

**BUILDING PROSECUTORIAL AUTONOMY FROM WITHIN:  
*THE TRANSFORMATION OF THE MINISTÉRIO PÚBLICO IN BRAZIL***

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**ABSTRACT**

How do prosecutors acquire prerogatives, autonomy, and authority? In contrast to previous research identifying top-down, bottom-up and outside-in models of reform, we show that government officials can promote their own transformation. Specifically, we examine how Brazilian prosecutors evolved from a low profile assemblage of transient and politically dependent prosecutors into one of the most autonomous and authoritative public agencies in the country. We find that they created cohesion among their ranks, lobbied incessantly, and crafted alliances that nonetheless keep their options open. Thanks to this responsive and pragmatic strategy, they took full advantage of ongoing turbulence in Brazilian politics: whenever the opportunity context expanded, they advanced their cause; whenever the context contracted, they strengthened their mobilizing structures and protected their gains. While previous research looks at one transition at a time, this longitudinal study shows the heterogeneous strategies of long-term reform.

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**INTRODUCTION**

Since the 1960s, when the Ford Foundation and USAID funded the first set of ‘Law and Development’ initiatives, the pursuit of the rule of law has mobilized enormous resources around the globe (IDLO 2010; Trubek 2014). At its core, this effort revolves around a simple question: how does a government of men become a government of laws? The bulk of the relevant research, especially when applied to developing countries, examines how judges can acquire enough power to resolve disputes impartially and without fear of reprisal (Kapiszewski and Taylor 2008; Brinks and Blass 2013). While the autonomy of courts continues to command attention, recent work in legal sociology suggests that the attainment of rule of law must be understood within the context of broader legal fields (Edelman, Leachman and Me Adam 2010), legal complexes (Karpik and Halliday 2011; Halliday, Karpik and Feeley 2007), or legal culture (Ewick and Silbey 1998). In particular, these studies argue that, to understand how the rule of law gains traction and persists over time, scholars must take other actors in the legal system into account. These actors include practicing lawyers, law faculty, non-governmental organizations (NGOs), government officials who enforce laws and regulations, and professionals responsible for ensuring legal compliance within organizations.

Prosecutors are arguably the *primus inter pares*. They are the gatekeepers of the criminal system and have enormous power not only over private citizens (Davis 2007; Rakoff 2014), but also corporations (Silbey 1981, Thompson 2004; Garrett 2007; Barkow 2011) and elected

leaders at home and abroad (Burnett & Mantovani 1998; Wilson 1999; Weiser & Protess 2014).

In recent years, scholars have examined in greater length the role that prosecutors play in the American justice system (Gordon and Huber 2009), in Western Europe (Fionda 1995; Ma 2002) and Japan (Johnson 2002). Their findings show how prosecutors shape the administration of justice in mature democracies. Our understanding on how prosecutors might attain professional prerogatives, organizational autonomy and legal authority in developing countries, where they are exposed to the “serial replacement” of institutions (Murillo and Levitsky 2013) is much more limited.

In this paper, we conduct a longitudinal analysis of the Ministerio Publico (MP), a constellation of 30 state and federal-level prosecutorial services in Brazil, to find out how its prosecutors went from being subordinated agents of political elites around 1889 to becoming one of the most powerful and independent public agents in the country in 1990, a status that they retain today (McAllister 2008; Mueller 2010; Coslovsky 2011; Shi and van Rooij 2014). We report on three main findings. First, while the bulk of existing studies suggest that rule of law can be produced or strengthened by top-down, bottom-up, and outside-in types of reform (Helmke and Rosenbluth 2009), we find that government agents can engage in reform-from-within their own ranks. Second, this change in perspective allows us to see the conditions under which political turbulence can stop being a hindrance to reform and become a source of opportunities. And third, by looking at the same reform effort within one country over time, we show how existing models of reform are not alternatives but a mosaic of options, and how a cadre of well-organized reform agents can accumulate resources that allow them to combine institutional reproduction with transformation.

These findings are significant not only because prosecutors are central actors in the legal complex and pillars of the rule of law, but also because the challenges they face can be compared to the challenges faced by many other regulators, law enforcement agents, and street-level bureaucrats (Lipsky 1980) such as public defenders, labor inspectors, and others. On one hand, their effectiveness hinges on their ability to reason impartially and without fear of reprisal. On the other hand, the elected leaders who can empower them often prefer to keep these officials under their direct control. Prosecutors offer a particularly apt comparison to other frontline government agents because they occupy a liminal position. In some jurisdictions, they are closely aligned with the judiciary and resemble trial judges. In other jurisdictions, they are members of the executive and face the same challenges and opportunities as other government officials. In Brazil, over time, prosecutors have occupied every conceivable position along this spectrum and as such scholars interested in other legal agents and other countries are likely to see numerous parallels between Brazilian prosecutors and their objects of study.

## **PATHS TO PROFESSIONAL PREROGATIVES, ORGANIZATIONAL AUTONOMY AND LEGAL AUTHORITY**

How does a government of men become a government of laws? Or, more broadly, how do government bureaucracies acquire the necessary autonomy and authority to fulfill their mission effectively? Existing research can be divided into two main streams. On one side, numerous scholars examine the political and economic context in which legal agents operate (cf. Helmke and Rosenbluth 2009). Within this broad frame, a subgroup of researchers has identified delegative, or top-down models of reform. In some cases, political leaders empower courts to protect themselves against politically motivated retaliation (Ginsburg 2003; Hirschl 2004; Finkel 2008), an outcome that is more likely when incumbents are exposed to institutional

fragmentation and electoral competition that threaten their hold on power (Smithey and Ishiyama 2002; Chavez 2003; Rios-Figueroa 2007). In other cases, leaders empower courts to divert blame over politically divisive issues or monitor the bureaucracy. These motivations for reform have been found not only in democracies but also in dictatorships (Pereira 2005; Ginsburg and Moustafa 2008).

The top-down model resonates with research on civil service reform. For instance, Schneider and Heredia (2003) examine several instances of administrative reforms in developing countries in the 1990s and find that reform efforts were often led by small groups of leaders within the executive. Similarly, Grzymala-Busse (2003) examines the relationship between elected leaders and the state bureaucracy in post-communist countries. She finds that political fragmentation leads incumbents to insulate government agencies from political control. These findings conform to the theory proposed by Geddes' (1994) analysis of the "Politician's Dilemma", and Grindie's (2012) longitudinal study of patronage and civil service reform in 10 countries.

Instead of looking solely at top-down efforts, other researchers identify a bottom-up model of reform, in which citizens, lawyers, and human rights advocates mobilize to demand independent judiciaries, impartial legal proceedings, and more responsive government agencies (Epp 1998). In some instances, popular mobilization complements and reinforces the opportunities created by political fragmentation (Smithey and Ishiyama 2002; Tezcur 2009). In other instances, popular mobilization protects courts threatened by an overbearing regime (Vanberg 2000; Ghias 2010; Harvard Law Review 2010). Finally, some researchers find that reform can also be promoted from the outside-in. In some instances, courts gain independence because foreign investors demand protection against capricious expropriation (Moustafa 2003,

Wang 2014). In other instances, foreign countries or international organizations require that governments in developing countries strengthen certain public agencies before they can have access to debt relief, foreign aid or preferential trade agreements (Babb and Carruthers 2008). Finally, international organizations and NGOs also use rankings, indicators and other subtle markers of status to influence domestic decision making (Davis et al. 2012).

