

ELECTORAL SYSTEMS AND CONGRESSIONAL MALFEASANCE: COMPARING BRAZILIAN SENATORS AND DEPUTIES IN THE SUPREME COURT CASES

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Abstract: This article contributes to our understanding of the relationship between electoral systems and legislative malfeasance by examining personal vote, district magnitude, and electoral accountability. Studies emphasizing individual responsibility argue that personal-vote electoral systems promote good performance by elected politicians and constrain their malfeasance by enabling voters to identify, monitor, and hold responsible individual politicians. Another strand of the literature claims that large district magnitude ensures the availability of good politicians and electoral competition, which reduce malfeasance. At first glance, personal-vote systems with relatively large magnitude districts, such as open-list proportional representation, appear to combine the beneficial attributes of the electoral systems that prior studies have shown to lower malfeasance. This study develops a proposition that due to high information costs to voters faced with many candidates, multimember-district personal-vote systems may weaken, rather than strengthen, electoral accountability. Thus, the combination of personal votes and large district magnitude can paradoxically encourage the entry of bad politicians, facilitate their elections, and fail to deter them from misconduct once elected into office. Examining data on congressional malfeasance in Brazil, this study finds that deputies, who are elected through relatively large magnitude open-list PR, are more likely to receive court notices about the charges against them than senators elected by plurality rule.

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1 Introduction

Recently, a good deal of research has emerged connecting electoral systems to legislative malfeasance, such as corruption, nepotism, and other types of indiscretion and abuse of the political office (Cox and Thies 1998, 2000; Ames 2001; Golden and Chang 2001; Persson, Tabellini, and Trebbi 2003; Golden 2003; Myerson 2003; Kunicová and Rose-Ackerman 2005; Chang 2005; Chang and Golden 2007; Birch 2007; Tavits 2007; Gingerich 2009). Scholars such as Myerson (2003) and Persson, Tabellini, and Trebbi (2003) argue that larger district magnitude will reduce corruption by inducing greater electoral competition and by encouraging the entry of ‘good’ candidates into the race. Yet, Kunicová and Rose-Ackerman (2005) and others contend that corruption control is less effective the larger the district magnitude due to the difficulty of the voters and opposition parties to monitor and sanction incumbents for their misconduct.

The importance of voters’ ability to identify, monitor, and punish or reward politicians is echoed in the literature that emphasizes high clarity of responsibility as a condition for good governance (Powell and Whitten 1993; Powell 2000). Particularly, this line of argument asserts that personal-vote electoral systems, such as plurality and open-list proportional representation rules where voters cast ballots for individual candidates rather than political parties, are more effective in reducing corruption because of the voters’ ability to reward or punish individual politicians (Tavits 2007; Persson, Tabellini, and Trebbi 2003; see also Powell 2000). The threat of ouster from office is said to give strong incentives to politicians to refrain from malfeasance. By contrast, various studies of multimember-district preferential voting systems indicate that intra-party competition and the subsequent need to finance expensive candidate-centered campaigns motivate legislators to engage in pork barrel politics and other legal and illegal ways of raising money, generating a greater tendency for malfeasance than other electoral systems (Cox and Thies 1998, 2000; Samuels 2001; Golden 2003; Chang and Golden 2007). Thus, the literature has not reached a

consensus regarding whether higher district magnitude or personal-vote systems increase or decrease corruption and other forms of malfeasance.

This article contributes to our understanding of the relationship between electoral systems and legislative malfeasance by examining the relationship between personal vote, district magnitude, and electoral accountability. In particular, this study compares two personal-vote systems: plurality and open-list proportional representation (open-list PR). Both systems allow voters to vote for individual candidates. In such systems voters are said to be able to identify, monitor, and hold individual politicians accountable by ‘throwing the rascals out.’ Many scholars argue that this mechanism of electoral accountability promotes individual responsibility, encourages good policies, and gives disincentives for misconduct. However, these electoral systems are different in the size of district magnitude. Plurality rules have very low district magnitude, typically one, whereas district magnitude in open-list PR systems vary considerably, for example, from two (as in Chile) to as many as 70 (Brazil’s Sao Paulo) or 120 (Peru in the late 1990s). As stated previously, existing research diverges on the effects of district magnitude on malfeasance, some claiming its reduction while others pointing out its rise. Moreover, even though many experts have discerned the increasing importance of money in electoral competition in personal-vote systems, the literature is not clear about why it should lead politicians to illegal, rather than legal, fund raising.

At first glance, open-list PR with a relatively large district magnitude appears to combine the attributes of the electoral systems that prior studies have shown to lower political corruption, namely, lower barriers to entry and enhanced competition attributable to larger magnitude systems and the identifiability and punishability of corrupt politicians typically ascribed to plurality systems. However, by increasing the number of candidates exorbitantly, multimember-district preferential voting systems may make voters’ choice-making extremely difficult. High informational costs for voters, in turn, may lead some voters to abandon making choices altogether, thus failing to get electoral accountability mechanisms to work. In this article, I argue that the combination of personal votes and large district magnitude paradoxically

encourages the entry of bad politicians, facilitate their elections, and fail to deter them from misconduct once elected into office.

This proposition—whether a personal vote system implemented under high multimember districts leads to higher likelihoods of electing bad politicians—is explored using novel data from Brazil on charges Brazilian deputies and senators face in the Federal Supreme Court. This analysis is supplemented with anecdotal evidence from recent major corruption scandals in the country. The examination of the data indicates that federal deputies, elected by open-list PR with relatively large district magnitudes of varying sizes, are more likely, on average, to face charges in the Federal Supreme Court than senators elected by a plurality rule.

In what follows, I first discuss prior research on electoral systems and malfeasance by focusing on the impact of district magnitude and ballot types on electoral competition and accountability. I will then present why multimember-district preferential voting systems, such as open-list PR, appear to have a desirable combination of attributes that seem to induce both high clarity of responsibility and political competition. I then make a case for why clarity of responsibility is actually low in high district-magnitude personal-vote systems and why competition may rather encourage, not discourage, corruption under such scenarios. The fourth section presents and explores data of congressional malfeasance in Brazil. The final section concludes.

