Chapter Eight

The Federal Police and the Ministério Público

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In the contemporary debate on the "quality of democracy" in Latin America, Norberto Bobbio's diagnosis (in his famous 1984 lecture entitled "The Future of Democracy") remains quite pertinent: the "raw material" of the regime we have succeeded in creating in the past few years is quite distant from the ideal. Among other "unfulfilled promises" of democracy, Bobbio drew attention to the persistence of oligarchies and the issue of "invisible power," power that is not subject to accountability mechanisms. He noted that in Italy "the presence of the *invisible* power (Mafia, *Camorra*, Masonic lodges, secret services that are uncontrollable and cover up the subversive powers they should fight) is highly *visible*" (Bobbio 1986, 29; emphasis and translation mine). Bobbio emphasized that democracy was born with the promise to put an end to these invisible forms of power and create governments whose activities would always be public and subject to public scrutiny. Yet he claimed that Italy remained far from that ideal. This is also an accurate description of Brazil's current situation.

In a country with a patrimonialist history like Brazil's (Faoro [1958] 1996), where economic and state modernization was not preceded or even accompanied by new power relationships based on the liberal principle of contract, the traditional coexists with the modern in what Schwartzman ([1982] 1988) called neopatrimonialism or bureaucratic patrimonialism. In fact, as Nunes (1997) has written, Brazil's incomplete and contradictory modernization has created a set of four "grammars" that structure the relationships between the state and society: clientelism, corporatism, bureaucratic insulation, and universal procedures coexist side by side. In a country with this history, political corruption is endemic in all forms of power

and representation. And on the other side of the patrimonialist coin we find a private sector that is strongly dependent on the state and weakly constrained by ethics.

From the standpoint of the political economy of corruption (Silva 1996), Brazil contains many elements favorable to corruption: patrimonialism has given us a strong state, with extensive economic and territorial control. The state commands enormous resources, and its activities directly or indirectly involve a wide array of private-sector agents interested in extracting rents from the state. Although the patrimonialist state is highly centralized and oversees a vast regulatory framework, society has few mechanisms of oversight over the state. In fact, a tradition of centralization and regulation bolsters the power of the state bureaucracy and the political agents who allocate public resources. Opportunities for corruption are numerous in this setting. It is remarkable just how pervasive embezzlement and fraud in Brazilian public bidding and public contracts have been, surviving regime change, institutional innovations, and new accountability technologies. Democracy, the creation of accountability institutions, and mechanisms of electronic government have been unable to eliminate these practices.

But it is worth noting that since the country's redemocratization in the 1980s, the problem of corruption has been at the center of public debate: corruption has drawn the attention of representative institutions, the media, public opinion, civil society actors, and even international bodies. Partly as a result, the country has undertaken legislative changes and signed international agreements and treaties acknowledging the need to fight corruption. Likewise, there is a growing interest in the web of accountability institutions responsible for monitoring, investigating, prosecuting (in both civil and criminal cases), and punishing acts of corruption and administrative malfeasance (Mainwaring and Welna 2003).

This chapter will not comprehensively analyze the fight against corruption by the full set of accountability institutions in Brazil, although I tend to agree with Taylor (2009) that depending on how we look at the situation, the glass of water may appear either half full or half empty. From the half-empty perspective, corruption in Brazil is widely spread among diverse sectors of public administration and political institutions. Although corruption has historical and cultural origins, institutional factors play a central role in its persistence under democracy. Taylor examines particularly

(1) political and electoral factors, especially the problem of financing highly expensive electoral campaigns, the costs of assembling political party coalitions to ensure governability, and the multiplication of these problems at all three levels of federal government; (2) the insufficiency of "social accountability," even by the media, which have proven extremely active in covering corruption-related scandals, but which still have limited influence on public opinion and cannot effectively attribute responsibility; (3) the judiciary's slowness and other difficulties, which contribute to a high level of impunity; and (4) the poor functioning of the web of intrastate accountability institutions, made up of many diverse bodies and agencies that, as a whole, are unable to effectively bite back at corruption given their flawed institutional "orthodontics" (Taylor 2009).

However, if we look at the glass as half full, important advances in the fight against corruption have also been made in the past few years. Influenced by Transparency International's concept of "national integrity systems," Speck (2002) analyzes a wide array of accountability institutions responsible for fighting corruption in Brazil: internal administrative controls, ombuds offices, legislative controls (with emphasis on congressional committees of inquiry, CPIs), Accounting Tribunals (TCs), the judiciary, the Ministério Público (MP), and nonstate actors, such as the media and civil society organizations. All of these institutions are analyzed at the three levels of the federation and across the three branches of power. Though the picture that emerges is promising (the study shows that real progress has been made in fighting issues such as fraud in public tenders, nepotism in the civil service, electoral crimes, and economic crimes), Speck concludes that the proliferation of control institutions is insufficient to ensure an effective "national integrity system." Further, to effectively evaluate the functioning of this system, it is insufficient to examine institutions individually: rather, the cooperation and integration of institutions within the system as a whole must be analyzed.

The work of the Federal Prosecutorial Service (Ministério Público Federal, henceforth MPF; or when referring to the state and federal prosecutorial services in conjunction, MP) and the Federal Police (Polícia Federal) over the past few years offers a very good example of the possibilities of and limits to cooperation and integration among accountability institutions in the fight against corruption and organized crime in Brazil, as the next section illustrates.

The Brazilian "Feds": Ministério Público Federal and Polícia Federal

The MP and the Polícia Federal have taken a leading role in contemporary Brazilian politics. The MP emerged first, gaining new powers—especially with regard to the fight against political corruption—with the 1988 Constitution and especially the Administrative Improbity Law of 1992. More recently, the Polícia Federal has joined the MP's prosecutors in this task. Below we describe these organizations' institutional profile.

The Public Prosecutorial Service (Ministério Público)

The Brazilian MP is a prosecutorial body, like its counterparts in other countries, but it stands out for two reasons: (1) it has a broad array of roles in the defense of society's collective interests; and (2) it has complete institutional independence from the other branches of government. The Brazilian MP has undergone material changes in the past thirty years, and indeed, these represent one of the most significant institutional innovations undertaken since Brazil's redemocratization. The various federal and state MPs today have around ten thousand members and operate in all of Brazil's twenty-seven states, bringing cases before the regular state courts and, at the federal level, also before specialized federal, labor, and military courts.

The Brazilian MP extended the scope of its operations in the civil sphere through three legal-institutional innovations, motivated by a strong ideological component that I label "political voluntarism" (Arantes 2002, 2007). First, the Public Class Action Suit Law (Lei da Ação Civil Pública) of 1985 established the means for legal defense of "diffuse and collective rights." Broadly speaking, these rights may be defined as rights that are indivisible, whether the persons holding title to those rights are indeterminate persons (diffuse rights) or a group of persons linked in some kind of legal relationship (collective rights) (Mancuso 1997). Because of this law, the environment, consumer relations, and historical and cultural heritage are defined in Brazilian jurisprudence as diffuse and collective rights, which can be protected through class-action lawsuits brought by civil society associations and chiefly by the MP. The Constituent Assembly cemented the creation of diffuse and collective rights, writing them into the 1988 Constitution. Since then, the Constitution has provided a generous framework

for new laws that replace individual rights with diffuse or collective rights. In the process, the MP has been strengthened in its role as the protector of society and broad diffuse and collective rights. Among many laws created with this intent since 1988, the Administrative Improbity Law (1992) granted the MP greater powers to act against corruption and misuse of public funds. Second, the 1985 law granted the MP important legal advantages over civil society associations, and these have led it to become the principal defender of diffuse and collective rights, to the detriment of civil society associations. Third, with the 1988 Constitution, the MP took the final step toward becoming a "political law enforcer" and a "fourth branch of power": it gained independence from the executive branch and is no longer subordinate to any of the other branches of government.