In contrast to these accounts of top-down, bottom-up, and outside-in reforms that treat government officials as the target of action conducted by others, an emerging body of work suggests that government officials can be deliberate agents of their own transformation. Judges, for instance, can strive to affect their position vis-à-vis leaders in the executive and the legislative through their legal opinions (Helmke 2005; Tezcur 2009; Huneus 2010). Judges may also act off-bench (Trochev and Ellett 2002). Widner (2001), for instance, shows how Francis Nyalali, a senior judge in Tanzania's Supreme Court, acted strategically over many years to increase the autonomy of courts. In a similar vein, Hilbink (2007) examines the "judges for democracy" in Spain and finds that they helped promote a series of democratic reforms (see also Hilbink 2012). And Crowe (2007) shows how Chief Justice William Howard Taft engaged in political entrepreneurship to increase the autonomy of the US Supreme Court in the 1920s.

These insights are echoed by studies that examine how other government officials increase their autonomy and authority. Epp (2010), for instance, examines four different types of organization in the US and finds that bureaucratic insiders worked together with activists outside the organization to change internal practices and procedures. Similarly, Abers and Keck (2013) study the creation of new river basin committees throughout Brazil and find that the daily work practices of water experts assigned to these committees explains why some acquired practical authority while others existed mainly on paper. Finally, other researchers have shown how

frontline government agents can use their discretion to innovate in practice even when their enabling mandates remain the same (Tendier 1997; Piore and Schrank 2008; Pires 2008; Amengual 2013; Coslovsky 2014 and 2015).

And yet, with few exceptions (e.g. Widner 2001; Grindie 2012) all these studies adopt a compressed time horizon and examine one episode of reform at a time, covering five to ten years, at most. As a result, they cannot explain why certain opportunities are seized while others are lost, why some reform efforts set a new level of autonomy and authority while others are reversed soon after the circumstances change, and how certain failed attempts at reform set the stage for subsequent successes. Moreover, the bulk of these studies examine changes that occur at the national level, and thus they cannot capture the dynamics of reform that take place within countries, particularly those that adopt a federal system such as Brazil, Argentina, Germany, the United States, and others.

### **EMPIRICAL PUZZLE: THE MP BEFORE AND AFTER**

The evolution of the Brazilian MP from 1889 to 1990 constitutes the ideal setting in which to study the gradual attainment of professional prerogatives, organizational autonomy and legal authority under a turbulent political environment- focusing on both state and national level reforms. We start our analysis in 1889 because that was the year when Brazil abolished its monarchy and became a federal republic. At that time, the federal government maintained a relatively small MP to enforce federal laws, and each one of Brazil's 20 states maintained their own MPs to enforce state laws. The national constitution of 1891 was silent on matters pertaining to prosecutors so state-level governors and the national president organized their MPs as they saw fit. Typically, leaders of the executive used the promise of public renown and



practical training to recruit young lawyers from influential families. In turn, they demanded full allegiance and treated prosecutors “as an instrument at their disposal, to protect friends and intimidate enemies” (Francisco Amaral, *Folha da Manhã*, 1 Feb. 1931: 10). Submissive prosecutors who respected their patrons’ orders retained their posts or moved up the hierarchy; defiant prosecutors who placed the law above the wishes of their patrons were fired or demoted without recourse or explanation (Arruda Sampaio 2007:1).

The job was part-time and paid a meager fixed salary. In São Paulo, one of the richest states in the federation, prosecutors received the same stipend as government typists, office clerks, and doormen (“Vencimentos do Ministério Público,” *Folha da Manhã* 6 June, 1935), which was less than half or even a third of the salary of the judges with whom they worked (“Reforma Organização Judiciária do Estado”, *Lei Estadual*, 30 December 1926, art. 4). To complement their pay, prosecutors were legally allowed to charge citizens a fee to perform official duties (Lei n° 2.260, de 31 de Dezembro de 1927). They could also represent private clients on the side. Those prosecutors assigned to larger, economically vibrant towns drummed up enough business to attain a reasonable standard of living. Others, posted in smaller, sleepy towns, seemed destined to destitution (“Não Vale Ser Órgão de Justiça,” *Folha da Manhã*, 11 Aug, 1926:6). Naturally, prosecutors constantly jockeyed with each other for the better, more profitable posts.

By hiring young lawyers, the MP ended up staffed with prosecutors who lacked experience and minimal legal skills. As explained by a disenchanted prosecutor from Sao Paulo, most of his colleagues were “*youngsters who just graduated from law school; incapable of writing even the simplest motion and who attend their first hearings dumbfounded, baffled and overwhelmed*” (“O Ministério Público Paulista,” *Folha da Manhã* 26 Dec, 1930:4). Making

matters worse, turnover was extremely high; in São Paulo it hovered around 20% per year (*Relatorio do Presidente da Provincia 1922-1929*). Turnover is not necessarily bad if it eliminates those ill-fitted for the job. In the MP, the opposite was true. The more skilled practitioners left first, and the MP retained either “*the losers, the diffident, the fearful of venturing out into a less ungrateful and more rewarding career*”, or “*the rare altruistic soul who, with fortitude, awaits better days*” .

The lack of experience and skill was mitigated by prosecutors’ limited legal powers. Those assigned to criminal cases shared the authority to initiate criminal action against alleged perpetrators with the police, judges, public servants, and citizens in general. Some prosecutors were assigned to “guardianships”, in which they oversaw the legal affairs of protected persons (such as orphans or the mentally ill), or protected interests (such as bankruptcy proceedings). In essence, this job required that they write legal briefs that judges could simply ignore. The MP was not a prominent institution. In the 1920s, the phrase “Ministério Público” was mentioned in the *Folha da Manhã* newspaper three times a month, at most.

We end the analysis in 1990, the year when Brazil consolidated its most recent transition to democracy. By then, the variation across subnational units had been eliminated. Brazil’s constitution and national laws had turned all MPs and their prosecutors into some of the most powerful and respected government agents in the country. At present, Brazil has approximately 12,000 career prosecutors who are assisted by 33,000 support staff and 21,000 legal interns (Conselho Nacional do Ministério Público 2014). All Brazilian prosecutors have the same professional prerogatives and duties as judges, including a respectable salary and numerous benefits. There is no lateral entrance. All prosecutors are appointed through entrance exams and promoted from within to higher, senior ranks. Prosecutors must work for the MP full time, they

are assured career progression, and they have legal authority to decide how to handle their cases according to their individual training and conscience. Prosecutors obtain life tenure after two years and cannot be fired, demoted, transferred, no less promoted, to a different post against their will. New legal cases are assigned to posts according to pre-existing rules rather than to persons, to prevent political interference. The MP has a level of autonomy rare for a public organization, including the ability to present its own budget proposal to the legislature, elect its own leaders, set its own bylaws, and run its own internal affairs division to investigate alleged malfeasance committed by prosecutors.