2 Electoral Competition, Clarity of Responsibility, and Corruption

Empirical research on the relationship between electoral systems and corruption has expanded in recent years, but the findings of these studies have been mixed. In general, the literature focuses on two variables of electoral systems—the ballot structure and district magnitude—and from these features draw inferences about competitiveness of elections, ability of voters and oppositions to monitor incumbents, and propensities for corruption and other types of malfeasance by elected officials.

The beneficial role of competitive elections in democratic accountability is widely noted in the literature (e.g., Montinola and Jackman 2002). Competitive elections help increase voters' choice of

candidates. Assuming that voters can discern good politicians from bad ones, and that given a chance they will choose the former, competitive elections help elect good-quality politicians. Moreover, with a wide availability of alternative candidates, competitive elections also induce elected politicians' good behavior and reduce corruption. Without credible alternative candidates for office, incumbent politicians may see captured votes, and voters may be trapped in the set of suboptimal choices and feel inefficacious in the selection of their representatives. Feeling confident in their re-election, politicians will have less incentive to be responsive and responsible, and may be more tempted to misuse their mandates. In short, competitive elections are an essential ingredient to make electoral accountability work.

In the studies of electoral systems and corruption, some scholars argue that competitiveness of elections and candidate quality increase with the size of district magnitude (M), with a consequent reduction in corruption. Thus for Myerson (1993), electoral systems that promote multiparty competition, such as proportional representation rules, are effective in eliminating corruption, but plurality rules are not because they tend to create barriers to entry against (presumably) non-corrupt new parties. The point about the barriers to entry is echoed by Persson, Tabellini, and Trebbi (2003), who contend that small electoral districts reduce the availability of good candidates and thus are likely to be associated with higher levels of corruption. Hence in this strand of the literature, the larger M , the better the quality of elected officials and the less corruption there will be.

However, higher district magnitude may be a double-edged sword because it may obscure the line of accountability and individual responsibility of elected officials. Even though high M may encourage more competition and a greater availability of good candidates, some scholars argue that large M creates monitoring problems for voters and thus more corruption (Persson, Tabellini, and Trebbi 2003; Kunicová and Rose-Ackerman 2005).

For example, the central concern for Kunicová and Rose-Ackerman (2005) is the ability of voters and opposition parties to monitor and discipline politicians under various electoral systems. According to the authors, such ability depends on two features of

electoral systems: district magnitude and whether voters vote for parties or individual candidates. The authors contend that monitoring politicians is more difficult, and hence corruption is greater, in higher M districts than in lower M districts and in electoral systems that do not allow voters to choose individual candidates. Likewise, the authors are skeptical about the oppositions' ability to effectively monitor the incumbents in proportional representation systems because of the adverse effects of multiple parties and coalition politics on monitoring.

Likewise, Persson, Tabellini, and Trebbi (2003) argue that personal ballots in plurality-rule elections are more effective in corruption control by making incumbents directly and individually accountable to voters, thus giving individual incentives for good performance by elected politicians. On the other hand, party-list systems, which are implemented under multimember districts, weaken individual incentives for good behavior because it creates more, and indirect, chains of accountability.

This line of reasoning is in fact at the center of the literature on clarity of responsibility and democratic performance (Powell and Whitten 2003; Powell 2000; Tavits 2007). It posits that political institutions that make lines of responsibility clear promote good governance by permitting voters to evaluate incumbents and punish or reward them accordingly, thereby giving representatives incentives to pursue good policies. Although the central focus of the existing work on clarity of responsibility is the majority status of the government, which enables voters to assign responsibility unambiguously, personal-vote electoral systems, such as majoritarian or open-list PR elections, should make it easier for voters to identify corrupt politicians and punish them by denying them re-election. The threat of electoral sanction, in turn, gives incentives for politicians to avoid malfeasance.

3 Multimember-District Preferential Voting Systems: Best of Both Worlds or Worst of Both Worlds?

If large district magnitude has the desirable effects of increased competition and availability of good candidates, and personal ballot systems of enhancing accountability mechanisms by giving voters to

the ability to monitor and punish individual politicians, personal-vote electoral rules implemented under multimember districts, such as open-list PR and single non-transferable vote (SNTV), appear to have the best of both worlds. In these systems, electoral competition and candidate quality supposedly increase as M rises, without taking away the tool of the voters to reward and sanction individual politicians. Consequently, one should observe less malfeasance by politicians elected by preferential voting rules from large districts than those elected by alternative combinations of ballot structures and district size.

However, this proposition can be challenged on at least two grounds. First, recent research on electoral systems that use preferential voting, such as open-list PR and single non-transferable vote, contends that the use of preferential vote in multimember districts elevates the importance of money in elections. Political corruption by elected representatives is explained by the expensive nature of individualized campaigns that candidates competing in multimember-district preferential voting systems pursue. This perspective has been used to explain corruption under open-list PR in pre-1994 Italy (Golden and Chang 2001; Chang 2005; Golden 2003) and the centrality of money in the politics of Japan (Cox and Thies 98, 2000; Nyblade and Reed 2008) and Brazil (Samuels 2001). Furthermore, since an increase in M in personal-vote systems presumably intensifies candidates' incentives to pursue personal votes (Carey and Shugart 1995), Chang and Golden (2007) posit that under open-list PR, corruption increases with the size of M .

Although plausible, it is not evident in the literature why candidates competing in these situations will pursue *illegal* forms of campaign funds. These studies shed important light on the incentives for candidates to raise money, but are silent about the constraints on such activities. Candidates competing in multimember-district preferential voting systems have incentives to pursue resources, perhaps even by illegal means, but if electoral accountability works, they should also face significant constraints to behave in this manner because such misconduct is more likely to be detected and punished by voters. On balance, then, predictions about the relationship between multimember-district personal-vote systems and corruption using this perspective are ambiguous.

