BUILDING PROSECUTORIAL AUTONOMY FROM WITHIN:

THE TRANSFORMATION OF THE MINISTÉRIO PÚBLICO IN BRAZIL

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ABSTRACT

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

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INTRODUCTION

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

Prosecutors are arguably the *primus inter pares*. They are the gatekeepers of the criminal system and have enormous power not only over private citizens (Davis 2007; Rakoff 2014), but

also corporations (Silbey 1981, Thompson 2004; Garrett 2007; Barkow 2011) and elected leaders at home and abroad (Burnett & Mantovani 1998; Wilson 1999; Weiser & Protess 2014). In recent years, scholars have examined the role that prosecutors play in the American justice system (Gordon and Huber 2009), in Western Europe (Fionda 1995; Ma 2002) and Japan (Johnson 2002). Their findings show how prosecutors shape the administration of justice in mature democracies. Our understanding on how prosecutors attain professional prerogatives, organizational autonomy and legal authority in developing countries, where they are exposed to the "serial replacement" of institutions (Murillo and Levitsky 2013) is much more limited.

In this paper, we conduct a longitudinal analysis of the Ministério Público (MP), a constellation of 30 state and federal-level prosecutorial services in Brazil, to find out how its prosecutors went from being subordinated agents of political elites in the late 19th century to becoming one of the most powerful and independent public agents in the country in 1990, a status that they retain today (McAllister 2008; Mueller 2010; Shi and van Rooij 2014). We report on three main findings. First, while the bulk of existing studies suggest that rule of law can be produced or strengthened by top-down, bottom-up, and outside-in types of reform (Helmke and Rosenbluth 2009), we find that government agents can engage in reform-from-within their own ranks. Second, this change in perspective allows us to see the conditions under which political turbulence can stop being a hindrance to reform and become a source of opportunities. Third, by looking at the same reform effort over time, we show how existing models of reform are not alternatives but a mosaic of options, and how a cadre of well-organized reform agents can accumulate resources that allow them to combine institutional reproduction with transformation.

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

PATHS TO PROFESSIONAL PREROGATIVES, ORGANIZATIONAL AUTONOMY AND LEGAL AUTHORITY

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

institutional fragmentation or electoral competition that threatens their hold on power (Smithey and Ishiyama 2002; Chavez 2003; Rios-Figueroa 2007). In other cases, leaders empower courts to divert blame over politically divisive issues or monitor the bureaucracy. These motivations for reform have been found in both democracies and dictatorships (Pereira 2005; Ginsburg and Moustafa 2008). The top-down model resonates with research on civil service reform. For instance, Schneider and Heredia (2003) examine several instances of administrative reforms in developing countries in the 1990s and find that reform efforts were often led by small groups of leaders within the executive. Similarly, Grzymala-Busse (2003) examines the relationship between elected leaders and the state bureaucracy in post-communist countries. She finds that political fragmentation leads incumbents to insulate government agencies from political control. These findings conform to Geddes' (1994) analysis of the "Politician's Dilemma" and Grindle's (2012) longitudinal study of patronage and civil service reform in 10 countries.

Instead of looking solely at top-down efforts, other researchers identify a bottom-up model of reform, in which citizens, lawyers, and human rights advocates mobilize to demand independent judiciaries, impartial legal proceedings, and more responsive government agencies (Epp 1998). In some instances, popular mobilization complements and reinforces the opportunities created by political fragmentation (Smithey and Ishiyama 2002; Tezcur 2009). In other instances, popular mobilization protects courts threatened by an overbearing regime (Vanberg 2000; Ghias 2010; Harvard Law Review 2010).

Finally, some researchers find that reform can also be promoted from the outside-in. In some instances, courts gain independence because foreign investors demand protection against capricious expropriation (Moustafa 2003, Wang 2014). In other instances, foreign countries or

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

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

These insights are echoed by studies that examine how other government officials increase their prerogatives, autonomy and authority. Epp (2010), for instance, examines four different types of organization in the US and finds that bureaucratic insiders worked together with activists outside the organization to change internal practices and procedures. Carpenter (2001) compared the evolution of the US Postal Service and the Department of Agriculture with the Department of the Interior between 1862 and 1928 to find that entrepreneurial mid-level

bureaucrats combined their distinctive reputation for expertise with access to diverse political networks to set their own policy-making priorities. Similarly, Abers and Keck (2013) study the creation of new river basin committees throughout Brazil and find that the daily work practices of water experts assigned to these committees explains why some acquired practical authority while others existed mainly on paper.

And yet, with few exceptions (e.g. Widner 2001; Grindle 2012) all these studies adopt a compressed time horizon and examine one episode of reform at a time, covering five to ten years, at most. As a result, they cannot explain why certain opportunities are seized while others are lost, why some reform efforts set a new level of prerogatives, autonomy and authority while others are reversed soon after the circumstances change, and how certain failed attempts at reform set the stage for subsequent successes.

SOCIAL MOVEMENTS IN ORGANIZATIONS

Research on social movements offers us a set of analytical concepts focused on political opportunities and mobilizing structures and practices that allow us to understand how prosecutors could enhance their authority and promote the rule of law in a rather turbulent political environment (McAdam 1996; Tarrow 1998). This research includes a growing body of management scholarship that draws from research on social movements to understand organizational change (Creed & Scully 2000; Briscoe & Safford 2008; Davis et al. 2008; King & Pearce 2010). While acknowledging that elites often play an important role in organizational change, scholarship on social movements within organizations challenges the assumption that all change emanates from the top. Rather, it suggests that social movements—involving deliberate

collective action by front-line workers or middle managers, as well as by outside advocates—can also produce organizational change.

Research on social movements has identified the political opportunity context, mobilizing structures and practices, and framing as key variables that impact the success of social movements. The ***political opportunity context*** is determined by two sub-components: avenues for political participation and elite allies (McAdam 1996; Tarrow 1998). In turn, change in avenues for participating in political decision-making are affected by the proliferation or contraction in the venues where political decision-making takes place (e.g., the executive, legislative, and judicial branches of government at the federal, state and local levels in the United States) or the windows of opportunity in which major policy decisions take place (Kingdon 1990). Avenues for participation are shaped also by the level of political competition between elites. A system in which a small or unified elite makes decisions will offer limited avenues for participation. Conversely, electoral competition or intra-elite disputes expand the spectrum of possibilities. Elite allies are those movement's supporters who can influence the political decision-making process.

