting to take a purely retrospective stance and deem specialization an “obvious solution” to the issue of *foro privilegiado* for mayors in Brazil.¹¹⁸ To some extent, this has been a common form of addressing this institutional arrangement¹¹⁹ and even a few judges I interviewed have reasoned in this way. This take on the topic, nonetheless, is not an accurate description of the real events that led to the establishment of the 4CC in July of 1992. Telling this story backwards – i.e., from the contemporary angle in which it is easier to

¹¹⁸ A *retrospective* explanation of historical events looks backwards and searches for causes of those events from the viewpoint of the current observer and of the contemporary effects of those past events, yielding contemporary bias. A *prospective* approach attempts to avoid such problems by searching for the causes of such events in the reasons for their choices from the viewpoint of the relevant decision-makers at their particular moment in time, regardless of the effects observed contemporarily (see e.g., Knapp 1984, Pierson 2004). Illustrative of how these two approaches may generate different results are the distinct findings of Boix (1999) and Ahmed (2010) on the origins of different electoral systems, particularly proportional representation.

¹¹⁹ For instance, one scholar argued that “there were so many prosecutions [of mayors in Rio Grande do Sul] that a special court had to be established” (Hudson 2011, 292).

observe the number of convictions the 4CC has ultimately produced – actually eludes us of the fact that this specialized panel on crimes of mayors was far from obvious to anyone at the TJRS when the Brazilian constitution was enacted in October of 1988.

For the first time in the country's history, it had been defined that mayors were entitled to *foro privilegiado* before state courts of appeals,¹²⁰ and much debate ensued inside those institutions. A new problem had clearly been placed on the state appellate judges' hands, but no natural way to approach it existed. That is, the one thing the *desembargadores* of the TJRS knew for sure in 1988 was that mayors would be tried for their crimes directly by them, and no longer by state district judges as before. At the same time, while this rule was a novelty, it was also quite vague. It had only defined that Brazil's mayors should be tried before the *Tribunais de Justiça* of the states, but failed to specify anything else as to how and by whom exactly *inside* such large courts should the heads of city halls be tried.¹²¹ Coupled with a long-standing norm that Brazilian courts have autonomy to define in their bylaws how to organize their internal work,¹²² this put the state appellate judges in charge of setting the direction as to how the vague constitutional rule of "mayor's trial before the *Tribunal de Justiça*" would be implemented.

¹²⁰ Although the reason why the Brazilian constitution of 1988 provided *foro privilegiado* to mayors is not the topic of this research, many of my interviewees attempted to explain why that happened. Common to such narratives is the lobby mayors would have made at Brazil's National Constitutional Assembly of 1987-1988. Allegedly, they were suspicious of being tried for their crimes before district judges because these would be too involved with local politics, potentially affecting their judgment. Taking such cases away from the local sphere and placing them in the hands of the court of appeals in the state's capital would be a way to enhance the impartiality of the judges who worked in the cases, thereby helping preserve the "dignity" of their recently empowered mayoral positions.

¹²¹ To be clear, the text of the article 29 of the Brazilian constitution of 1988 defines that each "municipality will be guided ... by the following principles: ... X – the mayor's trial before the *Tribunal de Justiça*."

¹²² This determination has been ensured in a series of Brazilian laws. The constitution of 1988 defined in its article 96, I, a, that the courts of the country have exclusive jurisdiction to elaborate their respective bylaws, which define the internal division of their work. This provision was not new for a constitution of the country. The constitutional amendment n. 1 of 1969 – which amended the constitution of 1967, enacted by the military regime initiated in 1964 – displayed a nearly identical provision in article 115, II, providing exclusive jurisdiction for the courts to elaborate their bylaws. Similar provisions have been present in the Brazilian constitutions of 1946 (article 97, II), 1937 (article 93, a), and 1934 (article 67, a). Another important provision in this regard is the article 101 of the supplementary law n. 35 of 1979, which established the organic law of the national judiciary, defining that the specific jurisdiction of panels within appellate courts should be determined in the bylaws of each appellate court, opening the door for self-initiated court specialization.

The first reaction of the TJRS's appellate judges was to place those cases under the jurisdiction of the *Tribunal Pleno*, or Full Court, as it is called the highest body within a court of appeals in Brazil, and which works in practice as a state supreme court.¹²³ In it sit *all* appellate judges of the court – often dozens of them – to make decisions on topics of critical relevance such as deciding challenges to the constitutionality of state laws, discussing the court's budget, selecting judges, and writing its bylaws. It is, thus, by no surprise that the trial of mayoral crimes was first placed under the responsibility of this body by the TJRS, following what was and still is a common practice among state courts of appeals in Brazil. According to Luiz Melíbio Uiraçaba Machado – one of the appellate judges of the TJRS at that time and who would just a few years later play a pivotal role in creating the 4CC – the initial idea was to place the criminal cases of mayors under the body “responsible for the most relevant political questions, which was the *Tribunal Pleno*” (Interview # 5; see also Interviews # 3, 7, 11, and 15).

Despite this widespread realization, the life of criminal cases of mayors at the TJRS's Full Court was short-lived. About a year later, the *Tribunal Pleno* delegated the jurisdiction over such cases to the then-existing three panels in charge of the criminal appeals arriving at the court – the so-called “criminal panels” of the court. Just as quickly as the appellate judges of Rio Grande do Sul had realized that the *Tribunal Pleno* should try mayors for their crimes, so they noticed that such a large body with dozens of members did not have the capacity to handle those cases adequately. In order to explain why the members of the TJRS arrived at this conclusion, though, a contrast

¹²³ To use English legal jargon, these are *en banc* court sessions. A variation of the *Tribunal Pleno* is the so-called *Órgão Especial* (or Special Body), which can be created in appellate courts with more than twenty-five members and is usually adopted in truly large courts, some with more than one hundred members. While the *Tribunal Pleno* includes all appellate judges, the *Órgão Especial* encompasses the twenty-five most senior of them and, more recently (i.e., after resolution n. 16 of 2006, by the CNJ), the twelve most senior appellate judges and thirteen members of the court – including its president – elected by their peers. Despite these differences, because most of my interviewees have used these two expressions (*Tribunal Pleno* and *Órgão Especial*) interchangeably, I arbitrarily use only the former as a synonymous of both to keep the reader from confusing these two terms whose distinction bears little to no effect for the particular purpose of the present research.

between the traditional work performed by a Brazilian appellate court and the one required by the cases of mayors (and of other officials who enjoy special standing in the Brazilian courts) is in order.¹²⁴ Without accounting for these procedures, it is virtually impossible to truly apprehend how court performances may vary and, in turn, how they can coordinate their activities with other institutions of the system of justice.

Accordingly, a *Tribunal de Justiça* like the TJRS is, above all, an *appellate* court. That is, the bulk of its activity consists in reviewing case files previously compiled by trial courts in order to either uphold or reverse earlier decisions made by district judges. The fact that mayors are *tried* for their crimes directly before such appellate courts poses a series of challenges that would not exist were their cases decided in trial courts. Because criminal cases of mayors are not appeals, but new cases altogether, they involve a series of activities that appellate courts are simply not used to perform. Traditionally, when an appeal arrives at such courts, it is randomly assigned to one of its civil or criminal panels (depending on the nature of the case) and, within it, to one of its appellate judges, who is sorted as its rapporteur (“*relator*”), or examining judge.¹²⁵ He or she is in charge of examining the case files (“*autos*”) received from the trial court, writing a report summarizing the facts of the case, the evidence, and the arguments of the parties, and writing his own opinion as to how the appeal should be ruled. Once done, the case is included in the panel’s docket for a session of adjudication. In it, the examining judge delivers his report and the panel

¹²⁴ This includes a review of rules of how criminal procedure and court organization intertwine in Brazil. More than mere technicalities, such rules reside at the backbone of the routine courts’ activities. Hence, it is nearly impossible to explain how courts decide *any* case absent references to such procedures. Only by understanding them one will be able to ascertain the meanings legal actors attach to them and thereby apprehend what they imply for theories of judicial politics and behavior. As Cohen points out, we “must go beyond the assumption that judicial decisions are the result of nothing more than a collection of individual decision makers to ask how the organizational context in which judges make decisions affects the way that those decisions are made” (2002, 21). See also Blumberg (1967).

¹²⁵ The idea of sorting cases among panels and judges serves the dual purpose of distributing evenly the workload and randomizing the leading opinions, minimizing potential biases. This system of rapporteurs, in turn, exists for practically any case – civil or criminal, appeal or not – and regardless of the body within the court of appeals in which the cases are adjudicated, be it either the Full Court or one of the panels. For an example of the centrality of the rapporteur in courts of appeals in Brazil, see Oliveira’s (2012) account of the Brazilian Supreme Court.

listens to the oral arguments by the parties' attorneys. Right after, the rapporteur presents his previously written opinion and votes, opening for the deliberation. His colleagues then also vote, finally deciding the case. By these terms, the examining judge is responsible for most intellectual effort pertaining to a case and frequently the work of his peers simply consists in saying "agreed" ("*de acordo*") after he or she votes, rendering the decision unanimous. If another judge does not agree with the rapporteur's opinion, though, he or she may either just vote contrarily to it or ask to review him or herself the case files, in the so-called *pedido de vista*. If that happens, the deliberation of that case is suspended until the reviewing judge brings it back to session in a future date, when adjudication is resumed and a final decision on the merits is reached.

When it comes to criminal cases of mayors, nevertheless, other proceedings become necessary besides the ones just described, making such cases significantly more time-consuming than the appeals routinely adjudicated by Brazil's *Tribunais de Justiça*. When the prosecutors' office presses charges ("*oferece denúncia*") against a mayor, the court has first to decide whether or not to take the case. This decision is made in a preliminary hearing in which the rapporteur brings his report and opinion based on the evidence and arguments presented by the prosecution and the preliminary explanations provided by the accused. Up until this point, thus, these cases resemble an appeal. If the court decides to take the case, however, an entirely different stage of critical importance begins: the *instrução*, or examining phase. It refers to the production of evidence in court to ascertain the facts of the case and provide support to the final decision on the merits. The *instrução* is a responsibility of the case's rapporteur judge and involves tasks such as interrogating the accused, hearing witnesses' testimonies, and collecting all forms of evidence deemed relevant to illuminate the facts of the case (e.g., expert opinions, inspections, audit

reports).¹²⁶ Once all evidence is on record and the examining phase is formally over, the court receives the final written allegations from the accusation and the defense, and prepares for final adjudication which, in turn, also mimics the routine of an appeal – i.e., the examining judge prepares a report with his opinion about the case and brings it to session, the court then listens to the oral arguments of the prosecution and the defense and, finally, deliberates to reach a decision on the merits and ultimately declares the accused guilty or not.

In short, thus, whereas in an appeal a single court session supported by the rapporteur's revision of case files suffices to reach a final decision, in a criminal case of mayor two such sessions exist – i.e., the initial hearing to take or not the case, and the final one to decide its merits – in addition to all the work at the *instrução* stage before the final disposition of the case. With that in mind, it is not hard to understand why the appellate judges of the TJRS quickly questioned the capacity of the *Tribunal Pleno* to try criminal cases of mayors properly. For one, it took simply too long to finally reach a decision on them. Because all court's members sit at the *Tribunal Pleno* – and in 1989 this meant forty judges at the TJRS¹²⁷ – deliberation was a delay-ridden process. Debate invariably took too long, and such a large number of judges similarly increased the likelihood for some of them asking to review the case, further delaying adjudication. Some of these cases, thus, “were not always decided in a single court session,” recalls Luiz Melício Uiraçaba Machado

¹²⁶ As Merryman and Pérez-Perdomo explain, the “examining judge controls the nature and scope of this [examining] phase of the proceeding. The examining judge is expected to investigate the matter thoroughly and to prepare a complete written record, so that by the time the examining stage is complete, all the relevant evidence is in the record” (2007, 130).

¹²⁷ In 1989, the TJRS was composed by forty *desembargadores* (appellate judges) divided into three criminal law panels and six civil law panels, with four judges in each panel but only three seating at a time (the nine panels add up to thirty-six judges, the other four being the court's president, its two vice-presidents, and another in charge of internal affairs). In addition to that, there was an entire arm of the state courts devoted to appeals of cases of minor relevance, the so-called *Tribunal de Alçada*, which had other thirty-seven judges (named “*juizes de alçada*”) divided in five civil and four criminal panels, but who did not seat at the *Tribunal Pleno*. The TJRS and the *Tribunal de Alçada* would later merge into a single court in 1998, preserving the name of the former and incorporating the then seventy-two *juizes de alçada* to its ranks as *desembargadores*. This reform was approved in the amendment n. 22 to the state constitution (of December 11, 1997) and the state law n. 11.133 (of April 15, 1998). Today, the TJRS has eight criminal panels and twenty-five civil panels, totaling one hundred and forty appellate judges.

(Interview # 5), a fact that was confirmed by several of his colleagues as well as by prosecutors and attorneys with experience on those cases (e.g., Interviews # 3, 7, 11, 15, and 22). Similarly, although the Full Court meets regularly, it discusses all sorts of topics, so the cases of mayors competed for attention with a number of other topics and cases of equal status (e.g., court budget, selection of new members, and judicial review of state laws).

For another, the cases of mayors were not few, further complicating the dynamics. That is the case because many of the cases at the TJRS were not new ones. Instead, they were proceedings that had started in a lower court right before the enactment of the 1988 constitution and, because the latter defined that mayors were entitled to special standing before the state courts of appeals, they had to be sent to the TJRS then. As those cases started arriving and mingled with entirely new ones, the *Tribunal Pleno* was met with an unexpected amount of work (see Interviews #5, 11, 15, 19, and 70). Additionally, many of the TJRS judges simply lacked familiarity with these sorts of cases and did not feel comfortable working on them. Because in the *Tribunal Pleno* all members of the court sit, appellate judges from civil panels (who outnumber those working on criminal panels in a ratio of two-to-one) were frequently sorted as rapporteurs of those criminal cases of mayors. “So, often you had an appellate judge who had been working for years with issues of civil law now facing very complicated issues concerning public law, city budget, etc.,” explains Luiz Melício Uiraçaba Machado (Interviews # 5, see also Interviews # 1, 9, and 11).

On top of that, the *instrução* stage was unfamiliar to nearly all judges in a court of appeals like the TJRS. “The biggest problem in an appellate court is that most of us [members of the court] have been away from trial hearings for a while,” notices Danúbio Edon Franco, another judge of the court in that period (Interview # 70). Thus, even if an appellate judge who used to work in a criminal panel was sorted as the rapporteur of a case in which the accused was a mayor, the

evidence produced in the examining stage would still be poor in quality.¹²⁸ This was especially the case for witnesses' testimonies, because in Brazil it is a right of the witnesses to be heard in the judicial district where they reside – and in criminal cases against mayors this means nearly always a different district than the one in which the TJRS is located.¹²⁹ Thus, because the rapporteur judge responsible for the *instrução* worked in a city other than the one in which the case's witnesses lived, he or she had to resort to *cartas de ordem*, or “letters of order.” These are like letters rogatory, in which the case's rapporteur judge asks the judge of the district in which the witnesses reside to hear them on his or her behalf and to send a written report back with the content of that hearing. Not only did this take quite long, but often contributed little to elucidate the facts of the case. Because the district judge hearing the witnesses had minimal interest in the case and because the prosecutor inquiring the witnesses was also the one from the district and thus *not* the one who had pressed charges, the testimonies were vague and even off-topic. As a result, the testimonial evidence produced in court – which is critical to ascertain intent – was usually of low quality, not being able to elucidate the case's facts and even less to support a conviction.¹³⁰

¹²⁸ In effect, appellate judges in Brazil – from state *Tribunais de Justiça* all the way up to the Brazilian Supreme Federal Tribunal – often complain about the *foro privilegiado*, because it demands a kind of work that they are not used to or do not have the proper structure to perform (see Taylor 2011, 172-175). Still, trial by a lower district court is no guarantee of justice. In fact, there is a long history of proximity between local politicians and law enforcement personnel in Brazil, which dates back at very least to the nineteenth century (e.g., Schwartz 1973, Flory 1975, 1981, Barman and Barman 1977). As some of my interviewees noticed in all three states, local judges interact frequently with mayors, particularly in small towns, in which the city hall often provides services to the courts, even providing space for court sessions to take place. Although most of the interviewees argue that *ideally* district judges should be the ones trying those cases, some do recognize that this makes at times even harder for the judges to be impartial. In the limit, there are episodes of threat and violence against district judges, as well as the “*coronelist* practice in several corners of the country: to put the [local] courthouse on fire to burn cases and evidence” (Félix 1999, 45).

¹²⁹ This follows the article 222 of Brazil's code of criminal procedure, which defines that witnesses shall be heard via *carta precatória* (which is similar to a letter rogatory, sent from the judge in charge of the case to the judge of the district in which the witnesses reside) if they do not reside in the district in which the crime is tried.

¹³⁰ The “*cartas de ordem* were too weak from the perspective of elucidating the facts because it went to the districts, so the judge did not know anything [about the case]; and elaborating a script with questions was complicated because while you ask a question, its answer may lead to other questions and if you send a script the [district] judge asks only that,” claims judge Luiz Melibio Uiraçaba Machado (Interview # 5; cf. Interviews # 11, 22, 70).

For all these reasons, trying criminal cases against mayors in the *Tribunal Pleno* of the TJRS was not working in the perception of its members. The “*instrução* was poor and the cases moved too slowly,” sums up appellate judge Luiz Melício Uiraçaba Machado (Interview # 5). Realizing it was not able to deal adequately with such cases, in September of 1989 the *Tribunal Pleno* delegated its jurisdiction over them to the existing three criminal panels of the court, the 1^a, 2^a and 3^a *Câmaras Criminais* – or 1st, 2nd and 3rd Criminal Panels.¹³¹ After less than one year in the Full Court, the cases were now responsibility of the so-called “separated” or “isolated” criminal panels of the TJRS.

With four appellate judges in each panel and only three sitting at a time for weekly sessions, the hope was that this leaner structure would speed up trials and produce better evidence. Doing so, however, was no uncontroversial move. As one attorney who worked closely with mayors in this period observes, in the years following the enactment of the 1988 constitution “there was a lot of debate as to whether *foro privilegiado* meant trial by the *Tribunal Pleno* or by the isolated [criminal] panels” (Interview # 7). While this controversy did not leave the perimeter of the legal circles proper (say, to include officials in the executive or legislative branches), the decision to transfer cases of mayors from the *Tribunal Pleno* to the criminal panels was disputed precisely in some cases brought before the TJRS, mostly as a strategy for the defense.¹³² This involved challenges all the way up to the Brazilian high courts (the STF and the STJ) under the argument that the constitutional provision defining the “mayor’s trial before the *Tribunal de Justiça*” meant trial by the Full Court and not by the isolated or separated criminal panels, as the TJRS

¹³¹ The administrative decision in which the *Tribunal Pleno* of the TJRS delegated criminal cases of mayors to its three criminal panels is the *Assento Regimental* n. 8, decided in August 21, 1989, and enacted in September 1, 1989.

¹³² One example is the case n. 689004471, decided by majority vote by the *Tribunal Pleno* in the exact same day when the *Assento Regimental* n. 8 of 1989 was approved (i.e., August 21, 1989). Another example is the case n. 689051712, decided by majority vote by the 3rd Criminal Panel, in December, 21 of that year. Both decisions stressed that the court had autonomy to define which body within the institution could try such cases. At the same time, the fact that both rulings were not unanimous displays how controversial inside the TJRS this decision was.

had just decided.¹³³ As it turns out, both the STF and the STJ repeatedly upheld the autonomy of the state courts of appeals to define in their bylaws which of its bodies could try those cases.¹³⁴ In effect, the TJRS was not the only state court of appeals that decided to move the criminal cases of mayors away from its *Tribunal Pleno* at that moment. Appellate judges of other Brazilian states also realized that their Full Courts were not properly equipped to try mayors, and delegated such cases to other of their bodies in the beginning of the 1990s.¹³⁵ Meanwhile in Rio Grande do Sul, the delegation to the panels did alleviate the workload of the Full Court. Yet, other problems pertaining to the processing of such cases persisted and entirely new ones emerged.

First, the trial of such cases did not speed up as expected. Inasmuch as the panels displayed a much leaner structure than the *Tribunal Pleno* and did take less time to deliberate and reach final decisions, other cases clogged their dockets. Accordingly, the three criminal panels of the TJRS were responsible for adjudicating all appeals in cases of major felonies from the entire state, and did not possess (neither currently do) any mechanism of case selection, being legally required to hear all of them. This meant that the workload of each judge in those panels was divided between a substantial number of appeals – reaching thousands of new ones each year – and a handful of criminal cases of mayors. Additionally, in accordance to the Brazilian laws, some appeals enjoy priority over other cases, especially when the defendant is in jail (either due to a conviction by a

¹³³ The first case at the TJRS mentioned in the previous footnote (n. 689004471), for instance, was challenged in the *Superior Tribunal de Justiça*, the highest branch of the Brazilian judiciary in charge of statutory interpretation of federal laws. This took place in the habeas corpus n. 493, in which 6th Panel of that court unanimously decided on October 29, 1990, that the TJRS had autonomy to decide which of its bodies could try criminal cases of mayors.

¹³⁴ In addition to the decision mentioned in the previous footnote, other examples of decisions by Brazil's high courts upholding the autonomy of the *Tribunais de Justiça* to define in their bylaws how to try criminal cases of mayors include the habeas corpus n. 2316 and the *recurso especial* n. 33.891 both ruled by the *Superior Tribunal de Justiça* in 1993 and the habeas corpus n. 71.381 and 72.465, decided respectively in 1994 and 1995 by the *Supremo Tribunal Federal*. The only decision that slightly differs from these is the habeas corpus n. 71.429, in which the STF ruled that this change of jurisdiction inside a court of appeals *could* be made via state legislation.

¹³⁵ Courts of appeals of states like Minas Gerais, Goiás, Pernambuco, and São Paulo, for instance, delegated cases of mayors to their respective criminal panels, as existed in Rio Grande do Sul between 1989 and 1992. Differently, courts of appeals in states like Mato Grosso, Paraná, and Rio de Janeiro, delegated such cases to other bodies in which all criminal panels of the Tribunal de Justiça merged into a single group for adjudication.

lower court or due to a preliminary arrest at the beginning of a case). The combination of huge workload, priority to other cases, and the inevitably much more laborious process of trying criminal cases of mayors implied that the latter were often at the bottom of file stacks and only slowly moved towards final adjudication.

Second, the expected improvement in the quality of the evidence produced at the *instrução* stage fell short. Accordingly, the administrative resolution of the TJRS that moved the cases of mayors from the *Tribunal Pleno* to the isolated panels in 1989 also included a novelty in this realm: the rapporteur judges of cases of mayors could now delegate the *instrução* of their cases to a single district judge that would be appointed by the TJRS to perform the examining stage of such cases on their behalf. That is, rather than relying on judges from all the judicial districts over the state to hear witnesses via *cartas de ordem*, this new practice centralized the task in the hands of just one judge, called *juiz de instrução*, or *instrução* judge. He would go directly to the several cities where the witnesses lived just to hear them in formal court hearings. Although the administrative resolution did introduce this new possibility, it was not immediately available. As Danúbio Edon Franco, who was one of the first such judges to exert this role in the early 1990s and would later become a member of the 4CC, explains:

“I had to travel ... and then outlined an itinerary to spend an entire week away in various cities for hearings ... and this implied expenses with vehicle, fuel, driver, diaries, and so on ... and at that time the second-vice-president of the court [i.e., the one in charge of administrative affairs] was José Barison, who was an extraordinary individual. Then, I went often to talk to him to say ‘so, I have to travel to all these cities to hear all these witnesses,’ to which he calmly responded ‘*bah tchê*, the court is short in cash, and it will take a lot of time just trying to get it ... so let’s use what the legislation allows us, which is the *carta de ordem*” (Interview #70).

This implied that even if some rapporteur judges wanted to use the *juiz de instrução* to perform the examining stage of their cases, only occasionally this could be done. Moreover, while some

rapporteurs did prefer using this appointed judge for the *instrução* of their cases, others did not and resorted anyways to traditional *cartas de ordem*. Therefore, while the quality of the evidence may have improved for a few cases, it was still lacking for most of them.

Third and final, because panels in a Brazilian court of appeals operate largely as courts within a court (with their own staff and clerk's offices, or *secretarias*), they work relatively independent from each other. Not surprisingly, once the TJRS placed the criminal cases of mayors under the jurisdiction of its three criminal panels, "the decisions that followed were often contradictory," noticed prosecutor Luiz Carlos Ziomkowski (*apud* Eggers 1996, 72). That is, distributing the cases in all criminal panels of the court led to "divergent rulings, divergent opinions, and ... to a divergence even in procedural routines," confirms judge Luiz Melíbio Uiraçaba Machado (Interview # 5; see also Interviews # 11 and 70). An example of this dynamic was the decision whether or not hear such cases. While some panels stipulated that this decision should be made in a session with all their members, others defined that it could be made by the rapporteur judge alone.¹³⁶ An additional example includes the use of *cartas de ordem* or of the appointed district judge for the *instrução* of the cases cited above. Inconsistent judicial positions within the same court, in turn, only amplified the uncertainty of what was in itself a confusing topic.

Given the novelty of the issue of the "mayor's trial before the *Tribunal de Justiça*," the appellate judges of the TJRS were by then unsure about a variety of issues, such as whether or not this applied to *former* mayors or to *federal* or *electoral* crimes – and all this implied for the need to transfer those cases to district judges or to federal or electoral branches of the Brazilian judiciary.

The fact that the TJRS had three panels making decisions in such cases allowed each one of them

¹³⁶ An example of the latter practice is the decision reached in the case n. 692008550, which was unanimously ruled by the 3rd Criminal Panel of the TJRS in May 15, 1992, in which the rapporteur judge was Nério Letti. That is, the entire panel agreed that it had been correct the rapporteur judge to decide, on behalf of the entire panel, whether or not to hear the case.

to pursue its own positions while interpreting the exact same laws, consequently increasing the volatility associated to those already complex cases.¹³⁷

So far, I have only talked about the courts of Rio Grande do Sul, therefore ignoring the actions of both the public prosecution office and the auditing agency of the state during this period. Starting by the former, the *Ministério Público do Estado do Rio Grande do Sul* (MPRS) was an attentive spectator of the changes taking place inside the TJRS since 1988 in regards to the criminal cases of mayors. Rather than producing increases in inter-institutional coordination, that was largely so because the court's definition as to which of its bodies –the Full Court or the criminal panels – was responsible for trying the mayors brought about important consequences for how the MPRS would prosecute them. Accordingly, only the head of a state *Ministério Público* in Brazil – called *procurador-geral de justiça*, or prosecutor-general – can formally press criminal charges against mayors. So, when the cases were tried before the Full Court, he was the one bringing the cases to court. As the *Tribunal Pleno* delegated the cases to the isolated panels, so the prosecutor-general delegated his authority to press charges against mayors to the prosecutors officiating before each of the court's criminal panels, the *procuradores de justiça*.

As a result, because the organization of the MPRS mimicked closely that of the TJRS, several problems that afflicted the latter also plagued the former. On the one hand, when the prosecutor-general was in charge of those cases, they competed for his attention with other equally relevant tasks. As the highest official of the *Ministério Público*, the prosecutor-general has several areas

¹³⁷ Not surprisingly, the TJRS was prolific in deciding those jurisdictional matters. While there were indeed several cases being sent to the court from district judges all over the state, other cases were being sent from the TJRS to the district judges, especially against *former* mayors (e.g., cases n. 691018592, 691018584 and 691107478). This resulted from a position of the STF, which until 1994 deemed the *Decreto-Lei* n. 201 inapplicable to former heads of city halls. The change took place in the decision of the habeas corpus n. 70.761 (I thank Vladimir Giacomuzzi for calling my attention to this topic). Additionally, there were decisions sending cases to the federal courts (e.g., cases n. 689076289, 690041959, 691103733, and 689077899) and the electoral courts (e.g., case n. 690024658). Parallel to that, some district judges kept on deciding such cases and their decisions had to be nullified by the TJRS (e.g., cases n. 689037943 and 690032487).

of concern, including arguing other types of cases before the *Tribunal Pleno* and, especially, all the administrative responsibilities that a large and complex institution such as the MPRS entail. Consequently, if the cases were only slowly tried by the TJRS, they were just as slowly brought to court by the MPRS too. These time constraints also prevented the prosecutor-general from participating directly in the *instrução* of the cases. He had to rely on the work of the prosecutors officiating before each one of the judicial districts of the state when they participated in hearings for *cartas de ordem*, contributing further to the poor evidence produced in court.

On the other hand, the delegation from the Full Court to the isolated criminal panels implied that the *procuradores de justiça* officiating before each of those panels became responsible for such cases. Because these panels were clogged with appeals, most of the attention of these prosecutors had to be spent on them, and thus not in the cases of mayors. In turn, this made nearly impossible for them to participate in the trial hearings of those cases throughout the state as well. Even more critically, they were not district prosecutors and had been working in appellate courts for quite a while, implying that they too lacked familiarity with hearings for the *instrução* of those cases. As a result, the MPRS and the TJRS performed very similarly, both contributing to generate slow-moving, evidence-poor cases against mayors during this period.

While the prosecutors' office followed closely the changes taking place in the TJRS during this period for the purposes of its own division of labor, the same cannot be said of the state's auditing agency, the *Tribunal de Contas do Estado do Rio Grande do Sul*, or TCERS. For most of this period, it actually exerted its functions in relative isolation from both appellate judges and public prosecutors. Yet, the audit reports of the TCERS detected several irregularities in the city halls of Rio Grande do Sul that could have potentially supplied material for a variety of court cases. Yet, their use to this end was limited by then, paling in comparison to the prominence they

gained in the years following the establishment of the specialized panel on mayors at the TJRS, when these audit reports became the most frequent, albeit certainly not the sole, source of the court's and prosecution's work on mayoral crimes.¹³⁸ In other words, the *potential* for using the audit reports to prosecute mayors in court existed, but would have to be unleashed.

Accordingly, this potential derived from a long-standing policy of the TCERS to perform *in loco* inspections in the expenses of all city halls of the state every single year (see Interviews # 8, 10, 13, 14, 18, 66, and 69). Comparatively to the auditing agencies of most Brazilian states as well as to their national counterparts,¹³⁹ this is not a typical practice. That is, most auditing agencies of the country do not perform as many *in loco* inspections every year. Instead, they often inspect just a few cities (either the larger or randomly selected ones) and rely mostly on the reports sent by the city halls to them in order to verify the compliance of the cities' expenses with the law. This implies that a comparatively large number of irregularities were (and still are) detected every year by the TCERS, especially those that would pass unnoticed were such yearly *in loco*

¹³⁸ Albeit hard data is scarce for this initial period, a report of the public prosecution office shows that less than twenty-five percent of its criminal investigations on mayors until 1992 had been initiated from notifications of irregularities by the TCERS (see MPRS 1994). The report is from February of 1994, so I had to exclude the years of 1993 and 1994 to account only for the period before the creation of the specialized judicial panel on mayors at the TJRS. Still, these data should be read with caution, given that many self-initiated investigations of the MPRS (which encompass the majority of cases in this report, or nearly sixty percent of them) may have also been based on these audit reports, even if they do not formally identify the TCERS as their sources. I thank public prosecutor Luiz Inácio Vigil Neto and another of his colleagues at the MPRS for explaining this aspect of their work to me. This suggests that the percentage noticed previously is probably an underestimation of the actual use of the TCERS reports by the public prosecutors. As for the use of the TCERS audit reports after the creation of the 4CC in 1992, I will detail this in the upcoming sections, but nearly all appellate judges and prosecutors I interviewed shared the opinion that such reports became the most important source of their work (e.g., Interviews # 5, 11, 17, 22, and 71). For instance, appellate judge Danúbio Edon Franco noticed that approximately “seventy percent of the material that arrived to us [at the 4CC] came from the audit reports of the court of accounts [i.e., the TCERS]” (Interview #70). His colleague Vladimir Giacomuzzi, who remained for several years in the 4CC also observed that “nearly 80, 90, and at times 100 percent of the crimes committed by mayors were indicted by the MPRS after an investigation based on the audit reports of the court of accounts [i.e., the TCERS]” (Interview #11).

¹³⁹ There are two national auditing agencies. The first of them, established in 1891, is named *Tribunal de Contas da União* (TCU, or Court of Accounts of the Union), which exhibits roughly the same structure and attributions of the TCERS, but is concerned with the oversight of federal resources. The second of them is the *Controladoria-Geral da União* (CGU, or Comptroller-General of the Union), a federal anti-corruption agency established in 2001 under the name *Corregedoria-Geral da União* (or Inspector-General of the Union) and acquiring its current nomenclature and structure in 2003.

audits absent. Despite this enormous effort on the part of the auditors, the wrongdoings they detected were simply failing to reach the courts in the early 1990s. Accordingly, because the TCERS is an administrative agency that can itself impose fines on mayors for their irregularities, it usually decided first whether or not to impose such penalties *before* notifying the MPRS of any detected wrongdoings. These decisions, nevertheless, were made by the board of the TCERS and took a significant amount of time to be reached, often years. This implied that many of the irregularities performed in city halls only came to the attention of the public prosecution office many years later, even if they had been detected by the TCERS much earlier.¹⁴⁰ Ultimately, this meant that such wrongdoings took even more time to be finally decided by the judiciary, further delaying the adjudication of cases either by the Full Court or the isolated criminal panels of the state court of appeals of Rio Grande do Sul.

The overall scenario that emerged from this dynamics in Rio Grande do Sul, therefore, was one in which holding mayors legally accountable for their acts was nearly impossible, representing an extreme case of what I have earlier termed *fragmented autonomy*, with distant institutions and non-routinized practices that could bind legal actors together. As it turned out, between 1988 and 1992 at least twenty cases involving mayors were heard and not a single one led to a conviction at the TJRS.¹⁴¹ Because the cases moved all too slowly, only a few ever displayed *any* decision from the court during this period. Of the few that did, the court decided not to hear a large

¹⁴⁰ This was, for instance, case n. 3241, of 1992 (following the numeration of the MPRS). Accordingly, it referred to irregularities of the city hall of the city of São Francisco de Paula detected by the TCERS in 1983 and which arrived at the public prosecution office only in 1992 (MPRS 1994, 2). While this is an extreme example, other cases arriving in 1991 at the MPRS included irregularities identified by the TCERS in years ranging from 1984 to 1988, with some received in 1992 having been detected by the TCERS between 1986 and 1988 as well (see MPRS 1994).

¹⁴¹ To be fair, there was one *preliminary* court decision removing a mayor from office during the period, in the case n. 691067920, of 1991, but it did not result from a conviction. Similarly, I could not find a single case of conviction at the TJRS before the 4CC was established. The only thing that came close to that was the case n. 689003549, of 1991, in which the mayor of the city of Santiago was convicted for having physically assaulted the president of a local union. Still, not only this is not a case of corruption in a strict sense, but the case had also been reached by the period of prescription, no longer being able to be sentenced.

portion of them, and all the remaining ones invariably led to acquittals.¹⁴² The few cases that ever reached the adjudication stage proper at the TJRS, not surprisingly, had very poor evidence resulting from the precarious *instrução* stage and could not safely support convictions.

By the same token, one of the only quality evidences available – the audit reports of the TCERS – took simply too long to arrive at the prosecutors’ office and even more so at court, contributing further to delay judicial decisions. Such prolonged time needed to finally adjudicate any of such cases, in turn, raised the issue of the period of “*prescrição*” (or prescription), which is similar to the statute of limitations of common law countries. It defines, in short, that after a certain time period elapses, an individual can no longer be sentenced even if he or she acted in a clearly unlawful manner in the past.¹⁴³ Additionally, in accordance to the Brazilian legislation, the clock only stops ticking with a judicial decision. That is, “from the moment the defendant begins to be investigated, through the prosecutors’ opening of a case and the defendant’s indictment and subsequent conviction (if guilty), the entire period is counted against the period of prescription,” explains Taylor (2011, 172). Taking too long to handle these cases, in other words, risked seeing guilty mayors walk entirely unsentenced despite the unlawfulness of what they had done.

In the first years following the enactment of the 1988 Brazilian constitution, hence, no “obvious” solution existed to the directive of the “mayor’s trial before the *Tribunais de Justiça*.” Instead, this was a short but entropic period in which the TJRS oscillated between trying such cases at the Full Court and the isolated criminal panels, with the *instrução* being performed either via *cartas*

¹⁴² In this period, cases not heard by the court include the following: n. 690087762, 690034210, 691099832, 691018261, and 691004402, all of 1991. Similarly, cases of acquittals include the following: n. 689053106 of 1989, n. 690028683, 688072834, 689064509, 690059266, 688079599 and 689067999 of 1990, n. 688076413, 689046258, 689004075, 689040103, 689047728 of 1991, and n. 690037320, 689004331, and 692007313 of 1992.

¹⁴³ Devised to speed up trials and safeguard individuals against overly delayed court proceedings, this rule is actually frequently employed by private attorneys to pursue all delaying techniques available so as to avoid any sentence to be carried out against their respective clients.

de ordem or by a single appointed judge, with all each of these changing arrangements implied for the activities of both the MPRS and the TCERS. In effect, before there was a specialized judicial panel on crimes of mayors in Rio Grande do Sul and it allegedly became a model to be emulated throughout Brazil, legal accountability of crimes of mayors in the state could more precisely be portrayed as the “policy primeval soup” or the “garbage can model of organizational choice” of which Kingdon (1984) and Cohen, March and Olsen (1972) respectively talk about.¹⁴⁴ This embrionary period served largely as a process of *organizational learning via exploration*¹⁴⁵ in which problems could be identified and potential solutions matured. Not surprisingly, this was mostly a period of in which the institutions of the judicial system of Rio Grande do Sul did not face any constraints from the elected branches, but were extremely dissociated or fragmented – both externally and internally – to produce any significant legal accountability results, leading to a severe case of *fragmented autonomy*.

In effect, the first realization judges had coming out of this period was that of mayoral impunity, in spite of the commitment some displayed against it. Similarly, the twofold causes of this state of affairs were clear by then as well: overly delayed cases and poor evidence produced in court.

Speeding up the processing of the cases and improving the quality of the *instrução* were in order

¹⁴⁴ The notion of “policy primeval soup” referred to by Kingdon (2003) in fact borrows from the idea of “organized anarchies” advanced previously by Cohen, March and Olson (1972) – and before them, the argument of incremental policy change suggested by Lindblom (1959). In common to all such views, there is the emphasis on operating “by trial and error, by learning from experience, and by pragmatic invention in crises” (Kingdon 2003, 84). In turn, “as officials and those close to them encounter ideas and proposals, they evaluate them, argue with one another, marshal evidence and argument in support or opposition, persuade one another, solve intellectual puzzles, and become entrapped in intellectual dilemmas ... This mode of working through problems and proposals... contrasts to working them through lobbying muscle or mobilization of numbers of people” (ibid, 125).

¹⁴⁵ I borrow this expression from March (1991), for whom processes of organizational learning via exploration of multiple alternatives are usually associated to risk-taking, experimentation and, ultimately, innovation. Along this process, organizations usually learn by evaluating the successes and mistakes they made in previous experiences (see Brown and Duguid 1991, Huber 1991). Importantly, this process competes for the allocation of scarce resources within organizations with the “exploitation of old certainties,” which minimizes risk and focuses on sharpening current practices. Learning via exploration, in turn, may be achieved either by competition for primacy within the organization or by mutual learning. Whereas the latter is slower and less efficient in the short run than the former, it also leads to more sustained results over time. By these terms, it resembles the process of “hard initiation” of which Hirschman (1970) talks about as a source of loyalty to organizations.

if other results should follow. In a similar sense, there was also a perception that something like a repressed demand for court work in regards to crimes of mayors existed by then, given both the new constitutional mission of the public prosecution office as the defender of society's interests and the quality of the material generated by the prolific auditing agency of the state. Putting all these things together, however, would demand an approach different than the ones attempted up until that point. Innovation was in order. After four years of trial-and-error but poor results, the members of the TJRS would have again to try something new. Now, they would try to place the criminal cases of mayors into a single specialized panel created only for this purpose. The next section tells this story.

4.3. Risk-Taking in a Sea of Uncertainty: Specializing the Courts to Try Mayors

If there is an institution that was responsible for setting in motion the process that eventually led to the emergence of *coordinated autonomy* in Rio Grande do Sul, it was the 4th Criminal Panel of the TJRS created in 1992, which became a focal point to increase inter-institutional coordination on the legal accountability of mayors in the state. In order to explain how it came into existence two arenas of decision-making have to be accounted for. The first took place inside the appellate court of Rio Grande do Sul, the TJRS, and referred to the agreement among its members to specialize the trial of cases of mayors into a single panel. In other words, this arena concerned the idealization and vocalization of such proposal, as well as the efforts that rendered it acceptable among the members of the court. Once done, the second arena of action took place outside the judiciary proper. Because the TJRS decided to establish an entirely new court panel to adjudicate crimes of mayors instead of specializing into one of the already existing ones, such

a decision required creating new positions for appellate judges and staff. These implied public expenditures which, in turn, demanded legislative appropriations. The second arena of action, consequently, referred to the potential constraints that could have been posed on this initiative by the legislative and executive branches of the state government. Understanding why the 4CC came into existence in the first place, by these terms, requires taking into account the efforts of the TJRS's members in doing so as well as the lack of opposition outside the courts to advance such proposal. Starting by the former, the dynamics of these two decisions is detailed below.

Within-Court Dynamics: Judges as Institutional Entrepreneurs

By all accounts, the institutional entrepreneur responsible for putting forward the idea of creating a specialized panel on crimes of mayors at the TJRS was appellate judge Luiz Melíbio Uiraçaba Machado (e.g., Sadek and Cavalcanti 2003, Interviews # 5, 7, 11, 15, 17, 18, 22, 70, and 73).¹⁴⁶ A career judge since 1963 with professional and teaching experience in several fields of law, Melíbio became a member of the TJRS in 1985.¹⁴⁷ As a *desembargador*, he held positions in both civil and criminal panels and while his contact with the criminal cases of mayors came first at the Full Court, it became much more critical when he took part in the TJRS's administration in 1992.

¹⁴⁶ In this regard, I follow the theoretical framework advanced by Crowe (2007, 2012), who analyzes the institutional development of the judiciary as that of any other bureaucratic agency and the role of judges, in effect, as potential political entrepreneurs.

¹⁴⁷ After earning a law degree in 1959, Melíbio worked for four years as an attorney in (and eventually *for*) the city of Montenegro, in the metropolitan area of Porto Alegre. He was then admitted to the judicial career of the state of Rio Grande do Sul in 1961, after passing the competitive examinations selection process. As all in such career, he started as a district judge in countryside cities like Uruguaiana, Santa Rosa and Passo Fundo, ascending to a position in Porto Alegre only years later, in 1972, when he was appointed to a judgeship specialized on bankruptcy law. A few years later, he was selected to the *Tribunal de Alçada*, where he worked in a civil panel and was later invited to assist the TJRS's presidency overseeing judges throughout the state in the *corregedoria*, the equivalent to internal affairs, and, later, he was also invited to examine appeals filed by attorneys against decisions of the court, which should be sent to the high courts of the country. Finally, parallel to his judicial career proper, Melíbio was also a professor in various law schools all over the state of Rio Grande do Sul, in municipalities like Santo Ângelo, Cruz Alta, Paso Fundo and São Leopoldo, ultimately being selected to teach in his alma mater, the law school of the Federal University of Rio Grande do Sul, in Porto Alegre, where he specialized on procedural law (both civil and criminal) and judicial organization.

Accordingly, the story of the establishment of the 4CC starts with the election of *desembargador* José Barison by his peers to the presidency of the TJRS in 1991 and his inauguration in the next year.¹⁴⁸ Among others, this election brought judge Melício to the second-vice-presidency of the TJRS, which was previously occupied by José Barison himself, and manages the administrative affairs of the court.¹⁴⁹ At that moment, one of the tasks of this position was presiding over a committee with other court members to update its bylaws in order to meet the requirements posed by the new national and state constitutions enacted a few years earlier. It was in his role as the president of such committee that judge Melício put on the TJRS's agenda the idea of creating an additional criminal panel in the court that would have exclusive jurisdiction over cases in which mayors were the accused. Building on the experiences of the highly volatile environment of the court until then as well as on his own both at the Full Court and at one of the criminal panels, it had become clear to him that none of those arrangements were working adequately to try mayors in the court. That is, *adding* the task of trying crimes of mayors to any of the existing structures of the TJRS was simply not helping to make such cases move fast or produce good evidence.¹⁵⁰ Specializing into an entirely new panel, however, could provide that.

¹⁴⁸ Presidents of state courts of appeals are elected by their peers (i.e., by other appellate judges) in Brazil at least since 1979, when the federal supplementary law n. 35 so defined. This same law entirely forbids the affiliation to political parties by members of the judiciary in Brazil. On the particular election of José Barison to the presidency of the TJRS, it was a close one. The group of judges headed by him won by the tight margin of a single vote among their peers, defeating the other group headed by Milton dos Santos Martins. Accordingly, José Barison was probably part of the situation group, given that he had been participating in the TJRS's administration since 1989 as one of its vice-presidents. In time, *desembargador* Milton dos Santos Martins would eventually be elected to the presidency of the court after José Barison left his two-year term, by the end of 1993. Finally, I was not able to interview judge José Barison because he passed away in 2000 and was therefore deceased when my fieldwork took place.

¹⁴⁹ Apart from José Barison and Luiz Melício Uiracaba Machado, the other members of the TJRS's administration in the 1992-1994 period included *desembargador* Elias Elmyr Manssour at the first-vice-presidency, in charge of legal affairs, and *desembargador* Ruy Rosado de Aguiar Júnior, responsible for the *corregedoria*, or internal affairs.

¹⁵⁰ The solution to be found, in other words, demanded performing more efficiently one task (that of trying mayors), but without disrupting the regular routine of performing all previously assigned tasks (that is, the court's work on all other appeals and cases arriving to it). Of course, this is not a problem exclusive of courts, afflicting all sorts of organizations. As Horowitz summarizes, "Institutions are often a step behind the tasks they must perform. This is especially likely to be true if new tasks have been added to the old, rather than displacing them, so that the problem is not simply one of transformation but of performing both tasks" (1977, 23).

While advanced by judge Melíbio, this proposal actually followed a realization reached by many TJRS's members by then, having been suggested at least as early as 1989.¹⁵¹ That is the reason why I have referred earlier to a process of organizational learning taking place inside the court. Not accidentally, as I pushed judge Melíbio to tell me where the idea to specialize criminal cases of mayors into a single judicial panel of the TJRS came from, he answered that it “matured as we [the state's appellate judges] talked to each other in recesses of courts hearings, during coffee break ... talking about what had just happened [during the trial of a case] ... we could see which things were working and which were not working” (Interview #5). Among the latter, there was the poor testimonial evidence produced via *cartas de ordem*, the divergent rulings of the isolated panels, the lack of time judges could dispense to such cases and, ultimately, the waste of their work, since all cases ended up in acquittal or *prescrição*, thereby resulting in a “demoralization of the court's authority” (ibid). This concern with the court's image as permissive in regards to such cases, in turn, was in line with the proposal of creating the new panel, so that its “activity would create a change in the political culture of our state ... to cease the feeling of impunity, because at that time no one saw any authority being convicted, only second and third tier officials... our visible objective was this one: fighting the culture of impunity” (ibid).

The specialization of cases of mayors into a new panel, however, implied taking such cases away from nearly all sitting judges of the court. Rather than believing that their powers were being seized, though, many appellate judges of Rio Grande do Sul actually felt relieved of being free from the laborious tasks those cases ensued. One of my interviewees – who asked to remain anonymous for this part of the interview – even suggested that the state's *desembargadores* in

¹⁵¹ This took place during the debates that led to the delegation of the criminal cases of mayors from the Full Court to the isolated criminal panels. As one appellate judge of the TJRS who retired from the court in 1989 recalls, “the [Tribunal] Pleno did not have the capacity to examine the large number of cases of mayors and that is why many *desembargadores* began contemplating the possibility of specializing into a single panel” (Interview # 15, see also Interviews # 11 and 70).

fact “created the 4th Criminal Panel because they simply did not want to try mayors ... and since he [judge Melíbio] wanted, so they decided to give those cases to him.” As radical as it appears, another testimony, by an appellate judge who was part of the TJRS’s administration in the early 1990s, corroborates this opinion: “Courts do not like to adjudicate ‘white-collar,’ and that is why we had the good sense of creating the 4th Criminal Panel. If the mayors were tried by the Full Court, it would be like Bahia, Maranhão, Acre, etc. [i.e., other Brazilian states], where no mayor is convicted. The 4th Criminal Panel, with only three members, has the conditions to perform the trial of those using the white-collar,” suggested Nelson Oscar de Souza (*apud* Félix and Grijó 1999, 346-347).¹⁵² In fact, as judge Melíbio himself recollects, “inside the TJRS, there was not much controversy or resistance to create the 4CC. The [judges from the] civil area loved it because ... [they] simply did not want to know of those cases [of mayors] in the *Tribunal Pleno*” and even those in the criminal panels “liked it because it took work away from them too” (Interview # 5). All those narratives, in turn, are consistent with the fact that the first members of the 4CC were “assigned to it upon requests of those interested in being part of it, observing the order of seniority” (TJRS n.d., 1).

The proposed specialization, nonetheless, could have existed in one of the then existing three criminal panels of the court, so that one could have absorbed the new task and the other two could have remained adjudicating solely appeals. The proposal of creating an entirely new panel was convenient, hence, precisely because it avoided a redistributive conflict inside the court, turning it into a near-consensual proposal. As a result, the only discussion taking place inside the

¹⁵² Contextually, it is important to mention that in this period the TJRS was under the enormous attention generated by the so-called *Daudt case*, in which state representative Antônio Dexheimer was accused of murdering one of his colleagues, state representative José Antônio Daudt. Since state representatives enjoy special standing in the TJRS due to a provision of the state constitution, the case was tried by the Full Court and placed all its members in the spotlight during the trial in 1990. The case ended up in acquittal, largely due to lack of evidence, but the controversy caught many of the TJRS’s appellate judges by surprise, given the widespread attention it produced.

TJRS was “technical ... whether or not we were legally entitled to do so [i.e., to specialize criminal cases of mayors into a single panel], and whether or not this decision would be reversed by the STF [the Brazilian Supreme Court]” (ibid).

At the same time, the proposal benefited from the perception that the courts of Rio Grande do Sul had a history of being innovative, largely due to the diversification and mobilization of its ranking members in a variety of fields of law.¹⁵³ The idea of establishing an entirely new panel at the TJRS only to try mayors, thus, enjoyed broad support among its members, resulting from a confluence of ideas and interests inside a traditionally activist court. Consequently, while several *desembargadores* simply did not spend time working on those cases of mayors, they nonetheless perceived as legitimate the pursuit of the proposed solution to what some – like judge Melíbio – considered to be a critical component of the court’s mission. As a result, if the TJRS’s members had an opportunity to establish this new criminal panel as well as the judicial and staff positions it required, they would take it. Doing so, nevertheless, demanded the good will of actors outside the walls of the judiciary proper.

Extra-Court Dynamics: Judicial Strategy in a Favorable Environment

Just as the environment inside the TJRS was receptive to the creation of the 4CC, so it was outside of it. In fact, as strange as it may seem, there was virtually no controversy with the executive and the legislative branches of the state government to approve the proposed new panel. The 4th Criminal Panel of the TJRS, accordingly, was officially established by the state

¹⁵³ This included the pioneer rise in Brazil of the so-called *direito alternativo* – literally, “alternative law,” which is similar in content to the critical legal studies of the United States – among its rankings (see Guanabara 1996, Custódio 2003, Engelmann 2004, 2007), a tradition of innovative judicial decisions in all sorts of cases (see Da Ros 2008) and even in institutional reform, such as the establishment of the first small claims court of the country in the early 1980s (see Schmidt 2008, 12-14). All such practices, in turn, were largely supported by and gestated within the local association of judges, the *Associação dos Juízes do Rio Grande do Sul*, or AJURIS, established in 1944, which even promoted strikes of district judges in the late 1980s and early 1990s to advance causes such as greater financial and administrative autonomy of the state’s judiciary (see Engelmann 2009, Ingram 2009, 278-288).

law n. 9.662, of May 11, 1992. The bill that resulted in this piece of legislation was submitted to the assembly of representatives of Rio Grande do Sul directly by the state's judicial branch, as has been the historical practice in regards to laws on judicial organization in Brazil.¹⁵⁴ The court proposed the bill only two weeks after *desembargador* José Barison was inaugurated as TJRS's president, in February 17, 1992. Once in the state's legislature, it moved quickly. It received favorable reviews in two of committees and was approved by the overwhelming margin forty-six votes for and only one vote against it, in April 29 of that same year.¹⁵⁵ Less than two weeks later, finally, the state's governor signed it into law.

As it turns out, the level of controversy that this bill engendered was so low in the elected branches of government that it was approved exactly as proposed by the TJRS. Not a single word of the bill changed from proposition to enactment. Part of the reason why this bill generated so little attention refers to the strategy the members of the court adopted to create the specialized panel. Accordingly, the explanatory statement presented by the *desembargadores* of the TJRS to submit this bill to the state's legislature did not mention anything about cases of mayors. Rather, it only asked for a new criminal panel and for its respective positions due to a true increase of the court's caseload. In short, the document simply refers to a growth of approximately thirty percent in the total volume of criminal cases in the previous year and of over a hundred percent during the preceding half decade. Nowhere in the bill or in the law resulting from it, therefore, were

¹⁵⁴ In other words, the judiciary is the direct and sole *sponsor* of bills pertaining to its budget, wages, etc. in Brazil. As such, both the federal and the state judicial branches of Brazil can propose bills to their respective legislative bodies (i.e., Congress for the federal courts, and various state assemblies for the state courts) in what concerns the establishment or termination of positions – judicial or otherwise – in their ranks, as well as their wages and the overall structure of the court system. This provision, which has existed in nearly every Brazilian national constitution since 1934, is also present in that of 1988. In time, while the national legislature of the country is bicameral, the state assemblies are not, including a single parliamentary chamber with twenty-four to ninety-four representatives, depending on the state's population.

¹⁵⁵ Seven representatives were absent in the day of the vote. Curiously, the only representative to vote against the bill was Carlos Araújo, who was then married to the current Brazilian president, Dilma Rousseff. I am not aware of the reasons for his divergent vote.

criminal cases of mayors mentioned specifically.¹⁵⁶ The enacted statute, hence, only created the positions of judges and of other personnel needed to make a new panel come into existence.

The proposed bill failed to mention the specific jurisdiction of this new criminal panel following what was a deliberate strategy on the part of the TJRS's appellate judges. Given that Brazilian courts enjoy autonomy to define in their bylaws how they organize their work (and that they are the ones defining them), the *desembargadores* of Rio Grande do Sul avoided a heated debate with the legislature simply by suppressing the topic from the bill. As such, it was only after the law creating the 4CC had already been enacted that the TJRS's judges altered the bylaw of the court to define that the new panel would have specialized jurisdiction over cases of mayors, as decided via administrative resolution in June 19, 1992.¹⁵⁷ The strategy of the TJRS judges, thus, helped avoiding any red flags from being raised in the elected branches of government. Still, it could only do so because the legal accountability of mayors was largely *not* an area of concern of most political elites by then in the state and, for that matter, in the country. Hence, while some TJRS members were sincerely concerned with mayoral impunity in the early 1990s, this was not an area of attention outside the courts. So little opposition existed to the proposal, thus, because the issue was simply not in the agenda of most elected officials of the state then, given that only a few cases had actually been tried until that point and none of which had ended in a conviction.

In effect, controversy with the elected branches of government only came into play a few years later, after the 4CC started performing its job more assertively. As judge Melíbio recalls, “people

¹⁵⁶ This information is available in the *Justificativa* – or “statement of reasons” section – of the *Projeto de Lei Ordinária* n. 54, of 1992, of the *Assembleia Legislativa do Estado do Rio Grande do Sul* (ALRS), the state's house of representatives.

¹⁵⁷ This decision was made via an internal resolution of the court, the *Assento Regimental* n. 2 of 1992. It defined that the 4CC would have preference in the trial and adjudication of cases brought against city mayors. Additionally, and following the organizational learning inside the court, the new bylaws also defined that the rapporteur judge could delegate the *instrução* of those cases to a single appointed judge by the court.

only started to realize what was happening after [the 4CC had been created], when convictions started to take place, with mayors in jail. No one had seen that before” (Interview # 5). The surprise that afflicted mayors in those years, in turn, also occurred to several members of the TJRS. As appellate judge Vladimir Giacomuzzi recollects: “How did the court do this [create the 4CC]? They [appellate judges] did not even know that all this repercussion would follow. If they knew, maybe they would not have done it” (Interview # 11).