The second challenge to the view that multimember-district preferential voting systems provide the best of both worlds is based on the possibility of limits on voters' cognitive capacity and their consequence when they are confronted with large choice sets. Recent experimental research and country studies on representation and voter turnout note that having too many candidate choices can place a hindrance to voters' decision-making processes. For instance, Lau and Redlawsk's (1997) study shows that larger choice sets decrease the probability of voters voting "correctly." Carey and Hix (2011) argue that too many partisan choices hinder the development of fully ordered voter preferences and raise informational costs for voters, thus hampering effective representation. Excessive numbers of candidates in the elections to the lower house of the Brazilian Congress pose a significant challenge to voters' cognitive capacity and sense of efficacy, which has contributed to voter abstentions in Brazil (Power and Roberts 1995; Cunow 2012). Indeed, when voters are presented with many options, a situation found in high magnitude districts using preferential voting, they may be unable or unwilling to identify quality candidates or punish bad politicians. If this is the case, the supposed mechanism of personal vote systems that would utilize the direct linkage between voters and politicians to make electoral accountability function does not work as expected.

In fact, the relationship between choice set size and cognitive capacity is well established in cognitive psychology. Human capacity for information processing is limited, and when the number of options exceeds a certain amount, people become more likely to avoid making choices altogether, make suboptimal choices, or even surrender the choice to someone else (Miller 1956; Iyengar and Lepper 2000; Schwartz et al. 2002). Moreover, the threshold is not very high: many people begin to become confused with as low a choice set as of six or seven (Miller 1956). Although most of the experiments on cognitive capacity have been conducted in the area of consumer choice, the same logic can be applied to political market research, such as voters' choices in elections.

The application of this perspective to voters' behavior and representation is still scarce. However, as discussed above, the few studies

that do exist have found evidence showing constraints on voters' choice-making processes given large numbers of candidates or parties (Lau and Redlawsk 1997; Carey and Hix 2011; Power and Roberts 1995; Cunow 2012), yet the exact number of the upper-ceiling of choices varies. Carey and Hix (2011) consider district magnitude of sizes between three and eight as the "electoral sweet spot" where representation and accountability are maximized, but Cunow (2012) finds that even a very modest increase in the number of candidates (choice sets larger than three candidates) has an important consequence for voter participation, and party labels do little to alleviate this cognitive effect.

Hence, preferential voting in high magnitude districts introduces complexity in voters' information processing and weakens electoral accountability because of the voters' inability or unwillingness to identify and sanction politicians. This in turn reduces incentives for individual responsibility and good performance by politicians, lessening constraints on their opportunistic behavior and misconduct and thus leading to greater corruption. In contrast, voters under low M preferential voting systems do not face high informational costs and are therefore better able to identify and hold their representatives accountable. Furthermore, because of the limitations on voters' ability to distinguish good from bad politicians, these systems give more reason for the latter to believe in their electability, thus encouraging their entry into the race. Even though prior studies emphasize entry of good candidates under reduced barriers to entry, high M also means lower barriers to entry for bad ones as well.

The cognitive challenges to voters facing too many candidates tend to lead to various sorts of abstentions and poor choices, including abandoning to vote, casting invalid or blank votes, or even surrendering their choice to supposed experts, such as local leaders and electoral brokers. Ames (2001) and Hiroi (2010) demonstrate that brokered mobilization of voters is a common and viable electoral strategy for candidates for federal deputies running under an open-list PR rule in Brazil where district sizes are relatively large. In such arrangements, candidates winning elections do not necessarily have to be popular or known to the voters. Under personal-vote systems, politicians lacking

credibility with voters may seek to develop reputation, which may be time-consuming and not necessarily successful. Or alternatively, they can simply rely on political intermediaries who can mobilize a bloc of voters on the politicians' behalf at election times, typically in exchange for some favors (Keefer and Vlaicu 2007). Studies by Hiroi (2010) indicate that once elected, corruption is typical among these politicians whose core electoral strategy is making deals with electoral brokers for votes.

In Afghanistan, voters cast their ballots for individual candidates under single non-transferable vote in multimember districts of sizes 2 to 33 seats. Like open-list PR in a large district, it is possible for a marginal candidate to be elected in this electoral system. For example, if there are four seats in a district, the top candidate may win with 90 percent of the votes while three others may win only with three percent of the votes each (Reynolds 2006). Moreover, experts fear that in very large districts, SNTV may create a lottery effect, making it "entirely random as to who among independents and minority candidates [will get] elected" (Reynolds 2006, 214). Large M also encourages a great number of candidates, making ballots long and confusing (Reynolds 2006), which poses significant challenges to voters to vote correctly and see the link between their votes and the government subsequently formed.

Indeed, many candidates elected in Afghanistan's first democratic election in 2005 were of questionable quality. According to Reynolds (2006, 218), among the 249 legislators elected in 2005, there were 40 commanders linked to militias, 24 belonging to criminal gangs, 17 drug traffickers, and 19 with serious war-crime allegations. In Kabul province where more than 400 candidates competed for 33 seats, the last candidate elected received only 0.5 percent of the vote. There was also substantial evidence that voters found the ballot confusing, contributing to low voter turnouts and spoiled ballots, especially in Kabul, the largest district. In short, in large M preferential voting systems, even small amounts of votes can elect candidates with dubious quality.

In addition to the problems for voters to identify good candidates and assign responsibility in large-M preferential voting systems, open-list PR systems may present an additional problem, i.e., the ability of

the voters to use their vote to act on the basis of that assignment when such assignment is done (Hellwig and Samuels 2007). In open-list PR, even though voters cast their ballots for individual candidates, votes are pooled at the party level to determine the number of seats each party will receive. Therefore it is possible that a very popular candidate helps elect his or her co-partisan candidates who cannot elect themselves solely based on their own votes, against whom many voters made a decision not to support. In 2002, Enéas Carneiro elected himself with more than 1.5 million votes from Sao Paulo, Brazil's largest electoral district with 70 seats, winning enough votes to elect five other candidates on his small party's list, including one who received as few as 275 votes. Consequently, even when compared to other preferential voting rules, open-list PR seems to have an additional problem in electoral accountability.

