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# From Delegation to Limits on Presidential Power: Brazil in Comparative Perspective

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From Delegation to Limits on Presidential Power: Brazil in Comparative Perspective

by

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A THESIS

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# ABSTRACT

In the early 1990s, observers noted that many new democracies had free and fair elections, while at the same time concentrating power in the executive's hands. Guillermo O'Donnell (1994) labeled these regimes "delegative democracies" to denote a hybrid system in which the president is considered to be the "saviour" who can govern "above all." In his view, presidents of such democracies could ignore weak or inexistent institutional checks on their power. And given the lack of incentives for leaders to limit their power, it was unlikely that institutional checks could ever emerge. He anticipated that the future of these democracies was not a bright one, with only two viable options: to remain delegative or follow an even more authoritarian path. Yet despite this pessimistic outlook, Brazil did the improbable: although it was a delegative democracy under President Fernando Collor in the early 1990s, it has seen limits to presidential power emerge in the decades since then. This thesis examines how and why such institutional checks were created in Brazil. I argue that institutional checks emerge because self-limitation becomes the most rational choice for presidents of these democracies when they face a growing uncertainty concerning their future in power. In the case of Brazil, President Collor was impeached in 1992 because he underestimated the uncertainty of his position, governing above all and ignoring the political elite. His impeachment, along with his involvement in a corruption scandal, triggered the creation of limits to presidential power. A comparison between Brazil and other democracies that were once considered delegative—namely Venezuela, Argentina, and Russia—confirms that if a delegative democracy is to last, presidents cannot govern above all, as once thought. If they do so, it will come at the cost of democracy as they will become even more authoritarian rulers. The examination of Brazil's democracy shows that presidents of delegative democracies are far from unconstrained and "above-all" rulers. Institutional limits to presidential power, ironically, were created in Brazil because a president governed as if he could indeed ignore all political players and bypass all obstacles to his power.

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# LIST OF SYMBOLS, ABBREVIATIONS AND NOMENCLATURE

ABI	Associação Brasileira de Imprensa “Brazilian Press Association”
AGU	Advocacia-Geral da União “General-Attorney Office”
ARENA	Aliança Renovadora Nacional “National Renovating Alliance”
CEI	Comissão Especial de Investigação “Special Investigating Commission”
CGU	Controladoria Geral da União “Office of the Comptroller General” Corregedoria Geral da União “Inspector General’s Office”
CNJ	Conselho Nacional de Justiça “National Council of Justice”
COAF	Conselho de Controle de Atividades Financeiras “Council for the Oversight of Financial Activities”
DPF	Polícia Federal “Federal Police”
ENCCLA	Estratégia Nacional de Combate à Corrupção e Lavagem de Dinheiro “National Strategy to Combat Corruption and Money Laundering”
INESC	Instituto de Estudos Socioeconômicos “Institute for Socioeconomic Studies”
MCCE	Movimento de Combate à Corrupção Eleitoral “Movement against Electoral Corruption”
MDB	Movimento Democrático Brasileiro “Democratic Movement in Brazil”
MEP	Movimento pela Ética na Política “Movement for Ethics in Politics”
MPF	Ministério Público Federal “Federal Public Prosecutor’s Office”
PC do B	Partido Comunista do Brasil “Communist Party of Brazil”
PCB	Partido Comunista Brasileiro “Brazilian Communist Party”

PDS	Partido Democrático Social “Social Democratic Party”
PDT	Partido Democrático Trabalhista “Democratic Labor Party”
PFL	Partido da Frente Liberal “Liberal Front Party”
PJ	Partido da Juventude “Youth Party”
PMDB	Partido do Movimento Democrático Brasileiro “Brazilian Democratic Movement Party”
PRN	Partido da Reconstrução Nacional” National Reconstruction Party”
PSC	Partido Social Cristão “Social Christian Party”
PSDB	Partido da Social Democracia Brasileira “Brazilian Social Democracy Party”
PT	Partido dos Trabalhadores “Workers’ Party”
PTB	Partido Trabalhista Brasileiro” Brazilian Labour Party”
SIAFI	Sistema Integrado de Administração Financeira “Integrated Budget System”
SFC	Secretaria Federal de Controle “Secretariat of Federal Control”
STF	Supremo Tribunal Federal “Supreme Court”
SUDAM	Superintendência de Desenvolvimento da Amazônia “Superintendency for the Development of the North”
SUDENE	Superintendência de Desenvolvimento do Nordeste “Superintendency for the Development of the Northeast”
TCU	Tribunal de Contas da União “Court of Accounts”

# 1. INTRODUCTION

Brazil has recently been through a political crisis fueled by a massive corruption scandal. On August 16, 2015, more than half a million Brazilians took to the streets to protest against corruption. Singing the national anthem and waving flags, they showed their frustration with the political direction the country had been taking under the government of then President Dilma Rousseff, who had started her second mandate on January 1<sup>st</sup> of that year. Many claimed their frustration was motivated by the scandal in Petrobrás, the state-run oil company that lost over US\$2 billion just in bribes in a money laundering scheme involving executives and politicians.<sup>1</sup>

In 2016, Rousseff became the second president in Brazil to go through impeachment proceedings. Accusations levelled against her included breaking fiscal laws and mismanagement. There was also an investigation concerning the involvement of her party, the Workers' Party (Partido dos Trabalhadores, PT), in the Petrobrás scheme and how it may have helped to finance her electoral campaign.<sup>2</sup> An unpopular president, with an approval rate of only 10-11.4%, Rousseff was impeached on August 31, 2016.<sup>3</sup> On the same day, Vice President Michel Temer officially took office as president of Brazil.<sup>4</sup>

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<sup>1</sup> Approximately 6,4 billion *reais*, according to the Public Prosecutor's Office/MPF (2016).

<sup>2</sup> Carta Capital, February 22, 2016; Folha de São Paulo, February 22, 2016.

<sup>3</sup> Public-opinion research companies slightly differ on these numbers. MDA survey, conducted on February 18-21, 2016, shows that 11.4% thought of Rousseff's government as "good" or "great" and 62.4% thought of it as "bad" or "terrible" (Valor Econômico, February 24, 2016). DataFolha's (2016) poll, in turn, found these numbers to be 10% and 67% respectively (poll conducted on 17-19 March, 2016). These are the same numbers found by Ibope (2016), on a poll conducted on March 30, 2016.

<sup>4</sup> As the first step of the impeachment proceedings, Rousseff was removed from power on May 12, 2016. She then had to be out of office for the following 180 days while the Senate deliberated over her future. Meanwhile, Vice President Michel Temer served as interim president. Once she was permanently removed from office on August 31, 2016, he officially became president.

Protests, corruption scandals, and a presidential impeachment are not new to Brazilian democracy. In 1992, thousands of face-painted citizens took to the streets to criticize the rule of then President Fernando Collor de Mello, who had been linked to a highly publicized corruption scheme, and who was later impeached through the same proceedings Rousseff has faced this year. These similarities suggest that democracy in Brazil has not changed much since Collor's rule. There is a sense of *déjà vu* concerning both the scandal and the protests that seem to confirm the popular saying that "nothing ever changes in Brazil."<sup>5</sup> If anything, current events have been framed in a manner to indicate that democracy changed for the worse; pro-government media and politicians frame the impeachment as a coup that should not have happened for the sake of democracy. Their anti-government counterparts, in turn, claim that Rousseff's "corrupt" and disastrous government was the real threat to democracy.<sup>6</sup>

Despite similarities between the events of this year and the ones of the early 1990s, it would be wrong to claim that there has not been much change in Brazilian democracy. It would be equally wrong to claim that the Petrobrás scandal, "the biggest ever corruption scandal,"<sup>7</sup> is proof that democracy in Brazil has worsened since Collor's day. First, Rousseff assumed office under very different conditions from the ones faced by Collor. In 1990, Collor entered history as the first president chosen through free and fair elections in Brazil since the dictatorship. He assumed office when hopes and expectations for democracy were very high. Brazil was emerging from twenty years of military dictatorship and the economic situation was extremely unstable: inflation was approaching 100% per month, there were low investment rates in both

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<sup>5</sup> Free translation for: "*nada muda no Brasil*," "*O Brasil não tem jeito*."

<sup>6</sup> See: Carta Capital, October 15 2015; Veja, April 4, 2016; Folha de São Paulo, April 4, 2016; The Washington Post, March 26 2016; The Guardian, March 18, 2016.

<sup>7</sup> The Guardian, March 7, 2015.

public and private sectors, the distribution of income was highly unequal, and the per capita GDP had stagnated (Skidmore, 2000; Avritzer, 1998). The economic situation has been much more stable since the 1994 Plano Real was launched. In addition, by the time Rouseff was elected, free and fair elections had been the status quo in Brazil for over twenty years.

Second, Collor assumed office when the country was transitioning back to democracy. A new constitution had been drafted in 1988 and was thus very recent, and institutions emerging from the dictatorship were extremely weak. Consequently, Collor used his power arbitrarily, often bypassing Congress and governing as he wished with no formal institutions restraining his acts (Skidmore, 2000).<sup>8</sup> By arguing that he needed to resort to emergency measures to deal with the large economic crisis, he limited checks and balances and expanded presidential power (Manzetti, 2007; Pereira, Power & Raile, 2011). Power, in short, was highly concentrated in his hands.

Rouseff's power, by contrast, was constrained by several institutions. Not only had existing institutions such as the Public Prosecutor's Office (Ministério Público Federal, MPF) and the Court of Accounts (Tribunal de Contas da União, TCU) grown stronger since the early 1990s (Power & Taylor, 2011), but new institutions were created. Anti-corruption bodies like the Office of the Comptroller General (Controladoria Geral da União, CGU)<sup>9</sup> and the Council for the Oversight of Financial Activities (Conselho de Controle de Atividades Financeiras, COAF) emerged in the 2000s and have been playing important roles in overseeing the government's

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<sup>8</sup> I will address Collor's governing style and his relationship with other politicians in Chapter 2.

<sup>9</sup> Which had its name switched to "Ministry of Transparency, Supervision and Control" in May 12, 2016. The institution will be referenced as CGU throughout the thesis as it was the name it had during the period considered in this study.

administrative actions.<sup>10</sup> Most of these institutions have either played or are playing a part in investigating the Petrobrás scandal and keeping Rousseff, and now Temer, accountable.

In sum, on the surface, there are numerous similarities between Brazil's current political context and the one of the early 1990s. As did Collor, Rousseff faced public demonstrations against the government and was removed from power through an impeachment; she almost took his place in history as the most unpopular president since the country transitioned to democracy.<sup>11</sup> In addition, when comparing the Petrobrás scandal to the corruption scandal linked to Collor, it seems that corruption has grown in unprecedented ways. Yet contrary to what happened in Collor's time, as noted above, Brazil now relies on stronger institutions that have been able to limit presidential power. In this thesis, I thus aim at explaining why and how that change occurred.

While observing Latin American countries in the early 1990s, Guillermo O'Donnell (1994) noticed that Collor was president of what he believed to be a different type of democracy. In O'Donnell's view, Brazil was only one of the cases in which democracy was taking an unexpected form. Despite the existence of reasonably competitive elections and basic freedoms,<sup>12</sup> these democracies were still different from representative ones.<sup>13</sup> They were neither institutionalized<sup>14</sup> nor representative; instead, the president was seen as the definer and

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<sup>10</sup> These institutions are only being mentioned here to illustrate that the president's powers are currently constrained in different ways; their functions and scope will be described as they are mentioned throughout the chapters on Brazil (Chapter 2-4).

<sup>11</sup> Comparing DataFolha's (2002, 2016) polls; Collor's government had a rejection rate of 68% in June 1, 1992—four months before the Chamber of Deputies' decision of suspending him. Rousseff's government, in turn, had a rejection rate of 67% less than two months before the Chamber of Deputies' decision of removing her from office.

<sup>12</sup> I will approach such basic freedoms in more detail in Section 1.2.

<sup>13</sup> The definition of both representative and delegative democracies will be explained in details in Section 1.1. In short, what is meant by a representative democracy in this thesis is a democracy in which there is a network of institutionalized power relations, there is a clear distinction between public and private sphere, and both vertical (electoral) and horizontal accountability mechanisms are strong.

<sup>14</sup> This thesis takes a noninstitutionalized democracy as a polyarchy in which formal institutions are ineffective, being either weak or unstable. It thus does not make use of O'Donnell's (2011) definition. This will be explained in section 1.2.3.

embodiment of the interests of the nation. O'Donnell labelled this political system "delegative democracy," since it rested "on the premise that whoever wins election to the presidency is thereby entitled to govern as he or she sees fit, constrained only by the hard facts of existing power relations and by a constitutionally limited term of office" (1994, p. 59). Brazil, he argued, was a case of pure delegative democracy.

The idea of delegative democracy entails that, in times of economic and political instability, society can centralize power in the figure of the president in an attempt to impose and maintain the order. This follows the Hobbesian logic that in a turbulent state, individuals decide to "confer all their power and strength upon one man or upon one assembly" (Hobbes, 2005, p. 190). Still following this logic, among all the possibilities for government, an absolute sovereign would be regarded as the best option in keeping the peace and achieving the common good as there would be no disruptive situations of disagreement, envy, or insecurity (Hobbes, 2005). In a democracy in which there is a high level of instability, delegating power in the president's hands is a way of appointing a supreme ruler to provide certainty in the midst of chaos; in other words, the quickest way to solve the country's problems.

Given the reasons to delegate power and remove institutional checks, O'Donnell was pessimistic about the fate of such democracies. He argued that "in the short term and in most cases, it is difficult to be very optimistic" when it comes to enhancing horizontal accountability in delegative democracies (O'Donnell, 1999, p. 44). In his view, "the incentives for many powerfully positioned individuals and their affiliates to continue with their scarcely liberal and republican practices are extremely strong," the reason being that "the incentives for pursuing horizontal accountability are weak" (1999, p. 45). Delegative democracies thus seemed to have only two potential fates: to remain a delegative democracy—with elections but with a massive

concentration of power in the executive branch—or to move towards an even more authoritarian path. A delegative democracy is, after all, the government of a ruler's will; it seemingly provides a context of extraordinary powers that would allow the ruler to govern above all.

Although it can be labelled a democracy because of the existence of free and fair elections, it is democracy in its most authoritarian form. In this sense, delegative features open up the possibility for a despotic government to do as it wishes. A democracy of this type provides no apparent incentives for the emergence of what can be considered its antithesis: limited government in the sense of a constrained executive power. Yet, as previously mentioned, limits on the president's power and influence emerged in Brazil since the early 1990s. Why did this occur? How did Brazil break the pattern of delegative democracy?

A close examination of the Brazilian case shows that delegative democracies are not as stable as once assumed. Although they came into place to provide an element of certainty in the midst of chaos, they have uncertainties of their own. Presidents of such democracies, contrary to what has been assumed, cannot actually govern above all. They must consider the vulnerability of their position and either follow a more authoritarian path if they aim to indeed govern above all, or turn to partnerships and coalitions if they seek to maintain the democratic features of such democracies. They are not supreme rulers.

In this sense, Brazil broke the pattern of delegative democracy because President Collor ignored the vulnerability of his position. He tried to govern above all, neglecting to make power-sharing arrangements while also failing to eliminate potential threats. Ironically, Collor behaved exactly how O'Donnell expected a president of a delegative democracy to behave; yet, he was later impeached. His impeachment, officially on the basis of corruption, signaled to

potential future presidents that despite the powers they had and the possibility of bypassing checks, sharing power with the governing elite and transferring power to third parties (i.e. institutions) was necessary to have a safer and stable position.

The case of Brazil illustrates that, contrary to what O'Donnell argued, presidents of delegative democracies cannot do as they please. When threatened in a manner that could jeopardize their future in power, presidents face a tradeoff in which there are strategic incentives to limit presidential power.<sup>15</sup> Hence, the enforcement of laws and anti-corruption institutions and the creation of new ones, at first, may be done solely to help presidents deal with a growing uncertainty concerning their future in power. Yet, while these institutions allow presidents to stay in office, they can also limit how presidents exercise power. A sudden growth in the uncertainty faced by the government, in short, may trigger the emergence of checks on presidential power. In this sense, a large corruption scandal can cause the uncertainty that triggers the emergence of limits on presidential power by a) undermining the very foundation of delegative democracy: the "saviour" image of the president, and b) generating incentives for the governing elite to delegate power to third parties, namely, institutions.

It is worth observing that corruption is still present in Brazilian democracy today, notwithstanding the emergence of limits on presidential power. Should the creation of checks on the executive's power eradicate corruption? The answer, I argue in this thesis, is not necessarily. There may be new limits to executive power, but corruption schemes will evolve and adapt in the sense that they are driven underground so they become harder to detect. There is an evolutionary logic concerning this relationship: institutional innovations and corruption

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<sup>15</sup> For the Brazilian case, this will be approached in Chapter 3; I will then derive a more general argument in Chapter 5.

schemes develop in an interdependent way.<sup>16</sup> In other words, the existence of corruption does not indicate that limits on executive power are a failure. The increasingly harder-to-detect corruption schemes in Brazil since the early 1990s suggest that actors have adapted and learned to bypass these limits.

This thesis aims to shed light not only on Brazil, but also on cases beyond it. After all, an inflated executive in a context of weak institutional checks is not unique to Brazil. Examples include Argentina under the presidency of Carlos Menem (1989-1999) and the Kirchners (Néstor, 2003-2007; Cristina, 2007-2015), and Venezuela under the presidency of Hugo Chávez (1999-2013) and Nicolás Maduro (2013-present). Russian President Vladimir Putin is another example of an elected official who has managed to significantly empower himself and limit the checks and balances on executive power.<sup>17</sup>

A comparison of Brazil with other delegative democracies, as I argue in Chapter 6, highlights how puzzling Brazil's development has been. Collor's downfall, and the emergence of limits to presidential power in Brazil occurred because he behaved according to the textbook definition of a delegative democracy president. Yet, paradoxically, Collor was actually an exception to the rule in practice. The fate of other delegative democracies—namely Venezuela, Argentina, and Russia—illustrates that delegative democracies are more unstable than O'Donnell assumed. If a delegative democracy is to remain, it is very difficult for a president to govern “above all.” They need allies, who can protect the president when their “*salvador da pátria*” image is tarnished. Democracies delegate extraordinary power to rulers in the hopes that they can accomplish things (“get things done”) without the messy negotiations and compromises

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<sup>16</sup> For Brazil, this will be approached in chapters 3 and 4. I will give a more general explanation in Chapter 5.

<sup>17</sup> He has, for instance, limited the autonomy of regions in Russia by moving political and economic power to the federal centre. The case of Russia will be briefly explained in Chapter 6, as will the cases of Argentina and Venezuela.

of politics. But it turns out that even these presidents must work through power-sharing arrangements and have allies in the political (i.e. legislative houses) and/or institutional spheres (i.e. Supreme Court, etc.).

If presidents are to actually govern above all and ignore political and institutional agents, they may redouble authoritarian measures in order to eliminate *any* potential threat to their position as presidents (i.e. the opposition, freedom of speech, etc.). In more general terms, the Brazilian case shows that presidents of delegative democracies are actually not as strong and free to do as they wish as once assumed; these democracies rely on a charismatic relationship between the ruler and society, which is very fragile. Collor, however, ruled Brazil by ignoring this fact; he did not share power while maintaining free and fair elections and democratic freedoms.

I have heretofore explained why the Brazilian case deserves attention and I have outlined the main argument that will be developed throughout this thesis. Yet, some theoretical and practical considerations are necessary before delving into the case of Brazil. This thesis is about limiting presidential power in a democracy that supposedly does not offer incentives for it to happen. It is thus about the combination of three elements, each of which will be discussed in the following three sections. The first concerns the possibility of tyranny, which is a problem when there is no limited government in a political system in general. The second concerns the problems inherent in delegative democracy, which are based on a ruler-follower charismatic relationship in a context of weak horizontal accountability. The third element refers to how presidentialism, a specific form of separating powers in a democracy, may enable delegative features. Following the discussion of each of these topics, I will explain why I propose Rational Choice Institutionalism as the theoretical framework to investigate this puzzle and I will describe

the research method and sources. Finally, I will provide a brief outline of how this thesis will proceed throughout the chapters.

## **1.1 Limited Government and the Possibility of Tyranny**

As mentioned in the introduction, the problem with delegative democracies is that they enable presidents to govern unchecked; they are democracies that allow for tyranny in the sense of arbitrary power. The idea that unconstrained presidential power is problematic for democracy, however, is part of a broader discussion about the relevance of limited government. This, in turn, has not always been linked to democracy. The term refers to the existence of limits on what government can do. In such broader discussion, limited government emerged as an idealized protection shield against tyranny.

The philosophical roots of limited government can be traced back to Aristotle, Locke, and Montesquieu. In the fourth century B.C., Aristotle asserted in "Politics" that "[a]ll constitutions have three parts... One of the three deliberates about public affairs; the second concerns the offices... and the third is what decides lawsuits." (1997, p. 125). However, he did not discuss the reasons why state power should be exercised in a well-organized decentralized form. A more precise discussion of why different powers should be exercised by different branches was outlined in Locke's "The Second Treatise on Civil Government" (1923) in the seventeenth century. Locke argued that the government should be designed to minimize the risk of tyranny so political rulers would not violate people's fundamental rights. Sovereignty resided with the people, and governmental powers should be limited so their rights to property, life and liberty could be protected.

In the eighteenth century, Montesquieu argued that there should be a separation of powers for liberty to be preserved and guarded against tyranny. With a separation of powers, the government would be limited since each branch would check on the other branches' power. In other words, the separation of powers would provide checks that would balance power so it would not be concentrated in one person, one group, in one branch, or one institution; checks would prevent the rise of tyrannical individuals and groups.

The idea that there should be limited government was in clear opposition to the absolutist monarchies that ruled most of Europe in the seventeenth and eighteenth centuries. Absolute monarchies, legitimated by the doctrine of the divine right of kings, are the best examples of unlimited government. Through the justification that their legitimacy was derived directly from the will of God, they governed as if they were not subject to any authority on earth. James VI of Scotland and Peter I of Russia are examples of such absolute monarchs; theirs was often a government of tyranny.

Tyranny, however, is not an inherent feature of monarchies. There have been and continue to be limited monarchies, as can be observed in the present day United Kingdom, where the monarchs have more of a symbolic role and are far from having unconstrained or unrestricted power. Actually, it is important to note that "limited government" refers to limiting all government branches' power. Yet, given its origins, the discussion on this theme paid special attention to the relevance of constraining executive power. According to Locke, the difference between a tyrant and a lawful king is that the former rules according to his/her will while the latter rules according to laws and seeks what is best for society.

In the nineteenth century, James Madison drew on that discussion to argue that the executive, legislative, and judicial powers should be in different hands to make tyranny less

likely to occur since each branch could check on the other (The Federalist, N. 44, at. 305). Limited government arguably prevents the possibility of arbitrary power to emerge, and the separation of powers is considered to be the way through which checks and balances can work best toward preventing tyranny.

The notion of fighting tyranny has led to discussions on themes such as the “separation of powers,” “republicanism,” and “constitutional government.” These three terms have been used interchangeably (Peterson, 2014), and refer to the existence of boundaries for governments to exercise their power. It is important, however, to bear in mind that the term “constitutional” here does not refer to the existence of a written supreme constitution. Britain, for instance, does not have a written constitution, but has a constitutional government based on a customary one. It follows that a democracy with a written constitution is not automatically a constitutional democracy. Many African countries, for instance, have a constitution but lack a constitutional government (Okoth-Ogendo, 1996).

As previously mentioned, although this thesis focuses on democracy, the discussion of limited government in general does not only concern this type of political system. There have been detailed studies of the development of states and societies as well as the elements that led them to follow the constitutional or absolutist path (such as Tilly, 2007; Mann, 1986). Others have focused particularly on what makes a monarchy an absolute or limited government (see Fortescue, 1476; Bodin, 1977; Ertman, 1997). There have also been studies of how limited government can emerge under dictatorships (e.g. Barros, 2002) and why some authoritarian regimes are actually not as unconstrained as would be thought (e.g. Boix & Svulik, 2008). In terms of democracy, there has been extensive research on the impact of the separation of powers, such as its influence on democratic consolidation or breakdown (e.g. Power &

Gasiorowski, 1997; Boix, 2005). Once the concept of democracy is broached in Section 1.2, I will discuss how the notion of limited government has been incorporated into the idea of democracy in Section 1.3.

### **1.1.1 Limited Government and Corruption**

Although this thesis is not about corruption, given the ongoing corruption scandal in Brazil, it is important to note that there is no causal relationship between limited governments and the presence or absence of corruption. Since limited government was intended to fight tyranny, which was about abusing power, it would seem natural that the former would be able to eliminate corruption. After all, corruption tends to be defined as the (active or passive) abuse of public office for any type of private gain.<sup>18</sup> Indeed, concentration of power in the executive branch and weak checks and balances have been considered to be typical features of a political system prone to corruption (Jensen & Meckling, 1976; Hodgson & Jiang, 2007). Corruption, it is important to observe, may take different forms: bribery, extortion, facilitation payment, fraud, collusion, obstruction of justice, trading influence, illicit enrichment, money laundering, abuse of function, and embezzlement.<sup>19</sup>

Boundaries to governmental power evidently affect all forms of corruption since they represent new obstacles. Yet, all of these practices also vary in terms of how social actors organize themselves to pursue such practices. For instance, when a bribe—which we will call bribe X—is paid with a signed check, it shows the practice is happening as if it were a regular and legal transaction. It actually barely requires any level of organization among actors. By

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<sup>18</sup> As defined by the OECD (2008), Transparency International (2016), and the World Bank (Barghava, 2008).

<sup>19</sup> According to the UN Convention against Corruption (2003, p. iii) and the OECD Anti-Bribery Convention (1997, p. 14).

contrast, when a bribe—we will call it bribe Y—is paid through money laundering, it shows that the people involved are putting more effort into organizing themselves to hide that practice. This argument is further elaborated in Appendix A.

It is important to bear in mind that these practices involve social actors and the interaction among them. Social actors, who must continuously make choices in the social world, may change their reasoning in reaction to new elements (Miller & Page, 2007). Actors develop an evolutionary selection mechanism: “a rule which was not scoring well might be less likely to appear in the future for different reasons. One possibility is that a player will try different strategies over time, and then stick with what seems to work best. Another possibility is that a person using a rule sees that other strategies are more successful and therefore switches to one of those strategies” (Axelrod, 1984, p. 50). In short, social actors may not decide to stop bribing completely once there are obstacles for bribe X to happen; instead, they may opt for bribe Y or come up with another form of bribery. When facing new obstacles, actors adapt (Miller & Page, 2007; Axelrod, 1980, 1984). Limited government can thus serve as an incentive for corruption practices to become harder to detect instead of leading to their full elimination. The creation of limits to the executive’s and all branches’ power in general is primarily about fighting the possibility of tyranny, not corruption per se.

## **1.2 The Evolving Concept of Democracy**

### **1.2.1 Democracy: The Conceptual Challenge**

In this section, I analyze why it has been assumed that a delegative democracy is an unlikely setting for limits to presidential power to develop by exploring how its concept emerged in the literature. Delegative democracy creates the possibility of tyranny despite the existence

of free and fair elections. Yet it is important to observe that from the classic Schumpeterian definition of democracy as an “institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote” (1943, p. 269) to the present, definitions of democracy have expanded and become multi-dimensional.

While Schumpeter (1943) defined democracy as a method, Dahl (1971) saw limits in the concept of democracy as pure electoralism. Hence, he introduced other requirements for a government to be considered a polyarchy.<sup>20</sup> These concern the opportunity to formulate and signify preferences through basic freedoms and to have such preferences weighted equally in conduct of government.<sup>21</sup> Thus, Dahl (1971) made the distinction between public contestation, which concerns the number of elections held, and inclusiveness, which refers to the proportion of the population entitled to vote. A polyarchy, according to Dahl’s criteria, is a government that has high liberalization and high inclusiveness.

Since Dahl, there has been great controversy over the concept of democracy. The proliferation of over 550 democracies “with adjectives” since the 1990s show the challenge of seeking to increase conceptual differentiation while attempting to avoid conceptual stretching (Collier & Levitsky, 1997). Indeed, as Cameron (2010) points out, one-dimensional Schumpeterian conceptions of democracy may not be adequate since they can be potentially misleading in the sense that they tend to neglect long-term historic processes, not capturing empirical reality.

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<sup>20</sup> Dahl considered responsiveness a key characteristic of democracy, but since he believed it is almost impossible for a government to be responsive to all of its citizens, he called the everyday conception of democracy “polyarchy.”

<sup>21</sup> More specifically, Dahl’s (1971) criteria are the following: (1) Freedom to form and join organizations; (2) Freedom of expression; (3) Right to vote; (4) Eligibility for public office; (5) Right of political leaders to compete for support and votes; (6) Alternative sources of information; (7) Free and fair elections; (8) Institutions for making government policies depend on votes and other expressions of preference.

The third wave of democratization has certainly reinforced that conceptual challenge (Huntington, 1991). A wave of democratization is “a group of transitions from non-democratic regimes to democratic regimes that occur within a specified period of time and that significantly outnumber transitions in the opposite direction” (Huntington, 1991, p. 15). The first emerged between 1828 and 1926 and the second wave started at the end of the Second World War and went on until 1962 (Huntington, 1991). The third wave presented “new” democracies<sup>22</sup> that shared some attributes of democracy, but differed from the ones in advanced industrial countries (Diamond, 1996).<sup>23</sup>

Recent developments in Latin American countries, which are part of the third wave, have challenged the idea of an absolute meaning of democracy. Cameron (2010), for instance, has observed that the democratic characteristics of the Andean states are mixed in contrasting ways. They all enjoy democratic legitimacy in the sense that elections are held and the right to vote is respected (Mazucca, 2007; Cameron, 2010) and are thus being democratic in the Schumpeterian sense. Although Chile is strong in terms of rule of law, for example, it lacks citizens’ participation. Venezuela, in turn, has violated the right to vote and to run for offices (Cameron, 2010).

Examples like the ones mentioned above challenge the idea that there is just one type of democracy and show that that there are different dimensions to be considered.<sup>24</sup> Although there is no consensus over the concept of democracy, the proliferation of “democracies with

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<sup>22</sup> In Asia Pacific countries (i.e. Philippines, South Korea), and Latin America (i.e. Bolivia, Brazil, Argentina).

<sup>23</sup> Having great economic instability, ongoing military interference in civilian affairs, and continued elite dominance in politics (Diamond, 1996).

<sup>24</sup> For instance, from Cameron’s (2010) perspective, there are two types of democracy: electoral democracy and citizen’s democracy. Hence, in attempting to become democratic, a state may focus on elections and rights to vote or in active participation and the protection of civil and social rights of citizenship.

adjectives” suggests that a) a dichotomous conceptualization of democracy and non-democracy might be misleading (Collier & Levistky, 1997); and b) the existence of free and fair elections is no longer seen as the only requirement for a democracy.

Despite the numerous subtypes within the literature on democracy, there was an assumption that transitional states were on the way to becoming representative democracies (O’Donnell, 1993; Carothers, 2010). Carothers (2002) claims that the assumption that countries moving away from dictatorial rule were thought to be transitioning to becoming democracies was in fact part of the “transition paradigm” of the 1990s. Another core assumption at the time was that there was a causal relationship between elections and democracy. As Carothers (2002, 2010) points out, it is not that elections and democracy were seen as synonyms, but it was thought that elections would improve representativeness over time; for Carothers, there were “very high expectations for what the establishment of regular, genuine elections [would] do for democratization” (2002, p. 8).

### **1.2.2 Delegative Democracies and Unchecked “*Salvadores da Pátria*”**

New democracies challenged the view that processes of democratization always take the same form; the so-called transitional states, it turned out, were not always on the way to representativeness as had been first assumed (O’Donnell, 1993, Collier & Levistky, 1997). As noted above, in studying Latin America, O’Donnell (1994) claimed to have depicted a “new animal”: a subtype of democracy that had yet not been theorized, one that was delegative and not truly representative.

That “new animal,” he argued, referred to political situations as the one in Brazil in the early 1990s; this and other regimes were newly installed democratic governments that inherited

characteristics from long-term historical factors, such as an authoritarian past, and were affected by severe socioeconomic crises. He claimed that these democracies met Dahl's (1971) criteria of a polyarchy, but were not institutionalized despite the lack of threat of reversion to authoritarianism. At the time, O'Donnell (1994) classified Spain, Portugal, Chile and Uruguay as representative democracies; and Brazil, Argentina, Peru, Korea, and the Philippines as delegative democracies.

In his work on constitutions, Cameron insightfully adds that delegative characteristics “flourish where particularistic social relationship involving personal exchanges—like clienteles and patrimonialism—masquerade as the rule of law” (2013, p. 178). In his view, an essential explanatory factor was that literacy was restricted to wealthy elites during colonial times, allowing these elites to monopolize institutions based on the use of the written word. Since the public saw no impact of the law in their everyday lives, they ignored the legal system. Hence, an independent judiciary was not seen as essential and the whole system became vulnerable to manipulation. Since laws were often violated with impunity, in turn, leaders acted as they wished. Still according to Cameron (2013), this led to a context in which the public was frustrated with government inaction; and, instead of wanting the rule of law, they started desiring a decisive and strong leader who personified the state's capacity for action and the nation itself.

Delegative democracies are the result of negative legacies of an authoritarian past and a deep socio-economic crisis that make citizens clamour for a “saviour” to solve all of the country's problems. They are the outcome of what O'Donnell called a “colossal prisoner's dilemma” (1993, p. 1365), wherein the lack of public confidence in state institutions leads to extreme trust placed on an individual to fix all the problems, whom they elect as their “*salvador da pátria*.” The extreme cult of personality and the chaotic economic and political context

makes society accept all of the saviour's policies. The act of delegating power to one hand is, after all, a way of having some certainty in a climate of instability. That personalistic system leads to a situation where "not surprisingly, these presidents suffer the wildest swings in popularity: today they are acclaimed "saviours," tomorrow they are cursed as only fallen gods can be" (O'Donnell, 1993, p. 11). Yet, a "fallen god" opens the door for another acclaimed "saviour" in what would supposedly make delegative democracy an unbreakable cycle (O'Donnell, 1993).

It is important to note, however, that delegative democracies should not be reduced to a simple populist political system. Although they entail elements of populism, they are characterized by the notion of "delegating power"; in other words, the only moments in which civil society is mobilized is when the ruler needs them to be: during elections and plebiscits. Delegative democracies tend to demobilize civil society; they are rather about society trusting that the one ruler in office will make decisions that are best for them. Populist regimes, in turn, rely on a large political mobilization and organization (O'Donnell et al., 2011). In addition, populism is not inherently characterized by a low level of horizontal accountability, which is the case of delegative democracies.

In delegative democracies, the phenomenon of appointing a leader to be a "saviour" through elections can be understood as being derived from a combination of what Weber (1968, 1978) conceptualized as "charismatic" and "traditional" authorities, even though the former plays a much stronger role. Since they come from a dictatorial past in which power emanates from a strong figure, delegative democracies still validate the ruler's power on the same premise they used previously. Hence, there is the belief in the legitimacy of that individual in power being the traditional definer of the interests of the nation to whom citizens owe loyalty.

Obedience is owed to the person who is in that position, not to institutional rules—hence, obligations regarding obedience to that individual are not too questionable and “tend to be essentially unlimited... [and] the exercise of power is oriented toward the consideration of how far master and staff can go in view of the subjects’ traditional compliance without arousing their resistance” (Weber, 1978, p. 227).

Although the “traditional authority” aspect is an important factor in the ruler-follower relationship, the charismatic aspect gains greater relevance because of the existence of elections. Authority is legitimized through tradition, but also “rests on devotion to the exceptional sanctity, heroism, or exemplary character of an individual person, and of the normative patterns or order revealed or ordained by him” (Weber, 1978, p. 215). It entails complete personal devotion to an individual seen as having special qualities that make him/her seem superior. Yet, charismatic authority is not about specific and objective traits of an individual leader; instead, it is about the followers’ subjective perception of the leader.

According to Weber, charisma is “a certain quality of an individual personality, by virtue of which he is set apart from ordinary men and treated as endowed with supernatural, superhuman, or at least specifically exceptional powers or qualities” (1978, p. 48). In the case of delegative democracy, it is possible to infer that it concerns virility, strength, courage; in other words, features commonly associated with heroism given that the president is supposed to “save the country.” Both the traditional and charismatic types of authority contrast with the legal-rational legitimacy that is part of representative democracies. That type of legitimacy characterizes political systems in which the authority of presidents lies on rule-bound institutions that are outside of their control (Weber, 1978).

### 1.2.3 Horizontal Accountability as a Requirement

Besides “heroic” presidents, O’Donnell’s (1994) main argument behind the idea of such a “new animal” is that, unlike representative democracies, delegative ones maintained serious deficits in the mechanisms of horizontal accountability (O’Donnell, 1994; O’Donnell et al., 2011). He distinguished between “vertical” and “horizontal” accountability: while the former concerns how the government is accountable to its citizens, the latter is about how government agencies and agents hold each other accountable. When it comes to power, Schedler (1999) adds that a relationship between unequals consists of vertical accountability and a relationship between equals in power refers to horizontal accountability.

To O’Donnell, accountability runs horizontally “across a network of relatively autonomous powers (i.e. other institutions) that call into question and eventually punish improper ways of discharging the responsibilities of a given office” (1994, p. 165). In his view, horizontal accountability occurs through empowered state agencies willing and able to make decisions regarding the oversight of unlawful actions or omissions by other state agencies and punish them accordingly (O’Donnell, 1999). Horizontal accountability, in short, is about enabling the possibility of limited government.

Although there is a debate over which aspects of horizontal accountability matter the most for democracy, the literature takes the concept as encompassing different activities. O’Donnell (1999), Mainwaring & Welna (2003) and Porto (2011) focus on the ideas of oversight and punishment as core elements. Nevertheless, the prevailing idea is that accountability cannot exist without sanctioning power (Mainwaring & Kenney, 2003). Non-sanctioning mechanisms are thus, for them, a minimal form of horizontal accountability. However, while they focus on the capacity of removing from office and applying criminal penalties as “sanctions,” Schedler

(1999) and Schmitter (1999) question the relevance of sanctions. They believe that oversight in itself is important as it can generate public exposure and political consequences. In other words, they do not see formal sanctions as essential for horizontal accountability to take place.

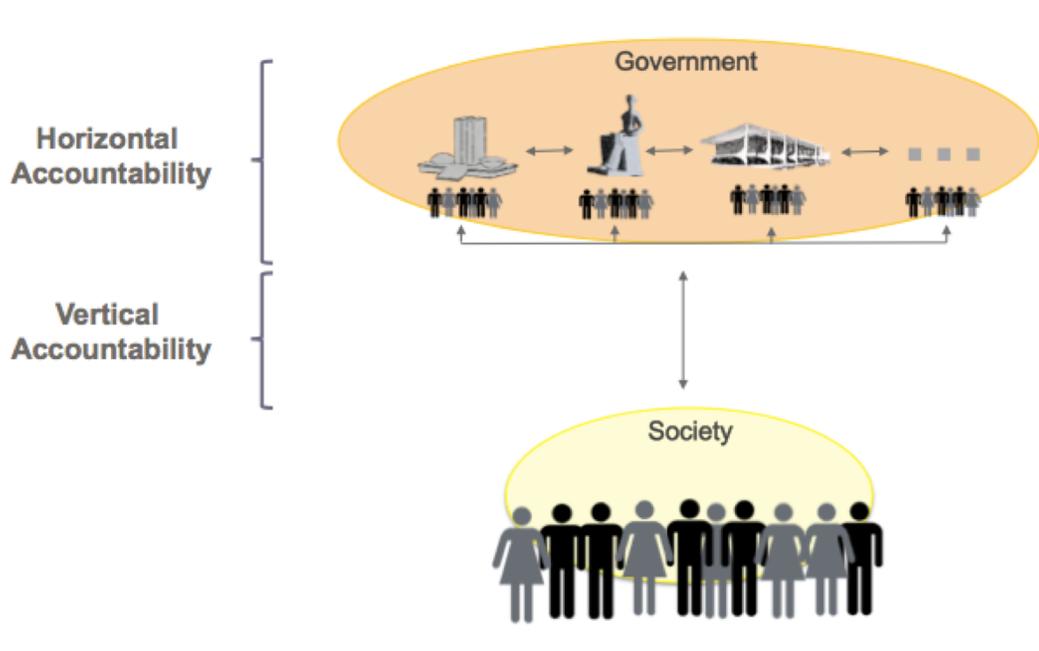
Horizontal accountability is exercised by different state agencies that are supposed to constrain, check, and monitor one another. In this sense, the most complete form of categorizing their activities concerns how related they are to oversight, punishment, and investigation. Following Power & Taylor (2011), the introduction of the investigative dimension dissociates the institutional power to do every day routine monitoring (oversight) from the power of inspecting the truth behind allegations (investigation). And since punishment does not naturally follow from investigation, the latter is also part of minimal horizontal accountability. The power of formally sanctioning once there has been investigation is an important element of horizontal accountability. Nonetheless, as Schedler (1999) and Schmitter (1999) point out, oversight in itself is a strong accountability mechanism since it can generate reputational costs, correct information asymmetry, and boost transparency.<sup>25</sup>

Horizontal accountability agents include the classic institutions of the executive, the legislative, and the judiciary; however, it also extends to “various overseeing agencies, ombudsmen, accounting offices... and the like” (O’Donnell, 1999, p. 39). Diamond, Plattner & Schedler (1999) agree that although the *locus classicus* is the interbranch relations, today the concept goes beyond the tripartite division of powers. The types of agents of accountability have expanded to anti-corruption institutions and others. Figure 1 is an illustration of the concepts of horizontal and vertical accountability through the example of Brazil. While the vertical aspect

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<sup>25</sup> The relevance of “minimal” horizontal accountability will be explored in Chapter 4 for the case of Brazil. Theoretical remarks will be discussed in Chapter 5.

**Figure 1. Vertical and Horizontal Accountability**



of accountability is between governmental agencies and society, the horizontal aspect is among the three powers: the legislative (illustrated through the image of Congress's building), the judiciary (illustrated through the statue placed in front of the Supreme Court, personifying the Law), and the executive (illustrated through the image of the Planalto Palace, the official presidential workplace). It also currently includes a number of new agencies that can be described as anti-corruption institutions (such as the CGU and the COAF).

According to O'Donnell, since delegative democracies lacked horizontal accountability, they were characterized by practices like clientelism, corruption, patrimonialism, and the like. As a result, they had not transitioned "from a democratically elected government to an institutionalized, consolidated democratic regime" (O'Donnell, 1994, p.56). O'Donnell (2011) opted for labelling highly institutionalized democracies the ones that are formally institutionalized, and categorized as poorly institutionalized (or

noninstitutionalized) those that are informally institutionalized. He also claimed that the former tended to be consolidated democracies while the latter were usually unconsolidated ones. Yet, he acknowledged “that was not without misgivings,” writing that “in the first set of countries many things happen outside formally prescribed institutional rules, while the second set includes one highly formalized institution, elections” (2011, p.4).

Indeed, that conceptualization is misleading since it takes different terms as having the same meaning. First, it is important to observe that both informal and formal institutions have the power of stabilizing and reproducing patterns of representativeness (Helmke & Levitsky, 2006; Immergut, 1998; Hall & Taylor, 1996; Steinmo, 2001). The difference is that “formal institutions are openly codified, in the sense that they are established and communicated through channels that are widely accepted as official.” Informal institutions, in turn, “are socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels” (Helmke & Levitsky, 2004, p. 5). They are evidently not the same as weak formal institutions. In fact, formal institutional weakness actually occurs when “the rules that exist on paper are, in practice widely circumvented or ignored” (Helmke & Levitsky, 2006, p. 9).

Informal institutions can actually co-exist with effective formal institutions and share compatible goals with them, and thus “reinforce or enhance the stability of the formal rules” (Levitsky & Murillo, 2012, p.26). Yet, that is not the case of the informal institutions in delegative democracies. To follow Helmke & Levitsky’s categorization, these are so-called competing or substitutive informal institutions. The former “combines weak formal institutions and antagonistic goals” (2006, p. 14). The latter are created by “actors seeking to achieve outcomes that formal institutions were expected to, but have failed, to generate” (2006, p. 14).

Practices described as typical of delegative democracies—patrimonialism, corruption, and clientelism—are informal institutions that are considered to be part of a context of weak or unstable formal institutions. Thus, a polyarchy in which there is a combination of ineffective formal institutions and competing and/or substitutive informal institutions is a more accurate definition of “noninstitutionalized” or “poorly institutionalized democracy” than O’Donnell’s (2011) definition. By contrast, a “highly institutionalized democracy” refers to a polyarchy in which formal institutions are strong and do not count much on these particular types of informal institutions.

As explained in Section 1.1.2, corruption may take different forms. A delegative democracy may offer the possibility for corruption to be widespread given the weak and unstable formal institutions. This does not mean, however, that its antithesis, a democracy with limited presidential power, eliminates corruption or even clientelism. It means only that these practices adapt to the new context. O’Donnell considered the existence of corruption as an informal institution to be an indicator of delegative democracy; rather, it is just the inexistence of checks to prevent and combat it that should be considered an indicator since corruption cannot be fully eliminated. The more boundaries there are to power, the riskier it is, and the harder it is to detect corruption schemes. The lack of limits to abuse of power is but a facilitator to corruption instead of the cause of it, as explained in Section 1.1.2.

The reason for delegative democracies to be considered problematic was that the combination of all characteristics mentioned in section 1.2.2 and in this section supposedly allow for an unconstrained executive power. Presidents, according to O’Donnell (1994), could thus present themselves above political parties and as definers of the interests of the state. In other words, these democracies present the possibility of tyranny. Their features are closely

linked to the authoritarian past and the economic crises that these countries have endured. High inflation, huge foreign debt, inequality, and economic stagnation came out of “the depth of the crisis that these countries inherited from their perspective authoritarian regimes” (O’Donnell, 1994, p. 14). That context translated itself into a “terrible drama” in which a general sense arose that power should be delegated to someone to deal with the disastrous political moment: a “saviour” was needed (O’Donnell, 1992; p. 15).

Once we consider horizontal accountability as an essential requirement for democracy, functioning democratic institutions become a crucial part of the equation. The process of democratization thus goes far beyond elections. It involves strengthening state institutions or creating them where there are none; it seems, after all, unlikely that a dysfunctional state would be able to bolster horizontal accountability and thus breaking the pattern of delegative democracy. After all, developing horizontal accountability is a matter of enforcing the rule of law and of redistributing state power to other branches and institutions instead of concentrating it in the executive’s hand. It is about making the state capable of developing impartial institutions and strengthening its capacity to legislate and effectively enforce laws and policies in all the territory.

What makes delegative democracies “democracies” nonetheless, O’Donnell (1994, 2011) claims, is their legitimacy through reasonably fair and competitive elections and the existence of basic political freedoms. As he explained in the original work in 1994, representation and delegation are not two polar opposites. After all, representation involves delegation since a collectivity authorizes someone “to speak for it and eventually commit the collectivity to abide by what the representative has decided in her capacity as representative” (1994, p. 10). Hence, the major difference between delegative and representative democracies

is that the latter entails the idea of accountability. In representative democracies, the representative is held responsible for the acts he/she makes in the name of the collectivity (1994, 2011).

O'Donnell's work was an important step in the literature on democracy; it not only stressed that elections on their own are not enough to characterize a democracy, but building on Dahl's requirements, it also pointed out the relevance of horizontal accountability for the functioning of a democracy.<sup>26</sup> And, although his work now dates from over 20 years ago, it still remains relevant: in 2016, Luna, Vergara, Hagopian and other scholars revisited the concept of delegative democracy to explore the paths undertaken by South American countries in terms of democracy.<sup>27</sup> By expanding on the ideas of vertical and horizontal accountability, they examined the notion of representation as an outcome of both types of accountability.

When it comes to democracy, today we have a deeper understanding that goes beyond Schumpeter's (1943) minimalist criterion of free and fair elections. O'Donnell's "new animal" has prompted a debate over the relevance of democracies with adjectives as Collier & Levitsky (1997) would call them, and by emphasizing the importance of accountability. Yet, "horizontal accountability" is a broad term. After all, as explained in this section, it concerns the executive-legislative-judiciary relationship and the interaction among all institutions, including NGOs. It

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<sup>26</sup> Three broad themes can be traced back or associated to O'Donnell's concept of delegative democracy. The first of them is on the relationship between delegation and the representation of citizens' interests. Stokes (1997, 1999), for instance, has explored political switches and the consequences of delegation on representativeness. A second theme, widely explored, has been on the executive-legislative relationship in Latin America. Examples are the works of Panizza (2000), Figueiredo & Limongi (2000), Santos (1997), Power (1994), Rennó (2010) and Peruzzotti (2001), which focused on the role of the executive and Congress in weakly institutionalized democracies. Finally, O'Donnell's work stimulated lively debate on the relevance of accountability in a democracy during the last decades. This has led to the exploration of the consequences of institutions of control on horizontal accountability<sup>26</sup>, on the relevance of societal accountability (e.g. Smulovitz & Peruzzotti, 2000; Mainwaring & Welna, 2003), and on the role of informal institutions in weakly institutionalized democracies (e.g. Helmke & Levitsky, 2006; Siavelis, 2006). Power & Taylor (2011) and Melo (2000, 2014), for instance, have specifically focused on corruption and the struggle for accountability. Another example is Porto (2003, 2005, 2007), who has widely researched on the role of the media in politics.

<sup>27</sup> In: *Journal of Democracy*, 2016, vol. 27, n. 3

thus involves understanding how accountable each of these institutions/branches is to each other, what type of information they make accountable, how often the accountability process takes place, and what is made of the information reported from one body to another. Still, not all of the activities involved actually affect democracy as seems to be implied. Perfectly functioning oversight, investigative or sanctioning mechanisms may, for instance, take place between two or three institutions without affecting the overall features of delegative democracy. Given delegative democracy's features, the imposition of boundaries around presidential power is what is essential; horizontal accountability matters insofar as it helps advancing the ideal of limited government.

