Inching Toward Accountability: The Evolution of Brazil’s Anticorruption Institutions, 1985–2010

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ABSTRACT

This article analyzes the evolution of the network of Brazilian federal accountability institutions over the course of the past generation, between the transition to democracy and the end of President Luiz Inácio Lula da Silva’s second term. Substantively, the article charts the significant gains that have been made in accountability institutions. Theoretically, it evaluates the evolution of these institutions as a consequence of the distribution of rules, routines, roles, and resources across a larger institutional network, demonstrating that changes in the various bureaucratic agencies have mutually reinforced each other and generated autocatalytic processes of reform.

Brazil’s significant economic, demographic, and geopolitical weight makes it a critical test case of the quality of new democracies in Latin America. Brazil’s democracy has therefore been a subject of much interest, most recently with regard to the debate over this new democracy’s ability to police its own government amid a succession of corruption scandals. This article analyzes the evolution of state capacity for accountability over the past generation, from the transition to democracy to the end of President Luiz Inácio Lula da Silva’s administration.

Brazil has more than 10 million civil servants, of whom roughly 1.1 million are federal civil servants. In seeking to understand the evolution of the state’s capacity to oversee and sanction wrongdoing by these federal employees and their political masters, this essay engages the debate on institutional development. The Brazilian case is marked by the complex, interdependent evolution of institutions in a web of accountability that includes bureaucracies focused on oversight (e.g., the Comptroller General, or CGU; the Accounting Tribunal, TCU); investigation (e.g., the federal police); and sanction (e.g., the Public Prosecutor, or Ministério Público; the courts).1 The diverse institutions that make up the “national integrity system” (Pope 2000) or “web of mechanisms of accountability” (Mainwaring 2003, 20) at the federal level in Brazil have not only acted to constrain political actors but also significantly altered and reshaped each other, in incremental fashion.

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INSTITUTIONAL CHANGE, INCREMENTALISM, AND NETWORKS

A growing literature recognizes that the evolution of political institutions occurs in ways that go beyond transformative moments of crisis, critical junctures, switchpoints, or punctuated equilibria. In addition to critical junctures followed by periods of stasis, institutions often evolve in more gradual ways, accumulating small changes at the margin that nonetheless add up to significant shifts over time. Yet despite its theoretical import, this incrementalist literature remains largely centered on the experiences of OECD countries, and in Latin America, a focus on seminal changes, such as transitions to democracy and constitutional moments, has dominated scholarship on institutional change. Much of the remaining literature focuses on the effects of political institutions in equilibrium. The result is an incomplete understanding of how and why many institutional arrangements have shifted and a static view of where institutions stand, nearly a generation after the region’s major transitional moments.

The first theoretical contribution of this essay, then, is to chart incremental institutional change in Brazilian accountability institutions. We demonstrate that much institutional change has been accretive, driven by small, gradual shifts at the margin, but nonetheless adding up to a sea change over the past generation. Much of this change has occurred through the allocation of new rules and routines to institutions, the attribution of new roles to previously established institutions, and the investment of new resources within institutions. Even when imposed by external actors, these rules, routines, roles, and resources have proven multifunctional, permitting adaptability and institutional conversion. The evolution of accountability institutions has been marked not only by transformative moments, such as the writing of the 1988 Constitution, but perhaps more importantly by transformative processes, whereby new resources and roles have been constructed via daily institutional changes (Galvin 2012). These quotidian processes are especially relevant because not only are political institutions rigid “rules of the game,” they are also participants in the creation of those rules: they influence the rules through implementation, mobilization of resources, control of information, and the processes of rule application and rule choice (Galvin 2012).

Drawing on this insight about the simultaneously constraining and constructive nature of institutions, our second theoretical contribution is to demonstrate that endogenous institutional change may result from interactions across institutions. Networks of institutions become a source of transformation that generates evolutionary pressures as one institution stimulates another (either through cooperative or competitive processes) to improve in areas that influence their conjoint effectiveness; supports and defends the other against external pressures; and generates new ideas for further change. Institutional networks are not the only source of transformation, of course: civil society, political leaders, interest group pressures, and policy entrepreneurs all play an important role. But institutional networks are an important and understudied source of change, and can contribute to producing
a potentially autocatalytic process as political institutions push each other to resolve perceived bottlenecks in the overall accountability process and the evolution of one institution generates ripple effects across the network.

At a given moment in time, the critical mass of institutional linkages, resources, and knowledge across the network becomes an important resource in its own right, permitting outcomes that are autonomous of—and sometimes even antagonistic to—the interests of political incumbents. In the contemporary Brazilian case, these outcomes have included investigations of powerful political leaders and the disclosure of information embarrassing to incumbents. This runs counter to the Weberian narrative about bureaucracy, which assumes that information is provided in a neutral fashion to high-level political decisionmakers. In fact, information is often acquired by bureaucratic agencies that instrumentally decide how to share it with policymakers or use it to achieve desired policy ends (Gailmard and Patty 2007, 2013).

Brazil’s accountability network demonstrates that gradual institutional evolution may be politically advantageous because it does not require the acquiescence or attentions of politicians or the construction of large reform coalitions. This is a major consideration in a nation marked by a remarkable number of veto players (Ames 2001, 16) that can make the win-set for institutional reform strikingly small, as well as a system in which politicians are not renowned for seeking out effective mechanisms to hold their peers accountable. In such a system, incremental changes that fly below the radar of veto players in the legislative and executive branches may be more likely to prosper.