Finally, the last factor facilitating the establishment of the 4CC was the overall good relationship between the judiciary and the state government, particularly the governor Alceu Collares (1991-1994), who openly endorsed a variety of reforms proposed by the TJRS in this period. Elected in a second round with over sixty percent of the votes, Collares was unable to convert his electoral strength into legislative support. While his moderate left-wing *Partido Democrático Trabalhista* – PDT, or Democratic Labor Party – received the largest share of votes for the state’s legislative assembly for his term, this meant just thirteen of its fifty-five seats, given the party fragmentation produced by Brazil’s electoral rules, with open-list proportional representation. Unable to obtain majority on his own, Collares also refused to give space to other political parties in the governing coalition, yielding a scenario of divided government in which the head of the executive adopted a centralized, uncompromising, even personalistic governing style, and had nearly three quarters of the state assembly in his opposition. Not accidentally, his term in office was markedly unstable, producing the lowest legislative success and the highest veto override rates of all Brazilian state governments in the period (see Passos 2013, 48-88).

Despite the odds, Collares was a key supporter of proposals of the state courts. Partially because he was a trained lawyer who was “ideologically inclined to respect the judiciary’s institutional autonomy” and partially because he had a “close friendship” with the president of the TJRS, José

Barison, governor Collares helped to enhance the financial and administrative autonomy of the court markedly by delegating to it functions that previously were exerted by the executive branch (Ingram 2009, 282). These encompassed “control over the planning and exercise of the judicial budget” as well as the “decisions regarding the organization of judicial districts (*comarcas*), the creation of new posts in the judiciary (clerks, secretaries, judgeships, etc.), and all purchasing, building, and institutional planning” (ibid).¹⁵⁸ Similarly, the judiciary of Rio Grande do Sul was also able to redefine the entire system of small claims courts of the state during this period, also with significant support from the governor and the legislative assembly.¹⁵⁹

This honeymoon between courts and elected branches, finally, would span beyond the Collares administration in Rio Grande do Sul. In fact, a series of reforms advanced by the state’s judiciary in the following years also enjoyed significant support from the government and the legislature, even if some episodes of conflict also followed.¹⁶⁰ Ultimately, even these conflicts were mostly confined to judicial spending and did not pertain to the exercise of judicial authority proper – that is, challenges to particular court decisions or prerogatives, or to the safeguards of its respective

¹⁵⁸ These were both exclusive responsibilities of the executive branch until 1988 and 1989, when the federal and state constitutions, respectively, transferred them directly to the judiciary. While the constitutions determined that, these measures took a while to be implemented in different Brazilian states and Rio Grande do Sul was indeed one of the first to do so. The effort of governor Collares was so noticeable that he even went to a session of the TJRS’s Full Court to sign the transfer of such responsibilities to the court. Thanks to this measure, the state judiciary could was able to build thirty-five new court buildings in the various cities around the state, in accordance to appellate judge José Eugênio Tedesco (*apud* Félix and Grijó 1999a, 226-227). See also Ingram (2009, 278-288).

¹⁵⁹ The state law n. 9.446, of December 6, 1991, entirely redefined the system of small claims courts of Rio Grande do Sul, even serving as the basis for the national law on the topic four years later. It followed the pioneer experience of the first small claims court of the country, created in the city of Rio Grande, as defined by the state law n. 8.124, of January 10, 1986 (see Schmidt 2009).

¹⁶⁰ Probably the best example in this regard was the fusion of the TJRS and the *Tribunal de Alçada*, completed in 1998 under the administration Antônio Brito, of the centrist *Partido do Movimento Democrático Brasileiro* – PMDB, or Party of the Brazilian Democratic Movement. Because it incorporated the seventy-two *juízes de alçada* to the TJRS’s ranks as *desembargadores*, it increased judicial spending with wages and with the construction of a new building for the new “unified” court of the appeals of the state. The legislative and executive support to such reforms were expressed in the approval of a state law (n. 11.133, of April 15, 1998) that regulated further the previous approval of an amendment to the state constitution (n. 22, of December 11, 1997).

members.¹⁶¹ The latter have largely failed to take place during this entire period, given that the state of Rio Grande do Sul has been characterized by high rates of electoral competition and polarization in the last decades, with a series of episodes of divided government, all of which have been preventing court-curbing attempts from taking place, least of all successfully, in the state.¹⁶² That is, the institutional autonomy of the TJRS has been consistently high for the period.

The political environment, as a result, was highly favorable for the TJRS's initiative of setting up a specialized panel on criminal cases of mayors, even more so because the issue was then outside the radar of most political elites and it was advanced by the judges in a manner that contributed further to avoid that attention.¹⁶³ The panel, in short, was easily created. Making it effective, however, would demand adjustments both inside and outside the 4CC, concerning especially the workings of other institutions, like the state's public prosecution office and auditing agency. The appellate judges of Rio Grande do Sul, by these terms, sent a clear message to attentive legal actors that they were now mobilized to fight mayoral corruption, and even had an institutional locus in which they could dedicate themselves more sharply to it. Whether or not they would be effective in doing so and whether other institutions would follow the initiative, though, were still open questions.

¹⁶¹ For a detailed account, see Ingram (2009, 78-88). It is important to mention, however, that those episodes of conflict over judicial spending do not seem to exhibit clear ideological line as to the state government involved in it, resulting largely from the fiscal problems increasingly faced by the state in the last years, as well as perception among the political elites that the state's judiciary is already well equipped and, thus, do not demand greater appropriations as it did in the beginning of the 1990s. In effect, the most recent episodes of conflict with the courts involved the administrations of both left-wing and right-wing governors (i.e., Olívio Dutra, of the *Partido dos Trabalhadores*, PT, or Workers' Party, between 1999 and 2002; and Yeda Crusius, of the *Partido da Social Democracia Brasileira*, PSDB, or Party of the Brazilian Social Democracy, between 2007 and 2010).

¹⁶² There is a long literature on the topic, of which good examples include the works by Grohmann (2003, 188-224), Schneider (2006), and Passos (2013), among various others. As for the effect of these variables on the behavior of Rio Grande do Sul's courts, see Da Ros (2008).

¹⁶³ The conditions that conduced to this innovation, by these terms, resemble those in which policy experts exert greater influence in its final definition. As Rich observes, "experts can have a greater chance of affecting the broad outlines of policy debates in instances where an accumulation of policy research supports similar conclusions as a new issue debate gets underway. Then the role of experts tends to be greater in debates that ... move at a relatively slow pace, and that do not elicit the mobilization of organized interests with much to lose in the decisions under consideration" (2004, 107).

4.4. Towards Coordinated Autonomy: Struggling to Produce a Unique Record in Brazil

Once created, nothing guaranteed that the 4th Criminal Panel of the TJRS would actually work to try the state's mayors for their crimes adequately. Above all, this specialized panel was – like the Full Court and the isolated criminal panels before it – another *attempt* in this realm. In effect, just like its specialized status had been established by an administrative resolution of the court, so it could easily be removed. Much therefore depended on how the panel and the individuals in it would perform their assigned tasks in the following years. As it turns out, this arrangement proved quite resilient since then, largely because it gave a “specific format to the adjudication of mayors and actually started trying mayors, and until that moment mayors barely had any cases brought against them,” explains Oscar Breno Stahnke, a private attorney who worked alongside the mayors and city halls of Rio Grande do Sul since the 1960s (Interview # 7).

Yet, stating that court specialization automatically solved all problems the appellate judges of the state had identified in the trial of mayors at the TJRS since 1988 is surely inaccurate. Inasmuch as the 4CC was established in 1992, only in the subsequent year the trials of mayors effectively started taking place and became routinized, eventually leading to the first convictions. That is, *coordinated autonomy* did not begin instantaneously following the existence of a judicial panel specialized on the topic. Instead, it was what happened as a result of such specialization – both inside and outside the 4CC – that actually set legal accountability in motion in the state of Rio Grande do Sul, as I detail in the subsections below.

Building Judicial Capacity: The 4CC as a Venue for Legal Mobilization

The quest for judicial specialization in the realm of criminal law is traditionally associated to the pursuit of greater efficiency in case processing, especially in order to yield greater expertise on a

given topic and speed up the disposition of cases.¹⁶⁴ In effect, the story towards the creation of the 4CC does have some of these elements and some benefits derived from its establishment do fit this narrative. For instance, *desembargador* Luiz Melício Uiraçaba Machado noticed that

“... after a while, we become experts in examining municipal budgets, city expenditures, and the like; we learned a bunch of things ... and started to dominate such a technical terminology ... By working daily in a limited set of cases, [we] came to identify elements or circumstances that others judges would not be able to so, or at least so quickly, thus not taking too much time to understand each case” (Interview #5).

At the same time, the 4CC became a venue in which judicial capacity could be built to provide a better structure and support for the trials of criminal cases of mayors in Rio Grande do Sul. The specialized panel, thus, made possible the creation and adaptation of organizational arrangements within it that facilitated the judges’ job of coping with the intricacies of the Brazilian legislation. These arrangements, in turn, were the actual mechanisms that gave to the panel the ability to process such cases expeditiously. Court specialization, therefore, was less a solution in itself than a venue that allowed for problem-solving.¹⁶⁵ As one of the first members of the 4CC, appellate judge Ruy Armando Gessinger, astutely sums up, “the 4th [Criminal] Panel learned as it walked” (Interview # 19). This implies that it is nearly impossible to understand how the judges mobilized against mayoral impunity absent considerations as to how they creatively used the institution in which they worked to advance their respective goals. Not surprisingly, part of the reason for the delay between the creation of the specialized panel in 1992 and the first trials of mayors only in

¹⁶⁴ This was especially true during the so-called “war on drugs” in the United States in the 1980s, when specialized courts were created to “allow more rapid case processing. Judges could develop routines to move cases efficiently, and they would develop expertise in drug cases that facilitated processing of cases” (Baum 2011, 100).

¹⁶⁵ Importantly, I do not employ the “problem-solving court” terminology in the same way most scholars referring to it do. These refer to the use of “the authority of courts to address the underlying problems of individual litigants, the structural problems of the justice system, and the social problems of communities” (Berman 2000, 78), implying “a general philosophy of restorative rather than retributive justice” (Butts 2001, 121). For a detailed account, see Nolan (2003, 2009) and Danogue (2014). In other words, the “problem-solving” approach of those courts concerns the inherent complexity of the topics causing those cases to arrive at the court system, which are seen as issues that need to be solved, rather than cases demanding adjudication. The problem-solving of the 4CC, thus, was simpler, and involved solving problems pertaining to the internal complexity of court work associated with trying those cases.

1994 has to do precisely with this “tuning” of the panel’s structure to better perform its devised role. This period of organizational adaptation, in turn, aimed to mitigate the earlier diagnosis that these criminal cases were plagued by poor evidence and moved all too slowly. I highlight three such elements that were critical for the 4CC’s success in overcoming such obstacles.

First, building court capacity to adjudicate mayoral corruption meant setting up an *administrative structure* needed to carry out such task, the most important of which was organizing the panel’s clerk office. Accordingly, each panel in a Brazilian court of appeals has its own clerk’s office, often called *secretaria*. Given the appellate status of those courts, the job of such an office usually consists only in receiving the case files already compiled by trial courts and distributing them among the judges of the panel as well as making them available for the public, especially private attorneys, for review. The tasks demanded by the 4CC’s work, however, were not those of an appellate court, but those of a trial court or, more specifically, of a “criminal judgeship, so we needed a *cartório*, not only a *secretaria*,” explains judge Melício (Interview # 5).

Differently than a *secretaria*, the *cartório* possesses the structure and personnel needed to notify the accused, subpoena witnesses, issue warrants, schedule hearings, record testimonies, collect documents and, as a result, compile entirely new records for the criminal cases brought against the mayors. The need for a clerk’s office such as a *cartório* may sound trivial, but if the 4CC was to perform its job adequately, it would demand this legal bureaucracy to be created to provide routine support to sustain the workflow of the judges, prosecutors and attorneys. The law that created the 4CC, in fact, also established some of those positions. Others, however, were taken from other areas of the state judiciary, such as stenographs and registrars. Recruiting and training the personnel for this office – called *Cartório de Prefeitos*, or Clerk’s Office of Mayors – as well as providing a physical structure for it were the first tasks that allowed the 4CC to perform its

role. To this end, “the 4CC built up an apparatus that none of the Brazilian high courts currently possess [to conduct cases against public officials who enjoy special standing], which includes clerks, civil servants, aides, etc.,” explains judge Ruy Armando Gessinger (Interview # 19).

Second, while this new bureaucratic structure did play a decisive role in improving the quality of the evidence produced in court, it was not the only measure adopted to this end. Additionally, the 4CC judges decided to abolish altogether the use of *cartas de ordem* for the *instrução* of those cases. Instead, either one of the members of the panel or an appointed *juiz de instrução* would go directly to the various municipalities of the state to hear witnesses, inspect public works etc. The idea was clearly not new. The TJRS had already raised it when it transferred the cases of mayors from the Full Court to the isolated criminal panels in 1989, but the use of this instrument had been quite limited until that point. The difference now was not only that the 4CC judges were firmly determined to resort only to this option of gathering evidence *in loco*, but also that the TJRS was in better financial shape to make available the resources needed to do it, given the improvements in the court’s financial autonomy since the Collares administration discussed above. Because hearing witnesses across the many cities of the state demanded expenses with transportation, accommodation, meals, etc., for all those travelling to hear them – i.e., judges, stenographers, clerks – only if the court had the money to do so, it could make it. Still, the 4CC members were so determined to avoid the substandard evidence produced via *cartas de ordem* that they initially decided to go themselves directly to the cities where the witnesses lived to hear them, rather than resorting to the *juiz de instrução*. As appellate judge Danúbio Edon Franco recollects,

“In the beginning, right after the creation of the 4th Criminal Panel, because the number of cases was still not overwhelming ... one of the appellate judges was in charge of the *instrução* of the cases, but he was not able to keep up with the increasing amount of

work... it was then that the court decided to make use of the appointed *juiz de instrução* to perform this task ... and from that the cases led to different outcomes, because now we had good evidence, the MP also organized itself and started to send its prosecutors to those hearings as well” (Interview #70).

In fact, as the caseload of the 4CC grew, the appellate judges increasingly delegated this task to an appointed *juiz de instrução*. Accordingly, these are selected among state career-track judges by the TJRS on the basis of seniority and experience with criminal trials and procedure. In effect, most are in the last stages (or *última entrância*) of their careers as district judges, right before being eventually promoted to an appellate position at the TJRS itself. As a *juiz de instrução*, he or she performs nearly all acts pertaining to the production of evidence in court on behalf of the rapporteur judge.¹⁶⁶

This includes interrogating the accused in the courtroom of the 4CC proper, determining the production of forensic evidence or inspections and, especially, hearing witnesses’ testimonies in their home towns, which are often the same cities where the accused mayors are from. To this end, the appointed *juiz de instrução* schedules a trip with the *cartório* of the 4CC, which makes available an official court vehicle with a driver and all other personnel needed to properly collect the testimonies. As two such judges described their job to me, he or she arrives in a given day in a city where the witnesses live, collect their testimonies in the local courthouse, and often leaves in the same day either to return home to the state capital or, more often, to go to a nearby city in which witnesses also need to be heard, usually for another criminal case of mayor (Interviews #8 and #9). This means that neighboring municipalities are often “clustered” into a single trip, so that an entire week is spent away in four or five cities to perform such hearings. As a result, in a single year, one of such judges hears over three hundred witnesses and interrogates roughly one

¹⁶⁶ At times, the appointed *juiz de instrução* does not work only in the *instrução* of cases for the 4CC, but cumulate this function with another in a different panel of the TJRS, usually replacing an appellate judge who has just retired. This was precisely the case of two of my interviewees (Interviews # 6 and 9).

hundred accused, including mayors and alleged accomplices (ibid). These numbers, though, vary from year to year, reaching two or three times as much.

Once the hearings and all other evidence produced in court are done, the *juiz de instrução* writes a detailed report to the rapporteur judge of the case, essentially “delivering the *instrução* of the case entirely ready for him” (Interview # 8). During such work, however, usually there is little to no interaction between the rapporteur judge and the *juiz de instrução*. Yet, the quality of these reports is significantly better than those coming from *cartas de ordem*. Why? The difference resides in the fact that all production of court evidence is centralized into the hands of a single judge who is specifically appointed to perform such task, rather than this responsibility being scattered in the hands of many district judges, some of whom with no connection or interest in the cases.¹⁶⁷ Finally, despite the availability of the *juiz de instrução*, still today a few appellate judges prefer themselves going directly to the cities to hear the witnesses of the cases in which they are the rapporteurs, if their schedule allows. This choice is entirely up to him or her, albeit it is a relatively infrequent one.¹⁶⁸ In any case, the overall result of abolishing altogether the use of *cartas de ordem* sent the 4CC – either via its own members or via the centralized work of the *juiz de instrução* – “into the field,” producing much better evidence in court. As appellate judge Vladimir Giacomuzzi, who presided over the 4CC between 1997 and 2000, summarizes

“What was the secret of the [4th Criminal] Panel? It created a functional structure that allowed the *instrução* of the case to remain under the command of the panel. This meant

¹⁶⁷ As a former clerk of one appellate judge, Aline Eggers, explains, “the proximity of the *juiz de instrução* with the witnesses made the cases before the 4CC much more detailed, much more than by *carta de ordem*, in which a judge has no connection to the case” (Interview # 12). Finally, given the career stage of the *juiz de instrução*, it may be said that he is not only reporting to one of his superiors, but especially to one who may affect his likelihood of being promoted to an appellate position in the near future, probably affecting his performance in such role.

¹⁶⁸ In order to do so, an appellate judge has to organize his schedule so as not to conflict with his the standing policy of weekly panel sessions, which may be hard to achieve. Additionally, one of my interviewees revealed that because the appellate judges are older than their district counterparts, the former usually prefer leaving the stressful work of hearing witnesses all over the state to the younger district judges, who are usually eager to show their good work to their superiors (Interview # 9).

the following. Say we had to hear five witnesses in Passo Fundo [a mid-size city about two hundred miles away from the state's capital]. So, instead of sending a *carta de ordem* to a district judge in Passo Fundo, who would put this request in his docket and would hear the witnesses only if and when he was able to do so, the panel sent a different order to that same judge, requesting him to make available to the panel a courtroom in a given day and to subpoena the witnesses to go to that courtroom in that same day, so that one of us [appellate judges] or an appointed *juiz de instrução* would take their testimonies. So the *instrução* remained under the firm command of the panel, centralizing it... After that, the cases started to exhibit a normal processing and could be tried in a regular period of time" (Interview # 11).

Third and final, as the volume of cases grew, the panel faced the problem of being only a *part-time* specialized body, rather than a *full-time* one. This meant that the 4CC – while being the sole panel of the TJRS responsible for criminal cases of mayors – did not adjudicate exclusively those cases. Rather, it was also in charge of appeals, just like the other panels of the court. That is, the 4CC was a specialized panel, but did not work just in its area of specialization.¹⁶⁹ This repeated a problem of the time when the three other criminal panels of the TJRS tried such cases, between 1989 and 1992. Because Brazilian law defines that some appeals (especially when the defendant is already in jail) have priority over other cases, such appeals also clogged the 4CC's docket and prevented it from paying greater attention to its area of specialization on cases of mayors. Panel sessions to decide whether or not city hall administrators were guilty, as a result, were frequently postponed due the necessity of adjudicating first the appeals for which the 4CC was responsible as well. Such continuous postponement, in turn, prevented the panel precisely from deciding the cases it had been established to try in the first place.

This problem was especially acute because by then several cases of mayors were entirely ready for trial, only waiting for an opportune slot in the 4CC's docket to take place. Accordingly, the changes in the *instrução* stage of those cases – with the work of the *cartório* and the "hands-on" approach to hearing witnesses – had indeed improved markedly both the speed of the examining

¹⁶⁹ Here, I follow the terminology of *part-time* versus *full-time* court specialization proposed by Baum (2011).

stage and the quality of the evidence produced in it, thereby increasing the number of cases ready for final adjudication (see Interviews # 5, 11, 70). All those efforts, though, were being wasted as those cases waited for a chance to be tried that unfortunately never materialized.

Because the trials of criminal cases of mayors consume much more time than the adjudication of appeals – taking at very least three hours¹⁷⁰ as opposed to the few minutes often spent in the latter – the 4CC paradoxically never had much time to try city hall officials as it should. Instead, the panel spent nearly all time of its weekly sessions adjudicating appeals, just like the other TJRS’s panels. This state of affairs lasted about two years, until 1994, when the 4CC finally became a *full-time* specialized panel on crimes of mayors.¹⁷¹ At about that time, Vladimir Giacomuzzi, who previously had a prolific career as a prosecutor, was appointed *desembargador* and joined the panel.¹⁷² As he recollects this period,

“When I arrived at the 4th Criminal Panel of the TJRS, it still adjudicated appeals ... and those appeals had preference over the cases of mayors because they involved defendants that were in jail ... so the cases of mayors did arrive to the panel and we did perform their *instrução*, but they ended up not being tried ... So, when I arrived at the panel, many of such cases were ready to be adjudicated ... but then some had reached the *prescrição* [i.e., the equivalent to the statute of limitations] and the practical effect was impunity ... so even if the court had proposed itself to speed up the adjudication of those cases [by establishing a specialized panel], that was not happening ... It was then that the four appellate judges of the panel met in an administrative session, something panels never do, to discuss what could be done in that regard. So we agreed to propose to the president of

¹⁷⁰ Brazilian law defines that in such cases the prosecution may present its oral arguments for one hour, the same time allowed for the defense. Judges’ deliberation, in turn, also took one hour. So, “in a given panel session, we were able to try at most only two cases [of mayors],” totaling six hours of work (Interview #11; see Interviews # 5, 22 and 70).

¹⁷¹ There is some confusion as to exactly when the 4CC started to adjudicate solely criminal cases of mayors. Most of my interviewees argued that this took place in 1994, and it was a condition for the trials effectively starting to take place (e.g., Interviews # 5, 11, 22, and 70). A court document, though, states that this full-time specialization started only in November 1997, lasting until August 1999 (TJRS n.d., 7). Due to this discrepancy in the dates, I follow my interviewees for two reasons. First, there is a near consensus among them about it. Second, the TJRS document could be a typo, since it also says that the trials of cases of mayors only started effectively in October 1994.

¹⁷² Between 1965 and 1988, Vladimir Giacomuzzi was public prosecutor of the MPRS and held a variety of positions in its ranks, from assisting the prosecutor-general, to working in the institution’s equivalent to internal affairs, to working in the local association of public prosecutors. He was appointed to the TJRS via the so-called “*quinto constitucional*” (or “constitutional fifth”), a rule that establishes that one fifth of the positions in state appellate courts have to be filled from either the ranks of public prosecutors or private attorneys.

the court that we would try *only* criminal cases of mayors ... and by the margin of one vote, the Full Court approved that proposition ... After that resolution, the panel ceased to receive other cases and appeals, so as to speed up the adjudication of those cases of mayors that were already in its docket” (Interview #11, emphasis added; for a similar take, see Interviews # 5 and 70).

This modification of the 4CC’s work towards a full-time specialization, however, was relatively short-lived. It lasted approximately five years, until 1999, when the Brazilian Supreme Federal Tribunal ruled that *former* mayors should be tried by district judges rather than by state appellate courts.¹⁷³ This relieved the 4CC (and the state appellate courts of the country, for that matter) of much work and the specialized panel started once again receiving appeals in that year. This five-year period of complete dedication to criminal cases of mayors, nonetheless, proved vital to set in motion the process of *coordinated autonomy* in Rio Grande do Sul. In effect, as another judge recalls the story surrounding the change towards full-time specialization in the 4CC,

“In the beginning, right after the creation of the 4th Criminal Panel, because the number of cases was still not overwhelming ... the 4th Panel also adjudicated some appeals ... but then the *Ministério Público* started to organized itself, and so did the *Tribunal de Contas*, and then the volume of criminal cases of mayors grew ... and then the appeals were retrieved from the 4th Panel’s jurisdiction” (Interview # 70).

In fact, this period of full-time specialization not only allowed the 4CC to finally come up with a routine to adjudicate the criminal cases of mayors, but also signaled to other legal actors of the state that the appellate judges of Rio Grande do Sul were indeed decided to make such cases a priority. It was this commitment – expressed in actions and organizational practices, rather than mere words – that made clear to others that they were mobilized on this issue.

¹⁷³ Before the court moved to full-time specialization, there was also a period of time in which the 4CC split its work into two weekly sessions, one for appeals and another for criminal cases of mayors (see Interviews # 5, 11, 22, and 70). In fact, the very move from part-time to full-time specialization in the 4CC was relatively controversial inside the TJRS, given that the Full Court’s decision determining it was won by the margin of only one vote. For a detailed account of this story, see the interview by Maria Helena Gozzer Benjamin and João Batista Santafé Aguiar with state appellate judge Vladimir Giacomuzzi published in November 25, 2009, and available in the website of the TJRS: http://www.tjrs.jus.br/site_php/noticias/mostranoticia.php?assunto=1&categoria=1&item=99597, accessed in June 3, 2013.

In effect, nothing *required* the members of the TJRS to transform their institution, as they had been doing since the late 1980s, in order to try to come up with an expedient procedure for the trial of criminal cases of mayors. No legislation or exogenously-imposed institutional mandate – aside from the judges’ own concern with this topic – compelled them, hence, to avoid altogether the use of *cartas de ordem* in order to improve the testimonial evidence produced in court, or to speed up trials to avoid *prescrição*, or to create a bureaucratic apparatus such as the *cartório* to support their activities in this realm. Similarly, the numerous changes concerning the jurisdiction of the cases of mayors – from the Full Court to the isolated criminal panels, and from there to an entirely new court panel that ended up wholly specialized on the topic – resulted from no force other than the engagement of judges to take those cases seriously.¹⁷⁴ In the words of the 4CC’s idealizer, appellate judge Luiz Melíbio Uiraçaba Machado, “our clear objective was avoiding impunity ... and what we did were means to achieve this end” (Interview # 5).

This mobilization of the appellate judges of Rio Grande do Sul, in effect, did not pass unnoticed outside the TJRS. In becoming a panel exclusively dedicated to the task of trying criminal cases brought against mayors, the 4CC also became a focal point around which the other institutions responsible for holding mayors legally accountable could also mobilize. Such joint mobilization, in turn, facilitated the emergence of coordinated activities among the judges, public prosecutors

¹⁷⁴ The adoption of all such measures, that is, did not result from exogenous constraints or mandates, but from the endogenous mobilization of judges on the specific issue of mayoral legal accountability, an effort that was backed by the entire appellate court of the state and not curbed by factors extraneous to the judicial system proper. On the former, such a specialized activity demands trust of the court as a whole to place the responsibility of such delicate cases in the hands of just a few individuals. Continuous support inside the TJRS for the 4CC’s work was therefore crucial. An interview with a former member of the 4CC highlights the point: “I was appointed to the TJRS and worked at the 4th Criminal Panel between June 1995 and February 1997 ... I have worked effortlessly in the Full Court to make the panel remain as it is, a specialized panel, because I have been there and I believe that it is extremely useful and necessary that it tries only mayors, so that such cases are not diluted in other panels. This panel has a fundamental pedagogical effect, because it has helped local administrations not to perform irregularities. Not that the mayors act on bad faith, but many make mistakes and are poorly advised. Now, they are much better advised, and those facts that occurred when the panel was first established, such as irregular hires, no longer take place” (Félix and Grijó 1999b, 394).

and auditors of the state. *Coordinated autonomy*, thus, effectively started to take hold as the 4CC began working solely on cases of mayors. More than finally being able to decide those cases, this new arrangement produced a new demand and new cases started to arrive in court.

Becoming an Iron Triangle: The 4CC as Focal Point for Improving Coordination

Even in the relative absence of exogenous constraints to the workings of the system of justice, the path towards inter-institutional coordination is not an easy or automatic one. It demands a reasonable dose of good will on the part of everyone in each agency involved, a permanent effort at avoiding institutional friction, and a continuous exposure to others of practices that were until then considered exclusively internal work of one institution. Expediently sharing information, fulfilling requests of other agencies or meeting regularly, thus, cannot be ensured *ex ante* by any formal institutional mandate. Inter-institutional coordination, in other words, has to be built and pursued permanently inside each agency to be achieved. Ultimately, it has to be anchored in the firm realization that the work of each legal accountability agency is complementary to the work of others, rather than an end in itself. And while all this may abundantly sound trivial, it is surely not achieved with ease. As Valtuir Pereira Nunes, a career auditor and current general-director of the *Tribunal de Contas do Estado do Rio Grande do Sul* (TCERS, or Court of Accounts of the State of Rio Grande do Sul, the state's auditing agency), ironically comments

“It does not matter who says ‘I am the one who found out,’ or who appears on *Conversas Cruzadas* [a TV talk show], or who is in the official picture. That does not matter. This is silly, to fight for beauty and attention. This does not matter. What matters is solving the problems we have. That is why the institutions of control have to come together to make things work ... but in real life that is not what happens. In real life, there are ‘small castles’ – internal control, external control, judicial control, etc. – and between them there are electric fences saying ‘keep out,’ ‘this information is mine,’ ‘this is subject to this or that jurisdiction,’ and so on. That is, we all are – the court of accounts, the public prosecution office, and the judiciary – branches of a same owner called ‘the people’ ... but the electric fences are still there ... that is why we need to get ourselves organized, because crime is already well organized” (Interview #66).

Having been one of the auditors responsible for making sure that the reports of the TCERS were available to subsidize the work of the 4CC in the early 1990s, Nunes is well aware of how hard and non-automatic the path towards inter-institutional coordination is. Still, as early as December 1, 1995, an article by journalist Lisandra Paraguassú published in *Zero Hora*, the newspaper with the largest circulation in Rio Grande do Sul, claimed that this goal was precisely being achieved. Accordingly, the piece claimed that the “oversight of mayors” had been “enhanced” in the state as a result of the “joint action” of state-level agencies that were working together to “investigate and punish irregularities in municipalities” (Paraguassú 1995, 12). The article gives us a glimpse as to how judges, prosecutors and auditors streamlined their work to bring mayors to justice.

“Approximately three years ago, the *Ministério Público* decided to place one *procurador de justiça* and three prosecutors in charge of cases against mayors. At the same time, the state court of appeals concentrated the trials of those cases in the 4th Criminal Panel, whereas previously they were distributed all over the court. The *Tribunal de Contas*, which always had as one of its attributions the oversight of the expenditures of all city halls and of other agencies of the state, also became part of the operation. In 1993, the public prosecution office asked for the help of the auditors of the TCERS to decipher the complicated financial reports of the city halls. It was then completed the joint action which, among other feats, was able to put in jail the mayor of Cidreira, who for years had been known as the perpetrator of a series of irregularities in the city halls of Cidreira and Tramandaí. Today, the yearly inspections of the TCERS serve as the basis for 80 percent of the charges pressed by the public prosecution office. The *Tribunal de Contas* also started to gather evidence following requests from the public prosecution office, or from tips received by its auditors. The public prosecution office works with three auditors of the TCERS at their disposal for investigations on mayors ... The joint work facilitated the life of the auditors, prosecutors, and of the *desembargadores* of the 4th Criminal Panel, responsible for trying the mayors. The indictments... used to lead to acquittals for lack of evidence ... While the number of convictions increased, thanks to the enhanced investigative efforts, the time of work [needed to process a case] shrank. Now, a case that used to take up to four years to be tried, ends in eight months” (ibid).

Far from unique, this article is just one example of the increased attention the local media started to pay to this new dynamic involving the courts, the public prosecution office, and the auditing

agency on the legal accountability of heads of city halls in Rio Grande do Sul.¹⁷⁵ In common to these narratives it is the observation that the 4CC sparked a wave of mobilization in other agencies in the state and that this increased mobilization on the same topic, in turn, resulted in the increase of inter-institutional coordination among these otherwise isolated bodies. As a result, the efforts that first led to court specialization ultimately “ended up creating *a small community around the Panel*,” acknowledges appellate judge Luiz Melíbio Uiraçaba Machado (Interview # 5, emphasis added), an aspect that was highlighted by practically all my interviewees in the state (e.g., Interviews # 1, 2, 3, 7, 9, 11, 12, 17, 18, 22, 70, and 71).

True, size mattered. Having only one panel with four appellate judges – instead of dozens of judges from the entire court or from all criminal panels – working on this topic did facilitate the formation of this “small community.”¹⁷⁶ At the same time, the efforts and organizational practices adopted inside the 4CC mattered too to signal to everyone the willingness of the judges to take those cases seriously.¹⁷⁷ Yet, for the triangle 4CC-MPRS-TCERS to be complete, efforts beyond the judiciary proper had to take place. In effect, the mobilization of actors inside both the public prosecution office and auditing agency of Rio Grande do Sul proved vital for this joint initiative to prosper and become routinized.

¹⁷⁵ Other newspaper articles highlighting basically the same points include those by Nunes (1994) and Kuhn (1995).

¹⁷⁶ In effect, that any “court is a closed community” is surely true (Blumberg 1967, 21). Still, this degree of proximity of this community varies largely according to the type of organizational structure it exhibits. Particularly, “numerical size can affect the court’s institutional life because, as the number of judges increases, so do social distance and judicial isolation” (Cohen 2002, 161). As such, in small courts, “judges become more familiar with one another, leading to better communication regarding the development of circuit law as well as more informal communication concerning specific cases ” (ibid). Specialized panels like the 4CC may produce similar effects, creating a proximate atmosphere among its few judges and its similarly few “repeat players” – to borrow from Galanter’s (1974) famous terminology – including frequent participants in the court’s work, such as recurrent public prosecutors and private attorneys who often know each other quite well.

¹⁷⁷ These organizational changes, in fact, are consistent with the call for increasing efficiency towards a more result-oriented and less formalistic approach of courts in Latin America, as proposed by Hammergren (2007, 2008).

Perhaps the most critical of these efforts was the creation of a specialized division on crimes of mayors inside the public prosecution office.¹⁷⁸ The organization of the *Procuradoria de Prefeitos* (PROCPREF, or Division on Crimes of Mayors) at the MPRS and the activism of its members, thus, were key steps to elicit coordinated autonomy in the state.¹⁷⁹ Due to its institutional location as a go-between the judiciary and the auditing agency, it was largely the work of this specialized division at the MPRS that established the link between the work of the auditors and that of the judges. As prosecutor José Guilherme Giacomuzzi remarks, while the state court of appeals had created a specialized panel to try mayors and the auditing agency of the state was known to be prolific in detecting irregularities in city halls, “what was missing was the point in-between them, [which was] the *Ministério Público do Rio Grande do Sul*” (Interview # 17).

How did this take place, though? Because the state court of appeals had decided to specialize the trial of mayors into only one of its panels, in the beginning the task of the MPRS at the 4CC was assumed to be identical to what had been taking place in each of the three criminal panels of the TJRS between 1989 and 1992. During this earlier period, three *procuradores de justiça* (one for

¹⁷⁸ As it happens with the judiciary, prosecutorial specialization on the particular issue of political corruption is, of course, not unique to Brazil and even less so to Rio Grande do Sul. In fact, comparative examples of specialized units of prosecution offices on corruption abound. One example cited by Karklins (2005, 133) is Czech Republic beginning in 2000. There, the attorney general established special teams of prosecutors and an entirely separate department to supervise investigations of serious financial crimes. Another relatively famous example in this regard was the Office of the Special Prosecutor of Corruption, created by the Attorney General in the State of New York in 1972. Accordingly, it operated with high intensity until 1976, especially during Maurice H. Nadjari’s term in office, leading to a total of “343 indictments, 188 guilty pleas, and 73 convictions at trial,” mostly of low-ranking officials (Anechiarico and Jacobs 1996, 100). The specialized office, nevertheless, saw its staff and budget shrink during the coming years, with subsequent declines in rates of conviction, being eventually abolished in 1990. This slow decay of the office was largely the result of political reprisal following Nadjari’s effort efforts to investigate high-ranking political officials, a fact that eventually led to his dismissal in 1976, precisely when this office started to decrease its anti-corruption efforts.

¹⁷⁹ The name of this specialized division on mayors inside the MPRS varied over time. I have found reference to the following names for this division: *Setor de Prefeitos* (or Sector of Mayors; see MPRS 1994, 2005a), *Procuradoria de Crimes de Prefeitos* (or Public Prosecution Office on Crimes of Mayors, see MPRS 2005), and *Coordenadoria de Prefeitos* (or Coordination of Mayors), alongside the most common and current name *Procuradoria de Prefeitos* (literally, Public Prosecution Office on Mayors; see Eggers 1996, MPRS 2003, 2005). To avoid any unnecessary confusion, I will adopt the latter most frequent term (*Procuradoria de Prefeitos*), which I have decided to translate more generally as “Division on Crimes of Mayors.”

each panel) performed this task under the delegation granted by the prosecutor-general – who is, to recall, the only one formally responsible for bringing cases against mayors. Beginning in June 1992 with the establishment of the 4CC, thus, only one *procurador de justiça* was appointed to this end. That is, because “the 4th [Criminal] Panel started to adjudicate those cases [of mayors], it required a *procurador de justiça* officiating before it on behalf of the prosecutor-general,” explains prosecutor Luiz Carlos Ziomkowski, who performed this role for eleven years between 1994 and 2005 and help to build this specialized prosecutorial division as it came to be known (Interview # 22). The creations of the 4CC at the TJRS and of the PROCPREF at the MPRS were thus “concomitant,” recognizes Voltaire de Lima Moraes, the prosecutor-general between 1993 and 1997, “but there was an initial period in which most things were still embrionary, not as professionalized as they came to be, largely because everything was new to everyone” (Interview # 73).

In fact, the Division on Crimes of Mayors was largely a legal fiction by then, bearing much more symbolic than actual weight right after its establishment. A single *procurador de justiça* working in the position, that is, would hardly be enough to perform all the tasks it demanded. That was the so because the activities of the MPRS before the 4CC were not limited to reviewing the work of lower courts in appeals, as it has been the traditional job of the *procuradores de justiça* who officiate before appellate courts like the TJRS. Additionally, the PROCPREF was responsible for indicting mayors, investigating allegations of wrongdoings brought by numerous prosecutors working around the state, examining reports elaborated yearly on every municipality of the state by the auditing agency, participating in trial sessions before the 4CC, and taking part in hearings all over the state to collect witnesses’ testimonies. Just like the 4CC was no ordinary panel, so it was not traditional the work demanded from the PROCPREF if it was to fulfill its potential.

As such, no single individual could possibly perform all those tasks single-handedly. As public prosecutor Luiz Carlos Ziomkowski recollects, “initially, I imagine Raimundo [Cesar Ferreira da Silva, the first prosecutor to take the position in 1992, leaving in 1993] suffered a lot, because he had just a couple of civil servants working with him and no one else to help, so there was a lot work for him to prepare the cases all by himself” (Interview # 22). In fact, there is a picture of the first office of the *Procuradoria de Prefeitos* cited by many, but which I could not locate, that has been described to me as “a tight office with a big table in the middle of it, and nothing else” (Interview # 71; see also Interviews # 16, 17 and 22). Given this precarious structure, it should not come as a surprise that until February 1994 – when Luiz Carlos Ziomkowski effectively took the position – only thirty-one cases had been brought to the 4CC, a number that would triple by the end of that year, eventually yielding eleven convictions (see MPRS 1994, TJRS n.d.).

Of course, this change did not result solely from Ziomkowski’s efforts, but also from the concern of the prosecutor-general with the issue. As the former notices, “just before I had been appointed, the prosecutor-general had provided a better structure [to the PROCPREF] ... Only with *the aid of other prosecutors working in the division* we came to be able to better prepare cases and to develop better arguments in court” (Interview # 22, emphasis added). This brings us to Voltaire de Lima Moraes, the *Procurador-Geral de Justiça* between 1993 and 1997. A career prosecutor with long history of engagement with the institutional policies of the *Ministério Público*,¹⁸⁰ he

¹⁸⁰ Voltaire de Lima Moraes joined the MPRS in 1980, after graduating from law school in 1977. He was admitted to the career after passing the competitive examination selection process that has traditionally has been the entry route to positions in the public prosecution office in Brazil. Accordingly, alongside his career as public prosecutor proper, he both taught law and took part in the administration of the local association of the public prosecution office (the *Associação do Ministério Público do Rio Grande do Sul*, AMP/RS, or Association of the Public Prosecution Office of Rio Grande do Sul), in which condition he participated in the national efforts to strengthen the institution in the late 1980s, and also became president of the *Confederação Nacional do Ministério Público* (CONAMP, or National Confederation of the Public Prosecution Office) between 1991 and 1993. Later, he would also be elected by his peers president of the *Conselho Nacional dos Procuradores-Gerais de Justiça* (CNPJ, or National Council of Prosecutors-General). This is information from both my interview (# 73) with him, as well as from his interview available at: <http://www.mprs.mp.br/memorial/noticias/id17275.htm>, accessed March 20, 2014.

reached the pinnacle of his organization due to broad support he enjoyed from his colleagues, which ultimately led to his appointment by the state governor to the position.¹⁸¹ The question then is: why reorganize the Division on Crimes of Mayors at the MPRS?

“It was part of my institutional policy to reevaluate and restructure several structures of the *Ministério Público* ... We were then before a new constitution, very recent, in which the *Ministério Público* had just acquired a new institutional physiognomy. In light of that [there was] the need to restructure that area [of mayors], which I reputed important because it was one of the areas in which the fight against corruption took place” (Interview # 73).

Importantly, this was a highly entropic period for public prosecution offices all over Brazil. They were all adapting to their new constitutionally-devised roles – and so was the MPRS. This means that a profound restructuring was taking place in the institution, especially the taking over of the responsibilities formally attributed to it by the 1988 constitution. Moraes’ statement, thus, has to be read within this context in which the role of the PROCPREF was perceived to be one parcel of a host of other initiatives taking place inside the institution in this period. Nonetheless, it was precisely this perception – that a specialized division had a key role to fulfill as part of this new institutional mission of the MPRS – which set in motion the PROCPREF’s reshaping.

This reorganization of the Division on Crimes of Mayors included things such as the “provision of proper physical space, of computers, and of more prosecutors to work alongside the head prosecutor,” explains Moraes (Interview # 73). While all such factors did help the PROCPREF gain muscle, it was probably the last one of them that proved more crucial. That is, rather than a

¹⁸¹ In Brazil, prosecutors-general can only be chosen from the ranks of their respective *Ministérios Públicos*. As such, there is an election in which only public prosecutors vote and run, so that the three with the highest vote count become part of a list that is submitted to the state governor, who picks one of those names to head the institution for the next two years. Importantly, this allows state governors to pick prosecutors who did not receive the highest vote count to run the institution. Reelection and reappointment, finally, are allowed for only another two-year term. On the specific case of Voltaire Lima de Moraes, he received the highest vote count among his peers, being appointed for the first time by the state governor in 1993. He received an even higher vote count in 1995, when he was once again appointed to the position, leaving the office in 1997 to be appointed *desembargador* at the TJRS.

single *procurador de justiça*, three *promotores de justiça* – i.e., public prosecutors who worked before *trial courts* rather than appellate ones like the former – were appointed to assist the one in charge of formally officiating before the 4CC (see Interviews # 17, 22, 71, and 73). As such, the new structure placed the prosecutor officiating before the 4CC (a *procurador de justiça*) as a coordinator of a team of three assistant prosecutors (the *promotores de justiça*) who would help performing tasks regularly demanded by trial courts, such as interrogating witnesses, performing investigations, and so on. In effect, while this was collaborative effort, it was also a hierarchical one, clearly defining one individual (i.e., the *procurador de justiça* officiating before the 4CC) as responsible for the actions and decisions taken by the entire division on behalf of the prosecutor-general. The choice for this collaborative yet hierarchical organizational scheme, in turn, derives from the fact that “the *Ministério Público* is an institution that traditionally gives significant independence to its individual members, so they [at the MPRS] unified the criminal cases of mayors under a single coordination to provide greater uniformity in their positions,” explains Marco Aurélio Moreira de Oliveira, a retired appellate judge (Interview # 15).

Given the prominence gained by the position of coordinator of the PROCPREF, Moraes claimed that he intended to appoint to it someone with the “organizational and fighting capacities” in order to take “very seriously that new physiognomy of the *Ministério Público* to defend society’s interests” (Interview # 73). Still, the aforementioned career prosecutor Luiz Carlos Ziomkowski was not Moraes’s initial pick for the position. At first, *procurador de justiça* Octavio Augusto Simon de Souza was appointed to head the Division on Crimes of Mayors. A few months after that, however, he left the division to take another position in the MPRS’s structure.¹⁸² It was only

¹⁸² Accordingly, Octavio Augusto Simon de Souza decided to leave the PROCPREF in order take a position in order to officiate on behalf of the MPRS before the *Justiça Militar Estadual* (i.e., state military courts), which tries cases related to one branch of the state police.

then, as a result of this unexpected vacancy, that Moraes finally appointed Ziolkowski as the coordinator of the PROCPREF.

Accordingly, Ziolkowski has been described to me as a typical prosecutor of jury trials, at the same time eloquent and strict in the application of the law, a profile some would not immediately associate with the tedious and time-consuming process of unveiling irregularities in city halls (cf. Interviews # 5, 7, 17, and 71). Coupled with a *carte blanche* from successive prosecutors-general of the MPRS¹⁸³ and the new structure of assistant prosecutors, Ziolkowski's uncompromising style actually turned the PROCPREF into an aggressive prosecutorial body that soon came to be known to municipal administrators all over the state. In fact, a private attorney who defended various mayors ironically claimed, for instance, that the latter "would tremble in fear just of hearing Ziolkowski's name" (Interview # 7). A similar illustration comes from an article published in a newspaper of another Brazilian state, which introduced him directly as "*carrasco de prefeitos*" – i.e., "executioner of mayors" (Diário de Pernambuco 1996).

While no mayors were truly executed as a result of his activity – even less so because Brazil does not legally practice the death penalty – it was this vigorous, effortless, and often rigid approach in the coordination of the PROCPREF by Ziolkowski that ultimately turned it into an active and continuous supplier of cases to the 4CC. This, in turn, helped not only justify the existence of

¹⁸³ This has been confirmed to me both by Luiz Carlos Ziolkowski and Voltaire de Lima Moraes (see Interviews # 22 and 73, respectively). The latter even described to me an event as follows: "I said to him [Ziolkowski]: here in this division never will the prosecutor-general interfere not to accuse this or that person. If someone disobeyed the law, go ahead and do whatever it is needed to be done" (Interview # 73). As a result of the perceived success of Ziolkowski's approach to the PROCPREF, the three prosecutors-general that took the position after Voltaire de Lima Moraes's departure all kept Ziolkowski in the chief position of the Division of Crimes of Mayors of the MPRS. These were prosecutors-general Sérgio Gilberto Porto (1997-1999), Cláudio Barros Silva (1999-2003), and Roberto Bandeira Pereira (2003-2007). It was the latter, however, that eventually appointed a different prosecutor (named Gilberto Montanari) as coordinator of the PROCPREF. This took place, though, only in 2005, when Roberto Bandeira Pereira was reappointed for a second term as *Procurador-Geral de Justiça* of the MPRS.

both the specialized panel at the TJRS and the specialized division on mayors at the MPRS, but also approximated these two expert bodies in a variety of ways.

For one, the routine of bringing cases and constantly arguing them before the specialized panel on a weekly basis surely helped the PROCPREF (and its representative before the panel) become an integral part of what judge Melibio called the “small community” that was formed around the 4CC. Not surprisingly, as the panel started to gain notoriety beyond the state limits, every time its judges were called to present their experience in other states, they would frequently take one member of the MPRS with them (e.g., Interviews # 5, 11, and 22; TJRS 1998, TJBA 1998,). For another, the PROCPREF decided to purposefully facilitate the work of the members of the panel. Because cases arriving to the 4CC deal with complex topics pertaining to public administration that most judges are unfamiliar with, the indictments and evidence brought by the prosecution to the court were made as lean and direct as possible. That is, in order to facilitate the intelligibility of the cases to the *desembargadores*, the prosecutors decided to start filing indictments that were short and “to the point,” so as to avoid requiring judges to spend unnecessary time reviewing the cases (see Interviews # 5, 22, TJRS n.d., 6).¹⁸⁴ For still another, the MPRS started to take an active role in the *instrução* of those cases of mayors. Because most witnesses had to be heard all over the state, the 4CC’s members decided either to go themselves to those hearings or to send an appointed *juiz de instrução* to collect their testimonies. Following that initiative, the PROCPREF also started to send one of its members to those hearings instead of relying on the work of the prosecutors working in the districts. Just like the 4CC, thus, either the coordinator or an assistant prosecutor would participate directly in the inquiry of witnesses all over the state in

¹⁸⁴ This strategy of the MPRS was conceived bearing in mind that judges seldom enjoy having to review voluminous case files to reach a decision. Cases with this characteristic, as a result, often end up at the bottom of file stacks and are only decided after much time has passed. As Ziolkowski summed up, “*processo gordo não anda*” – that is, “fat cases do not move” (Interview # 22).

cases pertaining to crimes of mayors. In fact, the coordination of judges and prosecutors is such that it has been described to me by a judge as follows: “so, in a car travels the *juiz de instrução* with a driver and a stenograph of the court and, in another car, usually right behind, travels the assistant prosecutor with a driver” (Interview # 9).

Along the same lines, “it was almost a team work between the prosecutors and the auditors of the TCERS,” recalls Aline Eggers, a former clerk of an appellate judge at the 4CC (Interview # 12). As such, the PROCPREF turned the work of the auditors into a foundation of its job. Considered “technically perfect” by prosecutors and judges alike, the audit reports of the auditing agency soon became crucial sources of evidence from which the PROCPREF could build entire cases to be brought to the 4CC (Interview # 22; see also Interviews # 5, 11, 16, and 17). In fact, “several cases did not even demand that we opened an investigation [*inquérito*] at the *Ministério Público*, given the quality of the material brought by the TCERS,” acknowledges Ziomkowski (Interview # 22). When that happened, the only job of the prosecutors was to draft an indictment and bring it to court attaching the audit reports. In effect, another prosecutor ironically noted as follows: “I know our products [i.e., indictments] sell very well in the TJRS if they come with raw material from the *Tribunal de Contas*” (Interview # 71).

In order to use the material of the state’s auditing agency in their investigations and indictments, though, the PROCPREF had to change its access to them. Firstly, the paperwork needed to make the audit reports available for the prosecutors, either to help an ongoing investigation or to start a new one altogether, had to be simplified. Regularly, if the PROCPREF needed documents from the TCERS, it had first to file a request with the MPRS’s prosecutor-general who would in turn send an official letter to the presidency of the *Tribunal de Contas* asking for a specific list of documents to be made available. If accepted, the latter would request the auditor responsible for

writing the report to finally make it available to the prosecutors. This redundant bureaucracy took simply too much time. Again, this may sound trivial, but the time spent in it could mean the difference between being able to sentence a corrupt mayor or not, given the risk of a *prescrição*. Soon after the PROCPREF approached the TCERS, these formalities started to be flexibilized. As Ziolkowski told a newspaper at that time, “Before we needed to send a letter every time we needed the *Tribunal [de Contas]* ... Today, we ask [for the audit reports] first and send the letter later” (Paraguassú 1995, 12). Eventually, the TCERS “let two of their auditors at our disposal so that, if and when we needed any document or explanation from the court of accounts, we could simply call them,” Ziolkowski told me (Interview # 22).

Secondly, the PROCPREF also decided that it would no longer wait for the TCERS’s decision as to whether or not impose an administrative penalty on the mayors to start prosecuting them based on the audit reports. Previously, the prosecutors would only start working with that material after the auditing agency had reached its own decision about the mayor’s administration, something that often took years to finally occur. Starting in 1993-1994, the PROCPREF began using those audit reports to indict mayors before any administrative decision had been made (Interviews # 5, 11, 17, 19, 22). Following a simple request of the Division on Crimes of Mayors at any moment, the auditors then started to send the audit reports directly to the prosecutors before any decision had been made by the TCERS. In effect, the auditors themselves began taking the lead and even came to notify the prosecutors of irregularities absent any PROCPREF’s requests. “As soon as an auditor knew about a potential illegality, he or she sent it directly to the *Ministério Público*,” recalls Ziolkowski (Interview # 22). Ultimately, the “auditors would even call us to let us know of certain irregularities and suggest that we requested formally the documents to the TCERS so that they could ‘officially’ send their reports to us,” recalls another prosecutor (Interview #71).

Streamlining these procedures ensured that the PROCPREF “would be fed” by the material from the TCERS, as one of my interviewees put it (see Interview # 73). Over time, this cooperation grew to a point that the audit reports came to be entirely available on-line to the prosecutors of the PROCPREF at any moment, who can access directly the servers of the TCERS via a specific password that was given to the chief prosecutor, thereby avoiding the paperwork altogether.¹⁸⁵ “Most prosecutors work from our reports” because “we are the only institution that can actually get inside each body of the public administration,” comments an auditor (Interview # 10). More than supplying documents, the prosecutors also ask the auditors to perform inspections following suspicions of wrongdoings in certain city halls. “We ask them to release the hounds,” ironically comments a prosecutor (Interview # 71). In effect, the number of metaphors used to describe the work of the over two hundred auditors of the TCERS who effectively go to the field to oversee municipal expenditures and gather evidence is illustrative, ranging from “the eyes and ears of the taxpayer” to the “infantry of the TCERS” (Interviews # 10 and 69). Comparisons with police work, nonetheless, are the most frequent. “If we were a police station, they would be our police officers. Someone has to go to the crime scene to see what is going on” (Interview # 8; see also Interviews # 17 and 66). Not surprisingly, even an internal document of the state court of appeals acknowledges that the TCERS

“... performs the functions of an ‘investigative police of municipal administrations’ [*polícia judiciária da administração municipal*], because as soon as it comes to its knowledge a fact or event with connotation of crime, it immediately starts investigating it, gathers evidence and sends it to the *Ministério Público* with a report. It also performs investigations [*diligências*] determined by the 4th Criminal Panel” (TJRS n.d., 2).

¹⁸⁵ This change is recent, of 2009-2010. Still, it results from actors inside both the TCERS and the MPRS that long understood the value of increasing the coordination between these two bodies to fight mayoral corruption. In fact, when Luiz Carlos Ziomkowski became vice-prosecutor-general in 2009, he was the one who reached out especially to Valtuir Pereira Nunes at the TCERS to make those reports available on-line to the PROCPREF (see Interviews # 17, 22, and 66). The audit reports, in turn, are programmed in such a manner that they automatically highlight irregularities, making easier the identification of critical information (see Interviews # 10, 14, and 66).

With all this material of the TCERS being brought by the PROCPREF to the 4CC, the technical language of the auditing agency soon had to be decoded to the judges too. In effect, inasmuch as the indictments were short and clear, the *desembargadores* of the specialized panel also reached out to the auditors to fully understand their reports, particularly to “explain how they had arrived at the conclusion that there was an irregularity ... so that they could put in a clear, non-technical language what had happened” (Interview #70). In order to do so, a few auditors were temporarily transferred (“*cedidos*”) to the panel and occasionally the appellate judges themselves went to the TCERS to consult with them (Interviews # 18, 22, and 69). Ultimately, some auditors became witnesses in the cases before the 4CC, a practice that was unheard of until then.¹⁸⁶ As retired auditor Wremir Scliar recollects,

“The 4th Criminal Panel used many of the audit reports of the court of accounts, and so the MPRS started to prosecute based on the material of such reports. But the reports have a quite hermetic language... so they [judges and prosecutors] came several times to the court of accounts to have us explain to them what those reports were saying. Over time, we suggested they called auditors as expert witnesses in those cases” (Interview # 18).

All coordinating activities described in the previous pages – i.e., judges and prosecutors going to the various cities of the state to hear witnesses, prosecutors and auditors overcoming bureaucratic obstacles so that the former could more easily access the reports of the latter, auditors making themselves available to explain their work to both prosecutors and judges, and so on – all led to what I earlier called *coordinated autonomy* in Rio Grande do Sul. In effect, all those practices that made the judiciary, the prosecutors’ office and the auditing agency come close together were

¹⁸⁶ In fact, because it was not common, a few hurdles followed. As *desembargador* Vladimir Giacomuzzi explains, “The prosecution at times subpoenaed the auditors as witnesses, but they initially refused to participate, and even complained to the president of the court of accounts, believing they were the ones under investigation by the TJRS, as if their work was under suspicion ... Because this was new, no one had the practice of doing so, they were surprised. So we [the appellate judges] went to the TCERS to say ‘wait, calm down, no one is putting your work in doubt. We actually want to affirm and use the material of those reports ... we want to ratify those facts’ and this was well received [by the auditors of the TCERS]... So this interaction started, so much that some auditors of the court of accounts were temporarily transferred [“*cedidos*”] to the MPRS in order to explain that technical language [of the audit reports]” (Interview #11).

not anchored in any particular group of institutional characteristics or formal arrangements, but much more in the willingness of the actors within them to do so. None of the practices listed in the previous pages was formally required or exogenously imposed upon the TJRS, the MPRS or the TCERS to be performed. Instead, they were all initiatives that emerged from the mobilization of agents inside each one of them – i.e., specific judges, prosecutors and auditors – concerned with the issue of the legal accountability of mayors. It was the efforts of these actors – spanning well beyond the “regular” requirements of their jobs – that ultimately helped to narrow the gaps among their institutions in order to streamline their work and achieve results that were more effective. As one prosecutor puts it, “the more we work, the more work we have to do. If we just shelved the cases, it would be less work for everyone” (Interview # 71). It was this commitment that improved not only the performances of the individual institutions, but also of others agencies whose work was perceived to be complementary in this realm.