### **1.3 The Problem of Presidentialism**

As explained in Section 1.2, horizontal accountability is critical for democracy because it can strengthen checks and balances. After all, what makes delegative democracies problematic is the possibility of arbitrary government; more precisely, of an arbitrary executive power, of tyranny. Indeed, as a part of the broader discussion on limited government, the idea that constraining the executive's power is necessary is not new. Democratic theory has built on the discussion of limited government and maintained that checks and balances are crucial because they prevent one branch from becoming supreme. The principle of separating powers has thus become an important part of research on democracy, and there has been extensive research comparing different forms of separation of powers (e.g. Cameron, 2010; Cheibub & Limongi, 2002; Linz & Valenzuela, 1994; Linz, 1990, 1994; Mainwaring, 1993; Stepan & Skach, 1993; Mainwaring & Shugart, 1997; Stepan & Skach, 1993; Shugart & Carey, 1992). This section

explains why one of these forms—presidentialism—is more likely to enable delegative features in democracy.

There are different ways to separate powers in democratic regimes—typically: presidentialism, parliamentarism, and semi-presidentialism (Samuels, 2007). These differ, among other elements, on the roles and powers of the head of state and the head of government. Regardless of the chosen version, however, the purpose of separating powers in democracy is to impose a functioning system of checks and balances in order to prevent abuse of power (Persson et al, 1997). Semi-presidentialism combines characteristics of both presidential and parliamentary systems. An important difference between presidentialism and parliamentarism is that in the former, the president is “always the chief executive and is elected by popular vote or... by an electoral college” and “the terms of office for the president and the assembly are fixed” (Mainwaring & Shugart, 1997, p. 449). In addition, the executive and legislative branches are selected in separate elections by citizens. By contrast, in a parliamentary regime, executive and legislative powers are more blended and there are no fixed terms as the government’s authority “is completely dependent upon parliamentary confidence” (Linz, 1990, p. 52).

According to Linz, presidential systems are less likely to sustain democracy, one of the reasons being that they entail a rigidity “that makes adjustment to changing situations extremely difficult” (1990, p. 9). Linz argues that parliamentary systems are more flexible and offer opportunities to resolve disputes that presidential systems cannot. In other words, once a leader loses the confidence of the parties that supported his/her election, such a leader is replaced in a parliamentary system without affecting the stability of democracy. If the same occurs in a presidential system, the only way to remove the leader is through impeachment, which affects the stability of democracy as it may lead political crisis given the polarizing antagonism between

pro-government and anti-government actors. As mentioned in the introduction, the political crisis concerning Rousseff's government in Brazil is an illustration of this problem.

Mainwaring & Shugart agree that the rigidity of presidentialism "can be a liability, sometimes a serious one" as it makes it "difficult to get rid of unpopular or inept presidents without the system's breaking down" (1997, p. 452). Linz (1990) also pointed out that the winner-takes-all nature of presidential systems allows presidents to feel no need for power-sharing or coalition-forming arrangements as their mandate emanates from the people. This could lead to political gridlock, which would happen in situations where the president and the majority of the legislative branch are from different parties. It also implies a tendency towards authoritarianism as there is no moderating power to act as a means of restraining power.

In short, the features of presidentialism make it more likely for democracy to have a tendency towards authoritarianism, creating the conditions for delegative democracy to emerge. Indeed, it is not difficult to observe that the separation of powers "is often violated in delegative democracies in which the public yearns for strong executive leadership" (Cameron, 2013, p. 167). As explained in the previous section, what makes these democracies problematic, rather than the weak horizontal accountability, is a despotic oversized executive. These are democracies in which the president is the supreme ruler, even though there might be a constitutionally well-defined tripartite model of power. In delegative democracies, power is not limited, and constitutional government, with a clear separation of powers, is weak or non-existent.

Parliamentary systems may offer fewer risks to regime failure, as claimed by Linz (1990), while presidential systems increase the possibility of an oversized executive power. Yet, the latter may develop checks and balances and work on the basis of power-sharing arrangements,

reducing the risks of instability. Also, once there are devices to limit the ability of presidents to use office for undue reasons, presidential systems may work (Cheibub, 2002). After all, the existence of checks and balances in presidential systems can “inhibit winner-takes-all tendencies; indeed, they are designed precisely to limit the possibility that the winner would take all” (Mainwaring & Shugart, 1997, p. 454). As will be explained in the following chapters, this has actually been the case in Brazil since the 1990s. Abuse of power is thus not an inherent tendency of presidentialism, but an outcome of the lack of institutional checks. Although presidentialism might not be ideal, a presidential system in which there are checks on presidential power provides more stability when compared to a “winner-takes-all” political system.

To summarize, the lack of institutional checks, the executive’s abuse of power, and free and fair elections are what comprise delegative democracy. The features of presidentialism, in turn, enhance the possibility of tyranny. In this sense, breaking the pattern of delegative democracy concerns the imposition of *de facto* limits to presidential power, rather than being about the existence of a written constitution or even the existence of a tripartite model. For instance, in a constitutional government, “the legislative prerogative is shared by the ruler and a representative assembly” (Ertman, 1997, p. 6) instead of depending on the ruler’s will. Also, legal-rational legitimacy motivates citizens’ obedience to the ruler. Moreover, as Poggi points out, legal-rational legitimacy also entails the “depersonalization of power” (1978, p. 107). By contrast, in a delegative democracy, there may be a representative assembly that constitutionally shares the legislative prerogative. Yet, a despotic government based on charismatic legitimacy allows the ruler to govern above such an assembly.

Despite the extremely relevant contributions made by the works that followed O'Donnell's (1993) perspective on delegative democracies, there is no work on the possibility of delegative democracies becoming partially or fully representative, on what can trigger such changes and on how such changes take place. O'Donnell's (1994, 2011) typology itself fails to explain whether and how a delegative democracy can change over time. Delegative democracies are characterized as static and stable political systems in an unbreakable cycle with no way out, or at least with no way out towards the creation of means to limit presidential power. The theoretical explanations for a case such as Brazil, it follows, are weak.

#### **1.4 Unchecked presidents and Rational Choice Institutionalism**

The previous sections discussed the outcome of the combination of free and fair elections and an unchecked oversized executive under a presidential system. This section will examine what may be the best approach to explain how Brazil managed to create limits to presidential power under a delegative democracy. This section also discusses why it makes sense to analyze this puzzle from a neo-institutionalist as opposed to strict Rational Choice perspective. It also explains why, within Neo-Institutionalism, Rational Choice Institutionalism is the framework that has the most to contribute to this analysis when compared to the other two Neo-Institutionalisms, Historical Institutionalism and Sociological Institutionalism.

In the following subsections, I explain that the focus on agency and decision-making while maintaining that institutions affect the preferences of social agents makes Rational Choice Institutionalism a strong framework to examine how presidents would agree to limits to their power. First, Subsection 1.4.1 will explain how the existing free and fair elections in delegative democracy affect social agents as they need to follow a strategic behaviour to win elections and

have access to decision-making. It will also examine why strict Rational Choice Theory cannot be applied to this analysis, despite seemingly being the obvious choice, as it ignores the role of institutions. Subsection 1.4.2 will then explain why institutions are relevant for this analysis and briefly present the three types of neo-institutionalist frameworks. Finally, in Subsection 1.4.3, I will elaborate on the reasons why Rational Choice Institutionalism is the framework that allows us to best explain how limits to presidential power were created in Brazil.

#### **1.4.1 The Impact of Elections on Strategic Behaviour**

In a political system in which there are free and fair elections, politicians must either be elected or be part of the governing coalition to have access to decision-making. The literature on politicians' objectives (e.g. Shepsle, 2005; Müller & Strom, 1999; Wittman, 1973; Strom, 1990) often divides politicians into three groups: those who are concerned about office preferences, those who are vote-oriented and those who are concerned with policy preferences. Politicians in the latter category are policy-oriented while office-oriented ones care about what comes with the post: income, status, influence. Vote-seekers, in turn, are vote-maximizers. Ultimately, as Downs (1957) argues, there is a subtle practical difference between policy-oriented and vote-seeking politicians: the former wants to win elections in order to make policy while the latter make policy so they can win elections. Similarly, building on Downs (1957) and Strom (1990), I add that the office-oriented aim at staying in power to maximize the control of offices, be it through votes or coalitions.<sup>28</sup> These, obviously, are ideal types, but they serve to illustrate that regardless of the reasons behind politicians' actions, they aim to be in power either

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<sup>28</sup> As explored by Leiserson (1968) and Riker (1962).

as a means to accomplish what they desire or as an end in itself. They aim to have access to decision-making.

Indeed, politicians may have different interests and preferences; their agenda may differ, priorities are not alike, and the reasons for them to pursue that career are not the same. However, although politicians have different interests, they all need to be in power in order to pursue them. Despite the great debate on the order of preferences and whether they vary over time (Riker, 1962; Stokes, 1963; Katz, 1987; Strom, 1984, 1990; Shepsle, 2005), politicians generally want to be in power: they want to be part of the governing elite. And as mentioned above, when it comes to democracy, elections are the instrument *par excellence* of accessing decision-making.

Once it is established that politicians aim at having access to decision-making and that elections play an important role in this, it is clear that the existence of elections affect politicians' behaviour. After all, elections are more than just an instrument to access power; they also provide a way to punish or reward politicians' behaviour, for they are a mechanism of accountability to evaluate the incumbent government. Politicians are vertically accountable in any definition of democracy because the existence of elections has been a core concept in all of them.<sup>29</sup> That periodic vertical accountability instrument translates itself into an incentive for politicians—office-oriented, vote-seeking or policy-oriented—to behave strategically in order to remain in power or to access power so they can achieve their desired outcome.

Because politicians must act strategically to have access to decision-making, it would seem that Rational Choice Theory is an adequate framework to examine how limits to presidential power are created. After all, rationality implies that agents will always choose the

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<sup>29</sup> As explained in Chapter 1.

option that offers them the highest payoff, which in this case would be related to means of having access to power. Or, as Rational Choice scholars put it, “individuals make decisions that maximize the utility they expect to derive from making choices” (Munck, 2002, p. 166). In a political system in which there are free and fair elections, this strategic behaviour can include making coalitions, formally or informally, in order to be part of the governing elite. In a Rational Choice Theory perspective, this process can take the form of a “game”: politicians can be seen as agents that have a clear set of preferences and act strategically, based on tradeoffs composed by incentives and constraints in order to achieve the desired outcome.

Nonetheless, Rational Choice Theory has been questioned as being too simplistic. After all, analyses of “preferences are foundational for any theory that relies on agency” (Katznelson & Weingast, 2005, p. 2) and Rational Choice Theory attributes preferences prior to the interactions among agents. As Katznelson & Weingast (2005) observe, within that framework they are just imputed to the agents – they are given, exogenous, and stable. They are seen as inherent, atemporal and fixed human wishes that are not influenced by historical and cultural circumstances (Elster, 1979). Indeed, the criticism of Rational Choice Theory may be correct, but this thesis is not about understanding psychological reasons for why presidential candidates want to win elections or why politicians want to be part of the governing elite; it is rather about how they behave to do so. In short, it does not matter much that they have different interests, what really matters is that they need to have access to decision-making to pursue these interests. And, as mentioned, elections are the rules of the game in any definition of democracy and, besides Dahlsian freedoms, they are the only ones that consistently work in a delegative democracy.

The problem of applying Rational Choice Theory to the case to be examined in this

thesis lies in the fact that it takes the institutional setting as either exogenously given or as a mere way to coordinate collective action problems. In the first interpretation, institutions are seen as constraints: as the “rules of the game in a society (...) that shape human interaction” (North, 1990, p.3). For North, institutions could be defined as “any form of constraint that human beings devise to shape human actions” (1990, p. 4). In the second interpretation, they are not exogenously given, but they are “simply the ways in which the players want to play” (Shepsle, 2005, p. 2). Players make the rules of the game in order to govern their interactions, which imply that they can decide to change these rules (Calvert, 1995). The difference between the two views on institutions in Rational Choice Theory is subtle and both fail to recognize the decisive role of institutions in both political choices and behaviour.

Far from being exogenously given, institutions are part of the strategic interaction; they influence preferences and behaviour because they have the power to affect the rules of the game (Steinmo, 2001). They are “more than simple mirrors of social forces,” having a more autonomous role in influencing politics (March & Olsen, 1984, p. 739). Being interrelated, they define “appropriate actions in terms of relations between roles and situations” (March & Olsen, 1989, p. 160), but they also shape the power and the preferences of the agents (Levi, 1990; Hall, 1986). A behaviour that could benefit a president when it comes to remaining in power under an institutional setting may not work under a different institutional context. In sum, players’ behaviour is driven by strategic calculations regarding their own preferences which are in turn driven by the players’ expectations of how others will behave. Interactions among players are structured by incentives and constraints. But it is essential to take into consideration that “institutions structure such interactions, by affecting the range and sequence of alternatives of the choice-agenda or by providing information and enforcement mechanisms that reduce

uncertainty about the corresponding behaviour of others” (Hall & Taylor, 1996, p. 12).

#### **1.4.2 Neo-Institutionalism and Strategic Behaviour**

Institutions can take different forms and shapes. What can or cannot be called an “institution” has actually been a theme of debate in the literature. In the late nineteenth and early twentieth centuries, institutions were analyzed in Political Science from a legalistic point of view by mapping the formal institutions of government. That “old institutionalism” was too focused on description (see Easton, 1971; Eckstein, 1979, Shepsle, 1990). During the behaviorist wave in the 1960s and 1970s, in turn, institutions were assumed to be “empty shells to be filled by individual roles, statuses and values” and human action was reduced to calculated self-interest ignoring agency and autonomy (March & Olsen, 1989, p. 133).<sup>30</sup> In the post-World War II era, though, the shift changed to taking institutions as shaping and influencing politics. That so-called Neo-Institutionalism, which was born as a reaction to the behavioural school, was developed as three different approaches: Rational Choice Institutionalism, Historical Institutionalism, and Sociological Institutionalism (Hall & Taylor, 1996; Immergut, 1998).

Although the three approaches differed in some ways, they all defined institutions as having a role in the determination of social and political outcomes. Yet, Sociological Institutionalism places great emphasis on appropriateness in the sense that agents are seen as acting on the basis of what they believe to be appropriate given the social norms of the institutional milieu (Steinmo, 2008). Instead of “rationality,” it assumes that procedures are assimilated as a result of cultural practices—even the idea of what is “rational” (Hall & Taylor,

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<sup>30</sup> Shepsle (1989) would add that the analysis of institutions was the “social glue missing from the behaviourists’ more atomistic account” (p. 134).

1996). The line between Historical Institutionalism and Rational Choice Institutionalism, in turn, is subtler as utility-maximizing behaviour and attention to historical sequence are not mutually exclusive. The main difference between the two theories has concerned how much the analysis relies on one of the two elements and how central preferences are in it (Thelen & Steinmo, 1999; Katznelson & Weingast, 2005). As Katznelson & Weingast (2005) point out, as these two approaches tend to overlap, the distinction has been more about “the type of questions they ask.” Historical Institutionalism emphasizes historical structures, which may or not involve understanding how they shape actors’ interests. In the case of Rational Choice Institutionalism, the focus is rather on rational behaviour and agency.

New Institutionalism, in general, broadened the definition of institutions. Shepsle states that there are two types of institutions: structured and unstructured ones. The former refers to those that are “robust over time, and lend themselves to comparisons across settings” (2005, p.4) and Shepsle cites the U.S. Congress and the Irish Dail as examples. Unstructured institutions, in turn, are those that “may be described as practices and recognized by the patterns they induce, but (...) are more amorphous and implicit than formalized” (2005, p. 5). Shepsle (2005) mentions norms and informal coordination activity as examples of this type. Helmke & Levitsky (2004), Steinmo (2001) and Hall & Taylor (1996) all refer to formal and informal institutions as defined in section 1.2.3.

In the case of democracy, the concepts of formal and informal institutions help us understand the cost-benefit calculus faced by politicians and their strategies. The tradeoff faced by presidential candidates or by presidents in a delegative democracy differs from the one faced by them in a representative democracy. In a delegative democracy, presidents or candidates need to convince citizens that they are capable of becoming or remaining the definer of the

interests of the nation. Yet, citizens are extremely accepting of policies laid out by the president even if they might affect them negatively (since they trust the president that such policies will benefit them in the longer term). The heroic image is thus more important than policy outcomes and, in consequence, politicians may explore an image of virility, of invincibility, of being “one of the people.” The strategic behaviour lies in the individualistic and personalistic characteristics of the politician. In order to win elections or remain in power, the politician needs to match the “saviour” persona for whom citizens hope. Practices like corruption or clientelism are all more accepted instruments in that context.

In a representative democracy, by contrast, that image is not sufficient (and may not be that necessary): legal and institutional boundaries to power keep the governing elite’s actions more accountable. Also, these actions have greater relevance since judgment on the president as fit or not relies more on the rule of law than on his/her image as a hero. Informal institutions like the ones previously mentioned hardly play a role in accessing power or policy-making. Winning an election is rather based on the transparency of the politician’s actions, on how the policy agenda matches what the majority of citizens expect, on the level of respect regarding the separation of powers instead of delegative practices. Convincing citizens that a candidate is fit to be president in a delegative democracy is about the vertical appeal to citizens while in a representative democracy it is also about the horizontal relationship among formal institutions.

In addition, non-institutionalization has a strong effect on delegative democracies by making citizens more vulnerable to adverse selection and moral hazard. In any type of democracy, voters can be seen as a collective principal that chooses a politician to be their agent. However, in a delegative democracy, the ineffective formal institutions mean that there is more hidden information concerning the agent in regards to the principal. It is more difficult

to know whether the candidate/president indeed shares the same policy preferences with voters, characterizing a problem of adverse selection. It is also not known whether, once he/she cannot be directly observed, the president indeed supports voters' preferences (i.e. meetings with lobbyists, etc.), which is a problem of moral hazard (Ferejohn, 1986, 1999).

Contrary to Przeworski (2004)'s argument that institutions do not matter, the emergence of limited government under the conditions offered by delegative democracies cannot be solely explained by pre-institutional dynamics of power. In Przeworski (2004)'s perspective, institutions' endogeneity implies that the conditions underlying institutions are what really matters. Dynamics of power involving social actors would thus not change simply because of institutions as these would mirror such dynamics. This might be true in the short term, but what is disregarded is that these institutions can become "conditions." For instance, following Przeworski's logic, if a president of a delegative democracy creates or enhances self-constraining institutions, nothing changes *de facto*. That might be true at first; yet, such institutions can become the new conditions under which the following leaders will have to rule and so on, thus affecting their preferences. Just as conditions affect institutions, the latter may come to affect the conditions underlying the dynamics of power; institutions change the rules of the game. The several institutions that led the Petrobrás investigation—which were either created or strengthened in the last two decades—have come to affect high-key Brazilian politicians' and businessmen' behavior. This is a clear example of why institutions do matter.

### **1.4.3 The reasons for Self-Limitation**

The relevance of institutions must be taken into account to understand the creation of limits to presidential power under the circumstances of delegative democracy. Since Rational

Choice Theory ignores the relevance of their role in affecting politics, I approach this task by making use of Rational Choice Institutionalism. As a subfield of Neo-Institutionalism, it gives the proper relevance to political institutions and how they shape outcomes instead of only seeing them from a pure legalistic point of view (as would Institutionalism). And, although we do not know much about how preferences take form, a neo-institutionalist perspective allows us to observe how institutions embedded in particular historical situations provide incentives for agents and how “a given institutional milieu both constrains and shapes the repertoire of available preferences” (Katznelson & Weingast, 2005, p. 2). Given its emphasis on agency, it is the most appropriate framework to analyze how boundaries to presidential power emerged under delegative democracy’s conditions for this involves presidents’ decision to agree to such boundaries. As Gameiro de Moura (2003) points out, Rational Choice Institutionalism views politics as the convergence of individuals, institutions and events. It thus does not neglect the relevance of historical sequences as analyses are made considering the contextualized aspects of events (Shepsle, 2005).

Rational Choice Institutionalism has been widely used in Political Science. It has been used for different purposes, such as analyzing the impact of the structure of a particular institution on political behaviour (e.g. McCubbins & Sullivan, 1994; Weingast & Marshall, 1988; Huber & Shipan, 2003; Epstein & O’Halloran, 1999; Cox & McCubbins, 1987; McCubbins & Schwartz, 1984), the history of political institutions (e.g. North & Thomas, 1973; Garrett & Weingast, 1993; Garrett, Kelemen & Schulz, 1998) and on institutional designs and mechanisms through which “principals” can monitor their “agents” (Pratt & Zeckhauser, 1991; Milgrom & Roberts, 1992; Hix, 2001).

Democracy has also been a topic of interest within Rational Choice Institutionalism in

the last twenty years. Przeworski (1991), Marks (1992), and Geddes (1994) have analyzed transitions from a game-theoretic perspective. Although there are internal debates in the literature, authors share their core assumptions: actors behave instrumentally as in Rational Choice Theory in order to have the greatest payoff possible, politics is seen as a series of collective action dilemmas, and institutions have a role in structuring the strategic interaction that determinates political outcomes. This work thus borrows from Rational Choice Theory the following assumptions:

1. Players have a set of preferences;
2. They are able to rationally order their preferences in a transitive form ( $A \succ B \succ C$ ),
3. They choose what maximizes their utilities by following a cost-benefit rationale.

However, it also takes into account that

4. Preferences are not fixed and may vary across time;
5. Institutions have the power to shape or influence preferences (by offering incentives or constraining behaviour);
6. Institutions are not intrinsically stable. They are embedded in historical settings, being strongly affected by circumstances and events.

Interestingly, the first three assumptions may lead political actors to a collective Pareto sub-optimal outcome: a situation in which a political actor could have a better payoff without making other actors worse off. Or, in other words, a situation in which there is a collective action problem such as the “tragedy of the commons” or the “prisoner’s dilemma.” The three last assumptions, however, may mitigate or solve that by providing a solution to the collective action problem. When it comes to the creation of horizontal accountability and its role in limiting power, these assumptions together suggest that actors create institutions to maximize

their payoff: “the process of institutional creation usually revolves around voluntary agreement by the relevant actors” and “it survives primarily because it provides more benefits to the relevant actors than alternate institutional forms” (Hall & Taylor, 1996, p. 945).

But, more than resolving coordination problems, institutions affect actors’ preferences by creating and providing them with new rules. Hence, resolving the collective action problem depends on how the institutional setting affects strategic behaviour and preferences. Again, this framework does not unquestionably impute preferences to politicians as would happen in Rational Choice Theory. They are used and induced in cases in which “a series of earlier works have shown how preferences are induced, how they vary across time, and in particular which institutional details explain their emergence” (Katznelson & Weingast, 2005, p. 8). Preferences become questionable and can vary from one institutional setting to another (Thelen & Steinmo, 1992). For instance, it does not seem problematic to assume that Congress members seek reelection. It is not about assuming that they were born with such preference, but that those who run for Congress (or the presidency) for whatever motivation are likely to want to make a career out of that in order to pursue the motivation they have, thus having reelection as a preference (Katznelson & Weingast, 2005). Strategic behaviour is operationalized by “deducing the preferences of the actions from the structure of the situation.” (Thelen & Steinmo, 1992, p. 8).

The creation of boundaries on executive power under a delegative democracy clearly involves the choice of self-limitation. Rational Choice Institutionalism is the most suitable approach since it not only takes institutions into account, but also how they affect politicians’ preferences—they are thus not seen as mere dependent variables, but also as independent ones. This approach is of particular relevance for Brazil since new anticorruption institutions were

created from scratch in the 2000s. It will allow us to understand why they were created as well as their impact on politicians' strategic behaviour.

Presidents, as expected in the case of delegative democracy, are evidently the main actors to be considered in this analysis. The following chapters will thus place great emphasis on how they reacted to new institutional contexts since the 1990s. The other actors in the emergence of limited government include the political elite in general, composed not only of the governing elite, but also by the opposition (in terms of political party leaders and congressmen in both chambers). The interaction among presidents and the political elite as a whole is crucial and highly influenced by particular institutional settings over time.

As will be observed throughout the chapters of this thesis, federalism, a fragmented multiparty system, and presidentialism are all part of institutional context that influenced agents' decision-making in Brazil. Congress, the MPF, the TCU, the CGU and COAF—mentioned at the introduction of this chapter—along with the Federal Police (Polícia Federal, DPF), and the Supreme Court (Supremo Tribunal Federal, STF) will also be considered in the following chapters. Their function and their main developments concerning their role in limiting presidential power will be discussed. It will be observed that most have actually become autonomous and independent institutions, and all of them have become real limits to the possibility of having all-powerful presidents.

## **1.5 Methodology**

Brazil is certainly a relevant country to research in Political Science and Latin American Politics. It is the largest nation in Latin America, accounting for almost 40% of Latin America's

GDP; it is also the fifth-largest country in the world.<sup>31</sup> Yet, this thesis relies on a single-case study on Brazil for two other reasons. First, it managed to move away from delegative characteristics by creating limits to the once all-powerful executive. In that sense, Brazil offers a counter-argument to the pessimistic view shared in the literature of the future of delegative democracies.

Secondly, single-case studies allow for an in-depth analysis of how causal mechanisms shape social outcomes (George & Bennett, 1997; Ragin, 1997). They examine causality in detail, not neglecting the connections between events and how they evolve over time. In this sense, this thesis combines qualitative methods, namely process-tracing and narrative analysis. To understand its cause, I approach the emergence of limits to presidential power in Brazil through chronological causal connections.

Narrative analysis allows this type of investigation by approaching causality as “a product of unique, temporarily ordered, and sequentially unfolding events” (Mahoney, 1999, p. 1164). Hence, events that could be approached as discrete processes are explained through their individual relevance, but “giving weight to the conjunctural, unfolding interactions” (Skocpol, 1979, p. 320). That is the case of Chapters 2, 3, and 4, each of which are focused on how particular historical events affected the interactions that led to Brazil’s institutionalization. Process-tracing, in turn, allows a temporal reconstruction of the case, which was particularly important for the analysis of the creation of the CGU, discussed in Chapter 3. A brief counter-factual analysis is also employed by exploring other cases of delegative democracy in the conclusion.

For the purpose of consulting primary and secondary sources, I went to Brazil in a research stay at Universidade de Brasília between September and December 2014. This

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<sup>31</sup> World Bank (2013).

allowed me to do archival research in the Brazilian National Congress, where I investigated documents concerning the presidential impeachment in Brazil, along with laws regarding measures to prevent corruption issued from the beginning of the 1990s to the present.

During my time in Brasília, I also conducted interviews with over forty policy makers, who included a) legislators who were politically active at the beginning of the 1990s; b) current and former bureaucrats who were key figures during the creation/strengthening of anti-corruption institutions such as the CGU and the TCU; c) current and former members of the MPF; and d) leaders of NGOs. Questions were tailored to the interviewee's political and professional background and addressed how the institutionalization of accountability would have taken place under the conditions offered by a delegative democracy.

In this sense, the interviews aimed at making a temporal reconstruction of the case in an attempt to identify the intermediate steps between the independent variables and the dependent effect. The open-ended questions focused principally on the participants' understanding of the key decisions behind the creation of mechanisms of democratic accountability.<sup>32</sup> For instance, part of the questions focused on the following:

- a) What led to an act of horizontal accountability like an impeachment in a noninstitutionalized/poorly institutionalized democracy?
- b) Why did an accountability system, instead of a president with superpowers, seem to be the best option once Collor was impeached?
- c) Why was balancing the executive-legislative relations in the decision-making process not enough? More specifically, why did ruling governments also create anti-

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<sup>32</sup> According to Mosley (2013), uncovering causal processes may best occur through open-ended interview questions that leave room for the respondents to express their own perception of the issues.

corruption institutions?

- d) What was behind the growing autonomy of horizontal accountability institutions such as the Public Prosecutor's Office?

In order to avoid the possibility of bias or the risk of interviewing only respondents who see political events through the same lens, I contacted politicians of different backgrounds and from different political parties.<sup>33</sup> The choice of participants was based on the direct or indirect relationship the potential participant had with check and balance mechanisms in politics. Some participants decided to remain anonymous. Instead of using pseudonyms, I will indicate their wish of not having their name revealed.

This part of the research had its challenges and limitations. First, interactions with politicians depend heavily on their willingness to participate. Second, the presidential elections in Brazil were held on October 5, 2014, with a second round on October 26, which made it difficult to have access to politicians (most were working on political campaigns) and this may have had an effect on the answers they provided (some of them might be biased because of electoral concerns). Third, although I expected that former politicians would provide less biased information since they would not be worried about being elected, some of them showed a clear concern with their political legacy. These limitations were mitigated through the use of sources like newspapers, magazines, and the literature on Brazilian politics.

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<sup>33</sup> The interviews were conducted in accordance to the procedures of the ethics board of the University of Calgary. They were contacted by e-mail and/or phone and participation was voluntary and non-remunerated. Before starting the interviews, they were verbally communicated that they could stop participating at any point and that if they wished to remain anonymous, a pseudonym would be used. Hence, in case participants felt any discomfort during the interview, they could stop at any point with no costs of any type. The name, age, gender, educational level, and political experience were collected for personal identifying information when participants allowed. They could also decide to remain anonymous for only part of the questions they were asked to answer.

## 1.6 Chapter Outline

The following three chapters will each explore a particular historical moment in Brazil. Chapter 2 briefly explains the socioeconomic and political context of Brazil in the early 1990s. It also describes the main changes implemented by the 1988 Constitution on limiting presidential power. Following this, it focuses on how Brazil became a delegative democracy and on the impeachment of President Collor. I argue that, ironically, Collor was impeached because he behaved exactly as expected from a president in a delegative democracy. In other words, he ignored the uncertainty of his position and governed as he saw fit by completely disregarding the political elite and bypassing institutional checks. Rather than being impeached due to alleged corruption, he was removed from power by an elite that took advantage of the corruption scandal and his vulnerable condition of a “fallen god.” This chapter shows how the very characteristics that make a delegative democracy—derived from the absolute supremacy of the executive based on charismatic authority—can also become their key weaknesses.

Chapter 3 centers on the post-impeachment circumstances and how the following president, Itamar Franco, had to rely on coalitions and institutional measures to ensure governability. This chapter thus explains the reason why self-limitation became the most strategic choice to be followed. Far from relying on the charismatic relationships with citizens, the new president had to build a legal-rational legitimacy for his position through improvements in horizontal accountability. Because of the extremely competitive setting, transferring some power to institutions and building coalitions was generally more beneficial for the political elite rather than appointing another “*salvador da patria*” who might come to ignore them as Collor had done. Yet, these institutions came to limit presidential power and make Brazil move toward a more limited government in general. Following Collor’s impeachment based on corruption, a

new pattern was created in Brazilian democracy and the subsequent corruption scandals were all followed by improvements in anti-corruption laws or the creation of new institutions.

Chapter 4 examines the type of institutionalization that took place in Brazil. It explains how horizontal accountability has affected what used to be an oversized executive branch. It then discusses the relevance of “minimal” horizontal accountability mechanisms in placing boundaries to governmental power and particularly in presidential power, as well as the reasons behind their emergence instead of sanctioning mechanisms. It also explains why the existence of ongoing corruption in Brazil is not proof that these boundaries have failed. Corruption, I argue, can adapt and evolve with the new horizontal accountability institutions in Brazil. Far from being a sign of failure, the uncovering of corruption scandals in Brazil is proof of the institutions’ evolving strength.

In Chapter 5, I make theoretical inferences from the Brazilian case. I ask what the case of Brazil can tell us about how limits to presidential power emerge under unlikely circumstances. In that sense, I explore the role of uncertainty in strategic behaviour in a delegative democracy and how that influences the emergence of horizontal accountability institutions that, in turn, impose limits to executive power. I also explain how a political crisis like a corruption scandal may affect that strategic behaviour. This chapter, in short, examines the causal relationships linking the three previous chapters.

In Chapter 6, I briefly explore three cases that were considered to be delegative democracies at some point and how they have evolved over time: Argentina, Venezuela, and Russia. This chapter shows that all three cases confirm O’Donnell’s pessimistic view of the fate of delegative democracy: Argentina has maintained delegative features, while Venezuela and Russia have moved toward authoritarianism. Nonetheless, they all show that presidents cannot

govern “above all” and must work through power-sharing arrangements for delegative democracies to remain as such. If presidents indeed choose to govern in unconstrained fashion and “above all,” this means that the political system will stop being a democracy in any sense and move towards authoritarianism. This confirms that, by contrast to the presidents of these three cases, Collor’s impeachment in Brazil took place because he behaved exactly as would be expected from a president of a delegative democracy. His impeachment, in turn, triggered changes in the political and institutional spheres, which later became limits to presidential power.

## 2. FROM “SAVIOUR” TO “FALLEN GOD”: STRATEGIC BEHAVIOUR IN A DELEGATIVE DEMOCRACY

As mentioned in Chapter 1, presidents in Brazil currently face different constraints than they did in the early 1990s. However, at that time, it seemed unlikely that limits to the executive’s power would ever emerge. After all, during the transition to democracy in the late 1980s, a combination of socio-economic and historical factors led to extremely high hopes for someone who would “save” the country rather than for institutional solutions. Once society was able to choose Fernando Collor as that “saviour,” those same factors also made it seem implausible that he could be removed from office even before the mandate was over.

First, citizens were eager to have a democratically elected president after Brazil had spent over twenty years under a military dictatorship, which was established through a *coup* in 1964. In their first days in power, the military institutionalized their authority through a new constitution, and subsequent institutional acts imposed mechanisms of repression.<sup>34</sup> During the time they were in power, they engaged in cycles of repression, which reached their height between 1969 and 1974 in an attempt to eliminate opposition.<sup>35</sup> Once the military left power in 1985, Brazil found itself in a chaotic socio-economic situation.<sup>36</sup>

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<sup>34</sup> The first of these acts gave the executive power to carry out “economic, financial, political, and moral reconstruction of Brazil.”

<sup>35</sup> Including intellectuals and politicians who were involved in the pre-64 governments and those seen as connected with communism. In the first military government under Castello Branco, opposition to the military was high, which led to a list of almost 5000 enemies of the state (Alves, 1985).

<sup>36</sup> Which will be detailed in section 2.

Second, in 1983, when the military were at the end of their time in power, a civil unrest movement known as “*Diretas Já*” demanding direct elections had started. Participants came from a broad spectrum of artists, student and journalistic associations, political parties and trade unions. Besides future presidents Fernando Henrique Cardoso and Lula, then Minas Gerais governor Tancredo Neves was an active figure in the movement. The movement formalized its demand for direct elections through an amendment proposal known as the Dante de Oliveira Law. The proposal was voted on April 25, 1984, but the abstention of over 100 deputies led to the rejection of the bill due to a lack of quorum.

Third, Tancredo Neves had been chosen to be the first civilian president since 1964 by an electoral college during the process of negotiated transition towards democracy—but he never took office. Instead, the Brazilian “New Republic”<sup>37</sup> was inaugurated with Vice President José Sarney acting as president because Neves was too ill to assume the post. In this sense, not only did all the political agitation and efforts put into the *Diretas Já* movement not lead to the desired outcome, but the Vice President took office as president, which was not an ideal situation. In addition, Sarney’s government did not live up to expectations; there were several corruption claims about his administration, and the economic *Cruzado* Plan failed to combat the high inflation of the time. Sarney, however, called elections for a National Constituent Assembly, whose outcome was the 1988 Constitution. The new constitution, which will be discussed in subsection 2.1.2, sought to complete the process of transitioning to democracy. The only element apparently missing was a president chosen through direct elections.

The general sense of disappointment given these events mentioned above increased hopes for the 1989 elections: not only had citizens been anxious for a democratic government,

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<sup>37</sup> To distinguish from the term “Old Republic” (1889-1930).

but, given the *Diretas Já*, they were also specifically enthusiastic to finally have a president they could choose. Furthermore, the sense of urgency was the perfect context for the emergence of someone who could “save” them from the chaotic socio-economic situation—a “saviour,” a great leader, was needed. Fernando Collor de Mello seemed to be the perfect candidate and entered history as the first president directly elected after the dictatorship and he still remains as the youngest to assume that role, at age 40. Given the lack of real institutional checks and the apparent unconditional trust society placed on him, it seemed implausible that anything could go wrong for him. Nonetheless, he also entered history as the first president ever to be impeached in Brazil. This suggests that O’Donnell’s perspective on presidents in delegative democracy is misleading.

In this chapter, I explore that seemingly “implausible” event and I argue that it was actually not implausible at all. Ironically, Collor was removed from office because he behaved exactly the way it would be expected from a president in a pure delegative democracy. He relied on a powerful charismatic-type of legitimacy,<sup>38</sup> but failed to recognize that such legitimacy required him to constantly “prove” himself in terms of what distinguished him as the hero of the nation. By trusting that his image of “saviour” could not be significantly affected, his strategic behaviour relied on centralizing power in his own hands. He thus ignored the possibility of ever needing support from the political elite (as explained in Chapter 1, this term refers to opposition and pro-government political actors that are part of the legislature or have a position of leadership within parties), and he governed above all—even of his own party.

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<sup>38</sup> The idea of charismatic and traditional authority (Weber, 1978) was explained in Chapter 1, but will be further explored in section 2.1 of this chapter.

In other words, Collor not only neglected to realize that his vertical relationship with society could change, but he also did not build a safety mechanism through coalitions in case that happened. And although Brazil's institutional features relied on strong presidentialism, they also encouraged a very fragmented and undisciplined party system. His strategic behaviour ignored the uncertainty brought by the combination of such features to his future in power, culminating in his removal from office. Once the charismatic legitimacy was gone, he became an easy target for the opposition, which at the time encompassed almost all of the political elite given his choice for political isolation.

This chapter will proceed as follows: in the first section, I describe the political system, institutional constraints on presidential power, and the socioeconomic context of Brazil in the late 1980s/early 1990s. In the second section, I discuss Collor's strategy as a presidential candidate and as a president to explain why he perfectly matched Brazil's delegative democracy. In the third section, I explore how Collor's image transitioned from an "acclaimed saviour" to a "fallen god"<sup>39</sup> for citizens and the impact it had on the idea of delegating power to a "saviour." Finally, I discuss the role that Collor's political isolation played in his impeachment. As I will explore in more detail, the impeachment of Collor marked the transition from a charismatic-traditional authority characteristic of delegative democracies to a more legal-rational type of legitimacy when it came to presidential power. It thus influenced the presidents that followed as well as the political elite's strategic behaviour. In this sense, it was the trigger for another apparently implausible event: the emergence of limits to presidential power in a delegative democracy, which will be discussed in Chapter 3.

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<sup>39</sup> To use O'Donnell's (1994) expressions.

## **2.1 Brazil's "Rules of the Game" in the Late 1980s**

### **2.1.1 Political and Socioeconomic Context**

Once the military took power, they made use of institutional acts to amend the constitution that had been in place since 1946. The first institutional act of 1964 replaced the 1946 Constitution for six months. It institutionalized that Congress elect presidents, and that all political rights of those considered in opposition to the new regime would be suspended for ten years. This meant that the military would be entitled to have only pro-government Congress members, who would then elect the president.

The institutional Act n. 2, also passed in 1964, went further in eliminating opposition as it only allowed two parties: the pro-government National Renovating Alliance (Aliança Renovadora Nacional, ARENA) and the Democratic Movement in Brazil (Movimento Democrático Brasileiro, MDB), which would represent the opposition. All other parties were legally extinguished, although some "communist" parties—such as the Communist Party of Brazil (Partido Comunista do Brasil, PC do B) and the Brazilian Communist Party (Partido Comunista Brasileiro, PCB)—were still clandestinely operating. This same institutional act also favored the military government in three other ways: a) it established that the number of justices in the Supreme Court would grow from 11 to 16 (allowing the government to have the majority in the highest court of the country); b) it reassured that the president would be elected by simple majority and nominal votes in Congress; and c) it granted the president the power to issue decree-laws in matters concerning national security.

In 1967, a new constitution—which incorporated the rules established by the institutional acts—was promulgated. It was designed to lend legitimacy to the military regime, having been formally ratified by a Congress in which opposition was no longer present (Rosenn,

1990). This new constitution was later amended by twelve other institutional acts that granted more power to the executive to exercise total legislative powers. The centralization of power was so obvious that the military bypassed the constitution they had created themselves when it did not serve their interests. For instance, in 1969, President Costa e Silva had a medical issue that made him leave office,<sup>40</sup> and it would be constitutionally up to the civilian Vice President Pedro Aleixo to succeed him (according to Art. 79, 1967 Constitution). Instead, the military took office as a junta and issued the Constitutional Amendment n. 1: a rewrite of the 1967 Constitution that extended the areas in which the president could make use of decree-law power and expanded the term of office from four to five years.

In the first years of military government, there was an economic boom in Brazil. As can be observed in Figure 2, the average annual rate of growth of the Brazilian GDP between 1968 and 1973 was extremely high, 11.2%. Yet, in 1973, the oil crisis affected this level of growth since Brazil's economy relied significantly on imported oil.<sup>41</sup> But though the number varied over the following seven years, the 1970s decade had an average annual rate of 9% and was being considered to be the decade of the "Brazilian miracle." This economic boom attracted rural-based citizens to the cities; throughout their government, the military had managed to advance Brazil to an industrialized stage. From having 55.3% of the population living in rural areas in the 1960s, Brazil had transitioned to an urban country in which 67.6% of the population was in the cities in the 1980s.<sup>42</sup>

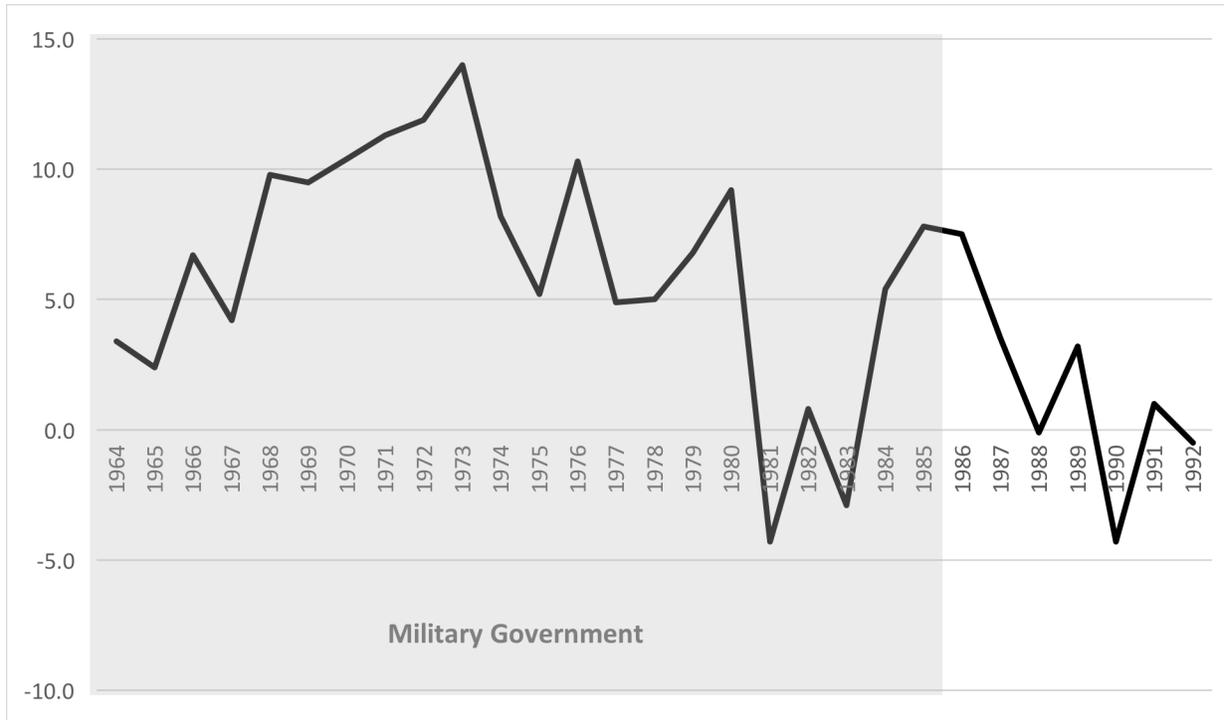
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<sup>40</sup> O Estado de São Paulo, September 18, 1969.

<sup>41</sup> Source: Banco Central do Brasil (1997), Relatório sobre a Dívida Externa Brasileira.

<sup>42</sup> Source: IBGE (2007) Censo Demográfico 1950/2000.

**Figure 2 – GDP Growth (%) during the Military Dictatorship and Sarney’s Government**



Source: IBGE (2016). Sistema de Contas Nacionais, Produto Interno Bruto.

Brazil, like other Latin American countries at the time, was then borrowing large sums of money from international creditors—such as the World Bank and private banks—for infrastructure and industrialization programs. By the early 1980s, Brazil boasted the eighth-largest GDP in the world.<sup>43</sup> However, a second oil shock in 1979 highly affected the price of Brazil’s imported oil.<sup>44</sup> From then on, the economic situation in Brazil worsened. The military were still borrowing from international lenders, as was a large part of Latin America. Yet, in 1982, Mexico declared it would not be able to pay for its debt. This, associated with other factors such as the political instability in oil producing countries, led to a debt crisis in the

<sup>43</sup> Being behind the United States, Japan, Germany, France, United Kingdom, Italy, and Canada in the year of 1980 according to the World Bank (2015).

<sup>44</sup> Source: Banco Central do Brasil (1997) Relatório sobre a Dívida Externa Brasileira.

region. In the case of Brazil, once its inability to pay back the loan became obvious in September 1982, the so-called “black September” loans (which represented approximately US\$1.5 billion/month) ceased.<sup>45</sup> Although the debt crisis affected the Latin American region, Brazil was the most affected:<sup>46</sup> In 1983, it owed a total of US\$92 billion, the largest debt in the world at the time.<sup>47</sup>

While the 1970s entered history as the age of “Brazilian miracle,” the 1980s were known as the “lost decade.” Although the GDP grew again when Sarney took office, the country quickly went back to recession, as can also be seen in Figure 2. The debt crisis, in turn, greatly affected inflation rates in Brazil, as can be observed in Figure 3. It had accelerated after the first oil shock; after 1982, however, it rapidly went up and reached 684.85% in 1989, the year of the first direct presidential elections. In response to the crisis, neoliberalism was gaining dominance in Latin America as it was believed that less government intervention would lead to greater economic prosperity—a perspective particularly encouraged by the IMF (Espinal, 1992).

During the military rule, political problems for the military government accompanied the economic ones. In 1974, 72% of the senators elected were from the opposition, the MDB. In order to avoid worse results in the future, the government changed several electoral laws. For instance, one-third of the senators would be nominated by their electoral district’s federal deputies. The government also decided to accept the idea of multiple parties in an attempt to divide the opposition. Thus, at the end of the dictatorship period, through the Constitutional Amendment n. 11 in 1978 and Law n. 6,767 in 1979, there were three important changes: both

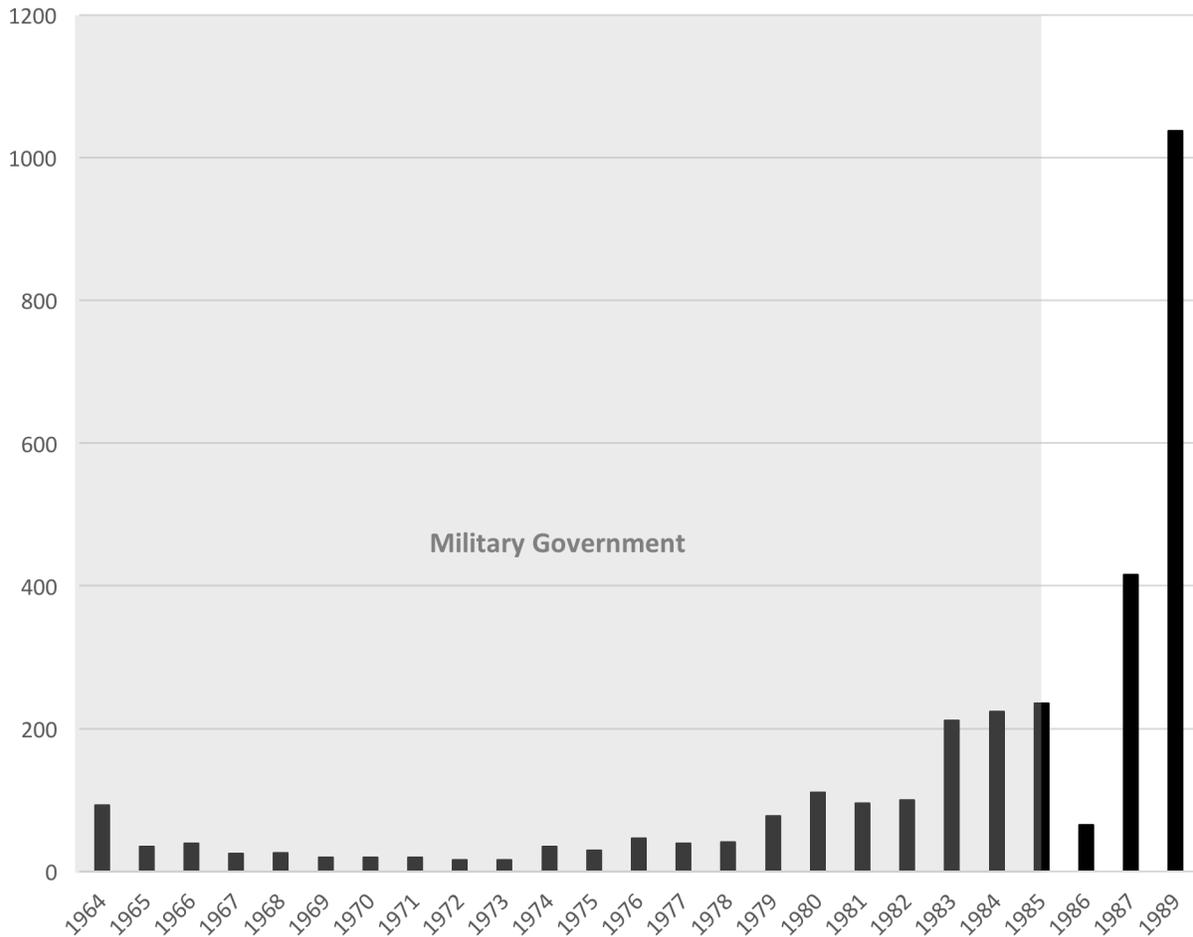
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<sup>45</sup> Source: Banco Central do Brasil (1997) Relatório sobre a Dívida Externa Brasileira.

<sup>46</sup> Source: Banco Central do Brasil (1997) Relatório sobre a Dívida Externa Brasileira.

<sup>47</sup> New York Times, November 26, 1983.

**Figure 3 – Accumulated Inflation (%) 1964-1989**



Source: Ipea (2016). Índice Geral de Preços – Disponibilidade Interna (IGP-DI)

the ARENA and MDB were extinguished, new parties could be created, and direct elections for governors and senators were reintroduced.