Our emphasis on incremental change from within government is not meant to imply that external conditions played no role in the development of Brazilian accountability agencies. Indeed, external factors play a very important role in creating a protected space in which institutional reform can take place. Facilitating conditions present in Brazil include vibrant media, which can protect bureaucrats and call attention to opposition to reform (Porto 2011); vigorous political competition and the absence of a hegemonic party, which can increase bureaucratic autonomy (Pereira and Melo 2012; Melo and Pereira 2013); civil society mobilization, which may generate ideas for change and provide bureaucrats with diffuse support; and the history of Brazil’s civil service as a qualified bureaucratic corps, which provides bureaucratic decisions with a legitimizing veneer of expertise and impartiality.

Nor do we wish to imply that no critical junctures have occurred in the development of Brazilian accountability institutions. Some of the most obvious changes in the web of accountability occurred through the creation or wholesale reform of key institutions during three critical moments: democratization, constitution drafting, and economic stabilization. Furthermore, scandals have repeatedly shaken the status quo, realigned coalitions, and led to the proposition of new reform ideas that enter the “primeval policy soup” (Kingdon 1984), even if they are not immediately taken up.

Perhaps the best examples of scandals’ ability to generate critical change are the reforms imposed exogenously on accountability institutions by President Itamar Franco in the wake of President Fernando Collor de Mello’s impeachment, and those
undertaken endogenously by members of the Congressional Budget Committee in the wake of the Budgetgate scandal in 1990–93. Yet care must be taken about the claims for these critical junctures: sometimes critical junctures lead to the creation of new institutions and policies but effective implementation lags behind, slowed by ideological differences, lackluster leadership, or the strength of veto players.

Once the new accountability institutions of Brazilian democracy were in place, the emphasis switched away from creating new bureaucracies wholesale (with the sole exception of the CGU, created in 2001) and toward enhancing their performance. Sometimes this occurred through legislative rule changes, such as the significant changes embodied in the 2004 judicial reform, or through more minute changes in bureaucratic regulations, such as a review of rules on tax evasion under Lula. At other times, it occurred through resource allocation, such as the investments made in the federal police over the past decade. Frequently, however, it was the result of interactions across the network of accountability institutions, with personnel and policy proposals rippling across the web from one institution to another. Perhaps the best example of this phenomenon is the success of the National Strategy for Combating Corruption and Money-Laundering (ENCCLA) in generating new policies and ideas from all of its many member institutions (Corrêa 2012; Senior staff member 2012). The interactions between ENCCLA’s member agencies proved to be an important generator of institutional change, sparking dialogue between institutions with little previous contact, such as those between the Accounting Court (TCU), formally linked to Congress, and executive branch agencies (Senior staff member 2012).

THE INSTITUTIONAL EVOLUTION OF BRAZIL’S WEB OF ACCOUNTABILITY

To begin to think specifically about the most significant institutional changes related to accountability in Brazil, it is useful to break contemporary Brazilian democratic history into six periods.

1. 1985–89: the transitional moment surrounding Tancredo Neves’s selection as president in 1985 and the constitutional convention of 1988, a major critical juncture for the establishment of new democratic institutions.
2. 1990–93: the Collor and Budgetgate scandals, which demonstrated two common patterns of corruption at the federal level and led to the development of a series of institutional reform proposals.
3. 1994–98: the policy choices surrounding the Real Plan and the increasing efforts toward budgetary transparency brought by economic stabilization.
5. 2003–5: the policy choices surrounding the arrival of a leftist labor party in office and, in particular, those made to illustrate Lula’s commitment to economic orthodoxy and to longstanding Workers’ Party (PT) claims to transparency.
6. 2006–10: the response to the mensalão scandal, as well as to the rising assertiveness of judicial actors, including courts, prosecutors, and police.

Each of these periods had its own logic of institutional change, emphasizing certain issues and priorities over others. Furthermore, pressure for accountability reforms was much greater in some moments than others. Although this may be perceived as positive for accountability outcomes, it is not necessarily so; it is often in the quieter periods that key accountability bureaucracies were able to build their own institutional capacity and develop expertise in the application of their own rules.


Two somewhat contradictory trends were at work during the transition to democracy. The first was an effort, led largely by the economic policy community, to liberalize and rationalize the state bureaucracy, and in particular, to address the problems of fiscal profligacy that were at the core of Brazil’s hyperinflation and lackluster growth. The second was an effort, largely led by the legal community, to ensure that there would be no return to the abuses of the authoritarian period, which included establishing rights-ensuring institutions. These two efforts ran their course largely independently of one another. But there was necessarily some overlap, and where the two met, not infrequently there was also some conflict. For example, the constitution included a broad range of commitments, including guarantees not just of individual civil rights but also expansive social promises that threatened the government budget. The legal community’s emphasis on defining rights broadly conflicted with the economic community’s emphasis on governance, with political repercussions that would play out throughout the state reforms of the 1990s.

The two groups’ objectives also touched on each other in the realm of accountability. At the outset, transparency and accountability for political corruption were not clearly on the minds of either camp: the legal rights camp was most concerned with addressing the military regime’s legacy of rights abuses, while the economic policy camp was most concerned with addressing the fiscal quandary left by the regime. And yet many of the two camps’ innovations would end up as cornerstones of the new accountability system.