With the 1988 Constitution, the MP achieved both external and internal independence. Externally, the MP attained functional autonomy, combined with an absolute lack of vertical or horizontal mechanisms of accountability (Kerche 2007).[1] Internally, individual members of the MP are chosen by public examination and are entitled to benefits such as career tenure and guaranteed income, which provides them with a high level of functional independence and policy influence. The autonomy of public prosecutors in Brazil is similar to the autonomy of Brazilian judges. The difference is that judges act only if called upon, while prosecutors are active and have great independence to choose their cases. In sum, the Brazilian MP model is distinct from its counterparts elsewhere around the world because it combines a wide variety of instruments to defend collective rights with high levels of institutional independence and discretion. Since 1988, furthermore, a peculiar definition of "functional independence" has emerged among prosecutors, who perceive themselves subject only to "the law and their own conscience." Madison would add: and to their ambitions.

In addition to these legal-institutional rules, the MP is also marked by what I have termed "political voluntarism." Its main elements are (1) a pessimistic assessment of society's ability to defend itself; (2) a pessimistic view of political representatives and political institutions, which are seen as corrupt and/or unable to fulfill their duties and; (3) an idealized conception of the MP as the preferred representative of a weak society, especially in contrast to inept bureaucracies that fail to enforce the law. This "political voluntarism" is widespread within the MP and has been an important driver of prosecutors' actions, especially in the fight against political corruption and organized crime (Arantes 2002, 2007).

With this new institutional framework and an ideology of "political voluntarism," the MP has become the expression of the Madisonian principle that, as far as institutional engineering is concerned, an officeholder's interest must be aligned with his position's constitutional foundations and that the ambition to become a kind of fourth branch may be useful to counterattack the ambition of others. Thus the MP has become a protagonist in numerous attempts to fight corruption at the three levels of government, using both criminal prosecution and civil suits for administrative improbity against politicians in the executive and legislative branches. This has led to strong acclaim from the public and especially the media, with whom the MP has worked closely in several investigations that resulted in large nationwide scandals. Surveys of public trust in institutions show the MP in the highest positions, well above electoral institutions and even the judiciary. Finally, the MP's constitutional status ensures a good budget, and the salaries of its members are among the highest in government—presumably a good way to maintain their independence and probity. Data from 2004 show that state MPs' spending totaled US$1.77 billion; the average starting monthly salary for prosecutors in 2005 was US$7,279, reaching US$10,600 by the time they retired (Ministério da Justiça 2006).[2]

However, the MP's great independence and its activism have raised the old "Who guards the guardian?" dilemma. Ambition, as Madison once again would have predicted, has counterattacked ambition, and now members of the executive and legislative branches have reacted to the new powers of the MP. Members of the elected branches have sought to impose new limits on the MP, claiming that prosecutors and attorneys are overstepping their institutional roles; using the media to inflict reputational costs on the subjects of their investigations; infringing on and taking over the police's investigatory powers; and abusing procedures such as civil investigations to pressure politicians, administrators, and even private citizens to adopt specific behaviors.[3]

The Federal Police

In comparison with other public bureaucracies, the Federal Police is relatively new. It was first located in the Federal Public Security Department (Departamento Federal de Segurança Pública, DFSP), created by President

Getúlio Vargas in 1944, at the end of the Estado Novo period.[4] The "federal" in its name did not, however, mean that the DFSP had nationwide jurisdiction but rather referred solely to the DFSP's primary focus: crime in the Federal District. With the country's initial transition to democracy in 1945, the DFSP gained nationwide responsibilities, especially in the fight against drug trafficking and counterfeiting. But the 1946 Constitution adopted a form of federalism with a strong bias toward the states and thus clashed with the idea of a national police body. For this reason, the 1946 Constitution did not include the DFSP as a federal police body, and police activities remained under the control of state governors. When the national capital was moved from Rio de Janeiro to Brasília in 1960, the DFSP practically disappeared, as most of its staff opted to remain in Rio (Rocha 2004). Throughout Brazil's history, the organization of the armed and police forces has always been a delicate matter in the balance between the federal government and the states. The distribution of these forces, and who wields authority over them, has usually pitted the central and subnational governments against each other, and the solutions to that conflict have varied according to regime type (oligarchic, authoritarian, or democratic). In Brazil's federal system, the political elite have always met with reservations the idea of a civilian police force with national jurisdiction and the ability to act in all states. The Federal Police's role over the past few years thus marks a considerable break with tradition.

After the 1964 coup, the military regime granted the Polícia Federal national jurisdiction (through Law 4483). Although this did not imply an increase in personnel or an improved structure, the day the law was passed (November 16, 1964) has been adopted by the Polícia Federal as its founding date (Rocha 2004), reflecting the importance of achieving national jurisdiction. In 1967, in the midst of the regime's reforms to the state security apparatus, the DFSP was renamed the Departamento de Polícia Federal, as it is still known. However, the military regime's investment in political police, public security, and national security was much more targeted toward the unification and strengthening of state military police forces, under the command of the army itself, leaving the Federal Police in a secondary role. During the military regime the "Federal Police operated little and was not a protagonist," except for its work in censoring newspapers and art (Rocha 2004, 91 ff). For political repression, the regime relied more heavily on the Destacamentos de Operações de Informações (DOIs), which were branches of the National Information Service (SNI), and, in the states, the Departments of Political and Social Order (DOPS) linked to state civil police forces. This secondary role of the Polícia Federal under the authoritarian regime placed it in an ambiguous situation when the country began redemocratizing: it had a less negative image than other state security bodies, but its institutional structure was more precarious.

The 1988 Constitution was written under the shadow of the military, which claimed a whole section for itself. Ironically labeled "Defense of the State and Democratic Institutions," Title V of the Constitution was reserved for the provisions relating to the armed forces, public security, and the definitions of "state of defense" and "state of siege." It was in this section's Article 144 that the Federal Police received a constitutional mention for the first time. Subordinate to the federal executive branch, and specifically to the Justice Ministry, the Federal Police was institutionalized in two ways by the Constitution.[5] First, it is a permanent body that, albeit subordinate to the executive, cannot be dissolved by the government. Second, the Constitution sets clear rules for police careers: how to fill vacancies, overall hierarchy, promotion criteria, and organizational subdivisions.

The Constitution also set forth both general and specific functions for the Polícia Federal. The Polícia Federal is charged with responding to crimes against the "political and social order"—a holdover from authoritarian rule—and also to protect the Union's assets, services, and interests, a role for which there is no equivalent in the state police forces. In other words, the Polícia Federal is considered the federal government's property police. The Constitution also empowers the Polícia Federal to carry out activities to prevent drug trafficking and contraband, attributions that date back to its creation as a department in 1944.

It is worth highlighting that the word *federal* in the name has finally found its etymological roots: the Polícia Federal is now responsible for investigating crimes with interstate (or federal) repercussions. In light of the Polícia Federal's precarious institutional standing before 1988—related to the long-standing difficulty of creating a police corps with national jurisdiction in a federal system with strong states—this constitutional definition is an important development, as it authorized the federal government to create a force capable of acting at the subnational level. Beyond the federal and state levels, the Polícia Federal also has jurisdiction over international law enforcement, performing the role of border police.

The Polícia Federal is responsible for criminal investigations in the cases under its jurisdiction. When the Constitution mentions (Art. 144) the role of "judiciary police," it is not creating another police corps but simply stating that the Polícia Federal shall help the federal courts and the MPF in enforcing warrants and carrying out criminal investigations and legal cases. The fact that it aids judicial institutions, however, does not mean that the Polícia Federal is under their charge. Indeed, in the Brazilian system, neither the judiciary nor the MPF directs the police or their investigations (Santin 2007). The three institutions are independent from each other, and the criminal case progresses *triangularly* among them. For example, only a judge can authorize the tapping of telephones, the breaking of bank and telephone secrecy, or the temporary arrest of people under investigation, upon request from the MP or the police. From the perspective of judicial accountability, it is worth emphasizing that although the Polícia Federal is subordinate to the executive branch (and its activities can thus be curtailed or directed by the Justice Ministry), its main tools for investigating and addressing crimes require the agreement of independent judges and take place under the oversight of the MPF. The Polícia Federal thus has the autonomy to investigate crimes but no authority to adopt extreme measures—such as wiretapping or arresting suspects—on its own.