Following these changes, Brazil moved from having two parties to having six: the ARENA became the Social Democratic Party (Partido Democrático Social, PDS) and the MDB was transformed into the Brazilian Democratic Movement Party (Partido do Movimento Democrático Brasileiro, PMDB). Defectors of both parties created the Popular Party (Partido Popular, PP). The Workers' Party (Partido dos Trabalhadores, PT), the Brazilian Labour Party (Partido Trabalhista Brasileiro, PTB) and the Democratic Labour Party (Partido Democrático

Trabalhista, PDT) were also created in 1980. Yet, the government stipulated that for the 1982 general elections—which comprised elections for governors (the first direct ones since the military coup), senators, and federal deputies—citizens would be required to vote on candidates from the same party for all positions.<sup>48</sup> The PDS slightly won the majority of the positions: 54% of the positions for governor, 65% of the seats in the Senate, and 49% of the seats in the Chamber of Deputies.<sup>49</sup>

Gradual erosion, the inability to deal with the economic chaos, the *Diretas Já* movement that demanded direct elections, and the increasing tensions within the PDS marked the final period of the military regime (Mainwaring, 1999). A number of PDS members eventually supported the idea of direct elections and others felt that it was time for the regime “to negotiate a way out” (Mainwaring, 1999, p. 16). The tensions within the PDS led to the creation of the Liberal Front Party (Partido da Frente Liberal, PFL) by PDS defectors, which included the former head of the ARENA and of the PDS José Sarney. For the 1985 indirect elections, a large part of PDS defectors negotiated with the PMDB; they agreed to support PMDB’s presidential candidate, Tancredo Neves, in exchange for having José Sarney as Neves’s vice president (Côttes, 2010).

Neves won 480 votes against the 180 votes won by the PDS’s candidate Paulo Maluf had in the electoral college. However, given Neves’s illness and subsequent death, Sarney turned to be the first civilian president after the dictatorship period. During Sarney’s government, the institutions of governance were structured in a way that retained strong powers for the president as it was still under the authoritarian 1967 Constitution. There was actually not a clear

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<sup>48</sup> At the federal level; the general 1982 elections also filled in positions at the state and municipal levels: state deputy, mayor, and aldermen.

<sup>49</sup> Source: Tribunal Superior Eleitoral, Anuário Estatístico do Brasil, 1983.

break between regimes and the transition to a civilian government from a military dictatorship was peaceful rather than revolutionary. Hence, the institutional setting continued from the military regime to democracy (Alston & Mueller, 2005).

Still, new laws were created to regulate the new multiparty system. For instance, Law n. 7,454 in 1985 regulated the creation of political parties, but established minimal requirements. Legislation concerning parties actually provided incentives for the creation of several new ones between 1985 and the first direct elections in 1989 (Nicolau, 1996). One of the reasons was that parties that had been cancelled during the dictatorship could then be legally created (Constitutional Amendment n. 25, 1985). This was the case of so-called “communist” parties PCB and PC do B. Second, small parties had and still have access to privileges: between 1965 and 1971, 20% of the funds destined to parties were equally divided among all parties.<sup>50</sup> Since 1995, this has changed to 5%.<sup>51</sup> Third, all parties were and are allowed a minimum TV time during campaign before elections (1988 Constitution, Art. 17), which means small-party candidates have proportionately more time than the ones in larger parties. As expected, the parties in the late 1980s had weak identities and ideologies, merely being used as electoral vehicles (Hagopian & Mainwaring, 1987).

Brazil’s political system has been characterized by a highly fragmented party system, which is the outcome of legislation of the mid-1980s explained in this section, and of rules established in the new constitution, which was promulgated in 1988—one year before the first direct elections. The following section will explain the main changes brought by the 1988 Constitution in terms of checks on presidential power.

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<sup>50</sup> Lei Orgânica dos Partidos Políticos (LOPP).

<sup>51</sup> Law n. 9,096, 1995.

### **2.1.2 The 1988 Constitution and Brazil's Political System**

Brazil has been under the same constitution since Collor's time: the 1988 Constitution, which was drafted by a Constituent Assembly consisting by a total of 559 congressmen (487 members of the lower house, the Chamber of Deputies, and 72 members of the Senate). Among the deputies was Itamar Franco (PL at that time), who later became Collor's vice president (through PRN) and also replaced him in power following the impeachment (switching to PMDB).

Even though the discussions carried out by the Constituent Assembly between 1987 and 1988 relied on a "democratic spirit" (Sadek & Cavalcanti, 2003), two contradictory set of measures were approved. On one hand, it maintained the legislative powers granted to the executive during the dictatorship. On the other hand, it improved the legislative and judiciary branches' powers in checking the president. The 1988 Constitution replaced the 1967-1969 one, which had authoritarian features and stipulated the main rules of Brazil's democracy: a presidential form of government, a bicameral legislature, strong federalism, and two different types of electoral rules. This section highlights the main changes brought by the 1988 Constitution when it comes to these features and explains what the outcome of their combination means in terms of limits to presidential power.

#### **2.1.2.1 The Legislature's Capabilities in Checking Presidential Power**

Just as the 1967 Constitution, the 1988 Constitution established a bicameral national legislature composed by the Chamber of Deputies and the Senate (Art. 44). Back in in the early 1990s, there were 23 states, plus the federal district (Brasília) and two territories serving as electoral districts. Currently, the total of electoral districts is 27, which is made of 26 states and

the federal district. Just as in the 1967 Constitution, the legislative term was established to be of four years (Art. 44). When it comes to district magnitude, Art. 45 of the new constitution stipulated that the number of seats in the Chamber of Deputies should be proportional to the population in the electoral districts; such numbers should be established through a complementary law (so it could change over time and adapt to the changing population).

Although the constitutional rules did not change, the idea of proportionality did. During the dictatorship, there would be up to 25 representatives for each 300 thousand citizens in the state; once the number of 25 representatives had been achieved, an extra deputy would be added per million citizens in the state (Art. 41, 1967 Constitution). In the 1990 election, in turn, 503 federal deputies were elected; the least populated states were entitled to elect the minimum number of eight federal deputies and the most populated ones were entitled to sixty representatives.<sup>52</sup> However, since 1993, this has changed as Law n. 78 established that the number of federal deputies should not exceed 513 and that each electoral district would be able to elect between eight and seventy representatives. Rules concerning the election of senators, in turn, did not change much—they are elected by majority vote for eight-year terms and each state elects three senators as the representation of each electoral district must be renewed every four years, alternately, by one-third and two-thirds (Art. 46). This did not change the rules established by the 1967 Constitution (Art. 43).

The new constitution instituted the division of powers: it strengthened Congress, which recovered powers that had been taken away during the military dictatorship. For instance, it re-established the power to review the federal budget submitted by the executive branch (Art. 49),

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<sup>52</sup> For instance, Acre at the time had a population estimated to be 417,718, thus being entitled to eight representatives. São Paulo, the most populated state, had an estimated number of 30,783,108, having sixty federal deputies (Source: IBGE and Tribunal Federal Eleitoral). Thus, while a federal deputy of Acre represented around 52,214 citizens, a federal deputy in Sao Paulo represented almost ten times that number.

which had been suppressed during the military period.<sup>53</sup> As established by the Chamber of Deputies' internal rules promulgated in 1989, this was stipulated with the help of its auxiliary body, the TCU.<sup>54</sup> The new constitution also included that Congress is entitled to “supervise and control, directly or through either of its Chambers, acts of the Executive, including those of indirect administration” and to “safeguard preservation of its legislative authority in the face of rule-making powers of other branches” (Art. 49).<sup>55</sup> Both prerogatives are mentioned in almost the same words in the Chamber of Deputies' and Senate's internal rules.<sup>56</sup>

The constitution maintained two mechanisms that can impose direct limits on presidential power: a) It allowed the existence of Parliamentary Investigative Committees (CPIs)—which existed since 1946 and were also mentioned in the 1967 Constitution (Art. 39). Yet, it now specified CPIs would have investigation power similar to the judiciary and could send their reports to the Public Prosecutor's Office so wrongdoing could be punished (Art. 58); and b) It maintained the steps defined in the 1967 to be taken in case of impeachment proceedings: the president is temporarily removed from power if two-thirds of the Chamber of Deputies vote in favour of that decision (Art. 51). The Senate then handles the impeachment trial (Art. 52).<sup>57</sup> But, before the 1988 Constitution, the Senate had to act within 60 days or the case would expire (1967 Constitution, Art. 85). The new constitution changed it to 180 days.

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<sup>53</sup> Back then, Congress was only allowed to pass a “yes-no” judgment on the budget.

<sup>54</sup> Chamber of Deputies' internal rules, Art. 24, item X.

<sup>55</sup> Free translation for: “*fiscalizar e controlar, diretamente, ou por qualquer de suas Casas, os atos do Poder Executivo, incluídos os da administração indireta*” and “*zelar pela preservação de sua competência legislativa em face da atribuição normativa dos outros Poderes.*”

<sup>56</sup> Chamber of Deputies' internal rules: Art. 24, items XI and XII; Art. 60. Senate's internal rules: Art 90, items VII and X.

<sup>57</sup> In the 1967 Constitution, these steps are defined in Art. 41, Art. 44, Art. 84, and Art. 85.

Both constitutions take so-called “crimes of responsibility” as being the reasons for impeachment and define this concept with almost the same words as “the actions undertaken by the President of the Republic that are attempts against the Federal Constitution, and especially those against:

I - the existence of the Union;

II- the free exercise of the powers of the Legislature, Judiciary, Public Prosecutor’s Office and constitutional powers of the units of the Federation;

III - the exercise of political, individual and social rights;

IV – the Internal security of the country;

V – Probity in administration;

VI – The Budget Law

VII – Compliance with laws and court decisions”<sup>58</sup> (1988 Constitution, Art. 85)<sup>59</sup>

A minor form of overseeing the government in general was introduced in the 1988 Constitution: besides summoning a minister or any chief office holder in any agency directly subordinated to the president to testify on a pre-determined matter,<sup>60</sup> Congress can now also request written information (Art 50). The role of Congress’ auxiliary body, the TCU, was also broadened. Previous to the 1988 Constitution, the TCU’s role involved analyzing and auditing the accounts of direct public administrators; the new constitution broadened this group as it stated that all persons involved in administration and expenditure of public resources should

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<sup>58</sup> Free translation for: “São crimes de responsabilidade os atos do Presidente da República que atentem contra a Constituição Federal e, especialmente, contra: I - a existência da União; II - o livre exercício do Poder Legislativo, do Poder Judiciário, do Ministério Público e dos Poderes constitucionais das unidades da Federação; III - o exercício dos direitos políticos, individuais e sociais; IV - a segurança interna do País; V - a probidade na administração; VI - a lei orçamentária; VII - o cumprimento das leis e das decisões judiciais”(Art 85).

<sup>59</sup> Defined in Art. 84 of the 1967 Constitution.

<sup>60</sup> This was already established in the 1967 Constitution (Art. 40). It is mentioned in the 1988 Constitution as part of Art. 50.

render accounts to the TCU (Art. 70). It also specified the TCU's role, which used to concern the examination and evaluation of the accounts rendered by public administrators. Beyond that, it now includes performing inspections concerning financial matters as well as imposing fines in case of verified illegalities. Also important, the TCU is supposed to notify the proper branch in case of irregularities of abuses and, if that branch fails to take action within ninety days, the TCU should decide the matter (Art. 71).

In addition, nomination for the TCU's highest positions—the ministers—used to be conducted by the president and ratified by the Senate. The 1988 Constitution changed this: the president is allowed to choose one-third out of the nine ministers, and, out of these, two-thirds must be chosen among the TCU's technical staff (Art. 73) and the other two-thirds are appointed by Congress (Art. 49). The ministers appointed by the president must be approved by the Senate after a public hearing (Art. 52). Finally, the president of the TCU is chosen by the ministers, and all of whom have the same lifelong privileges and prerogatives as judges in the judiciary branch (Art. 73).

### **2.1.2.2 The Broadened Powers of Justice Institutions**

Just as the 1967 Constitution had established, the 1988 Constitution stipulated that it is up to the Supreme Court to analyze and rule common criminal offences against the president, members of Congress, the general prosecutor, and the tribunal's own ministers (Art. 102).<sup>61</sup> The process of nomination for justices also remained the same: justices are nominated by the president, but the nomination must be approved by the Senate.<sup>62</sup> The 1988 Constitution,

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<sup>61</sup> Art. 113 in the 1967 Constitution.

<sup>62</sup> Art. 101, 1988 Constitution; Art. 113, 1967 Constitution.

however, re-established that the number of justices should be 11 instead of 16 (as during the military government) (Art. 101). In terms of safeguarding the country from abuse of power that may threaten the separation of powers, the Supreme Court plays the most important one as the 1988 Constitution established its primary responsibility would be to rule on direct actions of unconstitutionality (Art. 102).

The judiciary overall is assured administrative and financial autonomy (Art. 99), which means they can decide how to use their budget as well as propose what the budget should be to the government. This was extended to the Public Prosecutor's Office, which was not described as part of the judiciary in the 1988 Constitution; instead, it was described as a "position essential to justice" (in Chapter IV). During the dictatorship, the Public Prosecutor's Office had been attached to the executive branch. It was responsible for filing criminal charges and legally defending the interests of the State and officeholders (1967 Constitution, Art. 137 and 138). The new constitution made it independent from all branches. It also broadened its role as the Public Prosecutor's Office was given the "duty to defend the juridical order, the democratic regime and inalienable social and individual interests" (Art. 127).<sup>63</sup>

In addition, Art. 129 specified that it is up to the Public Prosecutor's Office to ensure effective respect by the public authorities and by the services of public interest for the rights guaranteed in the constitution by taking the required action to ensure such rights; to institute civil investigation and public civil suit to protect public and social property; to institute action of unconstitutionality or representation for purposes of intervention by the Union or by the states; and to issue notifications in administrative procedures within its competence, requesting

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<sup>63</sup> Free translation for: "[...] *incumbindo-lhe a defesa da ordem jurídica, do regime democrático e dos interesses sociais e individuais indisponíveis.*"

information and documents to support them, under the terms of a supplementary law (Items II, III, IV, VI). Besides broadening the Public Prosecutor's powers, the new constitution also granted lifelong tenure to its members (Art. 128).

The head of the Public Prosecutor's Office is the general prosecutor, who used to be nominated by the president but subject to approval by the Senate (1967 Constitution, Art. 138). The 1988 Constitution maintained the nomination proceedings, but specified that the general prosecutor is nominated for a two-year mandate (Art. 52) and can be removed by the president subject to an authorization given by the simple majority of the Senate. Finally, the Federal Police, which had not received much attention in the 1967 Constitution gained new powers through the 1988 Constitution. Two roles are important in terms of checking abuse of power at the national level: the exclusive function of being the "judicial" police of the Union, and the duty to detect criminal offences against the political and social order or against the interests of the Union (Art.144).

### **2.1.2.3 The Lack of Institutional Incentives for Party Discipline**

As explained in Section 2.1.1, Brazilian legislation offered several incentives for party fragmentation. In addition, some of the features of the Brazilian system offered and continue to offer little incentives for individuals to comply with their parties. One of the reasons is particular to the democratic period between 1989 and 2002: until that year, Congress members who were elected automatically had the right to run for the same position in the following election—even if they acted in complete opposition to the party's program (they were so-called birth-right candidates).<sup>64</sup> That practice was introduced in 1974 through Law n. 6,055 which later became

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<sup>64</sup> Free translation for: *candidatos natos*.

the bill n. 1,853, also in 1974. It was later revoked by the Supreme Court in 2002. Yet, between 1989 and 2002, it meant that parties did not have much control over elected members as they could not punish the latter in case of non-compliance with what parties recommended.

Other features of the Brazilian political system that encourage individualism and weak commitment within parties are still present. First, presidentialism, contrary to parliamentarism, does not offer many incentives for members to comply with parties as its “winner-takes-all” aspect makes it less inclusive. In a parliamentary system, there is an incentive to follow the party line as it helps the party to be in office or to overthrow the one in office. By contrast, in a presidential system, following the party line does not significantly affect the position of the party in the government (Mainwaring, 1990; Riggs, 1988).

The second reason concerning incentives for non-compliance regards Brazil’s two electoral systems. Presidents, governors, mayors, and senators are chosen through a majoritarian electoral system: candidates with the absolute majority of votes are the ones elected. In the case of presidents, the 1988 Constitution established that if a candidate does not have more than 50% of the votes (excluding blank and null ones), there is a second round between the two candidates with more votes. As will be discussed in the following section, the 1989 election, in which Collor was a candidate, was the first election to use this formula.

Federal deputies, in turn, are chosen through a different electoral system—a proportional open list that works in accordance to the following steps: first, voters choose a candidate or a political party legend. The votes received by each party (either from the candidate or from the legend) are then counted, and the number of positions available are distributed proportionally to parties. Finally, parties divide the number of positions to which they are entitled among the most voted candidates. It is thus up to the candidates’ ability to gain votes for their name that

enables them to be elected. Hence, during elections, they are competing not only with candidates from other parties, but also with candidates from their own parties.

Third, the Brazilian political system relies on strong federalism. The 1988 Constitution introduced fiscal decentralization by increasing the fiscal capacity of the states (Art. 159). In association with the Complementary Law n. 62 in 1989, it increased the amount of resources that the federal government would have to transfer to states from 14% to 21.5%. This, associated with open list elections, affects legislators' behavior by offering more incentives for politicians to be loyal to the electorate of the state rather than to the party. Moreover, state-level actors become more influential in pressuring national legislators to respond to state interests. In this sense, state governors' ability to influence federal politics became greater (Durand & Abrúcio, 1998) as they also control access to state ministerial jobs and are the ones who have access to the federal budget. Thus, a close relationship with the governor may have a greater impact on political campaigns than following party rules given the role of state interests and the weight of the electorate because of open lists. In short, it is in federal deputies' best interests to be on good terms with governors and loyalty to the electoral base may influence congressmen behaviour more than partisan ideology.

Granted, the points raised above encourage individualism, which could be minimized if parties had mechanisms to control and discipline their members or if electoral rules did not allow candidate to switch from one party to another so easily. Yet, this is not the case. The 1988 Constitution stated that it was up to parties to establish their own rules concerning discipline and loyalty (Art. 17). The open list representation system weakens party control as parties have no form to punish or reward members with changing the order of the list of candidates depending on their behaviour. In addition, parties could and can present a large number of

candidates for these positions. In the early 1990s, they could present 1.5 times the number of seats to be filled; between 1997 and 2015, 2 times; since 2015, they can present 1.5 times that number except for electoral districts that have less than twelve representatives.<sup>65</sup> For instance, a party in 1989 could present 90 candidates the state of São Paulo, and can currently present 105. Given the large number of candidates and that it is up to popular voting and not to parties to decide which candidates will become representatives, the system “gives the electorate exceptional choice in choosing individual candidates and weakens party control over candidates” (Mainwaring, 1990, p. 6).<sup>66</sup>

Party switching, in turn, is easy and almost costless; if deputies from a particular party feel too pressured by their party, they can just switch to a different one. As mentioned in Section 2.1.1, the end of the military government and the beginning of the democratic period in Brazil offered several incentives for the creation of new parties. This means that there are more options for candidates who do not comply with party guidelines as it is easy to switch from one party to another or to simply create a new party. Sarney leaving the ARENA and creating the PDS is an example of this. Collor himself had been part of the PMDB and switched to the small PRN. It is also possible for candidates to run for office through a small party—to get more time on TV, etc.—and then switch to a large one once elected. In short, presidentialism in itself is not a cause for non-compliance; but, associated with the two types of electoral system and the lack of mechanisms for parties to discipline their members, it favours candidates over parties. Institutional features of Brazil, in sum, offer incentives for party fragmentation and non-discipline while making it extremely important for politicians to craft coalitions.

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<sup>65</sup> As established by Law 4,737 of 1965, Law 9,504 of 1997, and Law 13,165 of 2015.

<sup>66</sup> For more information on Brazil’s party system, see Mainwaring (1999), Figueiredo & Limongi (1995), Mainwaring & Pérez-Liñan (1997), Santos (2002), and Cheibub, Figueiredo & Limongi (2009).

#### 2.1.2.4 A Strong Presidential System

The new constitution established that presidential candidates must be registered by a political party to compete for the four-year mandate, and that presidents are elected by absolute majority (Art. 82). A runoff election is held in case that an absolute majority is not attained (Art. 77). However, although the 1988 Constitution was an attempt to create an institutional framework that stood in contrast to the country's authoritarian past, that ended up not being the case. The contrasting powers laid out in the 1988 Constitution show the institutional continuity between the authoritarian period and the democratic one (Figueiredo & Limongi, 1994, 2000; Alston & Muller, 2005). In comparing the powers held by the executive during the military period and after the 1988 Constitution, Figueiredo & Limongi (1994) observe that the preponderance of the executive was maintained in the sense that Congress could not obstruct the executive actions.

Some "imperial"<sup>67</sup> characteristics remained: presidents had and still have the "exclusive power to... veto bills, either in whole or in part"<sup>68</sup> (Art. 84, V), the power to choose what areas to prioritize (given their authority over the execution of the budget), and the capacity to issue and reissue executive decrees or *medidas provisórias* which remained the same even though they are no longer called *decretos-lei*. Indeed, the *medidas* are supposed to be used "in relevant and urgent cases"<sup>69</sup> and lose effectiveness if they are not converted into law by Congress within sixty days (Art. 62). What constitutes "relevant and urgent," however, is up to the president's

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<sup>67</sup> To use Lamounier's (1993) expression.

<sup>68</sup> Free translation for: "*vetar projetos de lei, total ou parcialmente.*"

<sup>69</sup> Free translation for: "*em casos de relevância e urgência.*"

discretion and it is important to notice that, once issued, they have “the force of law”<sup>70</sup> even though Congress still has not made a decision on them.

Federal Deputy Gonzaga Patriota,<sup>71</sup> who was part of the Constituent Assembly and is currently a federal deputy, argues that in practice the only thing that changed was the name of the mechanism. Ruben Figueiró,<sup>72</sup> who was also part of the Constituent Assembly, remembers that there were constant debates on that matter at the time. However, he recalls that the *medidas* were seen as necessary because of the slow legislative process that involved (and continues to involve) a large number of congressmen and too many conflicting ideas. Yet, in Figueiró’s view, there is clear abuse of power through their use and it has become “a bastard child”<sup>73</sup> of the 1988 Constitution. In fact, according to Figueiredo & Limongi, they are “the most powerful legislative tool held by the executive branch” (1999, p. 13).<sup>74</sup> Because of them, the executive branch is “the main *de jure* and *de facto* legislator” (1999, p. 11).<sup>75</sup>

The preponderance of the executive in the 1988 Constitution was not an arbitrary act; it was rather a reflection of the shared belief of the time (Sallum & Casarões, 2011). Back in the 1989 elections, it was expected that the president would be a powerful figure that could decide what was best for the country. The centralization of power in the presidential position was a legacy from authoritarian times: the idea that a ruler had his/her powers legitimized by tradition still remained; it was a traditional-type authority: citizens were used to having a strong president.

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<sup>70</sup> Free translation for: “*força de lei.*”

<sup>71</sup> Interviewed on October 13, 2014, in Brasília, Brazil.

<sup>72</sup> Interviewed on November 13, 2014, in Brasília, Brazil. Figueiró is currently a Senator; he was a federal deputy from 1979 to 1990.

<sup>73</sup> Free translation for: “*filho incestuoso.*”

<sup>74</sup> Free translation for: “*o mais poderoso instrument legislativo de que dispõe o Executivo*” (p. 13).

<sup>75</sup> Free translation for: “*o principal legislador de jure e de facto.*”

The notion of state-driven development was also deeply embedded in Brazilian history. In truth, Brazil had a tradition of strong presidents even before the dictatorship, going back to the populist Getúlio Vargas, who governed on two occasions before the coup (1930-1945 and 1951-1954).

Indeed, the 1988 Constitution ensured there would be different mechanisms to hold the president and other politicians accountable. There was special attention given to the separation of powers, as explained in this section. It would, however, be naïve to think that the description of normative limits to abuse of power would imply real limits. As Sadek & Cavalcanti point out, “every republican Brazilian constitution has adopted a system of checks and balances, [but] in practice the executive branch has had few checks upon its powers” (2003, p. 202). Normative principles based on legality, as pointed by Sadek & Cavalcanti (2003), are not necessarily translated into reality. In fact, some of the presidential checks described in the 1988 Constitution already existed in the 1967 Constitution during the military government.

Ironically, the “authoritarian” constitution had established that presidents could be tried by the Senate in case they made an attempt against “the free exercise of the powers of the Legislature, Judiciary, and constitutional powers of the units of the Federation” and the “exercise of political, individual, and social rights.” This illustrates the distance between the legality and the reality in Brazil during the military government, as it was an oppressive regime when it came to political rights, and decision-making was centralized in the executive branch, regardless of what the constitution stipulated. As an example, it is interesting to consider that during that period, it was established that common criminal offences concerning presidents would be tried by the Supreme Court (Institutional Act n. 6, 1969).

Yet, as previously explained, the military government increased the number of justices from 11 to 16 just so they could nominate more names in their favour, which obviously

undermined the fairness of potential trials. The case of presidential nominations for positions such as the general prosecutor and even justices in the Supreme Court was not too different. Constitutionally, these nominations were subject to Congress' approval, but this was hardly an oversight mechanism when the military had suspended political rights of those they considered to be a threat to the regime. The possibility of having an impeachment for crime of responsibility and a Congress able to initiate CPIs lose their power when real opposition is not present in both legislative houses.

Beyond illustrating the difference between legality and reality, the examples above show that such institutional mechanisms to check abuse of power depend heavily on the political conditions to work. The vulnerability of most institutional checks remained in the 1988 Constitution (which is the case of the ones that remained from authoritarian times). For instance, the possibility of initiating the political trial of the president and of creating CPIs are hardly horizontal accountability mechanisms if the president has the support of the majority of Congress. In addition, the creation of a CPI does not mean that it will be concluded and provide outcomes—out of the 128 initiated during the military government, only 71.8% were concluded.<sup>76</sup> The TCU, in turn, is also hardly a horizontal accountability institution in case the same group governs the country for a long time and is able to nominate most of the ministers. Also important, the TCU is subordinate to Congress and is defined as an auxiliary body. Finally, the TCU is required to notify the proper branch in case of irregularities or abuses (Art. 71). But what can it actually do if it notifies the branch and the latter does not take action? Not much in the early 1990s.

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<sup>76</sup> Banco de dados Legislativos, CEBRAP.

As was the case during the military period, nominations are supposed to be overseen by the Senate. For instance, as discussed, the president nominates justices for the Supreme Court, but needs the approval of an absolute majority of the Senate (Art. 101). The president can also remove the general prosecutor from office on the president's initiative subject to an authorization given by the simple majority of the Senate. If the president has the majority in the Senate, this can become a dangerous mechanism to avoid punishment. In opposition, if the president lacks majority in both houses, the vulnerability of institutional checks described in the 1988 Constitution means they can also be used against the president. After all, the definition of "crime of responsibility," which remained from the 1967 Constitution, is extremely broad, leaving the president vulnerable to political trial for anything that can be interpreted as being opposed to the constitution, ranging from threatening the exercise of the legislature's powers to attempting against social rights (as stipulated in Art. 85).

It is important to take into consideration that the first direct elections for president after the military government took place only one year after the new constitution had been drafted. The institutional features—which enforced a fragmented party system, provided means for the legislature and the judiciary to constrain presidential power, but also granted presidents with the possibility of governing by decrees—provided two different possibilities to avoid political deadlock: to bargain with politicians in order to have the majority in the legislative houses or to take a more authoritarian path and ignore them. In the case of the first possibility, the fragmented system made and makes it extremely difficult for a president to have robust support in Congress.<sup>77</sup> The access to resources and to nominating political appointee jobs, however, puts

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<sup>77</sup> Mainwaring (1997), Shugart & Carey (1992), Mainwaring & Shugart (1997).

the president in a powerful position to bargain with legislator—even though these two elements combined may also encourage corruption.<sup>78</sup>

In case presidents took a more authoritarian path, the existing institutional checks could put their position in danger. Yet, ignoring them was not out of the question since, in 1989, Brazil not only had a tradition of strong presidents, it also had the greatest disparity between legality and reality—after all, institutional checks had also been present during the centralized and oppressive military government. As will be discussed in the following sections, Collor's government illustrates this second possibility as he behaved in a more authoritarian style despite the *de jure* institutional checks. He thus perfectly matched the expected behaviour of a president in a delegative democracy.

## **2.2 The “Maharaja-Hunter’s” Perfect Strategic Behaviour**

### **2.2.1 The Construction of the Perfect Candidate**

Fernando Collor de Mello built his image as “saviour” by making charismatic authority the basis for his legitimacy as president. Once he was elected, he behaved in perfect accordance with what would be expected to be the strategic behaviour of a president in a delegative democracy. He had been successively appointed mayor of Maceió from 1979 to 1982 at a time when the military government did not allow election of the mayors of state capitals. Competing through PDS, he won the position of federal deputy in the 1982 general elections. Collor's PDS actually won a significant number of seats—235 out of the 479 seats available—in the Chamber

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<sup>78</sup> This will be further discussed in Chapter 4.

of Deputies.<sup>79</sup> In the 1986 elections, Collor became governor of the small state of Alagoas from 1987 to 1989 by running through the opposition, PMDB. As governor, he used his mandate as a platform to attack the highly unpopular Sarney, whose government had an approval rate of only 32%<sup>80</sup> after the failure of the Cruzado Plan. In September 1989, he projected himself nationally (Almeida, 2013; Biroli & Miguel, 2013). His political career was fast-paced: in 10 years he went from being the mayor of Maceió, the capital of the small Northeastern state of Alagoas to being the president of the country.

His pre-campaign, which involved a moral crusade concerning “going after the maharajas,” gained him national prominence (Almeida, 2013, Biroli & Miguel, 2013). On April 22, 1987, *Veja* magazine, a major news weekly, published an interview entitled “I will end the maharajas: The governor of Alagoas speaks of his victory against the millionaires state bureaucrats and promises to keep his moralizing crusade.”<sup>81</sup> The term “maharajas” (referring to government officials who lived so well that they could be compared to Indian princes) was incorporated in his speeches for having a symbolic appeal (Conti, 2012). Collor was soon referred to as “the maharaja-hunter”<sup>82</sup> by the press because of some of his policies were considered to be contrary to Alagoas’ wealthy elites (Franceschini, 2014; Biroli & Miguel, 2013; Lattman-Weltman, Carneiro & Ramos, 1994).

Collor was actually from a privileged political and business family. His grandfather had once served as a Labor Minister. His father, in turn, had founded the Arnon Affonso de Mello

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<sup>79</sup> PMDB was in second place, with 200 seats, while PDT had 23 representatives elected, PTB 13, and PT 8. PDS also won the majority of the senators: 15 when compared to PMDB’s 9 and PDT’s 1.

<sup>80</sup> Source: DataFolha. The “approval rate” comprises those who consider the government to be great (“ótimo”) or good (“bom”) as opposed to bad (“ruim”) and terrible (“terrível”).

<sup>81</sup> Free translation for: “*Vou acabar com os marajás: o governador de Alagoas fala de sua vitória contra os funcionários milionários e promete manter sua cruzada moralizadora*” *Veja*, April 22, 1987, p. 4.

<sup>82</sup> Translation for: “*o caçador de marajás.*”

organizations, which owned newspapers and radio stations, and had also been a senator for the state of Alagoas. Collor's first wife, Lilibeth Monteiro, was the heiress to one of Brazil's largest fortunes at the time. Rosane Malta, his second wife, to whom he was married while disputing the presidency, was from a traditional political family in Alagoas. Despite these facts, he managed to present himself as an outsider who did not belong with these "maharajas."<sup>83</sup>

On March 23, 1988, he was on the cover of *Veja* magazine under the headline "Collor de Mello: The maharaja-hunter" and lauded inside the magazine as one of the most popular governors in Brazil. Collor was portrayed not only as having high moral standards,<sup>84</sup> but as being "athletic, a former karate champion, always very careful about his suits and shirts—which had double cuffs, closed with cufflinks—the governor still has full hair" (p. 41).<sup>85</sup> Often portrayed as young, modern, energetic, and even nice-looking in the media, it is clear that his image was built even before he finished his mandate as governor. Interestingly, until 2013, no other Northeastern presidential candidate has had so many positive covers on *Veja* during the campaign or at the beginning of the mandate (Biroli & Miguel, 2013).

As explained in Section 2.1, although he had to belong to a formal party in order to compete, the party itself did not matter so much when it comes to elections; it was all about the individual candidate. Collor was in a small party that had been founded in 1985 as the Youth Party (Partido da Juventude, PJ) and that had changed its name in 1989 to the National Reconstruction Party (Partido da Reconstrução Nacional, PRN). He had also been part of other political parties, including the large PMDB. Nevertheless, the fact that Collor was not part of a

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<sup>83</sup> Skidmore (2000) classifies Collor as having a "schizophrenic political identity": he was the embodiment of a modern Brazil while being from an old-fashioned political Northeastern clan.

<sup>84</sup> IstoÉ-Senhor (April 26, 1988), *Veja* (December 9, 1987; March 23, 1988; May 17, 1989; March 11, 1989; August 9, 1989).

<sup>85</sup> Free translation for: "*de porte atlético, ex-campeão de caratê, sempre muito cuidadoso com os ternos e camisas – de punhos duplos, fechados por abotoaduras -, o governador ainda conserva os cabelos cheios*" (*Veja*, March 23, 1988, p. 41).

“proper” party was transformed into a positive feature: it distanced him from the ongoing dirty politics (Matos, 2008).

As a presidential candidate, his athletic ability was widely broadcasted with pictures circulating of him jet-skiing, doing karate, swimming; there was even one of him at the gym wearing a shirt with the colours of the Brazilian flag.<sup>86</sup> *Veja* once captioned a picture of Collor swimming (which took up half of the page) with the following headline: “Collor de Mello takes care of his physical shape with daily 20 minutes of swimming and jogging in Lago Sul, in Brasília: ‘I want to see if other candidates can keep up.’”<sup>87</sup> The same issue mentioned that Collor maintained his health with *guaraná* powder every day. After all, he had to keep his good physique of 90kg and 1.89m (*Veja*, August 9, 1989). The perfect presidential candidate in a delegative democracy was born: Collor was virile, courageous and strong—and that set him apart from the other twenty-one candidates. Beyond that, he was also allegedly willing to “consolidate democracy” (Silva, 2005) and fight corruption. And, finally, Collor’s political campaign was based on neoliberal free market policies. Both his campaign and the media portrayed Collor as a champion, a winner (Santos, 2008; Lattman-Weltman & Carneiro, 1994), and a hero—the most willing and physically prepared candidate of them all.

Having the most votes, 28.52% of them,<sup>88</sup> in his favour in the first round, Collor had to run a second round since the 1988 Constitution stated that more of the simple majority was needed for a candidate to be successful. His opponent for the runoff was Lula, who won

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<sup>86</sup>These pictures can be seen on *Veja* (December 24, 1989; August, 9, 1989). Other examples are *Folha de São Paulo* (February 13, 1990, p. A7), *Veja* (March 23, 1987), *Estado de São Paulo* (March 6, 1990; April 12, 1990).

<sup>87</sup> Free translation for: “*Collor de Mello cuida da forma física com vinte minutos diários de natação e cooper no Lago Sul, em Brasília: Quero ver os outros candidatos agüentarem esse pique*” In: *Veja* (June 21, 1989, p. 39).

<sup>88</sup> 22,611.011 votes. Source: Banco de Dados Políticos das Américas.

16.08% of the votes in the first round.<sup>89</sup> Lula's program focused on land reform and stated that funds should be used for the economic development of the country rather than for a debt he believed the government had no obligation to pay. Collor's, in turn, kept emphasized market-friendly programs (Campello, 2015).

The media continued to be a decisive factor in the construction of the Collor persona (Biroli & Miguel, 2013), helping to create and perpetuate the myth of the nation's "saviour." News extensively made use of a polarization between the two candidates, portraying Collor as the "superior" well-prepared candidate and Lula as the "inferior" uneducated and unprepared. In her analysis of journalism during the democratization period in Brazil, Matos (2008) concluded that the general pattern of the press of the 1989 presidential elections was highly biased and lacked professionalism.

Collor actually had an almost totally favourable media on his side (Skidmore, 2000; Biroli & Miguel, 2013; Matos, 2008). That is not surprising; media outlet owners, after all, pursue their own goals and these were certainly much more aligned with Collor than with Lula. Collor's plan involved free market policies, which could benefit the economic elite. Actually, in an interview to UOL on November 15<sup>o</sup>, 2009, Collor admitted that the relationship he had with Globo, Brazil's most watched TV network, certainly helped him to become president. Roberto Marinho, the owner of Globo at that time, actually stated "I'll influence as much as I can in his favour"<sup>90</sup> when talking about Collor in an interview that was published in the newspaper Folha de São Paulo in July 27, 1989. More recently, José "Boni" Bonifácio, a director of Globo network, has confessed in an interview to GloboNews in 2011 that every time Globo

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<sup>89</sup> 11,622.673 votes. Source: Banco de Dados Políticos das Américas.

<sup>90</sup> Free translation for: "*eu vou influir o máximo a favor dele.*"

mentioned or showed parts of the last debate before elections, there was editorial manipulation to favour Collor (Carta Capital, November 29, 2011). Collor won with 49.95% against Lula's 44.21% in the second-round elections.

### **2.2.2 Collor's Traditional-Charismatic Authority**

As mentioned in Section 2.1, society was used to accepting the government's measures as legitimate. The idea of an all-powerful leader was still very fresh in Brazilian society. Although it was elections that put Collor in power, he still enjoyed traditional legitimacy. This was not only because society was accustomed to an all-powerful dominant executive, but also because Collor's election was based on the charismatic relationship he had created with citizens. There was an emotional link of trust allowing him to govern as wished in order to save the country from the crisis. Society was not only "used to" having a strong executive that could make decisions for the country as wished; they were also willing to have one. That powerful dual legitimacy, associated with the apparent lack of institutional checks, created a seemingly unbreakable basis for Collor's authority.

Not only did the disillusioned Brazilians see Collor as the solution to all of the country's problems, but he initially enjoyed a honeymoon with both the media and the public (Manzetti, 2007; Skidmore, 2000). Once he was elected, Collor's strategic behaviour was exactly as would be expected in a delegative democracy: he relied on his vertical relationship with citizens. The concentration of power in his hands went unquestioned because of the traditional-charismatic legitimacy he enjoyed as president. He behaved as if his mandate emanated from a strong

political will that meant he could do as he pleased. In the months between his election and his first day as president, his approval rate was approximately 89%.<sup>91</sup>

That dual legitimacy also seemed to result in a dominant strategy of not cooperating with parties, federal deputies, senators and the like. Collor behaved as if his individual payoff would always be greater if he governed on his own and it was thus not surprising that he presented himself as above parties. Actually, even though ten parties (including his own) had officially supported Collor, coalitions were not part of his governing style.<sup>92</sup> The governing elite—the ones who actually had significant decision-making power in Brazilian politics—was thus made up only of appointed ministers and his own staff.<sup>93</sup> These were, as O'Donnell (1994) would say, the alpha and omega of politics at the time.

That dual legitimacy concerning his authority as president made his position seem to be stable and strong. He concentrated as much power as he could in his hands (Heine & Weiffe, 2015; Manzetti, 2007). By claiming that he needed to resort to emergency measures to deal with the magnitude of the crisis, he expanded his presidential power (Manzetti, 2007; Pereira, Power & Raile, 2011). This could be observed through his *decretismo* way of ruling: Collor made frequent use of *medidas provisórias* and bypassed Congress (Skidmore, 2000). He even made use of a *medida*, n. 179 in 1990, to make a vehicle available for his vice president. Although it immediately takes effect when issued, the *medida provisória* is sent to Congress and if not approved within 60 days, it lapses.

The main problem in making use of the *medidas provisórias*, however, lays more on why they are used. In the case of Collor, it was his main instrument to rule: in the first two months,

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<sup>91</sup> Source: DataFolha (1992)

<sup>92</sup> PFL, PTB, PDS, PRN, PL, PDC, PSC, PSD, PTR, PST – Source: Folha de São Paulo, March 13, 1990.

<sup>93</sup> This will be further explored in Section 3.2.

he issued 27 *medidas* (the highest number until the present moment).<sup>94</sup> That, along with his lack of effort in sharing power with congressmen, illustrates that he actually did not mind bypassing Congress. He often reissued his *medidas* when Congress failed to approve them—of the 89 *medidas* he issued during his time in power, 70 were reissued. That certainly did not make him popular with the political elite of the time. Patriota, who has been a constant figure in the government since Brazil transitioned back to democracy, actually considers Collor to have behaved as a self-entitled president who governed as he wished just because he won the elections. Since then, Patriota claims, no other president has behaved in this way.<sup>95</sup>

Weber writes that a charismatic-type leader “demands obedience and a following by a virtue of his mission” (1978, p. 20). Indeed, Collor’s policy-making style involved the imposition of austerity packages “which, reneging on promises made on the campaign trail, imposed much of the burden of the economics on the popular sectors” (Heine & Weiffen, 2015, p. 52). The first of them—dubbed the “New Brazil Plan,”<sup>96</sup> but informally known as “Collor I”—was announced on the day he assumed office and took effect in March 1990. The aim was to control the inflation rate, which had reached 1,037% in 1989.<sup>97</sup> Some features of the plan were a freeze on the withdrawal from any bank account surpassing C\$50.000 (approximately US\$1,000 at the time) for one year and a half, the end of many subsidies, tax increases and the privatization of state-owned enterprises.

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<sup>94</sup> Source: DataFolha

<sup>95</sup> Even though he claims Rouseff personally had not been very respectful to Congress—which she managed to do, in his opinion, because her party is a large one and has governed through major coalitions. This interview was conducted before Rouseff’s impeachment.

<sup>96</sup> Free translation for: “Plano Novo Brasil.”

<sup>97</sup> This can be observed in Figure 3 in this Chapter.

Yet, there were no violent reactions since “hopes for the new government fighting inflation were still very high, and drastic measures in the economic plan were accepted as necessary” (Kada, 2003, p. 121). The approval rate for the Collor I Plan was between 70-80%.<sup>98</sup> However, the plan was not successful as inflation was not controlled; a new one then went into effect in January 1991: “Collor II,” which involved price and wage controls and was also unsuccessful. “Collor II” had an initial approval from 49% of society (and only 35% of rejection) according to IBOPE polls, owning the headline “Collor II Plan is supported by the majority”<sup>99</sup> on the *Estado de São Paulo* issue of February 23, 1991. The poll also showed that 67% agreed with the price controls imposed by “Collor II” while only 28% disagreed with them; and 83% agreed that businessmen were taking advantage of the constantly varying prices because of inflation as opposed to 10% who did not think that was happening.<sup>100</sup> The trust society placed in him seemed to be unconditional—at least at that point.

In sum, Collor had his image built around the idea of heroic attributes and his behaviour as president was nothing different from delegative characteristics. Citizens were willing to delegate power to one individual to fix the country’s problems and Collor’s demonstrated attributes (strength, courage, virility, etc.) and willingness to do so established an emotional link between the ruler and the followers. Once he was elected, he was “authorized” to govern as he saw fit—and so he did. But, if Collor’s strategic behaviour to remain in power was exactly as the expected from a president in a delegative democracy, what could possibly fail and lead to his impeachment?

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<sup>98</sup> Source: DataFolha; IBOPE, 1990.

<sup>99</sup> Free translation for: “*Plano Collor 2 tem apoio da maioria.*”

<sup>100</sup> Those that did not agree or disagree either decided to not give an opinion or claimed to not have one on that matter.

### 2.3 Corruption, Media, and Painted-faces

The apparent conviction that the president could govern as he saw fit, his *decretismo* governing style, and the apparently unconditional trust posited in Collor as a “hero” made it seem improbable that something as extreme as an impeachment could happen. Although citizens were facing economic restrictions because of his austerity packages, his position as president did not seem to be threatened. Even some accusations of corruption in the first two years concerning his government and his wife did not threaten his position. Collor was still the “acclaimed saviour” and no accusation was based on evidence directly linked to his name.

However, in May 1992, things changed when Collor was implicated in an influence-peddling scheme concocted by Paulo César Farias, who was his close associate and former campaign finance manager. The president’s own brother, Pedro Collor, accused Farias of extortion and claimed that Collor was benefitting from his scheme. At the time, Fernando and Pedro Collor were in a dispute regarding the media market in Alagoas where they had the Arnon de Mello Media Organizations. PC Farias began invading that market as a competitor and, although it belonged to the Collor family, Pedro was the one specifically running the organizations at the time.<sup>101</sup>

In an interview granted to *Veja*, entitled “Pedro Collor tells everything – PC [Farias] is the figure-head of Fernando,”<sup>102</sup> Pedro claimed to have heard Farias mention that the profits he made were divided with Fernando Collor (70% for Fernando and 30% for Farias).<sup>103</sup> Pedro accused them of taking big commissions and making illegal financial transactions, even though

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<sup>101</sup> Source: Conti (1999), and interview with Pedro Collor in *Veja*, May 27, 1992.

<sup>102</sup> Free translation for: “*Pedro Collor conta tudo - O PC é o testa-de-ferro do Fernando.*”

<sup>103</sup> May 27, 1992.

he mentioned that Collor was not involved in the operationalization of any activity. The illicit part was all on Farias's doing; Collor was "just behind the business deals."<sup>104</sup> According to Mário Sérgio Conti (1999), who was Veja's chief editor at the time, this interview prompted a huge political crisis in Brazil.

Indeed, that was the start of the process that would lead to Collor's impeachment. Once he read the interview with Pedro Collor, former senator Eduardo Suplicy<sup>105</sup> (PT) invited the then Deputy José Dirceu (PT) to pay a visit to Pedro at the Maksoud Plaza Hotel. According to Suplicy, they talked for about five hours with Pedro, leaving the hotel extremely shocked by the revelations concerning Farias' schemes. They then requested the creation of a CPI in Congress to investigate Pedro Collor's allegations.<sup>106</sup> The latter also passed documents that supposedly proved the corruption scheme to Dirceu (Conti, 1999). That same year, Pedro Collor published a book about his brother called *Coming Clean: the Trajectory of a Charlatan*.<sup>107</sup>

It is important to observe that Pedro's accusations "were directed towards the presidency, a fact which pointed to Collor's direct involvement" (Matos, 2008, p. 108). The significance lay in the fact that it involved Collor himself; it was specifically about Brazil's "saviour." As mentioned in the introduction of this chapter, society had high expectations concerning democracy: a democratic government should, after all, make Brazil break out from long-lasting practices of corruption and unfair privileges to politicians. Collor's campaign itself was based on these premises and his public persona was built around the idea of high moral

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<sup>104</sup> Free translation for: "*apenas orienta os negócios.*"

<sup>105</sup> Interviewed in October 14, 2014, in Brasília, Brazil.

<sup>106</sup> As explained in section 2,1, the CPI is as *ad hoc* parliamentary committee created whenever one-third of the members of one or both chambers request it to be created. The CPI process will be detailed in the next section.

<sup>107</sup> Free translation for: "*Passando a limpo: a história de um farsante,*" Brasil: Record, 1992.

standards, as mentioned in Section 2.2.1. The corruption scandal started to dissociate the image of Collor from the hopes concerning democracy.

Still in the month of May, the Movement for Ethics in Politics (*Movimento pela Ética na Política*, MEP) was created out of an idea proposed by federal deputy José Carlos Sabóia (PSB) in a meeting with an NGO, the Institute for Socioeconomic Studies (*Instituto de Estudos Socioeconômicos*, INESC). In an attempt to integrate civil society and politicians, the INESC invited the Bar Association, NGOs, academics, party activists, etc. The MEP was also articulated with some congressmen who took part in its meetings. At the time, Marcelo Lavenère<sup>108</sup> was the president of the Bar Association. In his view, MEP's objective was to keep abreast of the allegations of corruption involving Collor to enforce ethics in political institutions. Extremely pacific and non-partisan, MEP unified people from different backgrounds and 900 different entities came together for that purpose.

Although the political aspects of the impeachment will only be approached in Section 2.3, it is important to point out how it was received by citizens. Congress established a CPI to investigate Pedro Collor's allegations on June 1, 1992. The accumulated information suggesting that the president was corrupt (leaked by the investigative experts assigned by the opposition to the CPI) led to a popular reaction that made it difficult for the president's supporters to not turn their backs on him (Kada, 2003). Citizens took to the streets to protest and demand that appropriate measures be taken concerning the corruption allegations (Weyland, 1993). Throughout the CPI, it became clear that Collor was somehow involved in Farias' deals: there was evidence that the latter had paid for the remodeling of Casa da Dinda, a private property owned by the Collor family in Brasília where he lived during his time as president. There was

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<sup>108</sup> Interviewed on December 1, 2014, in Brasília, Brazil.

also evidence that Farias had purchased a car for the president's children and paid for other expenses of the president and his wife.<sup>109</sup> Besides finding checks issued by false bank accounts, the CPI also heard the testimony of secretaries who detailed the scheme.<sup>110</sup>

The fact that the corruption scandal was around the alleged theft of money for Collor's personal benefit affected the usually accepting behaviour of citizens. Also relevant and, "particularly damaging to the president was the revelation that the president's secretary and Farias were not affected by the bank account freeze that the president had imposed on the general populace" (Kada, 2003, p. 122). Until that moment, there were no protests against Collor's economic packages; despite being negatively affected in the short term, citizens seemed to be accepting of them. However, these packages, which were making it very difficult for poor citizens to survive and affecting the middle class' well-being, began to be regarded as outrageous (Sullam & Casarões, 2011; Weyland, 1993). His approval rate was then only at 15% and his rejection rate hit 48%.<sup>111</sup>

On June 27, 1992, *Isto É* magazine published an article on Collor's driver Eriberto França's side of the story. According to França, Farias paid the president's private bills and Collor's secretary frequently called Farias to ask for money. The image of França, a simple working-class driver, coming out to speak about this issue was "interpreted by the opposition as a revenge of the *descamisados* against Collor, who had defeated Lula" (Matos, 2008, p. 109). The next feature of *Isto É* had Eriberto França on the cover and the headline "Eriberto, a

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<sup>109</sup> O Estado de São Paulo, September 16, 1992; July 27, 1992; July 23, July 26, 1992; September 29, 1992; July 18, 1992. Folha de São Paulo, August 3, 1992; July 16, 1992; July 12, 1992; July 19, 1992; July 20, 1992.