Finally, all prosecutors in the country have enormous legal powers. They share with the police the authority to investigate infractions; however, they retain exclusive authority to either initiate criminal proceedings or dismiss allegations. In the civil sphere, prosecutors can investigate alleged infractions under labor, environmental, consumer protection, human rights, and other laws; share with a few other entities the authority to initiate the Brazilian equivalent of a class action (“*Ação Civil Pública*”) to enforce legal rights; and have exclusive authority to sign deferred prosecution agreements comparable to American consent decrees (“*Termos de Ajuste de Conduta*”). In contrast with the MP’s earlier role as the legal counseling and litigating arm of the executive branch, its present mandate entails representing the public interest against private parties and, at times, against the government itself. Not surprisingly, the MP has become remarkably prominent. A search for “*Ministério Público*” in the database of *Folha de São Paulo* for the period 2000 to 2010 returns an average of 4.5 mentions a day (49% in the economics and 41% in the politics section). High level government officials readily admit that before any important policy decision, they inquire what the prosecutors will think.

Remarkably, this transformation took place during a period of enormous and continuing political upheaval. Between 1889 and 1990, Brazil had at least six constitutions, three disruptive coups d'état, one civil war, and 36 presidents, but only four of them were both elected by a majority of the population in open, free and fair elections and succeeded by someone chosen through the same method.

## **DATA AND METHODS**

To understand how Brazilian prosecutors went from being the handmaiden of political elites to becoming independent legal authorities, we start our inquiry by examining the evolution of the *Ministerio Publico* in the state of São Paulo (MPSP), and then expand our scope to examine the path shared by all state- and national-level MPs in Brazil. We start by focusing on São Paulo because its prosecutors played a leading role in promoting reform at both the state and national levels in Brazil. Moreover, reforms initiated in São Paulo later became a model for reforms in other Brazilian states. We do not restrict the analysis solely to São Paulo because many of the reform efforts took place at the national level, involved representatives from numerous states, and their outcomes affected all MPs in the country. In addition, the shifting of the locus of analysis from a single state (São Paulo) to the national level is an important methodological feature of this study because it sheds light on subnational dynamics that most other studies ignore.

The purpose of this study is to explain change in three dependent variables: (i) professional prerogatives, (ii) organizational autonomy, and (iii) legal authority. Professional prerogatives include an adequate salary, job security, career progression, protection against capricious transfers, demotion, or dismissal, adequate conditions of work, and other assurances

that allow individual prosecutors to reason impartially and without fear of reprisal; (2) Organizational autonomy refers to MP's legal authority to negotiate its budget with the legislature, decide on internal governance matters, oversee recruitment, promotion and appointment procedures, conduct performance reviews, manage its own internal affairs division, and other high-level assurances that pertain to the organization as a whole; and (3) Legal authority refers to prosecutors' legal powers to investigate alleged violations (for instance, through subpoenas and depositions), initiate formal legal proceedings, settle cases, and issue binding legal orders. Prosecutors' authority is said to be higher if they have exclusive control over a particular legal decision or instrument and if they have the final word on a given matter. Prosecutors' authority is said to be lower if they share control over a decision or instrument, and if other legal agents can overturn a decision issued by the prosecutor.

The independent variables come from the two streams of the literature on judicial and bureaucratic reform discussed earlier. On one side, the top-down, bottom-up and outside-in models of reform suggest that we examine the role of competition and fragmentation in the political system, the demands placed on political leaders by popular groups, and the exigencies made by outsiders. On the other side, the reform-from-within model suggests we pay attention not only to the political opportunity context, but also to the mobilizing structures and practices of reformers. In turn, these structures are predicated on internal cohesion and a shared vision among activists. When cohesion is absent, the mobilizing effort suffers from apathy, infighting, free riding, and dissonant voices that cancel each other out. When cohesion is achieved, leaders have resources from which to draw, and can legitimately act on activists' behalf.

Data collection and analysis proceeded in three stages. First, we tracked all the proposed federal and Sao Paulo state laws and regulations that - if approved - would have modified the

status of the MP and prosecutors during the period under consideration. To this end, we consulted treatises on Brazilian administrative law, existing accounts of the institution (Macedo 1995, Bonelli 2002, Arantes 2002) and legal databases maintained by the federal government and the government of Sao Paulo. This search yielded 20 legal events that we considered to be both distinctive and meaningful (see Methods Appendix for a complete list). Second, we examined the legislative records, including original drafts, motions, amendments, committee votes, and floor debates, for each of these 20 legal events to identify the key actors that supported or opposed the proposed reform. We also consulted newspaper articles discussing those events, historical accounts, and personal testimonies of protagonists to identify other agents who contributed to these debates outside the legislative process. Typically, protagonists included elected leaders in both the executive and legislature, and lobbyists for various social groups, including prosecutors. Next, we consulted biographical records, party affiliations, and career trajectories for each of these protagonists to deduce their alliances and motives. When prosecutors were involved, we collected detailed data on their mobilizing efforts as well. Finally, we organized the data into a detailed timeline of reform. For each of the 20 legal events, we analyzed the data to understand both the political context and the forces promoting or opposing reform, as suggested by the different models of reform identified in the literature. This method allowed us to track the evolution of the MP, and to abstract from specific historical details to develop an analytical model, focused largely on the interplay between the political opportunity context and prosecutors' own mobilizing structures and practices that could explain the MPs transformation.

## **THE PROCESS OF TRANSFORMATION (1889-1990)**

### **Stasis and early attempts at reforms (1889-1934)**

Between 1889 and 1930, Brazil was an oligarchy. Only literate men were legally allowed to vote, ballots were not secret, and a committee of congressional representatives could allege fraud to impeach challengers after the votes had been counted. In every state, a small clique of landowners maintained a *de facto* monopoly over political representation. In São Paulo, the party known as *Partido Republicano Paulista* (PRP) elected every governor, every member of the national congress, and practically every representative to the state assembly at every election (Caliman and Dias 2011; Brazil Congresso Nacional 1998; Portal Senadores 2014). On occasion, aspiring reformers argued that prosecutors should have some professional prerogatives and organizational autonomy but they did not achieve results (Soares 1930:27). The political opportunity context was tightly shut, and elected leaders had no reason to relinquish their power over prosecutors or even contemplate reform. Moreover, throughout the 19<sup>th</sup> and 20<sup>th</sup> centuries prominent Brazilian jurists argued that the MP was the instrument through which the Executive interacted with the Judiciary, and thus proper constitutional design required that prosecutors remain subordinated to both (Milton 1895:285; Monteiro 1899:235; and dos Santos 1918:622).

For approximately 40 years, this long-standing political arrangement remained in place and prevented reform. But the oligarchic period came to an end in 1930, when a series of bumper crops and the Great Depression of 1929 caused a collapse in coffee prices. To pursue a federal bailout, politicians from São Paulo, the largest coffee producing state in the nation, tried to retain Brazil's presidency for two consecutive terms rather than alternate with Minas Gerais as had been conventional. Representatives from other states rebelled, deposed both the departing

president and his putative successor, and gave the post to Getulio Vargas, a modernizing politician from Rio Grande do Sul. Soon after taking office, Vargas disbanded the national congress and revoked the national constitution.