Mobilizing structures are formal structures and practices that activists draw upon to gain support and engage in collective action (McAdam 1996; Tarrow 1998). Formal structures include social movement organizations, or formal employee groups within an organization that social movement activists draw on as vehicles for achieving collective goals (Briscoe & Safford 2008). In addition, mobilizing practices include the deliberate cultivation of elite allies that helps activists achieve the reforms that they desire. The practice of cultivating elite allies can alter the political opportunity context for future collective action. Finally, ***framing*** involves deliberate

efforts to craft and communicate interpretive schema that can shape how potential supporters or opponents interpret their social world. Effective frames can help social movement actors mobilize the support of others and inspire them to action (McAdam 1996; Tarrow 1998; Benford and Snow 2000).

Our analysis focuses primarily on shifts in the opportunity context and in mobilizing structures and practices to explain how prosecutors engaged in collective action to achieve their goals. While framing may have been important in encouraging political leaders and the public to support the prosecutors, it remained fixed for the majority of the time period covered in our study. It was only late in our study, in the 1980s and 1990s, that a segment of prosecutors advanced a new frame.

EMPIRICAL PUZZLE: THE MP BEFORE AND AFTER

The evolution of the Brazilian MP from 1889 to 1990 constitutes the ideal setting in which to study the gradual attainment of prosecutors' prerogatives, autonomy and authority in a turbulent political environment. We start our analysis in 1889 because that was the year when Brazil abolished its monarchy and became a federal republic. Over the course of the hundred years in our study, individual prosecutors were transformed from a collection of poorly paid, poorly trained officials with limited legal powers and no promising long-term career prospects as prosecutors into a cadre of highly paid professionals whose career as prosecutors is highly coveted by the country's brightest law graduates. The MP was transformed from a relatively unimportant organization that was beholden to the executive branch into an important and powerful government agency that in many ways represents a fourth branch of government.

We focus our analysis on explaining change in three dependent variables: (i) prosecutors' professional prerogatives, (ii) organizational autonomy, and (iii) individual prosecutors' legal authority. Professional prerogatives include an adequate salary, job security, career progression, protection against capricious transfers, demotion, or dismissal, adequate conditions of work, and other assurances that allow individual prosecutors to reason impartially and without fear of reprisal. It includes both prerogatives that give them status and financial resources, as well as prerogatives (e.g. protection from demotion, job tenure, the assignment of cases by established rules, and promotion according to rules rather than patronage) that allow prosecutors to decide cases according to their training and conscience. Because professional prerogatives are defined, in part, by the strength of the "office" of the prosecutor, which requires full-time dedication to the official role, laws banning work and remuneration outside of that role strengthen their professional prerogatives further (Weber 1968). Organizational autonomy refers to laws and rules that recognize the distinctive role of the MP in government, and that allow for the prosecutors to collectively govern themselves and their organization with limited interference. It includes the formal demarcation of the MPs role in federal and state constitutions, and the empowerment of a head prosecutor, chosen with input from all prosecutors, to manage the organization. The organizational autonomy achieved by the MP is consistent with classic sociological models of professional self-governance (Freidson 2001). It includes the MP's authority to negotiate its budget with the legislature, and the authority of prosecutors as a collective to decide on internal governance matters, oversee recruitment, promotion and appointment procedures, conduct performance reviews, manage its own internal affairs division, and other high-level assurances that pertain to the organization as a whole. Individual prosecutors' legal authority refers to

individuals' legal powers to investigate alleged violations (for instance, through subpoenas and depositions), initiate formal legal proceedings, settle cases, and issue binding legal orders. In addition to giving prosecutors power over various legal persons in Brazil, these individual legal powers are also a form of jurisdictional power that gives prosecutors control over their work (Abbott 1988). Prosecutors' jurisdictional power is higher if they have exclusive control over a particular legal decision or instrument and if they have the final word on a given matter.

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

By hiring young lawyers, the MP ended up staffed with prosecutors who lacked experience and minimal legal skills. As explained by a disenchanted prosecutor from São Paulo, most of his colleagues were "*youngsters who just graduated from law school; incapable of writing even the simplest motion and who attend their first hearings dumbfounded, baffled and*

overwhelmed." ("O Ministério Público Paulista," *Folha da Manhã* 26 Dec, 1930:4). Making matters worse, turnover was extremely high; in São Paulo it hovered around 20% per year (*Relatorio do Presidente da Provincia* 1922-1929). Turnover is not necessarily bad if it eliminates those ill-fitted for the job. In the MP, the opposite was true. The more skilled practitioners left first, and the MP retained either "*the losers, the diffident, the fearful of venturing out into a less ungrateful and more rewarding career",* or *"the rare altruistic soul who, with fortitude, awaits better days*."

The lack of career protections or a meritocratic selection process further indicated weak professional prerogatives. Typically, leaders of the executive used the promise of public renown and practical training to recruit young lawyers from influential families. In turn, they demanded full allegiance and treated prosecutors "*as an instrument at their disposal, to protect friends and intimidate enemies*" (Francisco Amaral, *Folha da Manha*, 1 Feb. 1931: 10). Submissive prosecutors who respected their patrons' orders retained their posts or moved up the hierarchy; defiant prosecutors who placed the law above the wishes of their patrons were fired or demoted without recourse or explanation (Arruda Sampaio 2007:1).

The MP's organizational autonomy was weak to non-existent. The federal government maintained a relatively small MP to enforce federal laws, and each one of Brazil's 20 states maintained their own MPs to enforce state laws. The national constitution of 1891 was silent on matters pertaining to prosecutors, which gave MPs limited legal recognition as distinct, legally autonomous organizations. As a result, state-level governors and the national president organized their MPs as they saw fit. Leaders of the executive, rather than a head prosecutor, maintained the authority to manage the organization. Prosecutors as a collective, fragmented as they were, had

no authority for professional self-governance. As described by Ruy Barbosa, the most preeminent Brazilian jurist in the 19th and early 20th centuries, "*the name Ministério Público was the abstract and inaccurate representation of loose and disperse elements, without a body organic, a constituted entity, or individual personhood.*" (cited in Soares 1930, 10)

Finally, individual prosecutors had limited legal powers. Those assigned to criminal cases shared the authority to initiate criminal action against alleged perpetrators with the police, judges, public servants, and citizens in general. Some prosecutors were assigned to "guardianships", in which they oversaw the legal affairs of protected persons (such as orphans or the mentally ill), or protected interests (such as bankruptcy proceedings). In essence, this job required that they write *amicus*-type legal briefs that judges could simply ignore.

We end the analysis in 1990, the year when Brazil consolidated its most recent transition to democracy. By then, all Brazilian prosecutors possessed similar professional prerogatives as judges, including a respectable salary and numerous pecuniary and non-pecuniary benefits. Lateral entrance was abolished. To this date, all prosecutors are appointed through entrance exams and promoted from within to higher, senior ranks. Prosecutors must work for the MP full time and are assured career progression. They obtain life tenure after two years and cannot be fired, demoted, or even transferred to a different post against their will. New legal cases are assigned to posts according to pre-existing rules rather than to persons, to prevent political interference. These prerogatives ensure that prosecutors can decide their cases according to their individual training and conscience, without fear of reprisal.