On the legal rights side, perhaps the most important innovations from the perspective of accountability were 1985 reforms that gave the Ministério Público much greater autonomy and power (Arantes 2002; Kerche 2007) and the constitutional ratification of a highly independent judicial system that would funnel political accountability cases to the high court (albeit without creating mechanisms by which those cases would be guaranteed rapid resolution; Taylor 2011). These two changes have posed many of the most significant challenges to the accountability process over the past two decades: how to make the highly independent prosecutors in the Ministério Público work jointly with other institutions effectively, and how to turn the courts into effective sources of sanctions for corrupt behavior.
On the economic policy side, the most important changes in this period stem from the effort to stanch the fiscal crisis bequeathed by the military regime and deepened by fiscal decentralization during the transition. A significant part of the problem was the confused jumble of budget management: in 1985, control of expenditures was only rudimentary, centralized budget information was nonexistent, datasets were frequently inconsistent across bureaucracies, legislative staff expertise in this area was very weak (Greggianin et al. 2011; Piscitelli 2012), bureaucrats were poorly trained, and byzantine banking arrangements were used to administer the budget. This meant an almost complete inability to monitor spending and to allocate responsibility for budget outlays. The economic policy community was genuinely alarmed by this state of affairs and was eager to use the transitional moment to address some of the worst excesses of the authoritarian regime (Gouvêa 1996). A National Treasury Secretariat (STN) was created in March 1986 to oversee all budgetary processes; by January 1987, the Treasury had created an Integrated System for the Financial Administration of the Federal Government (SIAFI) to monitor all federal government expenditures. This process of consolidation continues, and today the federal budget is administered through one unitary bank account (Conta Unica do Tesouro Nacional), rather than the thousands of individual accounts of the 1980s.

In sum, this early period in Brazilian democracy provided the basic institutional structure for today’s web of accountability, creating new institutions, such as the National Treasury, as well as significantly revamping existing institutions, such as the Ministério Público and the courts. Much of the recent history of accountability has been the story of how these institutions settled into place and how their interactions with other bureaucracies shaped that process. With 20-20 hindsight, two key institutional innovations become clear that were not readily apparent at the time: the creation of routines, such as a more transparent budget process, that permitted basic oversight; and the attribution of new or revised roles to institutions, like the Ministério Público, that provided support for the investigation and punishment of corrupt behaviors. From the perspective of institutional development, what is particularly interesting in hindsight is that these innovations originated independently, in quite distinct economic and legal policy communities, with little cooperation or even consultation at the outset and no long-term plan guiding their adoption as part of a broader accountability system.

The Collor and Budgetgate Scandals (1990–1993)

Although President Collor took office with a policy emphasis on economic liberalization, his legacy includes not just economic reform but also the accountability reforms that followed his impeachment for corruption. Further impetus for these reforms came with the so-called Budgetgate scandal, which followed closely on the heels of his impeachment. Collor was the first directly elected president, and owed his second-round victory over Lula partly to his carefully constructed personal history as a hunter of corrupt public sector “maharajahs” in the state of Alagoas. His
time in office was marked by two bold but ultimately failed economic stabilization packages, which included a number of measures aimed at reducing the size of the federal civil service, as well as rationalizing budgetary control, including, most important, centralizing government expenditures under the SIAFI system.

Perhaps because of the anticorruption theme behind Collor’s rapid political rise, public opinion swung quickly against him when accusations against his campaign treasurer, P. C. Farias, surfaced early in his first year. The accusations became even more credible when Collor’s brother produced evidence of Farias’s various foreign bank accounts. Congress set up a committee of inquiry (CPI); after the CPI published its final report, the lower house voted to open impeachment hearings. Collor resigned to avoid a final senate judgment, but the Senate ignored this maneuver and suspended his political rights for eight years.

Less than 12 months later, massive fraud was discovered in Congress’s Joint Budget Committee. The Budgetgate scandal was precipitated by revelations that members of the committee had allocated public funds to nongovernmental organizations run by cronies and had traded budget earmarks for bribes. A CPI established in October 1993 investigated 43 congress members. Six were expelled from Congress and four resigned (Fleischer 1997, 300).

The impact of these two scandals was significant. In Congress, changes were introduced that decentralized budget allocation power in the Congressional Budget Committee (Praça 2010; Tollini 2011). The Chamber of Deputies moved “quickly to approve new legislation that determined the ineligibility of any member of Congress under investigation who resigned to avoid sacking/ineligibility” (Fleischer 1997, 309), and after some foot dragging, the Senate gave its approval in 1994. A constitutional project was drafted allowing the STF to open hearings against congressional representatives without first seeking the authorization of both houses of Congress. The 1988 Constitution, in an effort to protect political rights, had prevented members of the Senate or Chamber of Deputies from being tried in court without a previous vote by their peers. This amounted, in practice, to immunity from prosecution, even under very strong evidence of wrongdoing. This reform was finally approved as Constitutional Amendment 35 in December 2001.

Once in office, Collor’s former vice president, Itamar Franco, worked hard to distance himself from his predecessor’s tainted reputation. He established a code of conduct for civil servants (although it suffered from some legal gray areas; Iyer 2010, 2) and pushed to modify bidding processes for public procurement (through a new Lei de Licitações; Fleischer 1997, 305–9). In April 1994, he also created a new Secretariat of Internal Control in the Finance Ministry, which was relatively weak initially but would gradually evolve into an important overseer of executive branch spending and was folded into the even more powerful Federal Comptroller’s Office (CGU) in 2002.
The Real Plan (1994–1998)

The period surrounding the outset of the Real Plan—the successful effort to stabilize prices and halt chronic inflation—spans both the Itamar Franco and Cardoso governments. Although there were scandals during Cardoso’s first term, none had the public repercussions of either Collor’s impeachment or Budgetgate. The accountability reforms that took place in this period thus were not focused on accountability per se, but instead derived from two tangentially related objectives of the Cardoso administration: economic reform with an eye to stabilizing prices, which required both fiscal and monetary reforms; and civil service reform. Important changes championed by the government during this period thus tended to have anticorruption measures as a pleasant side effect, rather than as their central objective.