Vargas saw São Paulo as the bastion of the old regime and the staunchest opponents to his fledgling rule. To defuse the threat lurking there, he closed the São Paulo state assembly, deposed the governor, and named one of his generals to run the state. His ultimate goal was to weaken the PRP and end its unchallenged control of the state. The effort did not yield immediate results. As the PRP shrunk, three political factions jockeyed for power, creating continuing instabilities and political turbulence within the state. Between 1930 and 1933 São Paulo had, on average, a new governor every 80 days. Advocates of the MP took advantage of this turmoil to argue for reform. Within weeks of Vargas taking over, a prosecutor from São Paulo published a short book exhorting the new regime to establish a career track for prosecutors, increase their salaries, eliminate moonlighting, protect prosecutors against unfair transfers and dismissals, and empower the head prosecutor to manage the organization, instead of permitting loosely affiliated prosecutors to operate on their own (Soares 1930).

Vargas did not heed this plea, but competition among the warring factions within São Paulo created an opening in the political opportunity context that nonetheless facilitated reform. In 1931 Vargas appointed a prominent local citizen without clear ties to the contending political factions to govern the state. A month after taking office, this governor enacted a decree creating a career track for prosecutors, protecting them against unfair transfers and dismissals, and empowering the head prosecutor to manage the organization (“Reorganiza o Ministério Público do Estado,” Decreto 5179-A, 27 Aug 1931). It seemed like a significant victory for those intent on strengthening the MP, but it did not last long. As political conditions in Sao Paulo continued



to deteriorate, the factions that had been fighting within the state overcame their differences and rebelled against the federal government. Battles in this civil war were fierce but short. Within three months São Paulo's troops had surrendered. Vargas sent the leaders of the rebellion into exile and appointed a trusted military commander to govern the state. Soon after taking office, this new governor revoked the earlier decree and restored his power to appoint, promote, transfer and dismiss prosecutors at will ("Dispõe sobre Nomeação, Remoção e Exoneração dos Membros do Ministério Público," Decreto 5.784, 30 Dec 1932). In brief, an opportunity for reform arose at the exact place and time - São Paulo in 1931 - after one dominant political group had been dislodged from power and before another group had settled in. At a superficial level, these events conform to the top-down model of reform, but they also show that autonomy achieved through this method might be fleeting.

*São Paulo: Competitive elections create new opportunities for reform from the top*

By 1933-34, Vargas and his allies had acquired uncontested control over the Brazilian territory and proceeded to return the country to political normalcy. In particular, Vargas revamped the electoral code so both men and women could vote through secret ballot. He also created an independent electoral commission to manage and monitor the elections, and revoked the law that allowed incumbents to impeach challengers. Once these laws were in place, Vargas called elections so citizens could vote for a new slate of congressional representatives. He also instructed the newly elected members of congress to draft a constitution for the country. Prosecutors still did not have any mobilizing structure, so the MP did not figure prominently in constitutional debates. Three congressmen from Minas Gerais spoke in favor of an autonomous MP (*Anais da Assembléia Nacional Constituinte*, vol. 4 (1934):467) but did not gather enough votes to amend the draft constitution. In the end, the constitution of 1934 protected federal

prosecutors against unfair dismissal, and placed the provisions pertaining to the federal MP in the chapter devoted to “*organs of governmental cooperation*”, a symbolic move that suggested (but did not ensure) some independence from the other branches of government. It did not include any provisions devoted to state-level MPs, so governors still had unrestricted authority to organize their respective state-level MPs as they saw fit.

In addition to creating a political framework for the country, the national constitution of 1934 directed the Brazilian states to reopen their legislative assemblies and elect new governors. For the first time in history, local elections in Sao Paulo were contested. The formerly miniscule *Partido Constitucionalista* (PC), which supported Vargas, obtained 48% of the seats and elected the governor. The remnants of the PRP obtained 29% of the seats. Two smaller parties and representatives of the professions obtained the remaining 23% of seats. Prosecutors still did not have mobilizing structures, so attempts at empowering the organization were driven from the top and fueled by partisan divides.

The São Paulo assembly’s first task was to write a new constitution for the state. The initial draft emulated the federal constitution, and addressed the MP in its own chapter, separate from those devoted to the other branches of government. The constitution also decreed that prosecutors be appointed through an entrance exam, protected against unfair dismissal, and mandated that a third of promotions be based on seniority. Subsequent debates pertaining to the MP revolved around salary. On one side, a member of the PRP argued that prosecutors should be paid no less than two-thirds the salary of the judges with whom they worked. Naturally, the money would come from the executive’s budget, so this proposal would not only decrease the governor’s discretionary account, but it would also decrease his power over prosecutors. Speaking for the governor, a member of the PC (and former prosecutor) named Ernesto Leme

argued against these provisions and tried to delay the raise. Prosecutors' salaries were so low and the newly elected assembly was so evenly divided that all the provisions empowering the MP, including the amendment proposed by the PRP, were approved. A few months later a member of the PC proposed, and the assembly approved, that the executive branch pay for the raise by retaining 50% of the legal fees that prosecutors charged citizens for performing official duties. This increase in base-salaries and the reduction in legal fees decreased the disparity of income among prosecutors, reduced their incentives to compete with each other for profitable posts within the organization, and paved the way for solidarity within their ranks.

The next crucial event in the transformation of the MP took place in 1936, when the São Paulo assembly discussed how to implement the constitutional provisions mandating that prosecutors be recruited through an entrance exam and promoted from within. Debate again followed partisan lines. Ernesto Leme, again opposed to providing the MP with much organizational autonomy, wrote the initial draft with minimal concessions to the prosecutors. Cesar Salgado, a former prosecutor who had been elected state representative for the PRP, suggested a series of amendments that protected prosecutors and the MP from undue political influence, particularly unfair transfers. By then, the PC had assembled a majority coalition, so Salgado's amendments were rejected and Leme's proposals, which provided the MP with only a modicum of autonomy, were approved. This law constituted a small victory for prosecutors, as it mandated that prosecutors be hired through entrance exams and promoted from within. Yet, its importance should not be overstated. An organization such as the MP requires enormous flexibility in staffing to fill temporary vacancies and meet sudden peaks in demand. For another 20 years, state governors continued to appoint ad hoc or adjunct prosecutors from outside the

ranks of the organization. Naturally, ad hoc prosecutors were even more beholden to the governor than colleagues appointed through an entrance exam.

### **The São Paulo phase of reforms**

In 1937, political conditions changed once again. Vargas reneged on his promise to call for presidential elections and step down. Instead, he closed congress, replaced the national constitution of 1934 with a document prepared behind closed doors, and initiated a new period of autocracy and centralized decision-making known as Estado Novo. In São Paulo, Vargas disbanded the state assembly, deposed the governor, and named an ally to run the state. With the state assembly closed, Cesar Salgado returned to his post as prosecutor. In November 1938, he joined forces with a small group of disenchanted colleagues to create the *Associação Paulista do Ministério Público* (APMP), the first membership-based organization to defend prosecutors' professional interests in Brazil. Cesar Salgado was APMP's first president, and the organization operated from his house. Over the years, the APMP (and its sister organizations in other states) would become the main vehicle through which prosecutors advanced their cause.

