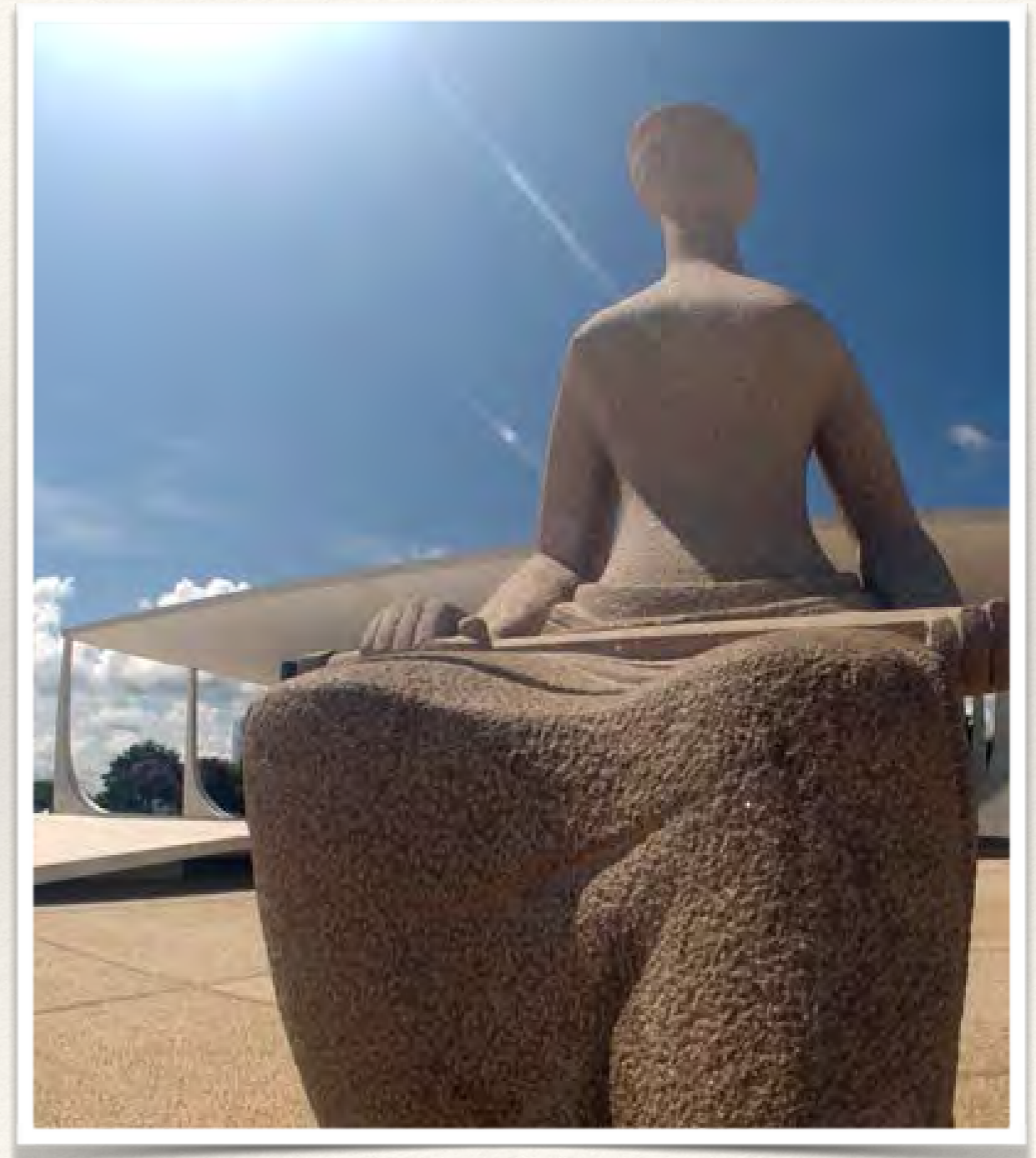

Objectives for a Democratic Judiciary

- ❖ Central goal: Rule of Law
- ❖ Key means to that end:
 - ❖ Efficiency
 - ❖ Access and equity
 - ❖ Effectiveness