The MP also achieved a level of organizational autonomy rare for a public sector organization. The wide variation in how MPs used to be structured across subnational units was eliminated and its role is officially enshrined in the federal constitution. In São Paulo, the MP has the ability to propose its own budget to the legislature, elect its own leaders, set its own bylaws, and run its own internal affairs division to investigate alleged malfeasance committed by prosecutors.

Finally, all individual prosecutors in the country have enormous legal powers. They share with the police the authority to investigate infractions; however, they retain exclusive authority to either initiate criminal proceedings or dismiss allegations. In the civil sphere, prosecutors can investigate alleged infractions under labor, environmental, consumer protection, human rights, and other laws; share with a few other entities the authority to initiate the Brazilian equivalent of a class action ("*Ação Civil Pública*"); and have exclusive authority to sign deferred prosecution agreements comparable to American consent decrees ("*Termos de Ajuste de Conduta*"). In contrast with the MP's earlier role as the legal counseling and litigating arm of the executive branch, its present mandate entails representing the public interest against private parties and, at times, against the government itself. High level government officials readily admit that before any important policy decision, they inquire what the prosecutors will think.

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

DATA AND METHODS

We start our inquiry by examining the evolution of the Ministério Público in the state of São Paulo (MPSP), and then expand our scope to examine the path shared by all state- and national-level MPs in Brazil. We start by focusing on São Paulo because its prosecutors played a leading role in promoting reform at both the state and national levels in Brazil. Moreover, reforms initiated in São Paulo later became a model for reforms in other Brazilian states. We do not restrict the analysis solely to São Paulo because many of the reform efforts took place at the national level, involved representatives from numerous states, and their outcomes affected all MPs in the country. The shifting of the locus of analysis from a single state (São Paulo) to the national level is an important methodological feature of this study because it sheds light on subnational dynamics and cross-level interactions that most other studies overlook.

The purpose of this study is to explain change in the three outcome variables, (i) professional prerogatives, (ii) organizational autonomy, and (iii) individual prosecutors' legal powers described above. The independent variables come from research on social movements, informed by the two streams of the literature on judicial and bureaucratic reform discussed earlier. On one side, the top-down, bottom-up and outside-in models of reform suggest that we examine the political opportunity context, including the role of competition and fragmentation in the political system, the demands placed on political leaders by popular groups, and the exigencies made by outsiders. Informed by this work, we focus on avenues for political participation and prosecutors' access to (potential) elite allies. On the other side, the reform-from-within model suggests we pay attention not only to the political opportunity context, but also to the mobilizing structures and practices of reformers.

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

THE PROCESS OF TRANSFORMATION (1889-1990)

Stasis and early attempts at reforms (1889-1934)

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

The oligarchic period came to an end in 1930, when a series of bumper crops and the Great Depression of 1929 caused a collapse in coffee prices. To pursue a federal bailout,

politicians from São Paulo, the largest coffee producing state in the nation, tried to retain Brazil's presidency for two consecutive terms rather than alternate with Minas Gerais as had been conventional. Representatives from other states rebelled, deposed both the departing president and his putative successor, and gave the post to Getúlio Vargas, a modernizing politician from Rio Grande do Sul. Soon after taking office, Vargas disbanded the national congress and revoked the national constitution.

A period of political turbulence changed the political opportunity context by dislodging political elites that had opposed prosecutorial reform. Vargas saw São Paulo as the bastion of the old regime and the staunchest opponents to his fledgling rule. To defuse the threat lurking there, he closed the São Paulo state assembly, deposed the governor, and named one of his generals to run the state. Vargas' ultimate goal was to weaken the PRP and end its control of the state. The effort did not yield immediate results. As the PRP shrunk, three political factions jockeyed for power, creating continuing political instability within the state. Between 1930 and 1933 São Paulo had, on average, a new governor every 80 days. Mobilizing structures among prosecutors interested in reform remained non-existent. Nevertheless, some individuals took advantage of this political turmoil to argue for reform. Within weeks of Vargas taking over, a prosecutor from São Paulo published a short book exhorting the new regime to create new professional prerogatives that would establish a career track for prosecutors, increase their salaries, eliminate moonlighting, and protect prosecutors from unfair transfers and dismissals (Soares 1930).

Vargas did not heed this plea, but competition among the warring factions within São Paulo created an opening in the political opportunity context in the form of a new elite ally that nonetheless facilitated reform. In 1931 Vargas appointed a prominent local citizen without clear

ties to the contending political factions to govern the state. A month after taking office, this governor enacted a decree increasing professional prerogatives by creating a career track for prosecutors and protecting them against unfair transfers and dismissals. The decree also increased organizational autonomy by empowering the head prosecutor to manage the organization ("Reorganiza o Ministério Público do Estado," Decreto 5179-A, 27 Aug 1931).

These reforms did not last long. As political conditions in São Paulo continued to deteriorate, the factions that had been fighting within the state overcame their differences and rebelled against the federal government. Battles in this civil war were fierce but short. Within three months São Paulo's troops had surrendered. Vargas sent the leaders of the rebellion into exile and appointed a trusted military commander to govern the state. Soon after taking office, this new governor revoked the earlier decree and restored his power to appoint, promote, transfer and dismiss prosecutors at will. He also restored his own discretion to manage the organization ("Dispõe sobre Nomeação, Remoção e Exoneração dos Membros do Ministério Público," Decreto 5.784, 30 Dec 1932). At a superficial level, these events conform to the top-down model of reform where reforms were passed by political leaders in absence of any organized mobilization among prosecutors, but they also show that professional prerogatives and organizational autonomy achieved thorough this method might be fleeting.

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

By 1933-34, Vargas and his allies had acquired uncontested control over the Brazilian territory and proceeded to return the country to political normalcy, once again opening up new avenues for political participation. In particular, Vargas revamped the electoral code so both men and

women could vote through secret ballot. He also created an independent electoral commission to manage and monitor the elections, and revoked the law that allowed incumbents to impeach challengers. Once these laws were in place, Vargas called elections so citizens could vote for a new slate of congressional representatives. He also instructed the newly elected members of congress to draft a constitution for the country. Both the constitutional convention process and new congress represented new avenues for political participation. Prosecutors still did not have any mobilizing structures, so the MP did not figure prominently in constitutional debates. There was, however, *ad hoc* advocacy. Three congressmen from Minas Gerais spoke in favor of an autonomous MP (*Anais da Assembléia Nacional Constituinte*, vol. 4 (1934):467) but did not gather enough votes to amend the draft constitution. In the end, the constitution of 1934 granted federal prosecutors some prerogatives, for instance by protecting them against unfair dismissal. It also placed the provisions pertaining to the federal MP in a chapter devoted to "*organs of governmental cooperation*", a symbolic indicator of organizational autonomy. It did not include any provisions devoted to state-level MPs, so governors still had unrestricted authority to organize their respective state-level MPs as they saw fit.