By all indications, the rising importance of the Polícia Federal cannot be explained, as was the case with the MP, by the emergence of an internal ideology of "political voluntarism." While the Polícia Federal does have an esprit de corps, it is not similar to that of prosecutors, who combine bureaucratic interests with social and political values. In comparison with the MP and the judiciary, furthermore, the Polícia Federal is weakly institutionalized for several reasons, ranging from its subordination to the executive to the fact that police work is the least prestigious government career for young lawyers (after judgeships and prosecutorial appointments). Historically, furthermore, police forces have been more subject than other judicial institutions to corruption and abuse of power. Their public image is thus ambiguous, if not negative. Reports of violence and torture by police officers, involvement with organized crime, and corrupt practices are widespread. The "trust in institutions" surveys carried out by the Brazilian Institute of Public Opinion and Statistics (IBOPE) show police forces at an intermediate level, a little above the very poorly rated political institutions (Senate, Chamber of Deputies, and political parties) but below judicial institutions (judiciary and MP), which are more respected by the public.[6]

The leadership role the Polícia Federal has taken on in the past decade in the fight against corruption and organized crime is as significant as the increasing role played by the MP in previous years. But the causes for its rise are also quite different. The inclusion of the Federal Police in the 1988 Constitution helps explain its new role, as does the police's interest in affirming itself as a bureaucracy, but these elements had already been present since 1988 and only over a decade later did the Federal Police begin to fulfill its promise in the fight against corruption. More important was a new policy adopted by the Justice Ministry at the end of the Cardoso administration (1995–2002) and then strengthened further under the Lula administration (2003–10). One of the key players responsible for a stronger Federal Police was Justice Minister Márcio Thomaz Bastos (2003–7). Soon after he stepped down from the ministry in 2007, Bastos claimed:

> I had a more specific role, which was to rebuild the republican institutions in Brazil. . . . The Federal Police I found [when taking office] was an institution that no longer deserved the respect of Brazilian people. It was ill-equipped, hugely understaffed and underequipped, and they didn't use modern investigative techniques that have now become the norm. . . . Within four years almost four hundred operations were carried out to fight organized crime in all states. And how was this done? Fitting out the police, having systematic meetings . . . , and using modern techniques, such as telephone monitoring, intensive intelligence, strategic planning, temporary arrests. In short, investigation methods that are used all over the world, but here have been used with great care. . . . I think we managed . . . to create a new Federal Police on top of the one that was already there. [When] Paulo Lacerda took office [as director general], [I said] that his job was to build the Brazilian FBI, and I think that is being accomplished. (Gioielli 2007; translation mine)

The Federal Police is run out of a headquarters in Brasília, headed by a director general who is appointed by the justice minister. There are local headquarters in each of Brazilian state and field offices in all of the states. However, despite this nationwide presence, the Federal Police's network of offices is quite limited: in three states (Alagoas, Roraima, and Sergipe) it

has only one station in the state capital. Even in some geographically large states (such as Amazonas, Tocantins, Ceará, and Maranhão), the Federal Police has only two stations. On average, if we disregard the headquarters in each state capital, there are only 3.6 stations per state. Some states, such as Rio Grande do Sul and São Paulo, have as many as thirteen to fifteen stations, but otherwise, this is a rather low average when we consider that there are 5,564 towns and cities nationwide.[7]

In addition to administrative personnel, the Federal Police today has 11,022 active staff, divided between detectives, forensics analysts, agents, registrars, and fingerprint experts. At least one-third of these joined the police between 2001 and 2008, and they are relatively young, with new entrants' average age being 31.6 years. Further, Federal Police today have the highest salaries among civilians in the executive branch. Detectives (who must have a law degree) and forensics analysts (who may be engineers, accountants, economists, doctors, systems analysts, dentists, pharmacists, geologists, and even physicists) receive the highest wages among federal civil servants: US$6,500 at the start of their career, rising to a possible maximum of US$9,500. For the purposes of comparison, these salaries are higher than those received by public defense lawyers, union attorneys, and professors at public federal universities (Ministério do Planejamento 2008).

The Federal Police's budget and the size of its staff have grown significantly in recent years. The budget has nearly doubled since Lula took office in 2002, from US$925 million to US$1.5 billion in 2008. And the staff has doubled in size since 2001: thanks to a series of civil service exams for the various posts that make up the Federal Police, 7,841 new posts have been created and 5,260 have been filled. The government has also opened new vacancies for officers to work in specific states, especially in the North and Northeast, where the Federal Police's structure is quite small and where corruption and organized crime are rife. Further, until 2004 the Federal Police did not have its own administrative staff, but since then 1,638 positions have been created in this area. The end result is that there has been a significant renewal in the Polícia Federal, which has also been materially reequipped as never before.

Finally, a civil police force is emerging that is national in nature, something unprecedented in Brazil. Throughout our political history, democratic periods have coincided with a strengthening of state autonomy in the federative setup—concentrating the prerogative of organizing their own justice and police forces, thus inhibiting the appearance of a national police force—and the authoritarian periods have been marked by a central government that had no interest in investing in a civil safety apparatus, only in developing its own military forces. Even after the last redemocratization process in the country, the security agenda was, for quite some time, hostage to the need to disassemble the authoritarian military legacy and conform the police to the principles of the rule of law, as part of the fight for human rights. Only toward the end of the Cardoso administration and the start of the Lula administration did the agenda detach itself from the initial goals of the democratic transition and adopt, more clearly, the idea of expanding and strengthening the police apparatus with a view to fighting organized crime and corruption.

The Struggle against Political Corruption in Brazil: The Institutional Framework

The institutional framework within which the MP and the Polícia Federal fight corruption is quite complex. We have mentioned their triangular relationship with the courts during the investigation, indictment, trial, and sentencing of alleged criminals. In the Brazilian system, judges do not act until called upon by the MP or by lawyers appointed by interested parties. Criminal cases can be brought only by the MP, and they rely in part on investigations carried out by the police, which, in turn, require judicial authorization for many investigatory measures. As this is a federal system and the judiciary has three or four hierarchical levels, such measures can be reviewed and suspended by either state or federal courts, depending on the case.

Since 1988 these institutions—the judiciary, the MP, and lawyers more generally—have grown stronger and more independent. But at a systemic level, cross-institutional integration is weak, and little has been done to reform the overall process in ways that would increase systemic effectiveness. The institutions mentioned are quite activist, and the number of complaints and suits brought is vertiginously high, but so too is the number of court cases that have been dragging on for years without reaching a definitive conclusion. As a result, a sense of impunity pervades society. This paradox has been particularly apparent in cases of political corruption. Brazil has made much progress in the past few years in improving legislation

and enhancing the individual performance of accountability institutions, but the end results remain dissatisfying. A more global approach might take into account not just the judicial accountability system but also executive and legislative accountability bodies, such as the Federal Accounting Tribunal (TCU; Speck 2000a; M. Teixeira 2004; Arantes, Abrucio, and Teixeira 2005) or the Federal Comptroller's Office (CGU; Olivieri 2006). In my analysis below, however, I will emphasize recent cases in which judicial and police bodies have held officeholders accountable.

Table 8.1 shows that acts of political corruption by agents of the executive branch can be tackled in at least *three distinct ways,* depending on which of three different juridical definitions of corruption is ascribed to a crime.

Corruption is treated differently depending on the location of the proceeding. If it is heard in the legislative branch and thus given "political" treatment, corruption is treated as fraud or embezzlement *(malversação).* Hearings take place as impeachment proceedings, with the possibility that the accused will lose office and have her political rights suspended. Impeachment proceedings against mayors, governors, and the president are dealt with in the respective legislative bodies at the federal, state, or municipal levels, and as a result they essentially depend on the political balance of power. But impeachment proceedings are judicial in tone (with rules and guarantees for ample defense), and during the proceedings the legislatures resemble regular courts.