These effects are perhaps best exemplified on the economic policy side by the significant fiscal reforms that accompanied price stabilization. Beginning under the Franco administration, for example, the high priority given to fiscal balance led to a restructuring of the Federal Revenue Service (Receita Federal), which was given new roles and resources. With pressure from the reformed Receita, new rules went into effect: taxes, such as the CPMF tax on financial transactions (1993–2007), were created that not only taxed all financial transactions in the banking system but also enabled the Receita to evaluate individuals’ tax declarations against the size of their financial transactions, with important repercussions for oversight of illicit money (Power and Taylor 2011, 267). An antitrust law was passed, partly to address the after-effects of the privatizations undertaken during this period. Federal budget systems were revised and planning procedures were centralized, making it harder for money to disappear into unplanned or even illicit projects. The federal civil service was significantly reformed under the aegis of a new Ministry for Administration and State Reform, with greater emphasis on performance and transparency (Bresser-Pereira 1996). Electronic bidding procedures were introduced as a way of discouraging fraud in public purchasing (Abrucio 2007; Senior staff member 2012).

With these changes came embryonic moves toward greater public disclosure of government information. Together, greater willingness to disclose this information, the spread of Internet technology, and newfound price stability (which made it easier to actually decipher the fiscal results) helped spark a flood of online information, to such an extent that today the problem facing citizens is not obtaining data but making sense of it all.

The government passed a money-laundering law in 1998, responding to treaty commitments, as well as to stanch capital outflows that were undermining the government’s fixed exchange rate strategy. The most important innovation in this law was the creation of a Council for Control of Financial Activities (COAF), an inter-agency council under the aegis of the Finance Ministry that comprises representatives of a number of bureaucracies across the federal government, including the federal police, the Central Bank, the Social Security Ministry, the Receita Federal, and the Brazilian securities exchange commission (CVM, Comissão de Valores Mobiliários).
The COAF facilitates the tracking of large international fund transfers, and has led to the establishment of a national registry of financial system clients used in corruption investigations.

Civil society was also active during this period. Partly out of revulsion with the scandals of the early 1990s and partly because of successful examples from the anti-corruption movement abroad (most notably the founding of Transparency International in 1993), a number of local NGOs were created in the 1990s. Among the most prominent were Transparência Brasil, Instituto Ethos, and Movimento Voto Consciente. Other movements were less permanent, such as a 1999 movement organized by the National Conference of Bishops (CNBB) with help from other groups, aimed at increasing the legal penalties for vote buying. A petition sponsored by the CNBB and other civil society groups received the signatures of 1 percent of the electorate (the proportion needed to propose a law to Congress under an article of the constitution permitting “popular initiatives”). With such strong popular pressure, it was perhaps inevitable that the law against vote buying would be approved by Congress (Power and Taylor 2011, 290), prompting the successful use of the initiative process in other cases, most notably the 2010 Ficha Limpa (Clean Slate) Law. Over time, civil society was able to push for a seat at the table, including on advisory boards to major agencies like the CGU and on the presidential Ethics Committee. Furthermore, civil society groups have received important institutional support from the state bureaucracy, including support for research and for participation in anticorruption workshops and conferences.

Change was fairly gradual, and few major anticorruption initiatives were conceived during this period, although small-bore administrative and fiscal reforms helped to clear much of the underbrush from government bureaucracies; to establish more transparent budgeting practices; and most significant, through economic stabilization, to make possible public monitoring of spending practices that had heretofore been obscured by the veil of hyperinflation. Simultaneously, civil society engagement widened the web of accountability to include not only government and media but also civil society organizations concerned with corruption issues.

Cardoso’s Second Term, 1999–2002

The euphoria of the Real Plan’s initial success gave way to disappointment as a string of crises hit Brazil during Cardoso’s second term. These included a scandal surrounding the privatization of the state telephone company, devaluation of the real in January 1999, a banking scandal that led to the fall of the Central Bank president, nationwide electricity outages, and an unprecedented political schism in the governing coalition. This string of crises had major effects on the accountability network. It led the Cardoso government to maintain its focus on economic policy imperatives, hoping to preserve and defend the Real Plan against its critics but also to work to publicly shore up its reputation.

The institutional results thus spanned both economic policy and accountability, and accountability was now no longer merely incidental to the changes triggered
by economic reform. The government succeeded in approving a constitutional amendment cementing in place fiscal constraints: this Fiscal Responsibility Law (FRL) of 2000 limits state debt levels, sets rigid limits on spending, and requires the provision of transparent fiscal information to the public. Although the logic of this amendment is largely driven by fiscal policy and a desire to restrain future incumbents, it is nonetheless an important accountability reform, providing greater transparency and constraining public spending (Khair et al. 2006).

The rule changes imposed through the FRL have been propagated across the network, perhaps most dramatically through its effects on the roles of the Accounting Tribunal (TCU) and the Ministério Público. With the enactment of the FRL, the TCU (and its state-level counterparts) has been forced to reorganize internally, both creating new institutional structures, such as ombudsman’s offices and training academies, and establishing new routines, such as permitting more civil society participation and providing better access to information (Loureiro et al. 2009). Likewise, prosecutors adapted their legal toolkit, taking up legal instruments that had previously existed but have now gained newfound strength (such as the ação penal pública, ação civil pública, and inquérito civil). The broader emphasis on transparency in the FRL has led to the creation of a number of government websites providing data to the public.7

In the accountability realm, the taint of corruption pushed the government to create a Public Ethics Committee in the executive branch in May 1999, and this committee issued a Code of Public Ethics for senior civil servants the same month (Iyer 2010). In a major institutional innovation, Cardoso created the Controladoria-Geral da União (CGU) by executive decree in April 2001.8 The CGU is responsible for protecting public resources, overseeing public auditing, carrying out anticorruption activities, and serving as an ombudsman within the federal government. Its creation represents an important breakthrough, pulling many of the previous anticorruption units out of the ministries they oversaw and into one central agency (Loureiro et al. 2012; Olivieri 2010). This has the potential for depoliticizing oversight decisions at the ministerial level, although the CGU’s legal subordination to the presidency means that complete decisional autonomy is unlikely.