The Iron Triangle in Action: Effectiveness, Moderation and Challenges

The workflow that resulted from the coordination of activities of judges, prosecutors and auditors starting in 1994, consequently, exhibits the following basic structure. The *detection* of potential irregularities in the city halls of Rio Grande do Sul starts especially with the yearly *in loco* audits of the TCERS. These are based upon the reports sent every two months by the city halls to the auditing agency, including information on their expenses, admission of personnel, contracts, and so on. Since 1998, the auditors started using a software developed by the TCERS called *Sistema de Informações para Auditoria e Prestação de Contas* (SIAPC, or Information System for Audit and Accountability), which is freely provided to the city halls so that they are *required* to fill in all such information using that system. The SIAPC then *extracts* information from the city halls’ computers and automatically generates a report to the TCERS highlighting potential problems

(e.g., missing information, highly valued contracts). These bimonthly reports are reviewed by the auditors, who cross and consolidate their data, and serve as the basis to prepare the *in loco* audits, which take place at least once a year in every city hall (see Interviews # 10, 14, and 69). These inspections, in turn, are critical to identify potential wrongdoings. As an auditor notices,

“If we took these reports and audited just them, most of them would be fine. So we need to perform external [*in loco*] audits to verify if it is true what they are telling us. This means designating a group of auditors to go to the field ... to check public works, contracts, public procurement, as well as their execution, and by sample, form an opinion about them. Auditing means this: on-site inspections” (Interview # 66).

Based upon these inspections, the auditors then write a final report consolidating the data on each city hall for the previous year. Before the board of the TCERS decides whether or not to impose administrative penalties on the mayor, these yearly audit reports on each municipality are already available to the prosecutors, providing them much material to work with. Still, such inspections are not the only way to detect wrongdoings in the city halls of Rio Grande do Sul. Additionally, district prosecutors also notify their colleagues at the PROCPREF of irregularities taking place in their jurisdiction. Prosecutors and auditors, in turn, do not rely exclusively on detection to bring potentially corrupt facts to public lights, but also on *exposure*. Accordingly, they also welcome whistleblowers and political opponents, who bring information in person or, more recently, give anonymous tips on-line to the *ouvidorias* (ombudsmen) of the MPRS and TCERS (Interviews # 10, 20, 66, and 69). Thus, on the top of the nearly five hundred yearly audits potentially detecting irregularities in all city halls and the work of district prosecutors in this realm, there is also the material from these other sources, which may be relevant. In 2012 alone, for instance, the state’s auditing agency was notified of 4,857 potential irregularities only via this channel.¹⁸⁷

¹⁸⁷ Available at: http://www1.tce.rs.gov.br/portal/page/portal/tcers/ouvidoria/numeros_ouvidoria, accessed in March 27, 2014.

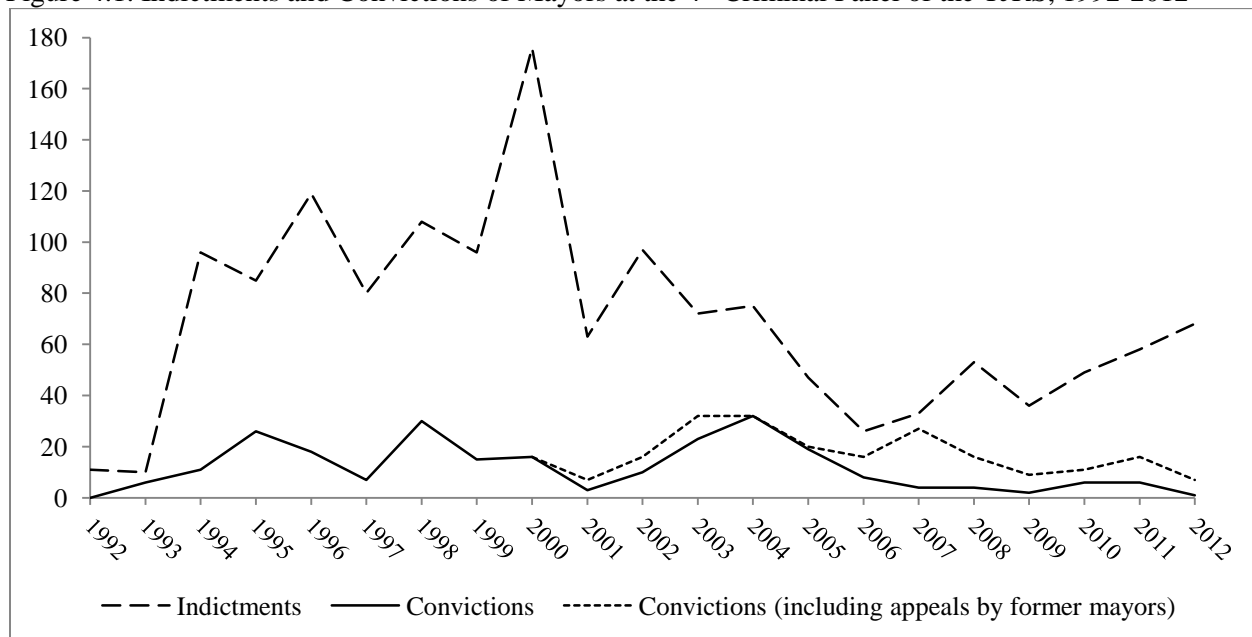
Once aware of a potential irregularity, the *investigation* starts with the efforts of prosecutors to build a case. At times, they take material from ongoing investigations either by the TCERS or by the city councils (in the so-called *Comissões Parlamentares de Inquérito*, CPIs, or Parliamentary Investigative Committees). At other times, especially when the notification of a wrongdoing is made directly to the prosecutors by political opponents, they first listen to the explanations of the mayors before digging deeper into the facts. Still, a significant amount of time is spent gathering evidence just to verify whether the potential irregularities that have been detected or exposed are indeed punishable by the law or not. Much of the prosecutors' investigative effort actually leads to inconclusive results and has to be dismissed before making to court.

A case is considered ready for *prosecution*, explains a member of the PROCPREF, when “there is nothing else to add in terms of evidence, apart from what was already uncovered during the investigation, so I either shelve the case due to lack of evidence or take it to the court” (Interview # 71). Between 1994 and 2012 the PROCPREF brought a total of 1,437 cases to the 4CC. During this same period, 3,659 other proceedings were initiated in the *Procuradoria de Prefeitos* but had to be shelved because the evidence that was gathered was insufficient to be held successfully in court.¹⁸⁸ That is, during this period at least 5,096 notifications of facts potentially irregular were investigated by the prosecutors, but less than thirty percent of them could be transformed into indictments brought before the 4CC. Interestingly, to avoid any suspicions over this decision not to prosecute a mayor, those dismissals by the prosecutors were also sent to the 4CC, so that the panel could itself reopen the case if the judges believed that was appropriate (cf. Interviews # 16, 22, and 71).

¹⁸⁸ Data calculated by the author based on the yearly reports of the PROCPREF (1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2004a, 2005, 2006, 2007, 2008, 2009, 2009a, 2010, 2011, and 2012).

Finally, once the indictments arrive in court, the 4CC first holds a session to decide whether or not take the cases, eventually dismissing from the start a few more of them. While that is not the most common scenario, it did occur in over two hundred of the 1,437 indictments brought by the PROCPREF against mayors of Rio Grande do Sul. Still, the majority of cases proceed to the *instrução* stage and ultimately to adjudication, resulting in 247 convictions of mayors directly by the 4CC, and 340 convictions if we include the appeals to the panel of *former* mayors who were first tried by district judges, as I will detail in the next section.¹⁸⁹ The graph below displays the numbers of indictments and convictions at the 4CC since its inception (see Figure 4.1.).

Figure 4.1. Indictments and Convictions of Mayors at the 4th Criminal Panel of the TJRS, 1992-2012



Sources: *Procuradoria de Prefeitos*, MPRS; website of the TJRS, cf. Appendix III.

The first thing to be noticed in the graph above is the relatively wide gap between the number of indictments and that of convictions, especially in the first years of effective operation of the 4CC

¹⁸⁹ In time, this data refers exclusively to the convictions of mayors and former mayors. It therefore ignores other individuals that may have been convicted in the same cases (e.g., advisors, civil servants, businessmen). As an illustration, for the period between 2003 and 2008, when data is available, ninety mayors and former mayors were convicted in the 4CC. If we include those other individuals, the total jumps to one hundred and forty-one convicted in the same period, roughly two times the number of people (MPRS 2008a).

starting in 1994. Two factors account for this difference between the amount of cases brought by the prosecutors to the specialized panel and those eventually sentenced. Firstly, because the topic was largely new by then and only a few were familiarized with it, the prosecutors decided to bring nearly everything that arrived at their desks to the 4CC. In effect, only as the judges started to make clearer their positions by deciding those cases, the prosecutors became able to better guide their work. As appellate judge Vladimir Giacomuzzi, who joined the panel in 1993, recalls this initial period of adjustment between the two bodies

“In the beginning the *Ministério Público* shelved [“*arquivava*”] only a few cases; it brought to court almost everything because there were no clear guidelines as to which cases would be accepted in court. But, as the panel started to work and to establish clearly those guidelines, the *Ministério Público* had a better idea as to which cases bring or dismiss, and this also sped up the processing of cases in the court, which started to focus its attention in those really deserving it... so the panel started to display a steady productivity and, as a result of this productivity, it began generating the world average of about twenty percent of convictions, even if the media only gave attention to the cases of convictions” (Interview # 11; see also Interviews # 5, 17, and 22).

Secondly, the powerful coordination ensued among the judiciary, prosecution office and auditing agency was to a great extent tempered by the decision-making of the judges. While this may look contradictory, it actually points out to the relatively low conviction rate of around twenty percent of the total number of cases brought to the panel. Particularly, this underscores the moderation of the *desembargadores* of the 4CC and the fact that, in spite of the massive number of convictions produced by the court, there could have been much more. To some extent, this moderation comes from the concern expressed by the members of the panel in verifying if the mayors were indeed directly involved in the alleged wrongdoings (instead of just their advisors or assistants), if those were purely formal irregularities (as opposed to intentional ones), and if the evidence produced in court did support a verdict of guilt. In effect, at times the judges even display some sensitivity towards the accused, because “many cases actually involved blunder [“*barbeiragem*”] by the

mayors, so the panel tried to understand that,” observes a former member (Interview # 70; see also Interviews # 1, 5, 7, and 11).¹⁹⁰ It was this moderation, in turn, that ultimately made the 4CC convict mayors only when its judges were absolutely sure that it was the right thing to do – i.e., it was clear that the illegal behavior was intentional and resulted directly from the actions of the head of the city hall (cf. Interviews # 1, 5, 11, and 18).¹⁹¹

The fact that the *desembargadores* of the 4CC were not using the fullest extent of the power they had in their hands, nonetheless, still resulted in hundreds of convictions. Given the novelty of the issue of legal accountability of mayors in the state, thus, it should not come as a surprise that the panel soon came to be seen as too strict or rigid by mayors and their attorneys (e.g., Interviews # 2, 3, 7, 67, and 68).¹⁹² This applied especially to the mayors of smaller municipalities, which exist in much larger numbers than bigger ones, and soon came to be the most frequent defendants at the panel. This, nevertheless, did not prevent mayors from bigger and wealthier cities from being accused and eventually convicted by their acts of misconduct. In September

¹⁹⁰ As it turns out, even some decisions of the 4CC followed this reasoning. One of them, for instance, observed: “we must have the maximum goodwill with the mayors ... they are not thugs, but government officials, often unprepared, trying to manage a municipality under all sorts of difficulties, being perfectly natural the occurrence of a few slips” (available in the final decision [*acórdão*] of case n. 70029075280, decided by the 4th Criminal Panel in June 17, 2010). In time, the care of the panel with those cases did not stop in their decision-making, but was also reflected in how the panel managed its relationship with the media. The court determined that only the *rapporteur* judge of a case was to speak about it to the media, particularly in order to avoid the provision of information about cases that had not yet been adjudicated. The effort was to minimize the eventual intention of the media to form a preliminary opinion of guilt about a mayor before the case was properly adjudicated (see Interview # 11). This was all the more important when the cases originated from tips given by the opposition aiming at destabilizing the current mayor, so that it was even more important to separate the wheat from the chaff in order to ensure the credibility of court.

¹⁹¹ This sort of moderation on the part of the 4CC, in effect, is consistent with a long history of accommodation of courts that have received new formal attributions (e.g., McCloskey 1960, Roux 2009, Kapiszewski 2011).

¹⁹² An attorney who defended various heads of city halls recalls: “The mayors came to be deemed responsible for everything that went wrong in their municipalities, whether they knew what was happening or not. So a mayor was, sometimes alone, convicted for anything, from an irregular competitive bidding process to the inadequate use of an official vehicle to a poorly executed earthwork. And this came to characterize the 4th Criminal Panel as overly drastic” (Interview # 7). Similarly, as I interviewed another attorney in Rio Grande do Sul and told him that my research involved not only that state, but also Minas Gerais and Bahia, he replied: “I see. You have picked three states with different profiles: one with little to no external control (Bahia), one with a regular control (Minas Gerais), and one with excess of control (Rio Grande do Sul)” (Interview # 67).

2005, for instance, the mayor of Pelotas, the third most populous city of Rio Grande do Sul with roughly 350,000 people, was convicted by the 4CC for dispensing with the competitive bidding process in a 1998 contract with a shelf waste management company in the amount of roughly US\$150,000. Mayor José Anselmo Rodrigues, from the leftist *Partido Democrático Trabalhista* (PDT, or Democratic Labor Party), was sentenced to four years of detention, to the payment of a fine, and to the loss of his position, being declared ineligible for five years.¹⁹³ Similarly, the mayor of Triunfo, the city with the highest GDP per capita in the state and one of the highest in Brazil,¹⁹⁴ was convicted by the 4CC in June 1995.¹⁹⁵ From the right-wing *Partido Progressista Brasileiro* (PPB, or Brazilian Progressive Party), mayor Bento Gonçalves dos Santos was a frequent defendant at the panel and according to the state's auditing agency still owes the city the equivalent of about US\$ 13 million for irregular hires and contracts (see Grizotti 2013).

As a result, mayors of all ends of the political spectrum and of municipalities of all sizes quickly became aware of the legal accountability efforts taking place in their state.¹⁹⁶ This, in turn, led to what has been described to me by judges, prosecutors and attorneys alike as a *pedagogical effect* through which the mayors started adapting to the decisions of the panel anticipating potential sanctions (e.g., Interviews # 2, 3, 5, 7, 11, 22, 67, and 68). This included especially the pursuit of professionalized legal advice on the part of the mayors to abide by the uniform parameters set by

¹⁹³ See information of case n. 70002289692, decided in September 15, 2005 by the 4CC. In effect, this was the third conviction of José Anselmo Rodrigues, who had been removed by the specialized panel from office since November 1998 (Cardoso 2000).

¹⁹⁴ Triunfo is a municipality with about 25,000 inhabitants in the metropolitan area of Porto Alegre and it is home of a major petrochemical complex, which is responsible for over ninety percent of the municipal revenues and over two percent of the entire state's GDP. As of 2011, Triunfo had the fifth highest municipal GDP per capita in the country, equivalent to about US\$ 110 thousand, comparable to those of countries like Qatar and Luxemburg (IBGE 2011).

¹⁹⁵ See information of case n. 691003313, decided in June 6, 1995 by the 4CC.

¹⁹⁶ As an attorney who has defended over sixty mayors before the 4CC told me: "The creation of the 4th Criminal Panel was an impact, an impact so huge that most mayors would panic just to receive a citation for the court ... The feeling of panic was largely because previously the mayor ... was going to be tried before the district judge and felt that it was local politics as usual, whereas bringing the case to the court of appeals in the state's capital meant being tried by a court completely independent from any political or personal influence" (Interview # 3).

the 4CC's decisions which, in turn, prevented them from becoming the targets of investigations by the PROCPREF or the TCERS. In effect, consulting firms like the *Delegações de Prefeituras Municipais* (DPM, or Delegations of Municipal Governments) and the *Consultoria em Direito Público* (CDP, or Consultancy in Public Law), alongside Rio Grande do Sul's association of city halls (called *Federação das Associações de Municípios do Rio Grande do Sul*, or FAMURS) and even the state's auditing agency started taking the lead to provide assistance and train the mayors and their advisors in order to avoid acts of misconduct from taking place. As Gladimir Chiele, who founded CDP in the mid-1990s, recalls:

“We perceived the need to assist public officials ... beginning in 1995, 1996 ... albeit still incipient at that moment, the TCERS and the 4th Criminal Panel were already acting with a heavy hand, especially the 4th Criminal Panel which, apart from an occasional excessive rigor, performed a very important role precisely in bringing about a certain fear among public officials not only of avoiding to act irregularly, but especially of pursuing measures and orientation to act more closely to what the legislation demanded. Before, no lawyers or consultants were needed: the mayor made the decisions he wanted or what appeared to be right to him” (Interview # 2).

True, this applied especially to administrative mistakes eventually committed by poorly advised mayors which were still deemed irregularities from a legal perspective.¹⁹⁷ Over time, this also raised the standards applicable to the city halls of the state, making the 4CC less understanding and tolerant with those sorts of misconducts, so that “the excuse of the mayors that they did not know what they were doing became increasingly ineffective in court,” explains a former appellate judge of the panel (Interview # 70). While this further contributed to consolidate the image of the

¹⁹⁷ As another attorney told me, for instance: “We started to notice when the mayors were elected that they used to bring as their secretaries and most immediate advisors the individuals who had helped them during their electoral campaigns and that this appointment was a compensation for that help. So, this brought completely unprepared individuals to the city hall who, sometimes in the first day in office, screwed it up [‘*metiam os pés pelas mãos*’]... So we started to train the mayors about fifteen, sixteen years ago, about in 1995, 1996. So we started training them before they were inaugurated in order to avoid any trouble. And any time they had a problem, they simply called us. And this grew immensely in the following years. Over time, we started training also the civil servants, using the guidelines set by the TCERS and the TJRS” (Interview # 7).

legal accountability institutions of Rio Grande do Sul as too rigid with the mayors, it also fueled a wave of challenges that would test the resilience of those efforts in the coming years.

Not surprisingly, the main target of such attacks was the 4CC itself. The association of municipal governments of the state (FAMURS), in effect, filed a formal request at the state court of appeals asking it to abolish the specialized panel altogether after only three years of operation (Impacto 1995). Similarly, as part of the defense strategies of their clients, private attorneys questioned the legality of the existence of a sole specialized panel to try the mayors, particularly in their appeals to the Brazilian high courts (e.g., Interviews # 3, 7 and 15). Shielded by a series of decisions by the latter, which essentially ruled that this was a decision of the state courts to make,¹⁹⁸ the 4CC's existence was not put at risk, being in fact backed by the entire TJRS. As a result, judges, private attorneys and prosecutors recall several *critiques* to the existence of the specialized panel, but not a single concrete action – legislative or otherwise – that was taken by elected officials to effectively attempt to curb its activities (e.g., Interviews # 1, 5, 7, 11, and 22).

Unable to attack the institution, the elected officials turned to the individuals that were part of it to signal their discontent with those legal accountability efforts. Accordingly, in January 1997, following the initiative of state governor Antônio Brito, Rio Grande do Sul established an agency – called *Agência Estadual de Regulação dos Serviços Públicos Delegados do Rio Grande do Sul* (AGERGS, State Agency for the Regulation of Delegated Public Services of Rio Grande do Sul) – to be in charge of overseeing a series of services that had just been privatized (distribution of

¹⁹⁸ For a review of these decisions, please refer to section 4.2., above. Still, a preliminary injunction decision of the Brazilian Supreme Federal Tribunal on the habeas corpus n. 71.381 challenging the existence of the 4CC put its activities at risk when justice Moreira Alves deemed the existence of a single panel to try crimes of mayors irregular. His decision, however, was later altered by his colleagues as they received information from the state court of appeals of Rio Grande do Sul which backed the existence of the panel, deeming it an institutional policy (see Interview # 15).

energy, roads, telecommunications, etc.).¹⁹⁹ In order to integrate the first governing board of this agency, the governor invited *desembargador* Luiz Melíbio Uiraçaba Machado, the idealizer and then president of the 4th Criminal Panel, as one of its members.

Judge Melíbio accepted the invitation, but in order to be nominated to be position he had to retire from his position in the state court of appeals, which he did, leaving the 4CC in the beginning of that year. Appointed by the executive branch, his name was submitted for approval at the state legislative assembly in April 14, 1997, and soon turned controversial.²⁰⁰ In his first hearing before the Committee of Public Services, in June 5, his name received the support of only four of the twelve representatives of the committee, all members of the right-wing PPB, one of the political parties belonging to the governing coalition spearheaded by the centrist *Partido do Movimento Democrático Brasileiro* (PMDB, or Party of the Brazilian Democratic Movement) of the state governor (ALRS 1997). A few days later, the committee finally approved his name with eight favorable votes, but still facing rejection from representatives of both ends of the spectrum.²⁰¹ As a matter of comparison, two other appointees by the state governor to the board of AGERGS had already been unanimously approved by the same committee.²⁰²

When finally submitted to vote by the assembly of representatives, in June 17, a twenty-seven to eighteen vote count did not approve judge Melíbio to be part of the governing board of AGERGS (ALRS 1997a). A newspaper article summed up the events: “a strong lobby was being done by representatives, advisors, mayors and former mayors so that his name was not approved. Reason:

¹⁹⁹ Accordingly, the AGERGS was created by the state law n. 10.931, of January 9, 1997.

²⁰⁰ This story is available in the legislative records, particularly in the *Requerimento Diverso* n. 18 of 1997 (*Processo* n. 2114.01.00/97-7), which was converted into the *Projeto de Decreto Legislativo* n. 77 of 1997 (*Processo* n. 20893-01.00/97-0).

²⁰¹ Representatives from both the left (e.g., Luciana Genro, from the *Partido dos Trabalhadores*, PT, or Workers’ Party) and the right (e.g., Divo do Canto, from the *Partido Trabalhista Brasileiro*, PTB, or Brazilian Labor Party) did not approve Melíbio’s name in the committee.

²⁰² They were two public officials with long careers in the party politics, Romildo Bolzan and Guilherme Socias Villela.

the numerous convictions of mayors while Melíbio was the president of the 4th Criminal Panel” (Kuhn 1997). This hostility emanated not only from parties already in opposition to the governor, like those from the left, but also from some of its allies, including the PPB, which had previously supported the nomination of Melíbio to AGERGS. The reason for this change in the position of the PPB was clear. State representative Marco Peixoto came to public to explain that his contrary vote was due to the fact that his brother Cássio Peixoto, former mayor of Santiago, a city with 50,000 people, had been convicted by the 4CC for keep charging the city’s population a fee that had already been declared irregular by the TJRS, explicitly disobeying that decision (ibid).²⁰³ As a result, *desembargador* Luiz Melíbio Uiraçaba Machado, who had retired from the state judiciary precisely to be appointed to AGERGS, ended up out of the latter as well, being actually entirely removed from public life against his will.

Judge Melíbio, nonetheless, was not the only one targeted as a result of the legal accountability efforts taking place in Rio Grande do Sul. After eleven years spearheading the PROCPPREF and over a thousand indictments brought against mayors, prosecutor Luiz Carlos Ziomkowski also came to face the consequences of the inevitable abrasion caused by those activities. As a private attorney noticed, “the mayors all complained about him, and to everyone, so much so that he was eventually removed from his position” (Interview # 7). It took quite some time, however, for this take place. In effect, four different prosecutors-general appointed by state governors of distinct ideological inclinations and parties all had been supporting Ziomkowski in the position since the end of 1993. In 2005, though, the prosecutor-general failed to reappoint him as coordinator of the Division on Crimes of Mayors of the MPRS and designated a new prosecutor to the position. As an interviewee who asked to remain anonymous explained to me, “the policy of the prosecutor-

²⁰³ The conviction occurred in the case n. 694037284, decided by the 4CC in June 13, 1995. See also Soares (1997).

general diverged from that of Ziomkowski ... the prosecutor-general thought he had to reduce the number of areas of friction of the *Ministério Público*, and this diverged from what Ziomkowski had been doing in the *Procuradoria de Prefeitos*” (Interview # 71).

Those two challenges that ended up removing judge Melício and prosecutor Ziomkowski from the legal accountability efforts taking place against mayors in Rio Grande do Sul, however, did not affect significantly the activities of their respective institutions in this regard. For instance, in the year following Melício’s retirement, thirty convictions of mayors resulted from the work of the 4CC, a record until then. At the PROCPREF, the response was not as immediate. In the first year after Ziomkowski’s departure, the division brought only twenty-six criminal cases against mayors to the 4CC, the lowest level since 1994. In effect, only recently the PROCPREF came to exhibit the levels it reached in the last years of Ziomkowski as its coordinator, when between sixty and seventy new cases were brought every year.

Still, convictions of mayors from both small and large municipalities have kept being common in past few years,²⁰⁴ making it clear that the limits imposed upon the PROCPREF were short-lived at best. Perhaps the best illustration of that took place in 2011, when the mayor of São Borja, a municipality of approximately 60,000 people, was convicted for using city hall resources to print material that came to be characterized as personal advertisement. The case had been brought to court in 2008 precisely by the public prosecutor that substituted Ziomkowski in the position and targeted Mariované Gottfried Weis who, more than being the head of a city hall at that time, was

²⁰⁴ Two examples illustrate this statement. First, there was the conviction of the head of the city hall of Guaíba, a city in the metropolitan area of Porto Alegre with over 100,000 people. Mayor Manoel Ernesto Rodrigues Stringhini, of PMDB, was convicted in 2006 for irregularly contracting with the company of the vice-mayor in the total amount equivalent to US\$ 110,000 (cf. case n. 70005762950 of the TJRS). Another example includes a different mayor from Triunfo, José Ezequiel Meirelles de Souza, of PDT, who was convicted for refusing to provide evidence to court in an investigation on illegal hires in the city hall, also in 2006 (cf. cases n. 70015235161 of the TJRS).

the president of the association of municipalities of the state, the FAMURS. As a prosecutor recalls, “his conviction was a something of a commotion, and served as a warning to the mayors: if the president of FAMURS could get caught, everyone else could” (Interview # 71).

4.5. Conclusion: Withholding Fragmentation and Increasing Prevention

Perhaps the most critical challenge faced by the system of coordinated autonomy that began to take hold in Rio Grande do Sul in 1994 came somewhat unintentionally, from a decision by the Brazilian Supreme Federal Tribunal, the STF, in a case unrelated to mayors or the 4CC. In 1999, the STF altered a long-standing position it had held since 1964 and ruled that *former* public officials were no longer entitled to *foro privilegiado* and, thus, that their cases should be tried by district judges and no longer by appellate ones.²⁰⁵

Particularly for the 4CC, this meant that a variety of cases of *former mayors* that were already in its docket had to be sent without trial to district judges all over Rio Grande do Sul, significantly reducing the total number of new cases of mayors before the panel. In effect, as soon as the STF decided to reverse its previous understanding, the members of the 4th Criminal Panel asked the Full Court of the TJRS to remove their full-time specialized status, so that they could adjudicate appeals again in order to distribute more evenly the workload of the court with the other panels (TJRS 2000, Interviews # 1 and 11). As the proposition started to be discussed by the appellate

²⁰⁵ The long-standing position of the STF was expressed in the *súmula* n. 394, of April 3, 1964. A “*súmula*” is a summary opinion that consolidates understandings of the court on matters of legal interpretation. The *súmula* n. 394 essentially stated that both current and former public officials were entitled to special standing in the courts for the trial of the crimes allegedly committed during their terms in office. The change of this position of the STF took place during the deliberation of a motion (“*questão de ordem*”) in the adjudication of the *Inquérito* n. 687, which was a criminal case against a former federal representative, Jabes Pinto Rebelo of the state of Rondônia. The justice who proposed the change was Sydney Sanches, suggesting it as early as April, 30, 1997. A long debate followed in court and the deliberation of that case was suspended until August 25, 1999, when the *Súmula* n. 394 was finally canceled, in a decision published only in November 9, 2001.

judges, a variety of other proposals emerged. Among them there was the idea of returning to the practice adopted before 1992, when all criminal panels of the court adjudicated mayors.

The solution ultimately adopted by the Full Court was an interesting one. On the one hand, it refused to disperse the cases of mayors all over the criminal panels of the TJRS as it had been the case before the establishment of the 4CC. That was so in accordance to *desembargador* Cacildo de Andrade Xavier – who was not a member of the panel but sponsored the proposal – because “the distribution of the responsibility of trying cases of mayors among all criminal panels would bring problems to them all, which would have to structure themselves to the *instrução* of those cases,” something that was already done with “commendable speed” by the 4th Criminal Panel (TJRS 2000, 1). On the other hand, rather than adjudicate all sorts of appeals, the 4CC kept its jurisdiction over the new cases of current mayors and started to receive appeals only on topics of similar nature – e.g., crimes against public administration, on public procurement, on taxation, and even those involving city councilors, who never enjoyed special standing in the courts as the heads of city halls do – alongside the appeals of cases of *former* mayors, who were now initially tried by the district judges of Rio Grande do Sul.

As a result, beginning in 2000, the 4CC started to decide not only entirely new criminal cases of mayors, but also appeals of those cases that previously were its sole job to do, but which were now initially under the jurisdiction of trial judges. At times, though, the entire *instrução* of those cases was performed by the 4CC but, since it did not have time to adjudicate the case because the mayor left office or lost the election, it had to transfer them to the district judges for their final adjudication. When that happened, the panel could in fact check whether the decision reached by the trial judge matched what would have been its own, given the evidence produced. Ultimately, this implied that the panel did not lose its specialized status, but mostly that it came to perform a

supervisory role over those cases as they came to be first trialed by district judges before arriving at the panel. The dotted line of Figure 4.1., above, starting in the year 2000, represents this new group of convictions of former mayors in appeals decided by the 4CC, which only added to those already directly performed by the panel.

True, some appellate judges felt unmotivated as a result those changes, arguing that they would have hollowed out the work of the 4CC.²⁰⁶ The key concern here, thus, is whether or not this new arrangement effectively demobilized the legal actors of the state and, as a result, fragmented the system of justice of Rio Grande do Sul, moving it away from what I have previously termed coordinated autonomy towards the fragmented kind. While the rhetoric of some appellate judges does resonate this argument – almost in a “story of decline”²⁰⁷ – I argue differently.

For one, if we look at the graph discussed in the previous section, the matter of the fact is that a great number of convictions took place at the 4CC after the changes of 2000. In actuality the peak of thirty-two convictions in a single year occurred in 2004 and included exclusively the trials performed directly by the specialized panel, therefore excluding appeals of former mayors. This suggests that the changes did not affect markedly at least the potential for new convictions to take place at the panel. For another, the alleged fragmentation brought about by the change of the long-standing doctrine of the STF affected all states of the country, not only Rio Grande do Sul. That is, it did *deconcentrate* the task of trying criminal cases of mayors from the hands of state appellate judges towards district ones, but this change was identical throughout Brazil and

²⁰⁶ For instance: “With that, what happened? When a mayor’s case arrives at the court, he is already in second or third year of his term. So, when the case ends, he will be already out of office. So, this took out all vigor of the panel ... This is the difference between today and that time before the cancelation of that *súmula*. Today the panel thinks this way, in my view: why are we going to put effort, vigor here if we are not the ones who are going to adjudicate this case in the end? ... The district judge, in turn, still thinks this is jurisdiction of the high courts, so this turned the position of the judiciary very fragile in this regard ... so this weakens the courts ...” (Interview # 11).

²⁰⁷ According to Stone, stories of decline adopt the following structure: “In the beginning, things were pretty good. But they got worse. In fact, right now, they are nearly intolerable. Something must be done” (2002, 138). As such, they are common rhetorical techniques used to justify policy change.

the responses of the different states varied, with some keeping their legal accountability efforts intense, as in Rio Grande do Sul, and others not, as I will stress in the next two chapters on Minas Gerais and Bahia. For still another, the notoriety the panel had already achieved by then started to attract *desembargadores* interested in it, so that these highly motivated judges could renew the mobilization of the institution on the topic of legal accountability of mayors.²⁰⁸

Finally, I would argue that the increased mobilization of the 4CC, PROCPREF and TCERS and the resulting coordination produced among them over the years actually resides at the bottom of this perceived recent decrease in the number of cases and convictions of mayors in Rio Grande do Sul. In other words, those legal accountability efforts did seem to have produced a deterrent effect on the irregularities potentially committed by at least a few city hall officials, a perception shared by judges, prosecutors, auditors and private attorneys alike (e.g., Interviews 1, 2, 3, 7, 10, 14, 15, 22, 66, 70, and 71). In effect, what I have termed in the previous section the “pedagogical effect” of those efforts accounts precisely for that, with mayors decreasingly incurring into some forms of wrongdoing, particularly those detected with relative ease by the auditing agency, public prosecutions and local political opponents.

At the same time, the reorganization of the TCERS that took place beginning in mid-1990s was crucial to generate an increased *preventive* approach to irregularities in the city halls, similarly contributing to reduce the number of cases ultimately arriving at the courts. In effect, as a private attorney acknowledged, “I have noticed that the cases against mayors have decreased recently.

²⁰⁸ That seems precisely to be the case of one of the new members of the panel, *desembargador* Rogério Gesta Leal, whom I have interviewed only a few months after he had become a full time member of the panel (Interview # 4). In effect, being a member of the 4CC is a prestigious position. Not surprisingly, some of the most senior members of the TJRS are among its members. At the same time, this prestige contributes to mitigate the invariably delicate issues they work on, providing its appellate judges with an incentive to be diligent in the adjudication of those cases. As a retired appellate judge puts it, “the 4th Criminal Panel puts people in the spotlight [‘*dá muito holofote*’] and many judges want to go there due to the political repercussions of the cases it deals with” (Interview # 15).

But this is understandable not only due to the increased training of the mayors and their advisors, who no longer perform so many mistakes as before, but especially because the court of accounts now knows in real time nearly everything that goes on inside the city halls” (Interview # 7). How did this take place, though? The combined effect of increased regionalization, decision-making efficiency, reliance on information technology, partnership with internal controls and facilitation of exposure on the part of the TCERS, in effect, account for a great part of this change.

Accordingly, the focus on the so-called “end-activity” of external control and oversight by the auditing agency is not new. The long-standing policy of performing *in loco* audits yearly in every city halls of the state illustrates that well. Still, as the number of municipalities of Rio Grande do Sul more than doubled between 1988 and 1996,²⁰⁹ so the amount of work of the TCERS doubled in the short period of less than ten years. As such, it could have just as easily stopped auditing *in loco* all city halls of the state yearly, given that its number of auditors remained largely stable for the period. Instead, the auditing agency decided to create regional offices, thereby reducing costs associated to performing the yearly audits.²¹⁰ As a result, currently the TCERS has nine regional offices throughout Rio Grande do Sul in addition to the headquarters in Porto Alegre, all working as field offices closer to their targets of oversight, randomly auditing them every year.²¹¹

Similarly, partially as a result of the increased exposure of its internal work to public prosecutors and judges, partially due to its own initiative, starting in 1997 the TCERS decided to improve its

²⁰⁹ The aggregate number of municipalities in Rio Grande do Sul jumped from 244 in 1988 to 497 in 1996, a 104 percent increase (see Table 3.1., above; see also Tomio 2002, 2005).

²¹⁰ An auditor explains: “We need regional offices. Otherwise, it would be too expensive to go to all municipalities every year” (Interview # 66).

²¹¹ That is, both the timing and the content of the audits are random. As such, the city halls do not know in advance either when the auditors of the TCERS are going to audit their expenses or which contracts, hires and public works they will check. The decision as to what and when to audit is made by the *Diretoria de Controle e Fiscalização* (or Director of Control and Oversight) of the TCERS, a position occupied by a career auditor, not a political appointee. Finally, the regional offices are located in the following cities: Caxias do Sul, Erechim, Frederico Westphalen, Passo Fundo, Pelotas, Santa Cruz do Sul, Santa Maria, Santana do Livramento and Santo Ângelo.

efficiency in the review of all public expenses under its jurisdiction.²¹² Accordingly, up until then these decisions, which could lead to the imposition of administrative penalties, took years to take place, so “at times a mayor had been already criminally convicted by the 4th Criminal Panel, but his expenses had not yet been reviewed by the court of accounts; they took years to finally make a decision, at times eight years (Interview # 11). The auditing agency then “proposed itself the challenge of speeding up this process” and today nearly one hundred percent of the expenses are reviewed within one year (Interview # 66). This increased efficiency, in turn, also changed how the TCERS audits the municipalities. Previously, it used to spend the same amount of time in each city. Recently, a “risk matrix” weights the size, budget, history of irregularities, number of delegated services, index of social development, etc., of all municipalities in order to define how much time should be dedicated to each, allocating increased attention to those deserving it (i.e., municipalities with greater population and budget, with a long history of wrongdoings, and so on). Still, all cities are audited yearly. What varies is the time dedicated to each of them.²¹³

These decisions, in turn, have been facilitated by the growing use of technology information. The SIAPC software cited earlier,²¹⁴ which extracts information from the city halls’ computers, is the best illustration of that. As it turns out, it collects information of *all* activities formally performed in the city halls – contracts, admission of personnel, competitive bidding processes etc. – helping not only identify critical items to be audited, but also making them public to facilitate monitoring

²¹² This process formally started with the establishment of the *Conselho e o Escritório da Qualidade* (or Council and Office for Quality) via Resolution n. 493 of 1997, which led the TCERS to be fully certified by ISO 9001:2000, as it has been ever since (TCERS 1998, 28, Bergue 2009). In effect, “now every office [of the TCERS] is a management unit,” explains one auditor (Interview # 10).

²¹³ Accordingly, more recently the practice of auditing in loco all municipalities of the state has been questioned by some members of the TCERS, so as to dedicate even increased attention to the municipalities and agencies of the state government more deserving of it (e.g., Interviews # 10, 13, and 14).

²¹⁴ See section 4.4., subsection “The Iron Triangle in Action: Effectiveness, Moderation and Challenges,” above.

by anyone who displays an interest.²¹⁵ As a retired auditor notices, “all city halls are connected to the servers of the *Tribunal [de Contas]*, which knows all the contracts that are being signed, the ongoing public procurement processes, and so on,” making the auditing agency of Rio Grande do Sul “nearly omnipresent” (Interview # 18).

True as it may be, the matter of the fact is that the TCERS is not all the time present in every city hall of Rio Grande do Sul, but only a couple of days every year. The so-called “internal controls” (municipal comptrollers, attorneys-general, etc.), though, are present in each city hall every day of the year. A few years ago, thus, the auditing agency started to partner up with those controls as a way to increase its own effectiveness in preventing irregularities in city halls. Accordingly, these controls are now required to review all municipal expenses to ensure their compliance with the agency. In demanding so, thus, the TCERS not only helped to establish such controls where they were previously absent, but also pushed towards more independent ones in city halls where they already existed. In effect, “a study on the profile of internal controllers found that ninety-six percent of them are stable civil servants [rather than political appointees], and approximately sixty percent have a university degree or are currently pursuing one,” explains Sandro Trescastro Bergue, the director of the *Escola Superior de Gestão e Controle Francisco Juruena*, the school of the TCERS established in 2003, which trains both auditors and public officials from all over the state, including city hall officials (Interview # 14).

The increased partnership of the auditing agency with the internal controls, in turn, has also been followed by the opening of channels of the TCERS to facilitate the exposure of irregularities by

²¹⁵ Additionally, the TCERS stores all this data, serving as a true backup of the records of municipal administrations. More than one auditor told me, for instance, that such data are often entirely deleted from the computers of the city halls after a fierce election in which the incumbents are removed from office. Right before leaving, some would delete all files just to create problems to the new group in power. These, in turn, reach out to the TCERS for help, which has all such data stored and gives it free to the municipalities (e.g., Interviews # 10, 14, 66 and 69).

all individuals potentially aware of them. Cited earlier, the *ouvidoria* (ombudsman) receives tips, especially anonymous ones, via the phone, e-mail or website of the TCERS. Also established in 2003, an average of over two thousand such tips have been made to it every year, as opposed to only eighty-five tips received in 2002, before the *ouvidoria* had been created. Used by all types of people – including “political opponents, companies who lost competitive bidding processes, people who were not hired for public positions, and even people committed to the public good,” ironically comments an auditor (Interview # 69)²¹⁶ – such tips are mandatory items in the yearly *in loco* inspections, and a great number of them end up being true once audited.²¹⁷

Combined, all the measures listed in the previous paragraphs have largely redefined the role of the TCERS. Regional offices performing random audits from the information gathered directly from the servers of the city halls and from anonymous tips, the increased role of the internal controls induced by the auditing agency, and the enhanced efficiency of the latter in deciding on the imposition of administrative sanctions all have, in effect, helped the TCERS “know in real time nearly everything that goes on inside the city halls,” as an attorney observed (Interview # 7). Coupled with the “pedagogical effect” of the efforts of the other legal accountability institutions of Rio Grande do Sul in the previous years, the perception of decreased number of criminal cases of mayors arriving in the courts, hence, becomes understandable. By the same token, this closer presence of the TCERS vis-à-vis the city halls has conducted to an increased *preventive* approach to irregularities, so wrongdoings that could lead all the way through criminal convictions at the

²¹⁶ As one auditor ironically comments, albeit most tips are anonymous, “political opponents, companies who lost the competitive bidding process, people who were people hired for public positions, and *even people committed to the public good*, are the most common sources of those tips” (Interview # 69, emphasis added). Similarly, another auditor observed on the use of the *ouvidoria* by political opponents: “If you consider a small municipality, it is often divided into two factions, the situation and opposition. And the latter is desperate in the search of problems within the former, so these guys are potential auditors” (Interview #14).

²¹⁷ As one auditor points out, “about sixty percent of the items that come via *iuvitoria* are true” (Interview # 66; see also Interviews # 10 and 14).

4CC came to be avoided with an increase of preliminary decisions by the TCERS that prevent certain practices from taking place.

This is especially true in reference to public procurement, a common area of irregularities in city halls. Representations to suspend competitive bidding processes before contracts are signed or winners announced by the city halls became common especially due to the increased activism of the *Ministério Público de Contas* (MPC), the branch of the prosecution office officiating before the auditing agency. It was entirely reshaped in 2000 and now has its own personnel recruited via competitive examinations, rather than being a role played by prosecutors temporarily transferred from the MPRS. Since then, the MPC/TCERS has become a key point of connection between the *gaúcho* court of accounts and other agencies, increasing inter-institutional coordination. One example of such preventive activity on public procurement is provided by Geraldo Costa da Camino, the current head of the MPC/TCERS in Rio Grande do Sul.

“The first joint action, the one that started the participation of the MPC in task forces, took place in 2006. There was an anonymous tip concerning the possible attempt to rig the competitive bidding process of waste management in Porto Alegre. The tip stated that a consultant from another state was elaborating the invitation to bid in order to favor certain companies. The tip arrived at the MPC, at the MPRS, and at the state police... so we started working together and found out that some expenses of that consultant to come to the state had been paid by one of the companies interested in the contract ... This action was preventive for two reasons. When we first announced the task force ... the bidding documents defined a total cost of R\$ 400 million [equivalent to approximately US\$ 200 million] over a five-year period for the city hall. At the moment we publicly announced our investigation, the city hall redid its calculations under the argument of a necessity to readjust the contract to the city’s budget, and reduced the amount to R\$ 300 million [equivalent to approximately US\$ 150 million] ... When we verified those issues concerning the consultant, I filed a representation in the *Tribunal [de Contas]* to suspend the bid before it took place, and the *Tribunal [de Contas]* suspended it. So the city hall had to call off the bid and came to public to say what we were saying from the beginning: that the model of bid the city hall was trying to perform limited the competition to just a few companies and was therefore not economic to the city” (Interview # 21).

Had this bidding not been suspended, bid rigging could possibly have occurred, ensuing criminal charges against the individuals responsible for it, involving possibly even the mayor due to the

publicity this investigation gained. Importantly, this was not an isolated action, but represents a growing trend at the TCERS (e.g., Interviews # 10, 13, 14, and 66).²¹⁸ Such a change, as a result, has affected how the PROCPREF came to perform its work. Accordingly, less material from the auditing agency is now used in the indictments brought before the 4CC, even if the audit reports of the TCERS have been entirely available on-line to the prosecutors of the Division on Crimes of Mayors since 2009.²¹⁹ That is the case because many irregularities detected by the TCERS are now resolved preventively by the TCERS itself and need not reach other institutions such as the MPRS or the 4CC. As a result, this has been turning the PROCPREF into an investigative body increasingly focused on unveiling wrongdoings that demand greater efforts to be detected,²²⁰ a perception that is shared not only by its members, but very especially by the appellate judges at the specialized panel (e.g., Interviews # 1, 11, and 70).

All in all, coordinated autonomy is still the most accurate way to describe the activities of judges, prosecutors and auditors on the legal accountability of mayors and former mayors in Rio Grande do Sul. That is, despite recent changes that introduced tendencies towards either fragmenting or limiting the autonomy of the judiciary, prosecution office and auditing agency of the state, they

²¹⁸ It is, in short, a transformation from one model of helping punish irregularities *after* they occur towards another of preventing them from happening in the first place. As one auditor recalls, the “culture of our auditors consisted mostly in identifying failures rather than suggesting recommendations to city halls in order to prevent problems from taking place” (Interview # 14).

²¹⁹ In effect, the coordination between the two bodies seems actually stronger than ever, even if there is always room for improvements. As a former coordinator of the PROCPREF observes, “I would say that our cooperation is now institutionalized because it is part of the routine of both institutions ... it does not depend on an individual initiative, or the good-will of someone ... it is internalized to each institution, and it is very clear what belongs to each institution” (Interview #16). Similarly, an auditor observes that “our audit reports are the raw material of the prosecution and ultimately the 4th Criminal Panel ... but we know that we also need the prosecution in what refers to going after the private individuals involved in wrongdoings because we are limited to going after those in the public administration” (Interview # 10).

²²⁰ An example of the current investigations targeted by the PROCPREF is provided by Luiz Inácio Vigil Neto, who was its coordinator in 2010 and 2011: “Say we are four people and we belong to the same political party and to the same faction of that party. Each one of us runs for office in a different city ... then the company ‘1’ contributes to the campaign of ‘a’, the company ‘2’ contributes to the campaign of ‘b’, the company ‘3’ to the campaign of ‘c’, and company ‘4’ to ‘d’. Then, after we win the election, in the moment of the contracting with the city halls, they rotate, so that the city hall of ‘1’ contracts with ‘b’, ‘2’ with ‘c’, and so on, so as not to become apparent that there is bid rigging. There is a lot of that and it takes a lot of effort to identify if that is happening or not” (Interview # 16).

have kept performing their jobs with relatively high levels of both inter-institutional coordination and institutional autonomy. As such, while fluctuations did occur over time, the total number of convictions has been also relatively high ever since the issue of crimes of mayors became part of the agendas of legal actors starting in 1992 with the establishment of the 4th Criminal Panel at the TJRS, which became a focal point around which they could mobilize.

So, how was coordinated autonomy able to emerge and sustain itself over time in Rio Grande do Sul? Accordingly, the story I have told in the previous pages can be understood through the lenses of the concepts and the typology advanced in Chapter 2. That is, on the one hand, much has to do with the political environment of the state, which has been consensually described as competitive and polarized, ensuring several periods of divided government and intense alternation in office (e.g., Grohmann 2003, Schneider 2006, Passos 2013). With such a plural political dynamics, no wonder judges, prosecutors and auditors have failed to recall episodes in which elected officials have attempted to curb or reshape their institutions. True, episodes of conflict did occur, as those targeting judge Luiz Melício Uiraçaba Machado and public prosecutor Luiz Carlos Ziolkowski, as I have described in the previous section. Yet, because they aimed at *specific individuals rather than whole institutions*, their effects were short-lived at best. Institutional autonomy, thus, largely prevailed. Nonetheless, the existence of episodes of conflict highlights that, even in a favorable environment like that of Rio Grande do Sul, legal accountability actors are not entirely free from pressure, which arises from the necessarily delicate and controversial nature of these cases. The moderation of the judges of the 4CC, which could have convicted many more mayors than they ultimately did, in turn, helps explaining why not more challenges to the autonomy of the 4CC, the PROCPREF and the TCERS took place during this period.

Along the same lines, this plural environment opened up the space for the initiatives of judges, prosecutors, and auditors to prosper. As a public prosecutor observed, “the *Ministério Público do Rio Grande do Sul* possesses a facility to build up certain structures ... and also some autonomy that is not the same in other states, so they organized the *Procuradoria de Prefeitos*” (Interview # 17). Thus, while pluralism was indeed important to open up spaces and ensure the autonomy of the institutions of the system of justice of the state, an even larger part of the observed results had to do with how the judges, prosecutors and auditors effectively mobilized to transform their institutions in order to streamline their work and increase their coordination. In effect, *nothing* required that a specialized panel was established in the courts, or that the *instrução* of those cases took place in the way it did, or that specialized division on crimes of mayors was established in the public prosecution office, or that the auditors inspected every single year all city halls of the state, or that they notified prosecutors as soon as they came across certain irregularities. None of these actions and many others described in the previous pages were required by any law, formal rule or institutional mandate. Rather, it was the mobilization of judges, prosecutors and auditors who deemed the issue of crimes of mayors important that set those organizational arrangements in motion and led to the observed results of increasing convictions.

Importantly, the inter-institutional coordination that emerged in Rio Grande do Sul involving the courts, prosecutors and auditors was largely facilitated because it started from the mobilization of the actors responsible for the final stage of the legal accountability process, adjudication. That is, judges were able to set the process of cooperation in motion largely because they signaled and demonstrated via their actions to others that they were willing to try the delicate cases of mayors diligently. In so doing, they provided incentives for prosecutors and auditors to make those cases arrive to court. Mobilization starting by the judges, thus, made easier to activate and mobilize

other institutions, in a way that would not have occurred if, say, only prosecutors or auditors had done so. In effect, as one of my interviewees observes, “who ultimately decides those things in Rio Grande do Sul? It is the 4th Criminal Panel. So if the panel proposes to the executive, to the legislature, to the court of accounts, and to the police actions [pertaining anti-corruption measures in the local sphere], it is surely an encouragement to them” (Interview # 4).

As a result, to return to the newspaper articles written by Andrew Downie in 2000, his evaluation was largely correct when he observed that “Rio Grande do Sul is not the most corrupt state in the country. It is simply that Rio Grande do Sul’s progressive judiciary and independent institutions ... have made pursuing villains easier” (2000, 1). While making these legal accountability efforts more efficient, they have certainly not eliminated mayoral corruption altogether from the state. In actuality, the incidence of certain types of corrupt practices has indeed decreased, particularly in reference to irregular hiring procedures and public procurement. Yet, new problems invariably emerge. As an auditor summarizes: “The external control of the [public] administration is a game of cat and mouse. The control is always running behind. It is a bottomless pit. When you believe that a one type of scam is over, another one comes, and another, and another” (Interview # 10).

CHAPTER 5. PERSISTENT FRAGMENTED AUTONOMY IN MINAS GERAIS

5.1. Introduction: 853 municipalities

The state of Minas Gerais has a total of eight hundred fifty-three municipalities, just shy of the states of Rio Grande do Sul and Bahia combined.²²¹ In effect, nearly everyone I interviewed in Belo Horizonte, the capital and most populous city of the state, made sure to remind me of this fact to stress that overseeing so many city halls is far from easy (e.g., Interviews # 25, 31, 33, 36, 39, 40, and 41). That is, Minas Gerais has way too many municipalities spread out through a vast territory marked by drastic regional differences, making the task of fighting mayoral corruption nothing short of humongous. In other words, the city halls are simply too many, too different and too distant from each other to make any form of legal accountability easily achievable.

To a large extent, these comments are truthful. Minas Gerais has indeed the highest number of municipalities in Brazil, almost two hundred more than the most populous state of the country – São Paulo, which has two times the population of Minas Gerais. Many of these municipalities, in turn, are indeed quite small and located in isolated areas. Similarly, the state has been famously portrayed in the local political chronicle as a microcosm of Brazil itself, reproducing within its limits the regional differences that would characterize the country as a whole.²²² Finally, Minas Gerais is indeed a large state. It ranks fourth in Brazil in area with 586,000 squared kilometers, comparable to the size of Ukraine or somewhere between California and Texas.

²²¹ See Table 3.1., above. These have been the numbers since 1996, when the emancipation of new municipalities in Brazil stopped after new laws that limited it were approved. As of today, Rio Grande do Sul and Bahia have total of 914 cities, a bit over the 853 of Minas Gerais. In 1988, however, the latter had 722 municipalities, or more than a hundred cities over the 611 municipalities combined of Rio Grande do Sul (244) and Bahia (367) then.

²²² That is, Minas Gerais has a rich, industrialized core (as Southeastern Brazil), an autonomy-seeking cattle-raising border region (as Southern Brazil), and a vast arid and poor region (as Northeastern Brazil).

All such factors do contribute to make the legal accountability of mayors a difficult task in Minas Gerais. These same characteristics, though, also help to bring the heads of city halls to justice. Accordingly, this diversity of the state's municipalities has been translating itself into a plural political spectrum, with parties of the right and the left competing fiercely for the positions of the state and local governments since the return to democracy in the late 1980s. Apart from the relatively recent period of hegemony of the *Partido da Social Democracia Brasileira* (PSDB, or Party of the Brazilian Social Democracy) in the state government starting in 2003, the political system of Minas Gerais has actually been characterized as plural as that of Rio Grande do Sul,²²³ with several of its largest cities being ruled in the past decades by mayors of parties that oppose the current state government. As Borges, Sanches Filho and Rocha summarize, “since the mid-1980s, the *mineiro* politics has been marked by the protagonism of three parties: the PMDB, the PSDB, and the PT” (2011, 347).²²⁴

Finally, Minas Gerais is indeed a large and populous state with many city halls, but resources to oversee them do exist. As Table 3.2. shows, the slice of the state budget allocated to the courts, to the prosecution office and, to a lesser extent, to the auditing agency of Minas Gerais are also

²²³ This follows from the classification of the period from 1982 to 2002 by Borges (2007, 2008, and 2011), which covers most of the time frame of my research, when governors of three different political parties (i.e., PMDB, PSDB and PTB) have alternated in office. True, Minas Gerais does not exhibit a political spectrum that is as polarized as that of Rio Grande do Sul (see Castro, Anastasia and Nunes 2009). At the same time, volatility in elections for the state government, the legislative assembly, the Brazilian house of representatives, and the senate were much higher in Minas Gerais than in Rio Grande do Sul from 1989 to 2006 (Bohn and Paiva 2009). Yet, these differences cannot be attributed to lack of political institutionalization. The legislative assembly of Minas Gerais, for instance, is paired with that of Rio Grande do Sul as the most professionalized in the country (Anastasia 2004, Nunes 2013). Similarly, the persistence of “traditional politics,” or clientele-based networks, even after the transition to democracy exists in both states, rather than being a characteristic of just one of them (e.g., Hagopian 1996, Grill 2003).

²²⁴ This has been the case at least of the three largest municipalities of the state. Belo Horizonte, that capital and most populous city of Minas Gerais with 2.5 million people, was governed by the leftist PT between 1993 and 2010, and is currently ruled by the *Partido Socialista Brasileiro* (PSB, or Brazilian Socialist Party). With 650,000 people and located in the western region of Minas Gerais, Uberlândia was a stronghold of the right-wing PPB from 1989 to 2000, when the city hall started to alternate between the PMDB and the successor of PPB, the *Partido Progressista* (PP, or Progressive Party). Currently, the city is ruled by PT. Finally, with 640,000 people and located in the metropolitan area of Belo Horizonte, Contagem is currently governed by the *Partido Comunista do Brasil* (PC do B, or Communist Party of Brazil) and from 2005 to 2012 was ruled by the PT.

similar to those of Rio Grande do Sul, the same being true in regards to the personnel available to perform those tasks. For example, there is relatively *less* work in the judiciary of Minas Gerais than in Rio Grande do Sul. On average, the courts of the former have received one thousand less new cases per district judge and one thousand less new appeals per appellate judge than the latter over the last years.²²⁵

As a result, the same characteristics that would make the legal accountability of mayors difficult in Minas Gerais actually make the potential for convictions to be one of the highest among the states of Brazil. *Ceteris paribus*, with 853 city halls, the “population pool” from which to draw corrupt city administrators is the largest in the country, thereby increasing and not decreasing the likelihood of mayoral convictions. A real life teaches, though, *ceteris* are hardly *paribus*. Hence, while the potential for high levels of judicial responses to city hall corruption does exist in Minas Gerais, it has probably not been realized to its fullest extent. Especially, the case of Minas Gerais contrasts sharply with that of Rio Grande do Sul, in spite of a variety of similar traits, including the plural political environment of both states and the autonomy enjoyed by the institutions of their system of justice. Still, Minas Gerais has 350 city halls *more* than Rio Grande do Sul but has convicted less than a half of the mayors of the former. Why such a difference? Why has the judicial system of Minas Gerais performed so timidly in comparison to its Southern counterpart? Providing answers to these questions is the goal of this chapter, which is organized as follows.