The proposition about the relationship between malfeasance and preferential voting systems does not contradict or compete with prior research on personal vote in multimember districts. Chang and Golden (2007), for example, find that corruption is lower in countries with open-list than with closed-PR systems, provided that district magnitude is below a certain threshold, specifically below 15 in their study. However, once district size exceeds this threshold, they find that open-list systems are associated with more corruption. Although their focus is on the incentives of politicians to raise campaign money illegally in personal vote systems, this study's claim regarding voters' cognitive capacity and electoral accountability points out that these politicians have not only incentives for corruption but also opportunities to do so, including lesser constraints they face as a result of weakened accountability and identifiability. By contrast, in countries where politicians have incentives but face significant constraints, corruption is less likely. Prior research concentrates on the incentives to raise money, but is not explicit about why politicians might do so illegally in a system where conventional wisdom states individual responsibility is paramount. This study indicates that large-M personal vote systems paradoxically diminish clarity of responsibility. Thus, the theoretical framework this study provides complements prior studies by providing an answer to the missing puzzle. And the

customary caveat stands: politicians engage in malfeasance given that they have both motive and opportunity to do so.

4 Congressional Malfeasance in Brazil: Comparing Federal Deputies and Senators

This section explores the hypothesis that high-magnitude personal-vote systems are more prone than low-magnitude personal vote systems to the election of bad politicians and legislators' malfeasance. Specifically, I compare two commonly used personal vote systems: plurality and open-list proportional representation. Both plurality and open-list PR are considered to elevate the importance of the personal vote compared to party reputation (Cain, Ferejohn, and Fiorina 1987; Carey and Shugart 1995). By enabling voters to vote for individual candidates, some scholars also argue that these systems enhance politicians' individual responsibility (Tavits 2007; Persson, Tabellini, and Trebbi 2003). However, as discussed above, voters' cognitive capacity for information processing becomes exponentially limited as district magnitude increases, and the intended mechanisms of electoral accountability are more likely to fail in high M open-list PR, electing more corrupt politicians and failing to deter their malfeasance once elected.

I explore this proposition by examining Brazilian federal deputies and senators. Brazil uses open-list PR to elect federal deputies and plurality to elect senators. For the elections of both houses, states are at-large districts. Since 1995, the Chamber of Deputies has 513 seats (503 seats until 1995), and its district magnitude varies from 8 to 70 (8 to 60 until 1995), with the state of Sao Paulo being the largest district. For Senate seats, candidates compete for either one seat or two seats in each state depending on the election year. The comparison of malfeasance records by Brazilian senators and deputies provides for a rare quasi-experimental setting that is lacking in most cross-national studies: they represent the same geographic constituencies; share similar organizational legislative structures and prerogatives; deal with the same president, bureaucracies, judiciary, and law enforcement; share the same history; and face the same national and regional constraints and problems (Desposato 2006).

Note that even the lowest magnitude districts for the lower house elections have eight seats, which is the upper-limit of Carey and Hix's (2011) "electoral sweet spot," but also far exceeds the limit of the effective functioning of voters' cognitive ability in an experiment undertaken by Cunow (2012) in Brazil. Furthermore, Brazilian law allows parties to field one and a half candidates for each seat in a district. As a result, most Brazilian voters find themselves in a situation in which they have to make a decision in legislative districts with hundreds of candidates. In 2010, even the least populous district with eight seats (state of Roraima) had 62 candidates, and in Sao Paulo, the largest district with 70 seats, 1,029 candidates ran. Moreover, federal legislative elections are held concurrently with presidential, gubernatorial, and state assembly elections. Thus, voting processes in Brazil's legislative elections can be unwieldy. If this paper's central contention—high *M* in personal-vote systems hinders, rather than helps, proper functioning of electoral accountability, thus leading to higher rates of malfeasance by elected politicians—is correct, we should find that malfeasance is more prevalent among the membership in the lower house than in the upper house.⁸

There is also survey-based evidence that Brazil's large district magnitude hinders effective and informed decision-making by voters, with implications for accountability and candidates' electoral strategies. Public opinion surveys have repeatedly revealed that a great majority of voters do not even remember for whom they voted in the last legislative elections. A recent study by Ames, Baker, and Rennó (2008), for example, indicates that in Brazil voter recognition of federal deputy candidates is less common than that of candidates in majoritarian (presidential or gubernatorial) elections. According to their study, among those actually going to the polls, 34% could not remember their legislative choice only one month later, and another 15% gave an incorrect name.

⁸ I am in no way making a claim that all the Brazilian deputies are corrupt or all the senators are clean. There are many respected, professional deputies who are unlikely to be corrupt. Moreover, misconduct scandals do appear for senators from time to time. My claim is that if the supposed electoral accountability mechanism does not properly function in high-magnitude open-list PR but does work better (but perhaps not perfectly) in plurality, we should then observe more malfeasance among the members of the lower house than among the upper house.

In addition, only 21% could spontaneously and correctly identify one of the many incumbent federal deputies in their state.

In high-magnitude districts, winning candidates need not be the most popular candidates but rather need to be just “adequate” to win a seat, and the threshold of adequacy, as discussed in the previous section, can be quite low. In such an environment, brokered mobilization of voters becomes a viable electoral strategy (Ames 2001; Hiroi 2010). Polls have repeatedly shown that prior to each election, many voters are approached by candidates or their “go-betweens” to sell their votes in exchange for money or other material goods or favors (Speck and Abramo 2002; Abramo 2007). There is also collective bargaining of votes conducted by influential leaders. The extent of this practice is such that it is possible that vote buying has significantly altered electoral results in certain cases (Abramo 2007).

If voters cannot remember whom they voted for, cannot correctly identify politicians representing them, or abandon to choose their representatives, they cannot use the threat of support withdrawal to induce politicians’ good behavior. In such a system, the line of electoral accountability is broken and corruption may abound.