The creation of the CGU triggered an outpouring of new initiatives, laws, and rules aimed at constraining corruption. These initially focused on constructing the CGU itself from the inside out (by writing the laws governing its internal structure and legal framework, as well as “borrowing” specialist civil servants from other agencies to provide human capital; Platero 2012; Gaetani 2012), but these new rules and routines are increasingly aimed at generating and advocating new legislation, auditing and overseeing public servants at all levels of government, and using CGU-sponsored events to build civil society networks and participation (Loureiro et al. 2012). The CGU is attentive both to integrating its own activities (such as its own monitoring and sanctioning activities) and partnering with other agencies. It actively tracks the annual number of its accountability “actions” that are executed jointly with other agencies (a figure that reached 8 percent of the CGU’s workload in 2011; CGU 2012a, 57; Olivieri 2010, 194–95), as well as the number of times other agen-
cies have asked for its cooperation on specific issues (a figure that rose fivefold between 2004 and 2010 to nearly two thousand a year; CGU 2012b).

Although the CGU tends to focus its efforts largely on state and municipal governments, in some cases its “investigations lead back to the federal level, as in the 2006 sanguessugas scandal, when national congressmen were found to be receiving kickbacks in transactions that were being audited at the municipal level” (Power and Taylor 2011, 18; see also Macaulay 2011). When this occurs, the CGU must move to bring in other agencies. In the sanguessugas case it activated the Ministério Público, the Revenue Service, the judiciary, the Polícia Federal, and an audit body in the Health Ministry (Congresso Nacional 2006, 40–43).

Also, as noted earlier, Congress acted on its own in 2001 to make it easier for wrongdoers in the legislative branch to be punished. Shocking revelations about congressional representatives’ unlawful activities drove change in the final stretch. Most horrific was the public revelation that one federal congressman, Hildebrando Pascoal, had run a brutal death squad while a top official in the Acre state police. He was expelled from Congress in 1999 and sentenced to more than 65 years in prison. Partly as a result, in 2001, Constitutional Amendment 35 was finally approved, modifying the 1988 Constitution by allowing the STF to hear cases against politicians without first obtaining the authorization of both houses of Congress. Congress also reduced congressional immunity from prosecution for “common crimes.” While the right to special standing in the high court remains in place, representatives can now be tried while in office if they are charged with crimes unrelated to their political position.

Lula, 2003–2005

Although the legacy of President Lula’s administration is likely to be forever tainted by the mensalão scandal, it is notable that during his first term, the development of accountability institutions achieved critical mass. Three factors were important in this regard. First was the institutional development that had occurred over the previous decade-and-a-half of democratic consolidation, creating a foundation of relatively stable institutions in both government and civil society, as well as some minimal consensus around necessary reforms. Second was a conscientious effort by the PT government, and particularly by the justice minister and his subordinates, including the secretary of judicial reform and the director of the federal police, to give priority to reform. Third was the increasingly autonomous reform process, which no longer was driven solely by presidential initiative but instead began to flow naturally out of the interactions between key agents and bureaucracies in the web of accountability.

The 2004 judicial reform was perhaps the best example of the first and second factors working in unison. Public frustration with the judiciary, especially with the extraordinary delays in obtaining definitive court decisions, had built throughout the 1990s, alongside burgeoning court caseloads. Furthermore, a series of investigations of the judiciary had raised the issue of judicial probity on the public agenda: a
1999 CPI focused on corruption in the judiciary, bringing to light several important scandals in the court system. Most notable was ludicrous overbilling (by nearly US$100 million) in the construction of the regional labor court in São Paulo, which led to the arrest of a key senator and the judge supervising the construction project.

Justice Minister Márcio Thomaz Bastos pushed for the creation of a Judicial Reform Secretariat in the Justice Ministry and then skillfully managed the reform process. During Lula’s first year in office, perhaps not coincidentally, the federal police carried out Operation Anaconda, targeting corrupt judges. One of the primary targets was a federal judge who had been suspended on suspicion of fraudulent decisions in corruption cases involving former São Paulo governor Orestes Quercia (Fleischer 1997, 312). The fact that judges in both the labor court and Anaconda cases had lived ostentatiously, and that their colleagues had done nothing to report or punish their excesses, helped mobilize support for one of the judicial reform’s key components, creation of two external control bodies: the National Judicial Council (CNJ) and the National Council of the Ministério Público (CONAMP). The idea of creating the CNJ had arisen as early as the constitutional revision process of 1993–94, but had never found enough support to overcome opposition from judges’ and prosecutors’ associations.

With regard to the priority given to reform, skillful leadership was key to internal institutional change during the Lula administration’s first term. Not only did top-level commitment significantly influence the paths of judicial reform, but it also had an important effect on the success of internal institutional reforms aimed at strengthening the CGU and the federal police. Lula appointed dynamic leaders to head the Justice Ministry (Bastos), the federal police (Lacerda), and the CGU (Pires and Hage); and new leadership in the TCU, especially under Minister Ubiratan Aguiar, also provided a turning point in that institution’s role as an accountability body (Bittencourt 2012; Senior staff member 2012).

