Objectives for a Democratic Judiciary

- Central goal: Rule of Law
- **Key means to that end:**
  - Efficiency
  - Access and equity
  - Effectiveness
The Basic Conditions for Accomplishing these Aims

- Democracy
  - Institutional:
    - independence to MP, courts
  - Legal protections:
    - new Constitution and “fundamental rights”
- Qualified staff
  - new judges;
  - professional examination;
- Sufficient staffing
  - 16,500 judges; 8.25 per 100K
    - UK: 3.8; Japan: 2.8; Germany: 24.7; Portugal: 19.2
  - 410,000 administrative staff; 205 per 100K; highest known
    - Italy: 40.5; France: 33.2; Chile: 42.1; Portugal 58.3; Germany: 66.9
- High budget
  - US$23.5 billion; 1.3% of GDP
  - Spain: 0.12%; US: 0.14%; Chile: 0.22%
# Efficiency

<table>
<thead>
<tr>
<th></th>
<th>Federal courts</th>
<th>State courts</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resolved cases</td>
<td>3.8</td>
<td>18.9</td>
<td>27.7</td>
</tr>
<tr>
<td>New cases</td>
<td>3.4</td>
<td>20.3</td>
<td>28.3</td>
</tr>
<tr>
<td>Pending cases</td>
<td>8.1</td>
<td>54.0</td>
<td>66.9</td>
</tr>
<tr>
<td>New+Pending</td>
<td>11.5</td>
<td>74.3</td>
<td>95.2</td>
</tr>
<tr>
<td>Congestion rate*</td>
<td>67%</td>
<td>75%</td>
<td>71%</td>
</tr>
</tbody>
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![Bar chart showing efficiency metrics](image)
Efficiency

- Brazilian judges are quite efficient!
  - 5,000 cases per appellate judge
  - 11,000 cases per STF justice
- Dense legal procedures
  - appeals
    - *agravos de instrumento* and *embargos infringentes*
  - weak binding precedent
  - individuality of sentencing
  - judges’ prerogatives
    - *pedidos de vista*
Access & Equity

- Ações populares, ACP, ADIn
- Broadened standing
- Juizados especiais
- Judicialization of politics
  - economic stabilization; land reform; healthcare; pensions; electoral law; decree powers; same-sex civil unions; affirmative action; etc.
- Treatment by status
  - Access to high court
  - Public defenders x tax evaders
Effectiveness

- Insegurança jurídica
  - Independence of judicial decisions, from each other!
  - Atomization of decision-making
  - Hierarchy and formalism
- “República dos Bacharéis”?
  - 860,000 lawyers today
  - 4.3 lawyers per 100K; 4x growth since 1991
  - 5x increase in number of law schools
  - 95,000 new lawyers graduate each year
Reforms

- 1985 *Ministério Público*
- 1988 Constitution
- 1993 *Defensoría Pública*
- 1990s *Juizados Especiais*
  - 13% state; 24% federal cases
- 2004 Amendment 45
  - CNJ and oversight
  - *Súmula vinculante* (n=37)
  - *Repercussão geral* (n=135)
- 2015 Civil Code and civil procedure
  - improve IT
  - reinforce trial judges’ authority
Toward a new Judiciary?

- An uphill battle
  - Pushback against CNJ and limits on privileges of judicial "class"
  - Slow pace of anti-corruption trials
  - Reform still not tackling backlog
- Important effects:
  - Economic
  - Human rights
  - Policy
  - Body politic
- Yet…
  - Increasing access; improved efficiency
  - Greater Rule of Law:
    - Convictions of senior political figures
  - New generation of judges
  - Political actors recognize the need to improve
  - Citizen demands are forcing change
Ten salient scandals 1990-2010

- 841 implicated
- 55 convicted
- 9 final, unappealable conviction

Source: Folha de S. Paulo, 2011
Government getting better at policing itself

Audits and removals

- Getting better at uncovering wrongdoing
- 500 civil servants expelled a year
- Judges expelled, up from 0 in 2005 to 42 to date
- Ficha Limpa law barred 250+ state and 13 federal candidates in 2014
- First sitting federal politician convicted in 2010; several since

Source: Praça and Taylor 2014.
More prosecution of wrongdoing

Corruption cases tried

Source: Levcovitz, 2014.
Judicial inputs to political impunity

- Penal code from 1940s
- Recurrent appeals
- Constitutional secrecy protections
- “Vulgarização” of habeas corpus
- Procedural delays
- Statute of limitations
- “Regime semi-aberto”

Special privileges
- Foro especial
- Tradition of deference
- Not a criminal court

- Special jail cells