Collecting malfeasance data poses a significant challenge to researchers because of the nature of the data (unlawfulness of such activities). This article utilizes information on the charges of malfeasance Brazilian legislators’ face in the Federal Supreme Court (STF). Brazil’s 1988 Constitution determines that incumbent members of the Federal Congress be tried only by the STF. Furthermore, its original provision prevented members of the Senate or the Chamber of Deputies from being tried in court without prior authorization by the respective house through a vote by their peers. This requirement amounted in practice to immunity from prosecution, even under very strong evidence of wrongdoing. This rule was finally altered by Constitutional Amendment No. 35 in December 2001, which reversed the process. Under the amended provision, Congress is informed if a case is brought against a member, but it has to proactively act if it wants to halt the case. In July 2010, I collected these STF notices (called *ofício*) sent to each house of Congress since 1988, and these constitute my primary data of legislators’ malfeasance. If the central claim of this article has relevance, we should

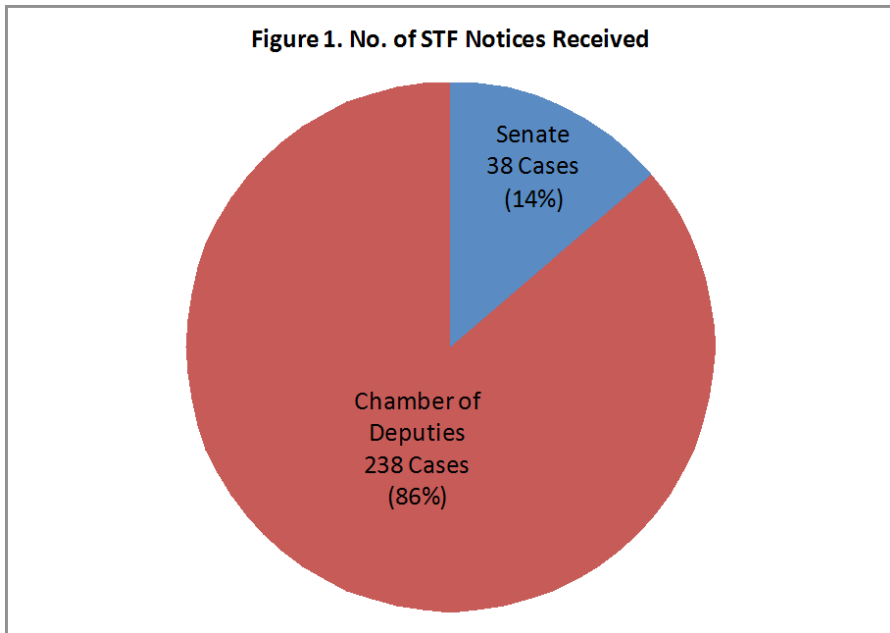
find the rates of STF notices to be higher in the lower house than in the upper house. I supplement the analysis of the STF notices with an examination of recent major corruption scandals that implicated many federal legislators.

There are a few caveats before we proceed to examine the STF data. First, the data represent *allegations* of malfeasance; it is possible that some of these allegations are unfounded. Ideally, we would use data of convicted cases, but the Brazilian judicial process moves extremely slowly, and rarely, if at all, are nationally elected officials convicted despite high initial media exposures and plenty of evidence against them in many of these cases (Taylor 2009). Despite this shortcoming, these are charges formally brought to the STF against incumbent members of Congress and symbolize the *first official decision* by the STF to move the cases forward. In a sense, these data may delineate legislators' malfeasance better than those based on accusations of wrongdoing reported by the media or perception-based indices of corruption. In any case, these malfeasance data should be considered to be complementary and should be interpreted with caution.

Second, STF notices against legislators do not constitute the universe of misconduct by legislators. Many cases of malfeasance remain uncovered or are only found after legislators leave office, in which case STF notices are not sent to Congress. Moreover, notices before the 2001 constitutional amendments included not only alleged crimes committed by incumbent deputies and senators while in their congressional office but also ones committed before assuming office. Although we should be careful about mixing these allegations attributed to two different periods, for the purpose of this study it is appropriate to examine both because its theoretical prediction refers to both electability of bad politicians and their misconduct in office.

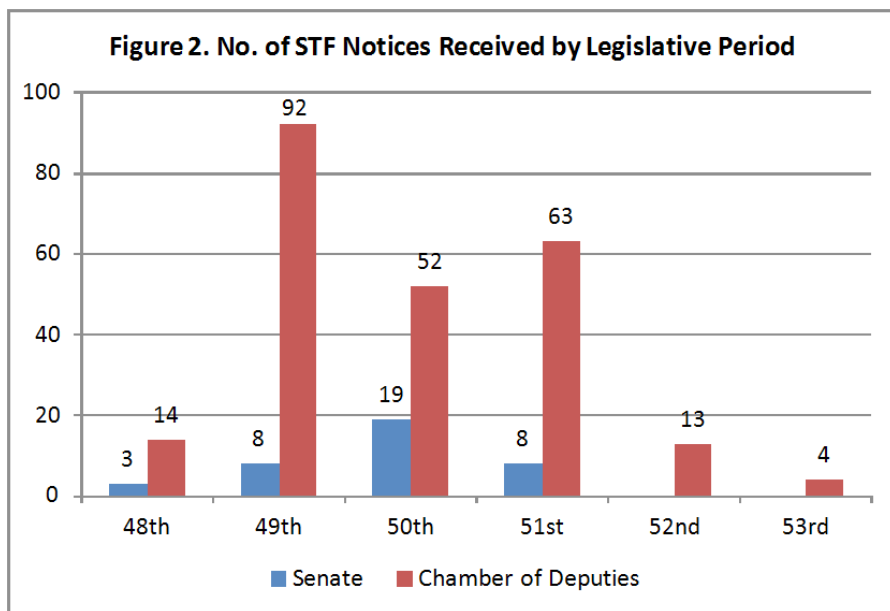
Third, since senators tend to have longer and more prominent political careers than deputies (Hiroi 2008) and their terms are longer (eight years for senators and four years for deputies), *ceteris paribus*, senators have more opportunities for malfeasance and more time to receive STF notices than deputies. This means that these data are biased against finding evidence of malfeasance by deputies compared to senators. On the other hand, if we find that the rates of malfeasance

are higher for deputies than senators based on STF notices, the evidence more strongly supports the hypothesis of this study than it first appears.



Sources: Elaborated by the author with data from the Brazilian Chamber of Deputies and the Federal Senate (2010).

Figure 1 presents the number of STF notices about the charges against senators or deputies received by the Senate and Chamber of Deputies from October 1998 through July 2010. In total, there are 276 such STF notices, 38 (14 percent) of which were sent to the Senate and 238 (86 percent) to the Chamber of Deputies.



Sources: Elaborated by the author with data from the Brazilian Chamber of Deputies and the Federal Senate (2010).