Perhaps the effects of this support and leadership are nowhere more apparent than in the federal police, whose role as an agent of accountability evolved considerably in the 2000s, despite an absence of institutional reform. More than half a decade ago, Taylor and Buranelli wrote that the federal police was not very proactive; that is, it “seldom push[ed] the limits in [its] pursuit of malfeasance by public figures” (2007, 66). Reticence is no longer a defining characteristic of the federal police. Since 2003, there has been a conscientious attempt to reduce internal corruption and renew the police force through new hires; the agency has grown from just over 9,000 to more than 14,000 civil servants between 2003 and 2011. Internal corruption continues to be a major issue, as does the use of draconian investigative techniques and an emphasis on flashy media coverage. But there has been a dramatic shift in the federal police’s role, in its resources, and, as a result, in its effectiveness in bringing corruption to light (Arantes 2011a).

Although executive leadership is almost always beneficial, the reform process has also gained momentum of its own in recent years, as bureaucracies look for ways to become more effective. Two innovations are exemplary in this regard. The first has been the Receita Federal’s efforts to increase information sharing with other...
bureaucracies, perhaps best seen in the decision to share data with the electoral courts. One effect of this effort was the Receita’s shocking 2007 decision to suspend the tax exemption of seven major political parties after it became clear that they had employed misleading accounting (Power and Taylor 2011, 290). A second interesting example is the ENCCLA, which, since 2004, has brought together representatives of nearly 70 agencies for annual meetings to discuss reform proposals and attempt to prioritize them with an eye to curtailing money laundering and corruption. This exercise, which is coordinated by the Justice Ministry, allows individual bureaucrats to comprehend better the constraints their peers in other agencies face, as well as to evaluate specific reform recommendations backed by their expert analysis (Power and Taylor 2011, 294; Augustinis 2011; Corrêa 2012).

The ENCCLA experience is an interesting mix of externally and internally driven forms of institutional change. It was created to comply with Brazil’s treaty commitments (Augustinis 2011, 86–90). The implementing law of 1998 led to the creation of the COAF, a specialized financial crime unit in the Central Bank, and specialized courts for money laundering (Aranovich 2007, 122). But ENCCLA has also been a source of endogenous change, producing a long list of reform proposals. Of ENCCLA’s nearly two hundred recommendations for reform offered between 2007 and 2010, more than half have been implemented (Corrêa 2011, 175), including revisions to the money-laundering law, creation of a financial asset recovery committee, implementation of a national registry of bank accounts, and better integration of criminal justice databases (Aranovich 2007, 128–29).

A related improvement in the rules governing money laundering was a decision by the National Monetary Council in March 2005 to restrict access to one of the most common mechanisms by which illicit gains were transferred abroad, so-called CC-5 accounts. This reform had long been sought as a way to close a major laundering loophole, but always had remained open at the insistence of the economic policy community, which feared the distortions a rule change might generate. The closing of CC-5 accounts reflects an increasing alignment of interests between the legal and economic policy communities in the government.

Lula, 2005–2010

In spite of the PT government’s legwork on accountability reforms early in President Lula’s first term, the government was caught up in a major corruption scandal that began in 2004 and deepened in 2005, forcing the resignation of the president’s chief of staff and several key PT members of Congress. Participants in the mensalão scheme were accused of overseeing a complex operation that laundered millions of reais to buy off congressmen for their support of President Lula’s legislative priorities.

The scandal led the executive branch to decrease its emphasis on accountability reforms. Following his 2006 re-election, Lula turned instead to promoting his other policy priorities, such as the Growth Acceleration Program (Programa de Aceleração do Crescimento; PAC). President Lula worked to publicly distance himself from the PT and especially from his former chief of staff, José Dirceu; Justice Minister Bastos
resigned three months into Lula’s second term; and the proactive emphasis on accountability that was such a hallmark of Lula’s first term appeared to fall by the wayside.

Once again, the expansion of the web of accountability to include new actors operating independently of the executive branch helped to guarantee ongoing reforms despite the government’s decreased appetite. Congress approved more stringent punishments for illicit campaign finance. Electoral courts took a number of decisions to try to regulate political parties (Marchetti 2008); the STF continued to make rule-shaping decisions on issues ranging from nepotism to police powers; and the CNJ moved to punish corrupt judges, forcibly retiring its first judge in March 2009. The CGU worked actively to deepen civil society participation in oversight, notably by creating a council with representatives from prominent civil society organizations (the Conselho da Transparência Pública e Combate à Corrupção) and holding public meetings to gather civil society proposals for accountability reforms (Loureiro et al. 2012).

In sum, four conclusions can be drawn from the course of the Lula presidency. First, executive leadership can be very useful for strengthening bureaucracies from the inside out, but once critical institutional networks have been built, it is not essential. Second, the realization that no party has a monopoly on ethics, and that no party can miraculously cure the system, has contributed in some degree to the public consensus in favor of accountability reform since the mensalão struck. Third, there has been a clear decentralization of the initiative in accountability reforms. Fourth, as a result, with a few exceptions (such as the 2004 judicial reform), most reforms have been small-bore bureaucratic improvements, such as the CGU’s introduction of state and municipal audits and other day-to-day cross-bureaucratic efforts to increase the effectiveness and efficiency of extant institutional routines, as in the ENCCLA project.

THE BRAZILIAN ACCOUNTABILITY NETWORK AND AUTOCATALYTIC INCREMENTALISM

The process described here is in line with a long literature that describes Brazil’s gradual and incremental processes of institutional change (e.g., Sola and Whitehead 2006, 7; Armijo et al. 2006, 781; Taylor 2009). Institutional change among Brazilian accountability institutions has frequently resulted not from radically remodeling institutions but from gradual changes to the rules under which they operate. Changes at this level of legislation and policy within institutions are far easier to implement than broad structural or institutional change, but they nonetheless may ultimately sum up over time to significant institutional developments, shifting the overall function of key institutions without ever requiring more veto-prone wholesale reforms.