In addition to creating a political framework for the country, the national constitution of 1934 directed the Brazilian states to reopen their legislative assemblies and elect new governors, further creating avenues for political participation and changing the composition of the political elite. For the first time in history, local elections in São Paulo were contested. The formerly miniscule *Partido Constitucionalista* (PC), which supported Vargas, obtained 48% of the seats and elected the governor. The remnants of the PRP obtained 29% of the seats. Two smaller parties and representatives of the professions obtained the remaining 23% of seats. Prosecutors

still did not have mobilizing structures, so attempts at empowering the organization were driven from the top and fueled by partisan divides.

The São Paulo assembly's first task was to write a new constitution for the state. The initial draft emulated the federal constitution, and addressed the MP in its own chapter, separate from those devoted to the other branches of government, an indicator of organizational autonomy. The São Paulo state constitution created some professional prerogatives. In particular, it determined that prosecutors be appointed through an entrance exam, protected them against unfair dismissal, and mandated that a third of promotions be based on seniority, which decreased the opportunity for patronage. Subsequent legislative debates pertaining to the MP revolved around salary. On one side, a member of the PRP argued that prosecutors should be paid no less than two-thirds of the salary of the judges with whom they worked. Naturally, the money would come from the executive's budget, so this proposal would not only decrease the governor's discretionary account, but it would also decrease his leverage over prosecutors. Speaking for the governor, a member of the PC (and former prosecutor) named Ernesto Leme argued against these provisions and tried to delay the raise. Prosecutors' salaries were so low and the newly elected assembly was so evenly divided that all the provisions empowering the MP, including the amendment proposed by the PRP, were approved. A few months later a member of the PC proposed, and the assembly approved, that the executive branch pay for the raise by retaining 50% of the legal fees that prosecutors charged citizens for performing official duties. This increase in base-salaries and the reduction in legal fees decreased the disparity of income among prosecutors, reduced their incentives to compete with each other for profitable posts within the organization, and paved the way for increased solidarity within their ranks.

The next window of opportunity for prosecutors to participate in the political process took place in 1936, when the São Paulo assembly discussed how to implement the provision in the São Paulo state constitution mandating that prosecutors be recruited through an entrance exam and promoted from within. Debate again followed partisan lines. Ernesto Leme (PC), again opposed to providing prosecutors with many professional prerogatives, wrote the initial draft with minimal concessions to the prosecutors. Cesar Salgado, a former prosecutor who had been elected state representative for the PRP, suggested a series of amendments that protected prosecutors and the MP from undue political influence, particularly unfair transfers. By then, the PC had assembled a majority coalition, so Salgado's amendments were rejected and Leme's proposals, which provided prosecutors within the MP with minimal professional prerogatives, were approved. This law constituted a small victory for prosecutors, as it confirmed that prosecutors should be hired through entrance exams and promoted from within. Yet, its importance should not be overstated. An organization such as the MP requires enormous flexibility in staffing to fill temporary vacancies and meet sudden peaks in demand. For another 20 years, state governors continued to appoint *ad hoc* or adjunct prosecutors from outside the ranks of the organization. Naturally, *ad hoc* prosecutors were more beholden to the governor than colleagues appointed through an entrance exam.

The São Paulo phase of reforms

In 1937, the political opportunity context contracted. Vargas reneged on his promise to call for presidential elections and step down. Instead, he closed congress, replaced the national constitution of 1934 with a document prepared behind closed doors, and initiated a new period

of autocracy and centralized decision-making known as Estado Novo. In São Paulo, Vargas disbanded the state assembly, deposed the governor, and named an ally to run the state.

In the context of this contraction in the political opportunity context, prosecutors in São Paulo created their first mobilizing structures to work towards reform. With the state assembly closed, Cesar Salgado, who had earlier proposed measures to protect prosecutors from political interference as a legislator, returned to his post as prosecutor. In November 1938, he joined forces with a small group of disenchanted colleagues to create the *Associação Paulista do Ministério Público* (APMP), the first membership-based organization to defend prosecutors' professional interests in Brazil. Cesar Salgado was APMP's first president, and the organization operated from his house. Over the years, the APMP (and its sister organizations subsequently created in other states) became the main vehicle through which prosecutors advanced their cause.

As prosecutors' main mobilizing structure, the APMP adopted a four-pronged approach to foster cohesion and collective action among prosecutors. First, it published *Justitia*, a quarterly journal that disseminated law reviews, legal templates, and professional announcements relevant to prosecutors. Initially, the journal circulated only in São Paulo, but colleagues from other states soon asked for copies and the APMP started distributing it nationally. Second, the APMP encouraged prosecutors from other states to create their own associations. Third, the APMP organized professional meetings so prosecutors could strengthen their mutual ties and discuss legal matters relevant to the profession and the organization. The first meeting took place in São Paulo around 1940 and was soon followed by a national meeting, also held in São Paulo in 1943. Over time, these meetings became a platform for mobilization and reform. Finally, the APMP took steps to identify and recruit elite allies—current and especially former prosecutors who

worked in public agencies, occupied elective office, or had access to political leaders and so could help it advance its cause.

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

At this point in their trajectory, prosecutors from São Paulo had secured a few professional prerogatives but still enjoyed very limited control over their own organization. Their most important asset was the APMP, which was helping them mobilize as a group and acquire resources that they could deploy the next time an opportunity arose. The political opportunity context opened again in 1945, when a non-violent coup d'état deposed Vargas and sent Brazilians back to the ballot box to elect a new president as well as new members of the national congress. As the newly reopened national congress began drafting a new national constitution, the APMP submitted a lengthy memorandum to various members of congress requesting more professional prerogatives for prosecutors and increased organizational autonomy for all MPs (*Anais da Assembléia Nacional Constituinte v6*: 199-204). Prosecutors from Pernambuco, who

had just created their own association, also submitted suggestions for reform (*Anais* v.18: 108). To complement this push, the APMP sent one of its leaders to the capital to lobby congress directly (Arruda Sampaio 2007).