In the next section, I will tell the story of how the state appellate courts of Minas Gerais initially reacted to the newly arriving criminal cases of mayors in the late 1980s and early 1990s and how its judges have chosen a model of fragmenting such cases in the various isolated criminal panels

²²⁵ In fact, the judiciary of Minas Gerais is currently among those with the highest ratio of judicial expenses per court productivity in Brazil (see CNJ 2012, 90).

that proved extremely resilient over time. As such, this story includes why the *desembargadores* of the state have refused more than once to specialize the trial of the heads of city halls, despite the encouragement of elected officials and the increased mobilization of prosecutors on the topic. In the following section, I highlight the impacts of this choice over the perceptions of prosecutors and how they came to organize their work given the lack of judicial mobilization. Along similar lines, I describe how the auditing agency of the state has been performing its activities in relative isolation from both the courts and prosecutors, which follows largely from its poor and erratic performance in inspecting city halls. All such elements, in turn, allow me to categorize the legal accountability of mayors in the state of Minas Gerais as an example of what I have previously termed *fragmented autonomy*, in which the lack of mobilization of most legal actors – in this case, particularly the judiciary and the *Tribunal de Contas* – fails to bring about increased inter-institutional coordination in spite of the autonomy of their institutions vis-à-vis the elected branches of government. In the final section, I conclude by showing how this scenario seems to be slowly moving towards *coordinated autonomy*, particularly due to the increased activism of the *Ministério Público de Contas* (i.e., the prosecution office at the auditing agency) of the state, which has slowly started to narrow the gap between the prosecutors and the auditors of Minas Gerais. Yet, because this transformation is rather recent, there is no way to tell how effective this initiative is going to be, despite its initial promising results.

5.2. Despite the Odds: Refusing Court Specialization

The history of the criminal cases of mayors at the state court of appeals of Minas Gerais – the *Tribunal de Justiça do Estado de Minas Gerais*, or TJMG – started in a way that resembled a lot

that of Rio Grande do Sul. In fact, not only the decisions initially made by the *mineiro* judges resembled those of their *gaúcho* colleagues, but also the conditions under which they were made resembled each other as well. For one, the political environment of Minas Gerais soon assumed plural contours after Brazil's transition to democracy, so that "no political group or leader was able to stay in power for long" (Borges 2008, 246). For another, when the Brazilian constitution was enacted and introduced the rule of "mayor's trial before the *Tribunal de Justiça*" in 1988, the sizes of the TJMG and the TJRS were practically identical. Accordingly, the court of appeals of Minas Gerais amounted to thirty-nine *desembargadores* divided in two criminal and five civil panels with five members each,²²⁶ rather than four of the Southern court, which totaled forty appellate judges divided in three criminal and six civil panels.²²⁷

The starting conditions could not be more similar. In effect, when the criminal cases of mayors started to arrive at the TJMG, they too were placed under the jurisdiction of its highest body, the Full Court or *Tribunal Pleno*. Just like the TJRS, though, this decision was short-lived. In June 29, 1991, the appellate court of Minas Gerais also decided to transfer the responsibility over such cases from the Full Court to its "isolated" or "separated" criminal panels, which were only two by then, the 1^a and 2^a *Câmaras Criminais*.²²⁸ Just like their counterparts in Rio Grande do Sul, the *desembargadores* of the TJMG soon realized that trying such cases at the Full Court would

²²⁶ See state law n. 9.548, of January 4, 1988.

²²⁷ Cf. section 4.2., above. Similarly, there was also an entire arm of the state courts of Minas Gerais dedicated to appeals of cases of minor relevance, the *Tribunal de Alçada*, which had other thirty-two *juízes de alçada* divided in four civil panels and two criminal ones, a number that was soon raised to forty-two *juízes de alçada* in 1989 (cf. state law n. 9.925, of July 20). As in Rio Grande do Sul, the TJMG and the *Tribunal de Alçada* would later merge into a single court, preserving the name of the former and incorporating the then one hundred seventeen *juízes de alçada* to its ranks as *desembargadores* (cf. amendment n. 63 to the state constitution, of July 19, 2004). Today, the TJMG has seven criminal and eighteen civil panels, totaling one hundred and forty appellate judges (cf. state supplementary law n. 59, of January 18, 2001, which was updated by the state supplementary law n. 105, of August 14, 2008; cf. resolution n. 3 of July 26, 2012 of the TJMG).

²²⁸ This decision was made in the resolution n. 213, which amended the bylaw of the TJMG (i.e., resolution n. 63, of June 12, 1984). The only exception of this resolution concerns the cases of homicide when mayors are accused. In those instances, the trial is not performed by the "isolated" criminal panels, but by all of them together merged into a single group of panels.

not work, especially because the vast majority of its members – i.e., the appellate judges of the civil panels – lacked familiarity with the topics and the procedures required by the criminal cases that involved the heads of city halls (e.g., Interviews # 23, 24 and 36). As a result, like the TJRS, this decision to change the internal procedures to try those cases was also challenged in the Brazilian high courts, where it was upheld due to the long-standing norm that the courts of the country have autonomy to make such decisions in their respective bylaws.²²⁹

True, the resulting arrangement was not perfectly identical to the one adopted by the TJRS from 1989 to 1992. Especially, the trial of criminal cases of mayors at the TJMG requires that the “full panel” meets – i.e., all five members of each panel have to be available for a court session, rather than just the three members that regularly meet to adjudicate the appeals arriving at the panels. Similarly, no provision at the TJMG opens up the possibility of the *instrução* of these cases to be performed through an appointed *juiz de instrução*, as it has been the case at the TJRS since 1989. This means that the entire examining stage of criminal cases brought against mayors in Minas Gerais has to be made via *cartas de ordem*, with all this implies for both the speed and quality of the evidence produced in court.²³⁰ Finally, no *cartório* or similar arrangement was ever created to facilitate the *instrução* of those cases, mostly because the latter is nearly entirely performed by the trial judges of the districts where the mayors and the case witnesses reside, rather than by the appellate judges of the TJMG themselves.²³¹

²²⁹ See, particularly, the habeas corpus n. 2316, decided by the *Superior Tribunal de Justiça* in 1993.

²³⁰ Some of the appellate judges I have interviewed admit that the evidence produced in court via *cartas de ordem* is not as accurate or helpful to elucidate the facts of the case as it could be. At the same time, they have sped up the *instrução* of these cases by setting time limits (e.g., sixty or ninety days, depending on the complexity of the case) for the district judges to complete the production of evidence in court and send it back to the TJMG (see Interviews # 23 and 36).

²³¹ Accordingly, the clerk’s offices of the panels at the TJMG are all called “*cartórios*,” but they do not work as such, being in reality “*secretarias*” like those of the other appellate courts of Brazil.

At the same time, this arrangement – which combines the distribution of the cases to all criminal panels of the court, trial only when the “full panel” is available for session, *instrução* via *cartas de ordem* and the virtual lack of appropriate structure in the appellate court to process such cases – has proved extremely resilient over time at the court of appeals of Minas Gerais. Accordingly, it would be convenient to explain such institutional stability in reference to the now common theoretical constructs of the three main versions of the institutionalist approach to politics that address lack of change – that is, the concepts of equilibrium, path-dependence, and logic of appropriateness (see Hall and Taylor 1996, Schmidt 2008). All these notions, nonetheless, ignore the fundamental fact that “there is nothing automatic, self-perpetuating, or self-reinforcing about institutional arrangements” (Mahoney and Thelen 2010, 8). Because institutions have multiple effects and are often the result of ambiguous compromises of various actors pursuing different and at times competing goals, “continuity requires the ongoing mobilization of political support” (ibid, 9).²³² Lack of institutional change, by these terms, has to be explained in reference to how this support is mobilized to make things remain as they have been after established.

The organizational arrangement adopted by the TJMG in 1991, in effect, has been reaffirmed by every new bylaw of the court adopted since then. The appellate judges of the TJMG, though, had at least five opportunities to alter it, and perhaps move towards a specialized formula like that of Rio Grande do Sul, but have consistently refused to do so. In effect, three entirely new bylaws have been adopted by the TJMG since 1991 and even two attempts by representatives of the legislative assembly of Minas Gerais to alter this arrangement took place, but none of them was successful. Surprisingly, the main source of resistance has not been external to the judiciary, but

²³² This implies that institutions do not exist in a limbo-like situation, framing the actions of actors but remaining immune from them, as some of the institutionalist literature tends to assume. As Mahoney and Thelen observe, “a dynamic component is built in; where institutions represent compromises or relatively durable though still contested settlements based on specific coalitional dynamics, they are always vulnerable to shifts” (2010, 9).

internal, deriving mostly from the appellate judges' lack of mobilization on the issue of crimes of mayors, thus begging the question: why have the *desembargadores* of Minas Gerais refused to specialize and improve the performance of their court in this domain? In order to provide an adequate understanding to address this question, I will reconstruct the five opportunities in which the TJMG could have altered this arrangement set in 1991, but have always refused to do so.

The first event took place in the mid-1990s, when the court of appeals of Minas Gerais had to revise its bylaw due to the approval of the new basic law on “judicial division and organization” of the state by the legislative assembly – the *Assembleia Legislativa do Estado de Minas Gerais*, or ALMG – in February 13, 1995.²³³ Under debate since November 1992, when it was introduced by the TJMG, this bill comprises the overall structure of the state courts, from the total number of judicial and administrative positions to the requisites for the creation of new judicial districts in the state, and was the first of its kind since redemocratization in Minas Gerais. Still, while it took more than two years of legislative debate to turn this bill into law, it only scarcely touched the issue of criminal cases of mayors.

When the bill was discussed in the Committee on Constitution and Justice at the ALMG, though, there was an attempt by representative Geraldo Rezende, of the governing PMDB, to explicitly include in the new law a provision determining that cases of mayors should be tried by the Full Court of the TJMG. The proposed amendment n. 8, though, was short-lived. A few months after it was proposed, as the bill was discussed by another committee, the amendment was rejected following the initiative of state representative José Renato, also of the PMDB, who deemed this topic to be an internal matter of the TJMG, delegating to the bylaw of the court such decision.²³⁴

²³³ This is the state supplementary law n. 38, of February 13, 1995.

²³⁴ See *Projeto de Lei Complementar* n. 22, of 1992, of the ALMG. Accordingly, amendment n. 8 was proposed in May 26, 1993 and rejected in September 15, 1993.

As a result, the issue of criminal cases of mayors was not raised again in the legislative debates and remained altogether ignored throughout the following months of discussion of the bill at the state assembly, being later signed by the governor into law without any specific reference as to how those cases should be tried at the TJMG, delegating such definition to the court itself.

Among other things, though, the resulting law increased the number of *desembargadores* of the TJMG from thirty-nine to forty-four, creating the five positions of appellate judges required to establish a new panel in the court.²³⁵ Although the new panel ended up being a criminal and not a civil one, it was identical to the other two that already existed in the court. The newly established 3^a *Câmara Criminal*, thus, had no specialized status and shared with the other two the general workload of the criminal area of the TJMG, including all criminal appeals arriving at the court as well as a few cases of original jurisdiction, such as those of mayors. As such, resolution n. 314 of July 12, 1996, which established the new bylaw of the state appellate court of Minas Gerais, kept unaltered the provision concerning the trial of cases of mayors, making all three criminal panels of the TJMG responsible for them. That was so much so that the language of the new bylaw was identical to the provision of 1991 that first regulated the issue.²³⁶

All this suggests that the criminal cases of mayors did not receive much attention on the part of both the appellate judges and the legislators back then. On the one hand, the debate at the ALMG highlights how easily dismissed was the topic. Even the arguments raised by state representative Geraldo Rezende to suggest placing the cases of mayors under the jurisdiction of the Full Court of the TJMG seem more technical than pragmatic. His proposed amendment n. 8, for instance, included not only criminal cases against mayors but also against public prosecutors among those

²³⁵ See article 10 of the state supplementary law n. 38, of February 13, 1995.

²³⁶ See article 13 of the resolution n. 314, of July 12, 1996, of the TJMG.

that should be tried by the Full Court. More than shielding mayors, the amendment seemed more concerned in being consistent with the state and federal constitutions by listing all authorities entitled to *foro privilegiado* in the new law.²³⁷ Not surprisingly, as soon as the amendment was rejected, the topic was entirely ignored until the bill was finally signed into law. On the other hand, more concerned with the equal division of workload than with prioritizing certain sorts of cases, such as those of mayors, the *desembargadores* of Minas Gerais soon decided that the new panel would be identical to the already existing ones. That is, as I have repeatedly listened from many appellate judges I interviewed in Minas Gerais, there were not as many cases of mayors to justify the existence of a specialized panel at the TJMG (e.g., Interviews # 23 and 36).

While this first event was largely uncontroversial, the next one was a watershed on the issue of criminal cases of mayors in Minas Gerais, bringing the TJMG to the forefront of the debate on mayoral corruption in the state. It took place once again during the discussion about the new law of judicial organization of Minas Gerais, which started to take place by the end of 1999. As in the previous case, the TJMG was the sponsor of the bill and introduced it to the state legislative assembly. Also as before, the bill made no mention to criminal cases of mayors.²³⁸ Instead, the main topic of attention of the first draft of the bill was with overall the increase in court work, to which the *mineiro* appellate judges were trying to solve by asking the legislators to increase the number of *desembargadores* from forty-four to sixty, a thirty-six percent increase that would allow the TJMG to put in place three entire new panels at the court.

As the bill was reviewed by the Committee on Public Administration of the ALMG, though, the issue of criminal cases of mayors emerged, being raised by state representative Chico Rafael, of

²³⁷ See amendment n. 8 to the *Projeto de Lei Complementar* n. 22, of the ALMG, proposed in May 26, 1993.

²³⁸ See *Projeto de Lei Complementar* n. 17, of October 16, 1999, of the ALMG.

the PSB, a political party then belonging to the coalition of governor Itamar Franco, of PMDB, elected in 1998. From Pouso Alegre, a municipality with approximately 140,000 people in south Minas Gerais, state representative Chico Rafael was allegedly concerned with a former mayor of his hometown, who would have been a notoriously corrupt official that nonetheless had never been convicted for his wrongdoings while in office.²³⁹ As the bill started to be debated in the committee, Chico Rafael and the president of the state legislative assembly, representative Anderson Aduato, of PMDB, traveled to Rio Grande do Sul to visit the 4CC, which had already made news outside Rio Grande do Sul (e.g., Souza 1996, Albuquerque 1999). As a news report of the ALMG entitled “Mayors can be tried by Special Panel of the TJMG” explains,

“The president of the legislative assembly, representative Anderson Aduato (PMDB), and representative Chico Rafael (PSB), reviewer of the bill ... on the reform of the judiciary, visited this Friday (July 2, 2000) the state court of appeals of Rio Grande do Sul. They went there to know the operation of the special panel of the TJRS, which tries political agents (mayors). The result of the visit will be the introduction of an amendment to the bill creating a specialized panel in the state court of appeals of Minas Gerais. ‘The goal is to provide instruments to the court of appeals to speed up the trial of political agents,’ stated Anderson Aduato” (ALMG 2000; see also Barrionuevo 2000).

Less than two weeks after the visit, the presiding *desembargador* of the 4CC (Aristides Pedrosa de Albuquerque Neto) and the prosecutor officiating before it (Luiz Carlos Ziomkowski) were invited to Belo Horizonte by the legislative assembly of Minas Gerais to present the experience of the specialized panel of the TJRS to the *Colégio de Líderes* (the collegiate of party leaders) of the ALMG. Right after, amendment n. 23 was approved in June 14, 2000, by the party leaders of the legislative assembly, determining: “it is hereby established, in the structure of the *Tribunal de Justiça*, a Special Criminal Panel with preferential jurisdiction to try criminal cases of political

²³⁹ The mayor was João Batista Rosa, who governed Pouso Alegre in two different occasions. The first took place when he was a member of the party supporting the military regime in Brazil, the ARENA (the *Aliança Renovadora Nacional*, or National Renewal Alliance), from 1977 and 1982. In the second occasion, he was elected as a member of the political party that succeeded ARENA, the PPB, remaining in office from 1993 to 1997.

agents” (ALMG 1999, 240). Only two days later, however, the draft of the bill also included a provision that conflicted with this one, stating that the jurisdiction of the panels of the court should be decided in the bylaw of the TJMG.²⁴⁰ The opposition to the amendment approved by the party leaders, thus, resulted largely from the members of the court, who voiced their contrary position to that proposition, arguing that was a interfering with the autonomy of the court (see Interviews # 23 and 36).²⁴¹ Less than a week later, thus, representative Chico Rafael introduced a new amendment to the bill, rejecting entirely the earlier one and now only *suggesting* to the court the establishment of a specialized panel. The significantly more “respectful” tone of his report – particularly when compared to the much more direct language of the first amendment approved a few days earlier by the party leaders – is worth highlighting, as follows

“Currently, the criminal cases against certain political agents in Minas Gerais are tried by three criminal panels of the *Tribunal de Justiça*. Only as an example and illustration, the state court of appeals of Rio Grande do Sul established, by an internal resolution [‘*ato administrativo normativo (assento regimental)*’], a specialized criminal panel with a preferential jurisdiction to try criminal cases against political agents, resulting in greater agility and efficiency in the trial of these authorities, according to the testimony given by a member of the court of Rio Grande do Sul to the collegiate of leaders of this legislative assembly. Because this is a highly positive experience, we deem it wise to abide by the proposal introduced by representatives Anderson Adatao and Sargento Rodrigues [of *Partido Liberal*, PL, or Liberal Party], with the support of various party leaders, to insert in the text of the bill a proposition that allows the *Tribunal de Justiça* to establish the specialized panel” (ALMG 1999, 293-294).

²⁴⁰ Article 33 of the bill stated that “the composition and jurisdiction of the groups of panels and isolated panels will be established in the bylaw of the court,” a proposition that was approved with exact same text and in the exact same article in the final statute.

²⁴¹ In fact, Luiz Carlos Ziomkowski remembered this story and described me as follows: “I went to Belo Horizonte invited by the legislature because they wanted to create something similar to the 4th Criminal Panel there... we went to the state assembly invited, explained how it worked... I am not sure if it was correct the legislature to establish the panel because this initiative should come from the judiciary, but they were indeed making an effort to create a specialized panel there ... but it seemed like the court lacked will to do it” (Interview # 22). Another prosecutor, Gilvan Alves Franco, one of the first members of the specialized division of the MPMG on crimes of mayors also recalls this episode: “In that opportunity ... we even went to talk to the president of the court, but we noticed that there was no interest on the part of the *desembargadores* in doing so [i.e., establishing a specialized panel] ... rather, there was a strong resistance among them ... there a tremendous conservatism here in the sense that every attempt to try to innovate here in Minas Gerais finds a strong resistance in the judiciary. ‘Why change?,’ the *desembargadores* ask” (Interview # 40).

In June 20, thus, amendment n. 94 was proposed stating: “it is hereby allowed to the *Tribunal de Justiça* to establish a specialized panel with preferential jurisdiction to try criminal cases against political agents” (ibid). This proposition was transformed, nearly unaltered, in article 340 of the resulting state supplementary law n. 59, of January 18, 2001.²⁴² Accordingly, the change in the position of the representatives resulted from a recognition that the final decision whether or not to specialize should rest with the appellate judges, who would have to define in a new bylaw of the TJMG to adopt the suggestion of the legislative assembly or not. Albeit unsuccessful as legislation, this episode was surely an encouragement for the appellate judges of Minas Gerais to improve the organizational capacities of their court to try those cases – and, for that matter, one that their counterpart in Rio Grande do Sul never enjoyed to establish the 4CC in the first place.

The third opportunity the *desembargadores* of the TJMG had to change the how criminal cases of mayors were tried in their court took place right after the new law on the judicial organization of Minas Gerais was enacted, in January 2001. Yet, as soon as the state governor signed the bill into law, the impulse towards court specialization ended. One of the first decisions of the TJMG, in fact, was to use all new sixteen positions of *desembargadores* that had been created by the law to establish three new civil panels at the TJMG and, hence, no new criminal panel.²⁴³ Similarly, as the new bylaw was finally adopted in August 2003, it ignored the suggestion of the ALMG and kept the trial of criminal cases of mayors as before, with article 23 of the bylaw defining that such cases should be tried by the isolated criminal panels of the court with all their five members. Two years later, when the number of appellate judges doubled to a total of one hundred twenty

²⁴² Article 340 of the final law, though, differs slightly from the amendment n. 94 by representative Chico Rafael. It states: “it is allowed to the *Tribunal de Justiça* to establish, *via specific law*, a specialized panel with preferential jurisdiction to try criminal cases brought against political agents” (emphasis added to highlight the difference). As one retired appellate judge explained, though, the difference is minimal. It served only to stress that the courts cannot create new judicial positions alone, requiring legislative appropriations to do so (Interview # 23).

²⁴³ See resolution n. 376, of August 22, 2001.

desembargadores at the TJMG, the court once again ignored the recommendation of the state representatives.²⁴⁴ Accordingly, two new criminal panels – the 4^a and 5^a *Câmaras Criminais* – were indeed established as a consequence of this radical increase in the total number of judicial positions at the TJMG, but the new panels were not specialized in any way and performed the generalist workload of the previous three criminal panels of the court.²⁴⁵

The fourth episode took place once again at the state legislative assembly. In July 2007, the court of appeals of Minas Gerais introduced a new bill at the ALMG in order to update the law of 2001 that included the suggestion to create a specialized panel at the TJMG.²⁴⁶ As before, however, the bill did not mention anything in regards to mayors or the proposed new panel, which had not been established until then. Instead, the crucial objective of the new bill was reorganizing the judicial districts of Minas Gerais to cope with the ever-increasing caseload. As soon as the bill started to be discussed by the legislature, though, the trial of criminal cases of mayors soon became an issue again. When the bill was reviewed by the Committee on Municipal Affairs and Regionalization, representative Weliton Prado – of the leftist PT, which opposed the governor of the state, of the centrist PSDB – noticed the content of article 340 of the previous law and similarly realized that its had never materialized. As his report reads,

“Article 340 of the Supplementary Law n. 59, 2001, allows the *Tribunal de Justiça* to create a Special Panel, via specific law, with jurisdiction to try criminal cases against political agents. However, we understand that the establishment of this panel shall not be made by law, but by administrative decision of court [*ato específico da própria Corte de*

²⁴⁴ The increase of sixty judicial positions at the TJMG was a result of the incorporation of the *Tribunal de Alçada* of Minas Gerais to the former. As I have explained in a previous footnote, there was an entire arm of the state courts of Minas Gerais dedicated to appeals of cases of minor relevance, the *Tribunal de Alçada*. In 2004, the TJMG and the *Tribunal de Alçada* merged into a single court that preserved the name of the former and incorporated the members of the latter as *desembargadores*, following the approval of the amendment n. 63 to the state constitution, of July 19, 2004 which. The same provision, in turn, was also defined in the amendment n. 45 to the national constitution of December 2004 – the so-called “reform of the judiciary” – which abolished the *Tribunais de Alçada* in the states where they still existed in Brazil.

²⁴⁵ See resolution n. 463, of March 1, 2005, particularly article 2.

²⁴⁶ See *Projeto de Lei Complementar* n. 26, of July 10, 2007, of the ALMG.

Justiça’]. Still, it is wise to set a deadline for the court to create this panel responsible for trying political authorities” (ALMG 2007).

In fact, seven years had passed, dozens of new positions of *desembargadores* had been created in the court and no action had been taken by the TJMG to establish the suggested panel. Approved by the aforementioned committee on April 8, 2008, the proposed amendment n. 16 defined that article 340 of the law should now be read as follows: “The *Tribunal de Justiça* shall establish, within one hundred eighty days, Special Panel with preferential jurisdiction to try criminal and administrative improbity cases against political agents” (ibid). A few months later, as the bill was reviewed by state representative Elmiro Nascimento – of the governing, right-wing *Democratas* (DEM, or Democrats) – at the Committee on Public Administration, he too favored the proposed amendment. As a result, when the final version of the bill was prepared for vote, a new version of article 340 was introduced, explicitly stating that “the *Tribunal de Justiça* will create Special Panel to try criminal and administrative improbity cases against political agents” (ibid). Drafted under the supervision of the president of the ALMG,²⁴⁷ representative Lafayette de Andrada, of the governing PSDB, this new version of the law was finally approved by the legislature in a vote of July 17, 2008. The provision defining the establishment of the new panel, however, did not survive the veto of the state governor, who justified his contrary position under the argument that it “imposed upon the Judicial Branch the creation of a judicial body [*órgão jurisdicional*’], therefore harming the principle of the separation of powers and the exclusive jurisdiction of the courts [*competência privativa dos tribunais*’]” to regulate those matters (GOVMG 2008a).

Many other provisions of the law, however, were not vetoed. The resulting state supplementary law n. 105, enacted in August 14, 2008, thus, created twenty new positions of *desembargadores*,

²⁴⁷ This final version of the bill at the ALMG is the *Substitutivo* n. 2, of July 16, 2008.

enough to establish four new panels at the TJMG and bring the total to the current one hundred forty members of the court. This time, the appellate court did use some of those positions to set up two new criminal panels – the 6^a and 7^a *Câmaras Criminais* – but, once again, made them identical to the already existing ones, refusing specialization.²⁴⁸ Sponsored by legislators from three different parties, from the right, the left and the center, from the government and the opposition, the legislative proposition ultimately did not survive only because the state governor respected the institutional autonomy of the judiciary, believing it was the one that should make this decision. Still, once again, it was not for lack of encouragement on the part of the political elites that the TJMG failed to establish a specialized panel to try criminal cases of mayors.

The final episode I was able to trace in which the *desembargadores* of the TJMG had a chance to improve the organizational capacities of their court to try crimes of mayors took place in 2011, when the appellate judges started revising the bylaw of the court. Their overall objective was to update the internal rules of the TJMG in order to bring them to terms with the new size of the court, which had grown markedly since the last bylaw was approved, in 2003. Accordingly, the bylaw of 2003 was designed for a period when the TJMG had only sixty appellate judges, but since 2008 it had one hundred forty positions of appellate judges available, a one hundred thirty-three percent increase which allowed the court to make its appellate caseload per *desembargador* to experience the lowest growth among the three cases examined here.²⁴⁹

In order to elaborate a new bylaw for the TJMG, a committee with fifteen members of the court was formed, including *desembargador* Geraldo José Duarte de Paula, a career judge since 1980

²⁴⁸ See resolution n. 628, of April 8, 2010.

²⁴⁹ From 2003 to 2010, the number of new cases per appellate judge in Minas Gerais grew from 1,113 to 1,567, a forty-one percent increase. While this is indeed a significant growth, it pales in comparison to the increases observed both in Rio Grande do Sul and Bahia. From 2003 to 2010, the appellate caseload per capita of the former grew from 1,424 new cases per appellate judge to 2,856 (a one hundred percent increase), and the latter grew from 454 new cases per appellate judge to 1,356 (almost a two hundred percent increase). See CNJ (2003, 39 and 2010, 126).

who ascended to the TJMG in 2004 and was then a member of its 7th Criminal Panel.²⁵⁰ During deliberation, he proposed an amendment (n. 32) to the bylaw aiming at introducing specialization in the criminal panels of court on cases of mayors. Clearly, his proposal was not as radical as the ones successively ignored by the TJMG over the years. In fact, his idea was to specialize two criminal panels of the court, the 1^a and 2^a *Câmaras Criminais*, on those cases rather than just one.²⁵¹ His proposal, hence, attempted to balance flexibility – allowing divergent interpretations inside the court because more than one panel would decide the same sort of cases – with the increased agility and efficiency brought about by specialization. His claim, in effect, was that the court needed to provide a better structure to those cases because there were many of them and they demand a type of work that is not regularly performed by a court of appeals like the TJMG. Specialization, in other words, would improve the capacity of the court to try quicker and produce evidence of better quality on those cases (Interview # 42). Similarly, the existence of two panels would avoid the “plastering” of judicial opinions brought about by specialization into a single panel. That is, it would be fairer for the court to increase the randomness of its decisions with more than one panel deciding on the same topic.²⁵²

²⁵⁰ Portaria n. 2.601, of July 20, 2011.

²⁵¹ It should be highlighted that this was probably not a self-interested action. I say so because *desembargador* Duarte de Paula belonged to the 7th Criminal Panel, but his proposal aimed at concentrating those cases in two other panels (the 1st and 2nd Criminal Panels), none of which he worked in.

²⁵² In fact, *desembargador* Duarte de Paula opposes specialization into a single panel because it would make court decisions overly inflexible (Interview # 42). As strange as it may sound for a common law country like the U.S., this is a conviction among many lawyers in Brazil, and an argument against specialization that I heard from lawyers in all three states, even in Rio Grande do Sul and Bahia with their experience of specialized panels (e.g., Interviews # 2, 3, 15, 23, 36, 37 and 63). That is, randomness in the assignment of the rapporteur judge would not be enough to ensure fairness. Accordingly to this understanding, at least two panels should exist to give a chance to the accused to face potentially divergent interpretations of the same provisions of law inside the same court. This is, in other words, an expression of the high degree of independence individual judges have from each other in Brazil, here elevated to the status of high principle of justice. One of the members of the TJMG even observed that: “This [specialization] would lead to a plastering of the decisions ... always, always this discussion over a specialized panel comes up ... and I have come to believe that this would be in the interest of the authorities ... they would have a better idea as to how those trials would result, because after one, two, three months you start to identify the line of reasoning of the *desembargadores*, rendering their decisions more predictable” (Interview # 37).

Desembargador Duarte de Paula's relatively modest proposal, though, faced vigorous opposition from his colleagues. The contrary position of his peers was nonetheless revealing, providing us a glimpse as to why the appellate judges of Minas Gerais have so firmly resisted specialization on criminal cases of mayors in their court in spite of the many opportunities they had to do so over the years. In a petition dated December 1, 2011, signed by nineteen of the thirty-five members of the criminal panels of the TJMG, it reads:

"In spite of the respect we have for *desembargador* Duarte de Paula, ... We come before this committee to express our disagreement with his proposal ... given the necessity to dilute eventual pressures generated in certain cases among all members of the criminal panels ... To explain well the last argument, we do not consider reasonable that only two panels have jurisdiction over the trial of criminal cases of mayors and former mayors, given that such measure would imply submitting the ten *desembargadores* members of those panels to a great external pressure that may be prejudicial to the good work of the court. It is obvious and evident, without unnecessary hypocrisy in this reasoning, that diluting this jurisdiction among the seven criminal panels, that is, among thirty-five *desembargadores*, decreases the probability of those political pressures from taking place, and reduces the chances of a few *desembargadores* being stigmatized for expressing this or that legal position, against whoever it may be" (TJMG 2011, 397-398).

The signatories of the document included *desembargadores* who had ascended to the TJMG as early as 1998 and as late as 2010, as well as members from nearly all criminal panels of the court with all sorts of backgrounds.²⁵³ Perhaps more importantly, being nineteen out of thirty-five, they represented the majority of the members of such panels at the TJMG. Thus, even if all remaining ones did favor the proposal – which is unlikely, given that some may have been indifferent and others may have even opposed the proposal but did not sign the petition out of respect for the proponent of the amendment – no support existed inside the court to make it prosper. Duarte de

²⁵³ There are nineteen legible names of *desembargadores* of the TJMG signing the petition, which I have suppressed here to avoid personalizing the discussion. In any case, the petition is included in pages 397-400 of the records of the *Projeto de Novo Regimento Interno do Tribunal de Justiça* (cf. article 10 of the *Deliberação Normativa* n. 1, of August 17, 2011) of the TJMG. It is, therefore, a public document, being available at the courthouse, where I have consulted it. Finally, as for the profile of the nineteen *desembargadores* signatories of the petition, they averaged a little below five years at the TJMG. Additionally, thirteen of them had been career judges of the state judiciary of Minas Gerais before their ascendance to the TJMG. As for the other six *desembargadores* who signed the petition, two were former private attorneys, and, somewhat surprisingly, four were former public prosecutors before they were appointed to the state court of appeals of Minas Gerais.

Paula's amendment, thus, was killed shortly after and no proposal introducing specialization on criminal cases of mayors was raised again during the deliberation of the new bylaw of the court of appeals of Minas Gerais. As a result, the arrangement pertaining to such cases in the TJMG remained the same as before, diluted in the now seven criminal panels of the court.²⁵⁴ As for the reasons raised by the signatories of the document, I highlight three aspects of it.

First, the *desembargadores* of the TJMG do not question their own authority to decide whether or not to specialize criminal panels of the court on cases involving mayors. Their autonomy to make such decision, instead, is assumed as a starting point of the debate. As a result, none of the other points raised in the petition to object the amendment challenges the perspective that this decision was a sole responsibility of the members of the TJMG, and no one else's.²⁵⁵ In effect, after successive interplays with the legislative assembly and the state governor on this issue, it was clear by then that not only the appellate judges shared this perception, but also the members of the other branches of the state government did. In short, the TJMG enjoyed autonomy to make this decision and it was the lack of willingness of the majority of the members of the court that ultimately prevented it from moving towards a specialized arrangement.

Second and related to the former, the main concern expressed by the nineteen signatories of the petition is with the consequences over the exposure that *individual members* of the court would incur as a result of the proposed specialization. That is, their concern was not with the potential constraints imposed upon the court as a whole, but upon a few of their members, which would become prominent as a consequence of their recurrent activities in cases that invariably attract

²⁵⁴ See article 39, I, a, of resolution n. 3, of July 26, 2012, of the TJMG, which established its new bylaw.

²⁵⁵ The argument I have transcribed above was the first one raised in the petition and the one that it emphasized the most. Other reasons raised in it, however, include the fact that specialization would not speed up the trial of these cases (because there would be confusion as to which panel these cases would actually belong), and that the proposed specialization in two panels would imply differences of interpretation between the two panels.

great public attention was specialization ultimately adopted. As an appellate judge of the TJMG who opposes specialization and asked to remain anonymous commented, “every now and then this idea [of specialization] comes up. But this will not work, there is no reason to do that ... The media exposes us, they do not understand our work and think we are being too soft” (Interview # 36). Specialization, in other words, would not be “a good option because the authorities would already know who the judges [trying those cases] would be,” comments one of his colleagues (Interview # 37). Were panels of the TJMG specialized on those delicate cases, their members would end up overly exposed, perhaps making these few *desembargadores* vulnerable to attack, ponder the appellate judges of Minas Gerais. Recalling the stories of how judge Melíbio and prosecutor Ziolkowski ended up being removed from their positions due to their alleged overly aggressive activities in Rio Grande do Sul, that is probably the sort of “political pressure” that the *mineiro* judges had in mind to oppose specialization. Avoiding exposure in order to minimize risk by not prioritizing those cases, hence, was their devised course of action.²⁵⁶ At the same time, by diluting the responsibility over those cases, the TJMG not only curtailed the improvement of its own organizational capacities, but also removed the possibility of the few interested appellate judges who would perhaps be willing to take this risk from doing so.

Third, the vocal opposition to specialization inside the TJMG has relied not only on its emphasis on the unwillingness to expose judges, but also on another recurrent argument that I have heard in the interviews with the appellate judges and their clerks (Interviews # 23, 36, 41, 43, and 44). According to this reasoning, there would not be enough cases brought against mayors to justify their specialization in a few panels of the court. Although this belief is widespread among the

²⁵⁶ Curiously, one of the reasons suggested by judges in other states – vanity fight – could not be perceived here. More than vanity fight, diluting the pressures would avoid. “What I sensed in other courts was a distrust of judges from each other to specialize” (vanity fight, Melíbio about other courts)

judges of Minas Gerais, it is also only a half-truth. For one, as the story of the previous chapter stresses, the specialized panel served largely to drive demand rather than just respond to it. That is, more cases were brought by prosecutors to the courts of appeals of Rio Grande do Sul because they perceived that its judges were prioritizing them. For another, specialization need not be full-time. That is, the benefits of improving capacity need not be gained at the expense of not sharing the general workload of the court. In fact, if we recall the previous chapter again, the 4CC remained a full-time specialized body solely between 1994 and 2000, a relatively short period that served mostly to organize the panel and set in motion the process of coordinated autonomy on the legal accountability of mayors in the state.

Finally, the number of criminal cases brought against mayors by the prosecution office of Minas Gerais – the *Ministério Público do Estado de Minas Gerais*, or MPMG – increased significantly since it established its own specialized division on the topic in 2000. Instead of meeting this demand, the *desembargadores* of TJMG have actually chosen to ignore it. Critically, this implies that most of the episodes in which they had a chance to improve the organizational capacity of their court but refused to do so – i.e., following the two legislative initiatives in 2000 and 2008, and the revision of the TJMG’s bylaws in 2003 and 2011 – took place in contexts characterized by the increased mobilization of the prosecutors of Minas Gerais, and not the opposite, as I detail in the next section. It was, thus, the appellate judges’ refusal to improve the capacity of their institution to meet the growing demand of cases that ultimately prevented inter-institutional coordination from taking place between the judiciary and the prosecution office in the state. In a context of high political pluralism, this ultimately meant the fragmentation of efforts, rendering the legal accountability of mayors less intense than it could have been in Minas Gerais.

5.3. Isolated Institutions, Poorly Mobilized Legal Actors and a Mixed Record

One of the conclusions of John W. Kingdon's now famous study on agenda-setting in the United States argues that "the chances for a problem to rise on the decision agenda are dramatically increased if a solution is attached" (2003, 143). That is, more than a perfectly linear process from problem-definition to agenda-setting to alternative-specification, his argument is that the cycle of policy formulation is much more convoluted than most models assume. Quite often, he remarks, solutions present themselves well before some issues are even considered problematic to elicit the search for public policy solutions that would address them.

Kingdon's quotation illustrates well how the legal accountability of mayors came to be deemed an issue in the political agenda of Minas Gerais. Accordingly, it was the pursuit of the emulation of court arrangements allegedly successful of another state by local legislators that turned this otherwise ignored topic into a prominent issue in the *mineiro* state and, as a result, gave it a spot in the decision-making agenda of both the legislature and the judiciary starting in 2000. The new status of this issue, however, did not ensure the approval of the proposed solution that made the issue receive attention in the first place. That is, the proposal of court specialization on criminal cases of mayors did not ultimately succeed in Minas Gerais, but helped the issue it was aiming to address gain prominence, even outside the initial circles where it had been raised and discussed.

In effect, the refusal of the TJMG to improve its organizational capacities on cases of mayors did not prevent the prosecution office from prioritizing these cases itself. Particularly, the episode in 2000, when legislators pushed towards court specialization, served to make the members of the MPMG aware that they too had a role to play in the legal accountability of mayors in Minas Gerais. Not by accident, less than a month had passed since state representative Chico Rafael had

proposed the legislative amendment establishing a specialized panel at the TJMG when the head of the MPMG decided to designate a group of prosecutors to investigate and prosecute crimes of mayors in the 853 city halls of the state. Prosecutor-general Márcio Decat de Moura, in effect, established by an internal resolution the *Grupo Especial de Combate aos Crimes Praticados por Agentes Políticos Municipais* (GECCPAPM, or Special Group on the Fight against the Crimes Committed by Municipal Political Agents) in July 26, 2000.²⁵⁷ Previously performed by specific *procuradores de justiça* appointed by the prosecutor-general to each case and later by the same prosecutors officiating before the auditing agency of the state, none of these arrangements was considered satisfactory by the members of the MPMG. The main reason was their perception that there was a growing demand to investigate allegations of wrongdoing in the many municipalities of Minas Gerais, which ended up diluted in the regular caseload of the prosecutors occasionally assigned to these cases (see Interviews # 24 and 40). Specialization, by these terms, was a way to give focus and time for interested prosecutors to work on those complex cases, rendering their investigation and prosecution agiler and more efficient (see Ramos Filho 2006, 254-255).

In many ways, this arrangement resembles the one adopted in Rio Grande do Sul since 1992. In fact, both the PROCPREF and the GECCPAPM are divisions within state *Ministérios Públicos* specialized on criminal cases of mayors. At the same time, a few important differences do exist between these two bodies. First, their points of departure were surely different. Accordingly, the PROCPREF emerged as an immediate response of the prosecutors to the increased mobilization of the appellate judges of Rio Grande do Sul on the topic, who had created a specialized panel on mayoral irregularities. As for the GECCPAPM, it was established following the refusal of the *desembargadores* to prioritize those same criminal cases brought against mayors. That is, while

²⁵⁷ The administrative decision that established the new specialized division at the MPMG was *Resolução* n. 37, of 2000.

the PROCPREF followed the judges' mobilization on the topic, the GECCPAPM was actually trying to set it in motion.

Second, the establishment of a division specialized in crimes of mayors was less controversial at the MPRS than it was at the MPMG. Recalling the previous chapter, the PROCPREF emerged in the early 1990s in Rio Grande do Sul as a result of the commitment of a prosecutor-general who was quite popular and enjoyed strong support among its peers, never being questioned since. As for the GECCPAPM, it was not the first attempt by a prosecutor-general to establish a similar structure at the MPMG. Accordingly, the first arrangement adopted in Minas Gerais on the topic was the *Grupo Especial de Combate aos Crimes Praticados por Agentes Políticos* (GECCPAP, or Special Group on the Fight against the Crimes Committed by Political Agents), which aimed at addressing all cases of authorities enjoying special standing in the courts, not only those of mayors. Established by prosecutor-general's resolution n. 13, of March 20, 2000, this decision soon became controversial because the cases assigned to the newly created group included those against prosecutor-general himself, leading to an internal conflict at the MPMG between the prosecutors in charge of the *corregedoria* (the equivalent to internal affairs) and the head of their institution. Fueled by internal struggles, this controversy became even more heated because it took place when the name of prosecutor-general Márcio Decat de Moura had been raised in the *máfia dos caça-níqueis*, or "slot machine mafia" scandal, which accused him of asking for bribes from illegal gambling machine owners to cool down the efforts of the MPMG in the area.²⁵⁸ As such, the resolution of March 20, 2000 was repealed when prosecutor-general Márcio Decat de

²⁵⁸ Accordingly, the scandal began when a tape of Márcio Miranda Gonçalves (prosecutor-general Márcio Decat de Moura's son-in-law and head of administrative affairs of the MPMG) talking to owners of illegal slot machines was made public in which the latter asked for bribes (see Ramos Filho 2006, 254). They were all later declared not guilty in a criminal case tried in 2010 by a district judge of the TJMG, who deemed the accusations largely false and attributed them to internal struggles for power at the MPMG. According to the court decision, the allegations were raised by former prosecutor-general Epaminondas Fulgêncio Neto in his internal struggle with Márcio Decat de Moura and would be an attempt to discredit the latter (see case n. 00240010871-0 of the TJMG).

Moura was temporarily removed from office, only eight days after it had been enacted. Only when the former returned to his position, in July 2000, he was able to reestablish a special group on crimes of public officials, now exclusively focused on cases of mayors.

Third, because the trial of criminal cases of mayors was decentralized at the TJMG, the MPMG had to organize itself accordingly. As a result, the GECCPAPM exhibits a much more horizontal organizational framework than the PROCPREF. Recalling the latter, in it a *procurador de justiça* both officiates before the specialized panel and coordinates the actions of a team of district-level prosecutors (or *promotores de justiça*) in the investigation and *instrução* of the criminal cases of mayors. Because no specialized panel exists in Minas Gerais, there is a need for the prosecution office to officiate before many panels of the TJMG in those cases. As a result, instead of a single *procurador de justiça* in the specialized division, there are several. At the same time, there less district prosecutors working at the GECCPAPM. Even if there are multiple panels at the TJMG trying these cases, a *procurador de justiça* does not officiate before the same panel all the time. Rather, the assignment of the cases to the prosecutors of the GECCPAPM is random, either as a function of the municipalities in which the alleged irregularities took place or following the temporal order in which they arrived at the specialized division.²⁵⁹ True, there is a coordinator at the GECCPAPM, who both responds before the prosecutor-general and represents the specialized division before other institutions (to sign agreements, request information, etc.), but a much less clear hierarchy exists in it when compared to the PROCPREF.

²⁵⁹ This arrangement changed over time, but assumed two forms. Either certain prosecutors are previously assigned to certain municipalities (so that if a case in it arrives at the GECCPAPM then that prosecutor is responsible for the case) or there is a previously established order of the prosecutors (so that the temporal order in which these cases arrive at the courts determines who gets which case, with the first cases arriving at the specialized division going to those prosecutors up in the list and the last cases to arrive go to those down the list). Both mechanisms were devised to provide a relatively equitable distribution of caseload and thereby prevent certain prosecutors from working much more than their peers.

In spite of these etiological and organizational differences, as soon as the GECCPAPM started to act, it quickly became an aggressive prosecutorial body like its counterpart of Rio Grande do Sul. This began particularly with the efforts of its first two members, *procuradores de justiça* Gilvan Alves Franco and Cesar Antonio Cossi,²⁶⁰ who even visited for a week the PROCPREF in Rio Grande do Sul to draw inspiration on how to set up a similar structure in Minas Gerais (Interview # 40). In effect, while before “only a few criminal cases were brought against the mayors,” as the GECCPAPM started to work on August 2000, it soon altered the previous practices (Interview # 24). As a result, in its first full year of operations alone, 2001, it brought 167 new criminal cases against mayors to the TJMG or over three new cases per week. This rate, moreover, remained intense in the next years, totaling 1,313 new cases brought by the GECCPAPM to the appellate court of Minas Gerais against mayors until 2012, a bit over one hundred nine new cases per year (cf. GECCPAPM 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012).

Clearly, the average of new cases brought against mayors per year by the GECCPAPM is much higher than the one of the PROCPREF in Rio Grande do Sul, which totaled 1,437 new cases for the entire period from 1994 to 2012, or about eighty new cases per year. These different numbers of indictments brought to court, though, have to be read with care, given the different number of municipalities of the two states. In effect, with seventy-one percent more city halls than Rio Grande do Sul, the prosecutors of Minas Gerais brought only thirty-six percent more cases yearly

²⁶⁰ Curiously, none of these two prosecutors was originally from Minas Gerais, but respectively from Bahia and Rio Grande do Sul, precisely the two other states examined in this research. They both moved to Minas Gerais, however, because they were selected through competitive examinations to become members of the MPMG. In fact, both had been prosecutors of the MPMG for many years before they started working at the GECCPAPM. The fact that both were outsiders, though, serves only to highlight that their attachment was much stronger with the new institutional mission of the *Ministério Público* than with any potential local loyalties. Finally, an interesting fact that has been highlighted by my interviewees about Minas Gerais is that, because it is a state geographically located at the center of Brazil, it ends up attracting people from all over the country looking for jobs, something that comes to be reflected in the origins of the members of several institutions (e.g. Interviews # 24, 26, 35, 38, and 40). Not surprisingly, many of my interviewees in Minas Gerais were from different Brazilian states, including São Paulo, Rio de Janeiro, Espírito Santo, Pernambuco as well as the aforementioned Bahia and Rio Grande do Sul.

against mayors than their *gaúcho* colleagues. The rough estimate of the rate of new cases yearly brought per municipality, in effect, is higher in Rio Grande do Sul (0.16) than in Minas Gerais (0.12), a thirty-three percent difference. In other words, despite the clear aggressiveness of the GECCPAPM, it still fell short when compared to its counterpart in the Southern state.

The different performances of the two specialized divisions on crimes of mayors, nevertheless, probably cannot be explained in reference to the aggregate number of potential irregularities that came to the knowledge of the prosecutors of both states. From 2000 to 2012, the GECCPAPM was notified by district prosecutors, political opponents of the mayors, monitoring agencies and whistleblowers of 7,697 potential acts of misconduct involving the heads of city halls of Minas Gerais (cf. GECCPAPM 2013, 2013a, 2013b). Between 1994 and 2012, in turn, the PROCPREF was informed of 5,118 acts of potential wrongdoing involving the mayors of Rio Grande do Sul. Resorting to the same estimate of new irregularities brought to the knowledge of prosecutors per year per municipality, the average is actually higher in Minas Gerais (0.75) than in Rio Grande do Sul (0.57). That is, the *mineiro* prosecutors were informed of a greater number of potential irregularities by city every year than their *gaúcho* counterparts, implying that the total number of detected and/or exposed potential wrongdoings that came to the knowledge of the specialized prosecution division of the two states does not account for the difference in the number of indictments eventually brought to the courts by them.

The main difference between the two specialized divisions, in effect, seems to emanate from the *investigative* capacities at their disposal. The 7,697 notifications received by the GECCPAPM in Minas Gerais resulted in 1,313 indictments, yielding a seventeen percent rate of conversion of investigations into indictments, whereas the 5,118 notifications received by the PROCPREF in Rio Grande do Sul resulted in 1,437 indictments, or twenty-eight percent of them. The rate of

conversion of notifications of irregularities into indictments by the MPMG, hence, is much lower than the one of the MPRS. In fact, the probability that a notification of mayoral misconduct will lead to a criminal case brought before the courts is sixty-four percent higher at the PROCPREF than at the GECCPAPM, resulting in more cases per municipality yearly being brought by the former than by the latter, despite the higher rate of notifications received by the latter.

The investigative capacities that result in such different rates of conversion of investigations into indictments, though, cannot be found *inside* the prosecutors' offices of the two states. Actually, the structures of the GECCPAPM and the PROCPREF are roughly proportional to the size of the tasks they are supposed to exert, with a greater number of prosecutors and civil servants having been consistently available at the latter than at the former.²⁶¹ Hence, more than illustrating how poor the investigative capacities of the GECCPAPM would be, the significantly higher numbers of inconclusive investigations of mayoral irregularities in Minas Gerais than in Rio Grande do Sul actually highlights how poor the coordination of efforts between prosecutors and auditors has been in the former state.

That is, up until very recently, there was very little interaction between the GECCPAPM and the state's auditing agency, the *Tribunal de Contas do Estado de Minas Gerais* (TCEMG, or Court of Accounts of the State of Minas Gerais). Not surprisingly, when asked about the sources of information of the irregularities they investigate, only rarely the *mineiro* prosecutors mention the TCEMG (e.g., Interviews # 24, 25 and 40). The dialogue I had with a prosecutor, who has been

²⁶¹ While they have varied over time, the number of prosecutors available at the GECCPAPM has consistently been higher than that at the PROCPREF. Recalling the previous chapter, in 1992 and 1993, there was only one prosecutor at the latter. Starting in 1994, the PROCPREF started to exhibit the structure it has today, with one coordinator and three to five assistant prosecutors (see MPRS 1994, Interviews # 16, 17, 22, 71 and 73). As for the GECCPAPM, in turn, it was established with three prosecutors and soon grew to the current structure, oscillating between seven and nine prosecutors, as well as over twenty civil servants available, including an investigative police officer temporarily transferred from the police to the GECCPAPM to help in the investigations (see Miranda 2009, Interviews # 24, 25 and 40).

working for many years at the GECCPAPM and asked to remain anonymous, is illustrative of this lack of interaction, as follows

“Interviewee: We receive notifications from various sorts of people, most of the time from politicians who oppose the current mayors, but also from interested individuals ... and there is also the work of the district prosecutors, many of whom are very diligent in notifying us of irregularities of current mayors.

Author: Does the court of accounts [of Minas Gerais] send some material to you?

Interviewee: The court of accounts even sends some things to us, occasionally, but they take so long to decide whether or not the expenses of the mayors were regular that if and when they send, *prescrição* has already occurred.

Author: But do you need to wait for their decision to start investigating a case?

Interviewee: No, but they simply do not send the material before and even if they do, it takes so much time for them to make a decision that in practically everything we receive from them *prescrição* has already occurred.

Author: Do you have any contact with the auditors of the court of accounts?

Interviewee: None whatsoever. And let me tell you something else. At times, even this year, I needed the court of accounts because I was in doubt concerning the expense of a city hall, whether or not competitive bidding was required from the mayor, and I asked for their help, but they did not send anything to us. They gave us an excuse and said that the case had not arrived to them, etc. So, for us, the court of accounts does not help. This is a reality. We cannot count on them” (Interview # 24).

More than the individual perception of one prosecutor, this actually seems to be the unanimous opinion of all members, former and present, of the GECCPAPM I have interviewed, and even of those in other divisions at the MPMG (see Interviews # 24, 38 and 40). As Leonardo Barbabela, the prosecutor in charge of coordinating civil cases of administrative improbity in Minas Gerais observes, there is “a tremendous loss of information and waste of efforts and of public resources: at times, the audit reports are ready, but we simply do not know of them ... and they come to us, then *prescrição* has already occurred” (Interview # 34). Prosecutor Gilvan Alves Franco, one of the first members of the specialized division, remaining over six years there, shares the opinion. As I asked him to list the sources of information the GECCPAPM received notifying them of the potential acts of misconduct of mayors, in the following order he mentioned: political opponents of mayors, district prosecutors, parliamentary committees of investigation of the city councils,

interested individuals, newspapers, and even directors of public schools (particularly in cases of mayoral embezzlement of funds destined for education). He then went silent trying to think if he had forgot something and I asked: “how about material from the court of accounts?” to which he replied, “No. That is a court of make believe [*tribunal de faz de contas*]. Through the court of accounts, we never got anywhere ... never existed this help from them ... unfortunately, we never received their material ... it may have occurred in one case or another, but if it did happen, it was really sporadic, it was not something normal or usual” (Interview # 40).²⁶²

This contrasts sharply with the enthusiastic team work that prosecutors and auditors have been performing for the past two decades in Rio Grande do Sul on the investigation of irregularities of mayors, with auditors not only continuously gathering and sharing evidence with prosecutors, but also performing inspections in city halls in response to requests by the latter. Inversely, the prosecutors of Minas Gerais never enjoyed this support, neither from the auditors nor from the police, so that “nearly all investigations were conducted directly by the *Ministério Público* on crimes of mayors” (Interview # 40).²⁶³ As a result, most notifications of irregularities that arrive at the GECCPAPM are of low quality – either in the form of tips by opponents of the mayors or by interested citizens – therefore making much more laborious the process of transforming such notifications into actual indictments capable of being held in a court of law.

²⁶² Not surprisingly, the manual of the MPMG is illustrative of how little interaction there is between its specialized division on mayors and the TCEMG, entirely ignoring the latter in its list of sources of material received for investigation. It says: “... the GECCPAPM, by one of its members, when it receives notifications of crimes involving municipal mayors, from the local legislative branch, the local prosecution office, the judiciary, other institutions, and even common citizens, will proceed to investigate ...” (MPMG 2008, 485).

²⁶³ Prosecutor Gilvan Alves Franco recalls that all the few investigations that were sent to the police in Minas Gerais never returned back to the GECCPAPM. This follows not only from the fact that state police forces in Brazil have no training in the area of corruption (being much more focused on “regular” criminal activity), but also because this puts police officials in a very delicate position of investigating mayors who, quite often, help police stations in their municipalities due to the overall lack of resources of the latter (see Interviews # 24, 25, and 40). Because district judges and prosecutors occasionally need this same help from the mayors, some argue, special standing in the courts would actually render easier and not more difficult the legal accountability of political agents in Brazil.

In other words, because so little help exists from other institutions, the *mineiro* prosecutors have to rely much more on *exposure* (which usually demands starting an investigation from scratch) than on *detection* (which relies on the continuous monitoring of oversight agencies and, as result, provides a much richer material as a starting point for the prosecution). In effect, absent the continuous efforts of the auditors to gather documents on city hall irregularities and send them to the GECCPAPM, the prosecutors of Minas Gerais end up having to “rely a lot on the mayors to send documents, because ... the city halls documents that we need are in their possession, so we [GECCPAPM] have to ask them. Usually, they send. Exceptionally, they do not. If that is the case, then we need to get a search and seizure warrant” (Interview # 24).

That the investigation of mayoral irregularities is conducted nearly exclusively by prosecutors in Minas Gerais results largely from the relatively erratic and poor performance of the TCEMG. To return to the comparison with Rio Grande do Sul, while the TCERS yearly inspects in loco all municipalities of the state, paying at least one visit to each city every year, the TCEMG only occasionally does that. In effect, the number of in loco audits made yearly by the auditing agency of Minas Gerais is not only substantially lower than its Southern counterpart, but also much more varied over time, ranging from as many as 975 in 2004 to as little as fourteen in 2011.²⁶⁴ In effect, the TCEMG averages 374 municipal audits – which comprise both inspections in city halls and city councils – per year, or approximately six times less than the TCERS, which

²⁶⁴ These data are from the yearly reports of the TCEMG (2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, and 2013). Critically, there is data specifically on municipal inspections only for the period from 2001 to 2011. For the years of 2012 and 2013, the reports inform only the data on the total number of inspections performed by the TCEMG, including audits in both state and municipal inspections. As such, I have estimated the specific number of municipal audits from the proportion of municipal inspections over the total inspections for the 2001-2011 period (which equal to 0.86) and then applied it to the total number of audits for those two years for which information was missing.

averages 2,415 municipal audits, ranging from 978 in 1998 to 3,231 in 2007.²⁶⁵ That is, the highest number of municipal inspections of the auditing agency of Minas Gerais is still below the lowest number reached by its counterpart of Rio Grande do Sul, in spite of the hundreds of municipalities the former state has more than the latter.