Institutional networks can be particularly helpful in generating endogenous change, largely because, in the pursuit of common goals, institutions goad each other toward improvements; align rules and routines; offer best practices; share resources, such as personnel and information; provide political support for each
others’ core roles; and otherwise cooperate. It is not always the case that institutions push each other toward the top, of course, and despite notable improvements, the interaction between key accountability institutions in Brazil has been marked by “imperfect orthodontia” and poorly designed incentives to cooperate (Taylor and Buranelli 2007, 79). State bureaucracies are not renowned for selfless cooperation, and some pushback frequently occurs as agencies become more active. For example, the CNJ has been amply criticized by judges for its efforts to curb judicial corruption; the MP has been criticized for the excesses of its prosecutors (Arantes 2002); the TCU has been criticized for overreaching its mandate (Balbe 2012); the CGU has been audited by the TCU at the Senate’s request (Loureiro et al. 2012); the courts have curbed the federal police’s operations (Arantes 2011a); and the constitutionality of the COAF’s work has been questioned by state judges. As in most any country, there are also complaints about the lack of qualified staff (e.g., TCU 2005, 37), uneven salary scales that lead to the poaching of staff (e.g., Platero 2012), and other capacity issues.

Yet despite these natural frictions between bureaucracies, capacity in the Brazilian web of accountability institutions has improved over the past generation. The number of actions by accountability institutions has risen steadily, as has the number of joint operations, as shown in the CGU’s annual reports. So, too, the number of personnel in accountability institutions has grown, more than doubling between 1989 and 2012. The transparency of public accounts and the availability of government data have increased markedly, permitting not only public oversight but also data sharing between agencies. The number of civil servants removed from their posts or expelled for malfeasence has grown, as has the value of special audits conducted since recordkeeping began (figure 1). While this might be interpreted as a sign of rising corruption, it seems more likely—given the low initial figures and previous lack of data—that it is a sign of increasing enforcement. Finally, the STF convicted the first sitting politician of the postauthoritarian period in 2010, and a number of prominent defendants in the mensalão case—including the former president of the Chamber of Deputies and the president’s chief of staff—were convicted in 2012.

What are the relay mechanisms that transmit institutional change across networks of bureaucracies? At the simplest level, personnel may share ideas about the most effective rules and routines and spread them as they themselves move from one bureaucracy to another. A clear example of this path can be found in the spread of personnel who left economic policy agencies to join the CGU (73 percent of the CGU staff in 2011). It may also occur through the sharing of routines and resources during joint operations: for example, two-fifths of federal police operations are carried out with other agencies (Arantes 2011b, 125). Sometimes these resource exchanges are formalized via official agreements (convênios), such as agreements between the CGU and the TCU for information exchanges (Platero 2012); or are formally part of agency responsibilities, such as CGU reports to the TCU or the TCU’s provision of evidence to the MP (Bittencourt 2012). These formal agreements are often vital to agency mandates, providing legislative agencies like the TCU with access to executive branch databases on salaries, benefits, and prices,
without which they would find it difficult to conduct investigations (TCU 2005). There are also more fluid exchanges between technical staff in distinct agencies working on similar topics, who advise each other without any formal agreement underpinning that exchange (Bittencourt 2012).

A second, more complex mechanism is the process of accountability. In an ideal world, oversight bodies in each ministry, auditors at the TCU and CGU, congressional committees, and watchdog groups would continuously monitor politicians and the civil service. On uncovering indications of malfeasance, they would pass along their findings to the federal police and the Ministério Público for analysis and investigation. If credible evidence of wrongdoing were found, the Ministério Público would proceed to trial in the judiciary. There are very complex feedback mechanisms involved in these institutional roles and routines. When one of those handoffs between institutions regularly fails to elicit the proper response (the judiciary fails to convict, the MP fails to prosecute, etc.), the other agencies often adopt second-best solutions (Power and Taylor 2011, 255–56). In the absence of prosecution that

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Figure 1. Special Audits and Civil Service Suspensions

Source: Portal da Transparência; CGU, July 2013.
leads to successful legal punishments, for example, oversight agencies may seek second-best solutions, such as imposing reputational costs (“naming and shaming”) or seeking administrative sanctions rather than legal punishments (Arantes 2011a; Speck 2011). In the process, they subtly rejigger their own agency’s framework to new ends, while putting the broader network on notice about the bottlenecks prevailing in other institutions.

The day-to-day adjustments of thousands of civil servants involved in the accountability process produce an iterative game. The accountability process is multifaceted, involving rule definition, rule application, and rule oversight of everything from procedures (such as public procurement, contracting, and public-private cooperation agreements) to the accountability process itself (e.g., prosecution). These rule adjustments are frequently accompanied by shifts in routines and roles, as well as new resource allocations. As a result, even when large-scale reform has taken place, the process of institutional development does not typically proceed in great leaps, but rather in a ratcheting, incremental fashion.

We do not wish to imply that all of the incremental changes in the accountability system over the past generation have necessarily been improvements, nor that the process has been linear, unidirectional, or in any reasonable definition “planned,” pursuing specific reforms consciously and in rational sequence. Instead, reform has often been undertaken spasmodically, drawing on the wellstream of ideas and reform proposals circulating in the “policy primeval soup.” Indeed, as one member of the CGU told us, echoing Kingdon (1984), changes are seldom reactions to specific events. Instead, someone has already brainstormed a reform when suddenly an opportunity for implementation strikes (Platero 2012). Actors in complex policy networks such as the Brazilian web of accountability institutions may not have had a clear idea of where they wanted to push the full network, or of how changes to one institution would shape change in the network as a whole. Piecemeal change led institutions to contingent outcomes that were not clearly envisioned at the outset.