The APMP adopted a four-pronged approach to foster cohesion and collective action among prosecutors. First, it published *Justitia*, a quarterly journal that disseminated law reviews, legal templates, and professional announcements relevant to prosecutors. Initially, the journal circulated only in São Paulo, but colleagues from other states soon asked for copies and the APMP started distributing it nationally. Second, the APMP encouraged prosecutors from other states to create their own associations. Third, the APMP organized meetings so prosecutors could strengthen their mutual ties and discuss legal matters relevant to the profession and the organization. The first meeting took place in São Paulo around 1940 and was soon followed by a

national meeting, also held in São Paulo in 1943. Over time, these meetings became a platform for mobilization and reform. Finally, the APMP took steps to identify and recruit current and former prosecutors who worked in public agencies, occupied elective office, or had access to political leaders and so could help it advance its cause.

Thanks to these efforts, prosecutors from São Paulo retained their prior gains. In 1938, Vargas appointed a young and ambitious politician named Ademar de Barros to govern the state. Over time, Barros rose to be one of the most powerful politicians in the country, but at this moment of transition he was struggling to create a power base. Even though he had unrestricted legal authority over the state, he did not restore his gubernatorial power over prosecutors like the previous federal appointee had done in 1932. Instead, Barros enacted a decree further detailing prosecutors' prerogatives and affirming their prior gains ("Reorganiza o Ministerio Público do Estado," Decreto 10.000/1939; *Diario Oficial SP*, Ano 63, 6 Oct 1962:55). The decree was constructed in private, so we do not have details on its provenance. Still, we know that the leaders of the APMP had access to the governor, lobbied for this decree, and thanked him publicly for it ("Novos Promotores Públicos da Capital," *Folha da Manhã*, 2 March 1939:1).

At this point in their trajectory, prosecutors from Sao Paulo had secured a few professional prerogatives but still enjoyed very limited control over their own organization. Their most important asset was the APMP, which was helping them mobilize as a group and acquire resources that they could deploy the next time an opportunity arose. This opening arose in 1945, when a non-violent coup d'état deposed Vargas and sent Brazilians back to the ballot box to elect a new president as well as new members of the national congress. As the newly reopened national congress began drafting a new national constitution, the APMP submitted a lengthy memorandum to various members of congress requesting more professional prerogatives for

prosecutors and increased organizational autonomy for all MPs (*Anais da Assembléia Nacional Constituinte* v6: 199-204). Prosecutors from Pernambuco, who had just created their own association, also submitted suggestions for reform (*Anais* v. 18: 108). To complement this push, the APMP sent one of its leaders to the capital to lobby congress directly (Arruda Sampaio 2007).

Thanks to this effort, the MP occupied a much more prominent role in constitutional debates than ever before. The debates pertaining to the MP covered a broad array of topics, including institutional design, the balance of power across the branches of government, and mechanisms of accountability. The national constitution of 1946 addressed the MP in its own chapter, separate from the chapters devoted to the other branches of government, and it extended to all federal- and state-level prosecutors the professional prerogatives that were already in place in São Paulo. It was the first instance in which reforms that had been advanced in one state got disseminated to all states in the country. The leaders of the APMP were jubilant. Plinio de Arruda Sampaio, a former prosecutor from São Paulo, reminisced about his father, also a prosecutor, who had travelled to the capital to lobby the proceedings on behalf of the APMP:

*“...He came back from Rio de Janeiro ecstatic [...] He and his colleagues [co-founders of APMP] had succeeded in inserting the term “Ministério Público ” in the national constitution! I recall numerous meetings in our home, when my father and his colleagues discussed the importance of this achievement for the MP, to be instituted by a provision in the constitution”* (Arruda Sampaio 2007:3-4)

As part of the post-Vargas democratic transition, citizens in all states elected new governors and new representatives for the state assemblies. In São Paulo, elections were hotly contested. Ademar de Barros, the young politician who had been appointed governor by Vargas, was elected to the post but his political party obtained only 12% of the seats in the state assembly. The leading party obtained 35% of the seats, the runner-up obtained 19%, and six other parties shared the remaining 34% (i.e. 5-6% each).

Once again, the São Paulo assembly's first order of business consisted in drafting a new constitution for the state. Prosecutors in São Paulo took decisive action to enshrine the provisions pertaining to the MP, currently established by administrative decree in 1938, in the state constitution. As state representatives got ready to write a new constitution, APMP sent them a detailed document with proposals and arguments for a more autonomous MP. The initial draft of the new São Paulo constitution listed the MP in its own chapter and affirmed a number of professional prerogatives. Subsequent legislative debates involved intricate procedural maneuvering, heated debates between members of the assembly who advocated on behalf of judges, prosecutors, or the police, and some fierce opposition against the MP. The risk to prosecutors was real, but the APMP helped defuse the threat. When a group of assemblymen proposed that the state constitution omit any mention of the MP, a legislator argued against the motion by quoting Cesar Salgado's speeches from his time as a member of the assembly ten years earlier.

As the relevant provisions came to a final vote, a slim majority agreed to maintain the chapter devoted to the MP but did not expand the prosecutors' prerogatives. The text mandated that all prosecutors be hired through entrance exams, protected them against unfair transfer and dismissal, assured them salaries equal to two-third those of the judges with whom they worked,

and prohibited them from representing private clients on the side. In a last minute gambit, two assemblymen who opposed the governor proposed that prosecutors' salary be set in parity with judges. The amendment passed, and a subsequent law funded the raise by eliminating prosecutors' authority to retain legal fees paid by litigants. From then on, these fees would go straight to the state's treasury. This decision providing prosecutors with a relatively high fixed salary and no variable pay eliminated a source of squabbling among prosecutors and made it even easier for them to act collectively.

After these provisions were adopted as part of the São Paulo constitution of 1947, a group of prosecutors published an open letter to the head of APMP crediting the association for its achievements:

*“ [We] wish you our unrestricted solidarity in face of your noble and tireless effort defending the interests of prosecutors in your role as president of the APMP. In particular we express our full support for your suggestions concerning the chapter of the MP sent by you to the constitutional assembly, as they conform to the topics we discussed and approved during our congress in 1942” (“O Capítulo do Ministério Público na Futura Constituição Estadual,” *Folha da Manhã*, 4 June, 1947: 3).*

The next step in the prosecutors' campaign for organizational autonomy came at a time when São Paulo political life had settled into a two-party system, with Ademar de Barros on one side and Jânio Quadros on the other. In the interstices of this dispute, Lucas Garcez, a former Barros ally, served one term as governor. In 1951, Garcez named Cesar Salgado head prosecutor (at that point, Salgado was 56 years old), and in 1954 Garcez proposed, and a deeply divided



state assembly approved, a law mandating that the MP be headed by a senior prosecutor pre-screened by his or her peers. This law also mandated that the MP run its own internal affairs division, so prosecutors accused of malfeasance would be judged by their peers. This law was a crowning achievement for prosecutors in São Paulo, as it gave them all the organizational autonomy and professional prerogatives they still wanted. The transformation would have been complete if not for the fact that São Paulo remained a subnational unit within a national system of governance. To preserve their gains, prosecutors ended up taking their mobilizing effort to the national level.