<sup>110</sup> Folha de São Paulo, July 17, 1992.

<sup>111</sup> 35% considered it to be regular and 2% claimed to not have an opinion ("*não sabe*"). Source: DataFolha (1992).

Brazilian.”<sup>112</sup> Eriberto, a Brazilian—a person from the people—claimed that Collor was involved in deals that suggested he did not have the people’s interests at heart. França was not only a crucial witness who confirmed part of Pedro Collor’s accusations, but he put public doubts to rest when it came to the president’s personal involvement in the whole scheme. Suplicy, who was part of the CPI, recalls that França and other witnesses were essential in making clear to the general public that Collor was involved in wrongdoing.

The media at the time constantly resorted to non-political aspects to undermine Collor’s image.<sup>113</sup> Newspapers and magazines also published allegations without proper investigation (even though some of these allegations would be proven to be true during the CPI). Facing a threatened impeachment, Collor went on national television on August 13 and gave a speech pleading citizens to show their support for him and requesting them to go to the streets wearing the colours of the Brazilian flag on August 16. On that Sunday, *Folha de São Paulo* published the headlines “70% think that Congress should approve Collor’s impeachment” and suggested that people should rather “wear black to protest.” On that Sunday, instead of following the president’s request, citizens—mostly young students—took to the streets wearing black clothing and paint on their faces. That marked the launch of the movement that entered history as the “painted-faces” movement, one of the leaders of which was which was then president of the National Students Union (UNE), current Senator Lindberg Farias.

On August 25, newspapers published the final report of the CPI. *Veja* soon published an editorial entitled “the president must leave”<sup>115</sup> which claimed that Collor “had betrayed the trust

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<sup>112</sup> August 7, 1992.

<sup>113</sup> Such as a potential involvement of Collor with Pedro’s wife (*Veja*, May 27, 1992) and his involvement with “black magic” (mentioned first during the interview with França on *Isto É*).

<sup>115</sup> September 2, 1992.

of Brazilians, lost moral authority and has no credibility to govern.” *Jornal do Brasil*, which had been the least critical of Collor (Matos, 1998), stated in its August 30 issue that the support it had given to the president had been inspired by political, economic, and moral reasons concerning his project of market economy. Yet now claimed, however, that Collor had never been the beginning of a new era for Brazil. Voices demanding Collor’s impeachment grew in the streets. His approval rate at that time was around 9% with 68% considering his government to be “bad” or “terrible.”<sup>116</sup>

On September 1, approximately 100 MEP representatives—including Marcelo Lavenère and Barbosa Lima Sobrinho, President of the Brazilian Press Association (ABI)—walked together from the Bar Association building to the Congress building to present a letter requesting the impeachment of President Collor. By the time they arrived there, the number of people walking together had grown enormously. The CPI then announced through the *Diário do Congresso Nacional* on September 30, 1992, that it had created a special commission “to give a position on the accusation against the President of the Republic for crime of responsibility, offered by Barbosa Lima Sobrinho and Marcelo Lavenère” (p. 22104).<sup>117</sup> It decided to suspend Collor, who was removed from office on September 29.<sup>118</sup>

Having been elected on the basis of public hope for change, the corruption scandal greatly damaged the trust voters had placed in Collor. Indeed, “accusations that the president was benefitting from corrupt behaviour angered the populace, all the more because the public faced economic hardship as a result of those economic policies and because it expected the

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<sup>116</sup> 21% considered it to be regular and 1% declared to not have an opinion (“*não sabe*”). Source: DataFolha, August/September 1992.

<sup>117</sup> Free translation for: “*destinada a dar parecer sobre a denúncia contra o Senhor Presidente da República por crime de responsabilidade, oferecida pelos senhores Barbosa Lima Sobrinho e Marcelo Lavenère.*”

<sup>118</sup> He was finally impeached on December 29, 1992. That process will be discussed in the next section.

president to be the agent of positive change, not of too-familiar corrupt politics” (Kada, 2003, p.128). There was a general sense of disappointment concerning Collor, who had deceived the nation in the only way citizens would not be willing to accept. On September 29, before his removal, polls actually showed that 80% were in favour of his impeachment and only 13% were against it.<sup>119</sup>

Even though there had been accusations of corruption before, this one was different. Interestingly, Lavenère points out that Collor “was personally involved as the one responsible for the improbity acts. The allegations were not against Collor’s party; the allegations were not against the ministers of Collor’s government; the allegations were not against the president’s staff. The allegations specifically concerned the figure of the president.”<sup>120</sup> Collor was directly connected to the corruption crisis and was seen as taking advantage of his position for private gain and—even worse—he had done so when the rest of the nation was suffering economic pain. The former “acclaimed saviour” had become a “fallen god”; Collor’s charismatic legitimacy broke down.

As can be observed, civil organizations, citizens and the media<sup>121</sup> all had large roles in the process that removed Fernando Collor from office. Veja’s role, particularly, was recognized internationally and Conti received an award from the World Press Review in 1993 (FGV, 2001). The coverage of the impeachment at the time was important because during the military government, to denounce governmental wrongdoing was a risk for the media. Nonetheless, it

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<sup>119</sup> DataFolha

<sup>120</sup> Free translation for: “*Ele estava pessoalmente envolvido como o responsável pelos atos de improbidade. As denúncias não eram contra o partido do Collor, as denúncias não eram contra os ministros do governo Collor; as denúncias não eram contra auxiliares do presidente. As denúncias eram feitas dirigidas especificamente à figura do presidente.*”

<sup>121</sup> For analyses on the relationship between the media and politics in Brazil beyond Collor’s government, see Lins da Silva (2000).

is clear that the media was highly partial during Collor's campaign as well as during his impeachment.<sup>122</sup>

The pacific social movement encompassed by the painted-faces and the MEP also played an important role. Lavenère believes that the impeachment was an outcome of the fact that Collor committed illicit acts by trusting that he was above any type of accountability, including societal accountability. Personally, he judges that "(Collor) did not believe at any point that the figure of the saviour of the country, his image as a leader of the masses, could ever go through a process of impeachment in reason of lack of decorum, (but) he did."<sup>123</sup>

Actually, part of the literature on the impeachment claims that what followed in Congress was the outcome of popular wish. For instance, according to Avritzer (2000) the impeachment would have been a clear outcome of the political strength of social movements that emerged at the end of the 1970s. However, although public demonstrations have an important role, an impeachment takes place because of political grounds—as explained in Section 2.1—and involves the willingness of Congress to go through it. Congress, in turn, is made of rational actors whose preferences do not always reflect the ones of civil society. The following section will thus focus on Collor's relationship with the political elite of the time and on its role in the impeachment.

## 2.4 The Role of Isolation in the Impeachment

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<sup>122</sup> For more information on the relationship between the media and politics in Brazil throughout the years, see Matos (1998).

<sup>123</sup> Free translation for: "*não acreditava nunca que a figura salvadora do país, a figura dele como líder de massas, pudesse sofrer um processo de impeachment por atos de falta de decoro e sofreu.*"

Although necessary, the lack of popular support alone is not sufficient for an impeachment to take place. Sarney's prestige with citizens, for instance, was extremely low with an average of 60% of the population considering his government to be either "bad" or "terrible."<sup>124</sup> He had also faced accusations of corrupt behaviour during his mandate. Nonetheless, his government was not threatened and he finished his mandate on the expected date. Besides, allegations of corruption were and are not an exception in Brazilian politics: they were present during the military dictatorship period,<sup>125</sup> and have been present in every single government that followed Collor's impeachment. Actually, they can be traced back to the colonial period (Fleischer, 1997). Despite this, Collor was by then the only one that had abuse of power checked in such proportions: he was the only one impeached. In this section, I argue that his choice for political isolation played an essential role in that process.

First, as explained in Section 2.1 of this chapter, it is important to observe that Brazil's political system in itself provides incentives for power-sharing arrangements to be made through either formal or informal means. Also, given the wide range of powers to distribute resources and positions, the president in Brazil is in a strong position to negotiate support with other politicians.<sup>126</sup> In this sense, the Brazilian party system "is both a blessing and a curse for the president: while the fragmentation opens up many opportunities to bargain with legislators, the president can rarely rely on a single-party support base large enough to weather impeachment crises" (Kada, 2003, p. 116).

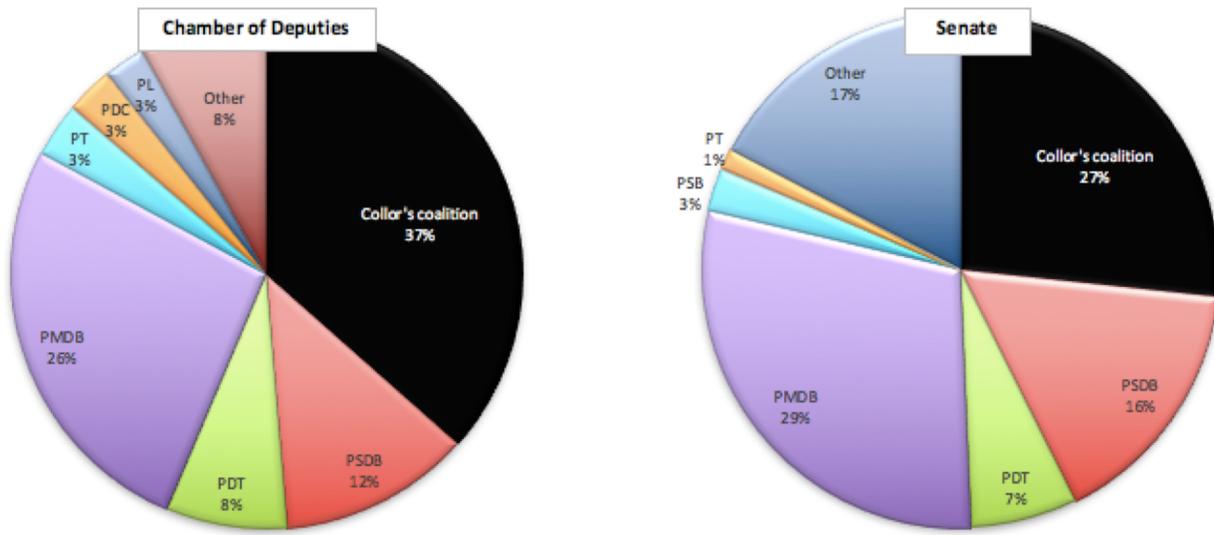
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<sup>124</sup> DataFolha, IBOPE.

<sup>125</sup> For corruption in the military period, see Geddes & Ribeiro Neto (1993), Assis (1984), and Pedone (1989).

<sup>126</sup> See Limongi & Figueiredo (1995), and Santos (2003).

**Figure 4 – Composition of the Chamber of Deputies and the Senate in 1990**



Source: Chamber of Deputies, Senate

In 1988, given the highly fragmented party system, Abranches coined a term that would be widely used to describe the political system in Brazil. In his view, “Brazil is the only country which, as well as combining proportionality, a multisystem and an ‘imperial presidentialism’, organizes the executive based on large coalitions. I will call this peculiar trait of the concrete Brazilian institutionalism, for lack of a better alternative, ‘coalition presidentialism’” (1988, p. 21, 22). Nonetheless, the 1988 Constitution also allowed the president to follow a more authoritarian route, as explained in Section 2.1. Collor clearly chose this one, as Collor’s coalition at the time of his election was formed only by PRN (his party), PDS, PFL, and PTB. As can be observed in Figure 4, these parties represented only 37% of the Chamber of Deputies— PRN counted with 31 deputies, PFL had 90, PDS had 32, and PTB had 28 representatives. They represented 27% of the seats in the Senate—PFL had 90, PDS had 32, and PTB had 28.

As explained in Section 2.2, Collor governed as an ideal-type president of a delegative democracy. He presented himself to be above parties and chose not to share executive power and to trust his status of “saviour.” He thus completely ignored the uncertainty of his position.

Not only had he relied on the vertical relationship with citizens, not recognizing that it might change, but he behaved as if the vote in his favour showed unity and as if he personified that unity. Relying on that, he did not cultivate a relationship with the legislature. The beginning of his mandate was almost a “roman dictatorship”<sup>127</sup>: the legitimacy obtained by Collor through direct elections and the hyperinflation of the time neutralized any role that Congress could have at the time. Indeed, on his first day as president, the “acclaimed saviour” Collor announced 22 *medidas provisórias* and they were all converted into laws by Congress one month later.<sup>128</sup> Although, constitutionally, there should be negotiations between the executive and the legislative branches, he “used his constitutional decree powers as freely as he could” (Hagopian, 2016, p. 121).

After that first period, however, the relationship changed. Collor failed to show any signs of willingness to negotiate with the political elite, including leaders in the legislative branch. He even mentioned in his first anniversary speech in 1991 that he thought *ad hoc* coalitions for specific projects were more democratic. As explained in Section 2.1, there was an institutional polarization: on one side, the strong “imperial” power in the executive’s hands, and, on the other, a set of institutions (parties, Congress, etc.) that was fragmented rather than a consistent bloc (Lamounier, 1993). Moreover, Collor “moved swiftly to trash the internal control organizations within each ministry and federal agencies. Once rid of these independent inspector general auditors, and because Congress was conveniently amiss in its constitutional function of oversight of Executive Branch operations, the corruption scheme operated freely” (Fleischer, 1997, p. 6).

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<sup>127</sup> To use the analogy made by Lamounier (1993).

<sup>128</sup> This concerned an administrative reorganization, the privatization of some state institutions, the liberalization of the economy, and the extinction of some public entities.

**Table 1. Ministers appointed by Collor in 1990**

<b>Minister</b>	<b>Minister appointed by Collor</b>	<b>Party</b>
<b>Social Action</b>	Margarita Procópio	No party
<b>Agriculture</b>	Joaquim Domingos Roriz	No party
<b>Economy</b>	Zélia Cardoso de Mello	No party
<b>Education and culture</b>	Carlos Alberto Chiarelli	PFL
<b>Infrastructure</b>	Ozires Silva	No party
<b>Justice</b>	Bernardo Cabral	No party
<b>External Relations</b>	José Francisco Resek	No party
<b>Health</b>	Alceni Guerra	PFL
<b>Labour and Social Security</b>	Antonio Magri	No party
<b>Aeronautics</b>	Sócrates Monteiro	Military
<b>Navy</b>	Mário César Flores	Military
<b>Defence</b>	Carlos Tinoco Gomes	Military

Source: Biblioteca da Presidência da República

Nevertheless, Collor's lack of a majority in Congress was not due to the highly fragmented party system. Instead, it was his decision to not seek such majority (Sallum & Casarões, 2011). He **chose** not to share the executive power with political parties. He aimed to not form strong party coalitions so that he would not have his political autonomy reduced in any sense (Weyland, 1993; Sallum & Casarões, 2011). In sum, he did not want centers of power to exist except for his own, which also led him to reduce the number of ministries from 18 to 12. As can be observed in Table 1, Collor did not appoint anyone from his own party (PRN) and only the PFL was given two ministries. In October 1990, Jarbas Passarinho of the PDS assumed the Ministry of Justice, but that still meant only three of the ministries were affiliated to a party.

At first, it was clear that Collor "saw his thirty five million of votes as reason enough to ignore Congress or to directly appeal to the population" (Flynn, 1993, p. 352).<sup>129</sup> It was only

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<sup>129</sup> Free translation for: "havia visto seus trinta e cinco milhões de votos como razão suficiente para tentar ignorar o Congresso ou para apelar diretamente à população."

when it became clear that his public prestige had decreased (in February 1992) that he tried to improve the relationship with Congress. He reduced the number of *medidas provisórias* and started discussing and negotiating the context of his legislative initiatives with Congress. That was not enough of a compromise for Congress, since he maintained his behaviour of not sharing the executive and not forming a stable majority (as per interviews). That, in turn, affected his policy-making because he was trying to pass constitutional amendments that required 3/5 of votes in favor in Congress. The opposition, led by PMDB, PT, and the Brazilian Social Democracy Party (Partido da Social Democracia Brasileira, PSDB) created in 1988 by PMDB defectors, started acting as an informal veto coalition (Sallum & Casarões, 2011). These parties had almost 40% of the seats in the Chamber of Deputies at the time.

In January 1992, he finally decided to change his tactics to try to secure PFL's support (Mainwaring, 1997). The PFL, as mentioned in Section 2.1, was the largest party that had supported him at the beginning of his mandate. He changed ministers accused of corruption and created a Secretary of Government to better manage the relationship between the executive and legislative branches. He was finally indicating that he was willing to pursue support in Congress. Yet, when Pedro Collor decided to speak, the "Collor government's support in Congress eroded. It was no longer capable of accomplishing much" (Mainwaring, 1997, p. 97)

When Pedro Collor spoke about his brother's involvement in PC Farias' shady deals, Fernando Collor was just initiating the process of forming a stable majority, which was thus very fragile. The pro-government congressmen, for instance, were not able to stop the opposition led by PT, PSDB, and PMDB from implementing the CPI in June to examine Pedro Collor's allegations. Since the opposition held the majority in the committee, opposition members headed the subcommittees established to conduct in-depth investigation concerning PC Farias'

affairs. The committee chair attempted to restrict the investigative activities to PC Farias only to shield the president, but the opposition “complained to the media of the allegedly obstructive moves by the chair, and such moves were soon reversed” (Kada, 2003, p. 122). There was, however, an initial sense in society that this CPI would not lead to concrete results since all of the 439 CPIs created since 1946 had not resulted in any sanctions for politicians.<sup>130</sup>

On May 27, party leaders Orestes Quercia (president of PMDB) and Tasso Jereissati (president of PSDB) decided to officially partner with leftist Lula (president of PT) to act as an opposition and pro-impeachment coalition throughout the CPI. The PFL, which was part of the governing coalition started changing its behaviour, and helped to approve the CPI. It is important to observe that these parties had low cohesion and different views on the liberalization of the Brazilian economy and other important issues of the time. Nonetheless, they came together to fight Collor’s imperial decision-making. At the end, Collor “faced an opposition that felt it had nothing to lose and everything to gain from the removal of the president and that found the means to accomplish that objective” (Kada, 2003, p. 128).

Throughout all the stages of the CPI, the opposition assigned investigative experts who leaked information to the press suggesting that the president was corrupt (Kada, 2003). Of the ten parties that had officially declared support to Collor throughout his mandate, none of them acted to defend the president from the process of impeachment.<sup>131</sup> Interestingly, that abandonment of Collor to his fate perfectly illustrates O’Donnell’s (1992, 1998) description of a president in a delegative democracy: Collor had attempted to be above parties in all forms

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<sup>130</sup> *Veja*, September 30, 1992.

<sup>131</sup> PFL, PTB, PDS, PRN, PL, PDC, PSC, PSD, PTR, PST.

and had isolated himself to then become even more isolated because parties (even the ones that helped electing him) decided to abandon him.

As established by the 1988 Constitution, the impeachment in Brazil is legislative-dominant; Congress handles the investigation (which may take place through a CPI) and the impeachment. The impeachment of Collor followed each of the steps described in the constitution—which were explained in Section 2.1—and did not use any extra-constitutional means. It is important to notice that the impeachment is a political process: it concerns crimes of responsibility involving the president and can impose only political sanctions. It cannot judge and impose sanctions concerning any potential crime (such as corrupt acts). The criminal trial of Collor was thus later conducted by the Supreme Court based on the criminal charges put forward by the Public Prosecutor's Office.

Interestingly, at the time, there were rumors of a potential corruption scandal involving the Joint Budget Committee in Congress.<sup>132</sup> Some evidence had been uncovered during the PC Farias/Collor CPI when cancelled checks involving several politicians from different parties were found. But before further investigation could be done (and drag down many members of Congress), the “CPI abruptly closed its investigation against Collor and submitted its report to the Chamber of Deputies” (Fleischer, 2004, p. 124). Instead of investigating the Joint Budget Committee in Congress, it was more important for the political elite to concentrate on Collor's corruption scandal.

The CPI's final report suggested that Collor had benefited from Farias' illicit activities. Besides street demonstrations demanding the impeachment, Congress now had enough evidence to indict the president for crime of responsibility. Collor, however, remained confident

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<sup>132</sup> Which eventually became the Budgetgate scandal and will be explored in the next chapter.

that he would not be impeached. He refused to resign until the last minute and trusted that he could still remain in power just by contesting Congressional actions. His strategic behaviour became that of delaying any process or questioning the legality of the procedures used by Congress.<sup>133</sup> The date for the Chamber of Deputies to vote for the impeachment was set for September 29 and representatives were under high pressure. After all, the Speaker of the Chamber of Deputies (from an opposition party) set the date to be right before the municipal elections. That increased the effectiveness of popular pressure since the candidates associated with representatives who would vote against the impeachment could expect to lose votes (Kada, 2003; Sullam & Casarões, 2011).

At that time, Collor's coalition counted only with the PRN, the PFL, and the Social Christian Party (Partido Social Cristão, PSC), which had been created in 1990. Yet, the PRN president José Carlos Vasconcelos actually declared that he was against the impeachment, but he was liberating party members to vote as they wished.<sup>134</sup> In the end, 441 deputies voted in favour of the impeachment while 38 voted against it, 22 were absent and 1 abstained. Of the 23 that were absent, 11 were in the governing coalition. Seventy-nine members of the governing coalition voted for the impeachment and only 24 voted against it—that meant 105 votes above the necessary constitutional quorum of 336. The main parties in the pro-impeachment coalition represented 175 votes. That can be observed in table 2.

At the time, there were two conflicting laws. Law 1,079 of 1950 stated that voting had to be by roll call while the Chamber of Deputies' internal code stated that in the case of impeachment based on common crimes, voting should be secret. The voting process in the

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<sup>133</sup> For instance, he tried to buy time through several appeals in the Supreme Court.

<sup>134</sup> *Diário do Congresso Nacional*, September 30, 1992.

**Table 2. Votes on the impeachment of Fernando Collor in the Chamber of Deputies**

<b>Party</b>	<b>Yes</b>	<b>No</b>	<b>Abstained</b>	<b>Absents</b>
<b>PDT</b>	38			3
<b>PC do B</b>	5			
<b>PSB</b>	13			
<b>PL</b>	15			1
<b>PRN</b>	21	8		
<b>PFL</b>	64	16		9
<b>PPS</b>	1			
<b>PT</b>	34			
<b>PMDB</b>	100			
<b>PSDB</b>	41			
<b>PDS</b>	33	8		3
<b>PTB</b>	26	4	1	
<b>PTR</b>	14	1		1
<b>No party</b>	3	1		1
<b>PDC</b>	16			2
<b>PST</b>	7			
<b>PSD</b>	1			
<b>PRS</b>	3			
<b>PSC</b>	2	1		2
<b>PPS</b>	2			
<b>PV</b>	1			
<b>PRP</b>	1			
<b>TOTAL</b>	441	38	1	22

Source: *Diário do Congresso Nacional*, ANO XLVII, n. 161, published on September 30, 1992

Chamber of Deputies was not done in secrecy and Collor argued that Law 1,079 had been revoked when the 1988 Constitution came into effect. He still believed that the Supreme Court would thus rule an impeachment to be unconstitutional, but it ruled otherwise (Kada, 2003). Thus, the president had his presidential powers suspended one day after the Senate started analyzing the possibility of the impeachment.

Collor, however, hoped to postpone the process in the Senate until the New Year by claiming to the Supreme Court that he needed more time for his defense. Additionally, he strategically attempted to pass an *habeas corpus* at the Supreme Court and fired his defense lawyers on the day that voting was scheduled in the Senate (in the hope that voting would be rescheduled for the following year).<sup>135</sup> The Supreme Court, however, only postponed it until right after the Christmas break, making senators go back to the capital from their states for the voting.<sup>136</sup>

On December 29, three months after Collor had been removed from office, the Senate convicted him for crime of responsibility by a vote of 76 to 3; the ones who voted against the impeachment were Ney Maranhão (PRN), Áureo Mello (PRN) and Odacyr Soares (PFL); 2 abstained, namely Guilherme Palmeira (PFL), and Lucídio Portella (PDS). Even Jarbas Passarinho (PDS), who had been a minister appointed by Collor, voted for his impeachment. Before the voting took place in the Senate, on the same day, polls showed that 82% believed Collor to be guilty of corruption charges while only 6% claimed he was innocent.<sup>137</sup>

Collor, however, resigned from office that same day minutes before the Senate would vote.<sup>138</sup> That was a desperate attempt to preserve his political rights so he could be eligible to run for office in 1994 (Fleischer, 1997).<sup>139</sup> Nonetheless, the Senate decided to proceed and he was permanently removed from office and banned from running for any electoral office for eight years—the maximum sanction that can be imposed on a president for a crime of responsibility

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<sup>135</sup> Folha de São Paulo, December 29, 1992.

<sup>136</sup> Folha de São Paulo, December 29, 1992.

<sup>137</sup> 4% gave other answers and 8% claimed they did not know (“não sabe”). DataFolha; also referenced in Folha de São Paulo, December 30, 1992.

<sup>138</sup> Folha de São Paulo, December 30, 1992.

<sup>139</sup> Also discussed in Folha de São Paulo, December 31, 1992.

in an impeachment in Brazil. Collor's lawyers tried to reverse the Senate's decision at the Supreme Court,<sup>140</sup> but the official announcement of both his resignation and his impeachment are on the same first page of the *Diário do Congresso Nacional*.<sup>141</sup>

Right before the Public Prosecutor's Office and the Federal Police were about to produce his indictment, PC Farias fled the country. He was later arrested in Thailand and deported to Brazil in 1993.<sup>142</sup> While he was sent to prison, the Supreme Court took a long time in analyzing Collor's case and ultimately absolved him. The first trial lasted for almost two years and on December 1994 the Supreme Court ruled, by a vote of 5 to 3,<sup>143</sup> that there was insufficient evidence to convict Collor of passive corruption.

Former Supreme Court Justice Carlos Velloso<sup>144</sup> was the first one to vote and was one of the three who voted for Collor's conviction. In his view, the trial was based on the judgment concerning the evidence; justices disagreed on technicalities and some claimed that they could not convict Collor based on the evidence presented by the Public Prosecutor's Office's report. Velloso points out that the Federal Police apprehended the computers used by Farias before they had a court order, which ruled out the possibility of using the evidence found in them. According to Velloso, "that was a powerful collection of evidence; (and) could not be considered"<sup>145</sup> even though he still felt comfortable with his vote given the evidence that could be considered.

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<sup>140</sup> Folha de São Paulo, December 31, 1992.

<sup>141</sup> Ano XLVII, n. 223, December 31, 1992.

<sup>142</sup> Folha de São Paulo, December 1, 1993, and December 3, 1993.

<sup>143</sup> One of the Ministers, Paulo Brossard, had just retired. Two other Ministers, Marco Aurélio Mello and Francisco Rezek, did not take part in the voting process claiming conflict of interest.

<sup>144</sup> Interviewed on November 18, 2014, in Brasília, Brazil.

<sup>145</sup> Free translation for: "*Aquele era um acervo de prova poderoso; não foi considerado.*"

Aristides Junqueira,<sup>146</sup> general prosecutor at the time, was the main author for the report that was presented to the Supreme Court. He claims that although there was evidence linking Collor to Farias' schemes, he did not expect the result of the trial to be any different from what it was. In his view, Brazil traditionally sees presidents as untouchable "unattackable" individuals—in fact, he claims that even before he turned in the report he believed that he would be the one to be condemned in the process (publicly, because of his report), rather than the president (criminally).<sup>147</sup> He states that a fellow prosecutor actually heard, in an informal meeting, from one of Supreme Court justices that he/she would not be so "crazy" as to ever indict a president.<sup>148</sup>

The fact that the Supreme Court absolved Collor does not mean that the impeachment was unjust in any way. First, he was absolved for insufficient evidence. Second, as Justice Velloso explains, the impeachment in itself is a political act based on how Congress judges the president's political actions; it is a political judgment. The Supreme Court, in turn, judges the potential criminal actions. One process does not depend on the other. In Lavenère's view, Collor was accused on two counts: one was the political crime of lack of decorum, the other one concerned the criminal offences. The former was the reason for his impeachment, in which it was recognized that he had to take responsibility for behaving incompatibly with what is expected from a president (Lavenère).

Significantly, Collor did not try to influence the impeachment proceedings and did not create obstacles to the investigation or prevent the collection of information. As Suplicy (PT)

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<sup>146</sup> Interviewed on December 1, 2014, in Brasília, Brazil.

<sup>147</sup> Indeed, Supreme Court Justice Ilmar Galvão gave an interview to Folha de São Paulo on December 10<sup>th</sup> 1994 in which he claimed that the report provided by the Public Prosecutor's Office was problematic.

<sup>148</sup> The actual quotation is "Is Aristides crazy to think that I would ever indict a president?" - Free translation for: "*O Aristides tá louco de achar que eu vou condenar um presidente da República?*"

recalls, he actually let the CPI follow its normal course in Congress, not blocking it in any way. Junqueira claims he did not think he suffered any political pressure or obstacles to do proper investigation of the case within the Public Prosecutor's Office. Velloso, in turn, states that, personally, he was not hindered from doing his job in the Supreme Court in any way. Perhaps based on the outcomes of the previous CPIs in Brazil, Collor acted as if the impeachment was not a real possibility. But, although he had finally showed willingness to make coalitions and compromise with Congress, it was too late to have a supportive majority in Congress to help him stabilize his power. And, not coincidentally, the Chamber of Deputies authorized the process of impeachment when his government was seen as positive by only 15% of the population.<sup>149</sup>

There has been great emphasis in the literature on the impact of Collor's personality on his fate.<sup>150</sup> Supposedly, given his unwillingness to make concessions, Congress had no other choice but to vote for his impeachment due to his "politically suicidal" behaviour (Skidmore, 2000, p. 35). Actually, the impeachment is often seen as the outcome of a combination of rare and implausible circumstances:<sup>151</sup>

1. The scandal generated by the allegations of the president's brother, Pedro Collor;
2. The absence of attempts to silence the press;
3. The extraordinary incompetence of Collor and PC Farias to hide their supposedly corrupt activities;
4. The fragility of Collor's allies in defending the government;
5. Collor's obstinacy to remain in power.

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<sup>149</sup> Source: DataFolha (2002a).

<sup>150</sup> On this matter, Martins (1990) emphasizes Collor's personality, describing him as having an authoritarian exhibitionism and as an *enfant gâté*. For works that prioritize the impact of Collor's personality on democracy, see Vianna (1991), Weyland (1993) and Flynn (1993).

<sup>151</sup> See the comprehensive studies of Lamounier (1992) and Souza (2000).

Nonetheless, Pedro Collor's speaking up about Collor's involvement in a corruption scheme is the **only** unpredictable event. The other "implausible" circumstances only reflect the strategic behaviour of a president in a delegative democracy: a president who thought that being an "acclaimed saviour" was enough and ignored the uncertainty of his position, thus neglecting to fulfill the requirements to remain in power. The corruption scandal shattered his image as "saviour" and also provided the perfect context for the opposition—almost all of the political elite—to remove him from power. Instead of being solely based on Congress having no choice but to impeach him, Collor's fate was the outcome of a dominant strategic behaviour of a *salvador da pátria* in a delegative democracy. Ironically, the institutional checks on the president started working because the political elite did not want that particular individual to remain in power.

## 2.5 Conclusion

Once the military government came to an end, citizens in Brazil were left with expectations that not only concerned democracy as a system, but a general feeling that Brazil needed to be "rescued." The death of Tancredo Neves right before he was to become the first civilian president since 1964 only worsened the collective dissatisfaction. Sarney, who assumed Neves's place, was not able to make significant improvements. That political and economic context increased Brazilians' hopes for a president that they would directly elect to "save" them. Fernando Collor, as discussed in this chapter, perfectly matched the image of the "saviour" that Brazilians hoped would come to the rescue. In spite of that, he was soon impeached.

Although he governed above all for the two years he was president, the impeachment proceedings were highly democratic and fully constitutional; pressure in the streets was peaceful

and Congress deployed constitutional procedures to remove Collor from office. Collor, in turn, had ample opportunities to defend himself and contest Congressional decisions. On the surface, the impeachment seems to be a successful story for Brazilian democracy when it comes to limits on presidential power. After all, it was the democratically elected legislature that removed the president from office. Since, at the time, the grounds were the incumbent's corruption, it was viewed both nationally and internationally as proof that institutions were strong enough to check abuse of power in the executive branch (Kada, 2003). The use of corruption as the basis for the impeachment also legitimized the actions undertaken by Congress.

Yet, as mentioned, Collor was neither the first president to be accused of corruption in Brazil nor the only one to face low prestige in society. The process of impeaching the president was due to political reasons. For instance, a CPI was put into place during Sarney's government and recommended his impeachment—significantly then-senator Itamar Franco (PL), who would become president after Collor's removal, was one of the main leaders of that CPI.<sup>152</sup> Conversely, then acting Speaker of the Chamber of Deputies Inocêncio de Oliveira (PFL) archived the case and did not transmit it to the floor “for a collective political reason” (Fleischer, 1997, p. 3). Ultimately however, an impeachment as specified by the 1988 Constitution simply requires a crime of responsibility—which, as discussed in Section 2.1.2, is a broad term—and legislative houses filled with the opposition.

The institutional features of the Brazilian system provided two choices for a president in the early 1990s: compromising with politicians from different parties in order to have the majority in Congress or governing above them. Collor decided to fit the model of a president in a delegative democracy. It could be argued that his decretismo-style of ruling only occurred

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<sup>152</sup> The reason behind that CPI was the centralization attempts on the part of Sarney's immediate family (Fleischer, 1997).

given the economic situation of the time; that issuing 27 *medidas provisórias* within the first two months in office was understandable given the chaotic inflation. That, however, does not hold: Franco, who—as will be discussed in Chapter 3—faced an even worse inflation rate, only issued four *medidas* within the first months in office.

Collor's number of *medidas* at the beginning of the mandate is also interesting when compared to the presidents that followed. Cardoso, who followed Franco in office, issued one *medida* in the first two months of his first mandate, and none in the same period of time of his second mandate. Also for the first two months, Lula issued six in his first mandate and thirteen in the second mandate. This was followed by Rousseff's four and three *medidas* for her first and second mandate, respectively. Current President Temer, finally, issued sixteen within the first two months as interim president.<sup>153</sup> Collor, to the present day, remains the one president who issued the most *medidas provisórias* at the beginning of the mandate since Brazil transitioned to democracy.

Yet, as mentioned in Section 2.2.2, the number of *medidas provisórias* in itself is not what makes *decretismo*. After all, more urgent needs may require a higher number of *medidas* or, as outlined in Section 2.1.2.4, these may even be used just because they take effect faster as they avoid the slow process for laws to be issued by Congress. The reason behind their use is what should be noted. And, as will be observed in the following chapters, all presidents worked through coalitions, maintaining a dialogue both with Congress and parties. Cardoso, who holds the record for the total number of *medidas provisórias*, was also the one considered the candidate of the big parties. Collor, instead, showed no effort to share power with Congress and

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<sup>153</sup> Source for the number of *medidas provisórias* mentioned in this paragraph: DataFolha. They can also be found on Folha de São Paulo, July 7, 2016: <http://www1.folha.uol.com.br/poder/2016/07/1793790-interino-temer-e-presidente-com-mais-mps-no-inicio-da-gestao-desde-collor.shtml>

at the same time issued the highest number of *medidas provisórias* at the beginning of his mandate; these combined illustrate his intentions to have power centralized and ignore Congress' role.

Collor's strategic behaviour, as discussed in this chapter, strongly relied on the vertical relationship he had with citizens. He thus completely ignored the fact that though the charismatic and traditional legitimacy on which his authority rested seemed robust, it could still break down. A charismatic-type leader is the master, "so long as he knows how to maintain recognition through 'proving' himself" (Weber, 1978, p. 20). Once Collor's mission (or willingness) to the "saviour" that would fight corruption was disproved through the highly publicized corruption scandal, the ruler-follower relationship fell apart.

Collor's government was the government of a president who seemed "to be that of a previous phase in Brazilian politics, which was used to make few concessions when dealing with other politicians" (Skidmore, 2000, p. 35).<sup>154</sup> It was not only that Collor did not form party coalitions, but that he governed above the party system and the parties that elected him. It was not a government of parties (Abranches, 1992), but a government of a delegative president in its purest form for a while. Interestingly, by following the strategic behaviour expected from a president in a pure delegative democracy such as Brazil, Collor ended up by being removed from office. At the end, all the minor details that contributed to that outcome can be summarized into two factors:

1. His image as "saviour" was ruined through the extremely publicized corruption scandal.

This destroyed the charismatic legitimacy on which his authority rested.

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<sup>154</sup> Free translation for: "*própria de uma fase anterior da política brasileira, habituada a fazer poucas concessões ao lidar com outros políticos.*"

2. His choice for extreme political isolation. That meant that there was no safety mechanism to support him once his authority was no longer based on charismatic legitimacy.

The impeachment of Collor was what Pérez-Liñan (2007) calls “politicized and spasmodic horizontal accountability” (p. 209). Far from being exactly a sign of the institutional strength at the time, it was activated as a way to handle an extreme situation when there was no continuous exercise of Congressional support during normal times (thus, “spasmodic”). It was also guided by legislators’ short-term personal and partisan considerations (thus, “politicized”). Institutional checks were carried out by the political elite in order to impeach an undesirable president instead of being about by the desire to prevent presidential abuse of power.

Regardless of the reasons behind the impeachment, it was undoubtedly a positive act of horizontal accountability since it was done in accordance with the constitutional rules and left “a positive legacy” for democracy, as former Minister Velloso puts it. First, Collor’s government shows that although the president is authorized to “govern as he sees fit” in a delegative democracy and he/she is given such authorization to “save the country,” it is necessary that citizens recognize the president as the “saviour” in order for them to keep delegating power as happens in that type of democracy. Once citizens no longer see the president as the “saviour,” the very basis on which a delegative democracy rests is gone. Second, beyond what it represented for democracy at the time, that historical event has affected how democracy has since evolved in Brazil. As will be discussed in Chapter 3, both the government and the impeachment of Fernando Collor had great impact on Brazilian democracy: it affected the political elite’s and the presidents’ preferences and behaviour, making it more strategic for them

to move towards limited government by imposing limits to presidential power rather than having another *salvador da pátria*.

### 3. THE LEGACY OF COLLOR'S IMPEACHMENT: LIMITS TO PRESIDENTIAL POWER

Fernando Collor left both the political elite and civil society disappointed for different reasons. The former had been ignored during his government; the latter saw their hopes for a “saviour” frustrated—Collor had gone from being an “acclaimed saviour” to a “fallen god” within two years. But once he was impeached, what can explain the emergence of limits to presidential power instead of another *salvador da pátria*? In this chapter, I argue that the uncertainty brought forth by Collor’s impeachment in the competitive fragmented Brazilian political setting, along with the highly publicized corruption scandal, was what led to important institutional changes in the short term.

Such changes, in turn, have had long-lasting consequences in limiting presidential power and allowing Brazil to move toward limited government. The alleged involvement of Collor in the corruption scandal weakened the idea of charismatic authority, slowly giving place to a more legal-rational authority type: uncertainty regarding the possibility of continuing in power became greater for every president who followed. It made it more strategic for presidents to limit their own power, through power-sharing arrangements and by delegating power to third parties, in exchange for stability.

Since having another “saviour” or being a “saviour” was too risky in the post-impeachment context, presidents who followed adopted a very different strategy from Collor’s. The need to distance themselves from a corruption scandal and the possibility of cheap talk

made it more strategic to transfer part of the power to horizontal accountability institutions.<sup>155</sup> And once that power started being transferred, it has increasingly been out of political control. Presidents' pursuit for stability in power also helped consolidating the so-called called "coalition presidentialism": instead of the characteristic executive isolation of delegative democracies, presidents have opted to govern through coalitions.

Indeed, even Collor had made partnerships before being impeached. Yet, these were a different type of partnership. Amorim Neto's (1994) typology is helpful in distinguishing the types of alliance made by Collor from the ones who followed. He calls "coalitions" the ones in which there is formal agreement between the president and political parties and ministers are appointed based on the party to which they belong. "Cooptation," in turn, characterizes a partnership that is not formalized between the president and the parties even though ministers are chosen on the basis of the parties they belong to. In this sense, the last two years of Sarney's administration and the last year of Collor's government can be characterized as "cooptation," being different from the alliances that took place after the impeachment.

Vice President Itamar Franco followed Collor. Franco had an almost anti-Collor strategic behaviour: although he did not belong to a party when he assumed office, he worked hard in forming coalitions with different parties—including the ones that had joined as a pro-impeachment block at the end of Collor's presidency. He also quickly passed laws that displayed his commitment to fight corruption to civil society. In addition, in the very first moment that his government was implicated in corruption allegations, he created a formal committee to investigate and distance himself from them. Interestingly, as will be demonstrated,

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<sup>155</sup> The concept of cheap talk has been mainly used in organizational theory and entails that, once there are no direct payoff sanctions, no one has incentive to communicate meaningful information. It will be further elaborated in Chapter 5.

this behaviour became a pattern in Brazilian democracy: almost every significant improvement in horizontal accountability since the impeachment has followed a corruption scandal. Institutions have continuously changed the incentives for political actors, culminating in a more limited government.

This chapter will proceed as follows: I will first explore the post-impeachment context and how the impeachment changed the incentives and constraints faced by both the political elite and by the president that followed. This will allow us to observe how horizontal accountability initially emerged as a way of distancing the new president from Collor's governing style. In the second section, I will discuss how the creation/strengthening of horizontal accountability institutions was guided by corruption scandals. This section will focus on the government of Fernando Henrique Cardoso, who followed Franco in the presidency.

The third section of this chapter will explain how that institutionalization broke the pattern of delegative democracy: once power was delegated to institutions, they slowly became independent of the president's will and affected the incentives and constraints of political actors. Once Lula assumed office as president, right after Cardoso, his power was already constrained by the institutional context. In short, although the process of institutionalizing horizontal accountability started because of the impeachment and continued as a pattern in response to corruption crises, it has become self-reinforcing enough to no longer depend on political initiatives.

### **3.1 Why Would Franco share Power?**

As a president of a weakly institutionalized democracy, any rational actor would certainly prefer to rule the country without horizontal accountability institutions. After all, "those

who benefit from existing arrangement may have an objective preference for continuity” (Mahoney & Thelen, 2009). And, once again, the lack of presidential checks allows presidents to be “the main custodian of the national interest, which it is incumbent upon him to define” (O’Donnell, 1994, p. 8). However, those that aim at institutional continuity need political support (Thelen, 2004, 2009), and the uncertainty brought by the impeachment had changed the political milieu in Brazil.

First, there was a general sense that “the public and most political elites were relieved that Collor was gone” (Mainwaring, 1997, p. 97). Second, the myth of the “saviour” was partly broken—the “saviour” himself had been allegedly involved in a corruption scheme. Third, the political elite was more aware of the institutional and constitutional powers it could use to be relevant in the decision-making process. This is interrelated to the fourth change: constitutional mechanisms for checking abuse of power showed they could function. In sum, the faith in formal institutions grew while the belief in the idea of a “saviour” decreased. A legal-rational type of authority was slowly emerging.

These new circumstances, in turn, affected the preferences and the strategic behaviour of the political elite. Contrasting features illustrate the existent “colossal prisoner’s dilemma”<sup>156</sup> in the aftermath of the impeachment, which can be observed in the first government that followed. On one hand, Vice President Itamar Franco, who assumed office the same day Collor was removed, had incentives to keep power to himself. Franco, who did not have strong formal ties with any party when he took office (actually shifting between PRN and PMDB), could choose to behave as a president of a pure delegative democracy, and, just as Collor, govern through *decretismo*. The lack of institutional checks allowed him to keep power to himself. On

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<sup>156</sup> To use the expression O’Donnell (1994) used to explain how delegative democracy emerge.

the other hand, being that kind of president—although possible—was extremely risky given the recent impeachment of Collor. The process that removed the latter from office, all done in accordance with constitutional mechanisms, showed all political actors that they no longer needed to accept a centralized strong executive. Legitimacy based on traditional authority had been negatively affected; the political elite had a newly found strength. They were “anxious to ensure governability in the aftermath of the Sarney and Collor debacles” (Mainwaring, 1997, p. 97).

Franco had to particularly manage the existence of the pro-impeachment coalition, which included PT, PSDB, PMDB and some members of PFL—which had over 40% of the seats in the Chamber of Deputies and 42% of the seats in the Senate.<sup>157</sup> The general sense was that an abuse of decree power could lead Congress to try to pass a bill that would restrict these powers.<sup>158</sup> As Mainwaring writes, “if a president infringed what Congress viewed as its prerogatives, Congress would react negatively, making it more difficult for the executive to win legislative support for subsequent bills” (1997, p. 107). In short, although it was appealing for Franco, as a rational actor, to keep power in his own hands, it became more strategic to find ways to have what O’Donnell (1994) calls a “competitive cooperation.”

Not only did the impeachment affect the idea that power had to be concentrated in one individual’s hands, it also changed the relationship between the president and society. Franco’s authority was not based on charisma as Collor’s was. He was far from the idealistic heroic “strong, courageous” image held by Collor. Actually, when he assumed office, his government

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<sup>157</sup> Number for the Chamber of Deputies calculated based on the data in Nicolau (1998) and, for the Senate, on the data on the 49<sup>th</sup> Legislature, Senate archives.

<sup>158</sup> Actually, during Collor’s government, dissatisfaction was so high that the Chamber of Deputies almost passed a bill that would have restricted or regulated the use of *medidas provisórias* (Power, 1994; Pessanha, 1993; Mainwaring, 1997).

had an approval rate of 18% and a rejection rate of 21%.<sup>159</sup> Instead, his authority was based on a very incipient and formalistic belief on the rule of law: as vice president, he was legally entitled to occupy the presidency once the president was removed. In his first speech as president on December 30, 1992, Franco highlighted how important it was “to go through these difficult months without erasing our laws and without violating those permanent principles of Law”<sup>160</sup> (Discursos Seleccionados do Presidente Itamar Franco, 2008, p. 9).

The almost unconditional relationship of trust between ruler and followers that characterized Collor’s authority had been destroyed months before he was impeached. In consequence, citizens were not as unquestionably accepting as they used to be.<sup>161</sup> They were still, however, anxious for a solution to the economic chaos as inflation was still growing (it would hit 2,708% in 1993).<sup>162</sup> But now, it was clearer than ever that corruption and abuse of power are enemies of a functioning democracy, given Collor’s deceitful government. In sum, the behaviour of Collor as president, the corruption scandal, and the impeachment had led to a context in which a) civil society was even more eager for measures to combat corruption and abuse of power than they had been when they elected Collor; and b) the political elite—which was **not** a homogeneous bloc given the fragmentation of the party system—was not willing to be “left out” as had happened between 1989 and 1992. Thus, besides the chaotic economic situation that Collor’s economic packages had not solved, Franco (or anyone who would have followed as president at that time) would have to face these two challenges.

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<sup>159</sup> Source: DataFolha (2004).

<sup>160</sup> Free translation for: “*caminhar estes meses difíceis, sem arranhar as nossas leis e sem violar aqueles princípios permanentes do Direito.*”

<sup>161</sup> As explained in Chapter 2, Section 2.3.

<sup>162</sup> Source: IpeaData (2016).

The post-impeachment context presented incentives for a president to govern as the embodiment of the interests of the nation (in a delegative democracy fashion), but it also presented powerful incentives for them to share power with the political elite and to show willingness to fight abuse of power. The impeachment had reshaped the political context and isolation was then far from being a utility-maximizing strategic behavior:<sup>163</sup> uncertainty regarding Franco's future in power was extremely high. In that sense, on December 29, 1992, as the new president of Brazil, Franco found himself in a situation in which the safer strategic behaviour was to distance himself from Collor's political style. That meant including part of the political elite in his government and protecting himself from allegations of corruption. Hence, instead of governing in a delegative fashion, he strategically operated towards reducing uncertainty by mitigating potential political competition and protecting his image to ensure his position as president. Franco's strategic behaviour regarding these two goals will be approached in the following subsections.

### **3.1.1 Franco: Making Peace with the Political Elite**

When it came to the political elite, it was clear at the time that Franco needed its support to have the necessary legitimacy to govern after the crisis that resulted in Collor's impeachment (Loureiro & Abrúcio, 1999; Durand & Abrúcio, 1998). Again, that was noticeable in his first speech as president. He pointed out that no "legitimate political power can be above the parliament. Parliaments have been created to provide laws to society" and he openly submitted himself to that since he "was certain that a lot of our ills come from the abuse of the executive

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<sup>163</sup> And, as explained in Chapter 2, after Collor's failure to remain in power, it became clear that his strategic behaviour (based on political isolation and abuse of power) was not that strategic after all.

power, which have been common in the periods of apparent republican normality and exacerbated in the authoritarian regimes”<sup>164</sup> (Discursos Seleccionados do Presidente Itamar Franco, 2008, p. 10).

However, he had to face a collective action problem: the political elite had come together to remove Collor from office, but it was made of different fragmented groups and individuals—all of whom would have the greatest payoff if they could govern the country in a delegative style without sharing power. As discussed in Chapter 2, when Brazil transitioned back to democracy, the party system was fragmented and parties lacked discipline. For Franco, a way of mitigating potential outcomes of that extremely competitive setting was to form political partnerships, which he did throughout his entire mandate. Collor had only done it at the end of his administration and, even when he appointed some PFL members as ministers, these were a different type of partnership that relied on cooptation. The relevance of that distinction lies in the fact that cooptation may be the outcome of *ad hoc* negotiations because of similar preferences while coalitions involve the bargaining of positions and legislative support (Müller & Strøm, 1999; Figueiredo, Canello & Vieira, 2012).

In fact, from the start of his government, Franco appointed ministers from different parties, such as the PMDB, the PFL, and the PSDB. In addition, throughout his mandate he appointed nine military officials to take part in the ministries and secretariats (Zaverucha, 1998). Although the PT had been part of the pro-impeachment coalition, it positioned itself as opposition since it envisioned having Lula—president of the party at the time—elected in the 1994 elections. Nonetheless, the “alpha and omega of politics,” as O’Donnell (1994) asserts,

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<sup>164</sup> Free translation for: “*não há poder legítimo que se eleve sobre os Parlamentos. Eles nasceram para dar às sociedades as leis*”; and “*com a certeza de que muitos de nossos males decorrem dos abusos do Poder Executivo, comuns nos períodos de aparente normalidaderepublicana e exacerbados nos regimes autoritários.*”

became broader than it had been in Collor's delegative government; it was no longer made of a president, his presidential staff, and his *técnicos*.