There are two ways to address political corruption in the courts themselves: as an ordinary criminal offense or as an act of administrative improbity. In the first case, the act of corruption is defined in the criminal code, and the defendant, if found guilty, may be imprisoned for one to eight years, in addition to losing office and being fined. As in impeachment cases, a defendant charged with corruption as a common crime is entitled to special protections: depending on his or her position in the federal hierarchy, the defendant may not be judged in trial court but rather may have a right to "special standing" *(foro privilegiado):* that is, the right to be tried by an appeals or high court. Such cases are prosecuted by the state attorney general or the federal attorney general. Historically, special standing has been justified as a means of preventing trial court judges from becoming tools in battles between political factions.

The second way of addressing political corruption via the judicial route is a Brazilian innovation: it can be addressed as an act of administrative

Table 8.1. Approaches to Corruption in the Executive Branch

	Political Approach	*Judicial Approach*	
	Crime of Fraud or Embezzlement[a]	*Crime of Corruption*	*Administrative Improbity*
Location of judgment	Legislative branch (federal, state, or local, respectively)	Criminal court (allows special standing)	Civil court (no special standing)
Players involved in the investigation and accusation stages	Politicians Ministério Público;	Police; Ministério Público Judiciary[b]	Ministéria Pública
Sentences if found guilty	Impeachment and suspension of political rights	1 to 8 years' imprisonment, and fine; loss of office	Loss of stolen assets; loss of office; suspension of political rights for 8 to 10 years; prohibition from participating in public bidding for 10 years
Costs prior to judicial or semijudicial proceeding	Reputational costs	Reputational costs; temporary arrest; cost of counsel; seizure of documents and invasion of privacy; weakening of criminal organization; blocked bank accounts and other funds	Reputational costs Conduct adjustment

[a] Throughout this chapter, the crime of *malversação* is translated as "fraud" or "embezzlement," although the specific legal treatment of this crime may vary considerably between Anglo and Brazilian judicial systems.
[b] The judiciary may take part in this phase by granting the police search and seizure warrants or authorization for phone tapping and temporary or provisional arrests.

improbity. This way of judging corruption was created in the 1988 Constitution and was enacted by law in 1992. It seeks to curb corruption just as political or criminal proceedings might, but without depending on the contingencies of the former (the balance of political power within the legislative branch) and without being limited by legal prerogatives (such as special standing) that complicate the latter. In administrative improbity cases, prosecutors can file suit against any political authority at any level of the government hierarchy, using the legal instrument of an Ação Civil Pública. If found guilty, the defendant is removed from office, has his political rights suspended for a period of eight to ten years, and must reimburse the public coffers for any losses. Since corruption is not defined as a crime in this case, this third alternative enables those in executive posts—from mayors to the president—to be prosecuted in trial courts without the privilege of special standing.[8] However, because these are civil proceedings, those accused of administrative improbity cannot be preventively arrested, nor can the final judicial decisions send them to jail. Further, the police and the courts do not get involved in the early investigations; prosecutors are the only investigators, since only the civil rather than the criminal aspects of the crime are being investigated.

Brazilian innovations in fighting corruption distinguish the country from other constitutional democracies. The drafting of the Administrative Improbity Law was a condition set down by the 1988 Constitution in response to a succession of political corruption scandals. The law was passed in June 1992, shortly before President Collor's impeachment in late July. In addition to significantly expanding the MP's potential to act as a horizontal *accountability* body, the law sought to speed up the fight against corruption. According to recent data from the MP, in fourteen of the twenty-seven Brazilian states, over four thousand administrative improbity cases were pending against public servants. This avalanche of proceedings is the result of prosecutors' activism in these states: they chose to use administrative improbity suits as an accountability tool, believing that they were a faster and more effective way of fighting corruption, especially when compared to the political and criminal justice approaches.

However, taking stock of fifteen years' worth of experience with administrative improbity cases suggests that they are not entirely effective in the courts, whether as a result of the slowness of proceedings, numerous dilatory appeals, or, frequently, judges' concerns about the MP's authority to act in this arena, as when they fail to recognize the legal legitimacy of suits or the legality of procedures adopted during the investigation. Of 572 suits brought by prosecutors in São Paulo since 1992, for example, fewer than 10 have reached a definitive conclusion *(transit in rem judicatam)* to date. The case of Paulo Maluf, a former governor of the state of São Paulo and former mayor of the city of São Paulo, is exemplary. There are numerous public civil and criminal suits against him, which have even led him to spend a few days in jail. But by continuously appealing his cases Maluf not only has dodged any definitive convictions but also has served as a federal congressman. The only definitive ruling against him so far—which has not yet been fully implemented—concerns the undue use of public funds to prospect for oil in São Paulo during his term as a governor (1979–82).

Such procedural ineffectiveness has led the MP to use pre-judicial procedures, such as investigations, to tackle corruption without being subject to judges' oversight. Investigations of this sort force politicians and administrators to adjust their behavior and impose "reputational" costs, such as negative media exposure. The drive to reduce impunity and achieve quicker results also seems to be at the heart of recent efforts by the MP and Polícia Federal to once again address corruption in criminal rather than civil proceedings. The increase in the number of police operations fighting political corruption and organized crime in the past few years—with participation by prosecutors and endorsement by judges—is in many ways a strategic adjustment to the poor results forthcoming in administrative improbity proceedings. The apparent advantage of administrative improbity hearings—that they require no involvement by the police and avoid problems with special standing or the rigors of the criminal code—has proved to be a key weakness: the excessive formalism of the courts, the number of dilatory appeals, and the various hierarchical avenues for appeal have provided defense counsel with ample opportunity to delay rulings and sometimes even to get cases dismissed. This does not mean that dealing with corruption as a criminal offense will necessarily avoid all of these problems, but the difference is that police investigations can more effectively obtain evidence (e.g., through telephone tapping or search and seizure warrants) and impose costs (e.g., temporary arrest). If both judicial approaches have equally poor end results, which is more likely to impose sanctions or costs on alleged criminals: corruption prosecuted criminally or in civil proceedings, such as in administrative improbity cases? Table 8.1 illustrates that the

administrative improbity path imposes reputational costs on defendants and may also lead them to adjust their conduct, including by bargaining with prosecutors (in the cases where this is possible). In the criminal justice approach, phone tapping has proved important not solely in gathering evidence but also in exposing criminal behavior to public opinion before trial. Further search and seizure operations, as well as temporary arrest warrants, not only impose reputational costs but also may weaken criminal organizations. This is especially the case if the evidence is sufficient for a judge to freeze criminal assets before a sentence is handed down.

As we have seen, in civil cases the MP does not require police investigations or judges' authorization to investigate and gather the necessary evidence to file suit. In criminal cases, investigation and accusation require extensive cooperation between police, prosecutors, and judges. If the fight against corruption and organized crime has expanded in recent years as a result of the increasing number of Federal Police operations, it is not only because the institutions involved are each individually more active but also because triangular cooperation among them has improved.