### **The national phase (1964-1990)**

The democratic period that had started in 1946 ended in 1964 when the Brazilian military deposed the president, purged the opposition and authorized an eviscerated national congress to write yet another constitution for the country, which was enacted in 1967. The military leaders replaced this constitution soon after with a more draconian document (“Emenda n’ 1 / 1969”). Both revised constitutions mandated that prosecutors be hired through an entrance exam and protected them against unfair dismissal and transfers. However, the Constitution of 1967 placed the MP in the chapter devoted to the Judiciary, and Emenda n’ 1 placed it in the chapter devoted to the Executive— both moves implied hierarchical subordination and a loss of prestige.

Prosecutors who had pushed for greater autonomy and prerogatives feared that the military leaders might nonetheless revert the MP to its earlier dependent configurations. A senior prosecutor from São Paulo explained, “It was an autocratic government. If the president could, on a whim, amend the Constitution, he could also modify those prerogatives that we cherished so much, such as the merit-based entrance exam, the structure that mirrors the Judiciary, the

salaries” (Paulo Salvador Frontini, quoted in Bonelli 2002:148). Prosecutors’ sense of vulnerability was heightened by structural divisions within their ranks. At the time, state-level MPs within Brazil provided their prosecutors with a range of different rights and duties and with different levels of organizational autonomy from the other branches of government. For instance, federal prosecutors represented the executive in court, pursued tax evaders and were happy to remain subordinate to the president in exchange for a share of the taxes they recovered. In some states (such as Rio de Janeiro), prosecutors represented private clients on the side, an activity that could be quite remunerative. Given this heterogeneity, prosecutors from São Paulo, Rio Grande do Sul, and other states that had moved towards a different, relatively independent and autonomous organizational arrangement, feared that the military would force them to change. A leader of the MPSP explains:

*“Most state-level MPs did not have the same set of organizational and professional prerogatives as SP, and this diversity constituted a risk, because the federal government could impose on the nation a model of MP that was not ours. ”* (Xavier de Freitas 2007:5).

In 1970-1, the leaders of the APMP responded to this perceived threat by joining forces with counterparts from other states to create a new supra-association named ‘*National Confederation of State-level Prosecutors’ Associations*’ (“*Confederação de Associações Estaduais do Ministério Público*” CAEMP, later renamed CONAMP). Its first president was a prosecutor from São Paulo. Building on the past efforts of the APMP and its counterparts on other states, CAEMP pursued a three-pronged strategy. First, it kept close tabs on all federal deliberations that might affect its members. Here, CAEMP drew on its network of elite allies, including current and former prosecutors, mobilized over the previous three decades of

organizing by state-level associations. CAEMP used this network to identify prosecutors who could provide it with privileged information on the decision-making process within the federal government and lobby on its behalf. As explained by a prosecutor,

*“We paid close attention to all subsequent acts of the military government. We had colleagues, particularly from the south, who integrated the closed circle of political decision-makers at the time ... some worked for the Ministry of Justice, as chief of staff, or undersecretary, they helped us enormously”* (Lopes Guimarães 2009:8).

Second, CAEMP encouraged prosecutors throughout the country to either strengthen state-level associations or create new ones where none existed. In 1964, prosecutors in 11 out of 20 states had an association; by 1978, this figure had almost doubled, and prosecutors in all 20 states had an association. As part of this push, CAEMP encouraged all associations to fight for more prerogatives and autonomy for prosecutors within their own states so that prosecutors could present a unified face when lobbying the federal government (Xavier de Freitas 2007:5).

Third, CAEMP organized national meetings to mobilize prosecutors and recruit allies in both municipal and state governments. CAEMP’s first president explains:

*“During those years, we organized numerous meetings. It was a time when the Ministério Público Congresses multiplied, thanks to the Confederation, as a strategy to promote [our vision of an autonomous MP] to local governments, public opinion, and politicians in general. The meetings were a political weapon. In addition to studying and discussing laws and proposing pieces of legislation,*

*we used this political weapon to lobby the power-holders” (Xavier de Freitas 2007:7).*

As they strengthened their capacity for national collective action, prosecutors also strived to seize two distinctive opportunities for reform, but these efforts only yielded results several years later. The first opportunity emerged in 1973-4, when the president of Brazil created a Special Secretariat for the Environment (“SEMA”) and appointed a biologist from São Paulo to head it. Upon taking office, this biologist convened a committee of experts to draft the country’s first comprehensive environmental stewardship law. One of the contributors was a young prosecutor from São Paulo with a keen interest in the nascent field of environmental law. Thanks to his suggestions, the bill empowered prosecutors to initiate civil action against anyone suspected of damaging the environment. It would have been a momentous expansion of prosecutors’ legal powers, but when the head of SEMA submitted its proposal to the president in 1975, business groups managed to hold it up (“Lei darà mais poderes à SEMA,” *Folha de Sao Paulo*, 11 June 1975:12; Hochstetler& Keck 2007:32).

The second opportunity arose in 1977, when the Brazilian Congress approved an amendment to the constitution that, among other provisions, obligated the federal government to standardize the organizational structure and operational autonomy of all state-level MPs. In response to this amendment, CAEMP convened numerous meetings of head prosecutors from state-level MPs and leaders of prosecutors’ associations to propose a draft bill (Visconti 2007:4). CAEMP submitted its proposal to the president, but the president did not submit it to Congress. At this point in their history, prosecutors had the mobilizing structures to spot and seize nascent openings but the political opportunity context remained insufficiently fluid to turn opportunities into sure wins.

The political opportunity context started to open again in 1979, when the military loosened some restrictions on political activities and scheduled country-wide elections for 1982. On that date, Brazilians would elect new members of congress, new governors, and new representatives to state assemblies. The military were planning the transition to civilian rule and they wanted it to be ‘slow, gradual, and safe’. To achieve this goal, the military leaders coupled discrete democratic concessions with policies that appeased important groups in society while constraining the political opposition. These tactics created opportunities for reform that prosecutors promptly seized.

In 1981, the military and their civilian allies controlled the federal government and all states except Rio de Janeiro, which was governed by Chagas Freitas, the head of a local political machine who had abandoned his alliance with the military. During his tenure, Freitas clashed with local prosecutors and appointed interim alternates from outside the organization. Career prosecutors were incensed, but Freitas controlled a majority of the seats in the state assembly so they had limited recourse within the state. State-level prosecutors from Rio de Janeiro reached out to the leaders of the military regime who feared—correctly—that the opposition would score major victories in the upcoming gubernatorial elections. To prevent future opposition governors from controlling their own state-level prosecutors, federal authorities sent to congress the draft bill that had been suggested by CAEMP in 1977 requiring that state-level MPs adopt the organizational model pioneered by São Paulo.

When the bill reached the national congress, prosecutors traveled to the capital to testify on its behalf and monitor its progress through the relevant committees. Legislative debates were mostly laudatory. Congressmen from both the majority and the opposition censured Chagas Freitas and defended the professional prerogatives and organizational autonomy of prosecutors

as a cornerstone of the rule of law. The bill was approved with only minor modifications. The leaders of CAEMP and other state-level MPs that had led the effort were ecstatic. The congressman who helped shepherd the bill through congress was named an honorary prosecutor by his home state's MP and granted the title of "friend of the Brazilian MP" by CAEMP (Câmara dos Deputados 2014).