Although Franco made it clear that he was not following Collor in terms of political isolation, Congress was still reluctant to give too much support after it had seen its role in politics neutralized during early in Collor's era. That posed a problem for Franco's capacity to govern, since, as Collor's government had made clear, the unpopularity within Congress could be a major obstacle for presidents despite their impressive constitutional powers. Franco still lacked a strong political base and "Congress consistently diluted and opposed austerity and stabilization plans" (Mainwaring, 1997, p. 98). The collective action problem had not been solved and the extremely fragmented Brazilian multiparty political system did not help.

Since the legitimacy of a president based on traditional-charismatic authority was broken, Franco had to make use of different tools to ensure governability in that context. Hence, in an attempt to gain more political support and mitigate uncertainty, Franco not only made coalitions, but he also included political actors by inviting them for discussion. For instance, he consulted with different economists including some who had collaborated with the military.<sup>165</sup> He also conducted a meeting with the presidents of the registered 19 parties on January 9, 1993, to discuss a governability pact, the so-called "politics of national understanding."<sup>166</sup>

Among the party leaders who took part in the meeting proposed by Franco were important names at the national and state levels: former and future presidential candidate Lula (PT); Orestes Quercia (PMDB), who would also run for presidency in 1994; Paulo Maluf (PP), who had run for presidency in 1985 and 1989; and Tasso Jereissati (PSDB), who was governor

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<sup>165</sup> Which was the case of Deputy Antonio Delfim Neto (PRP) and Afonso Celso Pastore.

<sup>166</sup> Free translation for: "Política de Entendimento Nacional." O Estado de São Paulo, January 10, 1993.

of Ceará at the time. While the main point of discussion concerned the fight against inflation, it was also a form of making the political elite feel more connected to the government. In exchange, Franco would not take part in any electoral campaign until the end of the mandate and would not run for presidency in the 1994 elections. “The president does not belong to a party,” claimed the Speaker of the Senate Pedro Simon (PMDB) to *Folha de São Paulo* on January 4, 1993, since he had been brought to power “by all political parties.”<sup>167</sup> While the sense of urgency had been an excuse for Collor to govern through *decretismo*, Franco used it as a reason for all parties to come together.

When it came to coalitions, a significant effort was made to gain more support: Luísa Erundina (PT) agreed to be the chief minister of the Secretariat of Federal Administration; PT was positioning itself as a less extreme opposition. A large coalition meant not only support in the legislative houses, but also support in the states, having an important role given Brazil’s strong federalism. In Franco’s first coalition—comprised of the PFL, the PTB, the PSDB, the PSB, and the PMDB—65% of the governors of the time belonged to his party coalition, being 30% of the total from his own party. This contrasted with the 41% that were part of Collor’s coalition when he still had support from the PFL and the PDS. Collor’s party did not have any governor elected during his time in government.<sup>168</sup> In addition, while cabinet members appointed by Collor had mainly been from the same parts of Brazil (approximately 58% from the Southeast and 30% from the South), Franco had more balanced appointments (60% from the Southeast, 10% from the South, 20% from the Northeast).<sup>169</sup>

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<sup>167</sup> Free translation for: “o presidente não tem partido” and “por todos os partidos políticos.”

<sup>168</sup> Based on the data shown at the Banco de Dados Eleitorais do Brasil, IUPERJ. This data considers the parties politicians were in at the time they were elected. It takes Collor’s coalition to be made of the PRN, the PDS, the PFL, and the PTB.

<sup>169</sup> Based on D’Araújo (2009).

Nevertheless, party coalitions are not permanent and negotiations go beyond election time. Franco's coalition, for instance, lost the PSB and the PTB and gained the PP's support. By the end of his mandate, Franco would have gone through three different coalitions; the PMDB, the PSDB, and the PFL were part of the three of them and all of the coalitions had the majority of the seats in Congress. By successfully making the political elite feel included in the decision-making process, Franco had reduced the uncertainty he faced when he took office. The newly-found strength of the political elite constrained his latitude to govern and the utility-maximizing strategy became that of including them in the government.

### **3.1.2 Franco: Distancing Himself from Collor's Image**

Including the political elite in the decision-making process was not the only great change from Collor's government to Franco's. The scandals of the early 1990s had led to an active civil society and its fear of an unchecked president and of abuse of power was still very much alive. There also seemed to be more faith in parties as donations from citizens to party funding increased considerably in the wake of the scandal (Melo, 2014). In his speeches, Franco highlighted that he was assuming office in accordance with democratic principles and promised that his government would be transparent, not allowing corrupt officials to remain unchecked.<sup>170</sup> It was strategically important to calm society at the time and distance himself from the previous president (Ferreira, 1995; Durand & Abrúcio, 1998).

Congress, in turn, was reducing the possibility of presidents to have unrestricted powers. During the CPI on the corruption scandal that led to Collor's impeachment, it managed to pass an important law in June 1992: The Law of Administrative Improbity (Law n. 8,429), which

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<sup>170</sup> Discursos Seleccionados do Presidente Itamar Franco, 2008.

could not signal more opposition to the ongoing corruption scandal than it did. It set out the rules for civil service behaviour by defining administrative improbity actions as being related to obtaining undue assets, including illegal enrichment, or financial advantages while having a public function (Art. 9). In other words, it categorized as administrative failures omissions that violate honesty, impartiality, legality and loyalty to institutions (Art. 11)—any action that could directly or indirectly affect public administration in any one of the federal levels (Art. 1).

During Franco's government, in turn, a law concerning public contracts with private companies (Law n. 8,666) was passed in June 1993. It laid out bidding processes for public procurement through norms for contract procedures in the public sphere at any level: national, state, or municipal and thus limited the power of bureaucrats in the process of tendering public contracts with private companies. That these laws were passed in Congress and sanctioned by presidents demonstrates the change in the executive-legislative relationship and that Congress was not willing to be ignored.

During Franco's government, some existing institutions were restructured and gained new powers and tasks. The MPF—informally called “the fourth branch” in Brazilian democracy these days—had its organic law passed by Congress and sanctioned by Franco in February 1993, which added to the agency's constitutional functions the possibility of making recommendations in the name of civil society.<sup>171</sup> That was an extremely important institutional change for democracy, even though the consequences would only become clear later.

The organic law, according to MPF prosecutor Denise Túlio,<sup>172</sup> was essential for it to become the independent institution it has become since the early 1990s. Besides, in 1993, the

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<sup>171</sup> Through re-editing Law n. 8625/1993.

<sup>172</sup> Interviewed on November 20, 2014, in Brasília, Brazil. Túlio has been a Public Prosecutor's Office prosecutor since 1991.

General-Attorney Office (Advocacia-Geral da União, AGU) was created. The aim was to have two institutions: the MPF representing society's interests, and the AGU representing the Union's interests. Before the creation of the AGU, these two functions belonged to the MPF. In addition to its main function, the AGU was assigned the duty to advise presidents on the legality of their acts regarding federal administration and internal control (Law 73, Art. 1).

Even though Franco did what was possible to distance himself from Collor's image and behaviour, corruption scandals were not absent during his mandate. The request of a CPI to investigate a corruption scheme involving the Joint Budget Committee in Congress had been archived at the time to prioritize the CPI on Collor and PC Farias. The focus on Collor was, after all, the perfect opportunity to sweep that scandal under the rug. However, on October 16, 1993, a CPI was installed to investigate a corruption scheme involving large Brazilian construction companies, which was connected to Congressional Joint Budget Committee.<sup>173</sup> Evidence was found that a sophisticated cartel was in place, whereby members of the committee distributed federal government construction contracts to a particular group of construction companies. It was what Johnston (2005) calls a situation of elite cartel, being centralized in a particular group.

That scheme was nicknamed "Budgetgate" at the time. But because it involved the Committee secretary, João Alves Santos (PPR) and his six sub-reporters, it also came to be known as the "Seven Budget Dwarfs scandal." The CPI investigated 37 congressmen and many people in both the private and public sectors. The final report recommended the sacking of 18 members of Congress and further investigation of 11 of them.<sup>174</sup> Results were frustrating: when it came

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<sup>173</sup> The Federal Police was actually investigating João Alves Santos, and while trying to find evidence that he had kidnapped and killed his wife, they found the first evidence of this scheme. For more information on this CPI and case, see Krieger, Rodrigues & Bonassa (1994).

<sup>174</sup> Final report of the Budgetgate CPI.

to deputies, only six were removed from their positions, four resigned before they could lose their political rights, and eight were absolved (Teixeira, 1998; Fleischer, 2004). Senators, in turn, were not further investigated or brought to trial (Zancarano, 1994).

However, during the investigation, the CPI uncovered evidence that suggested the participation of employees of the executive branch. Instead of leaving the investigation centralized in a CPI in Congress and trusting completely the coalitions he had made, Franco took a different approach: he immediately created the Special Investigating Commission<sup>175</sup> (CEI), a formal and somewhat independent institution, to investigate the accusations. The creation of the CEI not only served as evidence of Franco's willingness to fight corruption, it also involved civil society. The CEI was formed by seven citizens chosen from the most diverse social segments and could investigate any area of the government. It chose the most appealing cases from over two thousand requests it received (Folha de São Paulo, January 21, 1995). Beyond that, this decentralized the still incipient investigative aspect of horizontal accountability.

The Budgetgate scandal gave more impetus for the creation of a horizontal accountability system. The Chamber of Deputies approved "new legislation that determined the ineligibility of any member of Congress under investigation who resigned to avoid ineligibility"<sup>176</sup> (Fleischer, 1997, p. 309). Budget allocation had stopped being fully centralized in Congressional Joint Budget Committee (Praça, 2010; Praça & Taylor, 2014; Fleischer, 2004). A constitutional project was finally created allowing the Supreme Court to open hearings against members of both chambers without needing their authorization first.<sup>177</sup> Moreover, a small step

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<sup>175</sup> Translation for: Comissão Especial de Investigação.

<sup>176</sup> Which was approved by the Senate in 1994.

<sup>177</sup> The 1988 Constitution gave immunity to Congress members from prosecution by preventing them from being tried in court without a previous vote by their peers. That reform was only approved as a Constitutional Amendment (n. 35) at the end of 2001.

was taken towards what would become one of Brazil's most important anti-corruption institutions: Franco created a Secretariat of Federal Control (*Secretaria Federal de Controle, SFC*) in the Ministry of Economy<sup>178</sup> in 1994—that agency would go through major modifications in the following governments to become what later became the Office of the Comptroller General (CGU).<sup>179</sup>

The SFC was an internal audit body in charge of monitoring public expenditure; it was a form of making control more efficient. Since 1967, each Ministry had had its own Department of Internal Affairs, which were renamed Cissets (acronym for *Secretarias de Controle Interno*) in 1979. These did not have autonomy and had to report to the National Treasury Secretariat,<sup>180</sup> which was part of the Ministry of Finance.<sup>181</sup> The SFC, in contrast to the Cissets, had the power to audit and evaluate the results of the functioning of certain federal programmes in cities throughout Brazil. In 1995, for instance, the SFC investigated 73 cases throughout Brazil, which involved approximately US\$13 billion (SFC, 2000, p. C-284).<sup>182</sup> That number would grow to 200 cases involving approximately US\$60 billion (SFC, 2000, p. C-284).<sup>183</sup>

It is clear that, in contrast to Collor's strategic behaviour, Franco considered the uncertainty provided by the institutional and political context. Instead of behaving as would be expected from a president of a delegative democracy as Collor had done, he lowered the level of frustration of the then active civil society by passing laws that signaled his commitment to

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<sup>178</sup> *Medida Provisória* n. 480.

<sup>179</sup> That will be further elaborated in section 4.2 and 4.3.

<sup>180</sup> Free translation for: *Secretaria do Tesouro Nacional*.

<sup>181</sup> Free translation for: *Ministério da Fazenda*.

<sup>182</sup> 11 billion *reais* at the time.

<sup>183</sup> 118 billion of Brazilian *reais* at the time.

fighting corruption. Also, at the very moment that the executive branch was implicated in a corruption scandal, he created the CEI to distance himself from all the corruption allegations. Instead of trusting entirely the partnerships that he had worked on during his mandate, he anticipated any potential outcome that could come out of cheap talk by immediately transferring power to third parties. As can be observed, in the aftermath of the impeachment, horizontal accountability emerged in the shape of protection for the governing elite (and mainly for the president).

Although it is not possible to claim that horizontal accountability was strong back in the mid-1990s, it is clear that Brazil was no longer a delegative democracy. After all, some power had been transferred from the president to other institutions, such as the CEI and the MPF. In addition, since the impeachment, Congress was more involved in the process of decision-making through coalitions. Power was no longer completely in the hands of the president and he was no longer entirely seen as the “embodiment of the nation” by citizens. The president’s authority started to be seen as a matter of rule of law rather than being based on a charismatic relationship between ruler and followers or on the belief on a traditional centralization of power. But more than serving as a mere way of solving a coordination problem in the post-impeachment context, the institutional and political changes during Franco’s mandate created new rules in Brazilian democracy. That was the beginning of the MPF’s autonomy and independence, which would have great impact in horizontal accountability in the following governments.<sup>184</sup>

### **3.2 The Persistence of “Corruption Scandal-led” Institutionalization**

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<sup>184</sup> Ex. During the Mensalão scandal in 2006. This will be explored in section 3.3.

During Franco's government, the economy continued to stagnate and Brazil was the only Latin American economy that had not stabilized by 1994; both Argentina and Chile had successfully stabilized their economies through neoliberal reforms (Mainwaring, 1997). By that time, Brazilian society was extremely afraid of the consequences of high inflation and slow growth. Fortunately, the chaotic economic situation was finally about to change. At the time, Fernando Henrique Cardoso (PSDB), who was then the third person to hold office as Franco's finance minister,<sup>185</sup> implemented in Franco's last year in power (February 1994) the Plano Real, which gave signs of inflation control. Franco's government, which had a rejection rate of 20% in September 1992 when he took office, finished with a rejection rate of only 8%; and from an initial approval rate of 18%, grew to 41% in the last month of his term, December 1994.<sup>186</sup>

The Plano Real—which would reduce inflation from 2,708% in 1993 to 14.78% in 1995<sup>187</sup>—strengthened Cardoso's hand with Congress (Mainwaring, 1997) and its success reinforced the link among large parties. Cardoso quickly became “the large parties' [presidential] candidate”<sup>188</sup> for the next elections (Loureiro & Abrúcio, 1999, p. 78). The political elite saw in Cardoso the antithesis of a *salvador da pátria* when compared to candidate Lula (PT), who had populist tendencies. Once Cardoso won the elections and became president, however, the process of creating a more limited government through strengthening institutions seemed to have frozen.

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<sup>185</sup> Gustavo Krause had left the position on December and Paulo Haddad had assumed temporarily.

<sup>186</sup> DataFolha (2004).

<sup>187</sup> Source: IpeaData (2016).

<sup>188</sup> Free translation for: “o candidato dos grandes partidos.”

Cardoso's government constantly resorted to patronage politics in order to gain legislative support.<sup>189</sup> In his first week in government, Cardoso "quietly extinguished the CEI" (Fleischer, 2004, p. 125), claiming that the investigation would continue through the ministries of Justice and Finance (Carvalhosa, 1995). Fifteen of the CEI's ongoing investigations did not conclude at all (Folha de São Paulo, January 21, 1995). Finally, Cardoso also resisted numerous attempts to install CPIs to investigate corruption in his government (Suassuna & Novaes, 1994; Fleischer, 2004). Despite those issues, the reduced level of inflation, however, had affected public perception: he assumed office having a 40% of approval rate and only 16% rejection rate.<sup>190</sup>

The institutional innovations during Cardoso's first term were focused on economic and civil service reforms (Praça & Taylor, 2014; Oliveira & Turolla, 2003). Nonetheless, they indirectly affected the oversight aspect of horizontal accountability through the creation of anti-corruption measures even though this was not the main goal. For instance, the federal civil service was significantly reformed with an emphasis on transparency (Bresser Pereira, 1996; Draibe, 2003; Cervo, 2002) and electronic procedures to discourage fraud in public purchasing were put in place (Abrúcio, 2007; Praça & Taylor, 2014; Cervo, 2002).

Treaties were an essential motivation behind the acts of horizontal accountability at the time. The government passed a money-laundering law in 1998,<sup>191</sup> whose most important innovation was the creation of the Council for Control of Financial Activities (COAF), which facilitates the tracking of large international suspicious fund transfers. Current COAF President

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<sup>189</sup> For instance, in April 1995, legislators that had rural interests threatened to boycott Cardoso's constitutional amendments in case he did not postpone debit payments owed to Banco do Brasil by landowners. Cardoso caved in and that negotiation was a "*sine qua non* for the support of scores of legislators for constitutional reform" (Mainwaring, 1997, p. 105).

<sup>190</sup> Source: DataFolha. 39% considered it to be "regular" and 5% claimed they did not know ("*não sabe*").

<sup>191</sup> Law n. 9,613.

Antônio Rodrigues,<sup>192</sup> who has held this post since 2004, believes that the international pressure that grew out of the United Nations Vienna Convention had a great impact on the decision to create an institution focused on money laundering in Brazil.

Indeed, the United Nations Vienna Convention (1988) had established that signatories should take measures towards the criminalization of money laundering and drug trafficking. In 1997, one year before the COAF was created, the United Nations had created the Global Programme against Money Laundering to help signatories develop techniques to fight money laundering. By establishing a system to fight money laundering, even though it was originally focused on drug trafficking, the COAF created a mechanism for banks to identify suspicious transactions and report them to higher authorities. That structure, Rodrigues points out, was problematic because it involved banks and the police or other authorities without an intermediary institution to investigate. Thus, to comply with international treaties COAF was created to fill the gap.<sup>193</sup>

Not surprisingly, Cardoso followed Franco's behaviour when it came to dealing with the political elite and opted for a coalition government. Cardoso actually formed a stable multiparty cabinet and "controlled the legislative agenda as a European Prime Minister" (Amorim Neto, 2006, p. 187).<sup>194</sup> In his first mandate, he went through two different coalitions. The first commanded 56.14% of the seats in the Chamber of Deputies while the second represented approximately 77.25% of the seats. Although the institutional features in Brazil provide

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<sup>192</sup> Interviewed on December 1, 2014, in Brasília, Brazil.

<sup>193</sup> Brazil currently takes part in three treaties against corruption: the UN Convention, The OAS Convention and the OCDE Convention.

<sup>194</sup> Free translation for: "*controlou a agenda legislativa como um primeiro-ministro europeu.*"

incentives for non-compliance with party guidelines, Cardoso's coalition was large enough that his future in power looked less uncertain than Franco's had initially been.

Nonetheless, Cardoso's second mandate was marked by several corruption scandals and was less stable than his first one. The economic success of the Plano Real was no longer a factor and there were several crises: the real devaluated in 1999, a scandal led to the fall of the Central Bank president, and the scandal surrounding the privatization of the state phone company led to other crises.<sup>195</sup> At the time, Cardoso maintained his focus on economic policies, but also worked to publicly stabilize his reputation (Praça & Taylor, 2014). For instance, it was "the taint of corruption" that "pushed the government to create a Public Ethics Committee in the executive branch in May 1999" (Praça & Taylor, 2014, p. 36).<sup>196</sup> By 2000, in his second mandate, Cardoso's approval rate fell to 18% while the rejection rate was about 43%.<sup>197</sup>

In addition, two regional governmental agencies became embroiled in a very public corruption scandal. These were the so-called Superintendency for the Development of the North (SUDAM) and the Superintendency for the Development of the Northeast (SUDENE), both created in 1959 under the government of President Juscelino Kubitschek to stimulate economic growth in the two poorest regions of Brazil. In 2000, the SFC started auditing and investigating two programmes: the "Development of Legal Amazon" and the "Development of the Northeastern Region."<sup>198</sup> By going *in loco*, the SFC concluded that there were several structural and operational problems, which ended by involving investigatory institutions such as the

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<sup>195</sup> See Lesbaupin (1999), Salum Jr. (2003), and Sallum Jr. (2000).

<sup>196</sup> Which issued a Code of Public Ethics for senior civil servants the same month.

<sup>197</sup> For March 2000. 2% claimed they did not know ("não sabe") what they thought about it and 37% stated they thought Cardoso's government was "regular." Source: DataFolha (2002b).

<sup>198</sup> Free translation for: "Desenvolvimento da Amazônia Legal" and "Desenvolvimento da Região Nordeste."

Federal Police and the MPF. The final SFC report showed, for instance, that the former led to the loss of over 70 million Brazilian *reais* (SFC, 2000, p. C-295).

The corruption scandal, in which important congressmen were implicated, led Cardoso to dissolve both agencies.<sup>199</sup> The head of the SFC at the time, Poubel de Castro,<sup>200</sup> explains that the way the media portrayed that scandal was extremely important: when he was auditing these programmes and found that something was amiss, the press reported it in a sensationalist way that tried to provoke too much attention from the public. Poubel de Castro recalls this created a sense of uneasiness at the time, which made the president decide to somehow merge the idea of auditing within the executive branch with legal inspection. The executive's auditing activities then became subordinated to an inspector's office; in other words, the auditing of executive's programmes now had to go through a process of inspection on the legality of the programmes.<sup>201</sup>

What is described above is the process that led to creation of the Inspector General's Office<sup>202</sup>—in Portuguese, *Corregedoria-Geral da União*, referred to as the CGU—in April 2001. As can be observed, the corruption scandal changed the political context and affected Cardoso's preferences and strategic behaviour. Despite being in a stable government and backed by a large party coalition, Cardoso decided to manage the SUDENE/SUDAM crisis by creating the CGU.

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<sup>199</sup> Such as the President of the Senate at the time, Jader Barbalho. It is important to observe that the names for the direction of SUDAM and SUDENE were appointed by Congress.

<sup>200</sup> Interviewed in Brasília, Brazil, on November 14, 2014.

<sup>201</sup> The actual quote in Portuguese is: *"Eu estava fazendo controle de denúncias—que era interno—mas, que tinha impacto político e isso deixava uma situação desagradável para... desconfortável para a presidência porque (...) isso quando é visto pela imprensa, você parte do pressuposto que tem que ser rápido e jornalístico... (...) Então isso ficou ruim em termos de controle interno na presidência fazendo fiscalização de um programa quando as pessoas queriam ver era denúncias, era tudo mais. Então isso causou um mal-estar muito grande e aí houve por bem na presidência de fundir controle interno com corregedoria em controladoria. Na época, foi criada a corregedoria, que absolveu o controle interno."*

<sup>202</sup> Through the *medida provisória* N. 2.143-31.

The creation of the CGU was a major institutional innovation. At the time, Cardoso appointed Anadyr Mendonça de Rodrigues<sup>203</sup> as minister of the new cabinet-level institution. Rodrigues' explanation of how she learned about CGU shows how improvised the process of its creation was: Rodrigues, a retired MPF prosecutor, recalls she was in Pará<sup>204</sup> when she received a phone call from a younger colleague, Gilmar Mendes,<sup>205</sup> then a member of the MPF. Although he mentioned something about the president creating a new institution, she did not let him finish since she was about to give a speech on the reasons for the creation of the General-Attorney Office (AGU) to jurists. After her presentation was done, she rushed to the airport to go back to Brasília. She recalls the moment she landed in Brasília: "when I step[ped] out of the plane, the journalists [we]re all at the end of the stairs: TV networks, Globo TV network, all of them... wanting me to say my first words on what I thought as a minister; I had been nominated!"<sup>206</sup>

The following day, her assistants informed her that the president had scheduled a meeting with her. Once she arrived at the specified location, she realized it was actually an event for the president to introduce the new minister to the press in general—Cardoso was announcing the creation of the Inspector General's Office as a "new" anti-corruption institution. Besides publicly distancing Cardoso from all the corruption claims, the creation of the CGU was also a way of protecting him at a vulnerable moment in which his formal partner parties might attempt to take advantage him or even withdraw their support. For instance, being

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<sup>203</sup> Interviewed on October 10, 2014, in Brasília, Brazil.

<sup>204</sup> Once she retired as a member of the MPF, she had been invited to take part in the creation of the General-Attorney Office (AGU). She then had to go through all the states in Brazil to convince public servants that the centralization of the juridical representation of the Union in one body would be an institutional evolution.

<sup>205</sup> Mendes was interviewed on December 3, 2014, in Brasília, Brazil. He is currently a Minister in the Supreme Court.

<sup>206</sup> Free translation for: "*Quando eu desço do avião, estão os jornalistas todos no pé da escada: a televisão, Rede Globo, todos... querendo que eu desse minhas primeiras declarações sobre o que eu pensava como Ministra; tinha sido nomeada!*"

interested in maximizing their votes, parties could decide to abandon the coalition since they had no interest in having their reputation linked to a president whose ratings were low (Altman, 2000). Just as Franco had created the CEI right after evidence was made public that the executive might have been involved in the Budgetgate scandal, Cardoso created the CGU when his government was allegedly involved in a corruption scandal.

The creation of the CGU as an anti-corruption agency was presented as a complementary measure to the enactment of the Fiscal Responsibility Law,<sup>207</sup> which had been promulgated in 2000 and outlined requirements for transparency and debts concerning state and city governments.<sup>208</sup> The rules imposed by the Fiscal Responsibility Law had an impact in both the Federal Court of Accounts (TCU) and the Public Prosecutor's Office. The TCU reorganized internally by creating ombudsman's offices, allowing more civil society participation and providing better access to information (Loureiro et al., 2009). Public prosecutors, in turn, adapted and took up legal instruments that previously existed but had now gained newfound strength—such as the public civil actions and civil enquiries (Praça & Taylor, 2014).<sup>209</sup> The emphasis on transparency grew with that law and led to the creation of numerous government websites providing data to civil society.<sup>210</sup>

Interestingly, institutional reforms concerning horizontal accountability were marginal and indirect while Cardoso enjoyed a honeymoon with society given the successful stabilization of the economy. However, in his second term, he faced several corruption allegations and took

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<sup>207</sup> The state audit tribunals – *Tribunais de Contas Estaduais* – had to make sure they complied with the requirements lined out by the Fiscal Responsibility Law, as well as supervising how the constitutionally mandated transfers were being executed in the areas of health and education.

<sup>208</sup> Approved in 2000, the Fiscal Responsibility Law limited state debt levels by setting limits on spending and requiring transparent fiscal information (Khair et al., 2006).

<sup>209</sup> Free translation for: *ações civis públicas e inquéritos civis*.

<sup>210</sup> Currently, TCU, CGU, and the MPF all provide easily accessible data on their official websites.

numerous measures aimed at strengthening horizontal accountability. It was no coincidence that the announcement of the creation of the CGU was made in the midst of a huge corruption scandal. Despite the existence of coalitions as a safety mechanism, Cardoso opted to have the executive checked by a third party at the very moment that his government was implicated in a publicized corruption crisis. It was also more strategic to announce the creation of an institution that could be advertised as an anti-corruption agency instead of maintaining the SFC.

The improvised creation of the CGU was a perfect example of crisis-led institutionalization. In fact, Rodrigues's ministerial appointment letter,<sup>211</sup> signed by President Cardoso, actually reads: "nothing is more important in this moment for the strengthening of democracy and the respect to the republican institutions than fighting functional slips, corruption, and impunity. Impunity is the twin sister of corruption, and, together, they destroy democracy and allow corruption by disseminating the discredit of institutions. The government, Dr. Anadyr, does not wish to mask anything and fears nothing on that matter—least of all me. However, I cannot allow that facts of the past come back under the pretext that nothing has been investigated, thus creating a fictional context of sea of mud to settle in Congress electioneering seeds."<sup>212</sup>

### **3.3 After Cardoso: Self-reinforcing institutions**

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<sup>211</sup> Presented during the interview with Anadyr Mendonça de Rodrigues on October 10, 2014, in Brasília, Brazil.

<sup>212</sup> Free translation for: *Nada é mais importante neste momento para o fortalecimento da democracia e o respeito às instituições republicanas do que combater deslizes funcionais, a corrupção e a impunidade. A impunidade é irmã gêmea da corrupção; em conjunto são a hidra que destrói a democracia, (...) disseminando o descrédito instituições. O governo, Dra. Anadyr, nada deseja encobrir e nada teme nesta matéria - muito menos eu. Mas, não pode permitir que fatos do passado voltem a ficar em cheque sob o pretexto de que nada foi apurado. Com isso cria-se um clima fictício de mar de lama para se instalar no Congresso sementes de cunho eleitoral (...)*

When Lula assumed the presidency in 2003, the institutional, political, and economic context was very different from the one his predecessors had faced. Brazil had a much more stable economy, the CGU was in place, the COAF had been created, the MPF was stronger, as was well as the TCU, and Congress was very aware that the government did not need to be centralized in the hands of a president. The political changes that had maximized the governing elite's payoff in the previous governments had led to new "institutional rules" under which Lula had to frame his policies. There was no way of going back to an unchecked delegative system.

Since Collor's impeachment, presidents seem to have learned that it is too risky to govern without a sustainable coalition in Congress. Although Lula's government was unstable in terms of party coalitions, his cabinet was stable and he could always rely on seven to eight parties. On this matter, Lula made the interesting observation in an interview to *Folha de São Paulo* in 2009 that even "if Jesus Christ came here, and Judas were part of a political party and got elected, Jesus would have to talk to Judas to make a coalition."<sup>213</sup> During his first mandate, Lula made a coalition with PTB, the party which Collor would later be a member of when becoming a senator in 2007. Indeed, both Lula and Rouseff have counted on large pro-government coalitions in the very start of their mandate.

When he took office, Lula "created" a new CGU. In actuality, what he actually did was to expand on what used to be called the Inspector General's Office to what went on to be called the Office of the Comptroller General. In Portuguese, the name went from *Corregedoria* to *Controladoria Geral da União*—yet, both are commonly referred to as "CGU" in Brazil. That expansion shows how important it was for Lula to display efforts in fighting corruption.

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<sup>213</sup> *Folha de São Paulo*, November 10, 2009. Free translation for: "*Se Jesus Cristo viesse para cá, e Judas tivesse a votação num partido qualquer, Jesus teria de chamar Judas para fazer coalizão.*"

Interestingly, the creation of the CGU was later an issue in presidential debates. On August 18, 2014, when Rousseff was seeking reelection, she affirmed on one of the most watched television news shows, the *Jornal Nacional*, that the CGU had been created under the PT government. Indeed, Law n. 10,683 in 2003, which is said to have created CGU under Lula's government, was about the creation of an institution to fight corruption and to improve transparency. Nonetheless, this "new" institution had actually only expanded the existing institution created under Cardoso's government.

Waldir João,<sup>214</sup> current Head of the Disciplinary Board of CGU and a man who had been part of the Cissets system, claims that CGU's expansion was inevitable in the political context and would have happened regardless of who won the 2002 elections. He states that despite PT's attempts to make it look like a new institution, Lula's CGU simply merged existing institutions so they would have the same status.<sup>215</sup> Indeed, the new CGU might have expanded, but the basic idea behind it is still the same it was in Rodrigues' days as minister: to fight corruption. That does not mean that the expansion was not important. On the contrary, the CGU is now comprised of different and integrated agencies.<sup>216</sup> It evolved from a narrow focus on internal control to a broader focus on preventing corruption and including citizen participation (as per interviews).<sup>217</sup> In the words of CGU Ombudsman-General José Eduardo

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<sup>214</sup> Interviewed in Brasília, Brazil, on November 20, 2014.

<sup>215</sup> The basic structure of CGU has been composed by the following since 2003: the Cabinet, the Office of the Legal Counsel, the Council for Public Transparency and Fight against Corruption, the Internal Control Coordination Committee, the Executive Secretariat, the Inspector General's Office (CRG), the Ombudsman's Office (OGU), and two secretariats: the Federal Secretariat for Internal Control (SFC) and the Secretariat for Prevention of Corruption and Strategic Information (SPCI) - Article 18 of the Law n. 10,683/03. All of them have the same institutional status and work in an integrated way. The Inspector General's Office corresponds to the activities Minister Anadyr Mendonça was responsible for while the Federal Secretariat for Internal Control refers to the activities Poubel de Castro was responsible for back in the days.

<sup>216</sup> It reintroduced the process of auditing cities, for instance.

<sup>217</sup> This will be further elaborated in Chapter 4.

Romão,<sup>218</sup> it marked “the creation of a Brazilian model of internal control.”<sup>219</sup>

Lula’s government was marked by existing constraints that escaped his political control. First, when he took office he found some institutions to have their highest positions filled with individuals who were appointed by parties that were now opposition to the government. This was the case of the Supreme Court, whose justices had been appointed by the PSDB, the PMDB and Collor. Second, the CGU, the TCU, and the MPF members were all assured lifelong tenure. In addition, they counted on a generation of personnel that had not depended on political appointments, but solely on public exams to be part of these institutions; most had no political ties whatsoever. Third, the two reasons mentioned above made it unlikely for politically appointed positions such as the head of the CGU to be based on reasons that could favour Lula’s government. In short, it had become harder for Lula to bypass or ignore institutional checks.

The stronger institutions with weaker political links had become players with their own goal: to fight corruption, to check on abuse of power, and to demand and make information available to and from other institutions. Maximizing their utility was not about protecting the government in power, but to self-reinforce their horizontal accountability mechanisms. In this sense, and once they began to have some independence from the political sphere, internal factors started to play a great role in their development. In fact, skillful leadership within institutions has played an essential role in their more recent evolution. Notably, almost all of CGU members interviewed for this project have mentioned the role of internal leadership, mainly of former CGU Minister Jorge Hage (2006-2015) as the leader of that expansion. Even

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<sup>218</sup> Interviewed in Brasília, Brazil, on November 21, 2014.

<sup>219</sup> Free translation for: “*a criação de um modelo brasileiro de controle interno.*”

the head of the CGU in the state of Paraíba, Fábio Araújo,<sup>220</sup> claims that Hage was a tireless and exemplary leader. Interestingly, Hage had been part of the ARENA, the PMDB and the PSDB—all opposition to the PT—before being appointed by Lula for that position.

The appointment of Paulo Lacerda as the head of the Federal Police was also extremely important. Although the Federal Police did not go through an institutional reform, it had been acting with a “conscientious attempt to reduce internal corruption and renew the police force through new hires” (Praça & Taylor, 2014, p. 38). In Lula’s very first year as president, for instance, it carried out the Operation Anaconda, which targeted high-profile judges suspected of “selling” sentences, *habeas corpus*, and prison release orders to defendants. Some of these judges went to jail and the General Prosecutor’s Office managed to bring back to the Union a large sum of the money that had been involved.

Ubiratan Aguiar’s term as the head of the TCU from 2001 to 2011, in turn, marked a turning point in the agency’s performance as an accountability body. Paulo Weichers,<sup>221</sup> the TCU’s General Secretary of External Control, claims that the efforts made by Aguiar were crucial because the TCU established a web of exchanging information with other institutions; in his view, it was not actually an institutional initiative, but an individual one within an institution. Also, as Praça & Taylor (2014) point out, the 2004 judicial reform was an example of internal forces. Given the public frustration with the extraordinary delays in obtaining court decisions, Minister of Justice Márcio Thomas Bastos pushed for the creation of a Judicial Reform Secretariat, which introduced external control over judges, strengthened the states’ autonomy in judicial cases, and streamlined legal proceedings. The reform also created the National

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<sup>220</sup> Interviewed on November 14, 2014, in João Pessoa, Brazil.

<sup>221</sup> Interviewed on November 25, 2014, in Brasília, Brazil.

Council of Justice (Conselho Nacional de Justiça, CNJ), which is charged with policy planning and investigating on wrongdoing and is staffed of a combination of prosecutors, judges, and representatives of civil society.

In sum, when Lula took office institutional improvements in limiting abuse of power and fighting corruption were driven by internal forces, such as leadership, and through interactions among bureaucrats of different institutions. The institutional context itself was self-reinforcing; improvements no longer depended on the president. Actually, Lula's government went through its share of political crises and the outcome illustrated the institutional strength of the time.

In May 2005, Lula's government was rocked by a huge corruption scandal known as the Mensalão scandal. The scandal broke when federal deputy Roberto Jefferson (president of the PTB at the time) claimed that members of the PT, such as Lula's chief of staff José Dirceu, were secretly paying numerous congressmen approximately US\$12,000 a month<sup>222</sup> in return for legislative support (hence the name Mensalão, which translates to "big monthly allowance").<sup>223</sup> It was a clear case of forming hidden coalitions to ensure the ability to pass the executive's agenda. Significantly, Jefferson's confession of being embroiled in that scheme illustrates the problem of cheap talk: although being part of the scheme maximized his utility, he changed strategies the moment it suited him best. Obviously, nothing could enforce the agreements he had made with PT, and his preference changed the moment that PTB became the target of the media.

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<sup>222</sup> In an interview to the newspaper Folha de São Paulo, June 6, 2005.

<sup>223</sup> Published on Veja on May 18, 2005, under the headline "the key name of PTB." Jefferson got his name involved when Veja had accessed a video in which DECAM/ECT former chief Maurício Marinho negotiated a corrupt scheme to benefit an executive. In the first moment, the investigation focused on DECAM/ECT officials that had been appointed by PTB—which is why Jefferson decided to reveal the whole Mensalão scheme.

A CPI was installed to further investigate the case and produced a report that was unanimously approved. The report claimed that the investigation concerning Jefferson's accusations showed what he had revealed to be mostly true. In response, the general prosecutor called on the Supreme Court in March 2006 to open criminal proceedings against 40 individuals linked to the scheme. As holders of high office, the politicians accused were entitled to have cases against them only ruled by the highest court, which meant that only the Supreme Court had jurisdiction. The latter accepted Justice Joaquim Barbosa's report unanimously in August 2007, thus approving all of the 40 indictments.

In 2012, the Supreme Court finally convicted 25 individuals for crimes including money laundering, conspiracy, and bribery. Beyond that, the court imposed high sanctions including imprisonment. Among the 25 convicted, high-level politicians were imprisoned. This is the case of the PT treasurer Delúbio Soares, former PT president José Genoíno, and Lula's chief of staff José Dirceu. Since there was no evidence that Lula himself had taken part in the scheme, he managed to be left out of the process. Nonetheless, the outcome of the Mensalão scandal was historically surprising because "as the largest party, the PT should have been able to control the investigatory committee, including its president and rapporteur. However, the committee's official report concluded that the accused were guilty" (Melo, 2014, p. 17).

The imprisonment of high-level politicians was a milestone in Brazil's progress towards limited government. It is important to keep in mind that Lula had appointed the general prosecutor and 6 out of 11 justices of the Supreme Court. The fact that these officials acted against the interests of the president who had appointed them clearly demonstrated the effectiveness of these institutions. In addition, the Mensalão case was important in **signaling** the possibility of punishment. For instance, COAF President Antônio Rodrigues points out that by

imprisoning a banker,<sup>224</sup> the Mensalão trial also showed financial institutions that failure to report suspicious transactions could lead to punishment.

Interestingly, in the aftermath of that scandal, the government's focus on strengthening institutional checks in its own initiative appeared to decrease. Once he was re-elected, Lula worked to publicly distance himself from the image of the PT and especially from his former chief of staff, José Dirceu. Institutions, however, kept operating independently from the executive branch's decisions. The CGU worked actively to deepen civil society participation by holding public meetings (Loureiro et al., 2012; as per interviews). Electoral courts made decisions to regulate political parties and the Supreme Court kept ruling on issues concerning nepotism and other corrupt behaviours. Finally, the National Council of Justice (CNJ) began punishing judges that were proven to be corrupt (Praça, 2014).

Also important, civil society was no longer as passive and trusting as it had been in Collor's time and it participated more actively either through popular pressure or through the creation of NGOs. For instance, society pressure led by the Movement Against Electoral Corruption (Movimento de Combate à Corrupção Eleitoral, MCCE)—which represented more than 40 civil organizations—successfully formalized a petition with 1.3 million signatures of citizens throughout the country in an attempt to pass a new law: the Clean Record Law.<sup>225</sup> This legislation, which passed in 2010, bars candidates from running for office for eight years after being convicted of a serious crime, resigning to avoid impeachment, or losing their position due to corruption.

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<sup>224</sup> Kátia Rabello, former president of Banco Rural.

<sup>225</sup> Complementary Law n. 135 of 2010. Free Translation for: "*Lei da Ficha Limpa.*" According to the information made available by the Tribunal Superior Eleitoral on their website. Last checked on October 20, 2016.

In addition, a number of local NGOs and civil associations were created, such as Movement of Conscious Vote, Ethos Institute, Transparency Brazil, Open Accounts and the National Association of External Control.<sup>226</sup> The latter's president, Lucieni Pereira, and director, Glória Merola, are both TCU auditors and decided to found the organization back in 2012 because of the fragility they saw in the horizontal accountability process when it came to auditing.<sup>227</sup> Economist Gil Castello Branco, in turn, founded Open Accounts in 2013 with the objective of monitoring the government budget execution.<sup>228</sup>

Furthermore, institutions personnel looked for ways to be more effective on their own.<sup>229</sup> There were two interesting innovations in cooperation (as per interviews). The first of them is the National Strategy to Combat Corruption and Money Laundering (Estratégia Nacional de Combate à Corrupção e Lavagem de Dinheiro, ENCCLA), which has brought together representatives of nearly 70 agencies (including the COAF, the CGU and the TCU) for annual meetings to discuss strategies concerning corruption and money laundering. As Praça points out, ENCCLA is “an interesting mix of externally and internally-driven forms of institutional changes” (2014, p. 39). More than half of the almost 200 recommendations for reform on anti-corruption mechanisms offered by ENCCLA between 2007 and 2010 have been implemented (Correa, 2011).<sup>230</sup>

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<sup>226</sup> Free translation for: Movimento Voto Consciente, Instituto Ethos, Transparência Brasil, Contas Abertas and Associação Nacional de Controle Externo.

<sup>227</sup> Both were interviewed on December 1, 2014, in Brasília, Brazil.

<sup>228</sup> Castello Branco was interviewed on November 17, 2014, in Brasília, Brazil.

<sup>229</sup> This will be further explored in Chapter 4.

<sup>230</sup> These include better integration of criminal justice databases and the creation of a financial asset recovery committee (Aranovich, 2007).

A second innovation concerns the complementary relationship created by partnerships between agencies. The CGU has improved its exchange with the TCU in terms of technical knowledge and system integration. The MPF has increasingly counted on the CGU and the TCU, and worked on operations with the Federal Police. The AGU, which has the power to represent the State in order to take measures on corruption situations (such as recovering money that has been illegally transferred), makes use of what has been reported and technically proved by the TCU and the CGU. The Federal Revenue Agency, in turn, has decided to increase information-sharing with other agencies.<sup>231</sup>

The past decade demonstrates that Brazil has moved away from delegative characteristics. Presidentialism in Brazil is no longer a matter of one individual who embodies the interests of the nation, but an issue that also concerns the political elite since they take part in governing coalitions. Moreover, not only is civil society more politically involved in democracy, but government data has become more easily accessible—making social oversight much easier. Institutions have attained a greater level of autonomy and have developed horizontal accountability mechanisms and partnerships with each other without the president's interference.

The Mensalão case, by actually punishing high-key politicians, is the clearest evidence of the strength of institutions. In addition, the ongoing investigation into the Petrobrás scandal has involved the CGU, the TCU, the MPF and the Federal Police (as per interviews) and has targeted different parties, including the governing one (PT), both in an integrated and independent fashion. To summarize, former President Dilma Rousseff governed constrained not

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<sup>231</sup> Once of the impacts of these efforts was the agency's decision to suspend the tax exemption of seven major political parties after it was clear they had employed misleading accounting (Power & Taylor, 2011; Praça & Taylor, 2014).

only by these institutions, but also by the coalitions that provided her with the latitude she needed to govern. Current President Michel Temer is equally constrained by such institutions. Unlike Collor's government, power is no longer centralized in the figure of the president, but shared by the political elite and different institutions.

### **3.4 Conclusion**

After Collor's impeachment, sharing power and delegating part of it to institutions became more strategic for the governing elite than having another *salvador da pátria*. As discussed in this chapter, Brazil broke the pattern of delegative democracy once the governing elites started transferring power to formal institutions in an attempt to mitigate potential consequences of political competition and to show citizens that something was being done to fight abuse of power. Since the corruption scandal involving Collor triggered the process, other corruption crises contributed to strengthening checks on presidential power and building limited government in Brazil.

The impeachment was a critical juncture in the process of limiting presidential power in Brazil and uncertainty played a big role in that process. The impeachment made the context more uncertain for the political elite—then, extremely heterogeneous—and it became more rational for its members to make a pre-commitment: delegating some power to institutions of control became the most rational choice to be made for all even though each individual would privately prefer to govern in a context of delegative democracy. In short, having involved a much publicized corruption scandal in a context of intense political competition, the impeachment: a) was a necessary factor for Brazil to strengthen and create anti-corruption

institutions, and b) had great influence in the consolidation of the “coalition presidentialism” that followed.

In a fragmented multiparty system in which the president holds great constitutional powers like Brazil, the lack of real institutional checks on the executive would potentially lead to the executive abusing its power, as had happened with Collor. At the time, that possibility was a risk for the numerous heterogeneous parties and increased the support for stronger institutional checks on the executive—in this sense, limits to presidential power became the protection of the bargaining system in place in coalition presidentialism; it was the most rational way of maximizing the political elite’s and, above all, the president’s payoff. In sum, the emergence of limits on presidential power through the creation/strengthening of institutions became the solution to the prisoner’s dilemma situation in which the political elite found itself in the post-impeachment context:

1. It would hold the rivals’ actions somewhat accountable when they were in office, which was something important given Collor’s lack of willingness to cooperate with the political elite in the 1990s;
2. It would mitigate society’s fear of unchecked presidents and of abuse of power, which was important after the military dictatorship and after Collor’s corruption scandal; and
3. In numerous situations, it protected the president from having his or her name associated to corruption, which was extremely important given Collor’s fate. Examples of this are the creation of the CEI and the CGU.

“Corruption scandal-led” institutionalization became a pattern in Brazilian democracy. The SUDENE/SUDAM corruption scandal led to the creation of the CGU, the Budgetgate

corruption scandal triggered important reforms in the procedures of Congress Budget Committee, and the Mensalão Scandal sparked innovations in the application of sanctions. However, although institutions were created because they could benefit the political elite more than alternate forms, this has not been the reason why they have survived.<sup>232</sup> Since 2003, the institutional improvements have mostly been implemented independently from the president. Powerful leadership and institutional cooperation has made horizontal accountability more robust and increasingly more decentralized. Significantly, all members of the TCU, the CGU and the MPF interviewed strongly believe that the power of their respective institution has considerably increased since the early 1990s.

The uncertainty created by a context of fragmented multiparty presidentialism has also made exchange mechanisms essential. As Pereira & Melo assert, “if democracy is to work—indeed, if it is to last—the government in general and the president in particular must build and keep winning coalitions” (2012, p. 161). As discussed in this chapter, the coalition presidentialism in place actually seems to be the only way of governing a country with such contrasting political features as Brazil. For instance, the executive may often make use of particularistic benefits such as pork-barrel projects and political transfers in the form of policy concessions and presidential appointments in such institutional settings (Pereira & Melo, 2012).

The idea of bargaining, however, may be overstated by some power-holders; politicians may engage in corruption and illicit activity to maintain a support base or just switch parties in order to have more access to state resources they can deliver in an attempt to gain more support (Hagopian, 2007; Mainwaring, 1997; Kada, 2003). The Mensalão scandal was one of such cases; the ongoing investigation on the corruption scandal involving Petrobrás suggests that

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<sup>232</sup> Contrary to Hall’s (1996) belief.

such scheme may be another case of overstretching the concept of political bargain. The following chapter will discuss why, despite the stronger institutional checks, corruption is still present in Brazilian democracy.

## 4. THE NATURE OF INSTITUTIONAL CHECKS IN BRAZIL

As explained in Chapter 3, Brazil currently boasts a powerful institutional web for checking wrongdoing, abuse of power, and mismanagement. Yet, practices like corruption were part of the reasons why Brazil was considered to be a delegative democracy in the early 1990s (O'Donnell, 1994). And, in 2014, Brazil saw its “biggest corruption scandal”<sup>233</sup> make headlines all over the media. The so-called “Petrolão” (which translates to “big oily”) scandal involved money laundering through the state-run oil and gas company Petrobrás. The scheme has actually been traced back to when Rousseff was not even a presidential candidate. It clearly illustrates that corruption is still a problem in Brazilian democracy.

Is the ongoing corruption scandal proof that democracy has not advanced since the early 1990s? Does it mean that the seemingly stronger institutional web in Brazil has actually failed? In this chapter, I argue that that is not the case. Although the creation of limited government is an ongoing process, institutions in Brazil have managed to become self-reinforcing, on their own initiative, by creating forms to overcome their weaknesses. Yet, corruption schemes in Brazil have actually shown to adapt to institutional innovations. Thus, instead of fully eliminating corruption, the anti-corruption institutions and mechanisms created since the 1990s have served as an incentive for more sophisticated corrupt activities that are harder to detect.

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<sup>233</sup> The Economist. January 3, 2015.

In other words, it is not surprising that corruption was considered to be a characteristic of delegative democracies; the lack of institutional checks meant there were no constraints to corruption practices, so pursuing these practices was relatively costless. Nonetheless, the imposition of limits to abuse of power in Brazil did not eradicate such activities. Rather, it added new obstacles for corruption practices; these obstacles, in turn, represented new incentives and constraints for political actors as they then faced a new tradeoff when seeking to maximize their utility.

This chapter will proceed as follows: in Section 4.1, I will first examine the nature of the institutional innovations. In this section, I will then explain that the creation of limits to abuse of power—in the form of horizontal accountability—is a recent and ongoing process, which is currently in the phase of developing sanctioning mechanisms. Although horizontal accountability is a broad term, as defined in Chapter 1, the emphasis will be only on oversight, investigation, and punishment mechanisms and institutions designed to limit abuse of power. Following this, I will explain how the recent scandals in Brazil illustrate that corruption has adapted to new obstacles as they differ from the schemes that took place in the 1990s. Instead of being proof that institutions have failed, the fact that corruption schemes have become harder to detect are proof of the advances made by the institutional web in the last decades.

#### **4.1 Brazil's Strong (Non-sanctioning?) Horizontal Accountability**

Horizontal accountability encompasses three different types of activity—namely oversight, investigation and punishment. These, it turns out, are not always interdependent. While punishment certainly depends on investigation, oversight and investigation can take place without the existence of sanctioning mechanisms. However, because of its non-

sanctioning nature, oversight has been called a “minimal” form of horizontal accountability.<sup>234</sup> Yet, in this section I also take investigation as a minimal form since it does not actually imply punishment outcomes for the ones being investigated. This section explores the main innovations concerning the three types of activity in Brazil and observes that punishment is the problematic one. Brazil has developed a strong web of “minimal” horizontal accountability, which is not surprising due to the fire-alarm nature of institutional innovations.