CONCLUSIONS

Developing state capacity is a precarious and contingent process. Past authors have emphasized a number of “large” causes for enhancements in state capacity: war and taxation, for example, as well as electoral competition (e.g., Tilly 1985; Centeno 2002; Levi 1988). Without wishing to supplant these explanations, this essay has focused on a modest but perhaps more common source of institutional change: the creation of capacity through interactions within bureaucratic networks. Brazilian state accountability institutions have evolved in ways that are contingent on the interaction between the rules, routines, roles, and resources allocated to diverse institutions, as well as the way this complex network of institutions has interacted to allocate roles and resources and to develop consensual rules and routines.

Unfortunately, Brazil remains subject to political corruption and administrative malfeasance, and not all movements on the accountability front have been improve-
ments. Presidents weary of meddling have purposefully weakened some institutions, such as the Public Ethics Committee. The courts continue to be a major bottleneck to accountability: most emblematically, although it convicted some of the defendants to prison terms, the STF took seven years to reach a final decision on the most prominent scandal of the past decade, the *mensalão*. Slow courts mean that despite increasing transparency, sanctions are slow to emerge, feeding “a politics of permanent scandal” with consequences not only for governability but also for institutional legitimacy (Filgueiras and Aranha 2011, 380). Equally disturbing are recurring scandals within accountability agencies, suggesting that corruption remains a corrosive force. Perhaps as a result, Brazilian democracy has not shown significant improvement on cross-national measures of governance, such as control of corruption, government effectiveness, voice and accountability, or the rule of law (see, e.g., Teorell et al. 2011).

Yet many cross-national indicators may not catch the improvements described here, partly because they are based on subjective opinion surveys. Although judicial accountability continues to be poor, small-bore reforms that have changed budget processes, fiscal transparency, political eligibility, party recruitment, and auditing procedures have made corruption more difficult. Some of these changes could, in theory, have been driven by bureaucracies under dictatorship, but they are greatly facilitated by certain conditions of democracy, such as a free press and vibrant party competition. Democracy has also driven competitors to try to level the electoral playing field, has created constituencies for change, and has lessened the fear of official retaliation. As a result, the past generation has brought a silent revolution within the web of accountability institutions, and offers the promise of continued improvements to the quality of democracy.

Further research is needed to explore the conditions under which stronger webs of accountability may emerge, including the role that bureaucratic autonomy plays in institutional development, the function of external actors such as civil society, and the influence of political competition (hegemonic versus nonhegemonic party systems, electoral turnover, and in-coalition competition) on accountability outcomes.

Our research has, however, demonstrated important patterns in the evolution of the Brazilian accountability system. The system has seen moments of large-scale institutional innovation, such as the creation of the MP and the CGU. But many of the most significant changes in Brazil have arisen out of a process of gradual institutional settling, involving interactions across a network of institutions. Brazil has many best practices to share as a result—such as the CGU’s municipal audits, the FRL, the ENCCLA, and the Clean Slate law—all institutional changes that resulted from complex processes whose effects were not clearly discernable in advance. This lesson is perhaps the most interesting in comparative perspective, suggesting that accountability is a long slog, and one that may build from one small, incremental improvement to another until critical mass is built in the wider network of accountability institutions.
NOTES

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1. Space does not permit us to detail these institutions here, but readers are referred to Speck 2002; Power and Taylor 2011.

2. Representative works include Orren and Skowronek 2004; Streeck and Thelen 2005; and Mahoney and Thelen 2010. Following Hall 2010, institutions are defined here as “sets of regularized practices with a rulelike quality,” a definition broad enough to encompass the political bureaucracies that most people think of when they think of “political institutions.” Representative texts describing institutional change as punctuated equilibria include Abbott 1987; Collier and Collier 1991; Haydu 1998; and Krasner 1984. For a thorough discussion of the predominance of punctuated equilibrium–type models in the social sciences, see Streeck and Thelen 2005, chap. 1.

3. This “four R’s” framework of rules, routines, roles, and resources is adopted from Galvin (2012, 2–3).

4. For example, although the constitutional revision of 1993–94 did not lead to major reform, it generated proposals for the creation of an external control body to oversee the judiciary (Fleischer 1997, 312). This proposal stalled, but ten years later was successfully taken up.

5. Concomitant with but unrelated to the scandals were the approval of a 1990 law making politicians convicted of crimes ineligible for office (assuming it was a final, unappealable conviction), and the Law of Administrative Improbity, which sets out rules for civil service wrongdoing. Collor signed the latter in 1992 as the scandal was already swirling around him, but this was largely coincidental—both bills were already in the pipeline before the scandal.

6. The Ficha Limpa law bans candidates with criminal convictions in an appeals court.

7. Examples of these databases include Portal da Transparência, Siga Brasil, and Fiscalize. The move toward greater transparency culminated in the signing of an Access to Information Law in 2012, which includes mechanisms for citizens to access government data, including a fairly broad tool for freedom of information requests.

8. Initially, the CGU was the Corregedoria-Geral; this title changed to Controladoria-Geral in 2003.

9. To be evenhanded, it should be noted that similar leadership by Cardoso was central to the strengthening of the Finance Ministry, Treasury, and Receita Federal during his administration.

10. Among the alphabet soup of information systems, these include Siafi, Siape, Siasg, Sisben, Siconv, and Sinapi.
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