The *meanings* of these municipal audits, though, may be more relevant than their numbers. That is, even when in loco audits existed in great quantities in Minas Gerais, what such big numbers imply may be misleading. As one auditor summarizes, “the inspections are extremely formal” (Interview # 29). For instance, one of his colleagues recollects that between 2007 and 2008 the TCEMG “inspected all 853 municipalities of the state, the one hundred largest municipalities in 2007 and the remaining 753 in 2008, but the scope of these inspections were mostly formalities” (Interview # 27). By “formalities” he means the percentages defined in the Brazilian constitution that all cities of the country are supposed to spend on basic education and health care. In effect, the inspections of 2007 and 2008 “verified only if the municipalities achieved those percentages” (ibid), implying that nearly all issues pertaining to local-level corruption remained outside the scope of the TCEMG inspections in those two years, even if they may have been numerous.

As such, the erratic performance of the TCEMG does not express itself solely in the number of in loco audits performed yearly, which may triple from one year to the another just to fall to a tenth of that in the following year, but also in their scope. This means that in a given year the auditors may verify only constitutional percentages, but in the following one they may look at something drastically different, such as government procurement, local pension funds, or the admission of personnel, among others (see Interviews # 26, 27, 28, 29, 31 and 33). One auditor provides an

²⁶⁵ These data are from the yearly reports of the TCERS (1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, and 2013).

explanation on the sources of so many changes in the activity of the auditing agency of Minas Gerais over the years,

“What I perceive is not unwillingness on the part of the auditors, but that they have the scope [of their activities] predetermined by the head positions [of the TCEMG] ... then enters political issues, the will of the president, all sorts of things ... every two years, as we change presidents, there is an enormous change in positions, in directors, in thinking, in institutional objectives, etc. and consequently in what will be audited ... every two years the court of accounts [of Minas Gerais] changes completely its line of work, and practically reinvents the way it works ... I have not yet seen continuity in this domain” (Interview # 27).

In other words, the president of the TCEMG ends up determining the what, when and how of the in loco audits every year. As in all court of accounts in Brazil, the presidents of the TCEMG are elected by and from the top officials of the institution – the *conselheiros*, or councilors – most of whom are former elected officials, frequently state representatives with several years of political experience who are appointed to the auditing agencies often at the end of their legislative careers as a way to “retire” from politics. Left entirely to the discretion of one of these individuals, no wonder the in loco inspections performed by the TCEMG are few in number, formal in character and erratic in scope, thereby reproducing the image of the “court of make believe [*tribunal do faz de contas*]” to which prosecutor Gilvan Alves Franco referred to earlier (Interview # 40).

It is misleading, nevertheless, to attribute this erratic and overly formal activity of the TCEMG exclusively to the political background of the *conselheiros*. Importantly, *all* courts of accounts in Brazil have a predominance of top officials of this origin and their performances nonetheless vary a lot (Speck 2000, 2008, Melo, Pereira and Figueiredo 2009). The prevalence of politically-appointed former elected officials to the top positions of auditing agencies, therefore, cannot be considered an adequate explanation for the variation in their performances precisely because it is largely a constant. A more interesting line of inquiry, hence, is asking why the preferences of this

group of political appointees acquires greater weight in some auditing agencies, such as the one of Minas Gerais, and not in others, as the one of Rio Grande do Sul.

One possible venue of investigation concerns the overall professionalization of the institution. In other words, the preferences of the top political appointees would prevail over the ones of civil servants of technical or professional background because the majority – or, at least, a great parcel – of the total number of members of the agency would also be of political appointees, including those directly nominated by the *conselheiros*. The proposed answer, thus, is that the opinion of the latter would prevail inside the courts of accounts because there would be relatively too few professionalized, merit-based recruited, tenured auditors, rendering them unable to form an *esprit de corps*. This line of inquiry, therefore, reproduces the common tension in bureaucracy studies between professionalized and meritocratic institutions, on the one hand, and patronage-based or prebendal public organizations, on the other hand (e.g., Weber 1978, Geddes 1994, Evans 1995, Rauch and Evans 2000, Hollyer 2010).

The comparison between the auditing agencies of Minas Gerais and Rio Grande do Sul, though, does not support this reasoning. The absolute majority of the personnel of the TCEMG are made of professionally-recruited, stable civil servants. For the ten-year period between 2004 and 2013, when data is available, the TCEMG averaged 1,338 total members, of which only one hundred were political appointees, including the *conselheiros* and their own appointees.²⁶⁶ The remaining 1,238 servants, thus, were all recruited via merit-based competitive examinations, or over ninety-two percent of the total personnel of the institution. Of these, approximately 750 are college-degree holders who work as auditors and hence could go to the field, representing about fifty-six

²⁶⁶ These are the so-called *cargos de recrutamento amplo*, or “positions of ample recruitment,” commonly referred to in Brazil as *cargos em comissão*, or “commissioned positions.”

percent of all members of the auditing agency of Minas Gerais.²⁶⁷ As for the court of accounts of Rio Grande do Sul, it actually has a slightly greater proportion of political appointees in its ranks. The TCERS averages about nine hundred sixty members, of which about 840 are recruited via competitive examinations, or a bit below eighty-eight percent. The proportion of college-degree holders able to work as field auditors, in fact, is practically identical to the one observed at the TCEMG: that is, about five hundred fifty members of the TCERS hold such positions, or fifty-seven percent of the total personnel.²⁶⁸

At the same time, the TCEMG was indeed late in professionalizing some of its top positions. The so-called *senior auditors* – who are recruited via competitive examinations and have a minority of seats at the top board of the auditing agencies in Brazil, often substituting the councilors when these are unavailable – only came into existence in Minas Gerais in 2006, whereas they already existed in Rio Grande do Sul since 1989. Senior auditors, however, are very few in number in any court of accounts in Brazil (being, at most, seven positions) and the role they play is mostly confined to the decision-making of the impositions of administrative penalties, not the definition of the administrative priorities of the agency (e.g., the what, when, and how to audit). Increased professionalization of a few positions at the top, therefore, seems a relatively minor difference in comparison to the many similarities shared by the TCEMG and the TCERS. That is, just like its counterpart in Southern Brazil, the *mineiro* agency has had over the years an ample majority of professionalized civil servants, including hundreds of well qualified auditors who ultimately are

²⁶⁷ Data calculated from *Demonstrativos de Despesa com Pessoal*, or Statements of Expense with Personnel, of the TCEMG, available at: http://www.tce.mg.gov.br/index.asp?cod_secao=8K&tipo=1&url=&cod_secao_menu=50, accessed on April 18, 2014. While there are statements since 2001, only the ones from 2004 onwards provide the information discussed above. Finally, for the specific number of auditors (called *Técnicos*), this information is available only from 2004 to 2008.

²⁶⁸ For Rio Grande do Sul, there is only current data available at: http://www1.tce.rs.gov.br/portal/page/portal/tcers/institucional/informacoes_funcionais/relacao_quantitativa_cargos, accessed on April 18, 2014. Still, these estimates are consistent with the numbers reported in my interviews (e.g., # 8, 10, 13, 14, 66, and 69).

the ones performing the in loco inspections or not. If not professionalization, what then has been holding the auditors of Minas Gerais back from realizing their full potential?

A more promising explanation for the formalism and erratic number of in loco inspections of the TCEMG, I argue, comes from its organizational structure, which shuns away most of its auditors from actually performing such tasks. Two factors are critical. First, there is the skewed reward structure of the auditing agency of Minas Gerais. For quite some time, the wages collected by the auditors were low.²⁶⁹ They were able to increase them, though, by switching functions inside the agency. Particularly, this involved leaving the inspecting or auditing units of the TCEMG to go work in the chambers of councilors and senior auditors reviewing the reports sent yearly by all administrative units under the jurisdiction of the agency (i.e., city halls as well as city councils, the state legislative assembly and the state government). Gradually, hence, “there was something like a cooptation of auditors to the chambers, which today are filled with them ... in fact, the best and youngest [auditors] are now working in the chambers” (Interview # 29). Thus, precisely the ones “who bring new energy and have not yet taken the vices [of the agency],” being perfectly able to be on the field, end up in the chambers (Interview # 27). As a result, while there are indeed hundreds of auditors at the TCEMG who could conduct in loco audits, only a few end up doing so. Consequently, the unit of the *mineiro* court of accounts responsible for auditing the municipalities currently “exhibits approximately sixty auditors, and only a few of them actually go to the field” (Interview # 27), a number that contrasts sharply with the over two hundred fifty auditors of the TCERS who perform such tasks (cf. Interviews # 10, 14, 66 and 69).

²⁶⁹ Indeed, the TCEMG consumes a smaller share of the state budget (0.75) than the TCERS does (0.95), just like the ratio of available personnel over audited entities is higher at the former (0.79) than at the latter (0.61). Both of these points highlight that the availability of resources vis-à-vis the tasks required of each institution is greater in Rio Grande do Sul than in Minas Gerais. Still, the difference of six times more in loco audits performed by the TCERS than by the TCEMG is not nearly proportional to the difference in personnel and/or budget available to them.

Second, in such a large state like Minas Gerais, the auditing agency responsible for auditing all its municipalities does not possess regional offices. That is, unlike its counterparts in both Rio Grande do Sul and Bahia, all its activities are either remotely performed from Belo Horizonte or demand dispatching teams of auditors to cities that may be over 400 kilometers away from the state's capital.²⁷⁰ This not only increases substantially the costs of performing in loco audits, but also almost entirely removes the possibility of a closer presence of the auditors to their objects of inspection, rendering the much more difficult the notification of tips of potential irregularities. Coupled with the volatility in the number of inspections, no wonder "some municipalities end up remaining a lot of time without a visit from the TCEMG... at times even eight or ten years," recalls an auditor (Interview # 27; see also Interviews # 26 and 31).

The overall result is that the TCEMG ends up spending significantly more time on its so-called *atividade-meio* or "halfway activity" – i.e., reviewing documents sent by the entities it oversees – than on its *atividade-fim* or "main activity" – i.e., properly overseeing and auditing those entities (see Interview # 26, 30, 31 and 33). In effect, the relative number of in loco audits of the *mineiro* auditing agency is one of the lowest in Brazil.²⁷¹ The relative lack of such inspections implies that most yearly reports of the TCEMG that evaluate the expenses of the municipalities are based on the information sent directly by the city halls rather than being collected by the auditors. The best metaphor to understand how this works was provided by one of my interviewees: "Imagine how your tax returns would be if the *Receita Federal* [i.e., the Brazilian equivalent to U.S.'s Internal Revenue Service, IRS] did not cross-check what you sent to them with other databases: well, this is how we evaluate the expenses of our audited entities today" (Interview # 28).

²⁷⁰ This is the case of relatively large municipalities such as Uberlândia (650,000 inhabitants, distant 550 kilometers from Belo Horizonte), Montes Claros (420,000 inhabitants and 420 kilometers, respectively), and Uberaba (315,000 inhabitants and 480 kilometers, respectively), to cite only three of the largest cities of Minas Gerais. In turn, smaller municipalities may be located in even more distant and remote areas, making their inspection much rarer.

²⁷¹ See Table 3.2., above, as well as Moraes (2006) and Melo, Pereira and Figueiredo (2009).

Few in number dedicated to perform their main activity and lacking geographical proximity with their overseen entities, the auditors are simply unable to be more active and inspect more often the irregularities of the city halls of Minas Gerais. The auditors left at the inspecting units, hence, are not only few in number but among the ones least interested in performing those tasks with rigor, executing them in a quasi-bureaucratized fashion (see Interviews # 26, 30, 31, and 33). By hollowing out what should be the core of the institution's mission, finally, the "agency currently does not have the back of its auditors ... so, at times even out of fear, they may not even point out to some irregularities even if they notice that they exist" (Interview # 31). With this internally fractured structure, thus, what ends up prevailing at the TCEMG is the will of its president.

Not surprisingly, the TCEMG has been slow in improving its work over the past years. It lacks most of the databases its counterparts of various other states already possess and only recently it shortened the time it took to decide on the imposition of administrative penalties.²⁷² Similarly, only very recently the TCEMG has been attempting to approximate itself to other institutions, as I will detail in the upcoming section. Lacking mobilized auditors to help in their work until very recently, though, the investigations conducted by the prosecutors of the GECCPAPM not only resulted in indictments less often than they could, but also tended to focus on irregularities that were of relatively easy detection. Some cases the prosecutors recalled illustrate that, as follows: procurement fraud involving "ghost companies" (or "*empresas fantasma*," i.e., companies that only exist on paper) to embezzle public resources, in which a relatively simple check of their registration licenses at the databases of the state treasury sufficed to verify if they existed or not;

²⁷² Two of my interviewees illustrated this point on the lack of databases of companies that contract with either the state government of Minas Gerais or its city halls. First, one auditor notices: "for instance, say I want to know in which municipalities a given pharmacy store won bids with the city halls ... there is no consolidated data on that ... if I want to know that, today I have to send a letter to each of the 853 mayors and pray that the 853 mayors answer back in a reasonable amount of time" (Interview # 27). Similarly, one prosecutor who has been attempting to bring the GECCPAPM and the TCEMG together complains: "only now they [the TCEMG] are starting to build a record of the procurements of the city halls ... they should have started doing this at least ten years ago" (Interview # 24).

a mayor who used to withdraw money of the city hall in the bank teller and put it directly in his pocket, another mayor who bought filet mignon and boxes of whisky for a public kindergarten; and two invitations for bid that contained the same writing mistake in city halls that were 300 kilometers apart from each other (see Interviews # 24, 25, 40; see also Miranda 2009, 501).

At the end of the legal accountability chain, the appellate judges of the TJMG also corroborate the overall lack of interaction between auditors and prosecutors in Minas Gerais. One of them, with more than ten years of experience in these cases, noticed that “the auditors hardly notify the *Ministério Público* [of irregularities in city halls], at least in the cases that I have tried ... frankly, I do not remember seeing that often” (Interview # 36; see also Interviews # 23, 37, 38, and 42). Still, this does not mean that the *mineiro* judges are understanding or sympathetic of this fact. Actually, the prosecutors do not seem to receive much help from the TJMG either. The court lacks not only specialization, but also structure to try properly and quickly those cases.

First, the fact that the *instrução* of the cases is performed almost exclusively via *cartas de ordem* implies that this stage takes a significant amount of time to be concluded and that the resulting testimonial evidence ends up being of little help to elucidate the facts of the cases. Accordingly, the prosecutors at the GECCPAPM are forced to avoid as much as they can hearing witnesses, relying mostly on documental evidence to bring indictments to court (Interviews # 24, 25, 38, and 42).²⁷³ Once in the hands of members of the TJMG, the cases also move very slowly. When I asked a prosecutor at which pace were the criminal cases of mayors tried, he quickly replied

“At the snail’s pace [‘*a passo de tartaruga*’]. Exceptionally, one or another case moves faster, but normally that does not happen ... On average we are not even able to finish a case during the mayor’s term in office of the mayor. On average, it takes four to five years to close a case once it arrives in the court [of appeals]... some judicial districts take

²⁷³ By the same token, only occasionally the *prosecutors* go to the judicial districts for such hearings, relying mostly on their district counterparts to perform the hearings (Interviews # 24, 25, 38 and 40).

forever to finish the *instrução* of the cases, especially those in isolated areas ... some *desembargadores* clearly do not like to try the mayors and avoid as much as they can having to make any decision on their cases ... then *prescrição* happens a lot” (Interview # 24; see also Interviews # 25, 38, 40, 41, 43 and 44).

The fact that only full panels try cases of mayors further delays adjudication. This happens not only because five judges take more time deliberating on a case than three of them, but especially because the full five members of a panel are not always available to meet for court sessions. This implies, on the one hand, that just trying to schedule a panel session is a delay-ridden process, pending on the individual schedules of its members. As an appellate judge acknowledges, “it has been hard for the full panel to meet, particularly because the *desembargadores* go on vocation at different moments, so at times we only have four or three members available” (Interview # 36). On the other hand, when not all members of a panel are available but the sessions have already been scheduled, there is a need to replace the missing members of the panel with the members of other criminal panels of the TJMG. According to my interviewees, there are endless and heated debates among panel members to decide whom to invite from another panel in order to prevent changes in established positions of that panel on a given topic due to the temporary change of its members (see Interviews # 23, 24, 25, 36, 38, 41, 43 and 44).

Second, because multiple panels try the cases, they end up have different interpretations on the exact same provisions of the law. This is particularly important in reference to the investigative powers of the prosecution office, an unresolved question of the Brazilian constitution of 1988,²⁷⁴

²⁷⁴ The Brazilian constitution of 1988 does not make explicit the powers of prosecutors to conduct investigations on their own for criminal cases, something they are allowed for civil ones (and even those concerning administrative improbity). This has been subject to heated debate in Brazil, both inside and outside of legal circles. The Brazilian Supreme Federal Tribunal has not yet decided the case that argued this question, although it has been in its docket for some years. Finally, constitutional amendments that limit the investigative powers of the *Ministério Público* – making explicit, for instance, that prosecutors are *not* allowed to investigate criminal cases and, thus, should refer them exclusively to the police – have been proposed over the years, but none was successful thus far. In fact, the last proposal of this sort was repealed after the manifestations of June 2013, during which one of such amendments (the so-called PEC 37) was under discussion in Congress.

which is accepted by some criminal panels of the TJMG and rejected by others. Hence, because the cases are randomly assigned to the panels, it becomes difficult for the prosecutors to know in advance what the court of appeals of their state expects from the preliminary evidence brought alongside the indictments. As one prosecutor ironically summarizes,

“Here is a lottery game, especially in regards to the investigative powers of the *Ministério Público*. So, every time we indict a mayor, we pray for the case not to end up in the 3rd of the 4th Criminal Panels, which do not accept evidence resulting from investigations conducted directly by the *Ministério Público* ... the panels diverge with each other and among their own members, who fight each other and have heated debates [‘*discutem de bater boca*’] about this” (Interview # 24).

Because the investigative powers of the *Ministério Público* are still an open question in Brazil, lacking a final decision that settles the issue, the several courts of the country (and the panels within them) interpret in their own way this provision. In Minas Gerais, one consequence of this unresolved dispute to the specific issue of crimes of mayors is that it has been allowing divergent interpretations inside its court of appeals. In effect, this has been generating a markedly unstable environment for the work of the prosecutors, which risk seeing tremendous investigative efforts entirely thrown away due to pure chance – i.e., depending to which panel the of the TJMG each case is sorted to. In comparison, this exact same issue was repealed by the specialized panel of Rio Grande do Sul right from the start, never being raised after (cf. Interviews # 1, 5, and 11).

In fact, even the *desembargadores* acknowledge that the multiplicity of panels “generates a great disparity in the decisions, because there are more and less rigorous panels on the application of the laws on crimes of mayors ... and some *desembargadores* even summarily absolve the mayors” (Interview # 36; see also Interviews # 23, 38 and 42).²⁷⁵ In effect, some panels of the TJMG have indeed been more active than others to convict the mayors. For instance, since 2000, when the

²⁷⁵ The possibility of judges summarily absolving the accused in those cases is given by article 6 of the law n. 8038, of 1990, which regulates cases of *foro privilegiado* in the high courts of the country.

GECCPAPM was established, the 1st Criminal Panel of the *mineiro* court convicted sixty-two mayors and former mayors, whereas its 3rd Criminal Panel convicted just sixteen of them.

Finally, the fragmentation at the TJMG is not limited to the different opinions of the panels or to the individual judges within them on the same provisions of the law, but applies equally to the performance of the clerk's offices of each panel. As a prosecutor commented,

“It also depends a lot on the *secretaria* [i.e., clerk's office] of each panel, just like with the panels. And curiously, the panels that have the most diligent judges are not the ones with the most efficient clerk's offices. So, there are instances in which the judges do decide the cases quickly and even convict the mayors, and then the clerk's office has to issue a letter [‘*expedir um ofício*’] to send it to the electoral courts to let them know that the mayor has been removed from office, but it takes months for it [the clerk's office] to do so. So, we have to call it repeatedly, over and over, to ask it to make it quicker and, at times, this takes months ... so, we end up having the impression that no one is in charge of anything ... and this has to do with the individual clerks [‘*escrivão*’], some of whom are more diligent than the others” (Interview # 24).

With so much instability, not surprisingly, the overall conviction rate of mayors at the TJMG is low, close to eleven percent, or less than a half of the rate of the TJRS, where over twenty-three percent of the indictments end up in convictions. Still, by far the greatest number of convictions of the *mineiro* court comes from those of *former* mayors, which the TJMG adjudicates in appeals after district judges have already tried them, rather than in new cases. Recalling from the last chapter, in 1999, the Brazilian Supreme Court altered a long-standing position that both current and former officials enjoy special standing in the courts, thereby removing the cases of *former* mayors from the docket of the courts of appeals of the country, exceptionally as appeals after they are tried by the district judges.

In effect, the convictions of cases brought against *current* mayors are even fewer at the TJMG. The period from 2001 to 2004, which immediately follows the establishment of the GECCPAPM at the prosecution office of Minas Gerais, illustrates that well. Accordingly, once the specialized

division on crimes of mayors was created, the *mineiro* prosecutors brought 718 new indictments against current mayors until the end of 2004. These resulted in only fourteen convictions at the TJMG, or less than one conviction every *fifty* new indictments, none of which put the convicted mayors in jail (see Miranda 2009, 506). As a comparison, for the same period, the PROCPREF in Rio Grande do Sul brought 307 indictments against current *gaúcho* mayors and these resulted in sixty-eight convictions at the specialized panel of the TJRS – that is, more than one conviction for every *five* new indictments. The ratio of convictions per indictments for the period between 2001 and 2004, in effect, is *ten times lower* in Minas Gerais than in Rio Grande do Sul, despite the aggressiveness of the prosecutors of the former, who brought twice as many indictments as their counterparts of the latter.²⁷⁶

Pressed between an overly formalistic, erratic auditing agency and an unwilling, reluctant, slow-moving court, the prosecutors of Minas Gerais have been the sole actors truly mobilized to hold the mayors legally accountable for their acts of misconduct in the state, at least until recently. The specialized division on crimes of mayors of the MPMG, nevertheless, ends up in a quasi-impossible situation. On the one hand, it has to conduct alone practically all investigations on mayoral irregularities mostly because it cannot rely on practically any other institution to do it, including the auditing agency of the state, which has been so helpful to the prosecutors in Rio Grande do Sul. On the other hand, because the prosecution office has to perform many tasks that could have been shared with the auditors, the GECCPAPM not only stretches its organizational resources, but also depends on the goodwill of the appellate judges to have the evidence it has

²⁷⁶ The same holds true if the performance of the GECCPAPM at the TJMG is compared to that of the PROCPREF at the 4CC of the TJRS right after these last two specialized bodies were established in Rio Grande do Sul. In effect, from 1993 to 1996, the first three full years of operation of those entities, the PROCPREF brought 234 indictments to the court, resulting in sixty-one convictions, yielding a twenty-six percent rate of mayoral convictions over new indictments, which was even more assertive than the period from 2001 to 2004.

unveiled in those investigations ultimately accepted in court, which may or may not be the case depending to which panel the case is sorted.

As a result, the joint action observed in Rio Grande do Sul never materialized in Minas Gerais, despite the similarly plural political system that characterizes both states. That is, because only a few legal actors were actually mobilized on the issue of legal accountability of mayors in Minas Gerais and despite the relatively few constraints imposed upon its institutions, the *mineiro* judicial system ended up dispersed, with each institution – particularly the auditing agency and the courts – acting largely in disregard for the effects they bring about to others. In other words, this dynamics represents what I earlier termed *fragmented autonomy*.

Critically, at the root of this fragmentation *among* the activities of various institutions, there is a fragmentation *within* each one of them. That is, they lack coordination with one another to a great extent because they are internally fractured institutions, marked by conflicts among peers and an unclear line of work on the issue of mayors, except for the prosecutors' office. That is, the *desembargadores* of the TJMG are clearly divided not only on whether or not to specialize one or more of its panels on crimes of mayors, but also on how quickly to try these cases, on whether or not to allow in court evidence unveiled in investigations conducted solely by the prosecution, on how rigorous be with the mayors, and so on. Similarly, the auditors of the TCEMG are not only scattered throughout their institution, but especially far away from their main activity of in loco inspecting city halls and other administrative units. With so little unity inside both the court of appeals and the auditing agency, their members actually seem to have agreed to disagree: each panel tries and decides the cases in its own way at the TJMG, and every new administration of the TCEMG defines its own priorities of what, when and how to audit, practically reinventing the workings of the institution every two years. No clear institutional commitments to the legal

accountability of mayors, thus, have been able to emerge either at the judiciary or at the auditing agency of Minas Gerais, as they did at the prosecution office of the state starting in 2000. Failing to do so, however, prevented the courts and the auditing agency from allowing the prosecution to coordinate its efforts with them, thereby yielding a performance that is much inferior to what the plural political environment of Minas Gerais would allow. In sum, the internal quarrels at both the TJMG and the TCEMG left the MPMG practically alone in the anti-mayoral corruption fight.

Acting in isolation, though, there is only so much the *mineiro* prosecutors can do. In effect, they are forced to rely often on a suboptimal strategy to achieve at least some results in this arena: the ample divulgation of the indictments in the media once (and if) the TJMG decides to transform them into actual cases. As prosecutor Gilvan Alves Franco ironically remarks: “It is something of a kaffian experience. The cases take so long [to be concluded] that sometimes we do not even know if the mayors were punished or not ... so we joke that there are three types of penalties: imprisonment, detention, and publication [‘*reclusão, detenção, e publicação*’] ... and only the latter is effective” (Interview # 40). That is, due to the shortcomings they face, the prosecutors of Minas Gerais feel forced to move beyond legal accountability proper to publicize the charges brought against the mayors as a way to perhaps help other forms of accountability – electoral, social, etc. – to take place.

In effect, the meaning some prosecutors attach to their positions at the specialized division on crimes of mayors in Minas Gerais is quite different than the one they often attach in Rio Grande do Sul. Whereas in the latter, they frequently see themselves with pride, belonging to a position of status due to the prestigious service they perform, many of the former see themselves as being punished for being assigned to the division, particularly because it demands much more work than the one regularly required from a *procurador de justiça* – i.e., a prosecutor that officiates

before a court of appeals who, as a result of this position, mostly reviews cases already tried by district courts rather than help produce it from scratch (see Interviews # 24, 25, and 38).

5.4. Conclusion: Inching Toward Inter-Institutional Coordination

The overall picture of fragmentation and incipient mobilization – apart from the prosecutors – of the judicial system of Minas Gerais results in the following workflow on the legal accountability of mayors. Starting by *detection*, it is erratic and sparse, mostly fluctuating as a function of the work of the TCEMG, which occasionally engages in properly inspecting the city halls, but most of the time shuns away from doing so. With this unstable and overly formalistic approach of the auditing agency of Minas Gerais, most wrongdoings at city halls come to public via *exposure*, in which political opponents of the mayors, interested citizens, and whistleblowers notify either the GECCPAPM or the district prosecutors of the alleged acts of misconduct. With this information in hand, nearly all work of *investigation* falls in the hands of the prosecutors. This solo activity, nevertheless, overwhelms the GECCPAPM, which is able to transform only a relatively reduced parcel (about seventeen percent) of its investigations into indictments brought to court. Once at the TJMG, *adjudication* is largely an unpredictable but almost invariably delay-ridden process. On the one hand, once an indictment arrives at the *mineiro* court, much depends in which panel and in the hands of which rapporteur judge it ends up, some of whom being more welcoming to the evidence produced by the prosecution or rigorous in the application of the laws on mayoral crimes than others. On the other hand, that cases are only slowly tried (if at all), pending on the availability of the full panel to meet and on the *instrução* made via *cartas de ordem*. The latter, finally, makes difficult the production of reliable testimonial evidence, forcing the prosecutors to

focus on documental evidence and on cases of relatively simply investigation. Consequently, the overall rates of conviction of mayors are much lower than they could be in Minas Gerais in light of the activism of its prosecutors, of the vast number of existing city halls, and of the relatively high degree of autonomy enjoyed by the judicial system of the state, which derives largely from the plural political environment in which it operates.

Importantly, the scenario described in the previous paragraph is the one that has existed in Minas Gerais since 2000, when the specialized division on crimes of mayors was set up at the MPMG. Before the GECCPAPM was established, however, only a handful of cases arrived at the *mineiro* courts. As such, while the current scenario is indeed marked by a high degree of fragmentation at the state's system of justice, the dispersion was even greater before that, following the practically complete lack of mobilization of actors on the topic. This implies that important changes did take place during this period in the legal accountability of mayors and former in Minas Gerais. This process has not remained static over the past two decades, but at the same time – and despite the many efforts of the prosecutors – no inter-institutional coordination resulted, mostly because the actors inside only one institution were truly mobilized to that end.

The fact that there have already been changes in the workings of the system of justice of Minas Gerais, hence, opens up the possibility that more of them occur approximating otherwise isolated actors and institutions. That is precisely what seems to be happening to the *mineiro* prosecution office and auditing agency, which have started to come closer together largely due to the recent internal reorganization of the latter. First, the TCEMG has been speeding up its review process, so that the decisions about the imposition of administrative penalties to the mayors and the other authorities within the auditing agency's jurisdiction are now made within a year after it receives the reports from those entities (cf. Interviews # 26, 30, 31 and 33). This implies that the auditors

have been able to send the notifications of irregularities performed by heads of city halls faster to the prosecution office, thereby helping prevent *prescrição*.

Second and much more importantly, the *Ministério Público de Contas* of the TCEMG – i.e., the branch of the prosecution office that officiates before the auditing agency – has been completely reshaped since 2008. As it also happened with its *gaúcho* counterpart after 2000, the prosecutors of the MPC/TCEMG are no longer temporary positions of MPMG prosecutors transferred to the court of accounts. Competitive examinations were made in 2008 that selected four prosecutors who were then appointed to exert exclusively these functions before the *mineiro* auditing agency. Since then, the MPC/TCEMG increasingly assumed a crucial role as a connecting point between the auditors at the TCEMG and the prosecutors at the MPMG.

Starting in 2009 and especially in 2010 after the new prosecutors took office, the MPC/TCEMG soon started to organize itself. Accordingly, it absorbed thirty-six young auditors to its ranks and even established a coordination of joint actions to facilitate initiatives with other divisions of the TCEMG and with other institutions.²⁷⁷ True, this still follows the “cooptation” of auditors from the inspecting units of the TCEMG to other of its best-paying divisions. At the same time, the institutional ambivalence of the MPC/TCEMG – which exhibits the guarantees of a prosecution office but is located inside an auditing agency – pushes it to play a pivotal role between auditors and regular prosecutors. In effect, in the short period of time since its inception, this structure has pushed towards greater integration with other agencies, particularly the state *Ministério Público*, resulting in successful shared actions in that resulted in the imprisonment of mayors and former mayors of municipalities like Pirapora and Montes Claros (cf. Interviews # 24, 27, 28, 29, 32,

²⁷⁷ The thirty-six auditors were appointed via *Portaria* n. 12, of September 22, 2010, of the MPC/TCEMG, a number that grew to thirty-nine in March 22, 2011 (see *Portaria* n. 22). The coordination of joint action is the *Coordenadoria de Acompanhamento de Ações do Ministério Público de Contas* (that is, Coordination of Monitoring Actions of the *Ministério Público de Contas*), which initially had fifteen auditors and since 2011 has twenty.

and 34). As an auditor working at the MPC/TCEMG observes, “I notice that the inspections that were conducted in cooperation [with other institutions] are much more effective [than the regular inspections of the TCEMG] ... but they still are very few in number to represent a parameter” (Interview # 27). Finally, whether or not these joint actions will survive, though, is still an open question. Because the MPC still belongs to the TCEMG, its cooperation agreements with other institutions have also to be approved by the president of the latter and, as such, they may change every two years as everything else in the institution. When I was conducting fieldwork in Belo Horizonte in July 2013, the rumor was that the president-elected of the *mineiro* auditing agency did not want to renew the agreements the TCEMG had with the MPMG. “Lack of resources” was the alleged reason, but “excess of results” seemed a more plausible explanation.

While these innovations did come to facilitate joint actions involving the TCEMG, there is still other improvements in its internal organization that could further that. For instance, even today the MPMG is only allowed to access the audit reports after the board of the auditing agency of Minas Gerais has itself reviewed them in order to decide whether or not to impose administrative sanctions if irregularities are found. Even if the TCEMG has been speeding up these decisions, if we recall the case of Rio Grande do Sul, allowing the prosecution *immediate* access these records was a critical step to ensure that *prescrição* did not occur. Similarly, even if made available as soon as ready to the prosecutors, these reports will be of little help if they are overly formalistic or change drastically every two years, as it has been the case at the TCEMG. Coming up with minimally consensual criteria on what, when and how to perform in loco inspections is essential for the *mineiro* auditors to minimize the discretion of the agency’s president that has been the main characteristic of this decision. The parallel with Rio Grande do Sul once again illuminates. The *gaúcho* auditing agency has been acuter in finding mayoral irregularities not only because it

inspects all city halls every year, but also because this institutional policy of yearly auditing all municipalities of the state provides a clear line of work, stabilizing the expectations of everyone involved – including the auditors, the mayors, the prosecutors and even the successive presidents of the TCEMG.²⁷⁸ In fact, the efforts of many auditors and senior auditors of the *mineiro* court of accounts are geared at sharpening a “risk matrix” – considering the population, budget, history of irregularities, time spent without in loco inspections, etc. of all cities of Minas Gerais to point out which are in greater need for a visit of the auditors of the TCEMG – but it still is not used fully in the definition its plan of operations (Interviews # 26, 31, and 33). Whether or not it will be eventually adopted for good to this end, however, is still an open question.

While the mobilization of the MPC/TCEMG seem to be slowly making auditors and prosecutors come closer together in Minas Gerais, it remains unclear whether or not the *desembargadores* of the TJMG will embrace these efforts any time soon. That the modest proposal of judge Duarte de Paula to specialize two panels of the *mineiro* court on crimes of mayors was so firmly rejected by the majority of the members of criminal panels as late as 2011, in fact, is symptomatic of how much resistance still exists inside the judiciary to prioritize these cases or, at very least, provide a more adequate structure to try them.

Somewhat paradoxically, refusal to empower the courts has been coming consistently from the courts themselves in Minas Gerais, reflecting an overall disengagement of its appellate judges on the issue of legal accountability of mayors. Less than a concern with institutional sanctions that could possibly be imposed upon the judiciary as a whole, they actually seem to be avoiding the

²⁷⁸ Clear, explicit criteria on what to audit or even to prosecute have been highlighted as elements that help reducing discretion in the institutions of the system of justice, rendering their decisions more transparent and shielding them from outside interference, thus facilitating legal accountability. As Nelken notices on the “doctrine of compulsory prosecution” in Italy (an institutional policy of the Italian prosecutors that required them to take all cases that arrived to them to the courts), it has “prevented the government from raising considerations of public interest even when the investigations came to involve leading government figures and the Minister of Justice himself” (1996, 101).

exposure these cases yield, which remove them from the much more reserved environment in which they regularly perform their jobs adjudicating appeals in regular criminal cases. As one prosecutor of the GECCPAPM commented,

“The *desembargadores* have no interest in these sorts of cases, they avoid them as much as they can ...it is something very political to take a case against a mayor – and I am not speaking of convicting the mayors, only accepting the cases we bring against them. It is very uncomfortable to them ... because they often have to require additional funding [‘*verba suplementar*’] for the state assembly ... and then some look like are asking for forgiveness when they take a case ... they do not like trying the mayors. This is a reality, especially because it takes a lot of work. They want to be *desembargadores*, work only as reviewers [‘*pareceristas*’], take the entire case ready, and here [on crimes of mayors], they need to build the entire case from scratch, and perform the *instrução* of the cases, even if it is actually made via *carta de ordem* ... what is really lacking of most *desembaradores* is willingness to convict ... when they feel the case is going to be too polemic, they dismiss it just saying that the mayor did not have intent [‘*dolo*’] to do what he actually did ... so, each *desembargador* comes up with his own criteria on which cases to take or not, or on how to apply this or that provision of the law” (Interview # 24).

Risk-averse and protected by the relative anonymity that their fragmented arrangement on the trial of criminal cases of mayors provides – with thirty-five judges divided in seven panels – the posture of the *mineiro* judges resembles that of their Chilean counterparts. As Couso and Hilbink explain, the tradition among the latter “has been one of detachment from the public realm ... which led the judiciary to seek out a reasonable degree of autonomy by confining its work to so-called normal judicial business, that is, the regular application of the legal codes to common civil and criminal cases” (2010, 99). In fact, the disengagement of the *mineiro* judges on the topic and the fragmented organizational framework of the TJMG are one and the same, both being fueled and fueling an overall distance of the judiciary of Minas Gerais from such cases.²⁷⁹

²⁷⁹ As Cohen observes, large courts are prone to produce “a feeling of disengagement” among judges (2002, 162). One of Cohen’s interviewees explains: “The court is big enough that if you are not careful, you can think ‘Well, that is not my problem. It is not my case. It is not an area that I have a case in, so I will just keep my head down and do my work, and the hell with it’ ... The nature of the job is that you get cloistered ... One of the problems you have – and this is part of the disengagement – is any court of any size can have a maverick on it. And any court of any size can have personality clashes. But in a large court a maverick is very difficult to ride herd on, and that is where the disengagement comes in” (2002, 162-163).

At the same time, that the proposal to specialize panels at the TJMG came, in the last event, from inside the *mineiro* court of appeals and not from state representatives as before is symptomatic that the opinions on the topic may be slowly changing in the judicial circles. Also as in Chile, the incremental, almost unperceptive transformation that has been taking place at the TJMG follow the process of renovation of court members, so that a new generation of judges – who entered in their respective judicial careers already during the current democratic regime of Brazil, thereby being thereby embedded by the legal values of this period – has been slowly growing in the courts of Minas Gerais. Evidence of that is the fact that most convictions at the TJMG until today took place in the adjudication of appeals filed by *former* mayors who had first been convicted by *district* judges. In effect, as these younger, more assertive district judges are slowly ascending to the TJMG and replacing older, more conservative *desembargadores*, they are gradually making the appellate court as a whole less disinclined to the concerns of the prosecutors on the criminal cases of mayors. While this has not yet resulted in significant changes in the organization of the court structure, the perception is that judicial attitudes will eventually be lead to them.²⁸⁰ The same prosecutor that criticized the *desembaragores* earlier, in fact, acknowledges this fact when he comments on how quickly the cases are tried by the different panels of the TJMG,

“This [quick trial of the cases] happens only in the new panels... that is, in panels composed by new *desembargadores*, some of whom ascended to the bench only very recently. So I attribute this different speed of the trial of the cases to this ... a lot has to do with the different periods in which the *desembargadores* were appointed ... the ones that are just arriving to the court [of appeals] from trial positions, the ones that have just been promoted, they have not yet taken the vices of the system ...so it is getting better, there is renovation ... even in the most conservative panels, some renewal is taking place” (Interview # 24).

²⁸⁰ A relatively minor novelty in the internal organization of the TJMG was approved in the new bylaw of the TJMG, which established an additional panel in the court (composed by the most senior members of the other panels) that will attempt to make uniform positions among all panels on specific topics (Interview # 37). Whether or not this will help on the specific issue of crimes of mayors is still an open question, but it surely could be used to put to rest the issue on the investigative power of the prosecution office.

CHAPTER 6. MOBILIZATION AND COUNTER-MOBILIZATION IN BAHIA

6.1. Introduction: Arriving in Salvador

When arriving in Salvador – the capital and most populous city of the state of Bahia, with close to three million people – one cannot help but notice the constant presence of names linked to the Magalhães family in its streets, public buildings, and monuments. Travelling by airplane, one arrives at the Luís Eduardo Magalhães International Airport. In order to go downtown, he or she then takes the long *Paralela* Avenue, as the *Luís Viana* Avenue is popularly called, which pays tribute to a well-known political figure of the state who, among other things, was the governor of Bahia from 1896 to 1900.²⁸¹ The avenue was built when his son, Luís Viana Filho, had also become the governor of the state, a position he held from 1967 to 1971 largely due to his support to the Brazilian military regime that started in 1964. Among other things, Luís Viana Filho was also responsible for appointing as the mayor of Salvador Bahia's soon-to-be most famous and controversial political leader, Antônio Carlos Magalhães.

Known by his acronym ACM, Magalhães had been a state and federal representative since the mid-1950s and became Bahia's governor during the heydays of the Brazil's military regime, from 1971 to 1975 and, a second time, from 1979 to 1983. ACM's influence did not diminish as the regime that helped him rise started to fall apart. For five years since 1985, as Brazil was returning to democracy, he was appointed Minister of Communications, a position he held until

²⁸¹ The trajectories of Luís Viana and Luís Viana Filho highlight clearly the persistence of “family politics” in Bahia. Not only the former was a state governor, representative, and senator, but so was the latter, who also held positions as appellate judge and public prosecutor between the long period between the 1870s and 1920. The son of Luís Viana Filho, Luis Viana Neto, finally, was also state and federal representative, as well as senator and vice-governor of Bahia, from 1979 to 1983.

1990, when he became for a third time governor of his home state, now democratically elected. Since reelection was not allowed then for positions at the executive branch, he left office in 1994 and ran for the Brazilian Senate, being easily elected and becoming its president from 1997 until 2001, when he resigned to avoid losing his political rights after an investigation found he had violated confidential voting records of Congress.²⁸² In the next year, he showed his strength by winning the senatorial race in his home state again by an ample margin, ascending to the Brazilian Senate in 2003 and there remaining until his death in 2007.

With this long and successful political career, no wonder the name of ACM's family is inscribed all over Salvador. Going downtown via the *Paralela* Avenue, one notices the various entrances to the *Centro Administrativo da Bahia* (CAB, Administrative Center of Bahia), where practically all state governmental paraphernalia is located. Built during ACM's first term as state governor in the 1970s, the CAB also includes the building of the state legislative assembly, called Palace *Luís Eduardo Magalhães*, which bears the same name of the city's airport and pays tribute to a son of ACM's who died of a sudden heart attack in 1998 at the young age of forty-three while he was a rising political star, having held elected positions since 1979 and been president of Brazil's Chamber of Deputies from 1995 to 1997. As one keeps on going along the many entrances of the administrative center, in fact, he or she inevitably passes in front of the Luís Eduardo Magalhães Memorial, in which a statue of the deceased representative is visible. A few kilometers ahead, as the *Paralela* Avenue crosses the Luís Eduardo Magalhães Avenue, one has to choose. Right after it, the Antônio Carlos Magalhães Avenue takes one closer to downtown. However, if one prefers

²⁸² This followed a scandal in the Brazilian Senate in which ACM would have had illegal access to how each of the senators would have voted on a closed doors session to decide about the future of Luís Estevão, one senator who was with his term in office at peril because a company he owned colluded with judge Nicolau dos Santos Neto to embezzle the equivalent of over one hundred million dollars in the construction of a regional labor court (*Tribunal Regional do Trabalho*, or TRT) in the city of São Paulo. Because the vote on whether or not to remove Senator Luís Estevão from office was secret and ACM would have violated this secrecy as president of the senate, he would be subject to the same vote by his peers, but avoided being removed from office by resigning before that could occur.

to take the beautiful shoreline of Salvador on the way to the city's downtown, the route passes by the Professor Magalhães Neto Avenue, which pays homage to Francisco Peixoto de Magalhães Neto, ACM's father, who was also a federal representative. As one finally arrives to downtown Salvador, he or she realizes that the city hall is now headed by Antônio Carlos Magalhães Neto, the grandson of the former state governor. Having lived in Chicago for the past five years, when I arrived in Salvador I could not help but think of the Center, Library, College, Park, and Plaza all bearing the name of Richard J. Daley.

If political pluralism matters for legal accountability, the state of Bahia might not provide a very fertile ground for it. Suffice to say that the different parties to which ACM belonged to along his political career remained almost uninterruptedly in control of the executive branch of the state of Bahia from the year of Brazil's military coup, 1964, until 2006.²⁸³ With this centralized political dynamic, not surprisingly, the few studies on the courts of the state have portrayed them largely as non-autonomous ones, in spite of the many guarantees they formally enjoy under the national legislation (Sanches Filho 2004, Brinks 2008). Still, the court of appeals of Bahia was the second one to establish a specialized judicial panel on crimes of mayors in 1996, following the leading example of Rio Grande do Sul. That is, against all odds the *desembargadores* of Bahia did what surely is a bold move toward the legal accountability of heads of city halls. At the same time, even if this initiative gradually led to the mobilization of prosecutors and auditors, the results that followed fell short when compared to those of Minas Gerais and Rio Grande do Sul. That was largely so because this increased mobilization of legal actors took place in an extremely hostile environment, where the elected branches of the state government hindered the efforts of Bahia's

²⁸³ As I will detail in the next section, this period was not one of perfect continuity of ACM's group in power because from 1987 to 1991, the centrist group spearheaded by Waldir Pires (of the PMDB) was able to gain the gubernatorial elections, only to lose it again in the next one to ACM's group.

legal actors via a series of measures that ultimately prevented judicial responses to mayoral corruption from being effective in the state.

In order to tell the story of the legal accountability of mayors in Bahia, this chapter is organized as follows. In the next section, I first detail the state's political environment in the late 1980s and 1990s, and then explain the initiative of creating a specialized panel at the *Tribunal de Justiça do Estado da Bahia* (TJBA, or court of appeals of the state of Bahia). In the next section, I describe the impasses and initial operation of the specialized panel, detailing the several responses of the political elites to such initiative after 1996 which contributed directly to the poor record of mayoral convictions in Bahia and ultimately led to the abolishment of the panel in 2006-2007. In the last section, I outline the recent state of affairs of the legal accountability of mayors in Bahia, which has fragmented the efforts of most actors, particularly the courts, in spite of the increased pluralism of the state's politics. Seen through the lenses of the ideal-types proposed here, thus, the state of Bahia is the one that experienced the most changes of the three cases examined in this study, moving from a scenario of *constrained isolation* in the late 1980s and mid-1990s to *constrained coordination* until the late 2000s and to *fragmented autonomy* currently. How such shifts occurred and the forces behind them are detailed below.

6.2. Despite the Odds: An Unlikely Place for Court Specialization

My description of ACM's leadership in the previous section should not obscure the fact that his power and influence did not emanate solely from his personal charisma. Much more crucial than that was the so-called *carlista* political machine that he started to build during his two terms as governor of Bahia under the country's authoritarian period and which became the dominant

political force in the state as Brazil returned to democracy in the mid-1980s. “Thanks to federal support in the form of major development projects and state patronage, ACM’s group achieved the defeat of the state’s old political foxes and dominated the political scene,” explains Borges (2008, 242). As direct gubernatorial elections were reintroduced in 1982, hence, ACM’s political machine was already well established, initially at the *Partido Democrático Social* (PDS, Social Democratic Party) and after 1985 at the party that originated from a main dissident faction of the former, the *Partido da Frente Liberal* (PFL, or Party of the Liberal Front).²⁸⁴ Thus, apart from the short 1986-1990 period, “in which the centrist opposition led by Waldir Pires of the *Partido do Movimento Democrático Brasileiro* (PMDB) took the governorship,” clarifies Montero, “the *carlista* network dominated Bahia by electing governors between 1982 and 2002” (2010, 136).

At the municipal level, ACM’s clientelistic network was able to retain the support of vast contingents of local political elites. From the 1990s to the mid-2000s, for instance, mayors of political parties affiliated to the *carlistas* were in power, on average, in 327 of the 417 city halls of Bahia, or close to eighty percent of them (Borges, Sanches Filho and Rocha 2011, 342). Local patronage and ties to the federal government before and after Brazil’s transition to democracy, though, were not the only tools available for ACM’s group to exert such an overwhelming role for this long period of time in the politics of Bahia.²⁸⁵ The Magalhães family’s dominion, thus, includes the direct ownership of major communication vehicles in the state and even ties to

²⁸⁴ The PDS originated from the ARENA, the official party supporting Brazil’s military regime. Differently than other South American dictatorships of the 1960-70s, though, the Brazilian one did not ban political parties. Instead, it artificially created two: the ARENA, supporting it, and the *Movimento Democrático Brasileiro* (MDB, or Brazilian Democratic Movement), in its opposition but stripped of its more “radical” elements (see Kinzo 1988).

²⁸⁵ ACM’s connections with the federal government during Brazil’s military regime are well documented elsewhere (Dantas Neto 2006). As for his ties to it during the recent period of democracy, suffices to say that ACM held a prominent position in the first civilian government of the country (of President José Sarney, from 1985 to 1990, when he was the Minister of Communications), and was president of the Brazilian Senate from 1997 to 2001, when he was a major supporter of the so-called neoliberal agenda of the Cardoso presidency (1995-2002). Such ties, in effect, were not limited to ACM himself. His main political heir, Luís Eduardo Magalhães, ACM’s son who died in 1998, was president of the Brazilian Chamber of Deputies from 1995 to 1997, in which he was also a supporter of the Cardoso administration.

major construction companies.²⁸⁶ Operating with all such tools in a much poorer, less developed state than the others examined here, no wonder Bahia's political spectrum for the last decades has been described as very narrow and strongly skewed to the right, at least until recently (Souza 1997, 2007, Power 2000, Ames 2001, Borges 2008, 2010).

During most of the time covered in this study, hence, politics in Bahia resembled what Carothers called "dominant-power politics," a less-than-perfect form of democracy in which "one political grouping – whether it is a movement, a party, an extended family or a single leader – dominates the political system in such a way that there appears to be little prospect for alternation of power in the foreseeable future" (2002, 11-12). As part of the process of blurring the line between this ruling group and the state apparatus that characterizes this dynamic,²⁸⁷ he explains, the judiciary "is typically cowed" (Carothers 2002, 12).

Consistent with Carothers' narrative, the few studies specifically on the *baiano* system of justice have all stressed how the dominant political system of Bahia has produced deleterious effects for the autonomy of its legal actors and institutions. In his analysis of judicial responses to police killings in Salvador, for instance, Brinks commented that the courts of the state "are subject to political interference by ACM and his faction," which would have produced a "pliable judicial corps" (2008, 238). Similarly, Sanches Filho highlights that the *baiano* judiciary "is known for

²⁸⁶ Another of ACM's sons, Antônio Carlos Magalhães Júnior, in fact, is currently the chief executive officer of *Rede Bahia*, a conglomerate that owns the most popular television and radio channels of Bahia, the newspaper with the highest circulation in the state, and a developer of luxurious high-rise buildings (the *Santa Helena Incorporações e Construções S.A.*). *Rede Bahia* was established in 1975 and members of the Magalhães family have been its major shareholders ever since. Finally, ACM's son-in-law is the major shareholder of the *Grupo OAS S.A.*, which was established in 1976 in Salvador and is currently one of the largest construction companies of Brazil (Gomes 2001).

²⁸⁷ As Carothers explains, a key problem of "dominant-power politics" is the "blurring of the line between the state and ruling party (or ruling political forces)" so that the "state's main assets – that is to say, the state as a source of money, jobs, public information (via state media), and police power – are gradually put in the direct service of the ruling party" (Carothers 2002, 12). Carothers' explanation could not be closer to the description of one scholar about the politics in Bahia, according to whom "relying on the centralized and discretionary allocation of bureaucratic jobs and financial resources, ACM and his lieutenants co-opted centre forces and extended vertical, hierarchical controls over key institutions and processes, reducing the potential for meaningful opposition" (Carvalho 2008, 242).

its nepotism, for the lack of reliability of its selection processes and, primarily, for the political interference of the political group led by ACM” (2004, 82).²⁸⁸ Not surprisingly, as the Brazilian Congress started discussing policies to improve the transparency and accountability of the courts of the country in the late 1990s – the so-called “external control” of the judiciary – ACM, then president of the Brazilian Senate, said loud and clear: “In Bahia there is external control [of the courts]. Me” (Gois 1998, 30).²⁸⁹

The picture would not differ much for other institutions of the system of justice, particularly the prosecutors’ office. Specifically on police killings, Brinks notices that “the occasional prosecutor who is tempted to take on one of these cases will find a chilly reception in the courts, in addition to jeopardizing his or her career” (2008, 236). The narrative is relatively similar for the selection of the prosecutor-general of the *Ministério Público do Estado da Bahia* (MPBA, or Prosecutors’ Office of the State of Bahia). While only a few explicit clashes between the *carlista* machine and the prosecutors of the state took place since redemocratization, the state government kept for years an honest but extremely passive prosecutor-general. As a result, in spite of the gradually increasing activism of some members of the MPBA, his lack of initiative helped generate an overly docile prosecutorial corps in the realm of corruption cases throughout almost the entirety of the 1990s (see Sanches Filho 2004, 91-101).

²⁸⁸ True, problems of the lack of autonomy of the courts in Bahia have surely not started with ACM, dating far back as the establishment of the judiciary in the Portuguese colony of what later came to be known as Brazil. Bahia’s courts, in fact, are Brazil’s first (see Schwartz 1973).

²⁸⁹ The translation does not do justice to the sentence, which I reproduce here also in Portuguese: “*Lá na Bahia tem controle externo [do Judiciário]. Eu*” (Góis 1998, 30). For other examples of how close the relationship between the *carlista* machine and the state courts in Bahia is, see Bergamo (1999). In time, ACM was famous not only for trying to keep the judiciary of his state in line with his preferences. One of the most famous events of his presidency at the Brazilian Senate was the Parliamentary Investigative Committee on the Judiciary (nicknamed “*CPI do Judiciário*”), which broke out in February 1999 at his request to investigate allegations of corruption in the Brazilian courts, but which was amply criticized by members of the legal community as an attempt to limit their autonomy. Many judges I interviewed, in effect, not only from Bahia, but also from Minas Gerais and Rio Grande do Sul recalled this event and portrayed it in rather negative tones (e.g., Interviews # 11, 23, 63). Not surprisingly, the senator responsible for elaborating the final report of the investigative committee was Paulo Souto, former governor of Bahia and himself a member of the *carlista* political machine (see Speck 2002).

Finally, there is only scant literature on Bahia's auditing agencies for this period. The available data, however, tends to confirm the overall diagnosis of poor performance that plagued the courts and prosecutors' office of the state on the issue of mayoral irregularities during the late 1980s and most 1990s (e.g., Moraes 2006, Melo, Pereira and Figueiredo 2009). Importantly, Bahia is one of the few states of Brazil to have two courts of accounts instead of a single one.²⁹⁰ As such, while the *Tribunal de Contas do Estado da Bahia* (TCEBA, or Court of Accounts of the State of Bahia) is in charge of reviewing the expenses of state-level institutions, the *Tribunal de Contas dos Municípios do Estado da Bahia* (TCMBA, or Court of Accounts of the Municipalities of the State of Bahia) is responsible for overseeing exclusively those of local-level ones.

Still, while the latter was established as early as 1915 and performs a relatively large number of in loco audits, the former was established only in 1970 and as an institution subordinated to the executive branch, a status it retained until 1985.²⁹¹ Not surprisingly, it remained an extremely timid agency in the oversight of Bahia's municipalities for years. A comparative study on the performance of Brazil's auditing agencies with data of 2001, for instance, included the TCMBA in the group of the "typical cases of operational inefficiency," with "very low productivity both in relation to the number of audits conducted per administrative entity within its jurisdiction and in relation to the number of audits per employee (Moraes 2006, 71). As it turns out, only very recently this inactive profile has started to change toward a more assertive one, precisely as the *carlista* political machine started to lose its grip on power in Bahia (e.g., Interviews # 51, 57, and 59).

²⁹⁰ The other Brazilian states that have more than one auditing agency are Pará, Ceará, and Goiás. Finally, the cities of São Paulo and Rio de Janeiro, which are the wealthiest and most populous of the country, have their own local courts of accounts. These, however, are municipal-level institutions and not state-level ones, as the TCAs of Pará, Ceará, Goiás and Bahia (see Speck 2008).

²⁹¹ From 1970 to 1985, hence, the TCMBA was called *Conselho de Contas dos Municípios* (or Council of Accounts of the Municipalities).

As a result, no wonder Brinks concluded overwhelmingly that “all actors in the legal system [of Bahia], to a greater or lesser degree” are “wide open to exogenous pressures” (2008, 239). From the enactment of the 1988 Constitution to the mid-1990s, consequently, the legal accountability of mayors in Bahia illustrates what I have earlier termed *constrained isolation*. In fact, there are practically no instances in which legal actors have attempted to bring the heads of city halls to justice in Bahia during this period. With a passive prosecutors’ office and an inefficient auditing agency, the very few cases that were brought to the judiciary invariably stopped in the slow-moving procedures of the Full Court of the *Tribunal de Justiça do Estado da Bahia* (TJBA, or state court of appeals of Bahia), where the mayors would have been tried had indictments been brought during this period. As a result, in the first years after enactment of the 1988 Constitution, the legal accountability of mayors was mostly a non-issue for most judges and prosecutors in Bahia, who remained dormant largely due to the hostile political environment of the state to such initiatives (e.g., Interviews # 46, 47, 48, 62, and 63).