Despite the inexistence or weakness of all three elements in a delegative democracy, it is worth considering once again that delegative democracies have functioning vertical accountability. Beyond free and fair elections, both civil society and the media have Dahlsian freedoms. This implies they are able to raise what McCubbins & Schwartz (1984) call “fire alarms” once they believe something to be problematic. In Brazil, the painted faces movement, the creation of the MEP, and the media’s approach to the allegations regarding Collor’s corrupt acts were all clear fire alarms.<sup>235</sup> Since then, the creation of limits to abuse of power has been guided by different fire alarms: complaints from citizens and interest groups concerning corruption scandals have triggered selective acts of horizontal accountability.<sup>236</sup>

Because of the continuing fire-alarm nature of that process, different institutions began to implement either oversight and investigatory functions or both. Some of them, as will be discussed, actually started out with overlapping roles. Even though that has generated particular cases of conflict and institutional competition, the institutions have recently managed to work in a complementary manner, reinforcing horizontal accountability. While Congress

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<sup>234</sup> For the discussion on the elements of horizontal accountability and the idea of minimal horizontal accountability, see Chapter 1.

<sup>235</sup> These were explored in Chapter 2.

<sup>236</sup> As explained in Chapters 2 and 3.

constitutionally has the exclusive prerogative of overseeing the executive (1988 Constitution, Art. 44 and 49), that function is currently shared with two new institutions—the CGU and the COAF. The MPF and the Federal Police, in turn, share the investigatory function, but the CGU, the TCU and Congress have all taken part in investigative operations concerning corruption scandals. The following subsections describe the main developments concerning the three aspects. Following that, Subsection 4.1.3 discusses the main challenges that institutions have faced in Brazil in terms of horizontal accountability in the last three decades.

#### **4.1.1 Brazil's Overlapping, but Complementary Oversight Institutions**

Congressional oversight was particularly emphasized in the 1988 Constitution. There was a clear intention to change the balance of power since the executive branch had been too oversized during the military dictatorship from 1964 to 1985. According to Federal Deputy Gonzaga Patriota,<sup>237</sup> who took part in the elaboration of the new constitution, a “democratic spirit” took the National Constituent Assembly at the time.<sup>238</sup> Yet, most of Congressional oversight activities are done through the TCU, which, in fact, has existed since 1890 as the body responsible for oversight of public finances. Articles 70 and 71 of the 1988 Constitution have redefined it as the “main auxiliary agency for the external oversight of the administration.”<sup>239</sup>

Even though the TCU was “reborn” during the democratization process, institutional multiplicity in oversight emerged once the CGU and the COAF were created in the late 1990s

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<sup>237</sup> Interviewed on October 13, 2014, in Brasília, Brazil.

<sup>238</sup> The president of the Chamber of Deputies at the time, Ulysses Guimarães, declared at the day the constitution took effect that that one was the “Citizen Constitution” because of all the democratic social advances incorporated in the text (Speech of the Promulgation of the Constitution, October 5, 1988).

<sup>239</sup> TCU is not part of the judicial branch, but in practice it can be considered as a quasi-judicial institution because of its *modus operandi*. The court acts based on appeals, ruling, and hearings, as would a judicial body. Yet, TCU is a Congressional institution; it has been categorized as part of the legislative branch in all the constitutions since 1946 to the current 1988 constitution.

and early 2000s. The latter has a very specific role and is centered on overseeing financial transactions. Antônio Rodrigues,<sup>240</sup> COAF President since 2004, explains that the purpose of the institution is to be an intermediary player between horizontal accountability institutions and financial institutions (such as banks). In practice, once the latter informs them of suspicious financial transactions, the COAF does some initial inquiries on their own (requiring more information, etc.) and then transfers the information to other horizontal accountability institutions, such as the MPF.

The creation of the CGU, on other hand, represented an institutional bypass at first, since its purpose is the same as the TCU and its work is independent from the latter.<sup>241</sup> Nonetheless, it distinguishes itself from the TCU by being responsible for internal oversight within the executive branch. It aims at preventing potential mismanagement and wrongdoing before the TCU does its own evaluation. Although the creation of the CGU did not change the role of the TCU as a control institution in theory, it is obvious that in practice the executive branch is more inclined to prefer the CGU's recommendations than those of the TCU since the latter is linked to Congress (Speck, 2011). Paulo Weichers,<sup>242</sup> the TCU Secretary of External Control, states that the fact that they have different "clients" makes a great difference in how they work. The TCU, he claims, does not take all that is on the CGU's report as being unquestionably true since the CGU's client is the executive power. The TCU thus audits through its procedures to evaluate the executive power so it can work on a report for its client, Congress.

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<sup>240</sup> Interviewed on December 1, 2014, in Brasília, Brazil.

<sup>241</sup> The term "institutional bypass" is being used as in Thelen (2004) in the sense of new institutions performing the same functions as pre-existing institutions but independently of the latter.

<sup>242</sup> Interviewed on November 25, 2014, in Brasília, Brazil.

Despite their different status as “internal” and “external” oversight, the CGU and the TCU both oversee the government through auditing. Interestingly, however, they have evolved in a complementary form. In terms of oversight, the TCU assists Congress in three ways: a) it prepares reports on the government’s accounts for Congress’ Joint Budget Committee (CMO); b) it provides permanent advice on the execution of the budget; and c) it conducts specific visits and audits when committees or Congress itself requests it. Hence, by expanding the scope of the TCU’s action, the constitution has also allowed the TCU to overcome the simplistic accounting notion of oversight and to move towards a more expanded idea that also includes the examination of economic and legal dimensions (Pessanha, 1997; Figueiredo, 2003). Instead of being centered on lawfulness, the TCU has evolved to analyze the effectiveness of budgetary allocation.<sup>243</sup> It is all, however, very centered on oversight: according to Weichers, the TCU “can, for instance, tell you that the Abreu & Lima Refinery<sup>244</sup> construction work is overpriced. But we are only able to tell you that it is overpriced; we are not able to tell you where the money went to...”<sup>245</sup>

The CGU, in turn, having been created as a reaction to a corruption scandal, has since its beginning enjoyed the status of an “anti-corruption” institution (which is not often associated with the TCU). Since its inception, when it operated under Anadyr Mendonça’s administration, it was entitled to go through the government spending in order to evaluate legality aspects. While the TCU has remained dedicated exclusively to auditing (Speck, 2011), that task is only one of the CGU’s duties in the present. Currently, the CGU’s main oversight mechanisms at the

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<sup>243</sup> According with Ricardo Mello, interviewed on November 21, 2014, in Brasília, Brazil.

<sup>244</sup> One of Petrobrás refineries, the Abreu & Lima Refinery, was estimated to be overpriced in over 1 billion *reais* – around 65% of its total budget (TCU Report, November 18, 2015).

<sup>245</sup> Free translation for: “*nós conseguimos, por exemplo, te dizer que a obra de Abreu e Lima tá superfaturada. Mas nós só sabemos isso: ela tá superfaturada; nós não sabemos dizer pra onde foi o dinheiro.*”

federal level have been the following: a) the evaluation of how government programmes are being executed; b) the Random Audit Program in Small- and Medium-Sized Municipalities;<sup>246</sup> and c) the evaluation of public administrators, including the president.

Yet, as explained in Chapter 3, the CGU has expanded and currently encompasses different agencies. It has evolved to a so-called “performance auditing” (Balbe, 2008) by also analyzing the results of public spending on the ground. That enhanced the power of detection, claims Sérgio Seabra,<sup>247</sup> who has been part of the CGU since its Cisets times: “now we actually go to the indigenous reservations to check if they got the medicine (that the report says they did); we go to a city in the Amazon to see if the school is actually functioning in practice, if the school was built.”<sup>248</sup> The evolution of the CGU from *corregedoria* to *controladoria* in 2003, in turn, exemplifies a process of institutional layering, in which new elements are put in place, thus altering the overall trajectory of the pre-existing institution (Thelen, 2004).<sup>249</sup>

All of the CGU’s oversight activities have considerably expanded in the last decades: while three government programmes were evaluated in 2011, the number grew to 12 in 2015. The Random Audit Program, in turn, is in its 40<sup>th</sup> round of auditing and has evaluated over 38% of the total of municipalities in Brazil.<sup>250</sup> Its first round in 2003 examined only 5 municipalities and, in 2015, it examined an average of 70 of them per round. The program is currently in transition to also consider states as units to be investigated. Partnerships with the TCU have also

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<sup>246</sup> It targets municipalities with less than 500,000 inhabitants and approach how they manage federal funds.

<sup>247</sup> Interviewed on October 16, 2014. Seabra is currently CGU’s Secretary for Corruption Prevention and Strategic Information.

<sup>248</sup> Free translation for: “*hoje a gente vai lá na aldeia dos índios ver se receberam os remédios; a gente vai no município lá na Amazônia saber se a escola tá funcionando, se a escola foi construída.*”

<sup>249</sup> Which is different from the process of institutional conversion, which concerns the adoption of new goals (Thelen, 2004). The process of transforming CGU into a *controladoria* was explained in Chapter 3.

<sup>250</sup> 2,144 municipalities. Source: CGU (2015) Relatório de Sorteios Públicos.

changed its activities: between 2004 and 2008, the number of administrators audited by the CGU was around 1,200 per year; from 2009 to 2011, that number fell to an average of 559 per year when the CGU and the TCU established a partnership to work on more in-depth reports with enhanced technical quality.<sup>251</sup>

Although they are both audit institutions, the institutional overlap between them has provided not only partnerships, but also the possibility of functional substitutes for some purposes.<sup>252</sup> “Redundant capacities,” as Streeck (1991) calls them, do not mean that they cannot benefit horizontal accountability. An example of CGU’s and TCU’s overlapping functions and how they have managed to do so in a cooperative and complementary manner concerns the report on presidential spending. The report must be sent out to Congress annually to be evaluated.<sup>253</sup> It has been up to the CGU, as the internal control institution, to do its own examination based on the annual statements of the government (so-called General Balance of the Union).<sup>254</sup> It is then sent out to the TCU, which, in turn, prepares an extensive report analyzing all the presidential spending, enunciating its position (whether the president’s spending should be approved or not) and making recommendations. Finally, that report is sent out to Congress, which must position itself by approving the government spending or not. The overlapping functions and complementary ways of proceeding means that the government is “double checked,” which enhances oversight over its actions.

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<sup>251</sup> Source: Portfolio CGU (2012).

<sup>252</sup> For functional substitution in institutional multiplicity, see Streeck (1991) and Hall & Thelen (2008).

<sup>253</sup> According to the 1988 Constitution, Art 84, XXIV.

<sup>254</sup> It evaluates through auditing and performance auditing how financial resources have been used by the presidential power. The statement of the government spending is laid out by the National Treasury Secretariat through the Integrated Budget System SIAFI (Sistema Integrado de Administração Financeira do Governo Federal).

#### 4.1.2 Brazil's Interdependent Investigative Institutions

The two most important investigatory institutions in Brazil are the Public Prosecutor's Office (MPF) and the Federal Police (DPF). However, the TCU, the CGU, and Congress itself also take part in investigating when it comes to corruption schemes. As will be discussed, these institutions are formally independent of each other. Nonetheless, interestingly, they usually must work together for operations to be successful. Despite their growing autonomy, they have increasingly found ways to cooperate with each other and share their expertise in operations that require interdependent work. It is worth mentioning that this dynamic is the outcome of the institutions and bureaucrats themselves rather than political initiatives.

Congress's investigatory aspect takes place through the CPIs. Their scope is unrestricted and different investigations can take place at the same time. During CPIs, congressmen form a committee through which they can call on witnesses, investigate individuals who have allegedly been involved in wrongdoing, and can also demand other institutions to provide information (such as the TCU). As explained in Chapter 2, it was a CPI that started the process that eventually led to the impeachment of Collor in 1992. There has actually been a CPI for each of the largest corruption scandals since then, including the Mensalão scandal in 2006 and the ongoing Petrolão scandal.

Both the TCU and the CGU are expected to contribute to producing conclusive findings during investigations concerning public resources. The CGU, for instance, has produced over 450 investigative special audit reports on demand from other institutions (such as the Federal Police, the TCU and members of Congress).<sup>255</sup> Both institutions are also empowered to

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<sup>255</sup> the majority of them being on municipalities (Source: CGU).

investigate all aspects of government spending and revenue, including fund transfers and loans contracted by the government. Among other things, during investigations they help in identifying the amount of resources involved and who should be held responsible. There have actually been over 80 joint special operations involving the MPF, the CGU and the Federal Police in the period between 2007 and 2011.<sup>256</sup> The MPF, according to federal prosecutor Denise Túlio,<sup>257</sup> has successfully relied on the CGU's and the TCU's expertise numerous times.

The MPF and the Federal Police have also been important partners in anti-corruption investigations. Túlio, who is a member of the MPF unit responsible for corruption operations, recalls that illicit enrichment was formally not an offense; hence, if there was no clear evidence of corruption there was not much that the MPF could do. Once it started being considered an offense (Law 8,429 in 1992), it allowed for investigations into corruption to take place more frequently with the help of the Federal Police.

The Federal Police, in turn, has had an increasing leadership role in the fight against corruption.<sup>258</sup> Since it can approach corruption in terms of criminal (and not only civil) offense, the partnership between the two institutions has allowed for deeper investigations in the search for evidence. It makes investigation more effective because of the police expertise and the possibility of obtaining evidence more easily (through telephone tapping, for instance) (Arantes, 2011). The number of police operations has risen from 18 in 2003 to 516 in 2012.<sup>259</sup>

The MPF, however, is still the central piece in horizontal accountability (Arantes, 2011). The 1992 Administrative Improbability Law, passed during Collor's impeachment, granted the MPF

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<sup>256</sup> Source: Portfolio CGU (2012).

<sup>257</sup> Interviewed on November 19, 2014, in Brasília, Brazil.

<sup>258</sup> Much of it due to the leadership of Justice Minister Márcio Thomaz Bastos, as mentioned in Chapter 4.

<sup>259</sup> Source: DPF, *estatísticas*: <http://www.pf.gov.br/imprensa/estatistica/operacoes> Last accessed on October 22, 2016.

greater powers to fight corruption and mismanagement. Since then, it has been extremely proactive and the scope of its work is extensive. Indeed, it has no counterpart elsewhere in the world (Melo & Pereira, 2013; Arantes, 2011). It is the only one completely independent from the three branches and it enjoys budgetary autonomy. As previously mentioned, because of this independence, it has been called the “fourth branch” of Brazilian democracy (Sadek & Cavalcanti, 2003; Sadek, 2008).

The MPF’s independence is not only in relation to the three branches, but also on an everyday work basis.<sup>260</sup> Indeed, one of its members is nominated as general prosecutor and one as the vice-general prosecutor. Yet, members of the MPF work independently from each other and have freedom in selecting the cases to investigate and prosecute (as per interviews).<sup>261</sup> It has a highly meritocratic recruitment,<sup>262</sup> and federal prosecutors have assumed the role of both society and state in these investigations.<sup>263</sup> Interestingly, it has had such support from society that it is not uncommon for experts, universities, or other members of civil society to volunteer to help it throughout its work.<sup>264</sup> That relationship with society, according to MPF federal prosecutor Humberto Jacques,<sup>265</sup> was crucial in serving as an incentive for governments to never try to get in the way of the MPF’s expanding powers over the years.

Constitutionally, the Federal Police must help the MPF and federal courts through criminal investigations as well as enforcing warrants and the like (Art. 144). And, as mentioned, the MPF and the Federal Police have increasingly been working collaboratively in high-profile

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<sup>260</sup> Interview with Humberto Jacques. Interviewed on November 13, 2014, in Brasília, Brazil.

<sup>261</sup> Interviews with Humberto Jacques and Denise Túlio.

<sup>262</sup> All of the MPF members are chosen via a public exam and have guaranteed income and career tenure.

<sup>263</sup> As mentioned during the interview with federal prosecutor Humberto Jacques.

<sup>264</sup> Interviews with Humberto Jacques (November 13, 2014) and Alcides Martins (November 19, 2014), in Brasília, Brazil.

<sup>265</sup> Interviewed on November 13, 2014, in Brasília, Brazil.

corruption scandals and complementing each other in terms of prosecution and field investigation (Arantes, 2011). Their partnership has been enhanced by individual agents within the two institutions<sup>266</sup> and has been essential for investigating wrongdoing.<sup>267</sup>

Nonetheless, despite the Federal Police and the MPF's increasing strength, it is interesting to note that criminal investigation works "triangularly"<sup>268</sup> amongst the three institutions in a very interdependent way: although the Federal Police has enough autonomy to choose which cases to investigate, it depends on the judiciary or on the MPF's authorization when it comes to measures such as arresting suspects or breaking bank and telephone secrecy. The MPF, in turn, depends on the Federal Police to gather evidence in criminal cases. And obviously, the judiciary depends on these two institutions' work to punish to impose sanctions. In that sense, even if the Federal Police, the MPF and all other oversight and investigation-driven institutions collaborate in successful investigation, not much can be done without the judiciary.

#### **4.1.3 Difficulties in Brazil's Institutional Web**

As described in the subsections above, institutions in Brazil have been sufficiently empowered to take actions on their own in order to improve horizontal accountability through oversight and investigation. However, there are some institutional obstacles for their procedures to have a successful outcome. These, in general, regard one of the following: a) individual institutions' own weaknesses, b) the at-times fragile link between them when it comes to interdependency (sometimes generated by institutional rivalry), and c) the lack of a final tangible outcome in terms of sanctions. Out of all three, the latter is the most challenging one.

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<sup>266</sup> According with Denise Túlio. This will be further elaborated in the following subsection.

<sup>267</sup> Interview with Humberto Jacques.

<sup>268</sup> To use Arantes's (2011) concept.

First, it is important to observe that, as in federal prosecutor Jacques' words: "it is not possible to make an institution [work] without money, personnel, public exams..."<sup>269</sup> All institutions mentioned in this chapter evidently have to work under limited time and resources. The COAF "is very small in terms of personnel; today we have 53 agents in our team; we are smaller than the Paraguayan COAF,"<sup>270</sup> laments COAF president. The MPF does not have enough personnel to deal with the number of reports they receive every month. Federal prosecutor Alcides Martins<sup>271</sup> claims to receive around 200 cases a week, which he considers an "inhuman" workload. Ricardo Mello,<sup>272</sup> who has been part of the TCU's staff since Brazil transitioned back to democracy, states that the TCU also faces problems because it lacks enough personnel to deal with all of the institution's tasks.

The institutions also have to face their own shortcomings. The CGU, for instance, has great focus on small municipalities and has been suffering through a budget problem. The TCU's highest officials are politically chosen by Congress, which has been a controversial issue.<sup>273</sup> CPIs, obviously, are very political and highly influenced by legislators' interests and the executive's interests due to Brazilian coalition presidentialism. When it comes to corruption, particularly, Denise Túlio adds another problem: the MPF procedures can only be initiated when there is evidence; there must be a reason—in the case of a corruption scheme, for

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<sup>269</sup> Free translation for: "*Você não faz uma instituição sem dinheiro, sem pessoas, sem concursos, (...)*"

<sup>270</sup> Free translation for: "*O COAF é muito pequeno, né, em termos de equipe. Nós temos hoje 53 pessoas (...) A gente é menor que o COAF do Paraguai.*"

<sup>271</sup> Interviewed on November 19, 2014, in Brasília, Brazil.

<sup>272</sup> Interviewed on November 21, 2014, in Brasília, Brazil.

<sup>273</sup> According to Speck (2011), since the one chosen by Congress tend to be closer to a retirement age, they are not able to cut the political ties for the short period they serve on TCU before retirement. Yet, TCU auditors Glória Merola and Lucieni Pereira—interviewed in Brasília on December 1, 2014—claim that the politically appointed ones actually bring a different and necessary political view to the TCU highly technical procedures. The TCU Secretary of External Control Paulo Weichers, who has been a member in TCU since 1987, agrees on the fact that historically, there has been no apparent political agenda in the political appointed ministers' decisions. TCU member Ricardo Mello shares the same opinion, adding that in over 90% of the cases ministers final decision is the same as the recommendation of TCU's technical body.

instance, it is often necessary to have someone willing not only to denounce it, but to feel comfortable enough to sign a document. She asserts that it has not been rare to have situations in which people went to federal prosecutors to denounce such schemes, but did not want to sign their names. That left the MPF aware of situations in which there was clear wrongdoing, but with no possibility of starting any investigation.

To solve the problem of limited resources and time, all institutions have managed to work on the basis of a prioritization system as a somewhat second-best solution. Even though this selective approach means that not all cases are considered, it means that the most relevant ones are investigated. The TCU formally chooses priority areas (such as health programs, etc.) for the year. The MPF members select their own cases and also seem to prioritize the “most emblematic ones.”<sup>274</sup> As for the CGU, its Federal Inspector Waldir João<sup>275</sup> says that it has been necessary to focus on the most alarming cases. The COAF, in turn, has developed different methods to maintain its productivity.<sup>276</sup> Even with a small team, they managed to send out around 3,178 reports in 2014; this represents a great change from 2006, when that number was 1,169.<sup>277</sup>

Limited time and resources can also be problematic when institutions have overlapping functions since it means different personnel doing exactly the same job (when their time and resource could be better employed). For instance, the CGU performs internal audit in the federal realm even though each federal agency has its own internal audit body. Yet, as has been discussed in section 4.1.1, overlapping functions are not completely negative since they are a

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<sup>274</sup> Free translation for: “*os casos mais emblemáticos*,” as said by Denise Túlio during the interview.

<sup>275</sup> Interviewed on November 20, 2014, in Brasília, Brazil.

<sup>276</sup> Interview with COAF President Antonio Rodrigues.

<sup>277</sup> COAF (2014).

form of double-checking the government and in the case of Brazil, have led to efforts to coordinate between agencies.

The second institutional obstacle concerns the interdependency among institutions. Individually, they enjoy a high level of autonomy. All of them are self-governed and do not face significant external interference. However, none of them combine oversight, investigation, and punishment mechanisms. All the institutions mentioned in this chapter require a follow-through by other institutions, which makes sense. Yet, reaching a cross-institutional integration and coordination may be problematic at times. If one link is broken, the whole process suffers the consequences. A great deal of the TCU's work, for instance, concerns recommendations based on its audit reports. These are sent out to Congress, which decides whether to take them into account. A great deal of the Federal Police's work, in turn, depends on judicial authorization. The MPF, as Humberto Jacques put it, can ask for punishment to be imposed by the judiciary, but not impose one. Beyond that, if one of the institutions goes through a crisis for some reason, all of them suffer the consequences. If there are fewer public exams to hire CGU personnel, Túlio claims, the MPF may feel it during its operations.

One of the problems raised by interdependency concerns institutional competition when it comes to investigation. As Taylor & Buranelli (2007) point out, the "sunshine dynamic" can be quite problematic: during media scandals, there is competition for the spotlight. This may affect horizontal accountability in the sense that it offers incentives for a particular institution not to share its information or expertise with other institutions. According to Weichers, egos and institutional vanity can indeed pose problems; there have been cases in which a particular institution announced results as their own when these had actually been achieved by a different one.

Members of the TCU and the CGU who prefer to remain anonymous have mentioned that there has been sunshine dynamic between their two institutions as well as between the TCU and the Federal Police. One of them claims that Operação Sanguessuga, one of them claims, strongly relied on the TCU findings, but the Federal Police purposely took credit for the whole operation. This operation (which translates to “Bloodsucker Operation,” also known as Operation Máfia das Ambulâncias (Ambulance-Mafia Operation”), occurred between 2004 and 2006, and concerned over 50 congressmen who were personally profiting through the purchase of overpriced ambulances.

Yet, in general, the sunshine dynamic has not been the rule, but more of an exception. In Brazil, control must be exercised through an institutional “chain.”<sup>278</sup> Interdependency has made institutions develop systems to exchange expertise with one another. Denise Túlio says that although there has been tension between the Federal Police and the MPF, they have often successfully partnered. She points out that these partnerships are often done at the individual level (thus depending on individual relationships and how willing to work together are those involved). Hence, some partnerships work perfectly fine while others become impossible. Yet, generally, she says, it has been a good partnership.

COAF president states that the institution’s philosophy is a cooperative one: “we understand the COAF as not being an end in itself.”<sup>279</sup> According to Fábio Araújo,<sup>280</sup> head of the CGU in Paraíba, the CGU and the TCU have been working very closely in the past few years, with their members working in a more integrated fashion, holding meetings and

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<sup>278</sup> Free translation for: “*uma cadeia de controle*”-in the words of Paulo Weichers.

<sup>279</sup> Free translation for: “*a gente entende que o COAF não é um fim em si mesmo.*”

<sup>280</sup> Interviewed on November 4, 2014, in João Pessoa, Brazil.

discussing matters that affect both institutions even at the state level. Operations involving the CGU, the COAF, and the Federal Police have also not been an exception, as the Gafanhoto,<sup>281</sup> Pororoca,<sup>282</sup> and Mamoré<sup>283</sup> operations illustrate. The CGU actually receives the information on suspicious financial movements from the COAF without having to request it (Hage, 2010). Furthermore, ENCCLA also represents a great step towards greater coordination in the fight against corruption; it has involved joint forces of the MPF, the DPF, the CGU, the TCU and the COAF. And, once again, it came out of the institutions' own initiative.

As can be observed, institutions and bureaucrats have tried to find their own ways of dealing with the two problems discussed in this section. They have reached out to each other, partnered, and tried to find strategic solutions such as the selective priority approach. These have all been institutional or individual initiatives. Cooperation and partnerships have become powerful tools in both oversight and investigative activities. As Humberto Jacques points out, the MPF for instance “does not have the logistic resources of a Federal Police, the capillarity or the CGU’s detailed radar, and a technical body as qualified as the TCU”<sup>284</sup> —but none of these are completely independent, which is the case of the MPF. “The truth is: there is no way of fighting corruption alone,” Denise Túlio asserts. “This is something, I believe, that has become clear to all institutions.”<sup>285</sup> Working together has meant balancing the institutions’ weaknesses and strengths.

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<sup>281</sup> Corruption scheme involving the hire of “ghost” officials in Roraima.

<sup>282</sup> Corruption scheme involving fraud in contracting with construction companies when building hospitals in Amapá.

<sup>283</sup> Irregularities concerning the use of approximately \$5 million destined to cities in Rondônia.

<sup>284</sup> Free Translation for: “*não tem os recursos logísticos da polícia federal; a capilaridade nem o radar tão fino da CGU e não tem o corpo técnico tão qualificado como o TCU.*”

<sup>285</sup> Free translation for: “*a verdade é que não há como combater corrupção sozinho; isso é uma coisa que, assim, já ficou muito clara, eu acho, pra todos os órgãos institucionais.*”

The major institutional problem actually lies in the fact that, formally, all of these institutions were designed around the idea of producing strategic information to identify wrongdoing or investigating potential cases of wrongdoing. However, the outcome of these operations is not always tangible; in other words: punishment remains problematic. Although the web of horizontal accountability in Brazil relies on shared responsibility and different institutions concerning oversight and investigation, that is not the case for punishment. All of these institutions must transfer the responsibility on their findings to a very centralized sanctioning authority: the judiciary.

The COAF only transfers information to other institutions. The CGU relies on its demand for justifications from those found suspicious and on reporting its findings to the TCU and the MPF. The TCU can only impose administrative sanctions on those found guilty of misusing resources. Yet, even though the CGU's and the TCU's administrative sanctions do not depend on civil or criminal conviction, the final word in sanction is still the judiciary.<sup>286</sup> Courts have the power to review and overturn sanctions imposed by other institutions.<sup>287</sup> Hence, although the judiciary does not impose administrative sanctions, those facing them can appeal to the judiciary. As Speck points out, in the case of the TCU, "by the time a final verdict is reached in court, those held responsible frequently are no longer in office, have transferred the assets in question into safe heavens, or have died" (2011, p. 145).

According to Túlio, the MPF faces the same problem and some cases are left with no outcome as their statutes expire before the Court takes action. The MPF may indeed initiate civil and criminal proceedings, but cannot impose sanctions. The Federal Police can carry out

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<sup>286</sup> The TCU actually also depends on the AGU to prosecute those who do not comply with its decisions.

<sup>287</sup> Federal Constitution, art 5, XXXV.

investigations, but ultimately depends on the judiciary. The effectiveness of investigations realized by both the MPF and the DPF depend on courts for trial. In practice, the case of accountability institutions in Brazil is one of “indirect sanction power”: they are institutions that do not have the ability to sanction, but only to report their findings to sanctioning institutions (Mainwaring & Welna, 2003; Manzetti & Morgenstern, 2003). Once that is done, another procedure that can take years to reach an outcome is initiated. During those years, those blacklisted or “sentenced” by horizontal accountability institutions remain unpunished.

The Petrolão scandal, once again, provides an interesting illustration of how that can affect horizontal accountability. It may seem shocking that during large corruption scandals such as the ongoing one, some early red flags were not “caught” by the aforementioned institutions. That, however, is not really the case. Often, these institutions raise warning flags, but a formalistic judiciary becomes an obstacle. Ricardo Mello points out that the TCU had been signaling through its reports that there were irregularities within Petrobrás activities for over ten years. Weichers, in turn, recalls that in 2005 the TCU stated that Petrobrás was making use of unconstitutional means to gain access to some services (provided by private companies). Instead of changing its means, Petrobrás got a preliminary injunction from the Supreme Court so it could still work through them until there was a final decision. Since 2005, the case still has not been discussed in court. As Weichers points out, the partnerships between Petrobrás and companies that are currently being questioned in the Petrolão scandal have been made through such means.

Evidently, the problem does not lie in the oversight and investigatory institutions individually, but in the sanctioning mechanism. The centralization in the judiciary, says MPF prosecutor Alcides Martins, means that it is too overwhelmed to impose punishments

adequately. In the end, the link between oversight and investigation procedures and the implementation of sanctions is extremely weak. “In Brazil, justice takes time...”<sup>288</sup> concedes COAF president. The outcome is a general sense of impunity (Arantes, 2011). And, as Melo and Pereira point out, the slowness of the judiciary system “generates a negative effect that goes beyond courts and extends to the entire society a generalized feeling of impunity as well as a loss of confidence not only in the courts but also in other accountability institutions” (2013, p. 17).

Yet, although it takes undue time because of an overwhelmed and excessively formalistic judiciary, punishment has made advances in the last decade. As shown in Chapter 3, in 2006, high-level politicians were prosecuted and went to jailed during the Mensalão scandal, which was extremely significant for Brazilian democracy. Among them was former President Lula’s chief of staff, José Dirceu. In November 2015, a senator was imprisoned for the first time in Brazilian history: Delcídio do Amaral was sent to prison when the Supreme Court uncovered proof that he was trying to create obstacles for the investigations into the Petrolão scandal.

More recently, on October 19, 2016, the MPF demanded the imprisonment of Eduardo Cunha (PMDB), the Speaker of the Chamber of Deputies who had initiated Rousseff’s impeachment in Congress. Cunha, who is currently awaiting trial, has been investigated and indicted for corruption and money laundering in connection to the Petrolão scandal. Former president Lula (PT) is currently under investigation. These examples how much the system has changed from Collor’s time when all the three elements of horizontal accountability were extremely weak. Although the punishment aspect is still catching up, it has shown significant

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<sup>288</sup> Free translation for: “*No Brasil, a justiça toma tempo...*”

improvements and has been supported by a strong institutional oversight and investigative chain.

#### **4.2 “Minimal” Horizontal Accountability: Costless Solution**

Currently, both the oversight and investigative aspects of horizontal accountability in Brazil function properly while punishment is still catching up. Although the latter has made significant improvements since 2006, it was quite problematic before that year. Was it worth having a strong institutional web that seemed unable to either impose or enforce sanctions? In this section, I argue that although they might be considered minimal forms of checking the government, the establishment of oversight and investigation mechanisms has changed Brazilian democracy. First, they have been important instruments in limiting the opportunities for corruption and increasing the possibility of catching wrongdoing. Second, their existence has allowed for both endogenous and exogenous sources of change. Once created, horizontal accountability can change over time and overcome its own weaknesses, which has been the case in Brazil. Third, they have generated punishment through reputational sanctions, created alternative ones, and even enhanced formal punishments.

The first reason why they have affected democracy in Brazil is straightforward: by merely existing, both oversight and investigation constrain illicit acts. They make officials think twice before engaging in wrongdoing. Oversight has usually been addressed as a form of providing barriers to potential tyrannical exercise of power.<sup>289</sup> Yet, beyond preventing cases of abuse of power, it also helps boost transparency, corrects informational asymmetry, and allows discussions on preferred policies (Aberbach, 2001). Investigation, in turn, may constrain illicit

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<sup>289</sup> That will be elaborated in Chapter 5.

behaviour of risk-averse politicians. In sum, the creation of institutionalized oversight and investigation alters the rules of the game and the bargaining context for politicians. An example is the City Audit Program, through which the CGU has constrained opportunistic behaviour of mayors in Brazilian cities (Zamboni, 2012).

Besides being extremely relevant for constraining wrongdoing, the existence of such institutions implies the possibility that they can change. In the last two decades, institutions in Brazil have changed because of both endogenous and exogenous reasons. Institutional change or stability requires that those who benefit from them have an objective preference for continuity or alteration. There needs to be ongoing mobilization from them independently of their purpose (Thelen, 2004; Mahoney & Thelen, 2009). Agency had an essential role in the evolution of horizontal accountability in Brazil: individual leadership, in the case of all these institutions, has guided endogenous changes. Not having strong association with the governing elite, those in charge of the institutions would only benefit from their improvement—even more so in a competitive institutional setting that incentivizes the search for the sunshine dynamic. The CGU's performance auditing and the development of ENCCLA are examples of that.

It is extremely difficult to reverse the process once institutions are created or strengthened. The MPF, Túlio says, has made a long list of enemies since 1988 and constantly fights the political possibility of having its capabilities reduced. Also, once they exist, the circumstances in which they are immersed affect how they change and unfold. In the case of Brazil, corruption scandals worked as exogenous shocks by opening up opportunities for agents to create or improve horizontal accountability mechanisms at specific times. The corruption scandals that occurred after the 1992 impeachment generated fire alarms in society and

increased pressures for institutional change. The creation of the CGU itself was a direct outcome of a corruption scandal, as explained in Chapter 3.

The third reason why that “minimal” horizontal accountability has changed Brazilian democracy concerns the sanctioning aspect. Oversight and investigation institutions have generated both informal non-legal sanctions and some formal forms of punishment. Denise Túlio argues that in an informal culture accustomed to clientelism and the like, the fight against corruption cannot be solely repressive, but must include on preventative mechanisms. Seabra, who is currently the CGU Secretary for Prevention of Corruption, shares that view. In that sense, transparency has become a much used and useful tool: oversight institutions have significantly improved transparency as a way to expose companies and individuals to civil society.

On its website, the TCU publishes a list of officeholders it judged as having severe irregular misconduct.<sup>290</sup> The CGU also makes all of its reports available on the Internet, allowing citizens to know the cities that have been audited and the outcome of the investigations. These reports include the names of those being investigated and the results of its audit proceedings. Significantly, the CGU also launched the “Transparency Portal” website in 2004, which provides information on the federal government staff, the government’s fund transfers and spending, and contracts signed with either individuals or companies. Also important, it provides lists with names of individuals and companies that have been blacklisted because of illicit acts.<sup>291</sup> Seabra claims that the Portal makes it easier for civil society to denounce suspicious

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<sup>290</sup> Through its portal: CADIRREG; which can be found on [www.portal.tcu.gov.br](http://www.portal.tcu.gov.br); reports on government spending are available at <http://portal.tcu.gov.br/contas-publicas/contas-publicas/contas-publicas.htm>

<sup>291</sup> The National Debarment List lists companies that are forbidden to take part in public biddings with the federal government because of unlawful practices; it currently counts with 12,663 sanctions. The Registry of Suspended Not-for-Profit Private Entities does the same, but concerns not-for-profit private entities; it currently counts with 3,148 sanctions. Finally, the Registry of Federal Government’s Dismissed Staff shows the administrative sanctions applied to public servants at the federal level; it currently counts with 4,250 sanctions. The lists were last accessed on April 29, 2016. Most of the reports of the CGU can be found at

behaviour (for instance, if one notices that a government official has living standards not compatible with the income displayed on the Portal).

Besides, the MPF, the TCU and the CGU have all created channels for direct communication with civil society to denounce wrongdoing.<sup>292</sup> Beyond helping foster trust in these institutions, the enhanced vertical accountability has allowed NGOs, civil society, and the media to be more aware of names and values involved in corruption schemes. TCU Minister José Múcio<sup>293</sup> acknowledges that transparency has had a great impact in Brazilian democracy: “I make recommendations through a report and five minutes later there is already someone either complaining on the computer saying he did not like my report... [or paying me] a compliment.”<sup>294</sup> The relevance of transparency, Seabra says, is that it transforms every citizen into an instrument of detection for wrongdoing since they can easily check if what is shown to them on reports (a construction, a reform, etc.) is actually there on the ground throughout Brazil.

In 2012, the Access to Information Law<sup>295</sup> was passed, making it mandatory for all government institutions (in all levels) to provide the information demanded by any citizen within one month. In fact, transparency has become a tool to fight corruption and improve horizontal accountability through vertical accountability. It becomes more difficult to delay proceedings when the case is widely discussed in newspapers and social movements are being formed around it, as in the Mensalão case.

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[www.cgu.gov.br](http://www.cgu.gov.br); the lists with names and companies blacklisted are available on [www.portaltransparencia.gov.br/ceis](http://www.portaltransparencia.gov.br/ceis), [www.portaltransparencia.gov.br/expulsoes](http://www.portaltransparencia.gov.br/expulsoes)

<sup>292</sup> Both have ombuds office. TCU launched a program called “Public Dialogue.”

<sup>293</sup> Interviewed on November 18, 2014 in Brasília, Brazil.

<sup>294</sup> Free translation for: “*eu dou um parecer aqui e 5 minutos depois já tem um cara reclamando no computador que não gostou do meu parecer, isso ou aquilo, ou um elogio.*”

<sup>295</sup> Free Translation for: *Lei de Acesso à Informação*, Law. n. 12,527/2011.

Moreover, beyond the benefits mentioned above, transparency has also indirectly helped in imposing formal sanctions, as society is more aware of the happenings and can thus pressure sanctioning institutions. There have been two major cases of laws that came out of popular initiative and led to formal sanctions. The first was Law n. 9,840 in 1999, which aims at fighting vote-buying during electoral campaigns as it allows fines and removal from office as punishment for candidates who offer benefits in exchanged for votes. Over 800 politicians have been removed from office for breaching the law. A more recent initiative of civil society, the Clean Record Law of 2010, states that those convicted of crimes are not allowed to run for office even if their sentence is not final and they can still appeal. There were 253 candidates that were not allowed to run for office out of 24,362 in the 2014 elections;<sup>296</sup> for the 2016 municipal elections, that number was 1,658<sup>297</sup> out of the 496,898 candidates.<sup>298</sup> These laws were extremely important because they generated alternative paths for sanctioning wrongdoing.

Interestingly, some institutions have been looking for ways to formally sanctioning those found guilty without fully depending on the judiciary. They have developed compensatory sanction mechanisms through immediate financial costs and further reputational costs. The TCU, for instance, is empowered to ban companies from contracting with the government for a period of three to five years. It can also ban officeholders involved in severe misconduct from having high positions in the public sphere<sup>299</sup> for a period of five to eight years. Although it has been empowered to do so for the last three decades, it only recently began to make use of both

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<sup>296</sup> Source: Congresso em Foco; Folha de São Paulo, September 8, 2014.

<sup>297</sup> Congresso em Foco.

<sup>298</sup> The total number of candidates for mayor, vice maior and aldermen was retrieved from the data made available by the Superior Electoral Court.

<sup>299</sup> So-called "*cargos de confiança em administração pública*," as established by Art. 60 of the TCU's Organic Law.

powers. There are currently 200 companies blacklisted, all of them blacklisted in the 2000s.<sup>300</sup> No officeholder had been banned until a decade ago; the number has grown to 702 in 2015, and reached 744 in October 2016.<sup>301</sup> Both sanctions do not require any intermediate institution to become effective.

The TCU also makes use of Special Account Processes (TCE).<sup>302</sup> This mechanism determines liability in the case that the one investigated is found guilty of harming the government and can face a financial sanction. Although the decision can be appealed in the judiciary, no other institution can overturn the TCU's imposition of repayment of losses on technical grounds (Speck, 2011). Interestingly, the CGU can recommend the TCU to apply a TCE.<sup>303</sup> In 2010, the number of TCEs sent out by CGU to TCU was 1,106; in 2015, the number was 2,437.<sup>304</sup> Finally, it is also interesting to observe that although the TCU is supposed to be an auxiliary body to Congress, 146 actions of external control were demanded by Congress in 2014 while 534 were initiated out of the TCU's own initiative.<sup>305</sup>

In sum, although Brazil has indeed broken the pattern of delegative democracy through "minimal" horizontal accountability, these "minimal" aspects have increasingly been constraining wrongdoing. Oversight and investigation institutions have become so self-reinforcing that they have pushed towards reducing the institutional weakness concerning

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<sup>300</sup> Last checked on October 23, 2016, on TCU's portal CADIRREG.

<sup>301</sup> Last checked on October 23, 2016, on TCU's portal CADIRREG.

<sup>302</sup> Free Translation for: *tomada de contas especiais*.

<sup>303</sup> From 2002 to June 30, 2015, CGU sent out 21,102 TCEs to be analyzed by the TCU. Source: CGU's portal. Last checked on October 22, 2016.

<sup>304</sup> Source: Annual Report of Activities (CGU) – 2014 and data available on CGU's portal. Last checked on October, 22, 2016.

<sup>305</sup> Data from TCU (2014).

sanctions. In other words, although the punishment aspect has been a weakness in the horizontal accountability web in Brazil, it will not necessarily remain so.

Once horizontal accountability is created, society is more empowered and more willing to demand institutional solutions to abuse of power and corruption. The existence of such institutions, in turn, opens room for agency, which helps democracy by allowing the possibility of substantial institutional changes and for the strengthening of all aspects of horizontal accountability. The Brazilian case shows that horizontal accountability as a way to limit abuse of power must not only be seen as a multifactorial concept, but also as a continuing process—and, that the so-called minimal horizontal accountability is more powerful than once assumed.

#### **4.3 The Emergence of Harder-to-detect Corruption Schemes**

It is important to bear in mind that the weakness of institutional checks was the reason why Collor was able to abuse his power in the early 1990s. The scandal that preceded his impeachment, in contrast, was about corruption, about Collor abusing his position in public office **for private gain**. It is important to note the difference: his abuse of power took place because the institutional setting of the time allowed him to do so, whereas the corrupt scheme in which he allegedly took part were for private benefits. In other words, although corruption practices happen more easily when there are weak institutional checks—as was the case in the early 1990s—they are not the outcome of weak institutions. In the Brazilian case, this has been illustrated by the corruption scandals that followed Collor's scandal. As institutional checks have increasingly evolved, corruption schemes have become harder to detect.

The creation and strengthening of the institutions in Brazil have certainly affected the tradeoff faced by politicians when it comes to maximizing their utility through practices of

corruption. The weakness of the punishment aspect, for instance, may play an essential role in the persistence of corruption. After all, the unlikely possibility of being punished may serve as an incentive for social actors to make use of activities of corruption activities to attain their desired goal. Most innovations, as explained in Chapter 3, have been created as reactions to corruption schemes; they have thus targeted particular types of corruption.

Once corruption schemes were uncovered, it became easier for institutions to know how they operate and thus use that knowledge to create forms of preventing these schemes from happening again. This has certainly made institutions better-equipped to deal with such types of corruption. Yet, corruption is a wide and encompassing term; it ranges from a simple bribery to complex money laundering arrangements. In this sense, it is interesting to note that the corruption schemes that followed the one concerning Collor in the early 1990s have increasingly become more sophisticated as social actors have to exert harder to hide the scheme.

Back in Collor's time, the schemes that were uncovered were simple arrangements and actors were careless in hiding them—such schemes could hardly happen today. The way they were uncovered, in turn, shows how incipient institutional checks were. For instance, in the early 1990s, Domingos Poubel had just created SIAFI, the system that registers all government spending, and government officials were still learning how to use it. According to Poubel, the system showed suspicious financial transactions made by the foundation that the first lady, Rosane Collor, was in charge of—and all done through the SIAFI system. Rosane was found guilty in 2000, when the case went to trial, but she appealed and was later absolved.<sup>306</sup>

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<sup>306</sup> Other corruption scandals that had frustrating outcomes: The Dwarfes Scandal had a similar outcome to Collor's: although nineteen Congress members were expelled, none was convicted of corruption-related crimes even though the alleged crime was bribery. The next scandal involved vote-buying in 1997; members of the executive and some congressmen were accused and the outcome, once again, consisted with two legislators being expelled. The 2001 SUDAM and SUDENE scandal led to Senator Jader

The scheme that Collor was allegedly involved in was also very simple: PC Farias, who had been treasurer during his campaign but did not have any position in the government, took charge of the transactions with companies.<sup>307</sup> He personally pressured social actors to join in on the scheme. Former President of Petrobrás Luiz da Motta Veiga reportedly left his position because he was being pressured by Farias.<sup>308</sup> In addition, Farias' company—EPC—had made deposits to the company that had renovated Collor's property Casa da Dinda. It had also made deposits or paid bills for Collor's mother, Leda Collor, and the first lady, Rosane Collor.<sup>309</sup> Collor's account, in turn, had deposits made by six "ghosts"—names of people who did not exist that were later linked to Farias. Some of these ghosts had also made payments to Collor's first wife, Lilibeth Monteiro, and paid for one of Collor's cars.<sup>310</sup> In short, there was plenty of evidence linking Farias' careless behaviour to the corruption scheme and suggesting that Collor was involved as he and his close family were benefitting from it.

The abundant evidence led to the conviction of Farias, but not of Collor. The latter was found not guilty by the Supreme Court in 1994 because of the lack of evidence connecting him to the alleged crimes. That was in part because of the investigation process, which was done in a somewhat naïve and improvised way; the Federal Police apprehended Farias' computers before it had a warrant to do so. Hence, the evidence could not be considered in the final report that was judged by the Supreme Court. Collor currently serves as a senator, and his name has been implicated in the current Petrolão scandal.

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Barbalho's resignation. Barbalho currently serves as a Senator; although he was convicted in 2013, he has managed to not go to prison by constantly appealing to the judiciary.

<sup>307</sup> Folha de São Paulo, November 10, 1992.

<sup>308</sup> Folha de São Paulo, November 1, 1990.

<sup>309</sup> Folha de São Paulo, August 8, 1992; November 10, 1992.

<sup>310</sup> Folha de São Paulo, August 8, 1992.

Since the early 1990s, no other corruption scandal has involved suspicious transactions on SIAFI even though the system is still used today. Schemes began including a broader range of participants, contrary to what had happened under Farias. In the 2000s, things were already different concerning corruption and institutional checks. The Mensalão scheme was about “buying” support in Congress. As Paulo Weichers mentions: “Collor was selfish; he did not want to share the cake... and now there is a sharing behaviour. Mensalão was that: it was about sharing the cake.”<sup>311</sup> Members from different parties were involved, such as the PT, the PMDB, and the PSDB; the former was paying congressmen so they would vote in favour of legislation it was trying to pass. The scheme was much more decentralized than the one that took place under PC Farias’ leadership. There were different persons involved in the operation, such as businessmen Marcos Valério (the owner of an advertisement agency) and some of his associates, the treasurer of PT Delúbio Soares, the head of PT José Jenóino, some associates of the real estate agency Bônus-Banval, former director of the Bank of Brazil Henrique Pizzolato, and former high-level directors of the Rural Bank.

That Mensalão scandal actually illustrates the co-evolution of corruption and institutions: the MPF and the Federal Police’s partnership managed to do a joint investigation operation that had enough evidence for the Supreme Court to sentence some of those allegedly involved. Perhaps because they trusted the weak aspect of punishment in Brazilian democracy, most politicians involved in the Mensalão scandal did not admit any participation except for Roberto Jefferson, who broke the scandal. Yet, sanctioning showed its improvements; the Supreme Court issued arrest warrants for twelve of the alleged participants. Although some of them are still

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<sup>311</sup> Free translation for: “*Collor foi egoísta; ele não quis dividir o bolo (...) E agora existe uma divisão muito grande. O Mensalão era isso: era a divisão do bolo*”

appealing, others are now in prison. As Melo points out, “the Mensalão has become a symbol of the maturity of Brazilian institutions because it has set an important precedent: that even highly popular politicians can face sanctions” (2014, p. 3).

After the outcome of the Mensalão scheme, Brazilian institution adapted further: a law was passed regulating the possibility of plea deals in case for cases involving criminal organizations in 2013 (Law n. 12,850). A criminal organization was defined by the law as an association of four or more persons organized and characterized by a division of labor (even if informally) for the purpose of obtaining an advantage of any type through criminal offences whose maximum penalties exceed four years (Art.1). Because of this law, if one of the members of a criminal organization decides to tell the truth and collaborate, prosecutors can ask judges to reduce the sentence by up to two-thirds or a give a full judicial pardon or other benefits.

The outcome of the Mensalão scandal thus affected the strategic behaviour of those first accused of involvement in the ongoing Petrolão scandal. Alberto Youssef, an accused money dealer in the scheme, signed a plea bargain agreement and will potentially receive a maximum sentence of five years if he fully cooperates with the investigation. Executive officers of construction companies accused of involvement have followed the same strategy.<sup>312</sup> Until the present date, there have been seventy plea deals throughout the investigation of the Petrobrás scandal.<sup>313</sup>

It is also important to note that Collor’s involvement in a corruption scheme only became public because his brother, Pedro Collor, decided to speak out. The Mensalão scheme, in turn, became public because one of the persons involved, Roberto Jefferson, decided to tell what he

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<sup>312</sup> Dalton Avancini, executive officer of Camargo Correa, will have a penalty of six-year house arrest instead of a potential sixteen-year prison sentence.