Thanks to this effort by mobilized prosecutors, the MP occupied a much more prominent role in constitutional debates in 1946 than in 1934. The debates pertaining to the MP covered a broad array of topics, including institutional design, the balance of power across the branches of government, and mechanisms of accountability. The national constitution of 1946 enhanced MP's organizational autonomy by addressing it in its own chapter, separate from the chapters devoted to the other branches of government. The constitution further extended to all federal- and state-level prosecutors the professional prerogatives that were already in place in São Paulo. It was the first instance in which reforms that had been advanced in one state got disseminated to all states in the country. The leaders of the APMP were jubilant. Plinio de Arruda Sampaio, a former prosecutor from São Paulo, reminisced about his father, also a prosecutor, who had travelled to the capital to lobby the proceedings on behalf of the APMP:

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

As part of the post-Vargas democratic transition, citizens in all states elected new governors and new representatives for the state assemblies. In São Paulo, elections were hotly

contested. Ademar de Barros, the young politician who had been appointed governor by Vargas and who had decreed professional prerogatives for prosecutors in the 1930s, was elected to the post but his political party obtained only 12% of the seats in the state assembly. The leading party obtained 35% of the seats, the runner-up obtained 19%, and six other parties shared the remaining 34% (i.e. 5-6% each).

Once again, the São Paulo assembly's first order of business consisted in drafting a new constitution for the state. Prosecutors in São Paulo took decisive action to enshrine the provisions pertaining to the MP, currently established by administrative decree in 1939, in the state constitution. As state representatives got ready to write a new constitution, APMP sent them a detailed document with proposals and arguments for an MP with stronger professional prerogatives and organizational autonomy. The initial draft of the new São Paulo constitution listed the MP in its own chapter and affirmed a number of professional prerogatives, including MP's distinctive role as an organ of government. Subsequent legislative debates involved intricate procedural maneuvering, heated debates between members of the assembly who advocated on behalf of judges, prosecutors, or the police, and some fierce opposition against the MP. The risk to prosecutors was real, but the APMP helped defuse the threat. When a group of assemblymen proposed that the state constitution omit any mention of the MP, a legislator argued against the motion by quoting Cesar Salgado's speeches from his time as a member of the assembly ten years earlier.

As the relevant provisions came to a final vote, a slim majority agreed to maintain the chapter devoted to the MP but did not expand the prosecutors' professional prerogatives. The text mandated that all prosecutors be hired through entrance exams, protected them against unfair

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

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

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

The next step in the prosecutors' campaign focused on establishing the MP's organizational autonomy. At that point, São Paulo political life had settled into a two-party system, with Ademar de Barros on one side and Jânio Quadros on the other. Barros, who had

decreed a number of professional prerogatives for prosecutors as governor in 1938, was a potential elite ally for advocates for reform. In the interstices of this dispute, Lucas Garcez, a former Barros ally, served one term as governor. In 1951, Garcez named Cesar Salgado head prosecutor (at that point, Salgado was 56 years old), and in 1954 Garcez proposed, and a deeply divided state assembly approved, a law mandating that the MP be headed by a senior prosecutor pre-screened by his or her peers. This law also mandated that the MP run its own internal affairs division, so prosecutors accused of malfeasance would be judged by their peers. This law was a crowning achievement for prosecutors in São Paulo, as it gave them a level of organizational autonomy that complemented the professional prerogatives they had already attained. The transformation in terms of professional prerogatives and organizational autonomy would have been complete if not for the fact that São Paulo remained a subnational unit within a national system of governance. To preserve their gains, prosecutors ended up taking their mobilizing effort to the national level.

The national phase (1964-1990)

The democratic period that had started in 1946 ended in 1964 when the Brazilian military deposed the president, purged the opposition and authorized an eviscerated national congress to write yet another constitution for the country, which was enacted in 1967. Soon afterwards, the military leaders replaced this constitution with a more draconian document ("Emenda n' 1 / 1969"). Both revised constitutions preserved some of the professional prerogatives that prosecutors had achieved at the national level in 1945, particularly recruitment through entrance exam and protection against unfair transfers. However, the Constitution of 1967 placed the MP

in the chapter devoted to the Judiciary, and Emenda n' 1 placed it in the chapter devoted to the Executive— both moves implied an erosion in organizational autonomy.

Prosecutors who had pushed for greater professional prerogatives and organizational autonomy feared that the military leaders might nonetheless revert the MP to its earlier dependent configuration. A senior prosecutor from São Paulo explained, "*It was an autocratic government. If the president could, on a whim, amend the Constitution, he could also modify those prerogatives that we cherished so much, such as the merit-based entrance exam, the structure that mirrors the Judiciary, the salaries*" (Paulo Salvador Frontini, quoted in Bonelli 2002:148). Prosecutors' sense of vulnerability was heightened by heterogeneity in the individual prerogatives of prosecutors and the organizational autonomy of MPs across states and the federal government. For instance, federal prosecutors had limited organizational autonomy from the executive branch. They represented the executive in court, pursued tax evaders and were happy to remain subordinate to the president in exchange for a share of the taxes they recovered. In some states (such as Rio de Janeiro), prosecutors represented private clients on the side, an activity that could be quite remunerative. Given this heterogeneity, prosecutors from São Paulo, Rio Grande do Sul, and other states that had moved towards a different, relatively professional and autonomous organizational arrangement, feared that the military would force them to change. A leader of the MPSP explains:

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

In 1970-1, the leaders of the APMP responded to this perceived threat by creating new mobilizing structures suitable for a national campaign. They joined forces with counterparts from other states to create a new umbrella association named '*National Confederation of State-level Prosecutors' Associations* ("*Confederação de Associações Estaduais do Ministério Público*," CAEMP, later renamed CONAMP). Its first president was a prosecutor from São Paulo. Building on the past efforts of the APMP and its counterparts on other states, CAEMP pursued a three-pronged strategy. First, it kept close tabs on all federal deliberations that might affect its members. Here, CAEMP drew on its network of elite allies, including current and former prosecutors, mobilized over the previous three decades of organizing by state-level associations. CAEMP used this network to identify prosecutors who could provide it with privileged information on the decision-making process within the federal government and lobby on its behalf. As explained by a prosecutor,

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

Second, CAEMP successfully encouraged prosecutors throughout the country to either strengthen state-level associations or create new ones where none existed. In 1964, prosecutors in 11 out of 20 states had an association; by 1978, this figure had almost doubled, and prosecutors in all 20 states had an association. As part of this push, CAEMP encouraged all associations to fight for more prerogatives and organizational autonomy for prosecutors within

their own states so that prosecutors could present a unified face when lobbying the federal government (Xavier de Freitas 2007:5).

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

> "*During those years, we organized numerous meetings. It was a time when the Ministério Público Congresses multiplied, thanks to the Confederation, as a strategy to promote [our vision of an autonomous MP] to local governments, public opinion, and politicians in general. The meetings were a political weapon. In addition to studying and discussing laws and proposing pieces of legislation, we used this political weapon to lobby the power-holders*" (Xavier de Freitas 2007:7).