Anticorruption Operations

Federal Police operations against corruption and organized crime represent one of the biggest recent changes in Brazilian accountability processes. The Brazilian press has been filled in recent years with cleverly named police operations, and the number of Federal Police operations has risen nearly continuously, from 15 operations in 2003 to 187 in 2007, with increasing public awareness of the police's work. In most cases what the Federal Police calls an "operation" is the carrying out of arrest or search and seizure warrants, issued by courts after a period of investigation that may last weeks or months and almost always includes participation by the MP or other bodies such as the Revenue Service, the Social Security Ministry, the state police, or regulatory agencies. Though the police phase of the operations is often the most visible one, it is an outcome of extensive cooperation with other institutions in the web of accountability institutions. The operations generally occur only once sufficient evidence has been gathered to lead to temporary arrests and the seizure of assets, funds, and documents; they typically begin at dawn and involve a large number of officers, often flown in from several states.[9]

While the practice of naming its operations is long-standing, the Federal Police began to focus more systematically on its public relations aspects in 2003, an effort that included releasing brief summaries of all its operations.[10] This allowed me to build a database of six hundred operations carried out between 2003 and July 2008. Many operations' names are taken from the Bible or from Greek mythology, others come from Indian languages or local folklore, and many are plays on words that refer to the alleged crime being investigated. By way of example: Operation Fiscal Adjustment cracked down on a gang that had defrauded the pension system of around US$500 million; Operations Ctrl+Alt+Del, Pen Drive, and Trojan Horse arrested cybercriminals who raided Internet bank accounts; Operation Freud uncovered a scheme of fraudulent psychological disability pensions; Operations Aphrodite, Bye-Bye Brazil, Sodom, and Exodus dismantled rings trafficking Brazilian women; Operation Locust (Praga do Egito) dismantled a scheme whereby fraudulently registered civil servants "devoured" the Roraima state payroll; Operation Switzerland cracked down on money laundering; Operation Pinocchio arrested civil servants from the Institute of Environment and Renewable Natural Resources (Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis, IBAMA) accused of turning a blind eye to illegal woodcutting; and Operation Vampire revealed fraud in the Health Ministry's bidding for blood by-products.

The symbolic aspect of naming the operations cannot be overstated. In a *democratie du public* (Manin 1995), in which the media plays a crucial role in shaping public opinion, or when political scandals begin to affect the dynamics of the democracy itself (Thompson 2000; Chaia and Teixeira, 2001; Porto, this volume), catchy names play an important role. First, naming engages public and media attention. Second, the operation's name often gives a sense of the result and the likely responsibility of those being implicated. Operation names are an informational shortcut, in other words, for the media and public opinion. This can be useful in addressing some problems of social accountability: the low level of information available to citizens and accountability agencies' inability to keep investigations in the public eye for a long time. Operation names enable interested parties to remember police activity weeks or even months later. They help the press in organizing databases and Internet tags, which enable quick retrieval of information every time new events unfold. Naming also enables the Federal Police itself to monitor the level of media exposure: in 2006, according

to the Federal Police's own Communications Division, it was the focus of over fifteen thousand reports in the media, or forty-one references a day. For a recently reformed organization such as the Federal Police, which is seeking recognition from society and other public institutions, naming operations is thus an ingenious strategy.

Public relations aside, what kinds of crimes have effectively been addressed by these operations? At least fifty different types of crimes were addressed in the six hundred operations (table 8.2). The Federal Police has launched operations against corrupt politicians at all levels of the federation and in all branches of government. It has also targeted judges and police officers throughout Brazil, including within the Federal Police itself. From bureaucrats in the Social Security Ministry to members of the environmental agency IBAMA, from accounting tribunals to traffic departments, operations have hit corrupt civil servants throughout public administration. In the private sector, operations have targeted criminal organizations, businessmen, and professionals on a variety of charges, including money laundering, drug trafficking, smuggling, prostitution, infringing on Indian lands, child pornography, medicine counterfeiting, fuel tampering, predatory lobster fishing, irregular land clearing, irregular fossil digs, counterfeiting of powdered milk, fraudulent university entrance examinations, Internet fraud, armed killing squads, illegal gambling, electoral crimes, sexual exploitation of children, piracy, cargo robbery, and traffic in wild animals. The Federal Police has also targeted the highest levels of government: President Lula's brother was investigated in Operation Checkmate, and in other operations various state-level cabinet members have been removed from office, Supreme Court judges have had their telephones tapped, senators and deputies have been caught, and, most remarkably, the number two director of the Federal Police was himself arrested.

The breadth of operations indicates that the Federal Police is using its constitutional mandate to the maximum, if not exceeding it, as some critics allege. But as most operations take place via judicial warrants, any abuse of the Federal Police's mandate necessarily also implicates the federal judiciary and MPF, which are also expanding their anticorruption efforts (albeit more quietly) and thus authorizing the Federal Police to act more compellingly.

Table 8.2 illustrates that 22.7% of Federal Police operations have targeted political corruption. In classifying the operations I have adopted a

Table 8.2. Types of Crimes (Primary) and Number of States Covered in Each Operation (2003–8)

	No.	*%*	*1 State (%)*	*2 States (%)*	*3 or More States (%)*
Public corruption	136	22.7	67.6	11.8	20.6
Drug trafficking	91	15.2	54.9	14.3	30.8
Smuggling and tax evasion	59	9.8	57.6	15.3	27.1
Environmental crimes	34	5.7	58.8	8.8	32.4
Crimes against the financial system and money laundering	29	4.8	51.7	13.8	34.5
Fraud and swindling	28	4.7	53.6	17.9	28.5
Illegal gambling	24	4	87.5	0	12.5
Online theft from bank accounts	23	3.8	26.1	17.4	56.5
International traffic in persons and illegal emigration	22	3.7	54.5	13.6	31.9
Counterfeiting	17	2.8	47.1	17.6	35.3
Forgery, tampering, illegal manufacturing and commerce of fuels, food, and drugs	16	2.7	50	25	25
Organized crime (several crimes)	16	2.7	56.3	6.3	37.4
Theft	16	2.7	50	12.5	37.5
Irregular telecommunication services (radio, TV, and Internet)	16	2.7	100	0	0
Tax fraud	11	1.8	45.5	9.1	45.4
Piracy	7	1.2	71.4	0	28.6
Other	55	9.1	72	11	17
Total	600	100.0	60.5	12.3	27.2

strict criterion for political corruption, classifying as corrupt only the cases in which the main crime was *direct appropriation and embezzlement of public funds or reiterated and organized fraud in state activities (authorization, granting, and/or inspection of public interests, goods, or economic activities), by public agents (with or without private-sector involvement).*[11] This narrow definition excludes cases in which the corruption of public servants is a secondary dimension of the main crime. For example, one operation against a cross-border smuggling ring led to the arrest of a federal highway police officer on bribery charges. But despite the presence of bribery,

the operation was classified in my database under "smuggling and tax avoidance." These secondary cases of corruption are traceable, and thus I found out another ninety-seven operations in which a variety of public agents, bureaucrats, and politicians were caught receiving bribes. If we add up all the cases in which corruption is either the main crime or a secondary crime, corruption rises from 22.7% to 38.8% of the Federal Police operations.

In addition to specific types of crimes such as drug trafficking, smuggling, and tax avoidance (which are indeed among the most prevalent types of crimes targeted by police operations; see table 8.2)—the Constitution grants the Federal Police the authority to act on crimes that have potential interstate or international repercussions. In other words, the cross-border nature of the crime gives the Federal Police jurisdiction and is what justifies police intervention by the federal government in the states, given that the states have their own police officers and judges. From this standpoint, table 8.2 shows a certain stretching of these constitutional principles, with a number of operations in individual states, even when the alleged crimes did not have the interstate character required by the Constitution: no fewer than 60.5% of Federal Police operations took place in a single state, whereas 12.3% took place in at least two states and 27.2% took place in three or more states.

Yet there is some justification for the Federal Police's actions even in these cases, where local institutions are corrupted to such an extent that local actors are no longer able to police themselves. In Operation Taturana (Hairy Caterpillar), for example, 110 defendants allegedly embezzled US$150 million from the Alagoas state legislative payroll. They included fifteen out of the twenty-seven state legislators, members of the state accounting tribunal (TCE), mayors, and a number of civil servants. Four of the eleven members of the state supreme court recused themselves from the case because of their close ties with the defendants. Under such conditions, only intervention by an external force with national jurisdiction can really be effective, even if it risks crossing the lines of state autonomy and rekindling the debate over federalism. Political corruption, as table 8.2 illustrates, is among the crimes that is most likely to force the Federal Police to act in a single state (67.6%).