Despite these odds, in 1996 a few appellate judges did mobilize and even managed to establish a specialized panel of crimes of mayors at the TJBA. Inspired by the experience of Rio Grande do Sul, the proposal was initially brought to the *baiano* court of appeals by state representatives – of both the government and the opposition – who had visited the 4CC of the TJRS and imagined the idea could be replicated in their home state (cf. TJBA 1998, Vasconcelos 2007, Interviews # 47, 62 and 72).²⁹² Once presented to the president of the TJBA, *desembargador* Aloísio Batista, he was supportive of the proposal and shortly after submitted it to a vote by the Full Court, which approved and submitted it as a bill, sponsored directly by the state’s judiciary, to the *Assembleia Legislativa do Estado da Bahia* (ALBA, or State Legislative Assembly of Bahia) in June 26,

²⁹² The state representatives of Bahia who visited the 4CC of the TJRS were Nelson Pelegrino (of the oppositionist PT), José Santana and Isaac Marambaia (both of the *carlista* PFL) (see Vasconcelos 2007).

1996. As in Rio Grande do Sul, the proposal involved the establishment of an entirely new panel instead of specialization into one of the existing panels. As such, it minimized the potential for a redistributive conflict inside the TJBA, but required legislative appropriations for new positions of appellate judges that were needed for the new panel to come into existence.

Despite the source of inspiration, the specialized panel that came to be proposed by the *baiano* appellate judges was probably more ambitious than its *gaúcho* counterpart. While the 4CC of the TJRS was conceived as a regular criminal panel that would try the crimes of mayors alongside regular criminal appeals, the specialized panel idealized by the *desembargadores* of the TJBA would have mixed jurisdiction over both criminal and non-criminal disputes. That is, it would, on the one hand, try the criminal cases of mayors and, on the other, adjudicate appeals on tax and administrative law involving decisions of state and local governments. In so doing, the main idea was to establish a new panel that would prioritize cases in which the discussion revolved around topics sensitive to the public interest and that, consequently, enjoyed significant public attention. *Desembargador* Jafeth Euestário da Silva, one of the first members of the new specialized panel, who worked in it from 1996 to 2003, explains its conception as follows,

“The initiative [to establish the specialized panel] was of the *Tribunal [de Justiça]* itself because there was a constant complaint not only of the state of Bahia and of its city halls, but also of the community in general, that these cases did not have a faster processing, that they did not enjoy priority and, consequently, it was understood that a specialized panel would be the ideal arrangement to try those cases ... so, it was established precisely to speed up the processing of cases that involved the responsibility of mayors, of crimes committed by the mayors, not only of Salvador, but of all other municipalities of Bahia” (Interview # 72).

Similarly, due to the salience of the topics discussed in the new panel and the perceived need to present its decisions as those of the court as a whole, supporting its activities, its president would be one of the vice-presidents of the TJBA. The latter, though, would only preside over the panel

while the other three appellate judges would carry out the work (i.e., examine, review, deliberate and vote on the cases). The panel's president, in other words, would not decide any case unless some of the other members of the panel were absent. He would, in other words, just "lend" the authority of his high position at the TJBA to the new panel, making its decisions more acceptable to everyone given the sensitiveness of the cases (see Interviews # 47, 62 and 72). In effect, the name ultimately received by the new panel highlights the mixed status (combining jurisdiction over criminal and non-criminal cases) and the relevant mission it aspired to, being simply called *Câmara Especializada* (CESP, or Specialized Panel).

Unlike when the appellate judges of Rio Grande do Sul asked their representatives for legislative appropriations to establish their specialized panel, the appellate judges of Bahia did not omit that the proposed new panel would have jurisdiction over criminal cases of mayors nor that it would be in charge of other cases of great relevance. On the contrary, because the idea had first been raised by states representatives, the proposal sent by the TJBA to the ALBA was quite frank about the nature of the cases the new panel would try in the first two pages of the document that asked for legislative appropriations for the three new positions of *desembargadores* needed to create the new panel (ALBA 1996, 129-136). The bill, however, did not refer exclusively to the new specialized panel. It also proposed new positions for district judges and the reorganization of some lower courts which included, for instance, the establishment of judgeships specialized on consumer law in the city of Salvador. Still, there was a clear priority given by TJBA to the new specialized panel on crimes of mayors, which was the first item cited in both the bill and the explanatory statement submitted by the appellate judges to the state representatives.

In effect, the proposal faced little to no opposition at ALBA and was favorably reviewed by state representative Paulo Magalhães (ACM's nephew, of the *carlista* PFL), who also endorsed it. As

a result, the bill was approved by an ample margin of votes in July 10, 1996 at ALBA, just two weeks after it had been proposed. It was signed into the state law n. 6.982 by Governor Paulo Souto, also of the *carlista* PFL, on July 25, 1996, meaning that the proposal that established the CESP in Bahia's court of appeals was reviewed and approved by the elected branches even faster than its *gaúcho* counterpart had been in 1992. In effect, the new specialized panel of the TJBA took less than a month from proposition to enactment at ALBA and was approved exactly as proposed by the *desembargadores* of Bahia. Unlike Rio Grande do Sul, however, the jurisdiction of the new panel was directly determined in the law resulting from the proposal of the TJBA, which states that the new panel is responsible for trying crimes of mayors and other appeals on tax and administrative law.

The ample margin of votes and the quick approval of the proposal stress how little controversy the specialized panel sparked among the *baiano* political elites. This is startling given the record of the panel that inspired the one in Bahia – the 4CC in Rio Grande do Sul, which had already convicted over sixty mayors and former mayors – and the strong grip on power of the *carlista* political machine, which comprised precisely hundreds of mayors throughout the city halls of Bahia at that moment. In a way, it looks like a paradox. That is, why would a ruling elite help put in place an institution that could potentially harm its members? Why would a measure capable of negatively affecting the group in power be established with the aid precisely of that group? The question is not new in the judicial politics literature, but nonetheless demands an answer.

My answer to this question specifically for this case is that the support of the *carlista* machine to the establishment of the specialized panel at the TJBA was largely a symbolic gesture toward the *baiano* courts precisely because ACM and his group did not perceive this measure as a threat to their rule. On the one hand, much of the rhetoric of the *carlistas* to support the bill proposed by

the TJBA was that it would “introduce necessary changes to the modernization of the judicial services” and therefore was “relevant to the regular functioning of the *baiano* judicial branch,” concluded state representative Paulo Magalhães in his final favorable report (ALBA 1996, 239). Even the specialized panel to try crimes of mayors was seen as part of this effort. In fact, it was precisely *the* example used by the representative to illustrate the modernizing measures.²⁹³

On the other hand, the specialized panel was not seen as a threat by the *carlista* representatives, given their lack of manifested opposition to the initiative. In fact, forty-seven amendments were proposed to this bill, but none of them aimed at limiting or constraining the powers of the new specialized panel of the TJBA. Actually, practically all proposed amendments did not even refer to the specialized panel, but to the organization of the judicial districts of Bahia that would result from this legislation (i.e., which ones would be created, which ones would cease to exist, which ones would receive more or less judges, and so on). The only amendment that actually concerned the specialized panel was that of n. 21, proposed by state representative Nelson Pellegrino, of the leftist PT, which opposed ACM’s group. He was one of the representatives who had visited the *gaúcho* court and proposed it to the appellate judges of his home state. His amendment proposed establishing a staff of auditors at the new panel to assist the *desembargadores* in their jobs at the new panel (see ALBA 1996, 192). The amendment was not included in the final version of the law, however, being rejected by the final reviewer of the bill, the *carlista* Paulo Magalhães.

This single amendment proposed on the workings of the new specialized panel, still, is a key piece of information to understand what was at stake in this reform, for it highlights, on the one hand, that opponents of the *carlista* machine were willing to improve the performance of the new

²⁹³ In effect, the entire sentence of Paulo Magalhães’s favorable report reads as follows: “The proposal introduces necessary changes to the modernization of the judicial services, *of which deserve attention the creation of an additional panel in the court [of appeals] with jurisdiction to try crimes of municipal mayors*” (ALBA 1996, 239, emphasis added).

panel rather than to constrain it and, on the other hand, that the *carlistas* were perhaps not willing to go that far. Furthermore, this amendment helps dismiss an important alternative explanation as to why the CESP was established in Bahia: that the specialized panel could have been conceived by ACM's group to persecute opponents to its rule. If the panel was indeed pro-ACM, however, neither the amendment to improve its performance would have been introduced by opponents of *carlismo* nor the rejection of such amendment would have been made by a *carlista*. Along the same lines, the panel took a while to start convicting mayors and was extremely timid on this issue until as late as 2004, as I will detail in the upcoming section. If ACM's group was aiming at using the courts to its benefit, they would have not waited eight years to do so. Finally, as the panel finally started to become more aggressive on the criminal cases of mayors, the majority of the accused were precisely mayors of political parties that firmly supported *carlismo* in Bahia, and were therefore not its opponents (Sanches Filho 2004, 133).²⁹⁴

Despite the decisive support of ACM's machine to the proposal of the state judiciary to establish a specialized panel, thus, this court reform cannot be seen as aligned to the partisan goals of the *carlistas*. In order to understand how the specialized panel came into being – and particularly the overall lack of opposition of the *carlista* machine to it – it is crucial to understand how it came to perform once established. As I will explain in the following section, the CESP's performance for most of its years of operation was quite different from the panel that first inspired its creation, the

²⁹⁴ Similarly, it could be argued that ACM's group was in fear of losing power and that, by helping establish the new specialized panel, it was attempting to create a veto point for the future state governors in the courts, as the so-called insurance policy (Ginsburg 2003) and hegemonic-preservation (Hirschl 2008) theses predict. This was not the case. In 1996, when the panel was established, *carlismo* was at its highest in Bahia. There was no fear of losing elections in the near future. Accordingly, ACM's party PFL had just been reelected to the state government in 1994 and it had a solid majority at ALBA. Not surprisingly, the PFL would win the next two elections (in 1998 and 2002) by ample margins of vote (sixty-nine percent of the votes in 1998 and fifty-three percent of the votes in 2002, respectively). Second, the panel did not last forever. Instead, it was abolished in December 20, 2006, or twelve days before the *carlistas* had to give up the control of the state government, after decades in it, to a governor of the leftist PT, which had received a majority of votes in the elections of October 2006 (see Borges 2010, Montero 2010).

4CC in Rio Grande do Sul. That is, while the latter became rigorous with the mayors almost as soon as it was established, the former paled in comparison and only started to take concrete actions against mayoral irregularities almost eight years after it had been put in place. That was particularly the case due to the several maneuvers employed by the state's political elites that prevented any meaningful results to come out from the work of the panel for a long period of time. This was achieved by compromising the autonomy of other institutions of the system of justice. Particularly, the lack of activity of the investigative authorities that resulted from such political interferences ultimately prevented any prosecutions from being successful during this period in Bahia. I detail these stories in the pages below.

6.3. Against the Grain: Meeting the Limits of *Realpolitik*

While the establishment of the CESP in Bahia during the mid-1990s may be seen as surprising in light of the centralized political system of the state then, the fact that the proposal was adopted by the judiciary as soon as raised by state representatives highlights how much more willing to take a risk the *desembargadores* of Bahia were, especially when compared to their counterparts in Minas Gerais. In other words, mobilized at very least to take a symbolic gesture towards the legal accountability of mayors some members of the TJBA were. In effect, only two days after the state governor signed the bill into law creating the specialized panel, the bulletin of the state judiciary cheered with the news, including a cover story where it reads that the new legislation established “a mini-reform of the Judicial Branch” and authorized the TJBA to “increase the number of *desembargadores* from 27 to 30 and to create, within its structure, a new panel with jurisdiction to process and try the crimes of municipal mayors” (TJBA 1996, 1).

Despite the enthusiasm, a period of uncertainty followed the establishment of the CESP. While this is to some degree expected of any entirely new institution – as it had been for the case for the 4CC in Rio Grande do Sul too – the fact that the first actual decision on the merits of a criminal case of mayor only took place in 2004 suggests that this hesitation emanated from sources other than the dynamics of the new panel alone. As it turns out, there were two main groups of causes that prevented the legal accountability of mayors from taking place for such a prolonged period of time in Bahia. The first one concerns the internal organization of the specialized panel, which ended up *not* prioritizing the criminal cases of mayors and focused almost all its attention on the non-criminal appeals it also adjudicated. The second and much more important cause focuses on how other institutions of the judicial system were employed by the *carlista* machine to frustrate the investigation of mayoral irregularities and thereby to avoid the legal accountability stages that would follow it – prosecution and adjudication – from taking place. Because, as in Minas Gerais, there was doubt whether or not the prosecutors could investigate the mayors, the *carlistas* managed to make the prosecutors submit the cases to the state police so that it could investigate the mayors before any court proceedings could follow. By supporting for years an overly passive prosecutor-general at the MPBA and exerting firm control over the police, hence, ACM's group ensured that hundreds of potential cases that could have been brought to court were sent over the years from the prosecutors' office to the state police, only never to return from there.

As a result, since all investigations on crimes of mayors were all invariably pending at the police, only a few indictments had actually been brought to CESP until 2003. In that year, though, the prosecutors were finally able to replace the head of their institution and decided to conduct the investigation of those cases themselves. Coupled with the renewal of a few members of CESP, it finally started becoming more assertive to hold mayors legally accountable, removing dozens of

them from office at the beginning of the cases. Still, before decisions on the merits could take place, a campaign orchestrated by the *carlistas* led to the dismantling of the specialized panel by the end of 2006, with the cases of mayors then being transferred to the TJBA's Full Court.

To each wave of mobilization of the legal actors of Bahia to hold mayors legally accountable for their acts, thus, the political elites of the state fought back, largely frustrating the efforts of the latter. The resulting dynamics of increased mobilization of legal actors following the appellate judges' initiative to create a specialized panel at the TJBA, on the one hand, and the dissuasive tactics employed by the powerful *carlista* machine, on the other, ultimately led to what I earlier called *constrained coordination*. This section details this long and somewhat convoluted story, which I have divided into the two subsections below for ease of presentation. The first part tells the story of how the newly established specialized panel of the TJBA was largely emptied out of its devised role due to the strategic maneuvering of other accountability institutions by Bahia's political elites, a dynamic that took place roughly from 1997 to 2003. The second subsection shows how the mobilization of prosecutors – and the greater integration of their work with those of auditors – finally set CESP in motion and, as a result, started to produce the long yearned legal accountability results. This process, however, was short lived because it put practically all legal actors in collision route with the *carlista* machine, largely to the detriment of the efforts of the latter. This is the dynamic that took place from 2003 until the beginning of 2007.

1997-2003: Emptying the Câmara Especializada out of Criminal Cases of Mayors

The fact that the members of the CESP took over eight months to meet for the first time should have served as a warning to the *desembargadores* that the ease with which they set up the new panel would not be the same to actually try the mayors. Formally established by state law in July

25, 1996, the specialized panel of the TJBA held its first session only in April 10, 1997, and even when it finally occurred it was purely symbolic. The clerk of one of the members of the panel recalls that “the *desembargadores* met only to formalize the inauguration of the new panel. No cases were decided that day ... they met only for a couple of minutes in a small, short ceremony to declare the panel open, and that was it” (Interview # 62). The variety of topics and the high number of cases instantaneously assigned to the new panel took its members by surprise, taking a while for them to adjust to both the volume and the intricacies of their new work. As appellate judge Jafeth Eustáquio da Silva recalls,

“It was a panel that began overwhelmed right from the start because of those tax and administrative cases, alongside the ones involving mayors, that were in the other panels [of the TJBA] and which were immediately transferred to *Câmara Especializada*. That immediately overwhelmed us with over one thousand cases per appellate judge, all of high complexity” (Interview # 72; see also Interviews # 62 and 63).

Once formally inaugurated, it took almost another month for the panel to begin deciding cases, with its first session of adjudication taking place in May 6, 1997. Meeting regularly since then, however, CESP came to decide only a handful of criminal cases of mayors over the next years, and none of them on the merits. The few decisions the members of the *Câmara Especializada* of the TJBA made on cases of mayoral wrongdoings, thus, were either to dismiss the indictments brought by the prosecution or to accept and thereby transform them into actual court cases.

Critically, the appeals on tax and administrative law that were also under the panel’s jurisdiction soon took over most attention of CESP’s members due to their sheer numbers. In the inaugural year of the specialized panel, 1997, it made 472 decisions in appeals on tax and administrative law cases and only twenty-three decisions on the acceptance of criminal cases of mayors. That is, less than five percent of CESP’s work consisted of its supposedly main area of specialization. In the next year, the proportion was even lower: the sixteen criminal cases of mayors out of the total

of 647 cases decided by the panel were equivalent to less than three percent of its workload. As of 1999, the rate had decreased again: twelve criminal cases of mayors were decided (still none on the merits) against 658 non-criminal ones, or less than two percent of the total (TJBA n.d.).

A clerk who worked for years with one of one of the members of the specialized panel was clear about the implications of this scenario. “The number of cases that did not involve mayors grew much more than they [the *desembargadores*] initially imagined, and this surprised them ... so, they did not have much time to give attention to the cases of mayors, which were precisely the ones that required more time to be examined and processed” (Interview # 62). Not surprisingly, because the number of non-criminal cases decided by the panel had been much greater than the criminal ones, by 2000 two *desembargadores* of the TJBA proposed to transform the CESP into a regular *civil* panel, so that it would be the fifth of its kind at the *baiano* court of appeals (TJBA 2000). While this was not accepted, the very fact that this proposal existed was symptomatic that the criminal activity of the panel was quite reduced by then.

Yet, while the number of non-criminal cases at the specialized panel was indeed much greater than the ones involving mayors, the latter did exist. A thorough inventory performed at the end of 1999 by the clerk’s office of CESP shown, for instance, that a total of sixty-nine formal criminal cases were in the panel’s docket by then. These cases had resulted both from the acceptance of indictments brought by the prosecutors directly to the specialized panel and from those that had been accepted before 1996 by the Full Court of the TJBA, where the cases of mayors were tried before CESP came into existence.

In addition to being pressed by the voluminous workload of non-criminal cases, CESP was also slow to perform the *instrução* of the cases involving mayors, further delaying their trial. In fact,

while some members of the panel hoped to have started trying the heads of city halls by August of 1997,²⁹⁵ by March of the following year the members of the specialized panel had not tried a single one of those cases and even invited their *gaúcho* colleagues of the 4CC so as to help figure out how to speed up the decision-making of those cases at CESP (TJBA 1998, TJRS 1998). The judges of Rio Grande do Sul suggested to their colleagues in Bahia what had worked for them: the temporary suspension of the specialized panel's jurisdiction over other types of cases besides those of mayors (thereby transforming it into a full-time specialized panel on crimes of mayors, instead of the part-time one it had been thus far) and the *instrução* of the cases via appointed district judges (the so-called *juízes de instrução*) rather than via *cartas de ordem*, as it had been the case until then at CESP. Of these two proposals, only the latter was adopted in a resolution of April 13, 1998 (TJBA 1998a).

Even this measure, however, was short-lived. Having seldom being used by the appellate judges of Bahia because so few indictments arrived at the panel, it was formally abolished a few years later (TJBA 2002, Interviews # 62 and 72).²⁹⁶ As a result, all criminal cases of mayors at CESP ended up moving very slowly towards unlikely final decisions on the merits. Particularly, the *instrução* via *cartas de ordem* proved even more unfruitful in Bahia than in other states due to the difficulties the district judges responsible for them faced to perform their jobs throughout the state. With poorly funded local courthouses, many of them had to rely precisely on the city halls to keep their courts running, especially in small towns. At times, offices at the city halls were used on a daily basis by the district judges to hold sessions because no court buildings actually

²⁹⁵ A bulletin of Bahia's state judiciary dated July 25, 1997 noticed that the "Câmara Especializada with jurisdiction over white collar cases and over those of mayors will probably try the two first cases against mayors in August" (TJBA 1997, 1). The same news also acknowledged that "the majority of the cases against mayors were being organized and adapted to the legal systematic so that they can arrive at a trial" (ibid).

²⁹⁶ Contributed to the abolishment of the use of *juízes de instrução* in Bahia the fact that the clerk's office of CESP was not organized as a *cartório*, but as a typical *secretaria* of an appellate court.

existed in those localities or because the existing ones did not have enough space. This proximity between district judges and mayors, thus, prevented the latter from prioritizing (and, often, from working at all in) the cases involving the former. District judges felt extremely uncomfortable to hear witnesses in cases accusing the mayor of irregularities because they depended upon local authorities to perform their regular jobs, at times even fearing for their safety (e.g., Interviews # 47, 48, 62, and 72). The *instrução* of the criminal cases of mayors in Bahia, hence, either was very poor in quality or took too much time to be concluded, if that eventually occurred. As a result, in an interview with a newspaper two years after CESP had been established, its presiding judge acknowledged that “no mayor was convicted until today because all cases received by the [specialized] panel are still being processed” (Albuquerque 1999a, A5).²⁹⁷

The same inventory of 1999 that indicated the existence of sixty-nine formal criminal cases of mayors at the CESP’s docket also pointed out that twenty-seven other cases had already been dismissed by the specialized panel until then. These were not, however, decisions on the merits, but simply cases that the panel decided not to hear. Critically, the inventory also found out that a total of 118 proceedings against mayors had not yet been turned into formal criminal cases at the specialized panel. These were all notifications of irregularities that were still waiting for the end of their investigations by other agencies. Much more critically, a total of 178 other proceedings were classified by the inventory simply as “*sinistrados*,” as are called case files that disappeared or that were destroyed without explanation before the cases they referred to could be properly tried (TJBA n.d.). That is, three years after the establishment of the specialized panel, incomplete investigations and entirely lost case files amounted to almost three hundred potential criminal cases of mayors that nonetheless had not been realized to their fullest extents.

²⁹⁷ *Desembargador* Jafeth Eustáquio da Silva hence concluded that “given the caseload that was initially assigned to the *Câmara Especializada*, it did not reach its objective, that is, a faster processing of these cases” (# 72).

This vast universe of cases that had been lost or whose investigations had not yet been completed by other agencies suggests, on the one hand, that a great number of proceedings on criminal acts of mayors did exist in Bahia by then. On the other, it suggests that problems in the processing of these cases also existed and were far from few. Particularly, the fact that investigations either disappeared or were never concluded for years implies that the sources of those problems could be located beyond the walls of the judiciary proper. That is, although the internal organization of CESP's work was not conducive to the best performance for the trial of criminal cases of mayors – either due to the high volume of non-criminal appeals it had to adjudicate or due to the poor *instrução* of the cases of mayors – much acuter were the problems plaguing other institutions of the system of justice of Bahia.

Particularly, the MPBA was slow to join the initiative of the courts. Unlike in Rio Grande do Sul, the establishment of a specialized panel to try mayors at the court of appeals of Bahia did not spark an immediate response from the prosecutors of the state to prosecute mayoral irregularities more aggressively. In effect, no specialized division on mayoral crimes was formed at the MPBA until as late as 2003. The movement towards greater inter-institutional coordination that started in 1994 in Rio Grande do Sul, thus, did not take off for many years in Bahia, in spite of the specialized panel of the TJBA. This meant that while CESP had a prosecutor officiating before it, his activities did not have the support of a team of prosecutors to perform the laborious work the criminal cases of mayors demanded. The *procurador de justiça* who officiated before CESP, as a result, confined his job mostly to non-criminal cases, implying that only a few indictments against mayors were actually brought to court for years. From 1996 until the end of 2002, in effect, only forty-three such indictments (or six per year, on average) had been handed up by the prosecutors of Bahia to the specialized panel of the court of appeals (cf. MPBA 2012).

The lack of a team to help in the preparation of those cases also implied that no investigations of mayoral wrongdoings were conducted by the MPBA. Since, as in Minas Gerais, there was doubt as to whether or not the *Ministério Público* was legally entitled to conduct itself investigations of crimes, for years the official policy of the MPBA was unsupportive of such practices. This was especially the position of prosecutor-general Fernando Steiger Tourinho de Sá, who was the head of the prosecutors' office of Bahia almost uninterruptedly from 1994 to 2002. Described as a probe but overly passive prosecutor-general, he was able to remain in office for such a prolonged period of time due to the support he enjoyed both from his peers and from *carlistas*.²⁹⁸

Due to his long tenure as head of the institution, his specific position contrary to the investigate powers of the *Ministério Público* became the MPBA's official policy for years and in practice prevented prosecutors from investigating mayors. As prosecutor Valmiro Santos Macedo, who would later lead the way to establish a specialized investigative unit at the *baiano* prosecutors' office, explains: "the prosecutor-general [referring to Fernando Steiger Tourinho de Sá], with all due respect, did not have the perception that we needed to conduct the investigations and even had his own ties. He preferred turning a deaf ear because of the whole political climate that favored such behavior" (Interview # 46),²⁹⁹ he concludes in a clear reference to the period during which ACM's control over the politics of Bahia was at its highest since the return to democracy.

²⁹⁸ Fernando Steiger Tourinho de Sá was first selected prosecutor-general of the MPBA in 1994 to replace Carlos Alberto Dutra Cintra, who had been the prosecutor-general since 1991 and who had been appointed *desembargador* in 1994. Once selected, Fernando Steiger Tourinho de Sá remained in office until 1997, when Walter Rodrigues da Silva was selected for the position. The latter, however, passed away eight months after taking office. As a result, a new selection was made and Fernando Steiger Tourinho de Sá was, once again, the chosen one. He remained as prosecutor-general until 2002. For a detailed account, see Sanches Filho (2004, 91-101).

²⁹⁹ The translation does not do justice this sentence deserves, so here it is in the original Portuguese: "O procurador-general de justiça, com todo o respeito, não tinha aquela percepção que a gente deveria encaminhar a investigação e também tinha lá as suas vinculações. Ele preferia fazer ouvidos moucos, ouvidos de mercador, até porque tinha toda uma conjuntura política que favorecia esse tipo de comportamento" (#46). Far from the opinion of a single member of the MPBA, this actually reflects the position of most of its members who work in issues pertaining to corruption (see Sanches Filho 2004, 97).

The institutional policy of the MPBA during this long period under prosecutor-general Fernando Steiger Tourinho de Sá, thus, was that all notifications of irregularities involving mayors should be sent to the state police so that the latter would perform the appropriate investigations before any action by the MPBA could be taken. Even most reports sent by the auditing agency followed this policy, given that they commonly demand additional evidence to be gathered before they could be turned into indictments. As prosecutor Valmiro Santos Macedo again explains: “the investigation was conducted by the police. We sent all representations, notifications of crimes, and all other information pertaining to mayors and former mayors to the police because they could investigate ... that is, the *Ministério Público* received the notifications and just forwarded them to the police” (Interview # 46; cf. Interviews # 47, 48, 49). If the state police conducted the investigations and, once finished, sent them to the prosecutors, there would be no problem. Yet,

“... nothing that we ever sent [to the state police] returned to the *Ministério Público*. Absolutely nothing returned because the politicians that would be investigated had a direct relationship with the state government, with state representatives, with everyone ... and, because the State Secretary of Public Safety [who is the head of the Department of Public Safety and chief of the state police] is a figure linked to the state government, he exerted his influence” (# 46).

Practically all potential cases that arrived at the MPBA or at the TJBA without manifestation of the state police were thus sent to it, where they remained for years without any investigation (Interviews 46, 47, 48, 49, and 55). As it turns out, this was the trump card the *carlistas* had that explains their support for the creation of the *Câmara Especializada* in the first place. With the state police firmly in control of the investigations, it could act as a veto point to prevent any legal accountability efforts against mayors from being effective in Bahia. By supporting for years a prosecutor-general uninterested in performing investigations, on the one hand, and forestalling investigations from being concluded at the police, on the other, the state government prevented any stages coming after investigation (i.e., prosecution and adjudication) from taking place.

In so doing, the state government annihilated any chances of mayoral convictions from occurring in Bahia for a long period of time. In fact, no cases were even decided on the merits at CESP until as late as 2004, or eight years after it had been established. During this time, the specialized panel on crimes of mayors of the TJBA, consequently, was the inverse image of its counterpart in Rio Grande do Sul. While it could have sparked a wave of a mobilization in other institutions to fight mayoral irregularities in Bahia, it was rendered largely useless in this realm due to its isolation promoted by the maneuvering of other legal accountability institutions by the powerful political elites of state.

2003-2007: Bringing the Investigation to the Prosecutors, Abolishing the Câmara Especializada

If the MPBA was to become an active institution in the fight against local corruption in Bahia, its passive policy of transferring all investigative responsibilities in cases of mayoral irregularities to the state police had to be changed. This transformation, however, demanded altering an internal rule the MPBA had long held by determination of prosecutor-general Fernando Steiger Tourinho de Sá. As the head of the institution, after all, he was the one formally in charge of prosecuting mayors.³⁰⁰ Consequently, if the *baiano* prosecutors were willing to actively contribute to the legal accountability of mayors in their state, the first step they would have to take was to replace the head of their institution, that is, prosecutor-general Fernando Steiger Tourinho de Sá.

The prosecutors-general of state *Ministérios Públicos* in Brazil are selected via a procedure that combines election by peers with appointment by the state governor for a renewable term of two years. According to this rule, the three *procuradores de justiça* that receive the highest number of votes from all prosecutors of the state end up in a list that is submitted to the state governor,

³⁰⁰ To recall from the previous chapters, only the prosecutor-general of a state *Ministério Público* can file a criminal case against a mayor in Brazil, unless he or she delegates this function to another prosecutor or prosecutors who will then act on his or her behalf.

who picks one of them for the position, often the one with more votes. That had been the case of Fernando Steiger Tourinho de Sá in all his previous appointments to the highest position of the MPBA until 2000. In that year, however, other prosecutors mobilized to support the candidacy of Achilles de Jesus Siquara Filho. With a long history in the local and national associations of the *Ministério Público*, he campaigned for a more active role of the prosecutors' office of Bahia in a variety of areas, including the prosecution of corruption.³⁰¹ As a result, once votes were counted, Achilles de Jesus Siquara Filho did receive the support of the plurality of the prosecutors' votes with 244 of them, making him the first in the list to be sent to the governor. The runner-up was incumbent Fernando Steiger Tourinho de Sá, who received 189 votes. Because Steiger was still on the list sent to the executive branch, though, he was the one selected by the *carlista* governor César Borges instead of Achilles (Sanches Filho 2004, 96-97).

The election was considered a watershed event in the recent history of the MPBA for it made for the first time clear that there was a "gap between the corporation [of career prosecutors] and the administration [of the MPBA]" (ibid, 97).³⁰² Prosecutor-general Fernando Steiger Tourinho de Sá, in effect, remained in office until 2002, keeping unaltered his policy of no investigation of

³⁰¹ Achilles de Jesus Siquara Filho was a career prosecutor of the MPBA who was president of the *Associação do Ministério Público do Estado da Bahia* (AMPEB, or Association of the Prosecutors' Office of the State of Bahia) from 1991 to 1996 and later president of CONAMP (the national association of prosecutors) from 1996 to 2000.

³⁰² Importantly, episodes of direct pressure from the state government to the MPBA are not frequent. The selection of Fernando Steiger Tourinho de Sá as prosecutor-general in 1999 was one of the few in which conflict between the prosecutors and the executive branch existed. In effect, for most period of *carlista* rule in Bahia, this was one of the few events in which this disagreement became clear. Accordingly, another period of turbulent relationships with the state government took place precisely during the interregnum of the *carlista* machine – from 1986 to 1990 – when MPBA and state government clashed in a variety of occasions. As Sanches Filho (2004) explains, these clashes led to the replacement of the prosecutor-general by the state governor, to the expulsion of some prosecutors from the MPBA, and ultimately to the resignation of the new prosecutor-general appointed by the governor (2004, 95). It is important to observe that these clashes between the prosecutors and the state government did *not* take place because the prosecutors were aligned to the *carlista* machine and thus opposed the administration of Waldir Pires. The main reason for the conflict actually followed the prosecutors' attempt to push toward the implementation, at the state-level, of the greater autonomy and powers the *Ministério Público* had received in the 1988 federal constitution. Probably trying to score points with the prosecutors, after ACM's return to the state governorship in 1991, he chose the most voted prosecutor – Carlos Alberto Dutra Cintra – as prosecutor-general, who remained in the position until 1994, when he became *desembargador* and Fernando Steiger Tourinho de Sá replaced him.

mayors by the MPBA. In that year, however, Achilles de Jesus Siquara Filho finally became the prosecutor-general after opponents to Steiger's administration once more mobilized and this time were able to make all the three candidates it supported to be awarded the highest number of votes by the *baiano* prosecutors. Ending up in fourth place in the internal elections, Steiger's successor was thus removed from the list with three names submitted to the state governor. Forced to pick from the opposition, the executive finally gave up and appointed as prosecutor-general the first of the list, who was precisely Achilles de Jesus Siquara Filho (Sanches Filho 2004, 98-100).

Taking office in mid-2002, prosecutor-general Achilles de Jesus Siquara Filho soon realized that he alone could not perform the tasks demanded by the criminal cases of mayors, even if formally he was responsible for them. In order to tackle these cases, prosecutor-general Achilles decided to follow the idea of the prosecutors' office of other Brazilian states and establish a specialized unit on crimes of mayors at the MPBA. This is the origin of the *Núcleo de Investigação dos Crimes Atribuídos a Prefeitos* (NICAP, or Division of the Investigation of Crimes Attributed to Mayors), formed in the beginning of 2003.³⁰³ Initially, it had a lean structure of three prosecutors, which grew over time to its current arrangement with twice the number of prosecutors and a group of assistants. Its first coordinator was *promotor de justiça* Valmiro Santos Macedo, who remained in the position for several years and still today, even if not formally on the division, still helps it.

Of humble beginnings, Valmiro joined the MPBA via competitive examinations in 1993 after working for ten years as a lawyer who defended the interests of rural workers in the countryside

³⁰³ Formally, NICAP was established only in 2007 (Act n. 324 of the MPBA, of November 10, 2007), but it had been in existence as an extension of the prosecutor-general's office since the beginning of 2003 (cf. Interviews # 46, 47, 48, 49; Sanches Filho 2004, 97-98). Importantly, once established, NICAP's existence was never challenged either inside or outside the MPBA. This means that it was not the sole product of a personal preference of prosecutor-general Achilles de Jesus Siquara Filho, who remained in office until 2006 after he had ran as a single candidate for the position of prosecutor-general in 2004, given the huge support he enjoyed from his peers. All his successors, in effect, actually followed his line of work in this area, maintaining and even expanding NICAP over the years.

of Bahia. Once at the MPBA, he made a name for himself prosecuting the local authorities of the different cities in which he worked,³⁰⁴ being eventually appointed to coordinate NICAP once it was established. In charge of this new structure, one of Valmiro's first actions was to perform a diagnosis of the cases the division was now in charge. As he recalls,

“Until 2003, we had only some thirty cases. That is, from 1988 to 2003, there were only about thirty cases against mayors in court. Was this because all mayors had been pure creatures until then? Of course not, no one would be that naïve to think so ... Then, what we realized in 2003? That nothing that we had sent over the years [to the state police] had returned to us, nothing ... And what was the result? We decided to conduct ourselves the investigation here at the *Ministério Público*, because there were already precedents in other *Ministérios Públicos* of Brazil doing the same” (Interview # 46).

Created directly as an investigative division, only *promotores de justiça* (i.e., district prosecutors with trial experience, instead of *procuradores de justiça*, who officiate before courts of appeals) work at NICAP, one of them being its coordinator. The prosecutors at NICAP, hence, examine notifications of mayoral irregularities sent by opponents of the city halls' current administrations, city councils, interested citizens, local newspapers, and the like, from all over the state and check whether or not these allegations can be turned into actual indictments. As with the specialized divisions on crimes of mayors of other Brazilian states, the “immense volume of representations that we receive at NICAP is infinitely higher than the ones we can transform into indictments,” explains one of its current members (Interview # 47).

Also officiating directly before CESP on behalf of the prosecutor-general, NICAP's prosecutors entirely reshaped the nature of the legal accountability efforts taken against mayors in Bahia as

³⁰⁴ On the beginnings of prosecutor Valmiro Santos Macedo, he recalls: “I started in a farm [‘*roça*’] and my parents were the ones who actually made me study. I needed to walk six kilometers everyday to go to school and another six kilometers back home ... then I was enlisted in the army for two years before I could go to law school” (Interview # 46). On his profile, he recalls a story of the time when he was the prosecutor in Feira de Santana (a city one hundred kilometers away from Salvador, with 600,000 people): “There was a ceremony to honor various local authorities and we [members of the MPBA] were invited to watch it. Once we got there and looked at the stage where they were giving the awards, we noticed that every single one of the individuals being honored had also been indicted by us” (ibid).

soon as they starting performing their jobs in early 2003. No longer waiting for the never-ending investigations of the state police, the number of indictments brought by the prosecutors against *baiano* heads of city halls immediately soared as the specialized division of the MPBA started to investigate itself the notifications on mayoral irregularities brought to it. While during all years before NICAP's establishment a total of only forty-three indictments had been handed up by MPBA to the TJBA, in 2003 alone the number of such indictments brought by the prosecutors to the appellate court of Bahia equaled sixty-two.³⁰⁵ In the next year, finally, the all-time record of one hundred eight indictments was reached. Since then, the NICAP has averaged about fifty-two new indictments brought to court against mayors every year (cf. MPBA 2012).

Due to the dominance of the *carlista* machine in this period – which from 2003 to 2006 not only governed the state and had a stable oversized majority at the state legislature, but also comprised between 335 and 365 out of the 417 of Bahia's city halls (cf. Borges, Sanches Filho and Rocha 2011, 342) – it should not surprise that most indictments handed up by NICAP to CESP involved precisely mayors affiliated to the *carlista* network. In effect, Sanches Filho's survey concluded that “ninety percent of the accused in the criminal cases filed against mayors by the *Ministério Público* of Bahia belonged to political parties that integrate the support base of the group in power,” the so-called “*carlismo nuclear*” (2004, 133). Acting so intensely to bring such mayors to justice during a period in which ACM's network was still strong in power, no wonder the job of NICAP was seen as risky by other prosecutors of the MPBA. One member of the specialized

³⁰⁵ The number of indictments I obtained directly from the NICAP (cf. MPBA 2012) diverge slightly from the one Sanches Filho (2004, 129) obtained a few year earlier from it as well. Both data nonetheless point out to the same phenomenon. That is, the almost absence of indictments brought against mayors by the MPBA before 2003 and the overall intensification of its activism on after NICAP was established that year. Finally, both mine and Sanches Filho's numbers differ from the number of criminal cases of mayors – equal to sixty-nine – reported in the 1999 inventory of CESP. Because the clerk's office of the latter seemed to maintain relatively poor record-keeping (in light, for instance, of the almost two hundred cases that that had been considered destroyed or lost in this same inventory of 1999) I have also avoided using the data provided by CESP in this regard. I use it, hence, mainly as an illustration of events my other sources (interviews, archival research, etc.) also informed.

division, in effect, commented as follows: “We were considered, here in the *Ministério Público* of Bahia, a kamikaze group. That is, at the same time as our colleagues respect us, for the most part they leave us on our own. At least we are a very cohesive group” (Interview # 48).

This intensification of prosecutorial efforts was not the only important consequence of NICAP’s work. In effect, it also became the bridge that was able to connect the work of auditors to that of the judges. Up until that point the agency that audits the municipalities of Bahia, the TCMBA, was largely not part of the efforts towards producing judicial responses to mayoral corruption in the state. However, as soon as the specialized division on crimes of mayors of the MPBA came into existence, its members reached out to auditors of the TCMBA and they soon responded. The auditors, in fact, are quick to point out that this approximation between the TCMBA and the MPBA only began after the prosecutors mobilized to replace Fernando Steiger Tourinho de Sá for Achilles de Jesus Siquara Filho as their prosecutor-general in 2002. As one auditor told me, “with the *Ministério Público*, our activity started to improve a lot about ten years ago, to a large extent due to their new administration. It was from there that we started to realize that our missions are complementary to each other” (Interview # 51). As a result, nowadays “it is enough for me if the *Ministério Público* just sends two lines in an e-mail saying what they need that we put it on our schedule and try to inspect what they are asking us,” explains one auditor who has been working as the main point of connection between the two institutions (ibid).³⁰⁶

³⁰⁶ In fact, as in Rio Grande do Sul but unlike in Minas Gerais, prosecutors and auditors in Bahia were quick to point out the names of their contacts in each others’ institutions as soon as I asked about them. This is, in fact, something that I found out while conducting fieldwork: in order to effectively understand inter-institutional cooperation from the discourses of those who are supposed to perform it, researchers must go beyond just asking whether or not they cooperate with each other. As a matter of speech, no one would deny that. However, if individuals in one institution truly interact frequently with another institution, they are well aware not only of how the internal procedures of that other institution unfold but they also know with whom to talk in that other institutions when they need something from it. Inversely, when cooperation is exclusively *pro forma*, people in one institution do not know exactly how the others work and usually have no names to point out to when they need something from them. Instead, they would often refer to generic positions in the other institutions (e.g., “the presidency,” “the prosecutor-general”).

This willingness to cooperate of the auditors has not been expressed just in words. Since 2004, the number of notifications of irregularities sent from the TCMBA to the prosecutors' office of Bahia jumped. While this was not even a common practice before and only a handful of such notifications were ever handed from the auditing agency to the MPBA, this picture gradually started to change in the mid-2000s (cf. Interviews # 45, 47, 48, 51, 53, and 57). Starting in 2004, an average of one hundred fifty-two reports with irregularities of local governments was sent every year from the TCMBA to the MPBA. Similarly, during the same period the former also answered to a yearly average of almost four hundred information requests of the latter.³⁰⁷

Both fueling and being fueled by this increased disposition to cooperate was a transformation of the internal organization of the TCMBA. Formally established in 2002 but starting effectively only in the next year, the *3ª Coordenadoria de Controle Externo* (3CCE, or Third Coordination of External Control) was a new division of the TCMBA conceived with the sole responsibility of coordinating the execution of in loco audits in the *baiano* municipalities. While before in loco inspections were few and limited to single facts (e.g., fraud in a specific procurement procedure or the embezzlement of a given amount from a clearly identifiable office), the audits conducted by the 3CCE, “perform a sifting [‘*peneira*’] in a full area of the city halls’ expenses indentified as problematic, like school lunches or procurement in government advertisement ... so that we can actually perform a full screening [‘*devassa*’] of their accounts,” explains one of its members (Interview # 57, cf. Interviews # 51, 52, 53, 57 and 57).

Along the same lines, while the TCMBA has had regional offices – the *Inspetorias Regionais de Controle Externo* (IRCEs, or Regional Inspecting Offices of External Control) – since the 1970s

³⁰⁷ All data discussed in this section were taken from the publicly available yearly reports published by the TCMBA (cf. TCMBA 2005, 2006, 2007, 2008, 2009, 2011, 2012, and 2013).

and has even increased their numbers to the current twenty-seven of such offices in the 1990s, they were not conceived to perform in loco audits. Instead, they were “basically advanced offices where the overseen entities [*jurisdicionados*] could deliver their documents more easily for our review” (Interview # 57). With a limited staff of auditors working directly in the 3CCE, its main purpose is therefore to coordinate the work of the four to ten auditors of each IRCE with those of the central offices of the TCMBA in Salvador in order to perform in loco audits in the cities of Bahia. Not surprisingly, as soon as the 3CCE started to work, the number of such audits doubled from approximately forty-five in 2001 (cf. Moraes 2006, 69) to a yearly average of ninety since 2004.³⁰⁸ More important than the increase in the number of audits has been the change of their scopes. In effect, this arrangement is behind a gradual transformation that is still taking place at the TCMBA of moving the focus of its auditors’ activities away from the examination of mere formalities (such as constitution spending indexes) towards substantive issues. “That is why the 3CCE was created,” explains one of its auditors, “to start this gradual process of change of our cultural organization, so that our personnel stops looking just at the papers sent by the city halls or at aggregate indices, and tries to find the actual problems that make public money go down the drain of corruption” (Interview # 57).

The TCMBA, considered one of the least effective courts of accounts of Brazil in the late 1990s and early 2000s, consequently, gradually started moving away from that troublesome image by the mid-2000s. It should not surprise, thus, that the prosecutors at NICAP found in it a crucial ally in the fight against mayoral corruption. In effect, as Sanches Filho interviewed one of them

³⁰⁸ Importantly, the number of in loco audits of the TCMBA has been relatively consistent since 2004, with a lowest of sixty-six inspections in 2010 and a highest of one hundred thirty-one in 2006. This consistency of the TCMBA since then is similar to the one of auditing agency of Rio Grande do Sul (although the total number is much lower than the Southern court, in which the average number of in loco audits has been in the four digits since 1998) and very different from the extreme volatility of the auditing agency of Minas Gerais, which ranged from as few as fourteen and as many as almost one thousand in a given year (cf. section 5.3., above).

in October, 2004, she argued that “the *Tribunal de Contas dos Municípios* ... has contributed in these two years every day more independently” (apud Sanches Filho 2004, 131). As it turns out, my own interviews of 2013 reached rather similar conclusions. When I asked prosecutor Valmiro Santos Macedo which were the main sources of information of NICAP, he answered

“We receive all sorts of information: from the press, from society in general, a lot from politicians – often of the opposition, but also of the current administrations, when they fight to each other – and, very especially, from the *Tribunal de Contas dos Municípios*, which already gives us more detailed material [*‘já nos dá as coisas mais mastigadas’*] ... I estimate that eighty, perhaps ninety percent of our work counts with at least some participation of the court of accounts” (Interview # 46).

Far from the opinion of one member of the MPBA, another prosecutor who has worked for years at NICAP summarizes saying that “the TCM[BA] has been our biggest partner” (Interview # 47; cf. Interviews # 48 and 49). Importantly, not only prosecutors and auditors were changing their institutions and coming together by this period. In effect, at the same time they were doing so, both the TJBA and the CESP within it were passing through a period of intense renovation.

Starting by the latter, *desembargador* Carlos Alberto Dutra Cintra was elected by his peers the president of the state court of appeals of Bahia by the end of 2001 in an episode that was deemed by many a true declaration of independence of the *baiano* courts from the influences of *carlismo*. That was the case because the defeated candidate was *desembargador* Amadiz Barreto, who was openly supported by ACM himself (Sanches Filho 2004, Francisco 2001, Interviews # 61 and 63). Aiming to “transform the Judicial Branch [of Bahia] into an autonomous, transparent, and independent one” in light of its “submission to other institutions, such as the Executive and Legislative,” Dutra Cintra was awarded eighteen votes from his peers against only ten received by his opponent (Francisco 2001). Celebrated by various groups – which included district judges, prosecutors, servants of the courts, and even lawyers – Dutra Cintra’s victorious election was, in

effect, the first sign that the *carlista* machine was losing control over the state judiciary and that the relatively docile posture they had enjoyed from the latter could no longer be expected.³⁰⁹

As it turns out, in 2003 – the same year when NICAP had been established – there was an intense renovation at CESP, with the retirement of two of its members.³¹⁰ Coupled with the changes taking place at the TJBA as a whole, with the intensification of prosecutorial efforts, with the increased use of material from the auditing agency and with the arrival of a new *desembargador* described as very rigid at the specialized panel, CESP “was reborn to its criminal jurisdiction” (Sanches Filho 2004, 131). Similarly, prosecutor Valmiro Santos Macedo noticed that, as a result of these transformations, “the *Câmara Especializada* started to alter its composition and ended up arriving at a configuration, at a certain moment, in which they [the *desembargadores*] started to accept the positions that we had been advancing” (Interview # 46). In effect, a local newspaper article concluded: “Late, but finally the *Tribunal de Justiça* [of Bahia] started trying the criminal cases filed by the state prosecutors’ office against the *baiano* mayors” (Oliveira 2004).

With the *desembargadores* of the specialized panel on board, a much more coordinated work on the legal accountability of mayors finally started to emerge in Bahia. In effect, something of an iron triangle composed of CESP, NICAP, and TCMBA gradually began to take form at the

³⁰⁹ The election of *desembargador* Carlos Alberto Dutra Cintra to the presidency of the TJBA and his transference to the electoral courts later in 2004 are both considered by scholars specialized in *baiano* politics as one of the signs that cracks in the *carlista* political hegemony started in the early 2000s in Bahia (Dantas Neto 2003, 239, Sanches Filho 2004, 82). In effect, Dutra Cintra made a successor at the TJBA, *desembargador* Gilberto de Freitas Caribé (who remained in office from 2004 to 2006, even if he was considered somewhat independent from his predecessor). Later in 2006, another candidate supported by Carlos Alberto Dutra Cintra – *desembargador* Benito Figueiredo – was also elected to the presidency of the TJBA, remaining until the end of 2007. In effect, the election of the latter, which took place in the end of 2005, was symptomatic of how the tide was no longer in favor of ACM’s group in the courts of Bahia. Accordingly, *desembargador* Benito Figueiredo was elected with twenty votes against five votes of another member of the previous administration of the court (*desembargadora* Lucy Moreira) and only four votes to *desembargador* Eduardo Jorge Magalhães, who is ACM’s brother (see Oliveira 2005).

³¹⁰ These were the *desembargadores* Jafeth Eustáquio da Silva and Paulo Gomes, who had both been members of the specialized panel since its inception in 1997 and who, by 2003, had also both achieved the age limit of seventy years old defined by the Brazilian constitution for judicial positions, thereby precipitating their retirement from the TJBA.

baiano system of justice. The results of these joint activities did not take long to come up and, although practically no cases were decided on the merits, several mayors were removed from office and even arrested as soon as CESP decided to accept the indictments brought by the prosecutors of NICAP. In other words, the intensification of legal accountability efforts in Bahia was expressed particularly in the decisions of the *desembargadores* right at the beginning of the cases, as they determined the removal of the mayors from office and/or their preliminary arrest while pending the final decisions on the merits of those cases.

To a large extent, this was a product of the approach pursued by the prosecutors of NICAP, who deliberately decided to request the removal of the mayors from office in almost all the dozens of indictments they brought to the specialized panel over the years (cf. Interviews # 46, 47, 48, and 49). Forced to face so many of such requests, the appellate judges of CESP soon started to accept the position advanced by the prosecutors. Due to the investigations conducted directly by NICAP and the aid it received from the TCMBA, the resulting indictments ended up arriving in court with better evidence, in turn providing greater support for the rigorous preliminary decisions of CESP to remove the mayors from office at the onset of the cases.³¹¹ As a result, by mid-2004, the first *baiano* mayors started to be forced out of office due to such judicial decisions.

The first of these cases involved Lílían Souza Santos de Santana, of the centrist PMDB, who was the mayor of São José da Vitória, a rural town with 6,000 people in south Bahia. She had been accused of using a car that belonged to the city hall as part of the payment to buy a truck for

³¹¹ Another strategy adopted by the prosecutors to be better welcomed at CESP involved targeting cases in which the mayors could be indicted because they had disobeyed court orders. “Then, in the first cases,” explains prosecutor Valmiro Santos Macedo, “the first indictments we brought to court involved precisely noncompliance with judicial decisions because it is important that the courts are respected. Before, the judges issued decisions determining the mayors to do or not to do something and he simply disobeyed it, as if nothing had happened” (Interview # 46). In so doing, the prosecutors were attempting to make the appellate judges of CESP be more sympathetic to their efforts and thereby attempt to increase the odds that they would prioritize those cases.

herself and CESP's appellate judges decided to remove her from office as soon as they accepted the indictment brought by the MPBA in July 2004.³¹² Around the same time, Antonio Alves Serra, affiliated to the *carlista* PTB and mayor of Conceição da Feira, a city with 20,000 people in the metropolitan area of Feira de Santana, was also removed from office as CESP accepted the indictment that accused him of dispensing with competitive bidding processes.³¹³

Several such decisions by the specialized panel soon followed and, by the end of 2004, a total of 37 out of the 417 mayors of Bahia, or just shy of nine percent of them, had already been removed from office due to decisions of CESP (Sanches Filho 2004, 133). True, many mayors managed to remain in their positions via appeals to the Brazilian high courts. At the same time, this active commitment on the part of the legal actors of Bahia made quite clear that the legal accountability of mayors could no longer be ignored and, as a result, that judicial responses to corruption were a concrete possibility. As a prosecutor ironically summed up, “in 2004, 2005, the heads rolled. We started to have a lot of success in the acceptance of our indictments and in removing the mayors from office, so much that the *Câmara Especializada* was nicknamed *Câmara de Gás* [or ‘gas chamber’]” (Interview # 47).

Yet, despite the best efforts of the prosecutors, only *one* criminal case of mayor was ever decided on the merits at the *Câmara Especializada* of the TJBA during its entire existence. Largely as a result of the inherited problems of lack of structure to try these cases at CESP and due to various dilatory appeals filed by the attorneys of the accused, the *instrução* of the cases was still quite slow.³¹⁴ Hence, the first and only criminal case of mayor decided on the merits by the *Câmara*

³¹² This information is available at the *habeas corpus* n. 36.710 of the STJ.

³¹³ This information is available at the *habeas corpus* n. 38.181 of the STJ.

³¹⁴ The *instrução* of the cases was still conducted via *cartas de ordem* at CESP, since the *juízes de instrução* had been extinguished in 2002 (cf. TJBA 2002). The NICAP's prosecutors even participated in some hearings of witnesses throughout the state, but no structure of the TJBA would follow (interviews # 47 and 48).

Especializada of Bahia took place only in 2004, or eight years after it had been established. This was, as it turns out, the only conviction the specialized panel ever produced and, furthermore, the first conviction of a mayor at the TJBA in its history (Vasconcelos 2007, Leão 2008, Interviews # 46, 47, 48, and 49). This story, however, is not without its caveats.

Of the *carlista* PFL, Ney Alves de Carvalho was mayor of Itaguaçu da Bahia. The municipality is located 544 kilometers away from Salvador in central Bahia, has 12,000 inhabitants and GDP per capita below two thousand U.S. dollars, similar to those of Senegal or Kenya. His case had been one of the first ever to arrive at the court of appeals of Bahia. It referred to irregularities detected by the TCMBA as early as 1991, which resulted in an indictment brought by the MPBA in 1995. No specialized panel existed back then, so the case first arrived at the TJBA's Full Court only to be transferred to CESP's docket in the next year and there remain dormant for almost a decade. In 2004, the case was finally decided on its merits and Ney Alves de Carvalho was then sentenced to seven and a half years in jail for embezzling the equivalent to approximately two hundred thousand U.S. dollars from the city hall. Still, he was never arrested. He died before that could ever take place. "He probably died of shock, since no one had ever been convicted around these parts until then," ironically commented a prosecutor (Interview # 47).³¹⁵ Writing in 2007, journalist Levi Vasconcelos detailed this story in a newspaper article as follows,

"Ney [Alves de] Carvalho ended up going down in history with this mark: the only mayor ever convicted of corruption [in Bahia]. Even so, the epilogue of the case is tragicomic. Absolute master of Itaguaçu da Bahia, a municipality dismembered from Xique-Xique in 1989, Ney was its first mayor. After, he managed to elect his niece, Miriam Mara de Carvalho, with whom he later on quarreled. He was elected again in 1996 and was reelected in 2000. With cancer and an amputated leg, he received the news of his sentence in early August 2004. He then caught a plane and flew hastily to Salvador, where he managed to postpone his arrest. On October 20, two months later, and missing

³¹⁵ My translation does not do justice to the words of my interviewee, so I put it here in its original Portuguese: "Ele provavelmente morreu de susto, já que ninguém nunca tinha sido condenado por aqui até então" (Interview # 47).

just over sixty days to the end of his term, he died at the Hospital Aliança, aged 68” (Vascocelos 2007).