As they strengthened their capacity for national collective action, prosecutors also strived to seize two distinctive opportunities for reform, but these efforts only yielded results several years later. The first opportunity had the potential to allow prosecutors to increase their individual legal powers. This opportunity emerged in 1973-4, when the president of Brazil created a Special Secretariat for the Environment ("SEMA") and appointed a biologist from São Paulo to head it. Upon taking office, this biologist convened a committee of experts to draft the country's first comprehensive environmental stewardship law. One of the contributors was a young prosecutor from São Paulo with a keen interest in the nascent field of environmental law. Thanks to his suggestions, the bill empowered prosecutors to initiate civil action against anyone suspected of damaging the environment. It would have been a momentous expansion of

prosecutors' individual legal powers, but when the head of SEMA submitted its proposal to the president in 1975, business groups managed to hold it up ("Lei dará mais poderes à SEMA," *Folha de São Paulo*, 11 June 1975:12; Hochstetler & Keck 2007:32).

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

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

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

When the bill reached the national congress, prosecutors traveled to the capital to testify on its behalf and monitor its progress through the relevant committees. Legislative debates were mostly laudatory. Congressmen from both the majority and the opposition censured Chagas Freitas and defended the professional prerogatives and organizational autonomy of prosecutors as a cornerstone of the rule of law. The bill was approved with only minor modifications by Congress and a few line vetoes by the president. The result was standardization across state-level MPs ensuring both professional prerogatives (e.g. selection through a competitive entrance exam, protections against unfair dismissals) and considerable organizational autonomy (e.g. empowering a head prosecutor to run the organization, peer judgment for prosecutors accused of

malfeasance). To a large extent, these provisions set the foundation for the MP that exists today and their adoption illustrate the finding from the literature on comparative judicial politics that – under the right conditions – the rule of law can be strengthened even under dictatorship (Moustafa 2014). Naturally, the leaders of CAEMP and other state-level MPs that had led the effort were ecstatic. The congressman who helped shepherd the bill through congress was named an honorary prosecutor by his home state's MP and granted the title of "friend of the Brazilian MP" by CAEMP (Câmara dos Deputados 2014).

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

The next expansion of prosecutors' individual legal powers came in the mid-1980s. Since the early 1970s, legal scholars from around the world had been discussing how collective claims could be accommodated within contemporary legal systems (Cappelletti & Garth 1978; Yeazell

1977; Hensler 2009). In Brazil, a group of legal scholars, government attorneys and judges interested in advancing this agenda convened a series of meetings, workshops and congresses, and ultimately drafted a stand-alone bill creating the "civil public action," the Brazilian equivalent of the American class action. This bill empowered both civic associations and prosecutors to initiate civil public actions against private and public parties to protect the environment and natural, historic, and tourist sites in Brazil. In March 1984, a congressperson introduced this draft bill to congress (Projeto de Lei 3034/1984). Meanwhile, prosecutors from São Paulo rushed to prepare a bill of their own, which overlapped considerably with the first but expanded the scope of the law to further cover consumer rights and "all other collective interests." In addition, their bill empowered prosecutors (but not civic associations) to subpoena evidence and request expert testimonies under penalty of criminal contempt. To protect prosecutors' turf, it omitted a provision in the legal scholars' bill empowering civic associations to initiate criminal action to defend collective rights.

To ensure their bill would succeed over the competing one, prosecutors used the mobilizing structures and network of elite allies they had established over the previous decades. The authors of the draft presented it at a conference of prosecutors in São Paulo (1983) and garnered the formal endorsement of their peers. Next, they sent the bill to the head prosecutor of the MPSP, who forwarded it to the president of CAEMP (also from SP). The very next day, the president of CAEMP sent the bill to the minister of justice, who immediately submitted it to congress. The prosecutors' bill reached congress one year after the bill elaborated by the legal scholars but it sailed through and was approved with minor modifications. This law empowered

prosecutors to initiate class actions, and over time they acquired a near-monopoly over this powerful new legal tool.

Perhaps the greatest opportunity for reform came in 1985, when the military finally agreed to hand over the presidency to a civilian. This opened up the political opportunity context dramatically. In 1986, the country held its first open and free elections for congress in more than two decades, and the newly elected representatives convened to write a democratic constitution for the country. The writing of the constitution created a unique opportunity for prosecutors, but to take full advantage of this prospect, they had to achieve unity of purpose within their ranks. A campaigner explained, "*Our demands were not easy, and each [state-level] Ministério Público had its own supporters in congress. If the MPs had been divided, we would not have achieved anything. It was crucial that we arrive at the constitutional assembly with a united front*."

The mobilization structures that prosecutors created in the preceding decades helped them achieve unity and lobby effectively. CAEMP (now renamed CONAMP to accommodate federal prosecutors) mailed a survey to all Brazilian prosecutors asking them for their vision for the MP in the constitution. Later that year, CONAMP organized a national congress in São Paulo for prosecutors to discuss the same topics in person. A committee of experts distilled the main points from both sources into a list of provisions. Finally, CONAMP organized the first National Meeting of Head Prosecutors and Leaders of Prosecutors' Associations, which took place in Curitiba, where attendees discussed, modified, and eventually endorsed the proposals of the committee. This meeting's manifesto, known to prosecutors as the "Letter from Curitiba," became CAEMP's official platform. It called for organizational autonomy, including authority for the MP to propose its own budget. It also asked for strong professional prerogatives so

individual prosecutors could feel secure enough to act according to their own interpretation of the law, with additional assurances of life tenure and protection against demotions and unsolicited transfers or promotions.

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

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

The MP succeeded in practically all of its objectives. An interviewee recalled, *"...during the Constitutional Convention we achieved all our goals, the MP ended up being the most powerful lobby within congress at that time*." The MP emerged from this process with unprecedented organizational autonomy, professional prerogatives, and legal powers.

In addition to empowering the prosecutors, the constitution of 1988 created an inflection point in the way Brazilians relate to the state. The writing of the document drew from the intense participation of organized civil society, and numerous social groups – including those defending the rights of women, youth, urban workers, peasants, and indigenous people – actively shaped the document. In doing so, they changed their relationship to the state, from submission in the prior period, to partnership and participation (Doimo 1995). As part of this shift, many government institutions lost legitimacy while organized groups in civil society became increasingly responsible – both legally and politically – for making policy and providing checks and balances to state power. In this context, a group of environmentally-conscious prosecutors strengthened their budding alliance with environmental activists to propose the idea that the MP was not an agent of the state, but the defender of civil society against infringements perpetrated by corporations and the executive branch of government (Hochstetler and Keck 2007, McAllister 2008). This new frame helped propel the organization forward.