As part of the same strategy that coupled democratic openings with appeasement, the leaders of the military government sent to congress the environmental stewardship bill drafted by SEMA that had been held up since 1975. Legislative debates were quite heated, pitching those who wanted strong environmental protections against those who feared an adverse effect on the economy. The expansion of prosecutors' powers into civil litigation was not raised during the debates at all, but after the bill was approved, some business groups tried to convince the president to veto that specific provision. Prosecutors defused this opposition by leveraging the elite allies they had cultivated: allies close to the president who lobbied for the bill (Guimarães Jr. 1981:185) and others, such as university presidents and heads of environmental and research organizations, who argued publicly against the veto (186). The law was approved and opened a new stage of action for prosecutors.

Since the early 1970s, legal scholars from around the world had been discussing how collective claims could be accommodated within contemporary legal systems (Cappelletti & Garth 1978; Yeazell 1977; Hensler 2009). In Brazil, a group of legal scholars, government attorneys and judges interested in advancing this agenda convened a series of meetings, workshops and congresses, and ultimately drafted a stand-alone bill creating the "civil public action," the Brazilian equivalent of the American class action. This bill empowered both civic associations and prosecutors to initiate civil public actions against private and public parties to

protect the environment and natural, historic, and tourist sites in Brazil. In March 1984, a congressperson introduced this draft bill to congress (Projeto de Lei 3034/1984). Meanwhile, prosecutors from São Paulo rushed to prepare a bill of their own, which overlapped considerably with the first but expanded the scope of the law to further cover consumer rights and “all other collective interests.” In addition, their bill empowered prosecutors (but not civic associations) to subpoena technical documents and request expert testimonies under penalty of criminal contempt. To protect prosecutors’ turf, it omitted a provision in the legal scholars’ bill empowering civic associations to initiate criminal action to defend collective rights.

To ensure their effort would succeed, prosecutors used the channels they had established over the previous decades to promote their bill over the competing one. The authors of the draft presented it at a conference of prosecutors in São Paulo (1983) and garnered the formal endorsement of their peers. Next, they sent the bill to the head prosecutor of the MPSP, who forwarded it to the president of CAEMP (also from SP). The very next day, the president of CAEMP sent the bill to the minister of justice, who immediately submitted it to congress. The prosecutors’ bill reached congress one year after the bill elaborated by the legal scholars but it sailed through and was approved with some modifications. This law empowered prosecutors to initiate class actions, and over time they would acquire a near-monopoly over this powerful legal tool.

Perhaps the greatest opportunity for reform came in 1985, when the military finally agreed to hand over the presidency to a civilian. In 1986, the country held its first open and free elections for congress in more than two decades, and the newly elected representatives convened to write a democratic constitution for the country. The writing of the constitution created a unique opportunity for prosecutors, but to take full advantage of this prospect, they had to

achieve unity of purpose within their ranks. A campaigner explained, “Our demands were not easy, and each [state-level] Ministério Público had its own supporters in congress. If the MPs had been divided, we would not have achieved anything. It was crucial that we arrive at the constitutional assembly with a united front.”

The mobilization structures that prosecutors created in the preceding decades helped them achieve unity and lobby effectively. CAEMP (now renamed CONAMP) mailed a survey to all Brazilian prosecutors asking them for their vision for the MP in the constitution. Later that year, CONAMP organized a national congress in São Paulo for prosecutors to discuss the same topics in person. A committee of experts distilled the main points from both sources into a list of provisions. Finally, CONAMP organized the first National Meeting of Head Prosecutors and Leaders of Prosecutors’ Associations, which took place in Curitiba, where attendees discussed, modified, and eventually endorsed the proposals of the committee. This meeting’s manifesto, known to prosecutors as the “Letter from Curitiba,” became CAEMP’s official platform. It called for organizational autonomy, including authority for the MP to propose its own budget. It also asked for strong professional prerogatives so individual prosecutors could feel secure enough to act according to their own interpretation of the law, with additional assurances of life tenure and protection against demotions and unsolicited transfers or promotions.

To advocate for their desired reforms, prosecutors mobilized their elite allies. The congressional committee responsible for drafting the constitutional provisions concerning the Brazilian judicial system was headed by Plinio de Arruda Sampaio, a former prosecutor whose father had been one of the founders of APMP. Mr. Arruda Sampaio’s office was staffed by three lawyers, two of whom were prosecutors on leave. Meanwhile, the leaders of CAEMP moved to Brasilia full-time and worked around the clock to recruit and then support well placed



representatives who advocated for their proposed reforms. As reported by a prominent São Paulo newspaper:

*“ Without large public marches like the agribusiness association, or noisy demonstrations like the protestors who brought the citizens ’ amendments to the speaker of the House, the leaders of the MP are transforming their aspiration to become a semi-autonomous power into reality” (“Lobby Marca Estratégia do Ministério Público,” *Folha de São Paulo*, 23 August, 1987)*

The MP succeeded in practically all of its objectives. An interviewee recalled, “...during the Constitutional Convention we achieved all our goals, the MP ended up being the most powerful lobby within congress at that time.” The MP emerged from this process with unprecedented organizational autonomy, professional prerogatives, and legal powers. More than agents of the state, they had become defenders of society.

In subsequent years, the political climate remained open and prosecutors used their mobilization structures and practices to expand their legal powers even further. For instance, prosecutors acquired the legal authority to use civil public actions on behalf of individuals with disabilities (Lei 7.853/1989); small investors (Lei 7.913/1989); children and youth (Lei 8.069/1990); and consumers (Lei 8.078/1990); and to prosecute alleged cases of public sector corruption and administrative malfeasance. They also acquired the legal right to subpoena documents (“*Inquérito Civil*”) and sign deferred prosecution agreements (“*Termos de Ajuste de Conduta*”). To fully utilize these legal powers, prosecutors distanced themselves from the other branches of government and formed mutually-beneficial alliances with social movements that had blossomed since re-democratization. Since then, whenever political leaders have tried to

reassert their authority over the MP, social movements have lobbied vigorously on the prosecutors' behalf (for a recent example, see Borges & Mattos 2013).

## **CONCLUSIONS**

This paper describes how Brazilian prosecutors sought and achieved professional prerogatives, organizational autonomy, and expanded legal powers primarily from within their own ranks. In contrast to existing common conceptions of reform, which emphasize top-down elite driven change, bottom-up popular movements, and outside-in models of reform driven by international forces, we find that prosecutors, and perhaps other mid-level government agents, can be prime movers of their own transformation. In doing so, this paper draws from two concepts that are central to the analysis of social movements: (i) mobilizing structures and practices that enable collective action, and (ii) the political opportunity context.