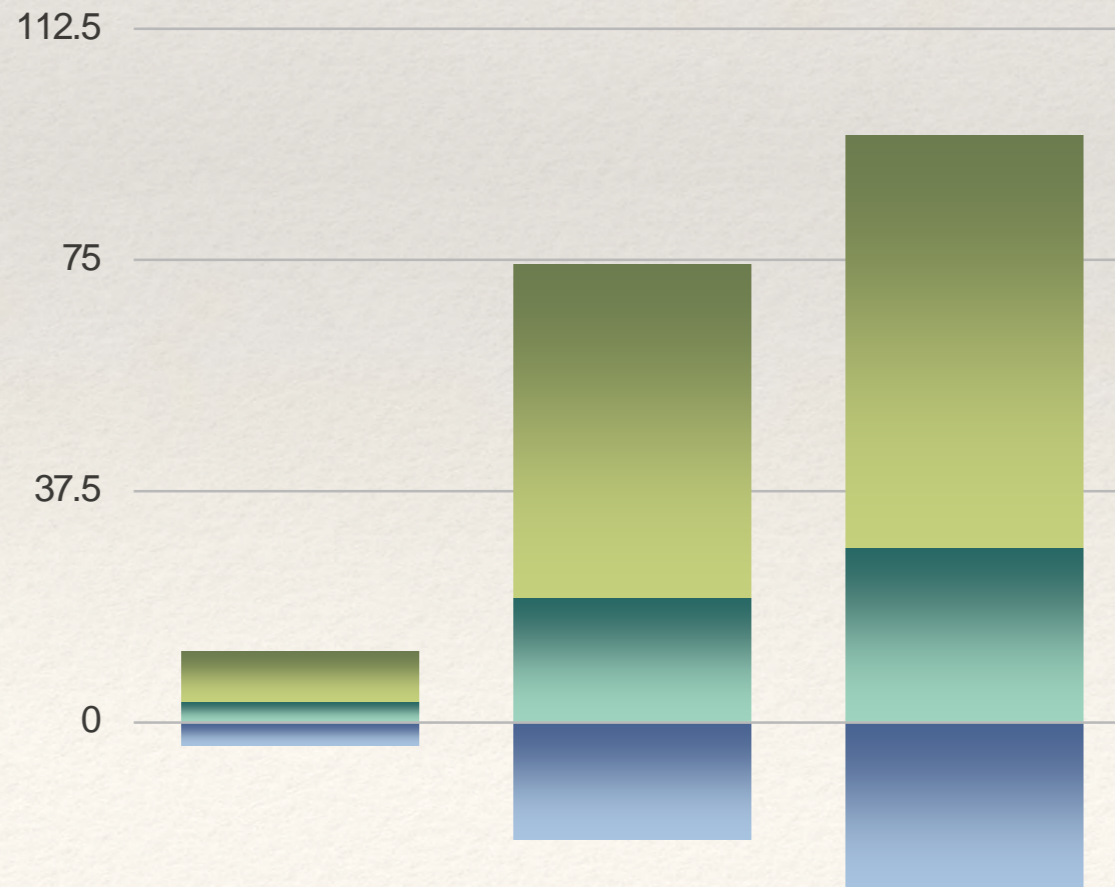
The Basic Conditions for Accomplishing these Aims

- ❖ 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

	Federal courts	State courts	Total
Resolved cases	3.8	18.9	27.7
New cases	3.4	20.3	28.3
Pending cases	8.1	54.0	66.9
New+Pending	11.5	74.3	95.2
Congestion rate*	67%	75%	71%