In subsequent years, the political climate remained open and prosecutors used their mobilization structures and practices, plus the new frame, to expand their individual legal powers even further. In addition to allying themselves with environmental activists, prosecutors acquired the legal authority to use civil public actions on behalf of individuals with disabilities (Lei 7.853/1989); small investors (Lei 7.913/1989); children and youth (Lei 8.069/1990); and consumers (Lei 8.078/1990); and to prosecute alleged cases of public sector corruption and administrative malfeasance. They also acquired the legal right to subpoena documents ("*Inquérito Civil*") and sign consent decrees ("*Termos de Ajuste de Conduta*").

To fully utilize these legal powers, prosecutors distanced themselves from the other branches of government and formed mutually-beneficial alliances with social movements and other groups that blossomed since re-democratization. Since then, prosecutors and their allies have been active in enforcing environmental law (McAllister 2008, Gibbs et al 2015), labor law, the statute of the city, and combatting corruption. These alliances have been beneficial to prosecutors as well. Whenever political leaders have tried to reassert their authority over the MP, social movements have lobbied vigorously on the prosecutors' behalf (for a recent example, see Borges & Mattos 2013). The transformation was mostly complete.

DISCUSSION

This paper describes how Brazilian prosecutors increased their professional prerogatives, organizational autonomy, and legal powers primarily from within their own ranks. In contrast to prior research, which emphasizes top-down, bottom-up and outside-in models of reform, we find that prosecutors, and perhaps other mid-level government officials, can be prime movers of their own transformation. In doing so, this paper draws from concepts that are central to the analysis of social movements, namely: (i) the political opportunity context, (ii) mobilizing structures and practices for collective action, and, to a lesser extent, (iii) framing, to show how they affected three outcome variables (i) professional prerogatives of prosecutors, (ii) organizational autonomy of the MP as a whole, and (iii) individual prosecutors' legal powers, or jurisdictional authority. Thanks to this analysis, we find that the biggest advances came when mobilized prosecutors took advantage of openings in the political opportunity context.

Our research shows that increases in prosecutors' professional prerogatives, the MP's organizational autonomy, and individual prosecutors' legal powers accreted in punctuated bursts, first in São Paulo and later nationally. Increases in prosecutors' professional prerogatives preceded changes in other outcome variables. The first expansion in prosecutors' professional prerogatives occurred in 1931 in São Paulo, and was reversed soon thereafter. Prerogatives began to expand again in São Paulo in 1936 with the reconstitution of the state assembly. Thanks to their mobilization efforts, prosecutors in that state retained and expanded these professional prerogatives over time. The professional prerogatives acquired by prosecutors in São Paulo in the 1930s were extended to prosecutors in other states in the 1946 constitution, and were largely retained through the military dictatorship and expanded further with the 1988 constitution.

Increases in organizational autonomy for the MP at the state and federal levels came later, and experienced more fitful increases. The first few moves towards organizational autonomy for the MP were partly symbolic, with the MP being recognized as a distinctive organ of government in state and federal constitutions in the 1930s and 1940s. These symbolic moves were reversed during the military dictatorship (1964-1985), and reinstated with the 1988 constitution. More concrete organizational autonomy for the São Paulo MP was achieved in 1954, when the state assembly passed legislation empowering prosecutors to engage in professional self-regulation. Throughout the 1950s, other state-level MPs had varying degrees of organizational autonomy. Strong organizational autonomy at the federal level and across all states was only achieved during re-democratization in the 1980s. Finally, expansion in prosecutors' individual legal powers came last, after the consolidation of professional prerogatives and organizational autonomy at both the state and federal levels.

Our analysis highlights three types of shifts in the political opportunity context that were important in shaping the evolution of the MP: (1) on some occasions, the opportunity context was affected by ongoing political turmoil that changed the set of elites in power. For example, Vargas' initial rule in the early 1930s dislodged the small clique of landowners who held exclusive power in SP since the 1890s, replacing them with new elites (e.g. his own trusted military men, a SP dignitary with no clear ties to the old elites). These new elites were potential allies for advocates for reform; (2) on other occasions, the political opportunity context was altered by democratic transitions that created new avenues for political participation. Each democratic opening in our study created deliberation processes for drafting new national- and state-level constitutions, as well as elections for new or newly revamped national- and state-level legislatures. Once established, legislatures themselves could create new opportunities for political participation by taking up and debating legislation relevant to the MP; and finally (3) on other occasions, the political opportunity context shrunk due to transitions to authoritarianism. In shutting legislatures and creating new constitutions to consolidate dictatorial power, transitions to authoritarianism reduced avenues for political participation. At the same time, they changed the set of elites, replacing political elites from the earlier democratic period with elites who were more closely tied to the authoritarian regime.

Our analysis also highlights that effective mobilizing structures and practices among prosecutors were critical in allowing them to respond to changes in the political opportunity context. Mobilizing structures and practices allowed prosecutors to both realize gains when the political opportunity context opened, and to prevent rollback when it closed. The earlier period in our analysis shows that prosecutors could increase their professional prerogatives through

top-down attempts at reform, but outcomes were unstable. For example, prosecutors in SP received important professional prerogatives in 1935 and 1936 (such as protection against unfair transfers and a higher salary) with only *ad hoc* mobilization. These gains were proposed and enacted by the state legislature, driven at least in part by the effort of Cesar Salgado, a legislator and former prosecutor who later spearheaded the creation of mobilizing structures for prosecutors in the state. But as Salgado himself demonstrated through his subsequent actions, mobilizing structures and practices were critical to MPs long-term transformation. These structures and practices included formal membership organizations to represent prosecutors' interests, social events where prosecutors could meet, deliberate, and foster interpersonal and intellectual ties, and the cultivation of elite allies. While top-down reform processes allowed prosecutors to increase their professional prerogatives in SP in the mid-1930s, our analysis suggests that their more formal mobilizing structures in the state and their efforts to cultivate elite allies allowed prosecutors to preserve their gains during the transition to authoritarianism (for instance, Barros reaffirmed earlier gains after he was appointed governor in 1938). Moreover, the mobilization structures created during the transition to authoritarianism allowed prosecutors to realize gains in future periods of democratic opening. For instance, APMP – created in 1938 – helped prosecutors increase professional prerogatives and organizational autonomy during the debates leading to the national constitution of 1946 and the SP constitution of 1947. Similarly, elite allies cultivated by organized prosecutors over the years allowed prosecutors to enhance their organizational autonomy in SP and nationwide.