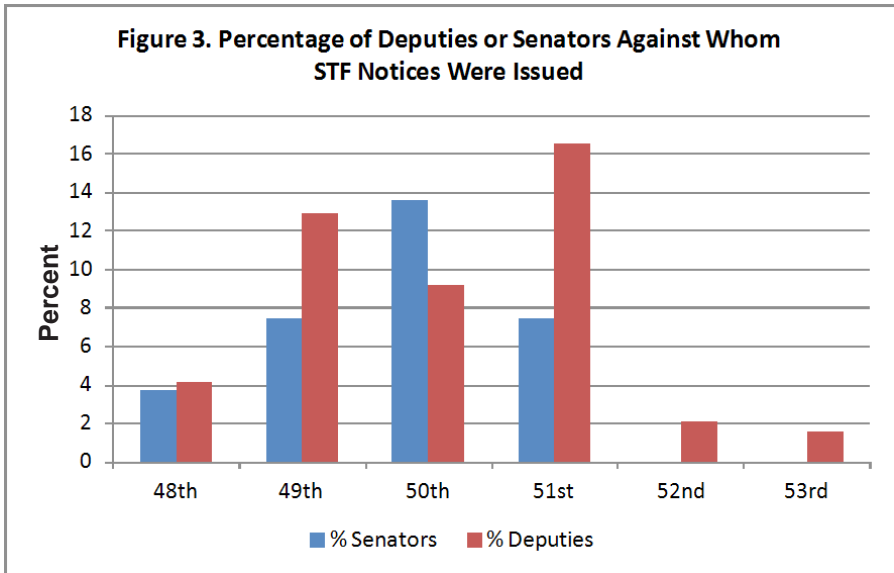
Note: The data for the 48th legislature cover approximately two years, from October 1998 to January 1991. The data for the 53rd legislature include STF notices received between February 2007 and July 2010. Constitutional Amendment No. 35 was enacted in December 2001.

Figure 2 provides the breakdown of the data by chamber and legislative period. The legislative term for the Brazilian Congress is four years, beginning in February and ending in January. The 48th legislature spanned between 1987 and 1991, and the 53rd between 2007 and 2011. The number of notices received by both houses of Congress during the 48th legislature is very small. This is partly explained by the fact that Brazil's newest constitution was only promulgated in October 1988, only at which point these notices were issued. Yet, even considering that it covers only about two years of the legislative period, these figures are comparatively small relative to the numbers in subsequent legislatures. The number of STF notices peaked during the 49th legislature with 92 notices received by the Chamber of Deputies. The number of STF notices to the lower house remained quite high during the next two legislative periods. It then dropped significantly after the

enactment of Constitutional Amendment no. 35 to only 13 during the 52nd legislature and four during the 53rd legislature. The peak in STF notices received by the Senate occurred during the 50th legislature when 19 notices, more than double the amount during the prior or subsequent legislature, were filed. From the enactment of the constitutional amendment in December 2001 through July 2010, the Senate did not receive any STF notice notifying the chamber of the opening of the process against its members for crimes allegedly committed since they took office.

The STF notices data indicate two interesting patterns. First, the Chamber of Deputies received far more notices than the Senate. This might not be surprising given that the lower house's membership is about six times as large as the size of the membership in the upper house. However, the lower house also received STF notices six times as many as the upper house did. Considering the point made earlier about different tenure lengths and political experiences, the fact that the numbers of STF notices issued to the two houses are roughly proportionally equal suggests possibly more malfeasance by the members of the lower house than the members of the upper house.

Second, the Senate received no STF notices against the incumbent members since the promulgation of Constitutional Amendment No. 35 whereas the Chamber of Deputies received 23 notices. The STF notices issued after the constitutional amendment are noteworthy because they indicate the opening of the processes for *crimes allegedly committed by incumbent legislators after their investitures*. While there was no opening of such processes against senators, there were 23 notices involving 27 federal deputies. One of these post-amendment STF notices deals with the “*mensalão*” (or big monthly payment) corruption scandal that broke out in 2005, which is discussed later in this section.



Sources: Elaborated by the author with data from the Brazilian Chamber of Deputies and the Federal Senate (2010).

Note: The data for the 48th legislature cover approximately two years, from October 1988 to January 1991. The data for the 53rd legislature include STF notices received between February 2007 and July 2010. Constitutional Amendment No. 35 was enacted in December 2001.

Table 1. Percentage and Number of Deputies or Senators Against Whom STF Notices Were Issued

Legislature	Senators (N)	% Senators	Deputies (N)	% Deputies
48th	3	3.7	21	4.2
49th	6	7.4	65	12.9
50th	11	13.6	47	9.2
51th	6	7.4	85	16.6
52th	0	0.0	11	2.1
53th	0	0.0	8	1.6

Sources: Elaborated by the author with data from the Brazilian Chamber of Deputies and the Federal Senate (2010).

Some STF notices include more than one legislator. Certain legislators also face multiple charges. Figure 3 and Table 1 present the percentage and number of deputies or senators against whom STF notices were issued in each legislative period under study. In these figures, if a legislator received multiple STF notices within the same legislative period, it is counted as one. The percentage of the total chamber membership who received STF notices in each legislative period takes into consideration the differences in the membership sizes of the two houses, and as such allows us to make a meaningful comparison of the two chambers. Both the table and the figure clearly show that federal deputies are on average more likely to receive STF notices than senators. Only during one legislature (the 50th) did the Senate exceed the Chamber of Deputies in the likelihood that its members received STF notices. Thus, the examination of STF notices provides confirming evidence for the hypothesis that due to the failure in the electoral accountability mechanism and low barriers to entry, corrupt politicians are more likely to be elected under a relatively high district magnitude open-list proportional representation rule than under a plurality rule, and once elected, they are more likely to be involved in malfeasance. Hence, by giving undue challenges to the voters in candidate selection and by obscuring identifiability, responsibility, and accountability, it is difficult to ascertain that personal-vote systems implemented with high M, such as open-list PR employed in Brazil, do service to the voters or enhance representation or government performance.