Ney Alves de Carvalho, in effect, would remain as the only mayor ever convicted of corruption in the state judiciary of Bahia until as late as 2012, when another five *baiano* mayors were finally sentenced by the TJBA. At the same time, the very fact that this conviction did occur in the midst of a wave of mayors being removed from office at the beginning of their cases was symptomatic that other convictions could be expected down the road. Such an intensification of accountability efforts in a political system marked by the clear predominance of a single group, however, could not last. In effect, “as soon as we started to have some promising results, the politicians started to complain [‘*começou a grita dos políticos*’] and then they abolished the panel,” a prosecutor who worked at NICAP recalls (Interview # 47). Prosecutor Valmiro Santos Macedo, in turn, sums up these events as follows,

“The *Câmara Especializada* started to act with a heavy hand in 2005, 2006. During these two years, the heads rolled: mayors were arrested, removed from office, all hell broke loose ... Then, they started to attack the *Câmara de Gás* [‘gas chamber’]. They hit it, hit it, and hit it in such a way that the panel would not be able to resist ... it was then they decided to extinguish the panel for good” (Interview # 46).³¹⁶

No longer able to contain the activities of CESP, MPBA and TCMBA, nor able to force cases to be referred to the state police where they would remain forever dormant, the *carlistas* resorted to the only weapon available to them: they expanded the scope of the conflict to the public, passing on an open offensive against the decisions of the panel and its members. The path towards the extinction of CESP, though, was not an immediate one. If the prosecutors and appellate judges of Bahia had backed down from their efforts, maybe the panel would not have been extinguished in

³¹⁶ As in other instances, my translation does not do half the justice the words of my interviewee deserve, so here it is in its original Portuguese: “A Câmara Especializada começou a pegar pesado em 2005, 2006. Nesses dois anos o couro comeu, foi prefeito preso, afastado, foi o diabo a quatro ... aí começaram a bater na Câmara de Gás. Começaram a bater, a bater, a bater de um jeito que não ia ter como aguentar ... foi aí então que resolveram extinguir a Câmara de vez” (Interview # 46).

late 2006. However, they did not back down. As a result, possibly the event that triggered the strongest response from ACM's group was the removal from office of Oziel Alves de Oliveira, of the *carlista* PFL, who was the mayor of a city suggestively called Luís Eduardo Magalhães. With over 70,000 inhabitants and distant almost one thousand kilometers from the state's capital, the municipality is located in west Bahia and is a relatively wealthy agricultural frontier.³¹⁷ Luís Eduardo Magalhães emancipated from the city of Barreiras in 2000, and since then adopted the name that pays homage to ACM's deceased son. Indicted in August 2005, Mayor Oziel Alves de Oliveira was temporarily removed from office for one hundred eighty days after the indictment that accused him of using the room of a public school as his campaign committee was accepted by CESP in early 2006.

In the days following the ruling of the specialized panel, the newspaper *Correio da Bahia* was filled with news in which *carlistas* openly criticized the decision (Correio da Bahia 2006, 2006a, 2006b, 2006c). One of the largest newspapers of the state, the *Correio da Bahia* belongs to *Rede Bahia*, a business group that is headed by the Magalhães family (Dantas Neto 2003, 2006a).³¹⁸ In April 5, the day after the ruling of CESP, its pages included a long article detailing a speech by Antônio Carlos Magalhães made a day earlier at the Brazilian Senate entirely on this subject. Among many critics to both the ruling and judiciary of his home state, he argued that the former occurred “exclusively because [the city] bears the name of my son,” and that in Bahia “almost every day mayors have arbitrarily been removed from office by the *Tribunal [de Justiça]*” and “by judges morally incompatible with the judiciary” (Correio da Bahia 2006). In the next day,

³¹⁷ The city of Luís Eduardo Magalhães, in effect, is one of the ten municipalities with the highest GDP in the state of Bahia. Similarly, its GDP per capita is higher than both the Brazilian and the *baiano* averages, being equivalent to twenty thousand U.S. dollars, comparable to countries like Portugal and Czech Republic (cf. IBGE 2012, 2013).

³¹⁸ The newspaper *Correio da Bahia* no longer has this name. Since 2008, it is simply called *Correio*. The change in name, however, did not follow any radical changes in its ownership and members of the Magalhães family remained as its main shareholder. Finally, I have decided to reference the newspaper as *Correio da Bahia* instead of *Correio* because this was its name by the time the news I present here were published.

the former president of Bahia's legislative assembly, the *carlista* representative Carlos Gaban, dedicated an entire speech to the issue, which also received an ample coverage of the *Correio da Bahia*. Arguing that the “*baiano* judiciary acts in accordance to the interests of the opposition,” he claimed that the “decisions of the TJ[BA] and of the *Câmara Especializada* are conditioned to political affiliations. If [the mayor] is of the PFL and of allied parties, he or she may be removed from office at any moment and without any legal basis” (Correio da Bahia 2006a).

Another day passed and a new article entitled “Representative shows inconsistency of judicial decisions” was published at *Correio da Bahia* (2006b). As in the other cases, it highlighted the speech of a *carlista* representative – in this case, Vespasiano Santos – who argued that “we are living in a dictatorship of the judiciary in Bahia” and asked if Mayor Oziel Alves de Oliveira had not been “removed from office only because he was of the PFL” (ibid). In that same edition of April 7, another article entitled “Assembly can put end to panel” was also published at *Correio da Bahia* (2006c). In an unambiguous reference to CESP, the article concluded that if the state representatives did not vote soon to abolish it, they would “miss the opportunity to contribute to the moralization of the *baiano* judiciary and to put an end to the purely politically motivated decisions of the *desembargadores*” (ibid).

The coverage by the *Correio da Bahia* of the reactions to the removal of Mayor Oziel Alves de Oliveira from office could hardly have been more intense. As a matter of comparison, another *baiano* newspaper soberly published an article highlighting the “divided city” that Luís Eduardo Magalhães had become after CESP's decision, with some supporting the mayor and others not (Oliveira and Hermes 2006). Not surprisingly, one prosecutor of NICAP summed up his opinion on how part of the press was covering these stories as follows: “This was all a factoid to debunk

and discredit the serious work the *Tribunal [de Justiça]* was developing back then” (Interview # 47, cf. Interviews # 46, 48, 49, 62, and 63).³¹⁹

The *carlistas*, though, went beyond publicly denouncing what they considered to be the partisan decisions of CESP. In July 2005, the appellate court of Bahia sponsored a bill at the legislative assembly of the state to promote a series of changes in the courts of the state (cf. ALBA 2005). Among others, the proposal aimed at increasing in the number of *desembargadores* from thirty to forty-seven and suggested transforming CESP into a regular civil panel. The bill remained entirely unexamined by the state legislature until December 12, 2006. In that day, a new version of the bill came up sponsored by representative Carlos Gaban, of PFL, who a few months earlier had openly criticized the specialized panel. The new bill did not alter significantly the content of the previous one submitted by the TJBA apart from one thing: not only the specialized panel was going to be abolished, but also the criminal cases of mayors were going to be placed under the jurisdiction of the Full Panel of the TJBA. Still in December 12, 2006, an agreement of party leaders was reached that allowed the proposal to dispense with “all procedural formalities,” such as the review by the three standing committees to which it had initially been assigned (cf. ALBA 2005, 34). Still in that day, as a result, the bill went to the floor of Bahia’s legislative assembly for a vote, where it was approved.

³¹⁹ Although they played a great part in it, the collision route between the *carlistas* and the judiciary of Bahia did not involve exclusively the criminal cases of mayors. As I detailed earlier, the election of Carlos Alberto Dutra Cintra to the presidency of the TJBA at the end of 2001 made clear that the influence of ACM’s group was in decline at the *baiano* courts. As a result, part of the campaign to attack CESP also involved attacking the TJBA as a whole. In fact, in ACM’s speech at the Brazilian Senate following the removal from office of Mayor Oziel Alves de Oliveira, he also insinuated that the former president of the court (*desembargador* Carlos Alberto Dutra Cintra) was an alcoholic and that the appellate judge who was the presiding judge of CESP had already been accused of raping servants of the court (Correio da Bahia 2006). By the end of 2005, the *carlistas* also accused the election of *desembargador* Benito de Figueiredo, who was supported by *desembargador* Carlos Alberto Dutra Cintra and how had blatantly defeated ACM’s brother – *desembargador* Eduardo Jorge Mendes de Magalhães – with five times the number of votes in the elections of the presidency of the TJBA in the end of 2005, was also a target of the campaign. The allegation was that the election was a fraud due to an alleged vote-for-gifts scheme. With so many accusations, the twenty-four out of the thirty members of the TJBA filed a representation against the (Jornal do Brasil 2005, Correio da Bahia, 2006d, Francisco 2006).

Why the sudden hurry to approve a bill that remained dormant for sixteen months at ALBA? For the first time since 1986, ACM's group was defeated in the elections for the state government. In October 2006, the leftist candidate Jaques Wagner, or PT, won the majority of votes in the state in what was considered a historical election. Not surprisingly, the *carlistas* were in a hurry to put an end at the specialized panel and so they used the remainder of their power to do so. In effect, Governor Paulo Souto signed the bill into the state law n. 10.433, in December 20, 2006, or just twelve days before the new governor was inaugurated.

Having been formally abolished, the members of CESP would not go down without a final fight. They could not, however, count with the support of the newly elected non-*carlista* government. That was the case for two main reasons. First, although Jaques Wagner was awarded with almost fifty-three percent of the valid votes – against forty-three percent of the *carlista* incumbent Paulo Souto – the majority he obtained in the election for the state executive did not translate itself into a *legislative* majority. The coalition in support of Jaques Wagner, thus, elected only twenty-eight out of the sixty-three state representatives of Bahia, or forty-four percent of them. The remaining representatives were divided into a large group of *carlistas* and a small group of independents, which managed to elect the president of ALBA, Marcelo Nilo, of the centrist PSDB. Second, former *carlista* allies (e.g., PTB) had switched sides and were now part of Bahia's governing coalition. As a result, none of these two factors gave room to greater immediate departure from previous policies, least of all in the first months of government.³²⁰

As such, the specialized panel was on its own. Still, because CESP was going to be transformed into a regular panel with jurisdiction over civil cases, a period of transition was determined by

³²⁰ This information was compiled from the website of the *Tribunal Superior Eleitoral* (TSE, or Superior Electoral Court), Brazil's electoral governing body, available at: <http://www.tse.jus.br/eleicoes/eleicoes-antiores/eleicoes-2006/resultado-da-eleicao-2006>, accessed in May 13, 2014 (cf. Borges 2010).

the presidency of TJBA and the new civil panel would only be formally declared open in March 6, 2007 (cf. *Decreto Judiciário* n. 07/2007 of the TJBA). As result, until then, CESP's members could keep working as if nothing had happened. The *Câmara Especializada*, thus, held a session in February 27, 2007, and even decided to remove two mayors from office.³²¹

As expected, a reaction soon followed. Representative Carlos Gaban, who had been a committed opponent of the specialized panel, claimed that “by allowing the activity of a panel abolished by law,” the court of appeals of Bahia was actually “overlooking the decisions of the Executive and Legislative” (Correio da Bahia 2007). He called for a nonpartisan committee to meet with the president of the TJBA, *desembargador* Benito Figueiredo and the meeting took place in the next day (Correio da Bahia 2007a).³²² As a result of the meeting of February 28, Benito Figueiredo determined that the next CESP session scheduled for later that week would no longer take place (Correio da Bahia 2007b). Still in that day, the presidency of the TJBA ordered the redistribution of all criminal cases of mayors, so that new appellate judges were assigned as rapporteurs of the cases (cf. *Decreto Judiciário* n. 8/2007). Having abolished the *Câmara Especializada*, the state representatives had to make sure the former judges of the panel did not remain with the cases in their hands. The reassignment of cases, thus, not only delayed their adjudication, but especially removed them from the hands of former judges, assigning them to new ones, including some who had no experience with those sorts of cases. In March 18, 2007, finally, the *Resolução* n. 7/2007 of the TJBA made clear that the criminal cases of mayors should be tried by the Full Court of the state court of appeals of Bahia.

³²¹ These were: José Carlos de Lacerda, of PFL, of São Gonçalo dos Campos, a municipality with 35,000 people in the metropolitan area of Feira de Santana, and Milton Borges, of the centrist *Partido Humanista da Solidariedade* (PHS, or Humanist Party of Solidarity), of Mucuri, Bahia's southernmost municipality, with 30,000 inhabitants (Correio da Bahia 2007).

³²² The nonpartisan committee, in fact, included representatives from all ends of the political spectrum. Alongside the *carlista* Carlos Gaban, it included representatives of parties as different as the leftist PT and PC do B, the centrist PSDB, and the right-center *Partido da República* (PR, or Party of the Republic) (cf. Correio da Bahia 2007a).

In the last session of the *Câmara Especializada*, thus, its president accused the representatives – and Carlos Gaban in particular – of contributing with impunity in Bahia and of approving “at lights out” the bill that extinguished the specialized panel (Correio da Bahia 2007c). Deemed an extremely rigid judge, the *carlistas*’ response to him did not stop in extinguishing the panel he presided over. In fact, he was later accused of extorting mayors and of selling his decisions not to arrest or remove them from office at the onset of cases (Interviews # 46, 47, and 60).³²³ Whether the former president of CESP was truly involved or not in such practices is to some extent beside the point. What matters is that these allegations served to kill for good any future attempts by the TJBA to reinstate a specialized panel. As a prosecutor astutely summed up, “at very least, he [the former president of CESP] was used as a scapegoat” (Interview # 47).

6.4. Conclusion: The Long Road Toward Fragmented Autonomy

The period discussed in the section above, from 1996 to the beginning of 2007, illustrates what I have termed *constrained coordination*. In it, the efforts of legal actors to integrate their work do exist and are to some extent successful, but they are no match for a hegemonic political group like the *carlista* political machine in Bahia until early 2007. With one hand in the police and another in the prosecutors’ office, ACM’s group prevented nearly all investigations of mayors from taking place for almost a decade in Bahia, despite the relatively welcoming organization of

³²³ The origin of this scandal is a case of a mayor indicted by the MPBA in early 2007 in which the former president of CESP was the rapporteur. The accused would have been approached by the son of the judge who, allegedly acting on behalf of his father, would have asked for the equivalent to two hundred thousand U.S. dollars so as not to send the mayor to jail. A recording of the alleged conversation became public in 2008 and then “a lot of mayors that had been indicted started to show up and say they too had been approach by the son of the *desembargador*,” explains a prosecutor (Interview # 47). As it turns out, though, “apparently his son did do that, but it was not only him. This is a common practice among sons of *desembargadores* ... to extort the mayors ... this happened here [in Bahia] a lot” (Interview # 48). The resulting criminal case has not yet been adjudicated by the STJ, which is in charge of it (cf. *Ação Penal* n. 644-BA, of the STJ). Ironically, he was temporarily removed from office in 2009 and forced to retire in 2012 by decision of the CNJ (cf. *Processo Administrativo Disciplinar* n. 00063744720092000000, of the CNJ).

the courts to such cases expressed in the existence of a specialized panel that had been created to try them. As the *baiano* prosecutors mobilized and took the investigation into their own hands, they reached out to the auditors at the TCMBA and both increasingly started to act in concert. In so doing, the prosecutors were able to bring more and better prepared indictments to court, which in turn precipitated a wave of preliminary decisions of the *Câmara Especializada* removing the mayors from office at the beginning of the cases. Even then, as accountability institutions started to work together, one of them – the judiciary – was entirely reshaped via new legislation, once again aborting efforts at bringing about judicial responses to mayoral corruption in Bahia.

From a theoretical standpoint, all these episodes stress that *constrained coordination* could not be achieved in Bahia not due to forces endogenous to the system of justice, as in Minas Gerais, but largely due to the interference of elements exogenous to it, especially those precipitate by the then dominant political elite of the state. At the same time, and contrary to what one could think, this is neither a context in which all accountability institutions identically lack autonomy nor one in which there is perfect mobilization of all legal actors. Instead, it can be better understood as an environment in which a strong political body reacts to the strong mobilization of *some* judges, prosecutors, and auditors.

That is, on the one hand, because judicial responses to corruption demand various institutions to act in concert and political elites can compromise the autonomy of just one or a few of them to frustrate legal accountability efforts, the autonomy of institutions within a same system of justice is likely to vary. In other words, the lack of autonomy that results from an overly centralized political system does not affect all legal accountability institutions with the same strength. On the other, while the legal actors are far from being mirror images of the political elites, they are not entirely unified in their pro-legal accountability preferences either. In fact, they are often highly

diverse, including in its ranks passive and reluctant as well as active and engaged legal actors.³²⁴

Within this a non-plural political system, in effect, legal mobilization assumes a meaning that is slightly different than the one it assumes under a plural one. In the former, mobilization works especially to increase inter-institutional coordination. In the latter, mobilization works to expand both institutional autonomy and inter-institutional coordination jointly. That is, because in a non-plural political system, accountability agencies often lack autonomy, if their actors do mobilize, they have first to free themselves from political interference so that they can come closer to each other. Still, this success tends to be temporary. Over time, hegemonic political elites are likely to frustrate such initiatives. That is, to each step ahead, another one back is just as likely.

Returning specifically to the case of Bahia, it is important to realize that just like its legal actors were not perfectly cohesive, so were not its political elites. In fact, the defeat of ACM's group in the 2006 gubernatorial elections made that quite clear. In this sense, the remainder of this chapter discusses the developments of the legal accountability of mayors in Bahia since the beginning of 2007, when the *carlista* political machine was democratically removed from power and replaced by a coalition of parties spearheaded by Jaques Wagner, of the leftist PT. Since this period marks the beginning of a transition towards a more plural political environment in Bahia – especially one characterized by increased electoral competition (e.g., Borges 2010, Montero 2010, 2012) –

³²⁴ The *baiano* legal system, in effect, is probably less monolithic than most accounts assume. Rather than having all been “*carlistas* in robes,” the institutions of the system of justice of Bahia have been marked by an increased degree of diversity for many years. The elections of *desembargador* Carlos Alberto Dutra Cintra to the presidency of the TJBA and of Achilles de Jesus Siquara Filho for the position of prosecutor-general of the MPBA both highlight that. Similarly, there is an important characteristic in whose regard the courts of Bahia are much more progressive than their counterparts of Minas Gerais and Rio Grande do Sul: the presence of female judges. While the legal profession is still predominantly masculine in Brazil, the TJBA is one of the few of the country to have had a female president (*desembargadora* Sílvia Zarif, elected in 2008, and whose administration included other three *desembargadoras* in it). Similarly, the TJBA was one of the first of Brazil to have had a female of African descent selected as a judge. Luislinda Valois started her judicial career in 1984 and recently retired from being a *desembargadora* at the TJBA. Among other things, she became famous for being one of the first judges of the country to ever try a case of racial discrimination, in 1993.

it is important to address the reflexes it brought about to the institutions of the system of justice of the state as well as how its actors behaved in light of those political transformations.

From the start, though, it is crucial to highlight one thing: no political change with this salience is immediate or automatic. That is, as much as there had been alternation in the state governor's office for the first time in years, the political forces that had ruled the state for decades were not only still around, but had significant resources (e.g., legislative seats, ties to local and national governments, access to communications vehicles) that did not allow them to be ignored by the new administration. In effect, by 2007, what was beginning was a period of uneasy and uncertain adaptation of all political actors towards a more plural political environment in which the powers of *carlistas* and non-*carlistas*, for the first time in a long time, were relatively similar. No radical departures from existing policies, thus, should be expected during this period. As it turns out, the very fact that the new state government left the decision to put an end to the specialized panel of the TJBA unaltered was consistent with this dynamic.

Perhaps the first relevant event involving the legal accountability of mayors to take place during Jaques Wagner's term as state governor did not involve any new actions, but old ones. In effect, right about the time the *Câmara Especializada* was joining the history books of Bahia, an untold story of the era of *carlista* hegemony started to be unveiled. In March 2007, the *sala secreta* of the *Secretaria de Segurança Pública* (SSP, or Department of Public Safety) was revealed to the public for the first time. As it turns out, the *sala secreta* – literally, “secret room” – of the SSP had been the destination of all investigations of mayoral irregularities that should have been conducted by the state police over the years, but which had never even been initiated by then. That is, instead of being investigated, the representations sent by the prosecutors to the police had all been dumped into a room with restricted access in the third floor of the building of the

Bahia's Department of Public Safety to be forgotten as if they did not exist.³²⁵ As ACM's group was defeated in the 2006 gubernatorial elections, it had to leave the SSP behind in 2007 and, in it, all these potential court cases that came to be discovered by the new officials in charge of the *Secretaria de Segurança Pública* (cf. Alcântara 2007, Rocha 2007).

According to a newspaper article, the practice of shelving the representations of mayoral crimes in the *sala secreta* would have started “during the administration of Antônio Carlos Magalhães, in the beginning of the 1990s ... and spanned over until December of last year [2006], when the defeat in the elections removed from the most important political position of Bahia the former governor Paulo Souto” (Alcântara 2007a). While the secret room existed until 2006, the newest cases found in it were of 2003, exactly when the prosecutors at NICAP decided to conduct the investigations of crimes of mayors themselves rather than refer them to the police (Alcântara 2007b). In total, approximately 435 notifications of crimes involving 167 mayors of Bahia were found in over sixty boxes of documents (Alcântara 2007, Rocha 2007).³²⁶ Not surprisingly, in the day following the discovery of the *sala secreta* a newspaper article suggested that “167 mayors were on the protection list of the SSP” (Alcântara 2007). Once uncovered, a group of officials was assigned to screen the material. As prosecutor Valmiro Santos Macedo recalls,

“It was formed a committee with members of the police and the *Ministério Público* to examine the cases, which included our notifications [of crimes of mayors] and even a few

³²⁵ Prosecutor Valmiro Santos Macedo recalls, “Zero, zero, zero cases had returned from the police to us. And why? Because they were all in secret room of the *Secretaria de Segurança Pública*. All this material was forwarded to the *Secretaria de Segurança Pública* and they [the police] did not give continuity to our work. They did not perform the necessary investigations ... When we found out, it came to be called ‘secret room’ because it was found an enormity of cases in it that no one knew about” (Interview # 46).

³²⁶ Criminal cases of mayors constituted the largest chunk of the cases found in the *sala secreta* and most of them – albeit not all – were of mayors allied to ACM's group. When I asked a prosecutor why the police did not investigate exclusively the cases of mayors of the opposition, his answer was interesting, as follows: “the majority of the cases involved *carlista* mayors ... but if they investigated only the opposition, it would draw attention, so it was best not to investigate anyone” (Interview # 47). Still, criminal cases of mayors were not the only ones found in the *sala secreta*. In fact, about eighty other cases were found in the room, some accusing police officers of crimes (Alcântara 2007a). Probably, this was the destiny of the cases of police killings examined by Brinks (2008).

representations which had been made directly to the police by other people ... in the end, the vast majority of the cases had to be dismissed because they had already reached *prescrição*. As for the other cases, we either opened one investigation of our own to later indict the mayors or we sent the cases to the judicial districts [*comarcas*] if the subject was no longer mayor” (Interview #46).

In spite of its absurdity, the discovery of the *sala secreta* sparked only a handful of concrete legal accountability measures in Bahia. Particularly, former secretaries of public safety of Bahia were prosecuted but, as of today, none has been punished (cf. Rocha 2007). As for the former state governors who ran the state since the early 1990s, they all argued in unison that they were not aware of those irregularities at SSP and were able to escape prosecution (cf. A Tarde 2007). As for the specific criminal cases of mayors, since the extinction of the CESP, they had been placed under the jurisdiction of the Full Court of the TJBA. Not by accident, they had returned to their lethargic state, moving very slowly towards unlikely final decisions on the merits.

With practically no cases decided during 2007, the appellate judges adopted a different approach in the next year. *Desembargadora* Sílvia Zarif was the first woman elected to the presidency of the TJBA and, as soon as she took office in February 2008, she decided to speed up the trial of the criminal cases of mayors. “We are going to start calling for an extraordinary session only to try the mayors. The fact that the jurisdiction over these cases passed to the Full Court clogged its docket and only a few mayors have been tried,” she commented in the day of her inauguration (Bochicchio 2008). In the first Fridays of each month, thus, the Full Court of the TJBA tried only criminal cases of mayors, and for those specialized sessions were nicknamed ‘*Sexta-feira do terror*’ [or ‘Friday Terror’]” (ibid, Interview # 46).

Interestingly, some promising results came out of this arrangement. As one prosecutor explained, “the cases [of mayors] had been placed by the politicians under the jurisdiction of the *Tribunal Pleno* with the hope that they would fare better or take longer to be tried, but the plan backfired.

Several of our indictments were accepted and even some mayors were arrested” (Interview # 47). Moreover, because the cases were decided by the Full Court, “then the weight of the decision to remove the mayors from office was enormous because it was made at times by more than thirty *desembargadores*,” acknowledges prosecutor Valmiro Santos Macedo (Interview # 46).³²⁷ Still, this initiative was short-lived. In September 4, 2008, after just seven of those extraordinary court sessions had been held, they were over. In that day, the new bylaw of the TJBA was approved and ruled in its article 98 that the criminal cases of mayors were placed under the jurisdiction of the isolated criminal panels of Bahia’s appellate court (cf. *Resolução* n. 13/2008, of the TJBA). After so many controversies involving trial of criminal cases of mayors at the court of appeals of Bahia in the previous years, the *desembargadores* of the TJBA grew tired of the exposition that such cases once again started to produce. In fact, one prosecutor observed that

“... over time, there was a feeling that the *desembargadores* were less and less willing to face the cases [of mayors]. So, they hoped that the *cartas de ordem* would take long to return, or that the *instrução* would end up being delayed by some problem. They don’t want to bother [‘*eles não querem se incomodar*’]. These cases deal with very influential people. You know, behind every mayor, there is always a state representative, a federal representative, a senator, a governor, etc ... so if the *desembargador* makes a mistake or is considered too rigid or too soft, it is easy for him to be stigmatized” (Interview # 47).

In effect, as soon as the new arrangement of monthly sessions at the Full Panel began to take off, the *desembargadores* of the TJBA decided it would be best to avoid all the trouble. As such, they resorted to the same low-key strategy their colleagues in Minas Gerais had been using for years: to disperse the cases in the isolated criminal panels of the appellate court. Unlike the *mineiro* court, the TJBA has only two criminal panels, with six members each. Exactly like the *mineiro*

³²⁷ To my knowledge, this is the only case in which the *Tribunal Pleno* of a Brazilian court of appeals was actually able to try these criminal cases of public authorities entitled to *foro privilegiado* in an agile, expedient manner. The guiding principle of the extraordinary monthly sessions of the TJBA, in effect, is similar to the one of a specialized panel: both arrangements are based on specialization (i.e., either specialized *panels* or specialized *sessions*) and, as such, they give clearer focus of the tasks assigned to those working in it at the same time as these arrangements become focal points that facilitate inter-institutional coordination. The arrangements did not last a year and, as such, no cases were decided on the merits.

court, though, only the full panel (i.e., all six members of the panel) can decide cases of mayors and the *instrução* of the cases is still performed via *cartas de ordem*, which are invariably slow to return. Also like the TJMG, the investigative powers of the *Ministério Público* have not been settled at the appellate court of Bahia. In effect, the only two panels that decide the cases at the TJBA disagree precisely on this aspect. As one of my informants points out,

“The *Tribunal [de Justiça]* met and decided to assign the cases of mayors to the two [criminal] panels. So, what was the problem we faced from the start? At the 1st Criminal Panel, there are some *desembargadores* ... who do not allow investigation by the *Ministério Público*. There are terrible discussions [*‘um bate-boca danado’*] every time the investigation was conducted by the *Ministério Público*. They dismiss the case from the start. If the investigation was conducted by the *Ministério Público*, which is often the case, they do not even bother looking at the indictment ... and that is weird because the Full Court and the specialized panel before it both accepted the investigation by the *Ministério Público*. Even so, the 1st [Criminal] Panel does not accept it. And the 2nd [Criminal] Panel does accept it. So, the understandings of the court ended up diluted, the weight of the decisions decreased and work was pulverized (ibid).

Taking from the court decisions and its recent transformations, hence, the legal accountability of mayors in Bahia seems to be moving towards a scenario of *fragmented autonomy* that is fueled especially by the de-mobilization of its appellate judges and the consequent fragmentation of the TJBA's work. By distributing rather than concentrating the jurisdiction over the criminal cases of mayors in its criminal panels, this arrangement allows the appellate judges to operate in a much more reserved environment. Court fragmentation, thus, allows judges to dilute responsibility and, as such, to minimize their individual exposure on cases that have high potential to be politicized. In short, no one remains in the spotlight for too long. This logic, in turn, seems to emanate from the traumatic events involving the *Câmara Especializada*, which are likely to have produced a long-term effect in the court. It is, thus, as if several members of the TJBA had internalized a self-restrictive approach to the cases of mayors due to the serious conflicts they produced during the *carlista* era, which were deleterious to the stability and autonomy of the court.

In fact, as I visited and walked by the corridors of the TJBA in July and August of 2013, the topic of the *Câmara Especializada* was still an extremely delicate one, and a significant number of people wanted as much distance as they could possibly get from associating its name to CESP. My attempts to talk to two former members of the specialized panel are illustrative. In one case, I called and talked to a clerk of the *desembargador*, who said that he did not have anything to say about his three years of work at the panel. As I went to his chambers and talked to his secretary in a day of court session, she replied that he did not have any time available because he was “very busy” reviewing cases. I then said that my schedule was flexible and that I could return anytime the *desembargador* was available, even late if that was better for him. The secretary then shortly replied that this was not possible: the “very busy” *desembargador* could not see me later because he invariably leaves at 6:00PM. Similarly, as I went to the chamber of another *desembargador* who worked at CESP during its last two years, I was able to pass through the secretary and was even invited to come into his office, just to be standing there while he had a meeting with his clerks. As I entered his office, he interrupted the meeting and, without anyone leaving the office, said – with a mix of irritation and embarrassment – that he had nothing to say about the *Câmara Especializada* because *nothing out of the ordinary had happened there*, that they just decided cases like any other panel of the court and then it was abolished, and that was it.

Importantly, the 2008 decision to transfer the cases of mayors from the Full Court to the criminal panels was the first decision ever made by the TJBA itself on the jurisdiction of criminal cases of mayors. That is, all previous decisions concerning such cases – i.e., from the Full Court to CESP in 1996, and from CESP to the Full Court in 2006-7 – had resulted from new laws approved by the Executive and Legislative of Bahia, rather than being decided by the appellate judges in the bylaw of their appellate court. Thus, as much as the 2008 decision fragmented the jurisdiction

over criminal cases of mayors, it was the first decision concerning such cases made *by* the court without outside interference. It was, by these terms, an affirmation of its autonomy, even more so because it directly contradicted the state law n. 10.433, of December 2006, which extinguished CESP and placed the cases of mayors under the jurisdiction of the Full Panel. Founded in the national constitutional rule that this decision is internal to the courts, the *baiano* judges explicitly asserted it. Somewhat paradoxically, the diffusion of responsibility of the cases of mayors was a sign of the increased institutional autonomy of the TJBA, which had in turn been supported by the recent increases in the pluralism of Bahia's politics.

The decision, thus, was similar to the one that has been repetitively made by the *mineiro* judges: to affirm its autonomy so as to avoid concentrating responsibility in the courts to fight mayoral corruption. At the same time, the resulting court fragmentation of Bahia is probably acuter than the one of Minas Gerais, for even fewer individual initiatives at bringing mayors to justice exist in the former. While in Minas Gerais the majority of the convictions at the TJMG have resulted from decision of the court in appeals of cases previously decided by district judges, no such thing has ever occurred in Bahia. As a prosecutor sums up: "no appeal of decision either convicting or acquitting a mayor has ever been adjudicated at the TJ[BA] because it is very complicated, even dangerous, for the district judges to try to do so" (Interview # 47).

As with the *instrução* via *cartas de ordem*, the trial of these cases is even more problematic in Bahia because poorly funded local courthouses force district judges and prosecutors throughout the state to rely on mayors to keep local judicial institutions running. The latter, as a result, hardly take any active stances against the mayors. This means that while in Minas Gerais a relatively large group of district judges and prosecutors helps intensifying judicial responses to mayoral corruption, in Bahia this arena of action is almost entirely out of the equation. The sole

locus of action, thus, is the TJBA. No wonder convictions of mayors are still in the single digits in Bahia. With practically no action from lower instances of the courts and prosecutors' office and the many recent changes in the jurisdiction of these cases, only a few cases ever arrive at final decisions on the merits. These have been only twelve so far, eleven of which took place in 2012.³²⁸ As a result, six convictions is the total count of mayors sentenced by the state judiciary in Bahia (cf. MPBA 2012). Still, only time will tell if the relatively positive results of 2012 will be repeated in the following years.

Finally, moving beyond the judiciary, while the coordination between the works of prosecutors and auditors has been steadily increasing since 2003-4 and has been much greater in Bahia than it has for the most part been in Minas Gerais, it is still very far from the degree of collaboration observed in Rio Grande do Sul. That is, on the one hand, albeit much poorer in resources, the MPBA and TCMBA are significantly more collaborative than MPMG and TCMG have been for most of the past years. On the other, the superior resources and the intense collaboration between the MPRS and the TCERS demonstrate how much room for improvement both with and without an increase in its resources.³²⁹ There is room for improvement, thus, on how the relationship between the TCMBA and the MPBA/NICAP has been carried out. I highlight two of them, detailed below.

³²⁸ The previous decision on the merits was the one of Mayor Ney Alves de Carvalho, or Itaguaçu da Bahia, decided by the specialized panel in 2004 a few months before his decease.

³²⁹ The contrast of the coordination between MPBA and TCMBA with that of MPMG and TCEMG is actually quite astounding. The *mineiro* prosecutors could not even remember the TCEMG as a source of information for their investigations, whereas, as in Rio Grande do Sul, the auditing agency was one of the first things that came to the mind of the prosecutors in Bahia as a source of information. Similarly, while *mineiro* prosecutors could not even recall a single notification received from their auditing agency, since 2004 an average of one hundred fifty-two reports with irregularities of local governments was sent every year from the TCMBA to the MPBA. During the same period the former also answered to a yearly average of almost four hundred information requests of the latter. Despite the increased collaboration between prosecutors and auditors in Bahia, this is much greater in Rio Grande do Sul, given the thousands of yearly audit reports instantaneously available to the prosecutors as soon as they are completed by the TCERS.

First, while auditors do share their information with the prosecutors, the *moment* in which they do so is a common complaint of the latter (cf. Interviews # 47 and 48). While the TCMBA has been quick to decide whether or not to impose administrative penalties on the mayors – taking often one year to do so – they only notify the prosecutors of the irregularities they identified once they make their own decision. Although they have been fast to do so, if one recalls the story of the collaboration between auditors and prosecutors in Rio Grande do Sul, one of the key traits of how they coordinated their work involved the simple measure of the former informing the latter of irregularities as soon as they are detected, so that the risk of *prescrição* can be minimized. This could be especially helpful for the so-called “*termo de ocorrência*” – a report that registers serious irregularities at the TCMBA as soon as one of its members identify them. Created in the early 1990s to speed up the processing of blatantly unlawful acts of local officials, the *termos de ocorrência* would be especially helpful if they arrived earlier at the prosecutors, for their content addresses precisely the sorts of illegalities that have the potential to be turned into indictments (cf. Interview # 53). In effect, a prosecutor observes that due to this lag in the notifications, at times “we are investigating something here [at NICAP] that they are also investigating there [at TCMBA] and we only come to know a year or so later” (Interview # 48).³³⁰

Second, a few issues pertaining exclusively to the internal organization of the TCMBA affect its performance somewhat negatively, so that it does not contribute to the legal accountability of mayors as much as it potentially could. Accordingly, while the TCMBA is more consistent in the number of in loco audits it conducts every year when compared to the TCEMG, these are still significantly less than those performed by the TCERS. As in Minas Gerais, the auditing agency

³³⁰ In time, the MPC of the TCMBA also seems to be gradually assuming the role of mediator between the auditors and the prosecutors (cf. Interview # 50, 54). It is still very recent – having been established in 2011- however, to allow any definitive conclusions about its performance in this regard.

of Bahia still has a great number of auditors whose job basically consists in reviewing the papers sent by the city halls rather than in being on the field directly inspecting the municipalities. As a result, the number of in loco inspections performed yearly by the TCMBA is still quite low when compared to those of the TCERS. The importance of the focus of the so-called “main activity” of the courts of accounts and thereby increasing number of audits directly linked to the sequential nature of the stages of legal accountability. That is, the more irregularities they are able to detect, the more investigations can be conducted. These, consequently, will lead to a greater number of indictments and to more cases adjudicated in court, potentially generating more convictions.

This focus on permanent monitoring and detection, though, is still relatively new at the TCMBA. As a result, it has not been realized to its fullest extent. As one of the auditors at 3CCE notices, “this change is slow-moving [*‘anda devagar’*] because we have to change what people have been doing for years. They are used to perform their jobs in a certain manner and what we are trying to do it to alter precisely that” (Interview # 57). Consequently, despite the recent improvements in the performance of the TCMBA, the usefulness of the material it sends to the prosecutors is not as good as it could be. Prosecutors, thus, end up relying on *exposure* more than *detection* as source of information for their investigations. As a member of NICAP concluded,

“We really use a lot of the material sent by them [TCMBA], but they work by sample ... then we end up giving more attention to those things that have clearer indications of irregularities [*‘indícios mais claros de irregularidades’*], so our work is the sample of the sample. So, it is actually only when the [local] opposition mobilizes that we are truly able to unveil what happened in the city hall and indict the mayors” (Interview # 47).

CHAPTER 7. LESSONS LEARNED, TASKS AHEAD AND BEYOND

7.1. Lessons Learned: Explaining Judicial Responses to Political Corruption

This study addresses a puzzle: if the legislation on mayoral corruption is identical throughout Brazil, why have some state courts convicted the heads of city halls at much higher rates than others? What, in other words, explains the variations in the “actually existing law” despite the same “law on the books” of Rio Grande do Sul, Minas Gerais and Bahia?³³¹ In order to provide answers to these questions, I have detailed along the last chapters the intricate stories involving the judges, prosecutors, auditors, and political elites of these three states. More than the specific procedures employed in each state judicial system or the names of its participants, however, my expectation is that these stories are able to illuminate a much ampler theoretical inquiry.

A closer look at the judicial politics of corruption in Rio Grande do Sul, Minas Gerais and Bahia helps to reveal key factors behind the variation of judicial responses to political corruption in minimally democratic regimes. Underneath all details on how mayors are held accountable for their acts by the judicial systems of these three Brazilian states, I argue, lies an explanation on why corrupt elected officials are punished by courts at much higher rates in some democracies than in others. As it should be clear by now, my argument emphasizes two pairs of variables: political pluralism and institutional autonomy, on the one hand, and legal mobilization and inter-institutional coordination, on the other. These elements interact to generate four basic types of

³³¹ Federative countries with dual court systems (i.e., one federal or nationwide, and another provincial or statewide) end up producing different legalities across their territories. This process of “uneven production of legalities,” in turn, is fueled not only by the different legislation enacted subnationally, but also by the different interpretations its courts generate even in rulings of formally identical laws. Brazil is hardly the exception and other countries also exhibit this phenomenon (e.g., Trochev 2004, Filindra 2009, Lawson 2010).

performances of judicial systems on the punishment of corrupt elected officials. In increasing order of intensity of the judicial responses to political corruption they produce, these ideal-types are: constrained isolation, constrained coordination, fragmented autonomy, and coordinated autonomy.

If the policy-making is dominated by a single group or elite and legal actors are poorly mobilized to fight corruption, as in *constrained isolation*, neither will the several institutions of the system of justice be sufficiently autonomous nor will they be coordinated to produce judicial responses to political corruption at any meaningful level. If legal actors mobilize and thereby increase the coordination of their activities, their efforts will still be only marginally successful in this non-plural political environment. The hegemonic political elites will counter-mobilize and, in light of the general lack of opposition to their initiatives, they will be able to curb the legal accountability efforts. The resulting reduced level of institutional autonomy, in other words, will open the door for political manipulation, leading to the scenario that I earlier called *constrained coordination*. If, however, the political environment is marked by a multiplicity of sources of power, but legal actors are only scarcely mobilized to bring corrupt officials to justice, they will have latitude to perform their activities but will fail to coordinate them. Autonomous but isolated institutions, thus, will generate relatively sporadic judicial responses to corruption, resulting mostly from the efforts of a few committed individuals. This is *fragmented autonomy*. Finally, the most intense legal accountability results occur when highly mobilized legal actors bridge the gap among their institutions in a plural political context. That is, by coordinating the efforts of their autonomous institutions, they lead to frequent judicial responses to corruption, as in *coordinated autonomy*.

My purpose in this final chapter is to reassess these theoretical claims in light of the findings of the three previous chapters. This section, therefore, summarizes the main findings of each case

and collates them with this framework as well as with the alternative and additional explanations listed in the final section of Chapter 2. In the following section, I illustrate my findings with a brief application of my model to other cases. In so doing, I highlight how the typology advanced in this study can assess other states and countries facing the same challenge of punishing corrupt officials. In the last section, I discuss the broader implications of my findings and future venues of inquiry that derive from findings of this study. For now, let me recap the findings of the last three chapters to contrast them with my theoretical model. The table below sums up the main conclusions (see Table 7.1.) which are explained right after it.

Table 7.1. Legal Accountability of Mayors in Three Brazilian States, 1988-2012

		<i>Inter-Institutional Coordination</i>	
		<i>Low</i>	<i>High</i>
<i>Institutional Autonomy</i>	<i>Low</i>	Constrained Isolation Bahia (1988-1996)	Constrained Coordination Bahia (1996-2006)
	<i>High</i>	Fragmented Autonomy Bahia (2006-2012)	Coordinated Autonomy
		Minas Gerais (1988-2012)	Rio Grande do Sul (1992-2012)
		Rio Grande do Sul (1988-1992)	

Starting by the case of Rio Grande do Sul examined in Chapter 4, as soon as Brazilian mayors became entitled to *foro privilegiado* in 1988 as a result of the national constitution enacted in that year, the *desembargadores* of the state mobilized relatively quickly to prioritize the trial of such cases at their court, the TJRS. After a short period trying those cases at the Full Court and at the isolated criminal panels to the state court of appeals, they established an entirely new specialized panel – the 4^a *Câmara Criminal*, or 4CC – to try those cases. This specialized arrangement

allowed the appellate judges of 4CC to adapt its administrative structure to the trial of those cases (with in loco *instrução* via *juiz de instrução*, *cartório* and, finally, full-time specialization) which in turn improved the quality of the evidence produced in court as well as the speed at which these cases were adjudicated on the merits. Just as important as allowing the necessary changes in the court's structure, this initiative also set in motion a broader wave of mobilization involving both the prosecutors and auditors of the state. By 1993, the prosecutors established their own specialized division on crimes of mayors at the MPRS, which reached out to the prolific auditing agency of the state, the TCERS, and started to use the reports of the latter to indict the mayors. Shortly after, mayoral convictions started to take place and soon became routine in the state, totaling over a hundred in less than six years.

The responses of the political elites to these legal accountability efforts were few and limited in impact. First, as of today, no attempts to extinguish the specialized units either at the TJRS or the MPRS ever took place. Second, the resulting political responses targeted individuals rather than entire institutions. They were: the non-nomination of the creator and then president of the 4CC in 1997 (*desembargador* Luiz Melício Uiraçaba Machado) to a regulatory agency, which led to his departure from the specialized panel, and the removal of prosecutor Luiz Carlos Ziolkowski from the chief position of the specialized division at the MPRS. The impact of these measures was limited. The exit of judge Melício did not seem to have altered at all the performance of the 4CC. In fact, in the year following his departure, the panel reached a record of convictions, sentencing thirty mayors. As for the removal of prosecutor Luiz Carlos Ziolkowski from the coordination of the specialized division in 2005, it did result in an immediate reduction in the number of indictments brought to court, but this amount gradually returned to prior levels. Third, no attempts to restraint the activities of the TCERS took place either. In fact, since 1998, Rio

Grande do Sul's auditing agency changed a series of its internal procedures which not only enhanced its capacity to oversee city halls but also to coordinate its efforts with prosecutors.

The story of Rio Grande do Sul, as such, illustrates the transition from a context of *fragmented autonomy*, between 1988 and 1992, toward one of *coordinated autonomy*, starting in 1992. The mobilization of judges, prosecutors and auditors soon generated a relatively cohesive team work to bring mayors to justice. The plural political environment of the state, furthermore, limited the attempts of political elites to curb the legal accountability efforts. These were few in number and largely ineffective. The combination of coordinated legal efforts with little resistance from plural political elites, thus, conducted to over three hundred convictions of mayors and former mayors along the last two decades, or over fifteen per year.

Chapter 5 tells us a different story on Minas Gerais. Objective social conditions, as it turns out, did not translate automatically into political problems that demand policy solutions. With the largest number of city halls in Brazil and almost double the Rio Grande do Sul, the population pool of potentially corrupt mayors of the *mineiro* state is the highest in the country. However, the TJMG have failed to establish a specialized panel to try the mayors. This did not happen due to exogenous constraints imposed by political elites. On the contrary, although state representatives have tried to create this court structure by law at least in two opportunities, in 2000 and 2007, the *desembargadores* of Minas Gerais consistently refused to do so. Legislative encouragement, in other words, was faced with bleak responses from the judiciary. In effect, as of 2011, when the TJMG was discussing its new bylaw and one of its members proposed to concentrate the cases of mayors on two panels to enhance the capacity of the court to try them, other appellate judges strongly opposed and the proposal was never implemented. As such, after a short period in which

cases of mayors were tried at the Full Court, from 1988 to 1991, since then the TJMG has kept unaltered its procedure to try mayors by dispersing them in all criminal panels of the court.

Despite the judges' reluctance, the *mineiro* prosecutors established a specialized division at the MPMG in 2000, following the first frustrated initiative to specialize the courts. This generated an overall intensification of prosecutorial efforts which, however, was not accompanied either by the judiciary or the auditing agency of the state. For one, despite the hundreds of indictments brought to court since then, each criminal panel of the TJMG decide them on a different way, but still only a few arrive at the final disposition on the merits of the cases. For another, the auditing agency of Minas Gerais has been exhibiting a rather erratic performance on the inspections of city halls, in certain years auditing several of them and in others, none. The bureaucratized and overly formalistic approach of the TCEMG to inspections, consequently, has been of little help to prosecutors in their efforts to unveil wrongdoings in city halls. Similarly, there seems to be very little communication and coordination between auditors and prosecutors of Minas Gerais. Not only the TCEMG contributes little to notify the MPMG of mayoral irregularities, but also the members of the latter do not even deem the former partners in their efforts to bring mayors to justice, apart from very recent changes. As a result, all investigative work has been falling in the hands of prosecutors, who end up overwhelmed with the resulting amount of work.

Persistently throughout the 1990s and 2000s, thus, judicial responses to mayoral corruption in Minas Gerais have resembled what I have previously called *fragmented autonomy*. Its three main legal accountability institutions are largely distant from each other due to the lack of mobilized actors in two of them. True, the intensification of prosecutorial efforts starting in 2000 with the creation of a specialized division at the MPMG altered dramatically the number of cases brought to the courts. Still, it has not altered the nature of the legal accountability of mayors in the state.

Prosecutors, in other words, did mobilize and have remained mobilized since then. The impact of their activities, however, has been largely limited by their isolated position. Neither the auditors nor especially the TJMG appellate judges have mobilized to hold mayors accountable for their acts. No inter-institutional coordination, thus, has emerged. Only recently there seems to be some change in this regard with changes inside the auditing agency of Minas Gerais, but it is probably too early to evaluate their effects.

Critically, the relatively timid performance of the judicial system of Minas Gerais does not seem to emanate from exogenous constraints. Instead, incentives to strengthen the courts have existed continuously throughout the 2000s from elected officials, but the *mineiro* appellate judges have consistently preferred to avoid taking an active stand on the issue. By diluting the exposure those cases entail, the *desembargadores* of Minas Gerais have not only adopted a risk-averse approach to the trial of crimes of mayors, but have nonetheless also prevented the court from improving its performance in this regard. Despite the lack of opposition to legal accountability and the absence of explicit episodes of confrontation between legal actors and political elites, thus, auditors and especially appellate judges have not yet followed the mobilization of prosecutors in the state. As such, no scenario of *coordinated autonomy* has been able to emerge in the Minas Gerais.

Finally, chapter 6 has described the tumultuous story of the legal accountability of mayors in the state of Bahia. Differently than both Minas Gerais and Rio Grande do Sul, the political system of this state has been characterized during most of its 1990s and 2000s by the clear predominance of a single unified political elite: the *carlista* political machine spearheaded by the late Brazilian Senator Antônio Carlos Magalhães, or ACM. Comprising over eighty percent of mayors of the state, a consistent majority at the legislative assembly, and strong ties to the federal government, this hegemonic political group made the legal accountability of mayors practically a non-issue in

the policy-making of the state from 1988 to 1996. Until then, in effect, close to zero indictments against mayors had ever been brought to court and the few that did were never tried. During this period, as a result of the firm hand of the *carlistas* over the judicial system of Bahia, thus, the legal accountability of mayors in the state resembled what I called *constrained isolation*.

Still, in 1996 a group of legislators – both *carlistas* and non-*carlistas* – proposed to the TJBA to establish a specialized panel at their court similar to the one of Rio Grande do Sul – the *Câmara Especializada*, or CESP. Differently than the *mineiro* appellate judges, no resistance came from the *baiano* ones. The new panel started to operate in 1997, but it would take several years for it to generate any meaningful results in the legal accountability of mayors. Since Bahia's political system was very different than those of both Rio Grande do Sul and Minas Gerais, the *carlista* political machine was able to maneuver other institutions of the judicial system so as to frustrate any efforts at holding mayors accountable. That is, to each effort of legal actors towards bringing about judicial responses to mayoral corruption in Bahia, the political elites fought back. First, the specialized panel was made largely inoperative in the realm of criminal cases of mayors due to the lack of investigative efforts of prosecutors. Only a few indictments were brought to CESP panel because the prosecutor-general of the MPBA supported by the *carlistas* was unsympathetic to investigations being conducted directly by the prosecutors' office. Instead, all notifications of mayoral misconduct received by the MPBA were forwarded to the state police, which was firmly controlled by the *carlistas* and dumped them into the *sala secreta* not to be at all investigated. As the prosecutors finally took the investigations of those cases into their own hands in 2003 and commenced to use the material produced by the auditing agency of the state more frequently, the specialized panel of the TJBA started to remove dozens of mayors from office at the onset of the cases in the next years. Still, only one case was ever decided on the merits by CESP. Before any

other cases of mayors could be tried, in December 2006, twelve days before the *carlistas* would have finally to relinquish power for the first time in decades due to their defeat in the elections for the state government two months earlier, they abolished by law the specialized panel they had helped to create back in 1996.

No such direct and aggressive responses from the political elites of Rio Grande do Sul or Minas Gerais ever took place to curb legal accountability efforts as they did in Bahia. The significantly less plural political environment of this state during the 1990s and most 2000s, dominated by the powerful political machine of ACM and his acolytes, did not give much latitude for the *baiano* legal actors to make judicial responses to corruption effective in the state, despite their increased mobilization. As such, from mid-1996 to the beginning of 2007, legal accountability of mayors in Bahia illustrated a case of *constrained coordination*. That is, as much as legal actors mobilized to coordinate their efforts, they were no match for the overwhelming power of the hegemonic political group of the state.

Finally, as the *carlistas* were removed from power and real political competition was introduced in Bahia, the mobilization of the judges soon wore off. Following the alternation in power, thus, the system of justice of Bahia came to resemble that of Minas Gerais, even if in a more modest fashion. Starting in 2008, the appellate judges of Bahia decided to disperse the cases of mayors in the much more discrete environment of the isolated criminal panels of the court. Thus, in spite of the continued mobilization of prosecutors and their coordination with the auditors, the legal accountability of mayors in Bahia can currently be described as a case of *fragmented autonomy*.

Each of these cases highlights how the interplays between political pluralism and institutional autonomy, on the one hand, and legal mobilization and inter-institutional coordination, on the

other, are fundamental to understand how judicial responses to political corruption can be made more or less effective. Yet, judicial responses to corruption are probably harder than they appear to be. Legal accountability involves so many interdependent processes and institutions that it is almost incredible that it works at all. Even if the courts, prosecutors' offices, auditing agencies, and so on, are largely autonomous from the exogenous constraints potentially imposed by elected officials, much still depends on how willing the actors inside each of these institutions actually are to engage and be truly active in the domain. A large parcel of legal accountability results, in other words, has to be explained in reference to this similarly large area of discretion available to such actors, which can make their institutions come together or far apart.

The contrast between Rio Grande do Sul and Minas Gerais highlights that. For similarly plural political contexts, how mobilized the legal actors were matter significantly. The main difference between the two states was the initiative taken by the *gaúcho* judges to streamline the trial of the cases of mayors, which was almost immediately followed by the prosecutors and auditors, who mobilized accordingly. Coordinated efforts soon became routine. In Minas Gerais, this initiative never took off despite the favorable plural political environment. Even if prosecutors mobilized and organized their activities to fight city hall corruption, their efforts were never followed by the courts or the auditing agency. Coordinated efforts never materialized. Each institution kept on pursuing its own goals largely in disregard for the effects they bring upon the others. This difference between the *gaúcho* and the *mineiro* judicial systems may seem small or superfluous, but it is largely responsible for the vast differences in accountability results of the two states. I have mentioned this before, but it is worth repeating: Rio Grande do Sul convicted over twice the number of mayors of Minas Gerais in spite of having almost half of its city halls. This difference is far from small. It is, in fact, quite significant.

In contrast to Rio Grande do Sul, however, the case of Bahia shows that legal mobilization is not a panacea. There are important constraints that limit the effectiveness of such efforts depending on how monopolistic or hegemonic the political system in which such accountability efforts take place. Eight years had passed after the specialized panel that was established to try the mayors of Bahia could do that for the very first time. In the meantime, the state police, under strict control of the state political elites, frustrated all the efforts by judges and prosecutors to bring city mayors to justice by secretively shelving hundreds of cases so that they were forgotten. Even as the prosecutors adopted an increasingly aggressive approach and investigated themselves the cases, few concrete results emerged. Before that could be possible, however, elected officials took the matter in their own hands and aborted any actions by abolishing the specialized panel they had helped to create a decade earlier. That is, as much as the *baiano* judges, prosecutors and auditors increasingly mobilized to coordinate their efforts, there were only a few effective results they could achieve under *carlismo*.

Legal mobilization matters, but its effectiveness depends largely in what sort of environment it is pursued. Still, it can produce dramatically different outcomes. Intense and continuous judicial responses to corruption, however, are not the products of either the autonomous institutions that are characteristic of plural political environments or the coordinated ones that emerge from the mobilization of their actors. Instead, it is the combination of high levels of both variables that produces the most intense legal accountability results. At the same time, I do not deny that other factors do play a role in this regard.

Of the six alternative and additional explanations I outlined previously, the one that probably has contributed the most to the observed differences was the one on institutional capacity. This was especially true in reference to the observed results for the auditing agencies of the three states.

That the TCERS was so much more active in performing in loco audits at the city halls than both the TCEMG and the TCMBA followed only in part from its superior resources, however. That is, while the auditing agency of Rio Grande do Sul has performed many more inspections than both the other two agencies combined, this followed much more from how it is organized – with a clear focus on its main activity of auditing the administrative entities within its jurisdiction – and, consequently, how mobilized its auditors are, than on how rich it is. The TCERS does consume a larger share of the state budget than its *mineiro* and *baiano* counterparts. Still, the differences in budget are not even remotely proportional to the differences in performance. With about twenty percent more resources than its *mineiro* equivalent, for instance, the TCERS averages over six times more in loco audits over the past decade.

In effect, resources do exist at both the TCEMG and the TCMBA. It is how they are allocated inside each institution that has been preventing both from a better performance, particularly the former. Much could be done with the already existing resources, especially relocating auditors from reviewing documents sent by the city halls to performing in loco audits throughout their states. The stories of the other legal accountability institutions of all states illustrate this point. Prosecutorial capacity, thus, was built to investigate and prosecute mayors in Rio Grande do Sul (1993), Minas Gerais (2000) and Bahia (2003) as a consequence of internal initiatives that little had to do with increases in budget or personnel available. The specialized divisions on crimes of mayors of these three states resulted largely from the efforts of committed prosecutors, who decided to prioritize those cases at the expense of others. Institutional attention, it should be reminded, is invariably a scarce good because the limited availability of resources is ubiquitous (cf. Jones and Baumgartner 2005). It is the choice on how to use those ever-limited resources that is critical and may even separate high- from low-capacity institutions in this domain.

As for the other additional and alternative variables, none seem to have played a major role in the cases examined in this dissertation. The *preferences of political elites*, for instance, were almost entirely captured by how plural or non-plural they actually were. Quasi-hegemonic actors, such as the *carlista* political machine of Bahia, opposed aggressively most legal accountability efforts. The political elites of the more plural state of Rio Grande do Sul, in turn, were significantly more modest in the measures they pursued to signal their disagreement with those initiatives. Similarly plural political groups of Minas Gerais, finally, even tried to set legal accountability in motion in their home state but, because the decision to mobilize ultimately rests with the legal actors, they were not able to initiative it. Likewise, on the *motivations of legal actors*, their partisanship did not seem to have played any apparent role. Conflicts between elected officials and legal actors revolved mostly around the autonomy and alleged aggressiveness of the latter, so that allegations of partisanship were largely rhetorical weapons used to undermine the legitimacy of the courts, as in Bahia from 2003 to 2006.

On the *political support for the courts*, the presence of local opponents of the mayors notifying auditors or prosecutors of wrongdoings in city halls was a common trait to all three cases. In fact, the members of the *Ministério Público* in the three states were especially quick to point out that such information constitutes a substantial share of their work. On *judicial corruption*, allegations about it were also much more pervasive in the tumultuous case of Bahia than in Minas Gerais or Rio Grande do Sul. In effect, one of the members of the specialized panel was even accused of selling judicial decisions to the highest bidder. Just as similarly, since I returned from fieldwork in Bahia, its courts of appeals has been plagued with accusations of irregularities, ranging from the wrongful management of judicial deposits to fraud in the contracts of the construction of one annex to the courthouse (cf. França 2013). Finally, *other legal accountability stages* affected all

state court systems rather similarly since appeals were available to the exact same high courts for the three cases examined here.