There is a strong relationship between state GDP and the number of police operations, with an 88.3% correlation. If we consider the level of development and size of the states, it is possible to distinguish three groups of states. The first, in which there have been the most Federal Police operations, includes the most developed states in the Southeast and South of Brazil (São Paulo—the country's economic engine—has been the focus of 182 Federal Police operations, practically twice as many as Rio de Janeiro, which is in second place, followed closely by other wealthy states in the South and Southeast, such as Paraná, Minas Gerais, Rio Grande do Sul, and Santa Catarina). In the second we find the large states—in size and population—of the Midwest, Northeast, and North of the country, where there were, on average, forty operations. The third set of states is made up by the small states of the North and Northeast, where there were twenty operations, on average. Other specific factors could be highlighted, such as the importance of border states such as Paraná and Rio Grande do Sul, where smuggling and drug trafficking are the leading crimes addressed by the Federal Police, or states known for having fragile political institutions but also a much higher GDP than their regional average—such as Amazonas and Pará—where corruption is one of the top crimes.

Cooperation with other institutions in the web of accountability is an important aspect of the Federal Police's work. In at least 43% of the operations, the Federal Police worked with members of the MPF, state MPs, civil and military police officers, Revenue Service inspectors, or agents from the Central Bank, the Social Security Ministry, the Environment Ministry, or other public agencies. Such joint action is tied to the nature of the crime being investigated but also is associated with growing use of joint task forces as a more suitable way of fighting criminal organizations (Arantes 2000, 165).

In their pursuit of more effective ways of fighting corruption and organized crime, the MPF and the Federal Police have been making use of two very effective resources: telephone tapping and preventive or temporary arrest warrants. It is hardly an exaggeration to say that Brazil is "bugland": although the use of phone tapping has led to important evidence gathering, it has also been controversial. Phone tapping enables the police to map criminal networks and to record their members' communications for later use in court. But it is controversial because it has been used to trivial ends, and there has also been a growth in illegal wiretaps. The Federal Police are themselves accused of resorting to "preliminary" (i.e., illegal) phone recordings, and only after significant evidence has been

gathered are judges brought in to authorize it. Private and clandestine wiretaps are another problem. According to an investigation by the *Folha de S. Paulo* newspaper, transcripts of public authorities' phone conversations can be purchased in Brasilia for less than US$500 from illegal networks of wiretappers, private investigators, and telephone company staff (L. Souza 2008). Wiretapping is so widespread that Congress set up a congressional committee of inquiry (CPI) to look into the issue in 2008. One of the most amazing revelations came a few months later: summoned to provide data on the matter, telephone companies informed members of Congress that no fewer than 375,633 wiretaps were set up throughout the country in 2007, requested by the police and the MP and authorized by courts. Crossing data from 2007–8 provided to this CPI with data on the location of operations, there is a 72.6% correlation between wiretaps and the number of Federal Police actions.

Provisional and temporary arrests made in the six hundred operations sent 9,255 people to jail. Of these, 14.5% were civil servants and 67.7% private citizens (information was unavailable in 17.8% of the cases). The number of arrests doubled year after year between 2003 and 2006. Growth has slowed down slightly since then, but the number of arrests should reach three thousand a year by the end of 2008, and on average, in 2007, eight people were arrested every day. As these are *special* police operations, aimed especially at fighting organized crime, these figures are quite large.

Although most of those arrested are set free a few days later because of limits on temporary arrest, or because of writs of habeas corpus from higher courts, these arrests can have important effects: they temporarily stymie organized crime networks, lead to media coverage, and expose the accused to public rebuke. But not surprisingly, the large number of arrests has proved controversial, especially among lawyers and politicians who claim abuse of power. In response, the Federal Police published an "etiquette guide" for the operations so as to avoid unnecessary controversy. If there has been lack of oversight in this regard, it has likely been systemic, involving decisions not only by the police but also by the MP and the courts. The Federal Police themselves complain about the 1988 Constitution's prohibition against carrying out search and seizure operations without warrants (Arantes and Cunha 2003). Many police detectives claimed that this prohibition would tie their hands unnecessarily, although it had surely been created to reduce abuse by police forces. Twenty years after the Constitution was written, the prohibition remains in force, but cooperation between the police, the judiciary, and the MP appears to allow the police to overcome the worst constraints on their activity.

Among public servants swept up in Federal Police operations, the highest proportion were federal civil servants, including members of the Social Security Ministry (accused of fraud in granting retirement pensions), staff from the Ministry of the Environment (accused of involvement with environmental crimes), and inspectors from federal agencies such as the Revenue Service and the Ministry of Labor, accused of various corrupt practices.

The second largest public-sector group arrested by the Federal Police were police officers: 22.3% of the operations implicated state police officers and highway police officers, and 8.8% were members of the Federal Police itself. In all, sixty Federal Police officers have been arrested for corruption and involvement with criminal organizations. As Mingardi (1996) points out, organized crime cannot exist on a large scale without some sort of involvement by elements of the state itself, especially the police forces. Corruption is not an isolated occurrence that involves only a few "bad" police officers. "What [the facts] show is that corruption is part of the organization's rules, it socializes its members to act within certain 'standards of corruptibility'" (Mingardi 1996, 63; translation mine). There are several potential degrees of relations between police and crime, from the most minor to the most reprehensible, but all involve some level of corruption of the public agent. Federal Police operations have uncovered everything from the bribery of police officers to ensure that they turn a blind eye to smuggling, illegal gambling, and embezzlement schemes, to police involvement with organized crime groups engaged in drug trafficking and "extermination" of petty criminals and rivals.

Also of interest is the fact that 32.4% of the 238 operations that led to the arrest of politicians and public servants hit state and municipal civil servants—staff, mayors, city councilmen, legislators, judges, and prosecutors—which reinforces the point made earlier that the Federal Police has been working as a national intervention force in subnational governments.

According to Speck (2000b), attempts to measure corruption have most commonly used three types of indicators: cases reported in the media, data produced by the criminal justice system, and data obtained from *surveys*

Table 8.3. Corruption as the Primary and as the Secondary Crime in the Federal Police's Operations (2003–8)

	Freq	%
Corruption as the primary crime		
Social Security fraud	45	33.1
Corruption in grants, authorizations, and furnishing of public documents	26	19.1
Fraudulent public tenders	25	18.4
Embezzlement of public funds and resources	21	15.4
Police corruption	11	8.1
Inspection fraud	8	5.9
Total	136	100
Corruption as the secondary crime		
Smuggling and tax evasion	17	17.5
Environmental crimes	14	14.4
Organized crime (several crimes)	11	11.3
Drug trafficking	8	8.2
Forgery, tampering, illegal manufacturing and commerce of fuels, food, and drugs	6	6.2
Fraud and swindling	6	6.2
Other	35	36.1
Total	97	100

with citizens. My research on Federal Police operations fits in the second category, although there is some interface with the first, given that media coverage seems to be an essential component of these operations. Looking at the cases of corruption uncovered by these operations (table 8.3)—whether corruption is the main crime or the secondary crime, as defined earlier—provides a good general idea of how severely corruption affects Brazilian public administration. However, Speck's warning that data produced by the criminal justice system perhaps uncover "more on the traits of how the criminal code is applied then on the crime in question" (Speck 2000b, 11; translation mine) is worth noting as we consider just how perfectly Federal Police operations mirror *real* corruption.

The most important target of operations against corruption is fraud in the National Institute of Social Security (INSS) bureaucracy, which accounts for almost one-third of operations in which corruption was the main crime targeted (table 8.3). If the overall rule is that corruption and the sheer volume of public resources involved go together, it is no surprise that social security fraud is at the top of the ranking: social security benefits are the main spending item in the federal budget, totaling approximately US$98.5 billion in 2007. This extraordinary volume of resources is distributed nationally by seventy thousand employees of the INSS to about twenty-six million citizens who no longer work (whether because of age, illness, disability, involuntary unemployment, or even maternity). Indications of corruption in the system have always been high, but when the social security deficit recently started to threaten the Brazilian economy the fight against fraud was intensified.[12] A permanent task force was created, made up of agents from the Federal Police, the MPF, and the Social Security Ministry, and it has acted in all states. The adoption of the task force model aims to improve cooperation among these institutions, thus increasing the efficacy of investigation, criminal indictment, and punishment of corruption.