<sup>313</sup> According to the MPF (2016) data. Last access on October 22, 2016.

knew. This was not the case with the Petrolão. The TCU Secretary for External Control Paulo Weichers had personally exposed the issue of Petrobrás' overpriced constructions before Congress' Joint Budget Committee in 2009. Congress then, for the very first time, made a decision to have a Petrobrás construction project stopped. Yet, the president decided to make use of his veto power to keep the construction going—and so it went on. However, that did not stop the institutions of investigating and overseeing events that would culminate in the Petrolão scandal. Denise Túlio recalls that, in the MPF, there was already an ongoing investigation that ended by uncovering the Petrolão scheme. Concurrently, the COAF sent out reports to the Federal Police and the MPF on suspicious financial transactions involving some companies.<sup>314</sup> Throughout the investigation, those companies were linked to the Petrobrás scandal.

In short, the ongoing Petrolão scandal is no evidence that Brazilian institutions have failed. Far from that, its uncovering and the joint investigations that have been carried out are actually proof that they are successfully functioning. On the other hand, the corruption scheme itself is also proof that institutional checks have created incentives for social actors to adapt their arrangements to bypass the new obstacles. Corruption is still present, but in a different and harder-to-detect form than the corruption of the early 1990s. The relationship between institutions and corruption in Brazil has showed to be one of co-existence and co-evolution; while innovations concerning the former have been triggered by corruption scandals, the latter has been readapting to every innovation. In sum, instead of being eliminated by the growing web of horizontal accountability, corruption has evolved. For a general explanation on the co-evolutionary relationship between institutional checks and corruption schemes, see Appendix A.

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<sup>314</sup> According to COAF President Antônio Rodrigues.

As the TCU's Ricardo Mello points out, it is difficult for institutions to anticipate the type of illicit activity that will occur in the future. Once a corruption scheme happens, institutions learn from that activity the type of institutional checks they should develop to fight it. Thus, if it happens again, institutions will be well-equipped to tackle it. Yet, if an "original" type of corruption scheme follows, the learning process restarts. Just as institutional checks have grown stronger since the 1990s, corruption schemes have become harder to detect. Or, as a federal prosecutor<sup>315</sup> puts it, corruption in Brazil has proven to be extremely "creative."

Nevertheless, that does not mean that the fight against corruption is a lost battle. Since innovations concerning institutions and corruption are triggered by one another, there may be ways to reduce the number of corruption schemes within the political sphere: one of them is to try to step ahead and innovate in ways that provide incentives for actors to either not engage in corruption or to report those involved in a scheme. Both innovations have been taking place in Brazil more recently. Institutions such as the MPF, the CGU, and the TCU have together increased the level of transparency concerning government actions, which, for instance, serves as an incentive for politicians to not engage in corruption in order to avoid having their names publicized on the blacklists that are available to all citizens.

The possibility of making plea deals is an example of an incentive for telling on partners in corruption schemes, which helps institutions to learn more from the arrangements involved and adapt accordingly. Beyond that, it also increases the risks for those inclined in participating in future corruption schemes as they know a partner may decide to make plea deal. In sum, institutions can evolve to a point where they are able to anticipate some features of what will be the next corruption scheme. Plea deals have helped investigations to move faster; since 2014

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<sup>315</sup> Who wishes to remain anonymous.

until October 2016, 92 people have been temporarily imprisoned and 6 have been arrested red-handed. In addition, there have been 7 charges based on administrative improbity, which have targeted 38 people and 16 companies; there have also been 51 criminal accusations (ranging from corruption to money laundering) targeting 243 people, 23 have been sentenced.<sup>316</sup>

#### **4.4 Conclusion**

When it comes to corruption scandals, “Brazil has made much progress in the past few years in improving legislation and enhancing the individual performance of accountability institutions, but the end results remain dissatisfying” (Arantes, 2011, p. 196). Indeed, since the process of strengthening institutions started out through fire-alarms policies, it is not surprising that oversight and investigation have been prioritized over punishment. Until recently, the sanctioning power has remained centralized in a slow and overwhelmed judiciary. As discussed in this chapter, that is not all negative. After all, “once created, institutions often change in subtle and gradual ways over time” (Mahoney & Thelen, 2009, p. 1). Contrary to Schedler (1999), Kenney (2003) and Moreno et al. (2003),<sup>317</sup> the case of Brazil has shown that non-sanctioning horizontal accountability can be effective because it can develop sanctioning mechanisms besides constraining abuse of power.

Brazil currently boasts stronger institutions that it had in the early 1990s. Yet, corruption scandals are still very present. Siavelis argues, “at the root of both corruption and administrative inefficiency is government institutions’ lack of oversight capabilities” (2000, p. 71). For the case

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<sup>316</sup> Source: MPF (2016).

<sup>317</sup> As discussed in Chapter 1, the discussion on the relevance of punishment in the concept of horizontal accountability has been controversial.

of Brazil, that has proven to be untrue. Both oversight and investigation have been part of a robust web of accountability in the last decades. Rather, the root of the problem lies in the lack of efficient forms of punishing those found guilty and in the fact that corruption has constantly adapted to the improving institutions.

The sanctioning problem and the existence of corruption negatively affects public opinion and creates a sense that institutions do not work in Brazil. Yet, the creation of institutional checks does not mean ending corruption, as strong institutions cannot actually eliminate it. As corruption scandals in Brazil have shown, agents willing to engage in corruption learn through the institutional setting they are embedded in, adapting their strategic behaviour. In short, just as the process of institutionalization in Brazil was “guided” by corruption scandals, corruption has constantly adapted to institutional checks. Through this chapter, it is possible to conclude the following:

1. Ending abuse of power in a democracy does not mean ending corruption;
2. The creation of institutional checks in a delegative democracy potentially focuses on oversight and investigation mechanisms due to its fire-alarm nature;
3. “Minimal” horizontal accountability can be powerful enough to generate sanctioning mechanisms.

Brazil’s case has shown that corruption is able to adapt and requires equally adaptive institutional mechanisms. That does not mean, however, that the fight against corruption is pointless or hopeless. After all, the more sophisticated and complex institutional operations become, the more difficult it is for corruption to learn from it and evolve in the same level. Brazil’s increasingly more connected institutions do not seem to be heading in the wrong direction: sharing common goals centered on catching and punishing wrongdoing generates the

possibility of joint operations and a more effective outcome than if they were acting individually.

As examined in Chapter 3, despite the existence of corruption, the executive has not been able to abuse its power as it used to in the early 1990s. Constrained by a growing web of institutional checks, Rousseff could not do as she wishes and sees fit and Temer cannot do so, as Brazil no longer has the delegative characteristics it used to have. Beyond that, it is possible to observe that once power was transferred to institutions, they became self-reinforcing, allowing Brazil to move towards limited government.

Finally, the strength of institutions cannot be measured by the existence or not of corruption scandals, but by how its institutional chain of horizontal accountability deals with them. And, as discussed in this chapter, although corruption schemes have become harder to detect, institutions have also worked in more complex, interconnected, and cohesive ways. The existence of big corruption schemes is thus not a sign of institutional failure; having the ways to uncover such schemes is a sign that institutions checks are in place.

## 5. UNCERTAINTY AND THE EMERGENCE OF LIMITS ON PRESIDENTIAL POWER

Throughout the previous three chapters, it became clear that the process that led to the rise of a delegative democracy has to be reversed so that limits can emerge: society has to lose confidence in “saviours” and start trusting state institutions instead. That, however, is no easy task since these democracies entail a certain cult of personality and the lack of or weakness of institutional checks makes it hard for them to break the cycle. Yet, as shown in chapters 2, 3, and 4, Brazil has moved away from delegative characteristics since the 1990s. This chapter connects the findings of the previous chapters and discusses what they mean for our broader understanding of how limits to presidential power can emerge under what O’Donnell had considered unlikely conditions.

By connecting these findings, I explain in general terms why disappointment with the idea of a “saviour” is a necessary, but not a sufficient element alone to deter a democracy from its delegative characteristics. I then argue that the uncertainty generated by a corruption scandal in a competitive context in which fragmented groups are able to compete for power plays a fundamental role in the emergence of limits to the executive’s power. Although it would be beneficial for presidents to govern the country in a context of delegative characteristics, opting to limit their own power might be the price to pay in order to reduce the uncertainty of their future once they are threatened. In other words, strengthening institutional checks is the most rational choice to be made once the governing elite is in a prisoner’s dilemma situation.

Each of the sections of this chapter is an expanded and general view on the findings for

the case of Brazil in chapters 2, 3, and 4. Section 5.1 will examine how the very same characteristics that comprise so-called delegative democracies also make them vulnerable. Section 5.2 will then examine the role of uncertainty in making self-limitation a strategic behaviour. Section 5.3 explains why that strategic behaviour generates a suboptimal outcome when it comes to the institutions' strength and why it should not be considered a failure.

### **5.1 Delegative Democracies' Vulnerabilities**

As discussed in Chapter 1, the pessimistic prediction on the fate of delegative democracies makes sense: given their characteristics, why would rulers decide to limit their own power? Why would presidents want to be constrained by institutional checks if they can be in a much more unbridled position? Opting for being held accountable certainly seems like an unlikely and implausible choice once a delegative democracy is in place. The reason behind that, as discussed in Chapter 1, is the apparent lack of incentives for powerful individuals to invest in anything different from the comfortable *status quo* or, obviously, to change it to something that would result in a second best outcome from an individual perspective.

However, there are two elements in delegative democracies that have been underestimated. These two interrelated elements are at the core of what makes them "delegative democracies"—thus, once they are weakened or inexistent, they threaten the survival of the system as a whole (for better or for worse). First, for a system to be "delegative," the power must be delegated to an individual based on the assumption that such individual will be the "saviour." For a system to still be considered a "democracy," in turn, regular elections must take place. In other words, such powerful presidents actually gain power for a limited time and are chosen on the premise that they will make decisions that will help "save" the country. Once the first of

these elements is no longer there or citizens are no longer convinced of the second one, a delegative democracy ceases to exist. In the following subsections, I argue that ignoring the uncertainty of the future when it comes to both premises leads to overlooking the actual tradeoff the president faces in a delegative democracy—which is why presidents have erroneously been considered to be so strong in delegative democracies.

### **5.1.1 The “Saviour” Aspect of Delegative Democracy**

The lack of regular and fair elections has a straightforward outcome: the system is no longer a democracy. What allows delegative democracies to still be considered democracies, as mentioned in Chapter 1, is the fact that they have free and reasonably fair elections. Although that may seem like merely a periodic act of accountability, elections play an essential role in these democracies. Even though they are at the core of any concept of democracy, they perform a dual function when it comes to delegative ones: not only do they legitimize the system as being a democracy, but they also become the act of delegating power. Or, in short, they are the means through which power is completely delegated until the next election.

Interestingly, O’Donnell actually claims that delegative democracies are “more democratic, but less liberal, than representative democracy” (1999, p. 8). The majority chooses someone to be the interpreter of the interests of the nation. And if there is no clear majority, “a majority must be created for supporting the myth of the legitimate delegation” (1999, p. 9). It is through elections that candidates compete to become the zero-sum winner of the power to rule the country. If the lack of elections means that there is no democracy in place, their existence in a delegative democracy is a form of constraint: although presidents can govern as wished, they can only do so for a fixed period.

The authorization to govern has an expiry date, but it does allow presidents to govern as they see fit—which takes us to the “delegative” aspect of such democracies. As discussed in Chapter 1 and 2, once they become presidents, they abuse their power since there are weak institutional checks. Yet, the superpowers held by presidents are derived from the idea that they will save the nation, or at least, try to do so. The way these individuals are perceived by citizens is what validates their power. Once citizens “find” and elect the “saviour,” they are willing to “follow” that “saviour” because of the latter’s characteristics that they take as being special. Collor’s campaign and government in Brazil illustrate the process of creating a ruler-follower relationship with citizens.

It is important to observe that although both ideal-types of democracy are based on free and fair elections, elections authorize power based on different grounds in delegative and representative democracies. While the former rests on a traditional-charismatic authority, the position of the president is based and legitimated by what Weber (1978) calls “legal-rational authority” in the latter. In representative democracies, the legality of the rules is what validates the president’s position and policy-making rather than how citizens perceive that individual. The president is legitimized through continuous rule-bound conduct. Thus, although uncertainty is present in both types of democracy because of elections, it is higher in delegative ones. Even though strong presidents are considered to be the solution to deal with uncertainty and instability, they face a high level of uncertainty themselves when it comes to their future in power. The grounds on which their legitimacy rests are fragile.

It is also important to note that delegative democracies, as discussed in Chapter 1, are strongly individualistic; it is not so much about the party, but about the individual candidate in particular. Indeed, as discussed in Chapter 2, it was not problematic that Collor ran for the

presidency through a small party. It is expected that presidents know what is best for citizens even more than the citizens themselves. Thus, once the collectivity “authorizes” that “saviour” to govern, the elected president is entitled to speak for it and to also make it abide by his/her decisions. Presidential power in a delegative democracy is a sort of Leviathan in the sense that the president is responsible for being the unified expression of a whole made of different fragments. This means that the president has been authorized to apply measures that could be contested by Congress or one of the fragments of society but may choose to ignore such resistance. They have been authorized to be isolated from institutions and interest groups.

In sum, the delegative aspect implies that one individual has been authorized by the people to govern as he/she sees fit for a fixed term in order to save the nation from its ongoing problems. It is about bringing certainty to a context of instability. This is why it is so important for the candidate to fit into the role of the hero and to convince the people of his/her ability to manage the fate of the country. But, due to its nature, it is imperative for presidents to maintain the heroic image in a delegative democracy. After all, the image of the hero is what validates their power—the idea of them being “saviours” is why they are in office in the first place.

Because of the nature of this authority, “the only basis of legitimacy for it is personal charisma so long as it is proved” (Weber, 1978, p. 244). Yet, once that “charisma” can no longer be proven, the very own foundation of the idea of delegating power is gone. Just as strengthening the heroic image strengthens the president’s position, staining such an image threatens the survival of a delegative democracy – or, at least, of that particular president. It is important to observe that the charismatic link is not about personal charismatic attributes; charismatic leaders distinguish themselves from regular individuals by using “specific gifts... believed to be supernatural, not accessible to everybody” (Weber, 1978, p. 19). But it is necessary that society

sees itself as made of followers when it comes to that ruler; it concerns more a ruler-follower relationship than personal attributes. Personal attributes may help create that relationship, but its foundation concerns how citizens position themselves concerning the president.

As widely examined in the previous chapters, in a delegative democracy, the “supernatural specific gifts” that make society obey the president is that supposedly he/she is equally a) willing to save the country, and b) capable of doing so. Willingness and capability are what distinguish the leader from the followers. Indeed, fortunately for presidents, citizens tend to be accepting of the president’s actions. Even though they might disagree with (and even freely contest) some policies, they trust the president’s decisions to be the best for the nation in the long term. This was illustrated through how society felt towards Collor’s austerity packages, as described in Chapter 2.

It is difficult for citizens to stop regarding their “saviour” as the one capable of saving the country. Bad decisions can be accepted and mismanagement can be forgiven; all is accepted on the basis that the president is **trying to** save the nation from its problems. Thus, for the president to become a “fallen god,” one of the two aspects that made him/her be perceived as a hero—willingness and capability—must break down. While O’Donnell (1993) recognized that a continuing unresolved chaotic socioeconomic situation could transform the “saviour” into a fallen god, he did not approach the other aspect: willingness. The case of Collor in Brazil (in Chapter 2) has shown that the “willingness” aspect is also able to transform an “acclaimed saviour” into a “fallen god.” From the moment that the president no longer represents the solution for instability, the “saviour” aspect is gone.

### 5.1.2 The Individualistic Aspect of Delegative Democracy

In a democracy—even in a minimalist one—it is mandatory to win elections to be in power. In all actuality, it is not necessary to be the one individual winning, as access to decision-making can also be achieved by being part of a team or a party winning in a given election. As discussed in Chapter 2, politics is goal-oriented and actors behave rationally in order to achieve their goals. Note that it is not mandatory to gain office through elections to be part of the governing elite; what is necessary is to be part of the team that gains office through elections. At the national level, those included in the governing elite are the politicians that are in the governing coalition. As discussed in Chapter 1, in a delegative democracy, the president relies on a small group, a small governing elite, composed of the *técnicos* he/she chooses for appointed positions and the president's own staff.

Congress is often bypassed and an unchecked president governs *de facto* in a delegative democracy. Actually, the president is regarded as such a strong and inimitable figure that he/she may ignore the political elite as a whole and govern in isolation from the other branches. According to O'Donnell (1994), it is a system in which it is obvious that “resistance—in Congress and parties, or from interest representation associations, or in the streets—has to be ignored” (p.9). Such isolation, he adds, does not concern only political institutions and organized interests, as the president, once elected, can isolate himself/herself even from his/her own party. Collor's behaviour, discussed in Chapter 2, fully illustrates that governing style.

It is important to observe that a strong president of a delegative democracy is not the same as a strong ruler of a bureaucratic-authoritarian regime, which was the form through which Latin America experienced authoritarianism in the 1960s. O'Donnell (1973) coined the term in his analysis of the breakdown of democracies in South America in the 1960s. Contradicting

Lipset (1959), he argued that industrialization did not generate democracy in that region, but an authoritarian system based on professionalized military organization and technocrats. What differentiates these from delegative democracies is that Dahlsian freedoms are present in the latter.

In this sense, in contrast to the case of bureaucratic-authoritarian regimes, Congress, parties, social movements and interest associations can complain and criticize the policies undertaken by the president. And once that happens at a high level, the party(ies) that elected the president may refuse to support such policies in Congress. Obviously, this can isolate the president even more since it becomes more difficult to have a stable coalition in Congress. However, in a delegative democracy, this is not seen as a problem for strong presidents and merely affects the president's propensity to ignore or corrupt other institutions, according to O'Donnell (1994, p.10).

The uncertainty concerning the president's position in a delegative democracy, however, was neglected in O'Donnell's' conceptualization. What has not been considered in the idea of delegative democracy is that too much isolation generates tensions with the political elite, which enhances antagonistic feelings towards the president. Indeed, a delegative democracy lacks institutions checks; even if Congress decides not to support the president's policies, the latter can just govern by decree.<sup>318</sup> Nevertheless, as the case of Brazil illustrates, too much isolation generates a context in which political competition becomes so strong that it can divide the political sphere. On one side, there is a powerful president; on the other side, the political elite as a whole as opponents. In this sense, a delegative democracy as described by O'Donnell

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<sup>318</sup> Which, in the early 1990s, was the case of the *medidas provisórias* in Brazil, *decretos de necesidad y urgencia* in Argentina, and *decretos ley* in Peru.

enhances the characteristics of presidential systems that make them susceptible to severe crises (Linz, 1990).

Although antagonistic feelings and actions are not a threat to the president in the short term, it is important to keep in mind that the president “bears sole responsibility for the successes and failures of ‘his’ policies” (O’Donnell, 1994, p. 9). And, as mentioned in Chapter 1, that personalistic system leads to a situation in which presidents can experience swings in their popularity (O’Donnell, 1994). As such, too much isolation means that when policies go wrong or gross mistakes are made public, these “fallen gods” will have no support within the political arena and no safety mechanism that can help them stabilize their position. That, obviously, does not mean that once they are “fallen gods” they **need** political support to remain in power. Fortunately for these presidents, as long as citizens perceive them to be equally capable and willing to save the nation, there should be no problem. Unfortunately for them, as Section 5.1.1 aptly demonstrates, that will hardly be the case.

### **5.1.3 The Uniqueness of a Corruption Scandal**

It is extremely difficult to prove that the president lacks capability or willingness to be the “saviour.” Both are subjective qualities that can be easily manipulated by the president. The “willingness” aspect, which has not been explored in the theory of delegative democracy, may be even more difficult to be challenged. Citizens, after all, are willing to accept controversial actions from the president as long as they perceive him/her as their “saviour.” What can possibly affect society’s perception of the president’s willingness to save them?

As the case of Brazil has shown, in a delegative democracy, one event has the power to undermine the “willingness” aspect: a publicized corruption scheme that benefits the president

in the private sphere. It has to be extensively exploited by the media (and it can, due the existence of Dahlsian freedoms) so citizens can be aware of it. There has to be a link to the president because a delegative democracy is an extremely personalistic system. Moreover, it has to be specifically about private gains for the president. A corruption scandal involving the president demonstrates that the ruler was not so concerned with fixing the country, but was more concerned with using his/her position for personal benefits. It thus undermines citizens' almost unconditional trust, thereby putting the president in a vulnerable position.

In short, what makes a corruption crisis unique is the threat it represents to presidents' future in power by staining their reputation as "saviours" and potentially affecting the alliances made (if any have been made). In the face of such crisis, the president is no longer the figure of a leader whose visions inspires citizens that completely trust what he/she wishes for the nation. Instead, the scandals weaken that image and the delegative democracy thus loses its core element: the president is no longer the embodiment of the interest of the nation to whom power should simply be delegated.

Although it is difficult to stain the "saviour" image, once it is done, the president can only rely on political support to stay in power and make attempts to recover his/her position as an "acclaimed saviour." Nonetheless, if the president has governed in complete isolation, the moment that image is gone, he/she becomes vulnerable to the opposition—meaning, the entire political elite. The more the president isolates himself/herself politically, the more antagonistic is the political setting. In this sense, although delegative democracies have been approached as political systems in which presidents govern alone as wished, that may not be the case if they are to survive. The case of Brazil has shown that even in delegative democracies, presidents need coalitions to mitigate the problems that come along with presidentialism.

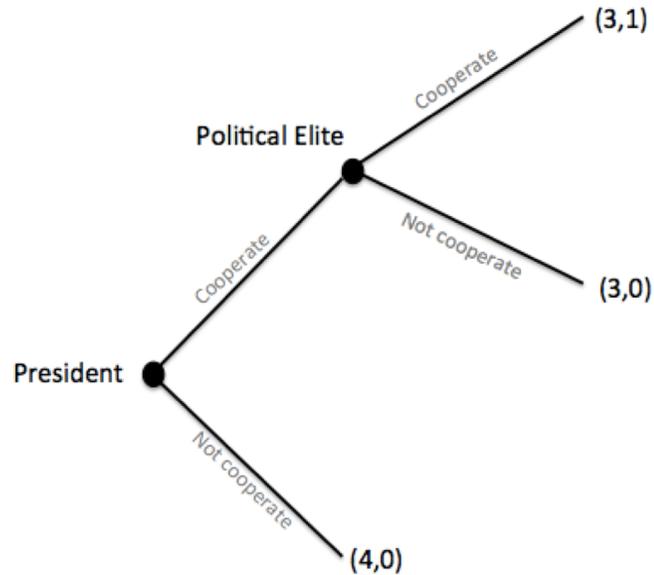
#### **5.1.4 Uncertainty in a Delegative Democracy**

Delegative democracies should not be considered stable and static political systems. The theory on delegative democracy underestimates the importance of dynamic changes: it assumes not only that the president will continue to be seen as the “savior,” but also that the structure of the political elite is extremely stable. It thus ignores the possibility of potential problems that the extreme isolation of the president can invite when it comes to competition. The combination of these elements, including the existence of vertical accountability, puts the president in a fragile position.

In order to remain in power, elections must be won. This becomes challenging once the heroic image is stained and political competition is present. In other words, the position of the president is not as strong and immovable as had been thought: despite the great powers, an unthreatened/stable government in a delegative democracy requires the president to either a) keep the heroic image extremely consistent or b) not be too isolated from the political elite. Hence, contrary to what would be expected, resistance—to Congress, parties, or interest representation associations—cannot be entirely ignored unless the “saviour” image remains strong.

When presidents are deciding whether to govern in isolation, they are actually facing the uncertainty of their image as “saviour” in the future. This fact, however, was overlooked when it was assumed that the president would always choose political isolation; in other words, in O’Donnell’s (1993) understanding, not sharing power with the political elite would always be a dominant strategy for presidents in a delegative democracy. However, this is incorrect. Thus, considering a delegative democracy to be a static and stable political system, presidents

**Figure 5. Strategic Behaviour in a Stable Delegative Democracy**



would face a tradeoff as the one illustrated in Figure 5.<sup>319</sup> The payoffs in Figure 5 are numbers chosen with the sole purpose of ranking (following an ordinal logic) the utility that the president and the political elite can get out of either cooperating or not cooperating.

When we see delegative democracies as stable political systems, the dominant strategy of presidents is indeed to not cooperate with the political elite (meaning to keep power concentrated in their hands). The payoff presidents get out of not sharing power is always higher (4) than if they decide to share power in any form (3) independently from what the political elite would decide. That is the case because:

1. Players have a set of preferences;

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<sup>319</sup> Considering the president to be a rational agent who wishes to remain in power and will act strategically to maximize his/her payoff. – This was discussed in Chapter 1.

2. They are able to rationally order their preferences in a transitive form ( $4 \succ 3 \succ 2 \succ 1 \succ 0$ ),

3. They choose what maximizes their utilities by following a cost-benefit rationale.

Hence, all other political actors are ignored. It would be more beneficial for the political elite to cooperate with the president by taking part in coalitions. Non-governing political actors, after all, have incentives to form coalitions with the president in order to be part of the governing elite. Since the president's power has the legitimacy of direct elections, a partnership with the president is necessary to have access to meaningful powers; the president is seen as a necessary coalition partner for utility-maximizers. Yet, the latter is not interested and prefers to govern above all parties and agents. This happens because the president trusts that his/her image as "saviour" cannot be so broken and that isolation from other political groups will ever become problematic.

The idea of a stable delegative democracy indeed leads to a prevailing policy-making style in which strong political will and technical expertise seem to be enough to accomplish the "saviour's" duty. Economic policy packages and presidential decrees become the means to "save the country" and the president, the presidential staff, and the *técnicos* appointed are the relevant actors. However, this behavior disregards the fact that the heroic image can be stained and that too much isolation may lead to a high level of political competition. As shown in Chapter 2, Collor behaved exactly as such, but he was impeached because he failed to recognize the uncertainty of his position and chose to govern above all.

What presidents decide whether they will govern above all, the tradeoff they face is a different one: had they taken into consideration that the position of a president in a delegative democracy could be vulnerable and uncertain, they would have considered that uncertainty in

the cost-benefit calculus to achieve the outcome desired. Consequently, reducing that uncertainty is part of the process of maximizing the president's payoff. And, as discussed in Section 5.1, the less antagonistic the political environment is, the safer the president of a delegative democracy is in the long term since his image may fluctuate between the extremist positions of "acclaimed saviour" and "fallen god."

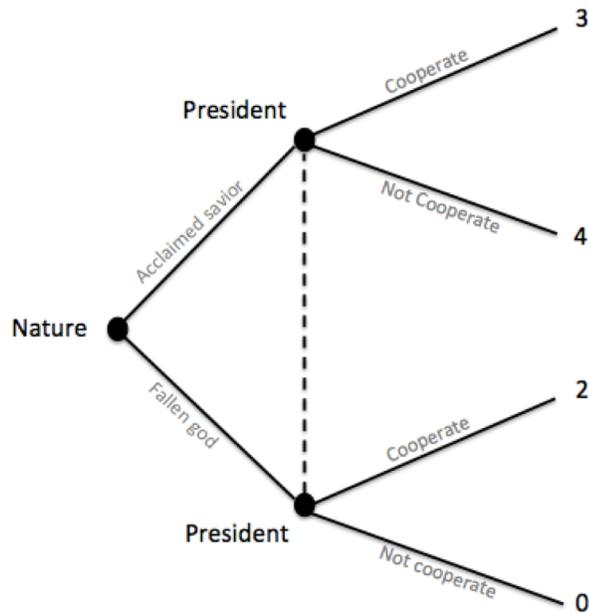
Obviously, the political environment is competitive *per se*, but the antagonistic feelings and actions can be toned down through coalitions, thus lowering the level of uncertainty. Indeed, there has been great debate in the literature when it comes to comparing parliamentarism and presidential systems and what incentives they provide for coalition formation (see Shugart & Carey, 1992; Stepan & Skach, 1993; Mainwaring, 1990; Mainwaring & Scully, 1995; Linz, 1994). In this sense, Cheibub, Przeworski & Saiegh have found that "the difference in the frequency of coalitions, while favourable to parliamentarism, is not large" (2004, p. 580) and that presidential governments can be "identical to parliamentary governments in that they rule with the support of a legislative majority" (2004, p. 567).<sup>320</sup>

Coalitions become strategically interesting as they mitigate potential effects of political competition. In presidential systems (even delegative ones), coalitions not only increase the ability of the executive to get its program through the legislature, but avoid potential regime instability (including presidential impeachment and constitutional crises) and divided government (Altman, 2000; Figueiredo & Limongi, 2000; Amorim Neto, 2002; Cheibub, Przeworski & Saiegh, 2004). In fact, these are reasons why the president almost always is the *formateur* of the coalition (Altman, 2000; Cheibub, Przeworski & Saiegh, 2004). Presidents thus

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<sup>320</sup> Through an extensive study on 189 spells of democracy (86 parliamentary, 75 presidential and 28 mixed systems) in 133 countries in the period from 1946 to 1999.

**Figure 6. The impact of Uncertainty in Strategic Behaviour**



may aim at forming coalitions to make their position more stable in the long term. In sum, the uncertain political context affects the president’s preferences and strategic behaviour. They must face the uncertainty of their position: beyond the fact that they might not always be in power (given the existence of fair and free elections), their “saviour” image may change at some point (threatening their continuity in power). This is illustrated in Figure 6.

Again, the payoffs displayed in Figure 6 are merely to rank (following an ordinal logic) the utility the president can get out of the strategy he/she chooses ( $4 \succ 3 \succ 2 \succ 1 \succ 0$ ). When presidents are making the decision whether or not to ignore the political elite, they actually are unsure whether their image of *salvador da pátria* will be a stable one. If they can manage to constantly prove their willingness and capability to save the country, it would indeed be more beneficial to them to ignore the political elite (a situation in which they would get the greater payoff, 4). In case they manage upkeep their image, but decided to share their power even if minimally with the political elite, they would get a slightly lower payoff (3) because they would

no longer concentrate all power in their own hands.

Yet, in case their image switches to “fallen god” for whatever subjective reason (external or internal factors), they would be better off if they had decided to make coalitions since the political elite would then have incentives to help re-boost the image of the “saviour.” Presidents would then have a higher payoff (2) if they had cooperated with the political elite than if they had decided to ignore it (payoff = 0). In that sense, when presidents face the decision of whether to concentrate all power in their own hands, they are choosing between the risk of “all or nothing” (4 or 0), or being risk-averse (3 or 2) and ensuring they will have a much more stable position in the long term, even if they have to share some power with the political elite to do so.

## **5.2 Self-Limitation as Strategic Behaviour**

The section above explained why the position of a president in a delegative democracy is not as stable as O’Donnell (1994) assumed. Yet, that does not say much about how limits to presidential power can emerge under such conditions. Indeed, once a president is no longer seen as the “saviour” and an antagonistic competition is too high due to isolation, it seems unlikely that that specific individual will remain in power. But it can be argued that this only “paves the way for another presidential candidate who, by promising a complete overhaul of existing policies, imposes a resounding defeat on the party of the current president... only to immediately reenter this cycle [of delegative democracy]” (O’ Donnell, 1994, p. 17). What can actually break that cycle?

The answer to that question is actually linked to how presidents have dealt with the uncertainty of their position. If they have ignored that uncertainty and governed as wished by

completely disregarding the political elite, the antagonistic feelings of the political elite towards them—as previously stated—will be extremely high. The rise of a corruption crisis thus changes the political context for the governing elite, which finds itself in a prisoner’s dilemma situation. The political scandal reshapes that context and affects the governing elite’s utility-maximizing behaviour: the future in power has never been more uncertain. Although agents are rational and follow a utility-maximizing behaviour, it is important to bear in mind that:

1. Preferences are not fixed and may vary across time;
2. Institutions have the power to shape or influence preferences (by offering incentives or constraining behaviour);

Thus, in order to maximize their payoff under this new context, presidents’ strategic behaviour lies in trying to mitigate the damage brought by the corruption scandal by: a) attempting to move away from being a “fallen god,” and b) establishing a more stable relationship with the political elite in general. The corruption scandal, however, also affects the political elite’s strategic behaviour: while it could have been beneficial for them to make coalitions with the president at a certain time, the new element affects the potential payoffs they can attain. In fact, if the president’s ratings are low they have no interest in having their reputation connected to him/her (Altman, 2000). That was illustrated through Collor’s failed attempts of forming coalitions when his popularity started to decrease.

Thus, the president must face the potential problem of “cheap talk”<sup>321</sup> if he/she actually

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<sup>321</sup> As put in the classic paper by Crawford and Sobel (1982): although a party or player A offers information to an uninformed party or player B, there is significant loss of information; there is no equilibrium in which all information is conveyed. This happens not only because there are no incentives for A to convey meaningful information, but also because there are no incentives for B to believe in the information content of A’s message, which then chooses to make decisions only on the basis of the prior information it had. Messages exchanged between A and B are thus “cheap talk.” The concept has been widely used in organizational theory (see Saloner et al., 2001; and Milgrom & Roberts, 1992). For the effect of incomplete information in the context of political institutions and formal rules, see Gilligan & Krehbiel (1987) and Baron (2000).

manages to make coalitions at such a moment: there is no way of knowing exactly how much information is credible when communication is costless (Matsui, 1991; Robson, 1990; Forger, F. 1990; Matthews et al., 1989). Coalitions also do not totally solve the problem because full revelation is never optimal even through contracts (Krishna & Morgan, 2004), and because there might be imperfect commitment.<sup>322</sup> In short, a corruption scandal affects the alignment of incentives of the president in power and the political elite as a whole: incentives provided by the new context may make the cost-benefit calculus more inclined to changing the level of commitment of all.

The situation, as mentioned, becomes that of a prisoner's dilemma game.<sup>323</sup> While it is privately beneficial to keep power to one's self, the governing elite faces a context in which it is collectively beneficial to find ways to have a competitive cooperation.<sup>324</sup> Once they cannot rely on the vertical relationship with citizens and cannot trust coalitions, limiting their own power becomes the most rational strategy to pursue. From that new situation, they must derive a new strategic behaviour and operationalize it (Thelen & Steinmo, 1992). The result is thus a suboptimal outcome for them: they get a lower payoff than if there were no institutional checks, but a higher payoff than if they lose power completely.

In the context of a corruption scandal, the creation/strengthening of institutional checks is thus the safer path to be pursued. It establishes rule-bound competitive cooperation through institutionalized interaction with the political elite; it facilitates bargain, makes tradeoffs more

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<sup>322</sup> Which happens when the objectives of two (or more) players may not coincide and when that is the case, "contracting under imperfect commitment is of no value even though gains can still be achieved under perfect commitment" (Krishna & Morgan, 2004, p. 3). See: Crawford & Sobel (1982), Krishna & Morgan (2004) and Bester & Strausz (2001).

<sup>323</sup> The Prisoner's dilemma and other collective action games have long been considered as a fundamental model to understand political conflict, cooperation and strategic behaviour (Examples are Axelrod, 1970; Hardin, 1971; and Coase, 1960).

<sup>324</sup> To use O'Donnell's (1994) term concerning what characterizes a consolidated democracy.

visible, validates interlocutors, and gives more credibility to communication and information exchanged between players (thus reducing the possibility of cheap talk). Also, while it helps to stabilize the president's position, it also leads to a greater payoff for the political elite in general than if there were no institutional checks at all (by reducing—even if only a little bit—the power held by the president). In addition, it makes it unlikely that a particular group of political leaders will become an unchecked government (which has to be considered given the uncertainty faced by the current president).

Institutional checks, in the form of horizontal accountability institutions and mechanisms, not only coordinate a collective action problem, but also help boost the image of the president. Since his/her name has been linked to the corruption scandal, it negatively affected his/her image as “saviour.” It is thus strategic for the president to attempt to recover the lost credibility by showing intentions of saving or fixing the country. Creating/strengthening horizontal accountability institutions publicizes that commitment and reinforces a positive vertical relationship with citizens while also shifting the focus from the involvement of the president in the corruption scandal to the involvement of the president in **fixing** that corruption crisis. Franco's and Cardoso's strategic behaviour following Collor's impeachment illustrates this in Chapter 3—both worked towards having solid coalitions but still did not fully trust that safety mechanisms and thus decided for institutions when they faced a corruption scandal.

In sum, under those circumstances, restraining their own power becomes the most rational and strategic behaviour for presidents for four reasons:

1. It shows their willingness to fight corruption, thus getting the sympathy from citizens;

2. It protects them from the corruption allegations they are facing at the moment since creating anti-corruption agencies or transferring more power to existing institutions makes it seem unlikely that the government itself would be corrupt;
3. It assures them that their rivals will be held accountable once they are in power since in a competitive delegative democracy it is likely that the governing party's opposition may eventually be in charge of the government;
4. It fixes a collective action problem and facilitates cooperative competition with the political elite.

For the political elite, in turn, although each would be better off if they could retain delegative powers while being in charge of the government, it is better for all if all agree to have institutional checks than if none do. The uncertainty regarding their future and the fact that they are not in power at the moment makes it more strategic to be part of an institutionalized competitive cooperation than to fight it.

### **5.3 The Relevance of “Minimal” Institutional Checks**

It is important to note that institutions are created in an attempt to accomplish the four points mentioned in 5.2 without getting too much in the way of the current governing elite. They were created for rational purposes to suit the president's goal in the new political context. The president, after all, aims at delegating enough power to accomplish these points without having to lose too much power. The outcome of the process is thus suboptimal for institutions in a first moment: they are not supposed to be too strong so they do not take too much power away from the government that created/strengthened them. Hence, although these institutions now formally exist, the result is at first a second-best outcome when it comes to checking abuse

of power.

Given the reason behind its creation, this process affects the three dimensions of horizontal accountability—understood as oversight, investigation, and punishment—in different degrees. As discussed in Chapters 1 and 4, because of its non-sanctioning nature, the oversight dimension is the least confrontational, has the lowest cost, and is the least time-consuming form of horizontal accountability. Investigative actions without punishment, in turn, can also be considered a “minimal” type of horizontal accountability. It is thus not surprising that the new legal-rational framework created out of a delegative democracy tends to be oversight- and investigation-centered rather than focusing on sanctioning tools.

Nonetheless, the benefits brought by the so-called minimal dimension of horizontal accountability should not be overlooked. After all, as shown through the case of Brazil in Chapter 4, they provide barriers to potential tyrannical exercise of power despite the lack of sanctioning mechanisms. In addition, they correct informational asymmetry (Aberbach, 1990; 2002) and can affect the vertical aspect of accountability as transparency and publicity favor organized interests and social movements.<sup>325</sup> Both investigative and oversight institutions in Brazil are examples of this, as discussed in Chapter 4.

Also, once these institutions are strengthened, even if only in the “minimal” aspect, the system changes: the delegative democracy is not that delegative anymore. There is a set of binding rules in place (even if just a few) and the president is no longer seen so much as the embodiment of the nation as it used to. The president’s authority now derives from (and is constrained by) a set of rules and rule-bound institutions. The logic behind authority slowly transitions from a charismatic type to a legal-rational type. This means that the power transferred

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<sup>325</sup> As defended by Schedler, Diamond & Plattner, (1999) and Smulovitz & Peruzzoti (2003).

to institutions is obviously not part of the president's power anymore; it is now out of his/her reach, which is a process that is difficult to reverse.

In sum, although the outcome is suboptimal at first, the institutions created (or minimally strengthened) can get stronger. This is easily exemplified by the case of Brazil—where such institutions have even managed to enforce and create some punishing tools themselves rather than depend on the executive's initiative to allow them to do so. They have also been able to affect politicians' public reputation, as shown in Chapter 4—which is a powerful non-legal element that must be considered (Schmitter, 1999; Smulovitz & Peruzzotti, 2003). But beyond that, they have managed to develop alternative sanctioning mechanisms, which has been proof of the relevance of “minimal” horizontal accountability for democracy.

Once institutions are in place, they validate agents and interactions in a way that make expectations more stable. The establishment of institutionalized interactions “enhances the value that [relevant actors] attach to the institution that shapes their interrelationships” (O'Donnell, 1994, p. 7). The process of creating/strengthening institutions generates a cycle that is not easy to break, or, in O'Donnell's words, “institutionalized interactions are expected to continue into the future. This is the foundation for the ‘competitive cooperation’ that characterizes consolidated democracies” (1994, p. 7).

In short, the process of breaking the pattern of delegative democracy might not instantly lead to an ideal-type representative democracy or limited government, but once it allows the emergence of limits to the president's power it becomes a difficult process to reverse. The new limits to presidential power in place help to eliminate the problems that come along with a “winner-takes-all” political system. Not only do they help in checking presidents' actions, but the existence of checks means presidents cannot govern alone (and must compromise through

coalitions and partnerships) to avoid political deadlock.

#### **5.4 Conclusion**

It is not an easy task to explain change in political systems. In the case of delegative democracies, the key driver of change is an element that undermines the very own foundation of delegative democracies. Although it is hard for the heroic image of the president to be stained, corruption crises of great proportion (in terms of the attention by the media) have a unique and powerful role in undermining that image once they are linked to personal gains by the president. They produce a shift in the goals and strategies being pursued by the actors; after all, “the concept of rationality [is] dependent upon its environment” (Koeble, 1995).

In order to remain in power, the president and the political elite find themselves in a prisoner’s dilemma context in which limiting their own power becomes the most strategic behaviour to maximize their payoff. In the case of a democracy, that means delegating power to third parties—institutions. Interestingly, a prisoner’s dilemma situation generates delegative democracies (as explained in Chapter 1) and a prisoner’s dilemma situation might explain how they break out of that cycle. Yet, as discussed in this chapter, since they are created to “help” the current president remain in power, these institutions are not strong at first; they focus on oversight and investigative elements rather than on sanctioning mechanisms.

Nonetheless, the existence of a minimal form of checking abuse of power leads to a transition of authority based on charisma to a legal-rational type of legitimacy: the president’s authority starts to derive from the rule of law. Rule-bound institutions start being the binding element of the behaviour of administrators over citizens. This, however, is not to say that the delegative democracy becomes a representative democracy in its purest form—in which

horizontal accountability functions perfectly—and that there is a pure legal-rational authority type. These are both ideal forms of democracy and authority. It is to say, though, that the delegative democracy breaks the pattern through the creation of limits to presidential power. It thus moves toward limited government and legal-rational authority, contradicting O'Donnell's prediction of the fate of delegative democracies.

The fact that these institutions are initially created to be oversight- and investigation-driven does not mean that the creation of institutional checks is unsuccessful. As O'Donnell himself claims, "the emergence, strengthening and legitimation of [effective institutions] take time, during which a complex process of positive learning is involved" (1994, p. 16). The development of "minimal" horizontal accountability may just be the first step. After all, in order for institutions to be able to sanction, they must be able to investigate—and, in order for investigation to be effective, it is necessary for agencies and agents to be constantly monitoring and monitored.

## 6. CONCLUSION: WHY LIMITS TO PRESIDENTIAL POWER HAVE NOT EMERGED IN OTHER DELEGATIVE DEMOCRACIES

O'Donnell (1993) argued that delegative democracy occurs when citizens place their trust on a "*salvador da pátria*" through free and fair elections. As discussed in Chapter 1, he noted that the combination of these elements and the absence or weakness of institutional checks would make it impossible for such democracies to ever allow limits to presidential power to emerge. Hence, he thought the future of these democracies was not an optimistic one: given the strong incentives they provided to powerfully positioned individuals, horizontal accountability would probably not emerge. In this sense, it seemed that the future of such democracies would include only two options, to remain delegative or break the pattern, but follow a more authoritarian path. Yet, Brazil broke the pattern by doing what seemed improbable: Although it was a delegative democracy in the early 1990s, limits to presidential power have emerged. Throughout Chapter 2 to 4, this thesis explained how it managed to do so under what O'Donnell had assumed to be unlikely conditions.

As the Brazilian case has shown, it requires two essential steps. First, the very foundation of a delegative democracy must be questioned in order for it to become vulnerable. These democracies require citizens to trust their "saviour" even though they disagree with particular policies. If the trust breaks down, the reason to "delegate power" to that particular individual is gone. In other words, that means that the traditional-charismatic authority must suffer somehow;

the “acclaimed saviour” has to be seen as a “fallen god.” That, however, is a necessary but not sufficient condition alone for horizontal accountability to start taking place, as another individual could easily become the new “saviour.” Hence, a second step is required: at the moment the basis for authority of the “saviour” is shaken, a legal-rational authority must emerge (even if weakly). This step is more problematic because there is no incentive for the governing elite to create such an institution. Yet, this changes the moment there is a major shock to the system, such as a corruption scandal of great proportions. Faced with the need to prove themselves as the legitimate authority, slightly limiting their own power becomes an apparently small price to pay to remain in power.

The two steps, when taken together, allow for the emergence of horizontal accountability in a minimal form—which, at first, may not limit presidential power, as explained in Chapter 2. Yet, it starts a process of transition from traditional-charismatic authority to a legal-rational one, and slowly empowers institutions to evolve and strengthen mechanisms to check on abuse of power. In other words, although institutional checks are created through a minimal form of horizontal accountability because it is the most strategic choice for the governing elite, they become more and more out of reach of politicians. It also becomes harder and harder to reverse the process back to the characteristic traditional-charismatic authority of a delegative democracy.

The current state of democracy in Brazil differs from the one in the early 1990s. Dilma Rousseff’s power was constrained by different institutions, such as the CGU, the MPF, and the TCU; that was not the case of Collor. Her impeachment, in turn, was far from being based on a personal connection in a corruption scheme as was his case. The events between her reelection and her impeachment actually illustrate that horizontal accountability has outrun the traditional

channels of vertical accountability in Brazil. Elections remain free and fair, but the relationship between parties and citizens, as well as between individual politicians and citizens, changed. The empowerment of institutions, and the transparency that came along, has helped in generating “demands for political representation that the existing party system has not been able to meet” (Hagopian, 2016, p. 120). Citizens have come to vote based on parties’ and individuals’ policy performances (Hagopian, 2016), also keeping track of their involvement in corruption scandals. This is extremely different from delegative times when casting a vote seemed to be more about deciding who was best equipped to make decisions for all at the expense of continued vertical accountability.

Indeed, the increasing strength of horizontal accountability institutions has affected how citizens see vertical accountability (“erod[ing] the bonds of vertical accountability” in the words of Hagopian, 2016). Although O’Donnell (1994) emphasized the relevance of strengthening horizontal accountability, he did not anticipate the challenges it would bring for parties, which are key institutions in vertical accountability (Luna & Vergara, 2016). As argued in this thesis, the current problem of democracy in Brazil is no longer horizontal accountability. Rather, it might be the vertical notion of representation—parties, “the institutions that mediate, and arbitrate interests and conflicts”, “are ineffectual and lack legitimacy” (Luna & Vergara, 2016, p. 162). When stronger horizontal accountability institutions expose corruption schemes and make policies’ results more evident through more robust transparency channels, they also affect the vertical bond between citizens and politicians/parties. The latter need to adapt to the new rules of the game.

The institutions mentioned in this chapter have become increasingly self-reinforcing and independent from any type of presidential initiative, as explored in Chapter 4. The fact that they

were able to uncover the Petrobrás scandal is actually proof of how strong and interconnected they have become. In short, this thesis argues that delegative democracies are not destined to a fate of inexistent or weak institutional checks; they are actually not even destined to continue. If presidents fail to recognize the vulnerability of their position in power and indeed govern above all, ignoring other political players, presidents will have to go through an authoritarian path or they will likely not remain in power. For delegative democracy to remain, presidents cannot ignore other political players.

As discussed in Chapters 2 and 5, delegative democracies are not stable and unbreakable political systems as O'Donnell had claimed. As in any political system, there is an element of uncertainty. In the particular case of delegative democracy, this element lies in its charismatic nature and the existence of election and Dahlsian freedoms. For such system to be stable, the president must consider the vulnerable position he/she is in and make power-sharing arrangements. The fact that Collor did not consider that was the reason why he was impeached, as discussed in Chapter 3. Collor's impeachment opened the way for institutional checks to emerge in Brazil, which confirmed Hall's (1996) claim that institutions are created out of a somewhat voluntarily agreement. They emerge because the relevant actors had new incentives presented by a new institutional and political milieu.

As explained in Chapter 3, the fact that Collor had ignored all of the other players was an incentive to create ways of constraining presidential power. And, although the emergence of institutional checks tends to be in terms of minimal horizontal accountability, as illustrated in Chapter 3 and discussed in Chapter 5, they should not be underestimated. Minimal horizontal accountability can provide powerful tools to fight abuse of power. Besides, as in the case of Brazil, they can also grow on their own to create or enforce different types of sanctioning

mechanisms. The institutionalization of horizontal accountability, as discussed in Chapter 5, should be understood as a continuing process in which the strength of its three elements (oversight, investigation, and punishment) may vary from each other.

Yet, contrary to Hall's (1996) statement that institutions survive because they provide more benefits for the relevant actors, Chapters 3 and 4 argued that they survive because they grow to be out of reach of such relevant actors; in the case of Brazil, they became self-reinforcing. Even if they were borne out of a governing elite's self-limitation strategic behaviour, they became the new rules of the game, shaping interactions from then on. This is particularly important in presidential systems, which provide a context of polarizing antagonism between pro-government and anti-government actors that may lead to a political crisis (Linz, 1990). It is, however, even more relevant in a delegative democracy as the problem of such system is the oversized executive.

Chapters 3 and 4 illustrated how the existence of checks through horizontal accountability mechanisms limit the possibility of abuse of power. In this sense, the argument of this thesis corroborates with Cheibub (2002) and Mainwaring & Shugart (1997) the idea that presidential systems may work once there are devices to limit presidential power. Institutional checks also regulate power-sharing arrangements so these are not done through activities that involve corruption practices, as illustrated by the outcome of investigations of the Mensalão and the Petrolão cases in Chapter 4. Nonetheless, although the existence of institutional checks is essential for democracy, they are not able to eliminate corruption. As illustrated in Chapter 4 and explained in Chapter 5, corruption has the power to constantly re-adapt to the improving institutional checks. The existence of corruption, it follows, does not mean that an institutional failure is taking place (See Appendix A).

The changes in Brazil's democracy from the early 1990s to the present moment, in short, clearly illustrate that the conceptualization of delegative democracy was misleading. Collor's behaviour as president followed the delegative script to the letter; but, instead of strengthening the delegative aspects of democracy, it led to Collor's removal from power and to the emergence of limits to presidential power. The fate of Brazil's democracy shows that the influence of uncertainty in strategic behaviour should not be neglected. That is the case not only in representative democracies, where there is horizontal accountability, but even in "authoritarian" democracies such as delegative ones.