To illustrate the point further, it is worth examining recent major corruption scandals in Brazil. As mentioned before, one of the post-amendment STF notices deals with the *mensalão* corruption scandal that broke out in 2005, implicating the government of President Luiz Inácio Lula da Silva and his allies in the president's Workers' Party for funneling public funds to buy support for Lula's key reform programs, pension and tax reforms, in the Chamber of Deputies. The internal investigation in Congress by a bicameral parliamentary investigative committee produced a final report in September 2005, accusing 18 deputies, but no senators, of their involvement in the corruption scandal. Upon accepting the indictment of 40 individuals, most of whom former and incumbent deputies, the STF sent a notice in 2007 to the lower

house informing the initiation of the process against the then incumbent deputies, José Genoíno, Joao Paulo Cunha, Pedro Henry, Valdemar Costa Neto, and Paulo Rocha. Other deputies had either been expelled from office through the vote by their peers (a procedure called *cassação*) or resigned in the anticipation of their expulsion.

While Brasília was still being shaken by the *mensalão* scandal, yet another large-scale corruption scandal that involved many members of Congress surfaced in 2006. Even though the STF notice had not arrived in Congress when the field research was conducted in July 2010,⁹ this scandal shares an important feature with the *mensalão* scandal in the involvement of legislators, and hence is worth a look here. The scandal, known as *sanguessuga* (bloodsucker) or *máfia das ambulâncias* (ambulance mafia) scandal, involved a kickback scheme based on fraudulent ambulance procurement in which members of Congress proposed amendments to the annual federal budget law for the purchase of overpriced ambulances in target municipalities. Initially over 100 members of Congress (nearly 20 percent of the total membership) were denounced. The congressional committee investigated 90 members and found enough evidence to recommend sanctions against 69 deputies and 3 senators.

The *sanguessuga* scheme was sort of an “equal opportunity” corruption scheme, i.e., it exploited the routine budgetary procedure in which members of both houses of Congress regularly participate. Any legislator—senators or deputies—with a motive for corruption had a chance to participate (Hiroi 2010). Congress’ internal investigative committee reported that more than 13 percent of the federal deputies but only less than 4 percent of senators participated in the scheme. Hence, this incidence, along with the *mensalão* scandal, gives yet more anecdotal evidence that given an opportunity, deputies, who are elected through open-list PR, are much more likely to be involved in such a scheme than senators elected through a plurality rule.

⁹ The Brazilian judicial process moves notoriously slowly.

5 Conclusion

This article contributes to our understanding of the relationship between electoral systems and legislative malfeasance by examining personal vote, district magnitude, and electoral accountability. Studies emphasizing individual responsibility argue that personal-vote electoral systems, where voters cast ballots for individual candidates, promote good performance by elected politicians and constrain their malfeasance by enabling voters to identify, monitor, and hold responsible individual politicians. Another strand of the literature claims that large district magnitude is a key to ensuring the availability of good politicians and electoral competition which enhance the monitoring of incumbents by oppositions. At first glance, personal vote systems with relatively large magnitude districts, such as open-list PR, appear to combine the attributes of the electoral systems that prior studies have shown to lower political corruption, namely, lower barriers to entry and enhanced competition attributable to larger district magnitude systems and the identifiability and punishability of corrupt politicians typically ascribed to plurality systems.

However, this study develops a proposition that due to high information costs to voters faced with many candidates, multimember-district personal-vote systems may weaken, rather than strengthen, electoral accountability, leading to a higher likelihood of electing corrupt politicians. In addition, information costs for voters become exponentially larger as the size of district magnitude, and thus the pool of candidates, increases. Some electoral systems can thus become unwieldy as district magnitude becomes large, for example, as is the case with Brazil's open-list PR and Afghanistan's single non-transferable vote. Thus, the combination of personal votes and large district magnitude can paradoxically encourage the entry of bad politicians, facilitate their elections, and fail to deter them from misconduct once elected into office. What is more, it does not take much for this adverse effect to begin: past research indicates that choice-making start becoming difficult with as few as seven, or some even showing with three, different options.

This study probes the argument of this paper with data on congressional malfeasance in Brazil. Findings provide strong support

for the hypothesis. Brazilian deputies, who are elected through relatively large magnitude open-list PR, are more likely to receive court notices about the charges against them than senators elected by plurality rule. Moreover, a brief examination of two recent major corruption scandals reveals that these schemes primarily incriminated deputies, and no senator was involved in the first (*mensalão*) scandal and only three senators were initially accused of their involvement in the second (*sanguessuga*). Even though more research is needed to further probe the proposition, the evidence from Brazil indicates that open-list PR contributes to greater incidences of congressional malfeasance compared to plurality rule.

However, open-list PR does not necessarily generate this undesirable effect; as argued, its adverse implications for electoral accountability and legislative malfeasance occurs only when district size is relatively large. Thus, open-list PR implemented with very small district magnitude may actually yield the fruit of the positive effects of both personal vote and enhanced electoral competition discussed in the literature. Chile, which uses open-list PR with district magnitude of size 2, may be a case in point: Chile is a regular on the list of least corrupt nations compiled by various international agencies. Nevertheless, it is worth repeating that even a small increase in district magnitude can create much larger adverse effects on accountability and representation.

REFERENCES

- Ames, Barry. 2001. *The Deadlock of Democracy in Brazil*. Ann Arbor, Michigan: The University of Michigan Press.
- Abramo, Claudio Weber. 2007. "Compra de Votos nas Eleições de 2006, Corrupção e Desempenho Administrativo." Relatório de Pesquisa Feita pelo IBOPE Opinião para a Transparência Brasil e a União Nacional dos Analistas e Técnicos de Finanças e Controle. Sao Paulo, Brazil: Transparência Brasil.
- Ames, Barry, Andy Baker, and Lucio R. Rennó. 2008. "The Quality of Elections in Brazil: Policy, Performance, Pageantry, or Pork?" In Peter R. Kingstone and Timothy J. Power eds., *Democratic Brazil Revisited*. Pittsburgh, PA: University of Pittsburgh Press.

Birch, Sarah. 2007. "Electoral Systems and Electoral Misconduct." *Comparative Political Studies* 40(12): 1533-1556.

Chamber of Deputies. 2010. *Federal Supreme Court Notices*. National Congress, Brazil.