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

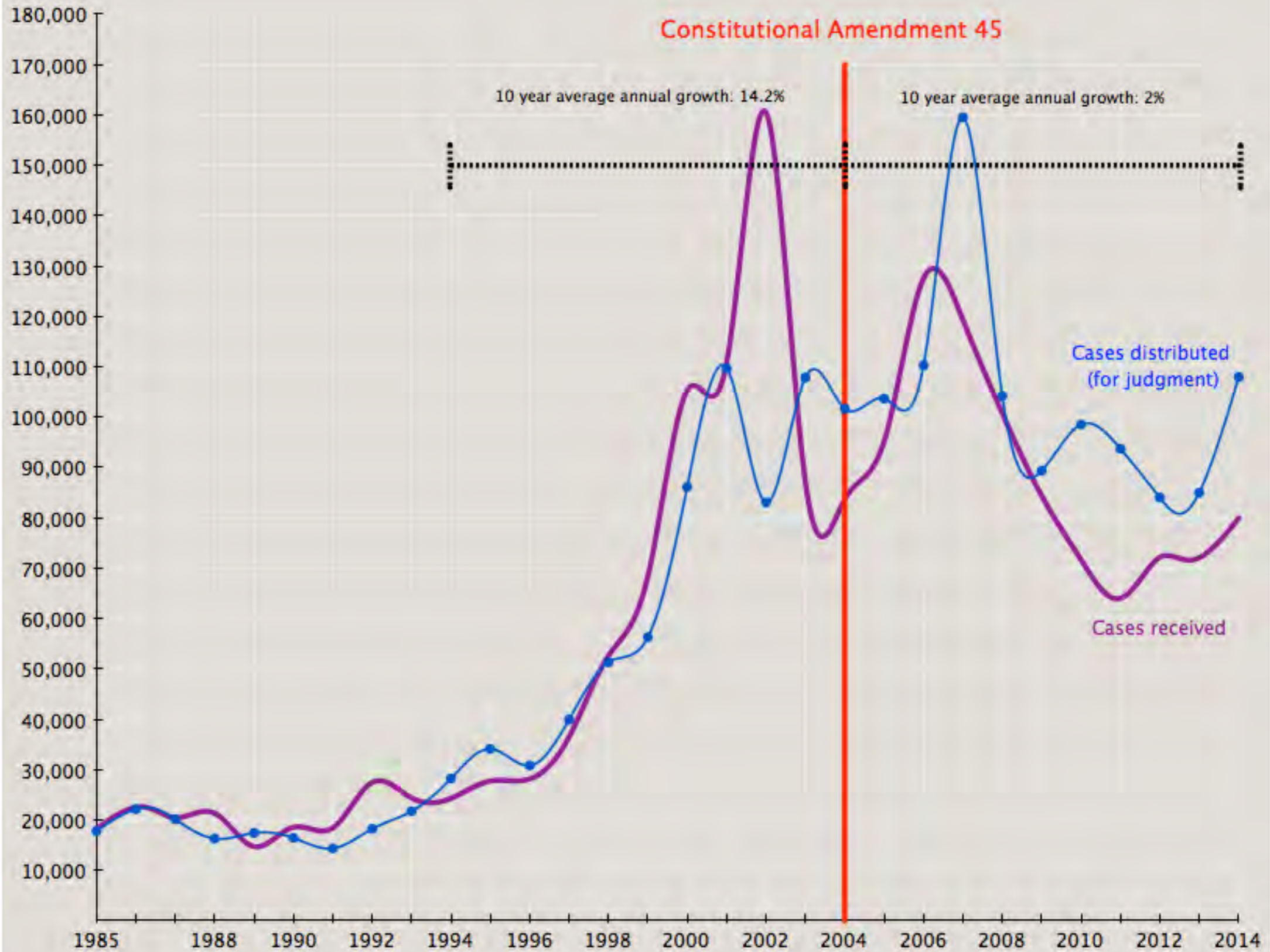
- ❖ *Insegurança jurídica*
 - ❖ Independence of judicial decisions, from each other!
 - ❖ Atomization of decision-making
 - ❖ Hierarchy and formalism
- ❖ “*República dos Bacharéis*”?
 - ❖ 860,000 lawyers today
 - ❖ 4.3 lawyers per 100K; 4x growth since 1991
 - ❖ 5x increase in number of law schools
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



Reforms

- ❖ 1985 *Ministério Público*
- ❖ 1988 Constitution
- ❖ 1993 *Defensoria 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?