Mobilizing structures and practices that enabled collective action on the part of prosecutors were critical to the observed reforms. Many prosecutors had been disgruntled with their poor working conditions and limited autonomy since the founding of the Brazilian republic in 1889, but it was only when they began to mobilize for collective action that they achieved substantive reforms towards independence and preserved these gains from subsequent attempts to rein them in. To advance their cause, prosecutors created formal organizations representing their interests, such as the APMP and its sister organizations in other states, and the national confederation CAEMP (later CONAMP). These formal organizations acted as vessels for prosecutors' interests as they searched for opportunities to advance their goals. In addition, these organizations convened meetings and created other communication channels that allowed prosecutors to increase cohesion, articulate goals, and achieve legitimate consensus within their

ranks. As our study highlights, goals articulated through congresses and meetings became a basis for lobbying efforts, including draft bills and constitutional provisions, which over time yielded concrete reforms. Prosecutors also cultivated elite allies. While prosecutors had a history of leaving the MP for prominent positions in politics and government throughout Brazilian history, it was only through the deliberate cultivation of elite allies that reformist prosecutors could retain the allegiance of former prosecutors and draw on other potential allies to support the MP's process of transformation.

The political opportunity context was the other critical variable. We show that openings in the political opportunity context allowed mobilized prosecutors to realize concrete reforms, whereas closings of the context prevented legislative gains. Yet shifts to authoritarianism intensified mobilization on the part of prosecutors, including the creation of formal organizations representing them that, ultimately, played the leading role in achieving reform. This dynamic suggests that political turbulence is not necessarily a hindrance to the strengthening of the state. The reforms that strengthened the MP spanned a variety of constitutional governments, from oligarchic, to elected, to autocratic. Many studies look at singular transformations, from authoritarian to democratic, or from democratic to military. In this paper, we see how a loosely affiliated group of individuals gradually produced an independent, professional organization for themselves. To achieve this goal, they engaged in both institutional reproduction and transformation, and blurred the boundaries between the two.

Finally, this paper also provides a reflection on bureaucratic power. By analyzing reform over 100 years, we find that opportunities came in many forms not observable in studies that cover only a short time frame. In some instances, the legislature strengthened the MP to constrain the executive; in other instances, newly empowered but loosely rooted political leaders

strengthened the MP to recruit allies and confront the old guard; in at least one instance, the central government strengthened state-level prosecutors to rein in political opponents at the subnational level; and in the present time, social activists have been supporting and protecting the prosecutors so they can work together to confront powerful interests, including large corporations and the state. In other words, openings have been plentiful throughout the period of analysis and unlikely to be a binding constraint. Where previous research observes only one or another of these models and offers it as the model of successful reform, either driven by outside forces, top down, or bottom up initiatives, the longitudinal analysis reveals the heterogeneity of the transformative vectors that cumulate over time.

The deeper engine of transformation, however, was prosecutors' ability to identify and seize these opportunities as they emerged, ahead of other contenders and without prejudice to their prior achievements. They were able to perform so well thanks to their ability to craft alliances carefully so they could keep their options open in the face of unforeseen events. While prevailing theories of judicial and bureaucratic reform are rooted in the assumption that power flows from votes, institutional gridlock, the purse, or the sword, our research suggests a fundamentally relational conception of power (Silbey, Huisling and Coslovsky 2009), in which formerly powerless prosecutors casts themselves as critical allies of whoever had some power at a given time but needed additional support, and gradually acquired power of their own. In addition to its theoretical value, this insight should provide inspiration for those interested in building state capacity everywhere.

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## Methodological Appendix - Legislative Events

| Phase      | Date      | Political Opportunity Context   | Mobilization   | Legislative Effort                           | Outcome                                 |
|------------|-----------|---|--|--|---|
| 1800s-1930 | n/a       | Closed  | none   | Attempts to empower MP (Soares 1930)         | No change - MP remains weak             |
|            | 1891      | Closed  | none   | Nat. Constitution 1891                       | No change - MP remains weak             |
| 1930-34    | 1930      | Vargas takes over; dislodges PRP in SP  | individual rambi ings  |  |   |
|            | 1931      | Political disputes in SP; Vargas names Laudo de Camargo (outsider) as governor; stays only 4 months in office   | none   | SP Decree 5179-A / 1931                      | MP gets stronger                        |
|            | 1932      | SP rises in arms against federal gov't and loses; Vargas names new governor   | none   | Decree revoked                               | MP gets weaker                          |
| 1934-37    | 1934      | Vargas allows a return to democracy; opens congress; new constitution   | none   | Nat. Constitution '34                        | No change - MP remains weak             |
|            | 1935      | SP elects new assembly (deeply divided between PC and PRP); writes new constitution   | Salgado runs for office; elected as alternate  | SP Constitution + law retains 50% legal fees | MP gets stronger                        |
|            |           |   |  | SP Law 2526/1936                             | MP gets stronger                        |
| 1937-45    | 1937      | Vargas dismisses congress, starts Estado Novo   | Salgado returns to MP; creates APMP  | Nat Constitution 1937                        | MP gets weaker (check)                  |
|            | 1939      | Vargas names Adhemar de Barros, relative newcomer, as governor of SP  | APMP lobbies, organizes local and then national congress                                     | SP Decree 10.000/1939                        | Reaffirms status quo - MP gets stronger |
| 1945-64    | 1945      | Vargas steps down, Brazilians elect new congress, which writes new constitution   | APMP sends repto lobby proceedings; submits memo; reps from other MPs lobby as well          | Nat. Constitution '46                        | MP gets stronger                        |
|            | 1946      | SP elects new assembly; writes new state constitution   | APMP lobbies   | SP Constitution                              | MP gets stronger                        |
|            | 1954      | Vargas is president again, but commits suicide; new election, preemptive coup. In SP, two local titans fight for supremacy, Lucas Garcez, relative outsider, is governor. | APMP lobbies   | SP Law 2878/1954                             | MP gets stronger                        |
| 1964-79    | 1964      | Military take over, close congress, enacts new constitution (1957)  | Several state associations   | Nat Constitution '57                         | MP gets weaker                          |
|            | 1968-69   | Hard liners within military tighten their grip  | Several state associations   | Emenda 1 (Const '69)                         | MP gets weaker                          |
|            | 1970-1    | Still hard liners   | APMP and others create CAEMP; working groups in SP   |  |   |
| 1979-on    | 1979      | Military eases grip   | CAEMP does extensive lobbying  |  |   |
|            | 1981      | Eve of general elections in 1982; growing tension btw central and state gov't; new min of justice (relative outsider), sends bill fwd                                     | CAEMP lobbying; writes draft (19xx)  | National LC40/1981                           | MP gets stronger                        |
|            | 1981      | Same as above   | Env activists, prosecutors and allies lobbying, NGO created by prosecutor; SEMA's draft 1973 | Pol Nac Meio Amb/ 1981                       | MP gets stronger                        |
|            | 1981      | Gov't of SP resigns so relative outsiderw/ no prospects becomes governor; deeply divided state assembly; federal mandate tells states to pass law regulating MP           | APMP and allies lobby for stronger law   | SP LC 304                                    | MP gets stronger                        |
|            | 1985      | First civilian president, quite weak  | APMP, MPSP, CAEMP lobbying, send bill ACP to replace legal scholars' bill                    | Lei ACP /1985                                | MP gets stronger                        |
|            | 1988      | Constitutional Assembly   | Massive lobbying unites both env and prof campaigns  | Nat. Constitution '88                        | MP gets stronger                        |
|            | 1989-1990 | Democratic congress, contested election   | Massive lobbying by prosecutors and allies   | Various national laws                        | MP gets stronger                        |

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