Carey, John M., and Simon Hix. 2011. "The Electoral Sweet Spot: Low-Magnitude Proportional Electoral Systems." *American Journal of Political Science* 55(2): 383-397.

Carey, John M., and Matthew Sobert Shugart. 1995. "Incentives to Cultivate a Personal Vote: a Rank Ordering of Electoral Formulas." *Electoral Studies* 14(4):417-439.

Chang, Eric C. C. 2005. "Electoral Incentives for Political Corruption under Open-List Proportional Representation." *Journal of Politics* 67(3): 716-30.

Chang, Eric C.C., and Miriam A. Golden. 2007. "Electoral Systems, District Magnitude and Corruption." *British Journal of Political Science* 37: 115-137.

Correio Braziliense. 2006. "Parlamento no banco dos réus." 20 August.

Cox, Gary W., and Michael F. Thies. 1998. "The Cost of Intraparty Competition." *Comparative Political Studies* 31(3): 267-291.

_____. 2000. "How Much Does Money Matter?: 'Buying' Votes in Japan, 1967-1990." *Comparative Political Studies* 33(1): 37-57.

Cunow, Saul. 2012. "Too Much of a Good Thing? Large Choice Sets, Parties, and Representation in Multimember Districts." Paper presented at Midwest Political Science Association Annual Meeting, April 12-15, Chicago.

Desposato, Scott W. 2006. "The Impact of Electoral Rules on Legislative Parties: Lessons from the Brazilian Senate and Chamber of Deputies." *The Journal of Politics* 68(4): 1018-1030.

Federal Senate. 2010. *Federal Supreme Court Notices*. National Congress, Brazil.

Gingerich, Daniel W. 2009. "Ballot Structure, Political Corruption, and the Performance of Proportional Representation." *Journal of Theoretical Politics* 21(4): 509-541.

Golden, Miriam A. 2003. "Electoral Connections: The Effects of the Personal Vote on Political Patronage, Bureaucracy and Legislation in Postwar Italy." *British Journal of Political Science* 33(2): 189-212.

Golden, Miriam A., and Eric C. C. Chang. 2001. "Competitive Corruption: Factional Conflict and Political Malfeasance in Postwar Italian Christian Democracy." *World Politics* 53: 588-622.

Hellwig, Timothy, and David Samuels. 2007. "Electoral Accountability and the

Variety of Democratic Regimes.” *British Journal of Political Science* 38:65-90.

Hiroi, Taeko. 2008. “The Dynamics of Lawmaking in a Bicameral Legislature: The Case of Brazil.” *Comparative Political Studies* 41(12): 1583-1606.

_____. 2010. “Electoral Strategies, Motives, and Corruption under Open-List Proportional Representation.” Paper presented at the Brazilian Studies Association Meeting, Brasilia, Brazil, July 22-24.

Iyengar, Sheena S., and Mark R. Lepper. 2000. “When Choice is Demotivating: Can One Desire Too Much of a Good Thing?” *Journal of Personality and Social Psychology* 79(6): 995-1006.

Keefer, Philip, and Razvan Vlaicu. 2007. “Democracy, Credibility, and Clientelism.” *The Journal of Law, Economics, & Organization* 24(2): 371-406.

Kunicová, Jana, and Susan Rose-Ackerman. 2005. “Electoral Rules and Constitutional Structures as Constraints on Corruption.” *British Journal of Political Science* 35: 573-606.

Lau, Richard R., and David P. Redlawsk. 1997. *American Political Science Review* 91(3): 585-598.

Miller, George A. 1956. “The Magical Number Seven, Plus or Minus Two: Some Limits on Our Capacity for Processing Information.” *The Psychological Review* 63(2): 81-97.

Montinola, Gabriella R., and Robert W. Jackman. 2002. “Sources of Corruption: A Cross-Country Study.” *British Journal of Political Science* 32(1): 147-170.

Myerson, Roger B. 1993. “Effectiveness of Electoral Systems for Reducing Government Corruption: A Game-Theoretic Analysis.” *Games and Economic Behavior* 5: 118-132.

Nyblade, Benjamin, and Steven R. Reed. 2008. “Who Cheats? Who Loots? Political Competition and Corruption in Japan, 1947-1993.” *American Journal of Political Science* 52(4): 926-941.

Persson, Torsten, Guido Tabellini, and Francesco Trebbi. 2003. “Electoral Rules and Corruption.” *Journal of European Economic Association* 1(4): 958-989.

Powell, G. Bingham, Jr. 2000. *Elections as Instruments of Democracy: Majoritarian and Proportional Visions*. New Haven: Yale University Press.

Powell, G. Bingham, Jr., and Guy D. Whitten. “A Cross-National Analysis of Economic Voting: Taking Account of the Political Context.” *American Journal of Political Science* 37(2): 391-414.

Power, Timothy J., and J. Timmons Roberts. 1995. “Compulsory Voting, Invalid Ballots, and Abstention in Brazil.” *Political Research Quarterly* 48(4): 795-826.

Reynolds, Andrew. 2006. "The Curious Case of Afghanistan." In Larry Diamond and Marc F. Plattner, eds., *Electoral Systems and Democracy*. Baltimore: The Johns Hopkins University Press.

Samuels, David. 2001. "Money, Elections, and Democracy in Brazil." *Latin American Politics and Society* 43(2): 27-48.

Shugart, Matthew Søberg, Melody Ellis Valdini, and Kati Suominen. 2005. "Looking for Locals: Voter Information Demands and Personal Vote-Earning Attributes of Legislators under Proportional Representation." *American Journal of Political Science* 49(2):437-449.

Speck, Bruno Wilhelm, and Claudio Weber Abramo. 2002. "Second Survey on Vote Buying in Brazilian Elections." Sao Paulo, Brazil: Transparência Brasil.

Tavits, Margit. 2007. "Clarity of Responsibility and Corruption." *American Journal of Political Science* 51(1): 218-29.

Taylor, Matthew M. 2009. "Corruption, Accountability Reforms, and Democracy in Brazil." In Charles H. Blake and Stephen D. Morris, eds. *Corruption & Democracy in Latin America*. Pittsburgh: University of Pittsburgh Press.