Regulatory activities are a regular target of fraud in Brazil (as elsewhere): for example, restrictions on the extraction of timber or minerals; regional or sectoral tax benefits or incentives; and even rather simple regulatory activities such as issuing passports or drivers' licenses. Efforts to circumvent regulation often corrupt government agents, and as a result they are the second crime targeted by the Federal Police (table 8.3), appearing under the title "corruption in grants, authorizations, and furnishing of public documents." Operations conducted jointly by the Federal Police and IBAMA against illegal logging, especially in the north of Brazil, have been exemplary in this regard: at least eight major operations were carried out, leading to the arrest of over two hundred people, including IBAMA staff.

Third place in table 8.3 is one of the most common crimes in Brazilian history: fraudulent public tenders. In the twenty-five operations that targeted this offense, federal and state civil servants, police officers, assemblymen, mayors, and federal and state legislators were either arrested or investigated. One of the most well-known of these operations was Operation Sanguessuga ("bloodsucker" or "leech"), which disrupted an

alleged scheme for the fraudulent sale of ambulances in over one hundred cities in at least eleven Brazilian states, involving more than sixty federal deputies and one senator.

Embezzlement of public funds is fourth on the list of crimes tackled by the Federal Police. Some cases are circumscribed to particular states, such as the operations known as "Locusts" and "Hairy Caterpillar," both mentioned previously—which cracked down on schemes in the state legislative assemblies in Roraima and Alagoas, respectively. But crimes in one state often spill over to the federal sphere, as in Operation Domino, which initially focused on embezzlement of funds from the state legislature of Rondônia. As the investigation progressed it was discovered that—like dominoes—members of the judiciary, the MP, and Accounting Courts had also fallen down on their professional obligations. Other cases that start at the local level often point to the embezzlement of public funds from large federal programs, such as the FUNDEF fund for elementary school education, the PRONAF program for family agriculture, the FPM fund for sharing income tax revenues with municipalities, and even the Lula administration's most important investment initiative, the Program for Accelerating Growth (PAC), announced in January 2007. Just as there was important cooperation between accountability institutions in the case of social security fraud, so too fraudulent public tenders and embezzlement have led to cooperation between the Federal Police, the MP, and the CGU. At least eight of the large operations against these crimes involved cross-institutional cooperation and began as a result of special audits by the CGU.

The nature of police work makes it especially vulnerable to corruption. Eleven operations have specifically tackled police corruption, especially in the Federal Highway Police, but also among civil, military, and federal police officers.[13] Like police, inspectors are extraordinarily vulnerable and thus have been a target for police operations: Revenue Service inspectors and auditors (responsible for preventing and fighting tax fraud) and labor inspectors (responsible for inspecting labor relations) were the focus of at least eight Federal Police operations for corruption.

Finally, as the second column of table 8.3 shows, corruption as the secondary crime tends to be associated with these inspection and policing activities and so is especially linked to crimes that may rely on the corruption of individual public agents for success (e.g., smuggling, tax avoidance, environmental crimes, drug trafficking, forgery). In these cases the corrupt public servant does not conspire, nor does he carry out the crime itself; rather, he serves as a facilitator in exchange for a bribe.

Final Considerations: Advances and New Challenges

The police operations analyzed here paint a troubling portrait of corruption in Brazil. Beyond the cases that usually concentrate media and public opinion attention, analysis of the operations has shown how corruption remains rooted within the broad state administrative setup and involves civil servants as much as or more than elected politicians. Corruption still takes place in the classic forms, such as tender fraud; embezzlement of public funds and resources; and fraud in grants, authorizations, furnishing of public documents, and regulatory activities. It takes place at federal, state, and local levels and in the executive, legislative, and judiciary branches of power. The volume of funds embezzled reaches, with no exaggeration, the sum of billions of dollars.

That said, it bears repeating again just how novel the Federal Police's work has been and how much more effective the coordinated action by police officers, prosecutors, and judges has become in combating political corruption and organized crime. Further, the shift in how corruption is being tackled—from an act of administrative improbity to an ordinary crime—and the cooperation between component institutions in the web of accountability have produced significant effects in areas as diverse as social security, the environment, oversight of public funds, and even the internal operations of the Federal Police itself.

Emphasis should be given to the novelty represented by cooperation and coordination between accountability institutions. Following the expansion of independent bodies and accountability roles that characterized the period after 1988, at last the players are acting more cooperatively and coordinately among themselves. The police-MP-judiciary triangle seems to be moving away from being a Bermuda Triangle—where cases get lost—and has become more effective, thanks to the greater proximity among them and procedural speed. Bringing together task forces between the Federal Police and independent agencies represents another important

introduction. Such a practice has marked almost half of the operations analyzed in this chapter and has been taking place particularly in the areas of social security, taxes, the environment, and public works. Finally, every single day the Federal Police is requested to take part in investigations of internal schemes of corruption and organized crime in public entities.

The downside to these tactics is that turning police operations into media spectacles has triggered harsh reaction from politicians, judges, and lawyers who accuse the police of excess. Media reports seldom distinguish between temporary arrests and in flagrante delicto arrests, so in the public eye many of those arrested before trial are already considered guilty. Everyone from ordinary citizens to high-profile businessmen and public figures has been shoved into a police van, handcuffed and at gunpoint. The footage is aired nationwide and may well boost public support for the police and generate—however temporarily—the feeling that something is being done to fight impunity. But excess is a constant risk.

The cooperation between judges, prosecutors, and police officers has also been a focus of criticism. According to the former president of the highest court in Brazil, the Supreme Federal Tribunal (STF), Minister Gilmar Mendes, "Police officers, prosecutors, and judges cannot work together" without compromising the neutrality of their positions. Mendes even stated that by working jointly they became veritable "militia," a statement for which he was reprimanded by trial court judges and their professional associations (*OESP* 2008).

No operation has put the limits and possibilities of this new form of accountability in starker relief than Operation Satiagraha in 2008. Led by a Federal Police detective who had lost the support of the top echelons of the police in the months prior to the operation, Operation Satiagraha led to the arrest of one of the country's most prominent bankers, Daniel Dantas of Banco Opportunity; Naji Nahas, a well-known financial investor already involved in previous scandals; Celso Pitta, a former mayor of São Paulo; and fourteen other people accused of criminal conspiracy, corruption, money laundering, stock market fraud, and other financial crimes. Suspicion was rife that Dantas had already been involved in past national scandals, but allegations that he was linked to the *mensalão* scandal in 2005 (see Pereira, Power, and Raile, this volume) provided the impetus for this particular investigation.

There is no space to go into the details of Operation Satiagraha here, but the operation was marked by a series of twists and turns involving judicial decisions that had the banker arrested and set free twice. In the process, various confusing but telling details emerged, against both the targets of the investigation and accountability institutions themselves: attempts by Dantas to bribe federal police officers, allegedly offering US$500,000 to suspend the investigation; excessive zeal by the Federal Police officer directing the operation, who sought out the Brazilian Intelligence Agency (Agência Brasileira de Inteligência, ABIN) for unofficial and illegal help; the leaking of the police operation to TV network Rede Globo, whose cameras arrived at the home of one of the accused before the police on the day the secret arrest warrant was to be executed; public disagreements between trial court judges and Supreme Court ministers; divisions within the Federal Police itself, which culminated in the removal of the detective responsible for the operation, who went from being the primary investigator to being investigated by his colleagues; and the reconstruction of the whole police investigation to remove irregularly obtained evidence. These are some of the many dramatic turns that have attracted widespread public attention to the case and to the political, judicial, and police actors involved.