7.2. Beyond Rio Grande do Sul, Minas Gerais and Bahia

So far, this has been predominantly a tale of three Brazilian states. At the same time, the model I developed through my literature review and analysis of the judicial systems of Rio Grande do Sul, Minas Gerais and Bahia illuminates the legal accountability performance of other cases facing similar challenges. My theoretical findings, in other words, go beyond the cases from which they were inductively derived and, as such, can be deductively applied to other contexts and cases.

One way to illustrate this claim is applying my theoretical framework to another state in Brazil's Northwest region, Maranhão. It provides fertile soil for analysis due to the many characteristics it shares with the state of Bahia, examined in Chapter 6. This is particularly true in regards to its level of political pluralism which until the mid-2000s was extremely low due to presence of a dominant political machine. Combined with poorly mobilized legal actors, the levels of both institutional autonomy and inter-institutional coordination would be quite low, generating what I have termed *constrained isolation*. Still, in the mid-2000s, not only its political environment started to display cracks in the existing political machine, but also increased mobilization of its legal actors. By these terms, I would predict that the performance of the system of justice of the state of Maranhão has evolved from a regime of *constrained isolation* to one of *coordinated autonomy* or, at very least, *constrained coordination*.

As in Bahia, a dominant political machine has exerted a quasi-hegemonic role in the politics of the state from the former military regime to the current democratic period (e.g., Montero 2010,

Grill 2008, 2013).³³² In effect, one could easily replace the name of the Magalhães family for the Sarney that the implications would be rather similar. Not surprisingly, the legal accountability of mayors remained mostly a non-issue since 1988, largely resembling what I have termed above *constrained isolation*. In 2007, however, the Sarney family was removed from the governorship of the state for the first time in decades. The running candidate for the incumbents, Roseana Sarney, lost the elections of the previous year by a narrow margin to the contender Jackson Lago, of the center-left PDT, opening the door for increases in the institutional autonomy.

Around mid-2007, a group of progressive judges in charge of the *Associação dos Magistrados do Maranhão* (AMMA, or Association of Judges of Maranhão) that had been opposing the opaque administration of the state judiciary since the early-2000s also started to press the state court of appeals to alter the procedures it used to try criminal cases of mayors as well.³³³ Particularly, it aimed to remove such cases from the Full Court, where they had remained dormant for years, and place them under the jurisdiction of the isolated criminal panels of the court. The declared goal of the judges at AMMA was to make the trial of corruption cases more efficient (AMMA 2007). Garnering the support of the prosecutors' office and of the chapter of the Brazilian Bar Association in the state, the *desembargadores* of Maranhão soon accepted the proposal of the judges of AMMA and in April 2008 decided to reassign the criminal cases of mayors to the three

³³² A direct comparison between Maranhão and Bahia, by these terms, could be characterized as one following the so-called "most-similar systems design" (Przeworski and Teune 1970), with perhaps an even worse case of power-politics domination. As Montero notices, "of all 27 Brazilian states, Maranhão is conceivably the one with the most oligarchical politics. The state was ruled by a single political group organized around the person of Federal Senator Victorino Freire from 1945 until 1965 and then the election of José Sarney to the governorship initiated a new political machine that extended through the 1990s as Sarney's own daughter, Roseanna, would claim the governorship in 1994 and then again in 1998. She would be followed by a long-time loyalist of her father, José Reinaldo Carneiro Tavares in 2002" (2010, 143). Similarly, just like the Magalhães family in Bahia, the Sarney family in Maranhão also extends its dominion to the media. In fact, the family owns the largest communication vehicles of the state (cf. Grill and Reis 2012). Finally, with 6.7 million inhabitants divided in 217 municipalities, Maranhão is the least urbanized state of Brazil and exhibits the lowest GDP per capita of the country, equivalent to 3,400 U.S. dollars (IBGE 2012, 2013).

³³³ For a detailed account of the progressive role of the judges at AMMA since the early 2000s in Maranhão, see Ingram (2009, 288-296).

existing criminal panels of the court (AMMA 2008). The first of such cases were tried in August of that same year and by the beginning of 2013 a total of twenty-one mayors and former mayors of the 217 municipalities of Maranhão had already been convicted (AMMA 2013).

The case of Maranhão, by these terms, is consistent with the predictions of my theoretical model. The confluence of increased legal mobilization and political pluralism since 2007 seems at least to have put the state on the track towards *constrained coordination*. Whether these efforts will be sustained over time and effectively lead to constrained coordination is open to debate. The threat that these mobilization efforts may actually lead to constrained coordination also exists. This is especially the case because the Sarney machine returned to the state government in 2009, after Governor Jackson Lago was impeached from office as “he was unable to garner enough political support to defend himself against the Sarney machine,” explains Montero (2010, 148). So far, however, the return of the previously hegemonic machine of Maranhão has not proved enough to limit the courts’ activity on cases of mayors, since convictions of heads of city halls continued until as late as 2013. The more competitive political environment resulting from the real loss of the Sarney machine in the elections of 2006, hence, is probably a contributing factor behind this change potentially towards more autonomous institutions.

Consistent with my overall approach, however, this is no strict test of my theoretical framework. The changes of how judicial responses to political corruption work in Maranhão can indeed be understood through the lenses of the categories advanced in this study. Still, this short review is no definitive proof of that. Only an in-depth analysis – as those performed in the previous three chapters of this study – would be able to properly apprehend these changes which, furthermore, are quite recent.

Moving beyond Brazilian states, my theoretical model also illuminates how the accountability institutions at the federal level have been performing in the country. In effect, the existing studies show that the predominantly plural political system of Brazil – with its competitive elections and fragmented party system (e.g., Santos 2008, Zucco Jr. and Power 2012, Melo and Pereira 2013) – has helped to produce only a few exogenous constraints on the system of justice of the country along the past decades. The institutional autonomy of the federal courts, prosecutors' offices, auditing agencies and, more recently, of the federal police have all been relatively high in Brazil, particularly in comparative perspective (e.g., Ríos-Figueroa 2006, Kapiszewski and Taylor 2008, Santiso 2009, Aguilar 2011). Still, for the most part their level of inter-institutional coordination has remained low, generating what I have called *fragmented autonomy*.

Critically, the federal prosecutors' office has been quite active in this domain and has also been working increasingly together with the federal police (cf. Arantes 2011, 2011a), but the judiciary proper still remains the main point of resistance of change towards *coordinated autonomy* (e.g., Taylor and Buranelli 2007, Taylor 2011). This has been true especially in regards to cases that involve elected officials entitled to *foro privilegiado* in the high courts, the STF and STJ, which include federal representatives, senators, state governors, and ministers, among others. None of these courts has been adequately prepared to try such criminal cases. Coupled with their massive caseloads, this leads to overly delayed trials and, much more often than not, to impunity.

Perhaps more critically at Brazil's high courts is the relatively absence of discussion among their members on how best organize the courts to try such cases. In a way, this is symptomatic of the overall lack of priority dispensed to these quarrels. Several relatively small changes that could positively impact how those cases are processed and tried, such as defining specific dates only to adjudicate those cases or setting up a clerk's office to deal with the specific procedures these

cases require, among others, could in fact be implemented via direct decisions of the courts.³³⁴ Still, only a few concrete actions took place in this regard over the more than two decades since the 1988 Constitution was enacted. For instance, the possibility of appointing a *juiz de instrução* to conduct the examining stage of the cases, which has existed since 1989 in Rio Grande do Sul, became available to the justices of the STF only twenty years later, in 2009.³³⁵ Not surprisingly, despite the relatively increased mobilization of prosecutors and other investigative officials in the country, the predominant low level of mobilization of the members of the Brazilian high courts is still preventing inter-institutional coordination from becoming truly effective.

Even the *Mensalão* case decided by the STF in 2012, which I have mentioned in the first lines of this study, can be interpreted through the lenses of the notion of *fragmented autonomy* advanced here.³³⁶ While events are still quite recent, the case was surely more the exception than the rule at that court. In fact, it was one of the first cases of its kind ever to be thoroughly tried at the STF which usually takes too long to conclude the examination and adjudication of the cases, so that they either result in *prescrição* or have to be relinquished to lower courts because the accused have lost their positions in the meantime. While many probably hoped that the trial of *Mensalão* would start a wave of mobilization in the STF around corruption, this has not been the case. With its relatively ample autonomy but poorly designed structure, this occasional success in bringing about legal accountability resulted mostly from an individual initiative than from an institutional

³³⁴ Importantly, not all measures that could possibly be adopted to strengthen the Brazilian high courts depend solely on their own wills. Others surely demand change in legislations. For instance, at the STF, up until 2001 there was an important drawback that tied the hands of its justices: the STF needed congressional authorization to hear a case in which one of the members of the legislature was the accused. In 2001 constitutional amendment n. 53 was approved that eliminated the necessity of this authorization. (cf. Power and Taylor 2011b, 269). Not surprisingly, over five hundred new indictments have been accepted by the STF and turned into actual criminal cases against elected federal officials since then.

³³⁵ This possibility was introduced as a result of the *Lei* n. 12.019, of August 21, 2009.

³³⁶ “*Mensalão*” is only the nickname of the case, which was baptized after the name of the homonym scandal that gave birth to it, of 2005. The actual court case is called *Ação Penal* n. 470, of the STF.

commitment. The trial of the *Mensalão* case, as it turns out, was concluded largely due to the efforts of chief justice Joaquim Barbosa. Still, the fact that the justices of the STF were patently divided on a variety of procedures adopted during the long trial of the case and that many heated debates between justice Barbosa and his colleagues took place during this period only highlights that this was indeed the result of an individual effort that was never embraced by the institution as a whole. In effect, the case soon became a burden for justice Barbosa to bear and his positions have been the target of some strong criticism by many prominent members of the Brazilian legal community. Furthermore, while the STF may have been rigorous in the *Mensalão* case, it has also failed to act similarly in other cases of similar relevance or topic that followed.³³⁷

Beyond the Brazilian case, I would argue that several cases can be understood through the lenses of the concepts and the theoretical model proposed here. My model, thus, illuminates certain aspects of other cases and contexts that have not yet made as clear and, in so doing, can help to integrate many findings of the literature into a relatively unified theory of the *judicial politics of corruption*. For instance, the Italian *mani pulite* investigations of the mid-1990s can probably be seen as a vibrant example of *coordinated autonomy*, in which the so-called “prosecuting judges” of the country started to operate jointly with the investigative police to tackle widespread

³³⁷ Among others, these include the so-called “*mensalão mineiro*” case (i.e., *Inquérito* n. 2280 and *Ação Penal* n. 536, both of the STF), in which a former state governor of Minas Gerais and his acolytes were charged with the same crimes the accused of the *mensalão* case had been charged with, but which the STF – differently than the *mensalão* case – decided to hand down to the lower courts because the accused had lost their positions. Another case involved the acquittal of former president Fernando Collor de Melo for the alleged crimes of corruption for which the Brazilian Congress opened impeachment procedures against him in 1992 (i.e., *Ação Penal* n. 465 of the STF). As Taylor sums up, “In the recent *mensalão* trials ... the high court was widely praised for the indictments it handed down, as though these were sufficient to temper corruption and move the country to a new level of the rule of law. Undoubtedly, the indictments were important, in part because of the novelty of the high court actually moving to try politicians. But a host of other politicians have also been found to have acted corruptly in recent years, and few have even been removed from office, much less convicted. Almost none have actually been sent to jail and it is doubtful any of the kingpins in the current scandal will be either” (2008a, 111). By failing to act more assertively on these and other cases right after taking a bold position at the *mensalão* case, the STF soon resumed its original, reluctant, slow-moving activity on those cases, reproducing in the realm of corruption cases the pattern of accommodation that Kapiszewski (2012) observed in the court on cases of economic governance.

corruption schemes that involved hundreds of high profile public officials, in turn generating thousands of arrests (cf. della Porta 2001, Sims 2011). The same is most likely true in regards to the mobilization of the French “investigating magistrates” and the coordinated work they developed with the judiciary police and low-level prosecutors during the late 1980s and 1990s, leading to the convictions of over one hundred high-ranking politicians (cf. Adut 2004, Roussel 1998, Sims 2011).

Likewise, *fragmented autonomy* is probably the most adequate explanation for the few cases of corruption tried by the apathetic German judges during the same period, in spite of the increased mobilization of prosecutors, police officers, tax inspectors, among others, on financial crimes (cf. Sims 2011). Additionally, an example of *constrained coordination* probably involves the former Office of the Special Prosecutor of Corruption of the Attorney General of the State of New York, which operated with relatively high intensity until the mid-1970s. As soon as it started to target high-ranking elected officials, however, it was dismantled by the strong political coalition that ascended to power in that period and which ruled the state for the next twenty years. Starting in the mid-1970s, the specialized office suffered a gradual loss of powers and resources until it was formally abolished in 1990 (cf. Anechiarico and Jacobs 1996, 97-101).

More than the sole possibility of replicating the ideal-types suggested in this study, my typology also allows room for future refinement into more nuanced categories. Accordingly, my fourfold classification of legal accountability performances is based on two relatively simple dichotomies of high and low levels of institutional autonomy and inter-institutional coordination. Because such quantifications are obviously simplifications of much complex realities, other in-between measures (e.g., medium, medium-low or medium-high levels of institutional autonomy and inter-institutional coordination) can be incorporated into the existing typology to classify other cases.

Continuous measures, likewise, can also be built based on the cautious identification of variables in order to facilitate quantitative studies on the topic. In any case, the key idea is that this model can indeed be used as a template to guide future research on the judicial politics of corruption.

7.3. Beyond Legal Accountability: Implications and Tasks Ahead

Moving beyond judicial responses to political corruption proper, the findings of this study invite us to further explore other topics that I have not thoroughly examined here. I believe that three implications and future venues of inquiry follow from the conclusions outlined in the previous pages. First, the discussion on how legal accountability institutions make elected officials face the consequences of their acts or not highlights a simple yet important fact for the relationship between organizations and rules, the two traditional interpretations of what institutions are in accordance to the institutionalist literature. Second, I suggest a few venues of inquiry to address a topic that I have left largely unexamined thus far: the sources of legal mobilization. Third and final, although discussed in the first chapter, I expand on the broader relationship between legal accountability and corruption levels proper. I examine these three implications below.

First, at the broader theoretical level, a main implication of this study concerns the relationship between organizations and rules. While both terms are treated interchangeably as synonymous for institutions in most literature, my research reveals an interesting interplay between the two. Accordingly, the analysis of the enforcement of the legislation on mayoral corruption in Brazil found that the different observed outcomes came from the distinct performances of the judicial systems of each state. *Rules* were enforced differently, in other words, because the *organizations* responsible for enforcing them performed differently. This means that rules and procedures come

into existence through the work and effort of organizations (cf. Blondel 2009). Institutions, as a result, do not exist outside the actors responsible for exerting the functions that give substance to them. Instead, they come into existence precisely through their actions – that is, via the patterns of behavior of those in charge of organizations that are responsible for enforcing rules.³³⁸

While organizations also have internal rules, these “always are subject to interpretation, debate, and contestation” (Mahoney and Thelen 2010, 11). As such, instead of being perfectly coherent structures, organizations often allow ample room for robust agency within their boundaries. How they perform depends largely on the sorts of goals and values that their respective agents aim to achieve and uphold. Paraphrasing Hall (2010), thus, I would argue that institutions can be seen more as *enabling structures* than as *constraining* ones. How they are operated and towards which of the numerous possible ends they are mobilized (if so) is therefore crucial to understand what sorts of rules they end up enforcing and, in practice, producing.

This is an implication of critical importance to both institutional theory and public policy studies.

In effect, between the enactment of a new policy and its implementation, there is an unexplored yet extremely important process of *organizational adaptation*, which results largely from a

³³⁸ This conception of what institutions are, in turn, alters the common understanding reproduced in the discussion of the role of the state in political analysis. While traditional definitions see it primarily as a collective body capable of applying perceived legitimate violence on others and thereby enforce rules based on that threat, this literature shifts the focus of the debate: it makes less about the constrain imposed “on others” by the rules and more about how collective violence is or is not mobilized to ensure compliance with those rules. In order to explain what institutions are, thus, one has to understand the processes by which compliance with them is brought about. This is related not only to the “exogenous” aspect of enforcement, but especially how the “enforcers” come to define and implement, through their practices (or patterns of behaviors), such rules. This debate, in turn, is articulated with the ambitious project by Mitchell (1991) of understanding the state as a “structural effect,” rather than as a “structure” proper. In his words, the “line between state and society is not the perimeter of an intrinsic entity, which can be thought of as a free-standing object or actor. It is a line drawn internally, within the network of institutional mechanisms through which a certain social and political order is maintained” (ibid, 90). More than ask what the state is, his suggestion is to move to an entirely different research agenda and try to “explain the ability of the state to appear as an entity standing apart from society in terms of factors external to the state” (ibid, 91). Specifically, he asks: “What kind of articulation ... could now seem to separate mechanically an organization from the individual men who compose it?” (ibid, 92). Finally, this echoes scholars who argue that the debate about the role of the state should be less concerned with its scope and more with how it effectively operates, given the different results it yields (cf. Evans and Rauch 1999, Rauch and Evans 2000).

process of *endogenous institutional change*, or lack thereof. Since new policies invariably add, suppress or transform the functions of existing government structures, one has to understand how these adapt to their newly devised roles in order to comprehend how a new policy will actually look like once implemented. And, in order to explain how this organizational adaptation unfolds, one has to look closely at how the actors inside these organizations interpret their own roles in regards to the execution of both their old and new functions. It is this understanding that defines if and how they will adapt (and change) their organizations to implement the new policy.³³⁹

In effect, the organizations responsible for enforcing rules are embedded in the dilemmas of the broader policy communities to which they belong to. Their different performances, as a result, can be explained in reference to the same factors that account for the different levels of influence of policy communities. That is, the more consensual the views of their members are, the more powerful they become. Inversely, the more politicized their positions become, the less effective they tend to be.³⁴⁰ How the members of organizations perceive their roles and perform their tasks, in effect, is essential to explain the rules ultimately enforced by the organizations to which they belong. The task at hand for those aiming to understand rule enforcement, therefore, consists in findings the areas of conflict and consensus inside the organizations responsible for such tasks as well as what actions are effectively taken based upon them.³⁴¹

³³⁹ Importantly, new public policy need not be enacted for the actors inside organizations to push for their preferred agendas. In fact, organizations with vague or unspecific goals – such as courts, for instance – are often wide open to the preferences of their members.

³⁴⁰ I cite two studies here. First, according to Kingdon, “a more close knit [policy] community generates common outlooks, orientations, and ways of thinking. These common features, a result of the relatively tight integration of the community, in turn strengthen that integration” (2003, 119). Second, according to Rich “for experts, influence ... is made easier when they are in general agreement on the image of the problem and the direction for policy reform viewed as most desirable” (2004, 142).

³⁴¹ Purely *individual* initiatives of motivated actors inside organizations, thus, hardly suffice. They often need to be supported at least by other members of the organization to be successful, hence my emphasis on *mobilization*, which is quintessentially a form of *collective* action. Likewise, my emphasis on *endogenous* mobilization stresses that it need not be externally induced or dependent on the level of autonomy enjoyed by the institutions to take place.

Second, the implications listed above bring us to another venue of inquiry that I have left largely unexamined throughout this study. If the endogenous mobilization of legal actors is so crucial to understand inter-institutional coordination and, hence, variation in judicial responses to political corruption, what contributes to its occurrence? In sum, why do some legal actors mobilize while others fail to do so? While it is not my goal to provide a thoroughly assessment of this important theoretical question, my findings point out to one possible contributing factor.³⁴²

Accordingly, it may be tempting to attribute the different performances of legal accountability institutions to their different degrees of *professionalism*. Meritocratic recruitment, however, was largely a common feature of the courts, prosecutors' offices and auditing agencies of the three states examined in this study and even when differences existed in this realm, they were not at all proportional to the differences in legal accountability performances. As such, while the existing literature has shown that meritocratic recruitment is indeed associated to higher autonomy and lower corruption levels of bureaucratic organizations (cf. Evans and Rauch 1999, Rauch and Evans 2000, Bersch, Praça and Taylor 2013), this cannot be the only explanation or focal point of reforms to improve accountability performances. For instance, the empirical evidence of this study shows that while some public organizations may be identical in regards to how professionalized their personnel is, they can still differ drastically in how actively they engage corruption – or any other policy subject, for that matter. That is the case because bureaucratic professionalization can be a catalyst just as it can also be a barrier to increased inter-institutional coordination.

³⁴² This, however, is hardly a definitive answer. Instead, it is only a consideration resulting from my analysis of the cases which still demands a thorough analysis to be conclusive.

For one, distinct professions may frame in different ways – and hence give different priorities to – a same policy issue. For example, Katzmann (1981) and Wilson (1982) illustrate how lawyers and economists disagreed over definitions of monopoly in cases before the U.S. Federal Trade Commission and how such disagreements rendered their work much less efficient. For another, belonging to the same profession or epistemic community is no guarantee that the mobilization necessary to produce inter-institutional coordination will take place.³⁴³ The fact that individuals share understandings about policy, however, does not imply that they also share the normative commitments about them. In this sense, this research is revealing. In its background, there is *legal* mobilization – i.e., the mobilization of professionals who share a same training in law and belong to the same epistemic community, the legal community. Yet, despite the influence of this group in Brazil's politics and society,³⁴⁴ there is clearly no consensus as how to tackle the cases of political corruption or if priority is to be given to them. There are, actually, drastic differences across states, institutions and levels of government in this regard.

As such, instead of thinking only about different *degrees* of professionalism, it is also important to take into account the different *types* of professionalism and professional identities bureaucrats exhibit. “Active,” “engaged” or “responsibility-claiming” bureaucrats, for instance, may generate

³⁴³ In accordance to Haas, an “epistemic community is a network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area” (1992, 3; see also Goldstein and Keohane 1993). They are, in short, a group of experts within a policy community or issue network. Policy communities and issue networks, nonetheless, frequently encompass more than one epistemic community. Debates over health care, for instance, involve not only physicians, but also hospital administrators, nurses, economists, policy analysts, and others. As such, just like several advocacy coalitions often exist within a policy community, so do epistemic communities.

³⁴⁴ By all accounts, Brazil is a nation of lawyers and its legal community is one of the largest in the world. Brazil has over one thousand law schools (in comparison, the United States has less than two hundred of them), which produced over two million law degree holders and over 800,000 practicing attorneys over the last decades. The pervasiveness of legal discourse in Brazil, however, does not mean a consensus about its goals. Rather, it only means an agreement over the terms in which this debate is made. Following the previous footnote, although epistemic communities share basic values and understandings, they often exhibit factions defending different aspects of a same policy.

radically distinct legal accountability outcomes when compared to “passive,” “risk-averse” or “responsibility-avoiding” ones (e.g., Hoffman 1989, Wilson 2000, Hilbink 2004).³⁴⁵

That is, despite identical meritocratic careers, the inner-group dynamics of distinct organizations may end up defining different professional roles. These, in turn, affect not only the productivity of individual members, but especially the *nature* of the tasks they end up performing. As Wilson observes, “Peer expectations not only affect how hard people work at their jobs, they can affect what they decide the job *is*” (2000, 48, emphasis in the original). If the implementation of successful anti-corruption policies is a collective action problem as much as it is a principal-agent one, therefore, it requires at least a few individuals to mobilize and to form the first groups that tackle the issue. Different professional identities – legal or otherwise – may play a crucial role in this regard.³⁴⁶

Third, the last issue that I have left largely unexamined in this study concerns the more ambitious question on the relationship between legal accountability and corruption levels. Especially, since my research question was focused primarily on explaining judicial behavior, a set of extremely important questions emerges right where mine ends. For instance, what happens after the courts convict corrupt officials? Do court decisions effectively produce deterrent effects? If so, to which extent do court convictions truly help reducing corruption levels? Inversely, to which extent does failure to convict corrupt elected officials effectively increase corruption levels? Furthermore, do judicial responses to political corruption affect perceived and experienced corruption in the same way? Probably most importantly, can courts actually reduce the incidence of corruption? This, of

³⁴⁵ Similar approaches include the studies by Wilson (1978) on police behavior and by Hoch (1994) and Jackson (2014) on urban planners. This discussion refers to the values around which professional identities are built, a topic that has received relevant attention in socio-legal studies (e.g. Halliday 1987, Scheingold and Sarat 2004).

³⁴⁶ As an example, Peter A. Hall’s study comparative study on policy innovation in France and England notices how the younger civil servants of the former, all with relatively similar backgrounds, were much more open to policy innovation and change than the older, career servants of the latter (Hall 1983).

course, is an echo of the much broader question famously proposed by Rosenberg (1991) on whether or not courts can bring about social change.

While I have not addressed any of these topics directly, they all complement my research and, as such, can rely on some of the findings of this study to be fully understood. A critical examination consists in delineating the impact of each of the four types of legal accountability performances (i.e., constrained isolation, constrained coordination, fragmented autonomy and coordinated autonomy) on both perceived and experienced levels of corruption. While they produce different *conviction* levels, nothing ensures that their impact on *corruption* levels will follow the same trends. For instance, although judicial systems under constrained coordination generate fewer convictions than those under fragmented autonomy, the impact of these different performances on corruption levels – either experienced or perceived – may not be as distinct. Likewise, the impact of coordinated autonomy may be much more significant over the levels of corruption than over the levels of convictions it produces, or the other way around. These are all extremely important empirical questions that my theoretical model does not directly answers, but provides the tools to pursue them.

Another important line of inquiry asks how much more effective judicial responses to corruption can become when pursued alongside other anti-corruption initiatives – e.g., institutional reform, education – or, inversely, what happens in their absence. This comparison, in turns, would allow us to parcel out precisely how much different legal accountability performances can contribute to curb corruption apart from other efforts pursued outside the system of justice proper. Yet another possibility moves slightly beyond the purely punitive role of the judiciary towards the subsidiary role it can play in support of other anti-corruption initiatives. For example, courts can help in the

fight against corruption by making easier the horizontal accountability of other agencies (e.g., by allowing heavy sanctions to be imposed by other agencies).

Importantly, such subsidiary activity of the judicial system could even lead to a transformation of the role of courts in the anti-corruption realm. They could shift their attention exclusively to the most severe cases of corruption (i.e., those involving the largest sums or the highest-ranking officials), leaving for other bureaucratic agencies to punish less serious irregularities.³⁴⁷ Even this change, though, can be understood through the lenses of the typology advanced in this study. To be effective, such supervisory role of the courts would require *coordinated autonomy*, so that the judiciary would be able to establish a clear line of coordination with the other institutions that would take the lead in the punishment of least prominent corrupt officials or scandals. Absent autonomy, this change would most likely mean shielding top corrupt officials from prosecution. Absent coordination, both the courts and other agencies would have mismatched decisions on what exactly to deem irregular and how to punish it.

Beyond the subsidiary role of the judicial system, a perhaps even more ambitious question asks whether or not the institutions of the system of justice can initiate broader anti-corruption reform. In other words, can the initiatives of judges, prosecutors, auditors and other oversight officials serve as catalysts for a broader political transformation toward cleaner government? While it is not my goal to exhaust the many possible answers to this question, I would point out to the fact

³⁴⁷ Importantly, throughout most of this study I have exhibited a normative bias in my analysis that comes close to what Packer (1968) famously called the *crime control model*, which is primarily concerned with the efficient punishment of criminal behavior. Just as important, however, is another side of the criminal justice system, represented in the *due process model* also proposed by Packer. Even more than the concern with the safeguard of individual rights proposed by this latter model, however, when it comes to political corruption, it involves something else. The possibility of the wrongful prosecution or conviction of an elected official brings into play not only the risk that the rights of an individual may be harmed, but also that a sovereign majority may be penalized as well. The stakes are truly high in cases of corruption. These cases are, after all, hard ones. Failure to bring legal accountability about when it is necessary, thus, may be just as damaging as generating it when it was not.

that autonomous and highly coordinated legal actors can surely help in the implementation of gradual reform on sensitive areas.

More than just punish wrongdoers, court rulings can also alter rules of campaign contributions, limit the number of political appointees to certain positions, and expand the application of the existing anti-corruption laws to cover behavior previously not defined as corrupt, among many others. Almost as endogenous processes of institutional change, such incremental court reforms can generate a huge impact if pursued systematically by committed actors. Over time, they have the capacity to narrow the array of options available for corrupt officials and, in effect, genuinely contribute to reduce corruption levels.³⁴⁸ Beyond the proper judicial sphere, finally, legal actors can also contribute to efforts broader anti-corruption reforms. New legislation, for instance, can have direct input from judges, prosecutors, and other oversight officials. They can propose or assist in the elaboration of entirely new laws that cover corrupt practices previously not defined as such or suggest changes that close loopholes in the existing legislation. In this context, though, their mobilization assumes less a *legal* meaning and more properly a clearly *political* one.

³⁴⁸ Several court-induced reforms, however, depend have to be implemented by other branches of government, the executive branch in particular (cf. Rosenberg 1991). Even if they find resistance to be implemented, though, they can serve to initiate reform by giving visibility to the issue. That is, more than an arena just of decision-making, the judicial system can also work as an agenda-setting one, thereby helping to induce anti-corruption reform in other institutions. In fact, incremental endogenous reforms can also be consequential to ameliorate corruption levels (cf. Praça and Taylor 2014).

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APPENDIX I: LIST OF INTERVIEWS

The list below includes all semi-structured interviews performed under the rules of the exemption granted by the Office for the Protection of Research Subjects of the University of Illinois at Chicago for the Research Protocol #2013-0530, effective May 30, 2013. All subjects listed below explicitly consented to be interviewed for the purposes of this research and no interviews were performed absent such consent. All consent forms are on file with the author. The list provides the following information. Each entry includes the full name of the interviewee or “anonymous” when he or she asked not to be identified by her or his name. After the identification of the interviewee, it includes her or his position and/or former position (if relevant), her or his current institutional affiliation, the place (if different from the former) and the date of the interview as well as the method used to collect information during the interview (i.e., whether the interview was recorded or only notes were taken during it). The list of interviews is organized in chronological order and does not include informal conversations with other subjects performed during the course of this research. Finally, when informants (both formal interviewees and informal ones) asked to remain anonymous, I have decided to exclude reference to their gender in the text of the dissertation by treating all of them uniformly in the masculine.

1. Gaspar Marques Batista, state appellate judge, Tribunal de Justiça do Estado do Rio Grande do Sul, Porto Alegre, June 5, 2013, recorded.
2. Gladimir Chiele, private attorney, Centro de Direito Público, Porto Alegre, June 5, 2013, recorded.
3. Anonymous, private attorney, law firm, Porto Alegre, June 7, 2013, recorded.
4. Rogério Gesta Leal, state appellate judge, Tribunal de Justiça do Estado do Rio Grande do Sul, Porto Alegre, June 7, 2013, recorded.
5. Luiz Melício Uiraçaba Machado, retired state appellate judge of the Tribunal de Justiça do Estado do Rio Grande do Sul and private attorney, Uiraçaba Machado Advogados, Porto Alegre, June 11, 2013, recorded.
6. Anonymous, state judge, Tribunal de Justiça do Estado do Rio Grande do Sul, Porto Alegre, June 12, 2013, notes.
7. Oscar Breno Stahnke, retired private attorney, law firm, Porto Alegre, June 12, 2013, recorded.
8. Cesar Viterbo Matos Santolim, senior auditor, Tribunal de Contas do Estado do Rio Grande do Sul, Porto Alegre, June 13, 2013, recorded.
9. Anonymous, state judge, Foro Central da Comarca de Porto Alegre, Porto Alegre, June 14, 2013, notes.
10. Eduviges Rogério de Souza, auditor, Tribunal de Contas do Estado do Rio Grande do Sul, Porto Alegre, June 17, 2013, recorded.
11. Vladimir Giacomuzzi, retired state appellate judge of the Tribunal de Justiça do Estado do Rio Grande do Sul and private attorney, Giacomuzzi & Eggers Advocacia e Consultoria, Porto Alegre, June 18, 2013, recorded.

12. Aline Eggers, former clerk of the Tribunal de Justiça do Estado do Rio Grande do Sul and private attorney, Giacomuzzi & Eggers Advocacia e Consultoria, Porto Alegre, June 18, 2013, recorded.
13. Anonymous, aide, Tribunal de Contas do Estado do Rio Grande do Sul, Porto Alegre, June 28, 2013, recorded.
14. Sandro Trescastro Bergue, auditor, Tribunal de Contas do Estado do Rio Grande do Sul, Porto Alegre, June 28, 2013, recorded.
15. Marco Aurélio Costa Moreira de Oliveira, retired state appellate judge of the Tribunal de Justiça do Estado do Rio Grande do Sul and private attorney, Moreira de Oliveira Advogados Associados, Porto Alegre, July 1, 2013, recorded.
16. Luiz Inácio Vigil Neto, prosecutor, Ministério Público do Estado do Rio Grande do Sul, Porto Alegre, July 2, 2013, recorded.
17. José Guilherme Giacomuzzi, prosecutor, Ministério Público do Estado do Rio Grande do Sul, Porto Alegre, July 2, 2013, recorded.
18. Wremyr Scliar, retired auditor of the Tribunal de Contas do Estado do Rio Grande do Sul, Z Café, Porto Alegre, July 2, 2013, recorded.
19. Ruy Armando Gessinger, retired state appellate judge of the Tribunal de Justiça do Estado do Rio Grande do Sul and private attorney, Gessinger Advogados, Porto Alegre, July 3, 2013, recorded.
20. Luiz Cláudio Varela Coelho, prosecutor, Ministério Público do Estado do Rio Grande do Sul, Porto Alegre, July 4, 2013, recorded.
21. Geraldo Costa da Camino, prosecutor of the Ministério Público de Contas, Tribunal de Contas do Estado do Rio Grande do Sul, Porto Alegre, July 4, 2013, recorded.
22. Luiz Carlos Ziomkowski, prosecutor, Ministério Público do Estado do Rio Grande do Sul, Porto Alegre, July 4, 2013, recorded.
23. Anonymous, retired state appellate judge of the Tribunal de Justiça do Estado de Minas Gerais, Belo Horizonte, July 9, 2013, recorded.
24. Anonymous, prosecutor, Ministério Público do Estado de Minas Gerais, Belo Horizonte, July 9, 2013, recorded.
25. Anonymous, prosecutor, Ministério Público do Estado de Minas Gerais, Belo Horizonte, July 9, 2013, recorded.
26. Anonymous, senior auditor, Tribunal de Contas do Estado de Minas Gerais, Belo Horizonte, July 10, 2013, recorded.
27. João Paulo Coelho Chelotti Bicalho, clerk of the Ministério Público de Contas, Tribunal de Contas do Estado de Minas Gerais, Belo Horizonte, July 10, 2013, recorded.
28. Alysson Vasconcelos Silva Coelho, clerk of the Ministério Público de Contas, Tribunal de Contas do Estado de Minas Gerais, Belo Horizonte, July 10, 2013, recorded.
29. Eric Botelho Mafra, clerk of the Ministério Público de Contas, Tribunal de Contas do Estado de Minas Gerais, Belo Horizonte, July 10, 2013, recorded.

30. Anonymous, auditor, Tribunal de Contas do Estado de Minas Gerais, Belo Horizonte, July 11, 2013, recorded.
31. Anonymous, auditor, Tribunal de Contas do Estado de Minas Gerais, Belo Horizonte, July 11, 2013, recorded.
32. Daniel de Carvalho Guimarães, public prosecutor of the Ministério Público de Contas, Tribunal de Contas do Estado de Minas Gerais, Belo Horizonte, July 11, 2013, recorded.
33. Anonymous, senior auditor, Tribunal de Contas do Estado de Minas Gerais, Belo Horizonte, July 12, 2013, recorded.
34. Leonardo Duque Barbabela, prosecutor, Ministério Público do Estado de Minas Gerais, Belo Horizonte, July 12, 2013, recorded.
35. Luciano Luz Badini Martins, prosecutor, Ministério Público do Estado de Minas Gerais, Belo Horizonte, July 15, 2013, recorded.
36. Anonymous, state appellate judge, Tribunal de Justiça do Estado de Minas Gerais, Belo Horizonte, July 16, 2013, recorded.
37. Marcia Maria Milanez, state appellate judge, Tribunal de Justiça do Estado de Minas Gerais, Belo Horizonte, July 16, 2013, recorded.
38. Júlio César Gutierrez Vieira Baptista, state appellate judge and former prosecutor, Tribunal de Justiça do Estado de Minas Gerais, Belo Horizonte, July 16, 2013, recorded.
39. Anonymous, private attorney, Associação Mineira de Municípios, Belo Horizonte, July 17, 2013, recorded.
40. Gilvan Alves Franco, prosecutor, Ministério Público do Estado de Minas Gerais, Belo Horizonte, July 17, 2013, recorded.
41. Anonymous, state appellate judge, Tribunal de Justiça do Estado de Minas Gerais, Belo Horizonte, July 19, 2013, recorded.
42. Geraldo José Duarte de Paula, state appellate judge, Tribunal de Justiça do Estado de Minas Gerais, Belo Horizonte, July 19, 2013, notes.
43. Anonymous, clerk, Tribunal de Justiça do Estado de Minas Gerais, Belo Horizonte, July 19, 2013, notes.
44. Anonymous, clerk, Tribunal de Justiça do Estado de Minas Gerais, Belo Horizonte, July 19, 2013, notes.
45. Anonymous, councilor, Tribunal de Contas dos Municípios da Bahia, Salvador, July 22, 2013, recorded.
46. Valmiro Santos Macedo, prosecutor, Ministério Público do Estado da Bahia, Salvador, July 22, 2013, recorded.
47. Anonymous, prosecutor, Ministério Público do Estado da Bahia, Salvador, July 23, 2013, recorded.
48. Anonymous, prosecutor, Ministério Público do Estado da Bahia, Salvador, July 23, 2013, recorded.

49. Carlos Artur dos Santos Pires, prosecutor, Ministério Público do Estado da Bahia, Salvador, July 23, 2013, recorded.
50. Anonymous, prosecutor of the Ministério Público de Contas, Tribunal de Contas dos Municípios da Bahia, Salvador, July 23, 2013, recorded.
51. Anonymous, auditor, Tribunal de Contas dos Municípios da Bahia, Salvador, July 24, 2013, recorded.
52. Anonymous, aide, Tribunal de Contas dos Municípios da Bahia, Salvador, July 24, 2013, recorded.
53. José Alfredo Rocha Dias, councilor, Tribunal de Contas dos Municípios da Bahia, Salvador, July 25, 2013, recorded.
54. Rita Andreia Rehem Almeida Tourinho, prosecutor, Ministério Público do Estado da Bahia, Salvador, July 25, 2013, recorded.
55. Pedro Augusto Costa Guerra, state appellate judge, Tribunal de Justiça do Estado da Bahia, Salvador, July 29, 2013, notes.
56. Anonymous, councilor, Tribunal de Contas dos Municípios da Bahia, Salvador, July 29, 2013, recorded.
57. Anonymous, auditor, Tribunal de Contas dos Municípios da Bahia, Salvador, July 30, 2013, recorded.
58. Carlos Sampaio Filho, aide, Tribunal de Contas dos Municípios da Bahia, Salvador, July 30, 2013, recorded.
59. Anonymous, councilor, Tribunal de Contas dos Municípios da Bahia, Salvador, July 30, 2013, recorded.
60. Ivete Caldas Silva Freitas Muniz, state appellate judge, Tribunal de Justiça do Estado da Bahia, Salvador, July 30, 2013, recorded.
61. Lucas Barbosa Mollicone, private attorney, União dos Municípios da Bahia, Salvador, August 1, 2013, recorded.
62. Anonymous, clerk, Tribunal de Justiça do Estado da Bahia, Salvador, August 1, 2013, notes.
63. Anonymous, state appellate judge, Tribunal de Justiça do Estado da Bahia, Salvador, August 2, 2013, recorded.
64. Anonymous, aide, Tribunal de Contas dos Municípios da Bahia, Salvador, August 2, 2013, recorded.
65. Anonymous, aide, Tribunal de Contas dos Municípios da Bahia, Salvador, August 2, 2013, recorded.
66. Valtuir Pereira Nunes, general director, Tribunal de Contas do Estado do Rio Grande do Sul, Porto Alegre, August 6, 2013, recorded.
67. Anonymous, attorney, Federação das Associações de Municípios do Rio Grande do Sul, August 7, 2013, recorded.
68. Anonymous, attorney, Federação das Associações de Municípios do Rio Grande do Sul, August 7, 2013, recorded.
69. Anonymous, auditor, Tribunal de Contas do Estado do Rio Grande do Sul, Porto Alegre, August 8, 2013, recorded.

70. Danúbio Edon Franco, retired state appellate judge of the Tribunal de Justiça do Estado do Rio Grande do Sul, private residence, Porto Alegre, August 13, 2013, recorded.
71. Anonymous, prosecutor, Ministério Público do Estado do Rio Grande do Sul, Porto Alegre, August 13, 2013, recorded.
72. Jefeth Eustáquio da Silva, retired state appellate judge of the Tribunal de Justiça do Estado da Bahia, via telephone, verbal consent, August 13, 2013, recorded.
73. Voltaire de Lima Moraes, state appellate judge and former prosecutor-general of the Ministério Público do Estado do Rio Grande do Sul, Tribunal de Justiça do Rio Grande do Sul, Porto Alegre, August 14, 2013.
74. Anonymous, agent, Controladoria-Geral da União, Brasília, February 4, 2014.
75. Anonymous, agent, Controladoria-Geral da União, Brasília, February 11, 2014.

APPENDIX II: GLOSSARY OF BRAZILIAN EXPRESSIONS AND LEGAL TERMS

<i>Auditor Substituto de Conselheiro</i> (a.k.a. <i>Conselheiro Substituto</i>)	Senior auditor or substituting councilor; highest position recruited via competitive examinations at a <i>Tribunal de Contas</i> ; he or she participates in the decisions of the irregularities inspected by the auditing agency and substitutes a <i>conselheiro</i> when these are not available
<i>Baiano/s/a/as</i>	Demonym or gentilic of the state of Bahia
<i>Câmara/s</i>	Panel of state court of appeals; section of state appellate court; has four to six members, but often only three sit at a time to hold court session in which appeals of decisions of lower courts are adjudicated; because usually there are several <i>câmaras</i> and they are segments of a <i>Tribunal de Justiça</i> , they are formally referred to as <i>câmaras isoladas</i> or <i>câmaras separadas</i> , i.e., isolated or separated panels
<i>Câmara Cheia</i>	Full panel; it is an arrangement in which all four to six members of a court panel sit to adjudicate cases instead of the three that regularly meet to hold sessions
<i>Câmara Cível</i>	Civil panel; panel of a state court of appeals with jurisdiction to adjudicate appeals of civil cases
<i>Câmara Criminal</i>	Criminal panel; panel of a state court of appeals with jurisdiction to adjudicate appeals of criminal cases
<i>Carlismo</i>	Demonym of the political group spearheaded by the late Brazilian Senator Antônio Carlos Magalhães in the state of Bahia; it takes its name from the middle name of the leader of the group; it was the hegemonic political force in Bahia from the 1970s to the mid-2000s
<i>Carlista/s</i>	Demonym of those affiliated or aligned to <i>carlismo</i>
<i>Carta/s de ordem</i>	Letter or order; similar to letter rogatory; it is a formal request in which the member of a higher court asks the judge of a lower court to perform hearings on his or her behalf for a case in which he or she is the <i>relator</i> , i.e., the rapporteur or examining judge of the case
<i>Comarca/s</i>	Judicial district; geographical jurisdictional unit within a state; it often encompasses a single municipality or several of them, in case they are all small; in it work district judges
<i>Conselheiro/s</i>	Councilor; the highest position of a <i>Tribunal de Contas</i> ; the <i>conselheiros</i> are the majority of the participants in the decisions concerning irregularities inspected by the auditing agency; <i>conselheiros</i> are predominantly former elected officials appointed by the state government and the state legislative assembly

<i>Desembargador/a/es</i>	State appellate judge; highest judicial position in the state courts; he or she works at a <i>Tribunal de Justiça</i> ; about eighty percent of the <i>desembargadores</i> are appointed from the most senior career judges of the state; the remainder twenty percent are selected by the court from the names of attorneys and prosecutors nominated respectively by the local chapter of the Brazilian bar association and the state prosecutors' office
<i>Gaúcho/s/a/as</i>	Demonym or gentilic of the state of Rio Grande do Sul
<i>Juiz de direito</i>	District judge; career judge selected via rigorous competitive examinations; he or she works in a <i>comarca</i> of the state judiciary
<i>Juiz de instrução</i>	Temporary position in which a <i>juiz de direito</i> is invited by a <i>Tribunal de Justiça</i> to help perform the <i>instrução</i> of criminal cases tried by the latter
<i>Instrução</i>	Examining stage of a criminal case; it precedes the trial; in it all evidence, testimonial or otherwise, deemed necessary for the adjudication of the case is formally produced in court
<i>Mineiro/s/a/as</i>	Demonym or gentilic of the state of Minas Gerais.
<i>Ministério Público</i>	Prosecutors' office; autonomous body of prosecutors selected via competitive examinations; at the state level, its members are called <i>promotores de justiça</i> and <i>procuradores de justiça</i> and they officiate before trial and appellate courts, respectively, both on criminal and civil cases
<i>Ministério Público de Contas</i> (a.k.a. <i>Ministério Público junto ao Tribunal de Contas</i>)	Prosecutors' office before the <i>Tribunal de Contas</i> ; it has mixed status; it is an office of the <i>Tribunal de Contas</i> , but its members have the same individual safeguards and status of other members of the <i>Ministério Público</i>
<i>Procurador/es de justiça</i>	Prosecutor officiating before appellate court; senior prosecutor selected from the <i>promotores de justiça</i> ; he or she officiates before the <i>Tribunal de Justiça</i> reviewing appeals; it is the equivalent, at the <i>Ministério Público</i> , of the position of <i>desembargador</i> for the state judiciary
<i>Procurador-Geral de Justiça</i>	State prosecutor-general; the highest position at a state <i>Ministério Público</i> ; he or she is appointed for two year terms from the existing <i>procuradores de justiça</i> ; he or she is selected via elections by peers, so that the names of the three most voted candidates are placed on a list which is send to the state governor, who then picks one
<i>Promotor/es de justiça</i>	District prosecutor; career prosecutor selected via rigorous competitive examinations; he or she officiates before a <i>comarca</i> of the state courts; it is the equivalent, at the <i>Ministério Público</i> , of the position of <i>juiz de direito</i> for the state judiciary

<i>Relator</i>	Rapporteur or examining judge; it is the leading judge of a case; in appellate courts, he or she is the one responsible for reviewing a case and preparing a report about it to be presented to his peers before the case is adjudicated; the position of <i>relator</i> is assigned randomly among members of a court or panel
<i>Tribunal de Contas</i>	Court of accounts; auditing agency; audit courts; it oversees the expenses of public institutions within a state – city halls, city councils, state government, legislative assembly, bureaucratic agencies, etc. – and decides whether or not they are compliant with the requirements of the law; it can impose administrative penalties; despite the name, it does not belong to the judiciary
<i>Tribunal de Justiça</i>	State court of appeals; state appellate court; it is the highest body of the state judiciary; it has jurisdiction to hear appeals of the entire state; because it has dozens of members, it is often divided into several smaller <i>câmaras</i> , or panels
<i>Tribunal Pleno</i>	Full Court; highest governing body of a <i>Tribunal de Justiça</i> ; in it sit all active <i>desembargadores</i> of the state

APPENDIX III: ACCOUNTING FOR THE DEPENDENT VARIABLE

In order to collect the data of Table 3.1. concerning the total number of criminal convictions of mayors and former mayors in Rio Grande do Sul, Minas Gerais and Bahia, I relied primarily on the information provided by the prosecutors' offices of each of these states. These are the MPRS (1994) and PROCPREF (1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2008^a, 2009, 2010, 2011, and 2012) for Rio Grande do Sul, GECCPAPM (2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, and 2012) for Minas Gerais, and MPBA (2012) for Bahia. When this data proved incomplete or unavailable, I complemented it with the information collected in secondary sources, including other academic works and newspaper articles, such as Albuquerque (2000), Secco (2000), Weinberg (2000), Oltramari, Peres and Gaspar (2004), Sanches Filho (2004), Vasconcelos (2007), Leão (2008) and Miranda (2009), among several others cited specifically in each chapter. Finally, I have also crosschecked this data with a research on the websites of each one of the courts of appeals of the three states, the TJRS, TJMG, and TJBA. I have searched for the expressions “*prefeito*,” “*processo-crime*,” “*ação penal*,” and “*processo de competência originária*” under the tab “*jurisprudência*” and crossed the findings with those of the two other sources of data.

VITA

EDUCATION

- 2014 Ph.D. in Political Science, University of Illinois at Chicago
Dissertation title: *Mayors in the Dock: Judicial Responses to Local Corruption in Brazil*
Committee: Sultan Tepe (chair and advisor), Andrew S. McFarland, Evan McKenzie, Yue Zhang, and Matthew M. Taylor
- 2008 M.A. in Political Science, Federal University of Rio Grande do Sul, Brazil
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Committee: André L. Marengo dos Santos (chair and advisor), Carlos Schmidt Arturi, Luis Gustavo Grohmann, and Raúl Enrique Rojo
- 2005 LL.B. in Law, Federal University of Rio Grande do Sul, Brazil
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- 2013-2014 Dean's Scholar Award, University of Illinois at Chicago
- 2009-2013 Fulbright-Capes Doctoral Fellowship, United States Department of State and Brazilian Ministry of Education
- 2006-2008 Masters' Degree Scholarship, Brazilian Ministry of Science and Technology
- 2004-2006 Scientific Initiation Scholarship, Brazilian Ministry of Science and Technology

AWARDS

- 2013 Milton Ravoque Memorial Award Fund, University of Illinois at Chicago
- 2005 Young Researcher Award, Federal University of Rio Grande do Sul, Brazil
- 2005 Best Paper in Public Law, XVII Scientific Initiation Seminar, Federal University of Rio Grande do Sul, Brazil
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- 2003 Best Paper in Public Law, XV Scientific Research Initiation Seminar, Federal University of Rio Grande do Sul, Brazil
- 2002 Best Paper in Constitutional Law, XIV Scientific Research Initiation Seminar, Federal University of Rio Grande do Sul, Brazil

PROFESSIONAL EXPERIENCE

- 2012-2013 Teaching Assistant, Department of Political Science, University of Illinois at Chicago (courses: Political Theory, Data Analysis)
- 2004-2006 Research Assistant, Research Group Constitution and Society, School of Law, Federal University of Rio Grande do Sul, Brazil
- 2002-2005 Teaching Assistant, School of Law, Federal University of Rio Grande do Sul (courses: Sociology of Law, Philosophy of Law), Brazil
- 2001-2005 Voluntary Instructor, Popular Legal Education and Counseling Group, School of Law, Federal University of Rio Grande do Sul, Brazil
- 2001-2004 Intern, Moreira de Oliveira Advogados Associados (law firm), Brazil

PUBLICATIONS

2013. Difficult Hierarchy: The Evaluation of the Supreme Federal Tribunal's by Lower Ranking Judges in Brazil. *Revista Direito GV [Getúlio Vargas Foundation Law Review]* 9 (1): 47-64 (originally published in Portuguese).
2012. Professional Judges? Patterns of Career of Members of the Supreme Courts of Brazil (1829-2008) and the United States (1789-2008). *Revista de Sociologia e Política [Review of Sociology and Politics]* 20 (41): 149-169 (originally published in Portuguese).
2010. Judges in the Formation of the Nation-State: Professional Experiences, Academic Background and Geographic Circulation of Members of the Supreme Courts of Brazil and the United States. *Brazilian Political Science Review* 4 (1): 102-130.
2009. The Public Prosecution Office and Civil Society in Brazil: In Search of a Pattern of Interaction. *Política Hoje [Politics Today]* 18 (1): 29-53 (originally published in Portuguese).
2008. Parties In and Out of Power: Judicialization as a Contingent Result of Political Strategy. *Dados* 51 (4): 825-864 (with Matthew M. Taylor, originally published in Portuguese).
2008. Executive Decree Authority and Horizontal Accountability: Inter-branch Institutional Dynamics and Provisional Measures in post-1988 Brazil. *Revista de Sociologia e Política [Review of Sociology and Politics]* 16 (31): 143-160 (originally published in Portuguese).
2008. Paths towards the Courts: Careers and Patterns of Recruitment of Brazilian Supreme Court Justices (1829-2006). *Revista de Sociologia e Política [Review of Sociology and Politics]* 16 (30): 131-149 (with André L. Marengo dos Santos, originally published in Portuguese).
2008. Socio-Political Foundations of Jurisprudential Innovation and Diversification of the Legal Space: Notes from a Case Study. *Revista da AJURIS [Review of the Association of Judges of Rio Grande do Sul]* 109: 217-230 (originally published in Portuguese).

2007. Provisional Measures in the Supreme Federal Tribunal: Inter-branch Independence and Harmony? In: Carrion, Eduardo K. M. and Ranier S. Medina, eds. *Reforma Constitucional e Efetividade dos Direitos [Constitutional Reform and Rights' Effectiveness]*. Porto Alegre: UFRGS Press (originally published in Portuguese).

2007. Courts as Arbiters or as Instruments of the Opposition: A Typology of the Judicialization of Politics and an Application to the Brazilian Case. *Direito, Estado, e Sociedade [Law, State, and Society]* 31: 86-105 (originally published in Portuguese).

2006. Positions of the Brazilian Judiciary on the New *Lex Mercatoria*. *Revista da Faculdade de Direito da Universidade Federal do Rio Grande do Sul [Review of the School of Law of the Federal University of Rio Grande do Sul]* 26: 31-57 (with Ben-Hur R. Rava, originally published in Portuguese).

CONFERENCE PRESENTATIONS (SELECTED)

2013. Lawyers' Lobbying the Courts? The Order of Lawyers of Brazil at the *Supremo Tribunal Federal*. 71th Annual Midwest Political Science Association National Conference, Chicago, Illinois.

2012. The Judicialization of Politics, Revisited: A Conceptual Analysis. 70th Annual Midwest Political Science Association National Conference, Chicago, Illinois.

2011. Do Judicial Selection Rules Matter? Discussing the Assumptions of the Attitudinal Model in Comparative Perspective. 69th Annual Midwest Political Science Association National Conference, Chicago, Illinois.

2010. Deciding Not to Decide: Informal Strategies in the Brazilian Supreme Court Rulings to Avoid Potentially Costly Decisions. 68th Annual Midwest Political Science Association National Conference, Chicago, Illinois.

2009. Presidential Decrees on Trial: The Abstract Judicial Review of Executive Decrees by the Supreme Federal Tribunal in Brazil (1988-2007). 28th International Congress of the Latin American Studies Association, Rio de Janeiro, Brazil.

2008. Judging Decrees: Comparing the Judicial Review of Executive Orders in Brazil and the United States. 1st International Social Sciences Meeting, Pelotas, Brazil (originally presented in Portuguese).

2008. Parties In and Out of Power: Judicialization as a Contingent Result of Political Strategy. 6th Meeting of the Brazilian Political Science Association, Campinas, Brazil (with Matthew M. Taylor, originally presented in Portuguese).

2008. Judges of the Americas: Comparing the Patterns of Career and Recruitment of the Members of Supreme Courts in Brazil and the United States. 32nd Annual Meeting of the National Association of Graduate Studies and Research in Social Sciences, Caxambu, Brazil (originally presented in Portuguese).

2007. Paths Towards the Courts: Careers and Patterns of Recruitment in the Brazilian Supreme Court. 31st Annual Meeting of the National Association of Graduate Studies and Research in Social Sciences, Caxambu, Brazil. (with André L. Marengo dos Santos, originally presented in Portuguese).

2006. Is the Supreme Federal Tribunal a veto player? Judicialization of Politics and Limits to Provisional Measures in post-1988 Brazil. 14th Seminar of Young Researchers of the Association of Universities of the Montevideo Group, Campinas, Brazil (originally presented in Spanish).

2006. Courts as Arbiters or as Instruments of the Opposition: Judicialization of Politics in New Polyarchies from the Perspective of the Brazilian Case. 1st Conference of the Uruguayan Association of Political Science, Montevideo, Uruguay (originally presented in Spanish).

2006. Executive Decree Authority and Horizontal Accountability: Inter-branch Institutional Dynamics and Provisional Measures in post-1988 Brazil. *7th National Conference on Democracy*, Rosario, Argentina (originally presented in Spanish).

2005. Direct Actions of Unconstitutionality and Provisional Measures: Positions of the Supreme Federal Tribunal on the Relationship between the Executive and Legislative Branches in Brazil (1988-2005). *XVII Scientific Initiation Seminar of the Federal University of Rio Grande do Sul*, Porto Alegre, Brazil (originally presented in Portuguese).

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