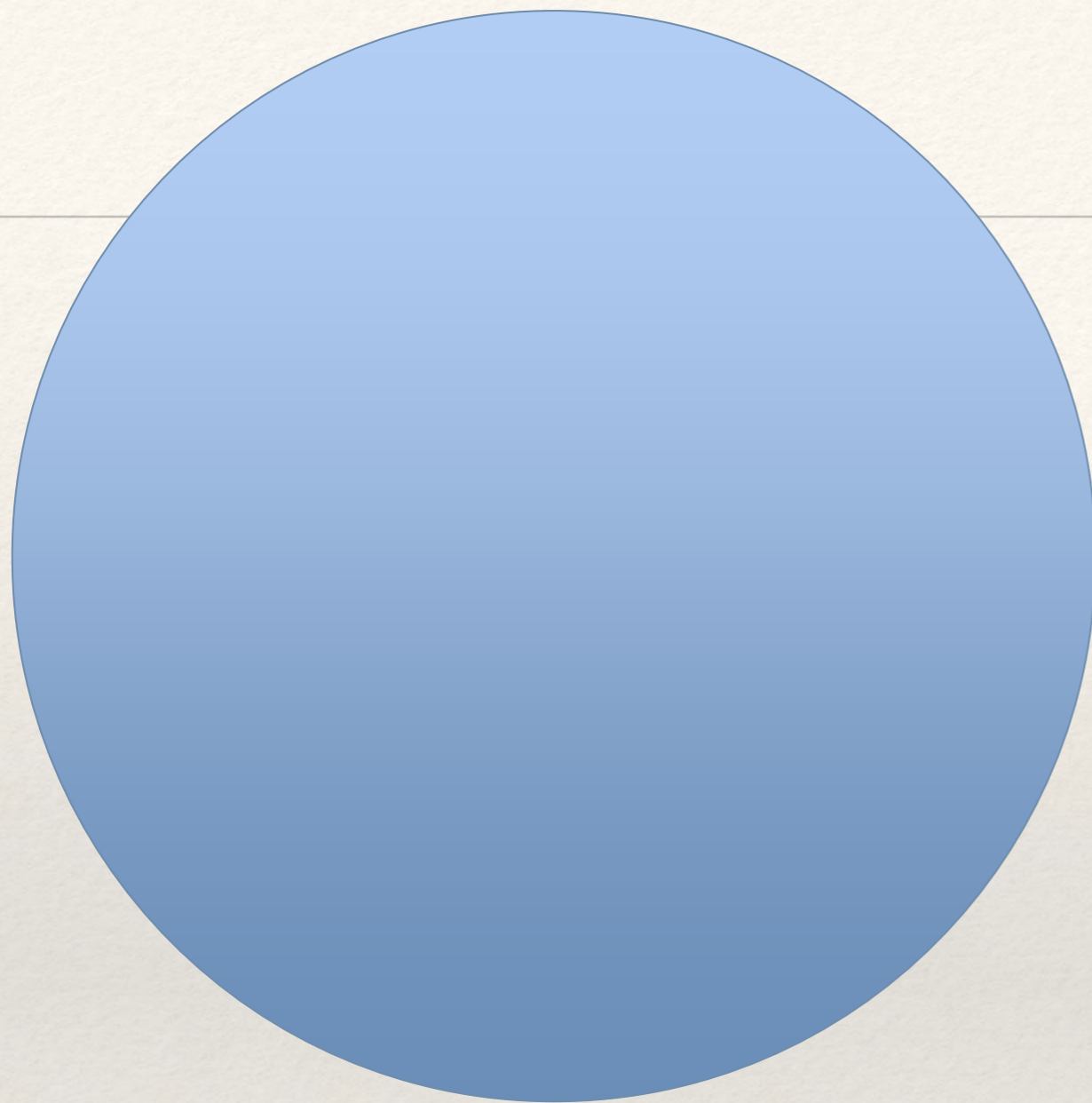
- ❖ An uphill battle
 - ❖ Pushback against CNJ and limits on privileges of judicial "class"
 - ❖ Slow pace of anti-corruption trials
 - ❖ Reform still not tackling backlog
- ❖ Important effects:
 - ❖ Economic
 - ❖ Human rights
 - ❖ Policy
 - ❖ Body politic
- ❖ Yet...
 - ❖ Increasing access; improved 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