### **6.1 Presidential Power in other Delegative Democracies**

As mentioned in the introduction, Brazil is not the only case of delegative democracy. There have been examples of this type of democracy within and outside of Latin America. It is thus important to compare what happened to Brazil and what took place in other delegative democracies in order to validate the arguments made in this thesis. The following subsections will thus briefly examine the cases of Venezuela, Russia, and Argentina. For different reasons, each of them provides a special tool to analyze the merits of the arguments developed here. The fate of these three democracies validates the argument that, in Brazil, the emergence of limits to presidential power was an exception that only happened because of the president's delegative-like behaviour.

The analysis of these three cases confirm that delegative democracies are not stable and presidents cannot actually govern above all as had been thought by O'Donnell. In Venezuela and Russia, presidents have followed a more authoritarian path in order to bypass institutional checks. They have eliminated the possibility of limits to their power to emerge at the cost of

democracy in its minimalist form. In Argentina, in turn, presidents have maintained a delegative democracy, but they have done so by relying on coalitions rather than ignoring the political elite and governing above them (they behaved as illustrated in Figure 6, Chapter 5). When compared to presidents of Venezuela, Argentina, and Russia, Collor was the only one who actually behaved as would be expected from a president in a delegative democracy. He fits O'Donnell's theoretical model perfectly, but was actually an exception in practice.

### **6.1.1 Venezuela's "Democratic" Procedures to Eliminate Democracy**

Contrary to Argentina and Brazil, Venezuela did not have a military dictatorship in the 1960s and 1970s. Instead, it was known for having one of the most stable democracies in a developing country at the time (Coppedge, 2002; Weyland, 2013). Yet, the late 1990s—when Hugo Chávez became president—were different and marked the start of Venezuela becoming an "extreme case of delegative democracy" (Coppedge, 2002, p. 2). That, however, was a short period of time in Chávez's government. Venezuela exemplifies a case in which abuse of power was taken to the extreme in a delegative democracy, making the "democratic" aspect of it questionable; it has "done worse than O'Donnell feared in 1994" (Luna & Vergara, 2016). Indeed, Chávez managed to increasingly eliminate constraints, including the fairness of elections, while expanding his charismatic authority through procedures generally seen as democratic.

The conditions for the establishment of a delegative democracy were present: there was a deep political-economic crisis prior to Chávez's election. Although the country was burdened with a massive foreign debt, citizens believed it was a rich nation. They thus blamed a corrupt political elite for siphoning off Venezuela's wealth (McCoy, 1999). Interestingly, Chávez had

been involved in an attempted coup to overthrow President Carlos Pérez's government in 1992, and "Pérez was such an unpopular president that the coup attempt made Chávez a hero in the eyes of many Venezuelans" (Coppedge, 2002, p. 3). Chávez's 1998 election campaign could be compared to Collor's in Brazil as his promises were tailored to make him look like an underdog and outsider. As former lieutenant colonel, "his ultimate announced goal was to restore prosperity to the country—to stop the waste and corruption" that Venezuelans believed to have been taken away from them by that political elite (Coppedge, 2002, p. 13).

The combination of economic decline, political ossification, and rampant corruption paved the way for Chávez to ascend to power (Weyland, 2013; McCoy, 1999). Extremely popular, he was easily the front-runner in the presidential elections in 1998. Some authors (Márquez, 2003; Roberts, 2003) explain his election by exploring how Chávez represented an independent alternative to the political establishment. Others (Zúquete, 2008; Weyland, 2003) focus on his charisma and rhetoric. Both views, however, are complementary in explaining the emergence of Chávez as president of a delegative democracy: just as had happened with Collor in Brazil, the context of deep political and economic crisis paved the way for a *salvador da pátria* to be elected on the basis of charismatic authority. His victory made him the "catastrophe president," as he would mention in a speech given to the World Bank-Government of Venezuela Forum in 1999.

Also important, Chávez was elected through an "automated vote count system—the first of its kind in the world," which "brought a new level of transparency and confidence to the process." As such, the 1998 elections were "among the most transparent in Venezuela's 40-year history of democracy" (McCoy, 1999, p. 71). During his first years in power, Chávez's governing style was that of increasing centralization. Yet, he eliminated constraints on the executive's

power by making use of means considered democratic, such as referendums and plebiscites—thus bypassing representative institutions. By focusing on popular sovereignty as the basis for democracy, he maintained and expanded his authority by reinforcing the ruler-follower relationship with citizens.

First, following the 1998 election, he took advantage of his popularity and had support from society through a referendum to establish a constituent assembly.<sup>326</sup> The assembly, made up of Chávez's followers, dissolved the democratically elected Congress, also dismissing the General Comptroller, the Attorney General, and members of the Supreme Court, who were mainly replaced with bureaucrats who were loyal to Chávez (Brewer-Carías, 2010). Instead of assuming that he could govern above all just by bypassing other institutions—as Collor had done in Brazil—he transformed institutions that could potentially represent institutional checks on his actions into an extension of his own power.

The referendum also allowed the president to be empowered to call for referendums to recall legislators, propose constitutional amendments, and dissolve the legislature under certain conditions. Finally, he also appointed former military colleagues as governors and ministers (McCoy, 1999) and started controlling local government allocations (De la Cruz, 2004; Martín, 2000). Yet, all was done with a participatory rhetoric (Hawkins, 2010; Álvarez Díaz, 2003). Even the 1999 Constitution was centered on the idea of participatory democracy.<sup>327</sup> Several participatory and voluntary initiatives were created during Chávez's government, such as the

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<sup>326</sup> With an approval rate of 80% in a referendum he had sponsored.

<sup>327</sup> Article 62 actually states that all citizens have the right to participate in public matters and how that participation is essential for the people to achieve *protagonismo*. Article 70 lists several activities that are considered to be participatory.

Communal Councils and the Health Committees,<sup>328</sup> which helped administering community development projects and local health clinics, respectively.

Participation during Chávez's government was actually high when compared to the rest of Latin America (Hawkins, 2010) and gave society the sense that they were part of the decision-making process. Yet, these programs had a high partisan bias (Hawkins, 2010; McCoy & Myers, 2004). They were also ill-defined and "often supersede[d] the roles of elected mayors and municipal councils" (Corrales, 2014, p. 39). Besides, they were distributed differently in Venezuela, being usually more present where there would be undecided voters, thus characterizing clientelism (Corrales & Penfold, 2007).

In short, Chávez's method involved strengthening the charismatic authority that had put him in power through the idea of popular sovereignty. He was able to concentrate power in his hands through democratic procedures. By doing so, he managed to "transform established institutions, dismantle checks and balances, concentrate powers in the hands of the president, and promote immediate reelection" (Weyland, 2013, p. 22). Also, participatory laws often empowered citizens, but there was always a clause that empowered the executive more than any other actor (Corrales, 2014). The same did not happen in Brazil, where Collor acted as if the fact that he was elected meant that he could govern as wished, as if he was the representation of what the people wanted. In Brazil, power was only "delegated" to Collor through elections; in Venezuela it was constantly being "re-delegated" to Chávez.

Chávez's "method" relied on constantly reinforcing the vertical relationship with citizens and eliminating any horizontal accountability in order to avoid institutional checks on his power. This is different from Collor's behaviour, which implies that he trusted that elections

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<sup>328</sup> Free translation for: Consejos Comunales and Comités de Salud.

meant he had such a strong vertical relationship that he would always be perceived as a “saviour.” Besides, he acted as if he trusted that weak institutional checks (which made enemies out of all of the political elite) would never be a problem in his future. Chávez did not take that chance and replaced Congress and high-level positions beyond ministries with allies.

Contrary to Collor’s failure in Brazil, Chávez’s “method” was successful; in 2000, he was re-elected and then again in 2006. Yet, these reelections were not without accusations of electoral irregularities.<sup>329</sup> Actually, “the Venezuelan opposition, the press, non-governmental organizations, and international watchdogs have discovered irregularities in almost every electoral process” (Corrales, 2013).<sup>330</sup> Intimidation strategies, the misuse of the state apparatus, and a constrained opposition became clearer during Chávez’s reelection in 2012 (Weyland, 2013). It was no longer a democracy as elections were then in place only to promote what Weyland (2013) calls an “electoral façade.” In addition, Chávez attacked Dahlsian freedoms: he closed independent media organizations and drove leaders of the opposition into exile.

As can be observed, Chávez pushed abuse of power to its extreme, and his time in office was only cut short by his illness and death. Yet, before his death, he had successfully installed a competitive authoritarian regime (Levitsky & Loxton, 2012). Hence, it was not surprising when Chávez’s handpicked successor Nicolás Maduro won the 2013 special election and became the new all-powerful president of Venezuela. Although Maduro has been facing a stronger opposition and international pressure than did Chávez, he “appears confident that he has enough institutional control” (Corrales, 2014, p. 50). However, in December 2015, the opposition won 112 out of the 167 seats in the Parliament, gaining a majority for the first time

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<sup>329</sup> For more information on electoral irregularities in Venezuela, see Álvarez (2009).

<sup>330</sup> Including the ones for deputies, governors, mayors, etc. There have been over 17 elections since Chávez came to power.

after almost seventeen years. Yet, interestingly, the Supreme Court did not allow three of them take office because the *chavista* government accused them of buying votes. In that case, the opposition counted 109 congressmen—two less than the number needed for a majority of two-thirds that would allow Congress to make constitutional changes and remove judges from the Supreme Court.<sup>331</sup>

More recently, in 2016, the opposition started a campaign for a recall referendum to oust Maduro. For the first petition, they managed to obtain signatures of more than 1% of the voters in each of Venezuela's state; the following step would consist of obtaining the signatures of 20% of the electorate in each one of the states in a period of three days next week. Nevertheless, the Electoral Council suspended the proceedings on October 21, 2016, alleging fraud in the first petition.<sup>332</sup> The fact is that even though Chávez's personal charisma is gone, Maduro inherited autocratic institutional conditions that allow him to concentrate even more power in his hands if wanted. Maduro will face obstacles, but for now, *Chavismo* seems to have outlived his founder.

### **6.1.2 Russia: from Yeltsin to Putin's Questionable Elections**

The hybrid regime in Russia has actually raised terminological controversies, conceptually stretching the terms "democracy" and "authoritarianism."<sup>333</sup> Indeed, as will be

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<sup>331</sup> New York Times, January 5 2016.

<sup>332</sup> BBC News: <http://www.bbc.com/news/world-latin-america-37724322>. Last access: October, 21, 2016.

ABC News: <http://abcnews.go.com/International/wireStory/venezuela-suspends-recall-campaign-president-maduro-42953626>. Last access: October, 21, 2016.

Valor Econômico: <http://www.valor.com.br/internacional/4751577/conselho-eleitoral-da-venezuela-suspende-referendo-contra-maduro>. Last access: October, 21, 2016.

<sup>333</sup> It has been called a "competitive authoritarianism" by Levitsky & Way (2010), a "managed democracy" by Krastev & Holmes (2012).

discussed in this section, since it transitioned to democracy in 1991, Russia has had mixed features. Yet, from Russia's first president Boris Yeltsin to his successor and current president Vladimir Putin, that combination of features has moved towards more concentration of power in the president's hands. This, in turn, has affected both vertical accountability and Dahlsian freedoms. Far from being a successful case like Brazil, it has confirmed O'Donnell's (1993, 1994) pessimistic view on the fate of delegative democracies.

Before transitioning to democracy in 1991, Russia had been through a strong totalitarian regime since the fall of the monarchy in 1917—which is different from Brazil, Argentina, and Venezuela. Also, throughout the communist period, Russia—as part of the Soviet Union—went through phases of strong personalism and patrimonialism. In addition, institutions did not have to check the executive as one of their roles and were traditionally weak in that sense (Lukin, 1999). There was thus a tradition of “monolithic government personified by a charismatic leader” (Shevtsosa, 2000, p. 34).

In that context, Russian democrats saw democratization as a tool to destroy “the corrupt, ineffective, brutal communist bureaucrats and put in its place a similarly absolute power of democrats” (Lukin, 1999, p. 98). It was not surprising that Russian democracy started off with strong delegative characteristics when Boris Yeltsin was elected in 1991 to the newly created position of the President of the Russian Soviet Federative Socialist Republic. Interestingly, although coming from different historical origins than in Brazil, the idea of authority based on traditional authority was also present.

Once the Soviet Union was dissolved and the sovereign state of Russia was created, Yeltsin remained as president. He faced some friction with the Russian Parliament, which had passed amendments to restrict his powers, notably his *decretismo* governing style (Kubicek,

1994). No compromise was achieved between the two sides of the conflict, which culminated with Yeltsin issuing a special decree placing the executive power above the legislature. A plebiscite, which asked voters whether they had confidence in the president and his policies, was held, and Yeltsin won (Kubicek, 1994). He then issued a decree that dissolved the parliament and instituted direct elections for the position of president. Just like Chávez—and contrary to Collor—Yeltsin made use of measures seen as “democratic” to legitimize his power; he also did not trust his vertical relationship with citizens as a sufficient reason to not fear the opposition.

Yeltsin’s decisions indeed faced opposition by parliamentarians and communist supporters in what came to be known as the 1993 October crisis, which involved several street protests. The crisis ended when military troops loyal to Yelstin stormed the Supreme Soviet building (Lukin, 1999). Following that, he called a referendum on a constitutional draft that ensured his powers. The new constitution was approved in spite of allegations of electoral irregularities (Slater, 1994). It is interesting to observe that instead of the “Congress of People’s Deputies” and the “Supreme Soviet” (its permanent body), as parliament had been called, Yelstin re-established it as the “State Duma” in the constitution, which was the term used during Tsar Nicholas II’s government.

The new constitution allowed the president to appoint high-ranking officials and made the Duma irrelevant from a horizontal accountability point of view. First, its members could be appointed or removed as the president wished. The constitution granted the president “the option of ignoring the Duma’s first vote of no confidence in the government. In the event of a second no confidence motion passed within three months, the president could opt to dissolve the Duma” (Huskey, 2011, p. 461). Second, the impeachment procedures were nearly

impossible: “two-thirds of the State Duma must vote to charge him with treason or some other grave crime; these charges must be validated by the Supreme and Constitutional Courts. Then two thirds of the Federation Council must vote to remove him” (Shevtsova, 2000, p. 33). This difficult process is an essential difference from the Brazilian process, where the parliament was more easily able to impeach the president, as we saw in Collor’s case.

In sum, Yeltsin changed the rules, imposing a new set that made him the strongest actor in the decision-making process while also reducing the possibility of institutional checks to emerge. There was also “no clear division of powers between the president and the government; the prime minister and his cabinet [were] completely dependent on the president” (Shevtsona, 2000, p. 33). Yeltsin’s governing style was not so difficult to impose since the ideas of separation of powers and a system of checks and balances “had not yet penetrated Russian political culture” (Lukin, 1999, p. 97). For Yeltsin, maintaining elections meant his power was coming from the people; “a *coup d’état* could have delegitimized Yeltsin” (Gel’man, 2014, p. 513).

Indeed, although he strengthened the executive branch over the legislative and judicial branches, Yeltsin’s appeal to society was based on deepening democracy. Just as elections had “delegated” power to Collor for him to do as he wished, elections had made Yeltsin “confident that his authority was unlimited, regardless of any legal and constitutional formalities” (Lukin, 1999, p. 99). He thus “presented himself as the father of the country and the one who knew best what it needed” (Gill, 2015, p. 179). The justification for his actions was that he was doing the best for the Russian people (Kubicek, 1994; Lukin, 1999; Gill, 2015; Shevtsova, 2000).

Kubicek points out that the problem was that, “while formally accountable to ‘the people’, [he] assumed monopoly right to interpret their collective will” (1994, p. 428). Independent institutions were a nuisance in accomplishing that collective will: he saw himself

“as the ‘guarantor of the constitution’ standing above all branches of power” (Lukin, 1999, p. 99). Hence, he was “reluctant to respect democratic rules and structures designed to limit presidential power” (Huskey, 2011). Russia had become a delegative democracy—which, just as in Brazil, would be short-lived. The reasons for it to break the pattern of delegative democracy, however, would be opposite to Brazil’s reasons.

Although Yeltsin won a second term in 1996, he fell ill and resigned at the end of 1999. At the time, he turned power over to his then prime minister and chosen successor, Vladimir Putin, who became president through free and fair elections in 2000. Although the latter had low approval ratings when he was appointed prime minister, his image as a presidential candidate changed for the better. The media portrayed him as “young, fit, and healthy... someone who was decisive and would stand up for Russia both at home and abroad” (Gill, 2015, p. 93). Putin assumed office in a democracy in which the strength of the executive was extremely sound, horizontal accountability institutions were marginal and weak, and the idea of centralized power was widely accepted. This is very similar to Brazil’s political and institutional setting in the early 1990s. Yet, once Putin assumed office, any similarity with Brazil stopped.

Throughout his three mandates, Putin governed as expected from a president of a delegative democracy, but took concentration of power further than what is implied in such type of democracy. The impressive economic growth of the 2000s contributed to his popularity and consequently society became even more accepting even of his centralized policy-making style (Gel’man, 2014). First, he introduced a reform that reduced the power of Russian regions. Second, he increasingly restricted basic Dahlsian freedoms. There has been strong control over the media in an attempt to control public opinion (Petrov, 2005; Beumers, Hitchings & Rulyova,

2009). His regime also attacked individual freedoms have also been attacked as journalists have been physically threatened (Kubicek, 1994). Despite the vertical relationship with citizens and still-strong traditional authority legitimizing his power, Putin eliminated possibilities through which any institutional check could ever emerge.

Besides restricted Dahlsian freedoms, elections in Russia have also been affected—the very own core of democracy. Elections in 2004 were no longer fair—thus making Russia no longer a democracy even according to a minimal proceduralist definition. Rather, through “outrageously unfair and fraudulent elections” (Gel’man, 2014), there was “control over elections, which changes them from a means for society to control the government into a means of legitimizing decisions made by elites” (Petrov, 2005, p. 182). An electoral system in that context serves three purposes: a) It monitors the citizenry and party competition, averting potential risks of collapse because of domestic conflicts; b) It serves to legitimize the authority of the one in power; and c) It makes it difficult for the opposition to question decisions based on allegations of authoritarianism (Geddes, 2005; Gel’man, 2014)

Interestingly, since the constitution only allowed two terms, Putin’s *protégé* Dmitri Medvedev was elected president in the 2008 election. Medvedev had been Putin’s campaign manager in the past. It became clear that Putin’s never left power when his term as president ended when, as soon as Medvedev became president, the latter appointed Putin as his prime minister. According to Gel’man (2014), assuming a third term at the time would have turned Russia into a classical dictatorship, which was too costly for Putin as it would have undermined the legitimacy of the regime. Nonetheless, once Medvedev’s term was coming to its end, Putin ran again for office. In 2012, he was reelected for a third term.

Throughout the last decades, Putin has been “presented as the action man—hunting

tigers, fighting forest fires, driving heavy vehicles in remote locations” (Gill, 2015, p. 192). Elements of charismatic appeal have been abundant (Cassidy & Johnson, 2010; Goscilo, 2013). In Yeltsin’s perspective, “people believed that [Putin], personally, could protect them” (2000, p. 338). The shift towards more authoritarian features from Yeltsin to Putin has been addressed as a consolidation to “managed democracy”<sup>334</sup> or “electoral authoritarianism.”<sup>335</sup> In other words, besides weak institutions and a strong executive, Putin’s Russia involves much stronger state control, also affecting the media and elections as ways to control public opinion and legitimize the executive’s authority—all with the consent of the ruled.

Russian society started questioning the system in place during the economic crisis of 2008 and 2009, which became more visible through protest mobilization that took place between 2011 and 2012 (Gel’man, 2014). Putin’s third mandate has thus showed signs of ending “managed democracy” and moving towards a more literal authoritarianism as it has relied more on coercion than co-option (Liik, 2013). What was considered the emergence of democracy in Russia over twenty years ago “in fact turned into the troubled formation of a new authoritarian regime” (Gel’man, 2014, p. 522).

### **6.1.3 Argentina’s “Coalitional” Delegative Democracy**

Argentina provides an interesting case because it offers the possibility of a counterfactual for what occurred in Brazil. The two countries shared many similarities when they transitioned back to democracy. Just as Brazil, Argentina was considered a pure case of delegative democracy in the early 1990s and Carlos Menem was the counterpart of Fernando Collor in

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<sup>334</sup> As in Petrov (2005); Petrov, Lipman & Hale (2010); Simon (2004).

<sup>335</sup> As in Gel’man (2014).

Argentina at the time (O'Donnell, 1993). His election had messianic overtones and took place in the middle of a severe political-economic crisis in which hyperinflation was at its highest.<sup>336</sup> Just like Collor, once he was elected, Menem concentrated power in his hands and governed as he saw fit with no horizontal accountability institution checking him. Yet, contrary to what happened with Collor in Brazil, Menem did not go through an impeachment despite allegations of corruption.

Menem made use of his excessive discretionary authority by governing through *decretismo*. Interestingly, while presidents had only issued eight *decretos de necesidad y urgencia* (DNU) from 1853 to 1983, Menem issued 244 in the first three years in office (Ferreira Rubio & Goretti, 1998). Yet, he did not face much opposition to his governing style. First, urgent measures were seen and accepted by society as necessary to end the economic crisis. Second, the legislative capacity was weak at the time—because of the lack of independence and low reelection rates, the bicameral Congress consisted more of “amateurs than professional law makers” (Manzetti, 2014, p.178). Third, Menem was part of the Peronist Party, whose members and allies dominated both houses of Congress, and who “either loyally approved his chief programs or sat idly by while he exercised legislative functions” (Larkins, 1998, p. 426).

Besides ignoring the role of the legislative branch, Menem also went on to reduce the power of the already weak judiciary: “Menem’s inner circle reportedly offered ambassadorships and other prestigious posts to various justices in order to induce their resignations, thereby giving the new president a few vacancies to fill” (Larkins, 1998, p. 428). Because they were less than successful in persuading them to resign, Menem submitted a proposal to Congress to

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<sup>336</sup> Inflation was in triple digits for most of the 1980s, but it went out of control in March 1989 when it reached 1,344% per year. Source: Instituto Nacional de Estadística y Censo.

increase the size of the Supreme Court from five to nine justices, which was approved (Helmke, 2002; Alston & Gallo, 2005). The outcome was a Supreme Court that was highly partial toward Menem's government (Larkins, 1998; Levitsky, 2000; Brinks, 2005); a pro-government majority known as "*mayoría automática menemista*" (Chávez, 2007). Although Menem did not interfere in the Supreme Court's decisions, justices "were closely associated with President's Menem's preferences" (Brinks, 2005, p. 607).

The process of concentrating more and more power in his hands was so successful that he decided to run for reelection even though the 1985 Constitution did not allow it. Hence, once his six-year mandate was about to finish, he claimed that a new constitution was necessary. Even though the Radical Party could oppose it since it had one-third of the seats in Congress, it was not a real option once Menem threatened to call a plebiscite on presidential reelection as allowed by the constitution (Larkins, 1998). The Radical Party then decided to compromise and allow him to run for reelection provided that some measures would be included in the new constitution: the regulation of decree power (making the review by a special panel mandatory for decrees to be valid), and the creation of the Office of the Cabinet Chief<sup>337</sup> (so the executive power would be divided between two offices) (Larkins, 1998). The latter, in theory, has powers that used to be exercised by the president, having what should be a "fundamental role in the budget process" (Jones, 2001, p. 153). Menem was re-elected in 1995, but those constraining measures did not change his power in practice, and he simply ignored his limits and continued to govern through DNUs (Manzetti, 2014; Jones, 2001).<sup>338</sup>

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<sup>337</sup> Free translation for: Jefatura de Gabinete de Ministros.

<sup>338</sup> For the negotiations on the limits on DNUs, see Rose-Ackerman, Desierto & Volosin (2011).

Once the economic crisis was alleviated, things changed for Menem: since his “government fared poorly on most post-crisis issues (especially corruption), its image began to erode as the atmosphere of crisis subsided” (Levitsky, 2000, p. 62). Once an acclaimed “saviour,,” Menem became a “fallen god.” In the 1999 election, the Radical Party candidate Fernando de la Rúa won against Peronist Eduardo Duhalde. Yet, Argentina’s party system makes non-Peronist presidents highly vulnerable to governability crises (see Malamud, 2013). Opposition parties are extremely weak and non-Peronist presidents “are almost certain to confront Peronist-controlled legislatures and mostly Peronist governors” (Levitsky & Murillo, 2008, p. 24). Indeed, unable to form a solid coalition, De la Rúa had to face a Peronist majority in both houses after the mid-term elections of 2001 (Pérez-Liñan, 2002). Facing such opposition, he could hardly govern as a president of a delegative democracy, being in a similar position to Collor at the end of his mandate.

Once the chaotic 2001-2002 financial crisis hit Argentina, De la Rúa made efforts to make a coalition with the Peronist Party to try to regain governability, but was not successful (Pérez-Liñan, 2002). In the meantime, the crisis had led to riots and confrontations between protestors and the police with an outcome of several arrests and deaths. Hence, once the Peronist bloc announced it would open the procedures for an impeachment, De la Rúa promptly resigned. After a short period in which Rodríguez Súa was interim president,<sup>339</sup> Peronists negotiated with Radicals and other parties to appoint a new president, Eduardo Duhalde, who governed until 2003.

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<sup>339</sup> After great discussions within the Peronist party, it was agreed that Rodríguez Súa would follow De la Rúa as president. Contrary to the party’s expectation, however, Súa made attempts to remain in office until the end of De la Rúa’s mandate (Pérez-Liñan, 2002). Yet, once the leaders of the Peronist Party withdrew their support, he promptly resigned.

However, the economic collapse still needed to be fixed, and a “saviour” was still needed. For the 2003 election, the Peronists could not agree on a candidate, so three Peronists ran for presidency: Carlos Menem, Néstor Kirchner, and Adolfo Saá. Citizens once again re-elected Carlos Menem, but Kirchner, who was the former governor of Santa Cruz, was elected second to him. A runoff election was required as Menem had not obtained the necessary 25% of votes in the first round. But, once he declined to contest the runoff, Kirchner immediately took office.

Economically, things were about to change once Kirchner took office. In terms of democracy, however, they went back to delegative features. Unemployment decreased from 24% in 2002 to 11% in 2006 and the economic growth rate was approximately 9% per year from 2003 to 2006 (Sullivan, 2006). Even though the growth was largely because of East Asia’s increasing demand for agricultural commodities from Argentina, “Kirchner took full credit for it” (Manzetti, 2014, p. 176). Initially, he worked on his image as a president who wished to deepen Argentine democracy. For instance, given the public protests demanding the resignation of the Supreme Court justices (Brinks, 2005), Kirchner replaced these with respected jurists. He also made impunity concerning the violation to human rights crucial in his agenda (Malamund & Luca, 2011; Zelaznik, 2011; Manzetti, 2014).<sup>340</sup>

Argentina had a new “saviour,” but still did not present a horizontal accountability system strong enough to impose checks on presidential power. It thus did not take long for Kirchner to show a different side to his government. As the economic recovery took place, he made a U-turn (Manzetti, 2014). As would be expected, he concentrated power in the executive

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<sup>340</sup> According to Zelaznik (2011), the focus on human rights made him more welcomed to the Capital’s strong urban left, helping him in making coalitions.

branch, governing at the margins of Congress and undercutting institutional checks and balances (Levitsky & Murillo, 2008; Manzetti, 2014). He also promoted a law that allowed the executive to control the Magistrates' Council, which oversees the appointment of federal judges (Levitsky & Murillo, 2008).

Decision-making became even more concentrated when Kirchner reduced the provinces' autonomy. In 2006, a superpowers ("*superpoderes*") law, which gave the president discretionary authority over the budget, was approved. Finally, he maintained a governing style based on *decretismo*, just as Menem had done before and as Collor had done in Brazil.<sup>341</sup> That does not mean that Kirchner's government had become authoritarian, since, as Levitsky & Murillo point out, elections were "clean and civil liberties were broadly protected" (2008, p. 19).

Indeed, although institutional checks were extremely weak, societal accountability initially became much stronger. Civic and media organizations exposed and denounced cases of abuse of power (Levitsky & Murillo, 2008). When there were rumors concerning the possibility of changing the constitution to allow unlimited reelection, societal organizations manifested themselves and the project was quickly abandoned (Levitsky & Murillo, 2008). Yet, things were different when it concerned cases of alleged corruption involving Kirchner or his inner circle: "his response was a frontal attack against the press and whichever institution was trying to mount a serious inquiry" (Manzetti, 2014, p. 177).

Given the economic growth that took place under Kirchner's government and the weakness of the non-Peronist opposition, it was expected that the Peronist Party would remain

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<sup>341</sup> Actually, they had a similar rate of decrees/month: Menem issued an average of 4.4 decrees/ month while Kirchner issued an average of 4.3 (Levitsky & Murillo, 2008).

in power in the 2007 election (Levitsky & Murillo, 2008). Kirchner had actually left power with an 80% approval rating, the highest a president had enjoyed since Argentina transitioned back to democracy (Manzetti, 2014). He chose not to seek reelection, and his wife Cristina Kirchner ran in his place and won.<sup>342</sup> When she assumed office, she inherited the institutional checks from her husband's government, allowing her to have a high degree of domination.<sup>343</sup> Nevertheless, for the most part, both Kirchners had a comfortable majority in Congress, having pro-government supporters controlling the committees and blocking potential oversight mechanisms (Manzetti, 2014).<sup>344</sup>

By her second mandate, there was a clear "push for entrenchment" and attacks on the press, besides her "personalistic command over the state" (Weyland, 2013, p. 19). Media organizations that publically criticized her faced investigations or violence, and those that personally criticized her were targeted by special tax audits (Weyland, 2013). An example is when the Law of Audiovisual Communication Services (Law n. 26,522) was approved by Congress in 2009. The law is about limiting media ownership, which highly affects the Clarín Group, which controls 60% of the cable market and has been antagonistic towards Kirchner's government.<sup>345</sup> In short, Cristina Kirchner's government started to follow a "Chávez-like script" (Weyland, 2013, p. 24). Her policies relied on nationalism and strong centralization (Malamud & Luca, 2011).

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<sup>342</sup> According to Levitsky & Murillo (2008), she won mainly because she was "the candidate of a successful incumbent government" (p. 17).

<sup>343</sup> Congress, for instance, had few experienced names and little technical expertise with poorly developed oversight bodies (Levitsky & Murillo, 2008).

<sup>344</sup> And at times when the opposition had the majority, they did not manage to be united enough to make any change to horizontal accountability (Manzetti, 2014).

<sup>345</sup> The Guardian, August 20, 2013. It was ruled to be constitutional by the Supreme Court on November 2013 (Buenos Aires Herald, November 3, 2013).

In terms of democracy, things did not change much from Menem to the Kirchners. They all had the same approach: “one based on authoritarian exercise of power, which willfully ignored the principles of limited government and accountability” (Manzetti, 2014, p. 177). Both Kirchners actually went on to use the media—by manipulating and controlling news—for their political means (Sarlo, 2011). Just as Menem had done, Kirchner’s government maintained the persistent weak institutional checks. When it comes to horizontal accountability, this means extremely low or nonexistent oversight, investigation, and punishment-mechanisms. For instance, although Menem and the Kirchners have been allegedly involved in corruption schemes, nothing much was done about it even though, “by law, state prosecutors should investigate allegations of corruption. [I]f such allegations expose government officials then nothing happens or investigations are quickly abandoned and left dormant” (Manzetti, 2014, p. 184).

Recently, inflation has risen to more than 25% as a result of a deep public debt.<sup>346</sup> Argentina’s recent economic failure affected the image of Cristina Kirchner’s ability to solve the crisis. Kirchner—as would be expected—then became a “fallen god.” Since she had been re-elected in 2011, she could not run for presidency a third time according to the Argentinean Constitution. Given the death of Néstor Kirchner, there was also no possibility of a Putin-Medvedev maneuver to take place as had happened in Russia. The Peronist Party discussed the possibility of a constitutional amendment that would allow her to run for a third presidential term.<sup>347</sup> Yet, not being able to seek a third term, Kirchner did not run. In the 2015 election, Peronist candidate Daniel Scioli lost the presidency to the opposition candidate, Mauricio

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<sup>346</sup> Foreign Affairs, November 24, 2015.

<sup>347</sup> Buenos Aires Herald, February 5, 2012; April 30, 2012.

Macri. His victory may represent different things for Argentine democracy: he may be the new “saviour” and not change much the nature of delegative democracy or decide to make attempts to improve horizontal accountability.

In one year of presidency, Macri’s policies have heavily focused on strengthening Argentina’s economy, but he is also making some steps toward the fight against corruption. A law on the possibility for plea deals in cases of corruption was just sanctioned on October 19, 2016.<sup>348</sup> It is, however, clear that Macri faces and will continue to face obstacles. First, no non-Peronist president has completed a full term in office. Second, Macri took office after over 30 years of delegative democracy; the force of Cristina’s inner circle laid not only in the weakness of institutional checks, but in the fact that institutions were dominated by Peronists or allies. Finally, Kirchner also retains strong influence on unions and social movements, and Peronists still dominate Congress.<sup>349</sup> Indeed, Macri has been taking advantage of a divided Peronist Party, having had a larger support than what would be expected in Congress at times.<sup>350</sup> Yet, it may still be too soon to anticipate Argentina’s future on delegative democracy.

## 6.2 Final Remarks

The three cases presented in this conclusion share similarities with the Brazilian case: all transitioned to democracy with weak or inexistent horizontal accountability mechanisms, and with a leader who derived his authority from a traditional-charismatic relationship with citizens. All were also elected through free and fair elections, thus corresponding with the

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<sup>348</sup> El Clarín, October 19, 2016. Available on: [http://www.clarin.com/politica/figura-arrepentido-casos-corrupcion-convirtio\\_0\\_1671432930.html](http://www.clarin.com/politica/figura-arrepentido-casos-corrupcion-convirtio_0_1671432930.html) Last access on October 21, 2016.

<sup>349</sup> The Guardian, November 23, 2015.

<sup>350</sup> El País, March 2016. Available on: [http://internacional.elpais.com/internacional/2016/03/15/argentina/1458001546\\_289277.html](http://internacional.elpais.com/internacional/2016/03/15/argentina/1458001546_289277.html) Last Access: October 21, 2016.

definition of a delegative democracy. Their fate, however, was different from the path taken by Brazil in the last decades. As mentioned in the introduction, O'Donnell (1994) believed it was near impossible to be optimistic about delegative democracies creating horizontal accountability. Incentives to do so would be nonexistent. Russia is certainly the case that most perfectly illustrates O'Donnell's view. Not only has it not created horizontal accountability mechanisms, but it has significantly reduced vertical accountability. From Boris Yeltsin in 1991 to current president Vladimir Putin, Russia has gradually moved away from democratic standards through a growing concentration of power in the executive. It thus presents the most dramatic contrast to Brazil by turning towards authoritarianism.

Although the case of Russia provides an example of delegative democracy in a different context, some differences have to be considered. First, contrary to the other cases, it was not a case of re-democratization, but of installing democracy for the first time in its history. It also did not exactly emerge out of a deep politico-economic crisis. President Yeltsin, on the grounds that it was necessary for democracy's sake, forged an oversized executive by weakening the other branches. When Putin took office, Russia was already a delegative democracy. Despite background differences, Venezuela's path is the most similar to Russia's out of the three cases. In both countries, the idea of democracy based on popular sovereignty has been behind the emergence of first, delegative, and later, authoritarian features. It served as a justification for the president to reduce or eliminate horizontal accountability while strengthening the executive.

Venezuela and Russia broke the pattern of delegative democracy, but went in a different direction than Brazil. In Brazil, as explained in Chapter 2, Collor relied on the fact that he had won elections to govern as he wished. He thus bypassed institutional checks and ignored the political elite as if his image of "acclaimed saviour" would never change. Putin in Russia and

Chávez in Venezuela had a very different behaviour: they did not rely on their vertical relationship with society, and thus took measures to undermine even the remote possibility of institutional checks to ever emerge. Despite the weakness of horizontal accountability, both of them did not take risks and mitigated the impact of institutional tools the opposition could use in the future. For Putin, this included increasing media censorship, attacking individual freedoms, and reducing the power of regions. For Chávez, it involved filling high-level positions such as Supreme Court justices with allies, and passing different constitutional amendments that put the executive branch above others. In Brazil, as mentioned, Collor behaved as though he was invincible as the “saviour” and he did not need to worry about the opposition.

Contrary to Collor, Putin and Chávez did not ignore the uncertainty of their future as presidents. In this sense, instead of formally negotiating with the political elite or governing on the basis of concessions to the opposition, they took an authoritarian path. Interestingly, in both countries, presidents increased their powers while also reinforcing their relationship with society. In Russia, that happened at the beginning of Yeltsin’s government, and in Venezuela it happened continually throughout Chávez’s presidency. In Brazil, in turn, democracy followed exactly the “delegative democracy script” in the sense that once power had been “delegated” to Collor, it was up to him to define the interests of the nation; citizens’ role in decision-making was over. In Russia and Venezuela, in short, presidents resorted to means taken as democratic to implement an authoritarian government and delegative democracy was the means to that end.

The fate of Argentina has not been as extreme as the two cases above. But, it is important to note that in this case, all the presidents who reduced institutional checks were from the Peronist Party. Far from being an individual project, it relied on a broad governing elite behind

the increasing concentration of power in the executive. Contrary to Collor, Menem was not from a recently created small party. He was a member of Peronism, which was not only one of the largest parties, but also had a historical appeal to the working class in Argentina.

By using an established populist party as a launching pad for his project, Menem placed people from his inner circle in different institutions while also having the majority in both houses in Congress. Menem and the Kirchners, despite how powerful they were, governed “in coalition with—and with the negotiated consent of—party bosses,” including governors of provinces (Levitsky & Murillo, 2008, p. 20). In Argentina, presidents soon understood that the ability to concentrate power in their hands was constrained by the nature of coalitions. In Brazil, as explained in this thesis, Collor did the opposite—coming from a recently created party, he ignored the political elite at the time.

Also, although corruption allegations were the basis for Collor’s impeachment, the Argentine case confirms that corruption was not the sole reason for his removal from power. There have been corruption scandals throughout Menem’s and Kirchner’s governments and none of these presidents were threatened with having their mandate shortened in any sense.<sup>351</sup> In Argentina, the record of convictions in corruption cases is extremely low and the scandals often dissipate into oblivion (Manzetti, 2014). And, “although federal prosecutors have been active in pursuing corruption cases involving members of the opposition, they have been reluctant to launch inquiries affecting government officials” (Manzetti, 2014, p. 184).

In different ways, the three cases briefly examined in this conclusion confirm O’Donnell’s prediction on the fate of delegative democracy. One of them has maintained a delegative democracy and the other two have moved towards a more authoritarian path, though

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<sup>351</sup> For a discussion on the different corruption schemes that happened under the Kirchners’ government, see Manzetti (2014).

not completely (by keeping the existence of questionable elections). In all three cases, however, presidents considered the uncertainty of their positions. Chávez and Putin managed to influence the fairness of elections and Dahlsian freedoms. They did not completely trust their image of “saviour” would hold strong even though both worked hard at not becoming a “fallen god” in the people’s eyes.

In the Argentine case, the president also did not behave as expected: Menem and the Kirchners had considerable support through the Peronist Party. When they became “fallen gods” because of apparent inability to deal with a crisis, or when corruption scandals seemed to affect the “willingness” aspect of their charismatic authority, they had a safety mechanism. They considered the uncertainty of their position when they were still “acclaimed saviours” and maintained the stability of Argentina’s delegative democracy. In the three countries, presidents maintained or expanded their strong powers.

Collor, as opposed to the rulers of these three cases, was the one who governed exactly as expected from a president in a delegative democracy and ignored the uncertainty of his position completely. Contrary to the other three cases, he indeed governed above all of the political elite while keeping Dahlsian freedoms. As argued in this thesis, that behaviour in a competitive setting was what led to his removal from power. The way that democracy has evolved in Argentina actually allows us to have an idea of what democracy in Brazil would look like had Collor not been impeached. Menem’s government in the 1990s and the Kirchners’ government in the 2000s have been centered on a “deliberate effort to act unilaterally by emasculating the institutions of horizontal accountability” (Manzetti, 2014, p. 193). There have thus been no efforts to engage in institution-building and enabling limited government.

Since Collor's impeachment, Brazil has consistently and increasingly developed horizontal accountability mechanisms and reduced the possibility of the executive's abuse of power. That is not a complete and general failure of O'Donnell's model. As Luna & Vergara (2016, p. 160) point out, O'Donnell was "correct to insist that political regimes do not follow a linear, irreversible trajectory from authoritarianism to low-quality and then high-quality democracy." The cases mentioned in this chapter are illustrations of this. Rather, O'Donnell's failure, for the case of Brazil, lays in not anticipating the element of a presidential impeachment and its impact on a competitive setting like the Brazilian one—in other words, a failure in considering the role of uncertainty in a delegative democracy. That uncertainty, as described in this conclusion, has led to different outcomes in delegative democracies.

In short, by comparing what has happened in Brazil since 1989 and what has happened in these other three cases, it is possible to infer the following: if delegative democracy is to last, as the case of Argentina has shown, presidents cannot ignore the political elite; they cannot govern above all. However, if presidents in delegative democracies indeed aim at governing above all, ignore the opposition, and fully concentrate power in their hands—as the cases of Venezuela and Russia illustrate—this will come at the cost of democracy itself as they will eventually enforce authoritarian practices. In Brazil, ironically, by following the script of what a president's behaviour is supposed to be in a delegative democracy, Collor made the country vulnerable to the creation of limits to presidential power, which eventually led to the emergence of limited government.

# Appendix A

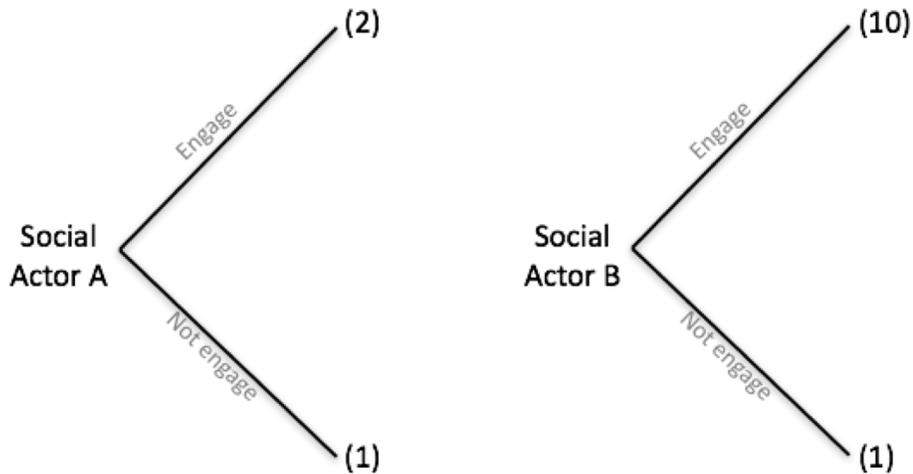
## Why is the existence of corruption not proof of institutional failure?

The creation of limits to presidential power and the harder-to-detect corruption schemes have shown to develop in an interdependent way in Brazil, as shown in Chapter 4. Each major institutional innovation to check and prevent abuse of power has followed a corruption scandal; yet, corruption schemes following such innovations have been increasingly harder to detect. What has happened in Brazil is what Stacey calls a “co-evolutionary feedback process in which what one does affects the others and then returns to affect the first” (1996, p. 36).

The aim of the institutional innovations mentioned in this thesis is to limit the possibility of abuse of power, thus also affecting corruption practices. They are designed to uncover evidence and catch those engaged in the schemes. It is thus not difficult to understand that corruption schemes, once uncovered, trigger innovations as it becomes possible to know how social actors operated for these schemes to take place. Institutional checks, in turn, affect practices of corruption; as explained in chapters 1 and 4, corruption encompasses different activities, such as bribery, illicit enrichment, and money laundering.

A certain activity is considered corrupt when public office is somehow used for private gain. In this sense, corruption concerns social actors aiming at maximizing their own utility by abusing their power. The creation and strengthening of institutional checks are thus new obstacles to that purpose. Each innovation in limiting abuse of power affects the strategic behaviour of social actors as it changes the tradeoff from what they faced prior to that

**Figure 7 – Strategic Behaviour concerning Corruption in a Delegative Democracy**



innovation. For instance, assuming that two social actors—A and B—are prone to use corruption to achieve their desired outcome, the tradeoff would be as illustrated in Figure 7.

The payoffs displayed in Figure 7 are merely to rank (following an ordinal logic) the utility social actors can get out of the strategy they choose ( $10 \succ 9 \succ 8 \succ 7 \succ 6 \succ 5 \succ 4 \succ 3 \succ 2 \succ 1 \succ 0$ ). In the absence or weakness of institutional checks, given that social actors aim to maximize their utilities, both A and B would choose to make use of practices of corruption as they would have a higher payoff than if they had chosen not to do so.

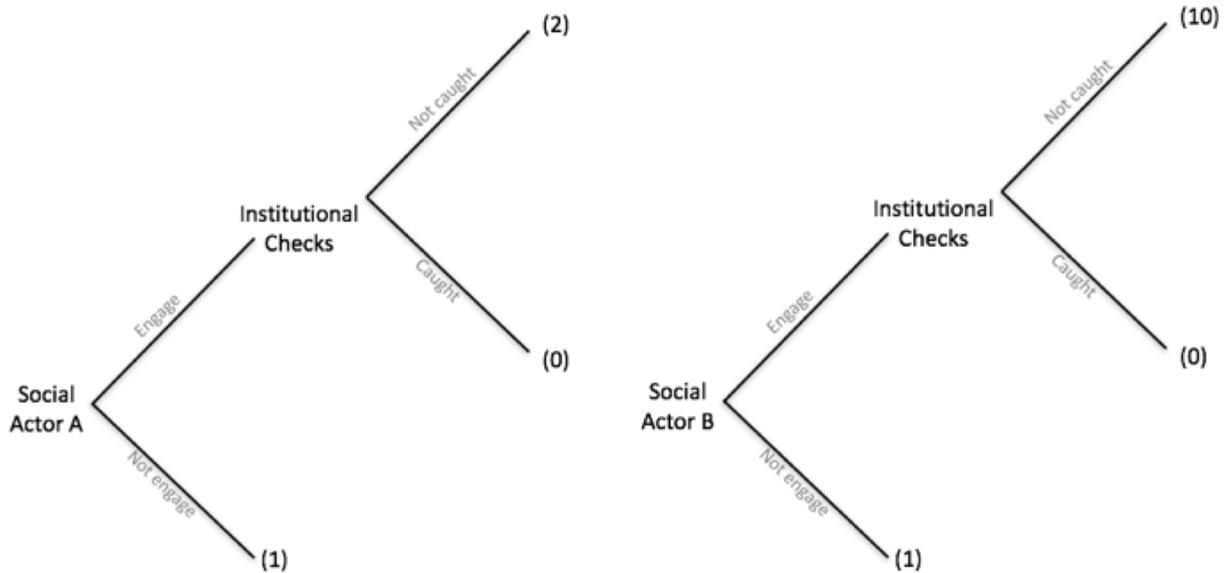
Nevertheless, the payoff they get out of corruption is different: social actor A gets a payoff of 2 while social actor B gets a payoff of 10. An example of a situation as such would be different sums of money, with A getting a “modest” bribe in exchange for political support while B gets a large sum of money. Another example of the situation illustrated in a political context would be one in which A gets a position in a secretariat while B gets a high-level position, say, minister. The point is that one of them, B, has more to win and more to lose if he/she chooses not to

engage in that specific corruption practice. The lack of institutional checks makes the decision easy to take, and, as mentioned, both would choose to engage in that activity. Yet, this may change once institutional checks are in place, as can be observed in Figure 8.

In a limited government there is the risk of being caught by institutional checks when engaging in corruption. Social actor A must now choose if it is worth going through the risk of being caught to get a payoff of 2 when he/she can actually get the payoff of 1 with no risks whatsoever. Some actors in such situation may indeed choose to take the risk, but others may be risk-averse and decide to not get involved in the scheme. For politicians in a situation like A, the emergence of limited government may stop them from engaging in that activity or not have any influence depending on how averse to risk they are.

In turn, for those in a position like social actor B, in turn, things are more complicated. After all, a payoff of 10 is much higher than a payoff of 1, so B has more incentives to pursue his/her desired goal through corruption. Nonetheless, the existence of institutional checks now poses an obstacle that may lead him/her to have either the payoff of 10, if the scheme is successful, or the payoff of 0 if he/she is caught. In other words, those in the situation illustrated for social actor B have much more incentives to try to bypass the new institutional checks than those in a situation like social actor A, which might actually choose to not engage in corruption.

**Figure 8 – Strategic Behaviour concerning Corruption in a Limited Government**



By affecting the tradeoff faced by politicians in terms of corruption, the existence of institutional checks makes the decision of whether to engage in corruption more complicated than in a situation like a delegative democracy. The lack of these mechanisms in Figure 7 was not the cause, but rather a facilitator for social actors to engage in corruption. In other words, limited government leads to a situation in which if corruption is to exist, it must be harder to detect—social actors who want to engage in acts of corruption despite the institutional checks must adapt. The situations presented in Figure 7 and 8, however, are ideal-type situations; as explained in Chapter 4, the creation and strengthening of institutional checks is a continuing process. Obviously, given that institutional mechanisms have different purposes (being oversight-, investigation-, or sanction-driven) and that they do not develop all at the same time, social actors actually face different tradeoffs depending of the stage of development of these mechanisms.

Yet, because institutions learn from corruption schemes that are uncovered, institutional innovations target the type of corruption and operations that have become known. Thus, social actors need to resort to a type of scheme that is still not known to institutions in order to reduce the possibility of being caught. As social actors, they change their reasoning in reaction to new elements (Miller & Page, 2007) and they develop what Axelrod (1984) calls an evolutionary selection mechanism: if a type of arrangement involving corruption starts being unsuccessful, they will try different arrangements and stick to the one that works. If that one stops working, they will move to another one and so on. Those arrangements that become easy to catch eventually die out. This is easily seen in the case of Brazil, as explained in Chapter 4; the types of corruption that used to take place in the early 1990s stopped taking place. In their place, harder and harder to detect corruption schemes have appeared.

To summarize, although institutional checks eliminate some types of corruption, they end by serving as incentives for more sophisticated corruption schemes. Thus, corruption must thus be understood as adaptive. It is not possible to just create institutions to solve the problem at once; corruption is a moving target (Maravall, 2003). Both corruption and institutional improvements involve social actors. On the side of the institutions, these actors learn from the corruption schemes and create new forms of catching corruption practices. On the side of corruption, social actors adapt to the new rules of the game and, if they decide to engage in corruption, aim at developing a scheme that is able to bypass the institutional check.

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