If on the one hand the evidence of crimes committed by gangs such as these has been compelling, on the other hand the STF—especially its president—has tried to put the brakes on federal police officers, prosecutors, and judges responsible for conducting the investigations. Madison wrote that ambition should counter ambition between the branches of government. Operation Satiagraha is a very good example of how, in the absence of strong institutions—capable of finding the correct balance between the fight against crime and the rule of law—personal motivations and ambitions may lead to excesses. In his first decision to set free Daniel Dantas after his arrest, the president of the STF stated that respect for the due process of law is what distinguishes a country with the rule of law from a police state. This has framed the public debate between those who claim to fight impunity by major criminals and those who intransigently defend the rule of law.

While the revelations behind the scenes of Operation Satiagraha would make Madison blush—ambition, betrayal, suspicion, and vengeance have all been factors[14]—institutional adjustments are being made that may

improve the balance between legitimate defense and legitimate prosecution. In this regard, it is worth pointing out that the judicial oversight body, the National Judicial Council (Conselho Nacional de Justiça, CNJ), in October 2008 established stricter rules for judges to use when authorizing telephone tapping and harsher punishments for breaches of confidentiality of electronic communications. In addition, the CNJ ruled that whenever information is leaked, the leak must be investigated. The congressional inquiry has completed its work and proposed new legislation on the use of wiretapping, with harsher punishment in cases of abuse and illegal use. In August 2008, the Supreme Court laid down rules for the use of handcuffs in arrests, stating that they are to be used only to protect bystanders or when there is a risk of flight. Not even the symbolic effect of naming Federal Police operations went unnoticed by the CNJ, and recently a determination was made that judges should refrain from using the names given by the Federal Police in their judicial rulings. Once again, according to the president of the STF and of the CNJ, Minister Gilmar Mendes, "We need to end this marketing [by the police] at the expense of the judiciary." The CNJ's decision will not prevent the Federal Police from continuing to name its operations, but such decisions mark an attempt to reestablish a more balanced prosecution of corruption and organized crime.

Another aspect must be highlighted in this conclusion: the accountability system is not static, and interaction among players has often led to corrections to procedures in pursuit of proportionality between the instruments of attack and defense of which Madison spoke. Shifting action in the fight against corruption from the civil to the criminal sphere coincides with the establishment of a civil police force that is national in nature, subject to the political control of the federal government. As we have seen, this is unprecedented in Brazilian political history. It should cause no surprise, therefore, that the concern to adopt measures against abuse of power should arise again in light of the recent expansion of police activism.

The process of institutional adjustment has been ongoing, with the rules of the game shifting as it is played. In terms of the quality of democracy, it seems clear that the best way to understand and predict the path that accountability may take under Brazilian democracy is by analyzing players' individual motives and the effects produced by the institutions they inhabit. Although it is still too early to say how effective the Federal Police's operations—with support from the web of accountability institutions—have been, we certainly are more aware today of what Bobbio called the "invisible power," and perhaps a little closer to fulfilling one of the still unfulfilled promises of democracy.

Notes

1. A 2004 constitutional amendment may change this situation. It created the National Council of the Ministério Público (CONAMP), which—although it is largely made up of prosecutors—is nonetheless charged with holding the Ministério Público accountable.

2. In this text, amounts are expressed in U.S. dollars rather than in the local currency, the *real*, at the exchange rate of US$1 = R$2.

3. The main reforms are (1) a proposal to restrict disclosure of information about people under investigation. Nicknamed the "gag law," this proposal was approved by the Chamber of Deputies in late 1999 but has been "sitting" unheard in the Senate ever since, hanging over the MP like Damocles' sword. (2) Given the MP's greater judicial activism in the past few years, prosecutors and attorneys have started to conduct criminal investigations with their own tools. Police, politicians, and even judges have reacted harshly, claiming that under the Constitution it is the police who must conduct investigations. The STF docket currently includes a case that will decide whether the MP can continue to carry out such investigations. (3) Other changes that threaten the work of prosecutors concern the extension of "special standing" to cases of administrative improbity. This will be discussed in greater detail later in the next section.

4. Polícia Federal, "Histórico da Polícia Federal," n.d., www.dpf.gov.br/institucional/historia/, accessed August 13, 2010.

5. The Federal Police appears in the constitutional hierarchy alongside the state civil and military police and the federal highway and railway police.

6. Instituto Brasileiro de Opinião Pública e Estatística, "Nova pesquisa do IBOPE Inteligência mostra a credibilidade das instituições brasileiras," press release, November 26, 2009, www.ibope.com.br, under "Pesquisas," "Opinião Pública," 2009.

7. Polícia Federal, "PF pelo Brasil," www.dpf.gov.br/institucional/pf-pelo-brasil/, data from September 2008.

8. The issue of special standing has become quite controversial, especially after Congress approved a legislative change (Law No. 10628) extending special standing from common crimes to acts of administrative improbity carried out by those in civil service positions. It is frequently argued that special standing

leads to impunity for politicians accused of corruption. Extending it to cases of administrative improbity, which are judged under the civil code and thus do not permit special standing, would be a major step backwards. This change threatened to have a devastating effect on the MP, as it removed prosecutors' ability to use charges of administrative improbity against mayors, governors, and other authorities, who thus could be sued exclusively by the twenty-seven prosecutors general of each state and by the federal prosecutor general. In addition, nearly four thousand existing cases were at risk of being set back by the new law, as they would have to be sent to appeals courts for review. The National Confederation of the Ministério Público (CONAMP) and the National Association of Magistrates (AMB), however, successfully challenged the constitutionality of this law before the STF. The constitutionality ruling, however, did not come down until nearly three years after the law originally went into effect. This delay, and the comings and goings that have characterized the political debate and the STF's decisions on the matter, created strong legal and institutional instability that adversely affected the MP's performance.

9. The average number of officers involved in each operation is seventy, but this number hides enormous variation across six hundred cases: from as few as six officers to as many as one thousand.

10. The summaries are available at "Agência de Notícias de Polícia Federal," www.dpf.gov.br/DCS/. Several gaps and inconsistencies have been resolved by means of extensive research on other institutional Web sites connected to the Federal Police (e.g., the Association of Federal Police Detectives, www.adpf.org.br/) and in the press.

11. Often the operations involved more than one type of crime, but the classification in table 8.2 reflects the main crime in each case.

12. The numbers provided by the Social Security Ministry are even more comprehensive than those obtained in the official Federal Police listing, on which our data are based: between 2004 and August 2008, no fewer than 171 operations were carried out, with 1,072 arrests: 262 INSS workers and 810 private citizens involved in the most diverse types of social security fraud. Twenty operations carried out by the Social Security Task Force in 2008 interrupted losses to the public coffers estimated at US$60 million. Ministério de Previdência Social, "Força Tarefa Previdenciária: Operações de 2003–2008," www.mpas.gov.br/conteudoDinamico.php?id=658, accessed October 20, 2008.

13. The results have sometimes been significant: Operation Trânsito Livre (Free Traffic) removed half of the federal highway patrol officers in the border region of Foz do Iguaçu from their posts; Operation Mercúrio removed one-third of the highway officers in the state of Amazonas; and Operation Sucuri, on the border between Brazil and Paraguay, led to the arrest of twenty-three federal police officers, three Revenue Service agents, two highway patrol officers, and eight smugglers. A Federal Police report from 2006 showed that between 2003 and 2006, 719 disciplinary cases were opened and 2,139 inquiries against members of the police itself

were carried out, with 186 agents suspended by Internal Affairs. See Departamento de Polícia Federal, "Relatório de Atividades—2006" [Annual Report 2006], www.dpf.gov.br/institucional/relatorio-anual-pf/RA%202006.ppt/view.

14. A meeting held by the Federal Police to discuss problems with the operation culminated with the decision to remove the detective who had led the investigation. To add to the controversy, the meeting was surreptitiously recorded and a three-hour-long audiotape was leaked to the press. It is available on the Internet at Folha.com, "Reuniao Polícia Federal," November 18, 2008, http://media.folha.uol.com.br/brasil/2008/11/18/reuniao_policia_federal.mp3.