mtaylor@american.edu

Ten salient scandals 1990-2010



841 implicated



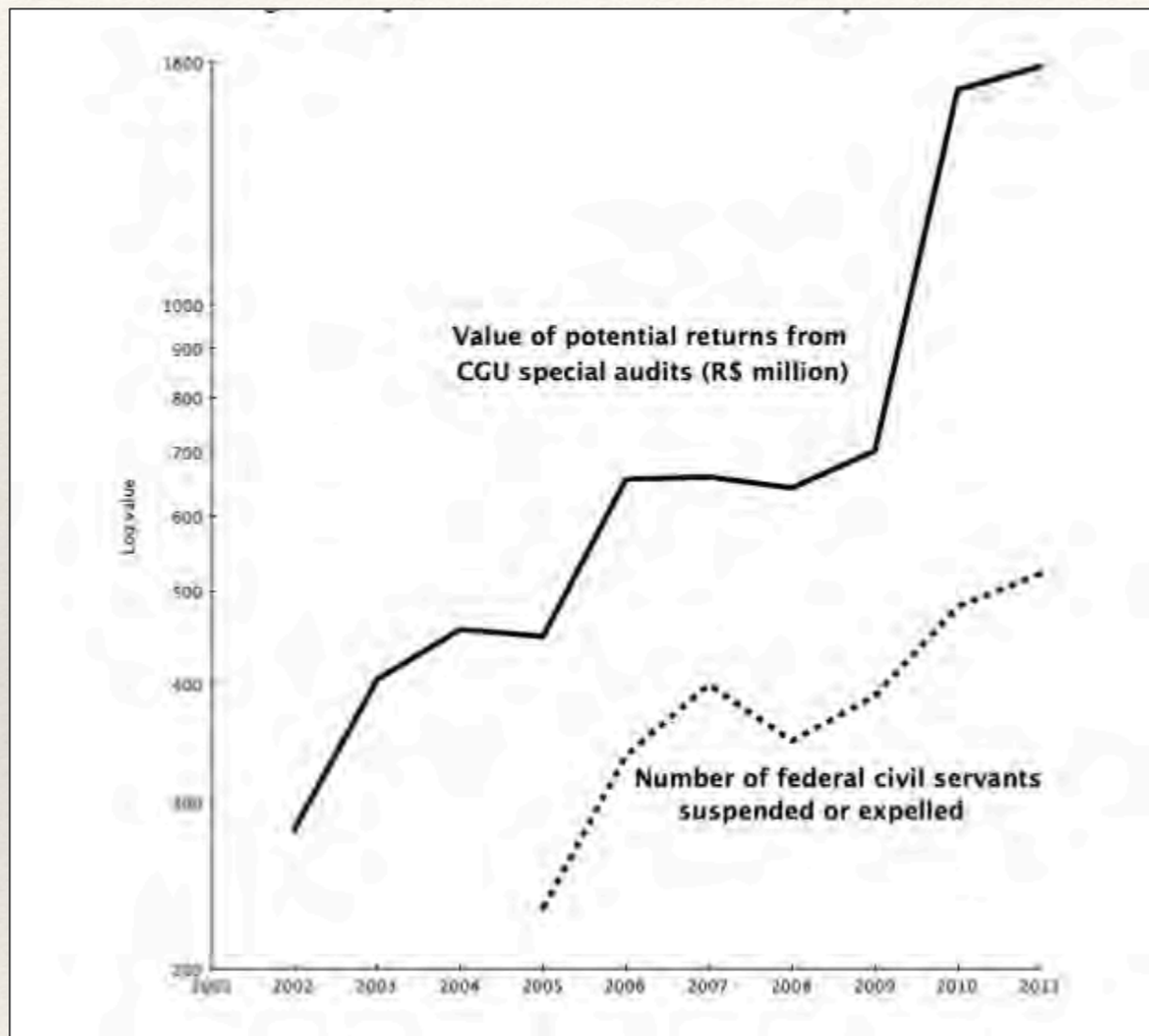
55 convicted



9 final,
unappealable
conviction

Government getting better at policing itself

Audits and removals

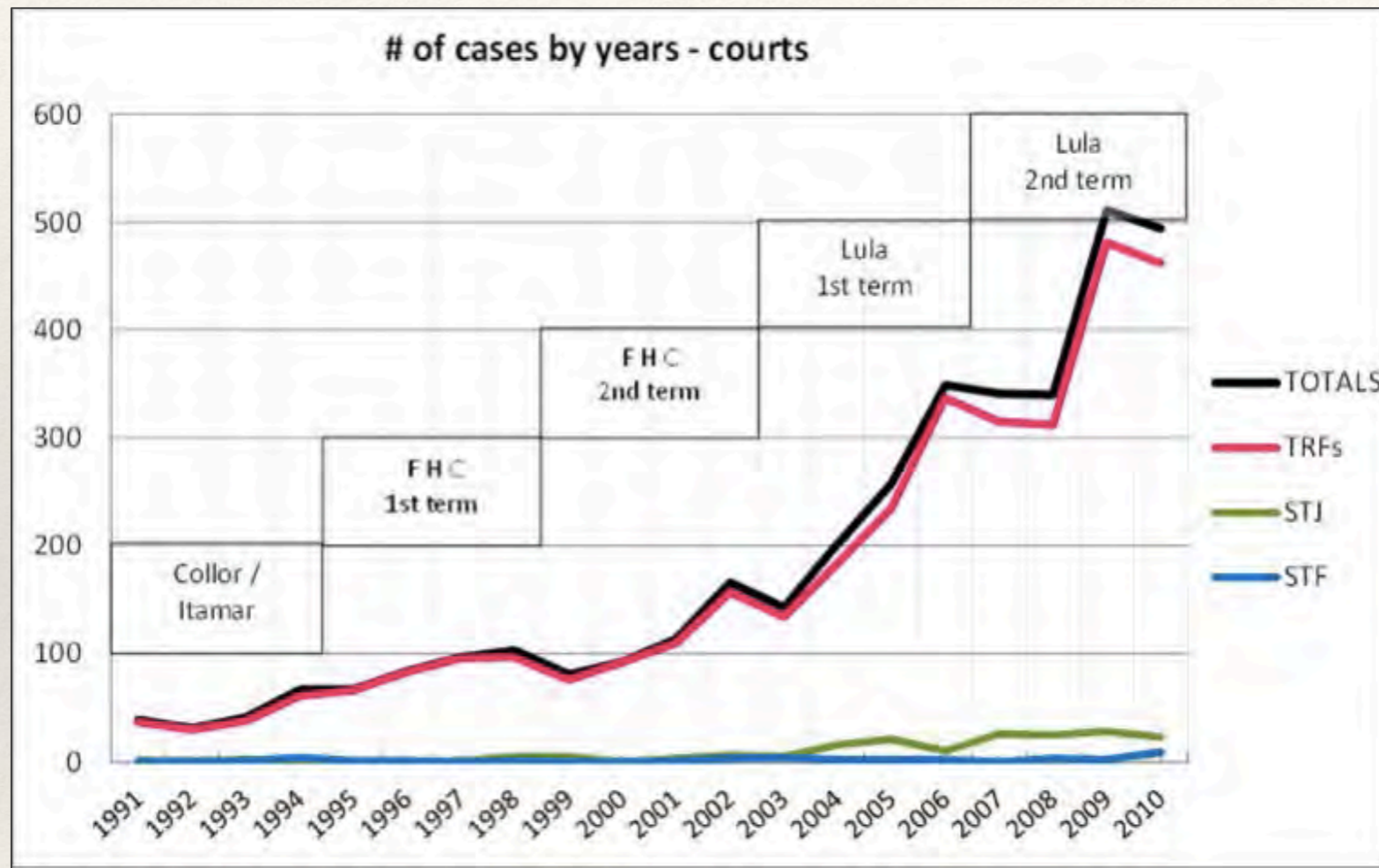


Source: Praça and Taylor 2014.

- ❖ 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

More prosecution of wrongdoing

Corruption cases tried



Source: Levcovitz, 2014.



José Dirceu, President Lula, João Paulo Cunha

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 jail cells

Special privileges

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