Finally, our analysis reveals how these two critical variables – mobilization and political opportunity context - interacted. In particular, our analysis shows how mobilizing structures were

important in allowing prosecutors to both realize gains during democratic openings and to prevent rollback during transitions to authoritarianism. The formal organizations created to represent prosecutors' interests (e.g. APMP, CAEMP) allowed prosecutors to both cultivate elite allies and to formulate specific legislative proposals that prosecutors used to frame and shape broader legislative debates. Elite allies were particularly helpful in allowing prosecutors to protect previous gains during transitions to authoritarianism. For instance, in addition to forming a tie with Ademar de Barros to protect gains in SP in the late 1930s, organized prosecutors used their ties to elites during the military government of the 1960s and 70s to keep tabs on relevant legislative proposals initiated by the military regime. The ability to cultivate elite allies was also important in allowing prosecutors to realize or protect gains during moments of political uncertainty. For example, on the eve of 1982's gubernatorial elections, and soon after governor Chagas Freitas attempted to control prosecutors in Rio de Janeiro, well-organized prosecutors in that state drew on their ties to the military government and the national legislature to support CAEMP's draft law standardizing the structure and autonomy of state-level MPs. Finally, both the cultivation of elite allies and the collective formulation of legislative proposals to frame broader debates were important in allowing prosecutors to realize gains during transitions to democracy. For example, CAEMP and state-level prosecutors' associations were critical in facilitating dialogue among prosecutors nationally to create a consensual proposal, the "Letter from Curitiba," that prosecutors used to shape constitutional debates when the national congress drafted the constitution of 1988. Both the cultivation of elite allies and the formation of legislative proposals were made possible by the prosecutors' associations' efforts to create deliberative venues that would allow prosecutors to exchange ideas and form mutual ties. The

conferences, meetings, journals, surveys of prosecutors and other deliberative devices allowed prosecutors' formal organizations to formulate legislative proposals that could legitimately be presented as representing the preference of prosecutors as a whole. In addition, the conferences and meetings allowed prosecutors to cultivate and benefit from their ties to political elites. For example, prosecutors in SP could not plausibly keep tabs on the military government and protect their past gains absent their ties and relationships to prosecutors from the south who actually had access to military elites.

To sum up, we analyzed 20 legal events that affected (or could have affected) one of our outcome variables, namely (i) the professional prerogatives of individual prosecutors, (ii) the organizational autonomy of the MP, and (iii) prosecutors' legal power or jurisdictional authority. Out of this universe of 20 legal events, 13 propelled the prosecutors forward while 7 produced no effect or moved them backwards. The balance, of course, led to increases in all three variables. As indicated in the summary table below, the bulk of the advances (9 out of 13 events) occurred when mobilized prosecutors took advantage of openings in the political opportunity context. On one occasion, mobilized prosecutors relied on an elite ally they had cultivated to promote an advance even when the political opportunity context was closed. In turn, practically all legal events (6 out of 7) that produced no effect or decreased prerogatives, autonomy or authority of prosecutors occurred when non-mobilized prosecutors faced the closure of the political opportunity context.

The remaining events are instructive as well. On three occasions (in SP in the 1930s), individual activists succeeded in increasing the prerogatives of prosecutors and the autonomy of the MP even when the political opportunity context remained closed, but some of these

achievements were reversed immediately afterwards. Similarly, on one occasion, the political opportunity context opened (when congress drafted the Brazilian constitution of 1934), but prosecutors had no mobilizing structures so this opportunity to affect change was lost. Finally, we want to call attention to the absence of backward moves (or even legal events) when mobilized prosecutors faced a closed political opportunity context (indicated by "zero" in the table below). Such a combination of conditions occurred between 1971 and 1981, when prosecutors were represented by CAEMP and Brazil was ruled by a military dictatorship with a firm grip on power. The fact that they retained their prerogatives, autonomy and authority despite the imminent risk of reversal conforms to the theory that we propose.

Summary Table – Count of Legislative Events

Prosecutors: Political opp. context:	Mobilized Open	Mobilized Closed	Non-mobilized Open	Non-mobilized Closed
Increase power	9	1	3	
Decrease power		0	1	6

CONCLUSION

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

the old guard; in at least one instance, the central government strengthened state-level prosecutors to rein in political opponents at the subnational level; and since 1988 social activists have been supporting and protecting the prosecutors so they can work together to confront powerful interests, including large corporations and the state. In other words, openings have been plentiful throughout the period of analysis and unlikely to be a binding constraint. Where previous research observes only one or another of these opportunities and offers it as the model of successful reform, either driven by outside forces, top down, or bottom up initiatives, the longitudinal analysis reveals the heterogeneity of the transformative vectors that cumulate over time.

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

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Methodological Appendix - Legislative Events

Year	Historical context	Legal Event	Pol Opp. Context	Mobilization	Outcome
n/a	Brazil and states ruled by oligarchies	1 - Attempts to empower MP	Closed	No	Stasis
1891	Same as above	2 - National Constitution 1891	Closed	No	Stasis
1930	Vargas takes over, dislodges PRP in SP				
1931	Disputes in SP; Outsider governor	3 - SP Decree 5179-A/1931	Open	No	Increase
1932	SP loses war; General named governor	4 - Decree revoked	Closed	No	Decrease
1934	Vargas reopens congress	5 - National Constitution 1934	Open	No	Stasis
1935	SP elects new and divided assembly	6 - SP Constitution 1935	Open	No	Increase
1936	Same as above	7 - SP Law 2526/1936	Open	No	Increase
1937	Vargas dismisses Congresses	8 - National Constitution 1937	Closed	No	Stasis
1939	Ademar de Barros named SP governor	9 - SP Decree 10.000/1939	Closed	Yes: APMP	Increase
1946	Vargas' out, Brazilians elect new congress	10 - National Constitution 1946	Open	Yes	Increase
1947	SP elects new assembly	11 - SP Constitution 1947	Open	Yes	Increase
1954	SP governed by outsider	12 - SP Law 2878/1954	Open	Yes	Increase
1964-7	The military take over	13 - National Constitution 1967	Closed	No (Nat. level)	Decrease
1968-9	Hardliners within military tighten grip	14 - Emenda 1	Closed	No	Decrease
1970-1	Same as above		Closed	Yes: CAEMP	
1979	Military eases grip on power			Yes	
1981	Tensions btw central and state gov'ts	15 - National LC40/1981	Open	Yes	Increase
1981	Same as above	16 - Pol Nac Meio Amb./1981	Open	Yes	Increase
1982	Outsider governor; divided assembly	17 - SP LC 304/1981	Open	Yes	Increase
1985	First civilian president	18 - Lei ACP/1985	Open	Yes	Increase
1988	New democratic congress	19 - National Constitution 1988	Open	Yes	Increase
1989-90	Same as above	20 - Various national laws	Open	Yes	Increase